



SECRET/MOST IMMEDIATE

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VIJAI SHARMA
Additional Secretary
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Smt. (Pw)

मंत्रिमण्डल सचिवालय
राष्ट्रपति भवन, नई दिल्ली-110004
CABINET SECRETARIAT
RASHTRAPATI BHAVAN
NEW DELHI-110004

D.O. No. 701/3/1/2005-Cab.

26th December, 2005

Dear Madam,

This has reference to Cabinet Secretariat Memo. of even number dated 23.12.2005 constituting a Group of Ministers (GOM) regarding 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005'. The Group of Ministers is being serviced by the Ministry of Tribal Affairs. Copy of memo. is enclosed for ready reference.

2. As you are aware, the Group of Ministers is an ad-hoc Committee of the Cabinet, and in terms of established conventions, the Rules of Procedure applicable to the proceedings of the Cabinet are followed in the case of Group of Ministers also. The essential points to be kept in view while servicing the meetings of the Group of Ministers may kindly be seen at Annex.

3. Further necessary action in the matter may kindly be taken.

With regards,

Yours sincerely,

Vijai Sharma
(Vijai Sharma)

*Y/S (CRK)
DSE PCW
L.
29/12*

Dy. No. 572
Dated 28/12/2005

Smt. Meena Gupta,
Secretary,
Ministry of Tribal Affairs,
New Delhi.

*Copy retained
for Secretary (M)'s
10th perusal*

*1. Intd. on file.
29/12*

मंत्रिमण्डल सचिवालय/राष्ट्रपति भवन
Dy. No. 572
Dated 28/12/2005

To

49

(viii) Definition of forest dwelling scheduled tribes

JPC has defined forest dwelling scheduled tribes to mean STs who reside in or in close proximity to forests. The MoPR is in disagreement with the JPC in this respect. The Planning Commission has estimated that 47.1% tribal population resides between one to five kms. of forests, and have been so residing in and around forests for generations, while engaging in forest-based livelihoods. Many tribals have been evicted from the forest lands that they traditionally occupied and are therefore residing on the outskirts of forests while continuing to derive their livelihood from the forests. The definition by MoPR of "in and around the forests" seeks to cover precisely this category of tribals who have been dispossessed from their formal forest habitat and pushed to the forest periphery. It is these traditional rights that are sought to be projected in this clause.

(ix) Inclusion of MoPR in the Monitoring Committees

While the MoPR is concerned with the implementation of PESA in the Scheduled Tribe Areas, it is in agreement with the position of the Ministry of Tribal Affairs about the need to have Monitoring Committees at sub-divisional, district and State levels. However, we place on record the need for a caveat that representation from the MoPR be included at all levels. Besides, adequate representation for ST representatives including women ST members at all three levels of Committees must be ensured.



No.17014/4/2005-S&M/PC&V
Government of India
Ministry of Tribal Affairs

2.1 The 1st meeting of the Group of Ministers to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, was held on 20.7.2006 under the chairmanship of Shri Pranab Mukherjee, the then Minister of Defence. The stand of the Ministry of Tribal Affairs on the amendments made by the JPC on the Bill was placed before the GOM, which *inter-alia* said that while majority of the changes made by the JPC were broadly acceptable to the Ministry of Tribal Affairs with some changes, the following changes were not acceptable as they were considered to be against the interests of the Scheduled Tribes and the environment:-

- i) Expansion of the scope of the Bill to cover non-tribals and other forest dwellers;
- ii) Change of cut off date 25.10.1980 for recognition of forest rights;
- iii) Revision of the ceiling of 2.5 hectares of occupation of forest land;
- iv) Gram Sabha as the final authority for approving the forest rights; and
- v) Expansion of the definition of "Minor Forest Produce" to include stones, slates, boulders, fuel wood, timber, minerals, etc.

2.2 The GOM discussed these issues and after detailed discussions, a broad consensus was reached with reference to the following major issues:

- (i) The cut off date of 25.10.1980 provided in the Bill introduced on 13.12.2005 should not be revised.
- (ii) The ceiling of 2.5 hectares of occupation of forest land should be retained.
- (iii) The Gram Sabha need not be made the final authority for approving the forest rights, but should be the authority to initiate the process for determining the nature and extent of individual or community forest rights that may be given to the forest dwelling Scheduled Tribes, receiving claims,

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Government of India
Ministry of Tribal Affairs


4. **RECOMMENDATION OF THE JOINT COMMITTEE FOR PLACING THE BILL AFTER ENACTMENT IN THE NINTH SCHEDULE OF THE CONSTITUTION**

The Joint Committee in its Report has also observed that the Bill is an urgent measure intended to address a historical injustice done to a large section of some of the weakest and most marginal communities of our society and in particular the Scheduled Tribes. The Committee has noted that the courts have passed a number of orders in the light of guidelines issued by the Ministry of Environment and Forests including stay on regularisation of land title and preventing the process of recognition of rights from being completed. At this stage any further delay on the ground of litigation will lead to further injustice to the Scheduled Tribes and other traditional forest dwellers and will result in mass eviction. Since this law is directly intended to fulfill the constitutional mandate under the Directive Principles stated in Article 39(a), 39(b) and 46 of the Constitution and the States mandate under Article 48A, it deserves protection available through Article 31B. The Committee has, therefore, strongly recommended that the Bill after its enactment may be placed in the Ninth Schedule to the Constitution with a view to ensuring smooth and speedy implementation of the provisions of this law. The GOM may take a view on this recommendation.

5. The above position is submitted for the second meeting of the Group of Ministers for taking a final view on the issues at paras 2.2, 2.3, 3 and 4

6. The Minister of Tribal Affairs has seen and approved the proposal in this note.

Place: New Delhi
Date: 10th November, 2006


(Ruchira Pant)
Joint Secretary to the Government of India
Tele: 23383622

1. May kindly see the letter from Shri Ashok Gehlot, General Secretary, AICC and Shri Bharat Singh Solanki, MP and President of Gujarat Congress Committee on the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. As desired, The Ministry of Environment and Forests have been reminded with a copy to the Ministry of Tribal Affairs.

2. It appears from the media that there is an effort to mobilize public opinion on this issue through a Jail Bharo Andolan and demand immediate action by the government to notify the Act and Rules. In this connection, the following is submitted: ←

- a) The legal advice tendered by the Law Secretary at Principal Secretary's meeting seems to be at variance with the provisions of the Wildlife Protection Act, 1972 as amended in 2006. The key issue on which the notification of the Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules is being delayed is on the ground that "critical wildlife habitats" have to be identified. N/16-19 discusses the provision in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 and labours the point that the definition of the critical wildlife habitat as conceived in this Act is to follow and not precede the coming into existence of the Act. It is a specific provision under 4(2) of the Act itself for modifying the rights given to ensure relocation etc. and therefore presumes the accrual of the rights in the first place.
- b) Legal advice seems to have been based on the "practicality" of the issue and not "legality." If an argument is taken that it may be impractical to conceive of relocation after assigning rights, it may be a "practical issue" not a "legal" one and the two have to be differentiated. If practical issues to be taken up on board then it is also a fact that in the last 34-years, ever since the Wildlife Protection Act, 1972 came into force, not more than 5000 families have been relocated as reported in a Parliament Question. This has been on account of extremely poor terms of compensation/relocation which can easily be corrected through an attractive compensation package. ←
- c) There seems to be a flaw in the position of the Law Secretary made orally. The Wildlife Protection Act, 1972 as amended in

2006 already brings in the concept of core or critical tiger habitat and the concept of the critical wildlife habitat, for all practical purposes, is being agitated only on the grounds of tiger protection. Section 38.V (3), (4) and (5) of the Wildlife (Protection) Act, 1972 which is excerpted on Flag 'A' clearly states that:

- (i) *Core or critical tiger habitat areas of National Parks and Sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the purpose;*
 - (ii) *Buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i) of section 38 V (4), where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purposes.*
- (5) *Save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this sub-section, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation unless –*
- (i) *the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete;*
 - (ii) *the concerned agencies of the State Government, in exercise of their powers under this Act establishes with*

- d) Two respected civil society members from the Sub- Division/ Block/Taluka, atleast one of them shall be a woman, recognized for their understanding of forest rights tenurial issues in the area to be appointed by the District Level Committee preferably from among the first dwelling Scheduled Tribes of the Sub Division or District.
- e) Sub Divisional Level Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP) who will be the Member Secretary.

4(3) **Composition of the District Committee on Forest Rights**

- a. Chairman of the Zilla Parishad who shall be the Chairperson
- b. Collector who shall be the Vice Chair Person
- c. Conservator of Forests or Divisional Forest Officer
- d. Tribal Member of the Zilla Parishad nominated by the Zilla Parishad
- e. Two respected civil society members, atleast one of them being a woman, at the district level known for her/his understanding of tribal-forest issues nominated by the Tribal Commissioner/Director
- f. A Scheduled Tribe Member of Parliament representing the concerned Sub Division or in case there is no Scheduled Tribe Member of Parliament, a Scheduled Tribe Member of Legislative Assembly representing the concerned Sub Division to be nominated by the State Level Monitoring Committee. In case there is no Scheduled Tribe Member of Parliament or Member of Legislative Assembly from the Sub Division then any other Member of Parliament representing the Sub Division may be nominated.
- g. In the case of the North Eastern States a representative selected by the confederation of tribal councils such as autonomous regional councils.
- h. District Level Tribal Development /Welfare Officer, who shall be the Member Secretary

4(4) **Composition of the State Committee on Forest Rights**

- a) Secretary in charge of Tribal Welfare shall be the Chairman
- b) Principal Chief Conservator of Forests who shall be the Vice Chair Person
- c) Director Revenue
- d) Three renowned non-government person known for her/his understanding of tribal-forest issues nominated by the Nodal Agency.
- e) Commissioner/Director Scheduled Tribe who shall be the Member Secretary.

Chapter V

Nature of Evidence for Forest Rights

5. Nature of Evidence:

5 (1) The evidence for recognition and vesting of forest rights under Section 3 of the Act includes but is not limited to:

- a) Records prepared at the time of scheduling an area, and while scheduling the tribe and /or
- b) Government Records published or not and would also include Gazetteers, Census, Settlement Records Governments Orders, Commission Reports, Circulars, Quasi Judicial and Judicial Records including preliminary offence report by whatever name called and/or
- c) Documentary evidence from any prior research or documentation of a reputed institution, including survey maps and/or
- d) Traditional structures and symbols establishing its antiquity and/or
- e) Any authentic record from erstwhile princely state or province and /or
- f) Permanent improvement on the land such as wells, houses, medbandi and other land improvement works which were done prior to 1980 or loan taken from cooperative society for such constructions, seeds and fertilizers and/or
- g) Prior Resolution of the Gram Sabha on any forest right and/or
- h) Relevant circumstantial evidence including witnesses of neighbours, senior citizens and local inquiry by a local committee of at least three members, of whom, at least one should be a woman, and appointed by the Gram Sabha and/or
- i) Oral evidence of those who cannot read or write, reduced to writing.

- 3(8) The Sub Divisional Committee subject to preferring of all disputes relating to nature and extent of forest rights shall decide on the resolution of the Gram Sabha and then prepare the record of forest rights so determined through the Sub Divisional Magistrate and shall then forward to the District Level Committee for approval within a maximum period of six months.
- 3(9) The District Collector shall then effect necessary entries in the revenue and forest records specifying the nature and extent of such forest rights within a period not more than six months from the date of receiving the record of rights from the District Level Committee. The Collector shall be empowered to take up correction of land records relating to forest rights even after expiry of the period of limitation.
- 3(10) **Procedure to be followed by the Authorities at all levels under the Act**
The Authorities at all levels under the Act shall follow procedures that ensure that
- a. all concerned eligible forest right holders are informed,
 - b. all eligible forest right holders have an opportunity to assert their right in their language,
 - c. Traditional methods of publicity in the local language as well as advertisements in the local newspapers must be used to inform the people about the program of deciding the eligibility of forest right
 - d. all eligible forest right holders are covered and every person is given an opportunity to be heard.
 - f) Information of the task of the Gram Sabha or other authorities for the purposes of this Act, its aims, objectives and procedure should be made available in the village square, Gram Panchayat office of all villages, Panchayat Samiti and Tehsil office. Special attention should be given to reaching remote settlements and unsurveyed villages.
- 3(11) A timetable giving the dates and time of meetings of the gram Sabha should be prepared and publicized in advance within a fixed time period.
- 3(12) The verification of forest rights and their consequent acceptance or rejection thereby recognizing and vesting of forest rights and effecting necessary changes in revenue and forest records shall be completed within a maximum period of two years from the passage of this Act, which period may be extended by the Central Government if circumstances so require.
- 3(13) The Nodal agency shall ensure preparation of maps of appropriate resolution through satellite imagery to help know the present status of occupation of forest land for habitation and agriculture.
- 3(14) Title on forest right especially on forest land shall be conferred free of all encumbrances, including requirements of Net Present Value and Compensatory Afforestation for diversion of forest land.

Chapter IV

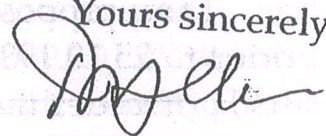
Authorities under the Act

- 4(1) **Gram Sabha** shall be the village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level. For North Eastern States where there are no Panchayats, Gram Sabha would mean traditional village institution.
- 4(2) **Composition of the Sub Divisional Committee on Forest Rights:**
- a) Sub Divisional Magistrate who will be the Chairperson
 - b) Sub Divisional Level Forest Officer who shall be the Vice Chair Person
 - c) Tribal Member of the Panchayat from the Sub Division nominated by the Zilla Parishad.

I would like to assure on behalf of the tribal people that recognition and vesting of forest rights of forest dwelling Scheduled Tribes would go deep into their psyche in instilling a long lasting sense of affiliation with their habitat.

With kind regards

Yours sincerely,




(P.R. KYNDIAH)

9/c

Smt. Sonia Gandhi
Chairperson
National Advisory Council
2, Motilal Nehru Place
New Delhi-110 011

Issued today


28/2/05

4. Regarding harmonization with the provisions of the Forest (Conservation) Act, 1980 the cut-off date of 25.10.1980 has now been provided in the proposed Bill and therefore the provisions of the Bill are now in conformity with the stated policies of the Ministry of Environment & Forests.

5. The proposed Bill recognizes and vests the right existing prior to 25.10.1980 in the form of an enabling legislation and, as such, precedes the Forest (Conservation) Act itself and, therefore, the recognition and vesting process does not attract the provisions of Forest (Conservation) Act. Further, the proposed Bill also seeks to provide sufficient checks and counter-checks to ensure that the forest rights are not conferred on anybody other than the genuine forest dwelling scheduled tribes. The nature of evidences that have been provided in Chapter V of the Draft Rules lays emphasis on the documentary evidence including the records prepared at the time of scheduling the area and the tribe in the early 1950s. In essence, the proposed Bill seeks to eliminate all ineligible encroachers in more certain terms than the current policy framework. Furthermore, the forest rights recognized under the proposed Bill include responsibility and authority for sustainable use of forest land, biodiversity conservation and maintenance of ecological balance, thereby strengthening the conservation regime while ensuring livelihood and food security of the forest dwelling Scheduled Tribes.

6. With regard to the suggestions annexed to your letter, I am enclosing point-wise reply along with a copy of the revised Draft Bill and Draft Rules. On receipt of similar suggestions from the Prime Minister's Office, we have sent replies to the PMO also.

officers and other employees for anything which is in good faith done or intended to be done under this Act.

~~13.~~ 12. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

Nodal agency.

~~14.~~ 13. In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

Power of Central Government to issue directions.

~~15.~~ 14. Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

~~16.~~ 15. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the procedure for and the manner of recognition and verification of forest rights under sub-section (4) of section 4;

(b) the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings under sub-section (2) (1) of section 6;

(c) the composition and functions of the Sub-Divisional Level Committee and the procedure to be followed by it in the discharge of its functions under sub-section (4) (2) of section 6;

(d) the manner of preferring an appeal a petition to the Sub-Divisional Level Committee under sub-section (5) (2) of section 6;

(e) the composition and functions of the District Level Committee under sub-section (7) (9) of section 6;

(f) the manner in which an appeal a petition may be preferred to the District Level Committee under sub-section (8) (4) of section 6;

(g) the procedure to be followed by the District Level Committee under sub-section (9) (2) of section 6;

(h) the composition and functions of the State Level Monitoring Committee under sub-section (1) (9) of section 7.6;

(i) the periodic reports and returns to be submitted to the nodal agency by the State Level Monitoring Committee under sub-section (3) (7) of section 7.6;

(j) any other matter which is required to be, or may be, prescribed.

(3) The rules so framed under this Act shall keep in view the variations observed in different parts of the country considering the ground level situation.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period

Act; or

(ii) commits a breach of any of the conditions of the forest right vested or recognised under this Act; or

(iii) engages in unsustainable use of forest or forest produce; or

(iv) destroys wildlife, forests or any other aspect of biodiversity; or

(v) fells trees for any commercial purpose,

he shall be guilty of an offence against this Act and be punished with a fine which may extend to one thousand rupees and in case of the offence is committed more than once, the forest right(s) of the person who has committed the offence shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha may decide.

Provided that these penalties shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Offences by members or officers of authorities under this Act.

9.—~~8.~~ Where any authority or officers or member of such authority contravenes any provisions of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with ~~imprisonment which may extend to thirty days or with fine which may extend to five one thousand rupees; or with both.~~

Provided that nothing contained in this sub-section shall render any member of the authority or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

~~10.-9.~~ No court shall take cognizance of any offence under section 9 ~~8~~ of this Act unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

Cognizance of offences.

CHAPTER VI

MISCELLANEOUS

~~11.-10.~~ Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Members to be public servants.

45 of 1860.

~~12.-11.~~ (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority referred to in Chapter IV including its Chairperson, members, member secretary,

the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval.

~~(7) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer an appeal a petition to the District Level Committee in such manner as may be prescribed and the District Level Committee shall consider and dispose of such appeal petition:~~

~~Provided no petition shall be preferred before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee.~~

~~Provided further that no such appeal petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.~~

~~(8) In discharging the functions under this Act, the District Level Committee shall follow such procedure as may be prescribed.~~

~~(9) Every appeal petition under sub-section (8) (7) shall be preferred within sixty days from the date of decision of the Sub-Divisional Level Committee.~~

~~(10) (6) The decision of the District Level Committee shall be final and binding and the Gram Sabha shall maintain the records accordingly.~~

~~(11) Every action under sub-section (1) to (10) shall be initiated conducted in such manner and subject to such procedure as may be prescribed.~~

State — Level
Monitoring
Committee.

~~(7) (1) The State Government shall constitute. There shall be constituted a State Level Monitoring Committee with such composition and functions as may be prescribed:~~

~~(2) The State Level Monitoring Committee shall examine the record of recognised and vested rights of forest dwelling Scheduled Tribes submitted by the District Level Committee and conduct periodic inquiry into to monitor the process of recognition and vesting of forest rights through random selection of sites and.~~

~~(3) The State Level Monitoring Committee shall submit to the nodal agency such periodic returns and reports as may be called for by that agency, along with the recommendations of the Committee for appropriate action.~~

~~(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the Departments of Revenue, Forest and Tribal Affairs at the appropriate level as prescribed.~~

~~(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by the authorities in discharge of their functions shall be such as may be prescribed.~~

CHAPTER V

OFFENCES AND PENALTIES

Penalties.

8. 7. If any holder of any forest right conferred by or under this Act or any other person —

(i) contravenes or abets the contravention of any of the provisions of this

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. (1) ~~The Gram Sabha shall be the authority to initiate any action-the process for determining the nature and extent of individual and/or community forest rights that may be given to the forest dwelling Scheduled Tribes within the local or customary limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of such rights in a format as prescribed. The Gram Sabha shall then and pass a resolution to this effect and thereafter forward the same to the Sub-Divisional Level Committee.~~

Authorities to vest forest rights in forest dwelling Scheduled Tribes and the procedure thereof.

~~(2) Any person aggrieved by the decision resolution of the Gram Sabha may prefer an appeal a petition to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Level Committee shall consider and dispose of such appeal petition:~~

~~Provided that every appeal such petition under sub-section (5) (3) shall be preferred within sixty days from the date of decision resolution of the Gram Sabha.~~

~~Provided further that no such appeal petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.~~

~~(2) (3) A There shall be constituted a Sub-Divisional Level Committee shall to examine the decision taken resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub Divisional Officer to the District Level Committee for a final decision.~~

~~(3) The composition and functions of the Sub-Divisional Level Committee and the procedure to be followed by it in the discharge of its functions shall be such as may be prescribed.~~

~~(4) Any person aggrieved by the decision resolution of the Gram Sabha may prefer an appeal a petition to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Level Committee shall consider and dispose of such appeal petition:~~

~~Provided that no such appeal petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.~~

~~(5) Every appeal petition under sub-section (5) (4) shall be preferred within sixty days from the date of decision resolution of the Gram Sabha.~~

~~(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer an appeal a petition to the District Level Committee in such manner as may be prescribed within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such appeal petition:~~

~~Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee.~~

~~Provided further that no such appeal petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.~~

~~(6) (5) There shall be constituted a District Level Committee with such composition and functions as may be prescribed to consider and finally approve~~

Scheduled Tribe;

(ii) the title to the extent given shall be registered jointly in the name of both the spouses where married and in the case of single person headed households, in the name of the single head ~~the male member and his spouse.~~

(6) The forest rights recognized and vested under sub-section (1) in the forest dwelling Scheduled Tribe shall -

(i) be exercised only to the extent vested for ~~bonafide livelihood purposes and not for exclusive commercial purposes;~~

(ii) include the responsibility and authority of protection, conservation with sustainable use and regeneration of adjoining forests in which community rights have been vested.

(7) In case any forest right recognised and vested under sub-section (1) is disputed by any State Government or local authority, the Competent Authority appointed by the Central Government shall consider the records prepared at the time of declaring the area as a Scheduled Area, and while notifying any tribe to be or deemed to be a Scheduled Tribe under article 342 of the Constitution, along with evidence and then pass an appropriate order in the matter.

Provided that no order denying or refusing to grant any forest right shall be passed unless the aggrieved member or members of the community are given an opportunity of being heard.

(8) Forest rights shall be conferred free of all encumbrances, including requirements of net present value and compensatory afforestation for diversion of forest land.

Duties of holders of forest rights.

5. The holder of any forest right under this Act shall ensure that, -

(a) save as for those sustainable use activities that are permitted under such rights, not indulge in any activity ~~no activity shall be carried out~~ that adversely affects the wild life, forest and the biodiversity in the local area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reforestation;

(b) ensure that adjoining catchment areas, water sources and other ecologically sensitive areas are adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) intimate to the Gram Sabha and to the forest authorities any activity in violation of any of the provisions of -

(i) the Wildlife Protection Act, 1972;

(ii) the Forest (Conservation) Act, 1980; or

(iii) the Biological Diversity Act, 2002,

~~is intimated to the Gram Sabha and to the forest authorities;~~

(e) decisions taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

53 of 1972.

69 of 1980.

18 of 2003.

~~(j) right to access to biodiversity and community right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity;~~

~~(k)(j)~~ right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

~~(l)(k)~~ rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;

~~(m)-(l)~~ any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wildlife hunting and unsustainable use.

CHAPTER III

RIGHTS OF FOREST DWELLING SCHEDULED TRIBES

Recognition of and vesting of forest rights in forest dwelling Scheduled Tribes.

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in the forest dwelling Scheduled Tribes, where they are scheduled, in respect of forest land and their habitat including right to collect, utilize or transfer minor forest produce in such manner as may be prescribed:

Provided that forest rights determined under this Act for vesting in the core areas of the National Parks and Sanctuaries shall be granted on provisional basis for a period of five years from the date of coming into force of this Act.

Provided further that such provisional rights in such core areas shall become permanent if the holders of such rights are not relocated within this period with due compensation.

(2) The recognition and ~~vesting~~ vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Tribes or tribal communities had occupied forest land before the 25th day of October, 1980 or such other date as the Central Government may, by notification in the Official Gazette, specify:

(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable ~~excepting for the right conferred by clause (g) of section 3.~~

(4) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed.

(5) Where the forest rights recognized and vested under sub-section (1) are in respect of land mentioned in clause (a) of section 3, -

(i) such land should be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe.

(m) (l) "Scheduled Area" means any Schedule Area as referred to in clause (l) of article 244 of the Constitution;

(n) (m) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002; 18 of 2003.

(o) (n) "village" means—

(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; 40 of 1996.

(ii) any area referred to as a village in any State law relating to Panchayats other than a Schedule Area;

(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

53 of 1972.

(p) (o) "wild life" means any species of animal listed in Schedules I, II, III and IV ~~has the same meaning as assigned to it in clause (37) of section 2~~ of the Wildlife (Protection) Act, 1972.

CHAPTER II

FOREST RIGHTS

3. For the purposes of this Act, the following rights which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes, namely:— Forest rights of forest dwelling Scheduled Tribes defined.

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;

(b) community rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;

(c) right of ownership access to, use or dispose of minor forest produce;

(d) other community rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) right, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed land under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases of grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of conversion of forest villages into revenue villages;

(i) rights of settlement of old habitations and unsurveyed villages, whether notified or not;

Definitions.

2. In this Act, unless the context otherwise requires,-

~~(a)~~ "bonafide livelihood needs", in relation to forest dwelling Scheduled Tribes, means the use of forests and forest based products for subsistence of such Tribes or for their own consumption and includes barter and sale of such forest based products for their household needs;

~~(b)~~ "commercial purpose" includes a forest based activity where such activity is used for profit or for large scale trade or mercantile purposes;

~~(ae)~~ "competent authority" means an authority appointed by the Central Government

~~(b)~~ "core areas" shall mean such areas of National Parks and Sanctuaries required to be kept as inviolate for the purposes of wildlife conservation as may be determined by the Ministry of Environment & Forests.

~~(d)-(c)~~ "forest dwelling Scheduled Tribes" means the members or community of Scheduled Tribes who primarily reside in and around forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bonafide livelihood needs;

~~(e)-(d)~~ "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks;

~~(f)-(e)~~ "forest rights" means the forest rights referred to in section 3;

~~(g)-(f)~~ "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses, permitted by the Government;

~~(h)-(g)~~ "Gram Sabha" means a village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level and in case of State having no Panchayats, the traditional village institutions;

~~(i)-(h)~~ "habitat" includes the area comprising the customary habitat and such habitats in reserved forests and protected forests, of Primitive Tribal Groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;

~~(j)-(i)~~ "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

~~(k)-(j)~~ "nodal agency" means the Ministry of the Central Government dealing with tribal affairs or any officer or authority authorised by the Central Government in this behalf for the implementation of the provisions of this Act;

~~(l)-(k)~~ "prescribed" means prescribed by rules made under this Act;

NOTE ON ACCEPTED POSITIONS OF GOVERNMENT ON TRIBAL AND FOREST DWELLERS RIGHTS

The year 1980 as cut-off year was first suggested by the Ministry of Environment and Forests (MOEF) in a circular on 18-9-1990 which directed State Government to "settle disputed areas, convert forest villages into revenue villages and regularize pre-1980 eligible encroachments as a one time dispensation." This regularization extended to all forest dwellers tribal and non-tribal. Moreover no ceiling was put on regularization of land. However in eleven years only 3.74 lakh hectares of land was regularized in eight States. The Supreme Court on November 23, 2001 banned further regularization of encroachments. The court made no differentiation between tribals and non-tribals. The MOEF through its circular dated 30-10-2002 reiterated that the 1990 guidelines for regularization of pre-1980 encroachments still stands. On 3-2-2004 and 5-2-2004 the MOEF issued further circulars shifting the cut-off year from 1980 to 1993. In extending the cut-off again no differentiation was made between tribals and traditional forest dwellers and no ceiling was put. However once again the Supreme Court intervened and stayed the said circular on 23-2-2004. The Court also directed Governments to clear all post-1980 encroachments which was calculated at around 14.85 lakh hectares. Within a year 1.52 lakh hectares of land was cleared. This led to great hardship as genuine forest dwellers including tribals were also evicted. After the UPA Government came to power MOEF issued another circular on December 21, 2004 which stayed all evictions on the grounds that genuine rights holders were also affected. From these facts the following points emerge:

1. The rights of non-tribal traditional forest dwellers have already been recognized by Government at least until 1993.
2. 3.75 lakh hectares has already been regularized for pre-1980 forest dwellers tribal and non-tribal.
3. The land so regularized has no ceiling but was done on an "as is where is" basis.
4. The cut-off year of 1980 has itself been shifted by Government to at least 1993 which means that 1980 is not a sacrosanct date for the Government.
5. Government has acknowledged difficulties in distinguishing between the different sections occupying land.
6. Government's position differs from that of the Supreme Court.

As can be seen from the above, the JPC recommendations on which the Government now has reservations actually emanate from the positions taken earlier by the Government itself. Moreover to use the Supreme Court orders as reason to keep 1980 as cut-off year is also untenable since Government has in practice already moved beyond that. But it is significant that the JPC has upheld 1980 as the cut-off year for all non-tribal traditional forest dwellers as suggested by the earlier Government circular as well

as the Supreme Court. In fact the JPC recommendations are even more stringent as it mentions that all "traditional forest dwellers" to become beneficiaries under the proposed law have to prove they have lived in the forests for three generations. It was reported to the JPC that in some States as much as 36 per cent of the forest dwelling communities comprise scheduled castes and other most backward castes. It was also pointed out that in some cases whereas the community was recognized as tribal in one State it was termed as Scheduled caste in another. The JPC for the first time has defined traditional forest dweller which will also help to evict the real encroachers. If the Government now wants to evict all non-tribal traditional forest dwellers pre-1980, going back on its own positions by not including them in the Bill at all, the consequences will be disastrous if not dangerous and will lead to widespread upheavals all over the country.

The JPC recommendation to extend 1980 cut-off year till December 2005 is not a blanket extension but limited only to tribals. What is the calculation of the amount of land involved? According to statistics given to Parliament at present 13.43 lakh hectares of land is identified as "encroached" post-1980. It could be reasonably assumed that of this land tribal held land would not be more than half which is an infinitesimal amount, lower even than one per cent of the total forest land and a very small token to meet the grand aim of redressing historical injustice to tribals that the Bill sets out to do. In other words the JPC recommendation will enable Government to implement the Supreme Court orders for post-1980 evictions for about half of the land encroached by non-tribals, which the Government has not yet been able to do. But even assuming that the amount of land held by tribals could be more than the estimate, a Bill to enhance tribal rights can not and should not become an instrument to evict tribals which is what is going to happen, as past experience shows, if 1980 is kept as the cut-off year. There is little documentation with tribals to prove occupation. Lakhs of tribals are being displaced from forest land due to various projects. Considering that in just five years from 2001 to 2006 as much as 5.73 lakh hectares of land has been converted for "non-forestry" purposes by Government (Expert Committee report to the Supreme Court) it would be extremely unjust and unfair not to regularize tribal held forest land

As mentioned earlier there has been no ceiling put on 3.75 lakh hectares of land already regularized either by the Supreme Court or by the Government. To introduce a ceiling now would therefore clearly be discriminatory. Secondly it is well known that tribal held land in the main is dependent on rain, has low productivity and is usually dry, hilly, stony land. The average ceiling for dry land in different States is 21 acres. To put a ceiling of 2.5 hectares for tribals would be unjust. Thirdly the concept of "nuclear family" for tribals is problematic. Property rights, customary laws and inheritance rights differ across the country for different tribes. In many communities daughters have equal rights in property therefore the term "nuclear" would have to be defined in terms of any "adult" son or daughter. With this proviso instead of the Bill being one aimed at regularization of existing occupation, it would turn out to be a forest land distribution programme which is certainly not the intention of the Bill. Fourthly, to

take away land in the name of ceiling implementation that tribals have traditionally owned would lead to widespread protest that would defeat the very purpose of the Bill. Since again, not much land is involved there is no reason to insist on a ceiling. No fresh land is to be distributed only existing occupation is to be regularized on an "as is where is" basis as was done earlier.

4. As far as gram sabha issues are concerned much of the forest land comes under the fifth and sixth schedule areas. Laws governing these areas have given substantial rights to tribal communities and gram sabhas concerning a range of issues. Indeed representatives from the north east have expressed concern that rights that they already enjoy over their land should not be circumscribed by this Bill. Among the powers given to gram sabhas under the Panchayat Extension to Scheduled Areas Act 1996 (PESA) is that of identification of beneficiaries for Government programmes. The JPC recommendation to uphold the right to identify beneficiaries is in tune with this right. However there is a clause included in the JPC recommendation which provides a role at the district level for a committee comprising various Government department representatives as well as tribal representatives etc. to examine any disputed claims. The JPC recommendation on rights of gram sabhas give no new decision making rights but only reiterate rights already legally recognized though perhaps not enjoyed. The UPA Government has expressed its commitment to the processes of decentralization and should not take away the rights of gram sabhas.

पृथ्वीराज चव्हाण
राज्य मंत्री
PRITHVIRAJ CHAVAN
Minister of State



प्रधान मंत्री कार्यालय
नई दिल्ली-110 011
PRIME MINISTER'S OFFICE
NEW DELHI - 110 011

26 September 2006

Dear Brinda ji,

This is in continuation to my telephonic conversation with you. I am fixing the meeting to discuss issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 at 1500 hrs. on 28 September, 2006 in the South Block, Prime Minister's Office, New Delhi.

2. You are requested to kindly attend the same.

With regards,

Yours sincerely,

(Prithviraj Chavan)

Smt Brinda Karat, MP
A. K. Gopalan Bhawan
Bhai Veer Singh Marg
(Near Gole Market)
New Delhi - 110001
(Fax:23747483)

6/51/C/3/05. ES-II

SECTION
19284
4/10/06

Could you please also attend the meeting?

Attended. You will be preparing the Minutes. Ms. Karat's note is placed below.

5/Dir/10/06
J1(G)/08
AS(P)/9/10/6

AS(P)

JG(G)

28/9

EST2 KA 29/9

Pl. Ink & put up

As informed by Minister, Tribal Affairs, the Cabinet at its meeting held on 7th December, 2006, while deliberating the Scheduled Tribes (Recognition of Forest Rights) Bill, approved the Bill with the amendments put up to the Cabinet with the following changes:

- (a) Other traditional forest dwellers would also be included for recognition of forest rights, provided they have lived in the forests for three generations. A "generation" in this context will mean 25 years.
- (b) The role of the Gram Sabha would be strengthened in line with PESA.
- (c) A Committee of Ministers would approve the amendments.

Minister desired that a note should be sent to the Secretary, Law, to start working on these amendments without waiting for the minutes of the Cabinet meeting.

Minister may kindly approve so that this note can be sent to Secretary, Law.

Meena Gupta
(Meena Gupta)
Secretary (TA)
8.12.2006

MTA
[Signature]
8/12/06

For further action, please.

Meena Gupta
/m

Secretary, Ministry of Law
(Shri T. K. Vishwanathan)

M/TA's Dy No. 1613/Secy (TA)/06 dt 8/12/06

[Signature]
ASCD

डा. ३६२०-६
दिनांक ०८/१२/०६

3620-6
Date 08/12/06

Dy No. 1700/06-44
8/12/06

Ministry of Law & Justice
Legislative Department

Reference: Ministry of Tribal Affairs' note dated 08.12.06 at pre-page.

The two changes suggested by the Cabinet in its meeting held on 07.12.06, while considering the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 ("Bill"), as reported by the Joint Committee, and the 'Official Amendments' suggested therein, have been carried out through suitable changes in the 'Official Amendments' as under:

- * = / 5 (11/5-27) /
T F / "Y" /
11/5-12/2
- (i) As other traditional forest dwellers are also to be included for recognition of forest rights, provided they have lived in the forests for three generations (a 'generation' relating to a period of 25 years), the amendment at S. No. 21 relating to clause 4(1) of the Bill has been deleted. Amendment at S. No.8 relating to clause 2(o) of the Bill has also been deleted; however, the definition of the expression 'other traditional forest dweller' is proposed to be substituted in the following terms:

'(o) "other traditional forest dweller" means any member or community that has been residing in, or in close proximity of, the forest land for at least three generations and primarily dependent on forest land or forest resources for his or its livelihood needs.

Explanation.- For the purpose of this clause, "generation" relates to a period of 25 years.;

- (ii) In view of (i) above, amendments at S. Nos. 1, 11, 12, 17, 27, 28, 31 & 33 relating to omission of the expression 'other traditional forest dwellers' have been deleted with a view to restore the said expression in the relevant clauses of the Bill;
- (iii) In clause 6 of the Bill, in sub-clause (8), the representation of the members of the Panchayati Raj Institution in the Sub-Divisional Level Committee, the District Level Committee and State Level Monitoring Committee is proposed to be increased from 'two' to 'four', of which two shall be from Scheduled Tribes and one shall be a woman. The marginal heading and sub-clause (1) of clause 6 are also proposed to be changed for insertion therein of the expression 'other traditional forest dwellers'. Hence, suitable changes at S. No. 35 have been suggested.

Contd...3/-

(iv) The existing S. Nos. of the 'Official Amendments' have been changed in view of the above.

2. A text of the 'Official Amendments', as modified, is placed below for kind perusal and approval.

B. A. Agrawal
(Dr. B. A. Agrawal)
Additional Secretary
09.12.2006

Secretary (on tour)

MLJ

U. B. S.
9.12.06.

A/S.

B.
9.12.6

Ms. Meena Gupta,
Secretary,
M/o Tribal Affairs

P
11/12/06
so (P/S)

Reference Ministry of Law & Justice note at pp.2-3/N.

2. The changes made by the Ministry of Law & Justice in the 'Official Amendments' suggested in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee, in the light of the decisions taken in the meeting of the Cabinet held on 7.12.2006, may be seen at F/Y(115-14/c).

3. The amendments, as prepared by the Ministry of Law & Justice, have been sent to Secretary, Ministry of Panchayati Raj and Secretary, Ministry of Environment & Forests, with the request to go through the Ministry of Law & Justice's proposed amendment and send their views to this Ministry by 11.12.2006.

4. We have gone through the amendments prepared by the Ministry of Law & Justice. It is suggested that the definition of the term "other traditional forest dweller" in Clause 2(o) of the Bill, as incorporated by the Ministry of Law & Justice needs to be revised as under to make it identical with definition of "forest dwelling Scheduled Tribes" :-

"other traditional forest dweller" means any member or community who has for at least three generations prior to 13th day of December, 2005 primarily resided in and who depends on the forests or forest lands for bona fide livelihood needs.

Explanation:- For the purpose of this clause "generation" relates to a period of 25 years";

5. It is also felt that in Clause 4(6) of the Bill, the words "and shall in no case exceed an area of four hectares" only need to be added after the word "occupation" at the end of the said clause.

6. It is also felt that in clause 6 of the Bill, in sub-clause (8), the representation of the members of the Panchayati Raj Institutions in the Sub Divisional Level Committee, the District Level Committee and State Level Monitoring Committee should remain at 'two' of whom one shall be from Scheduled Tribes and one shall be a woman.

7. The notice for 'Official Amendments' to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, has accordingly been revised and is placed below for consideration/approval.

P.K. Varma
(P.K. Varma)
Consultant
11.12.2006

JS(RP)

Secretary (TA)

Minister may like to see. The file may be submitted after incorporating changes as suggested above. The file may be submitted after incorporating changes arrived at this evening 11/12

F/339

डा० सं०...../सचिव (क. ग.)/
दिनांक.....26.12.06

1592
3000/Dy. No. FCA/2006
Dy. No. 11/12/06
Dated 11/12/06

11/12/06
Dy. No. 11/12/06
Dated 11/12/06

+ DTA

28-35/c

F/1413
डा० सं०...../सचिव (क. ग.)/
दिनांक.....11/12/06

used
28/11/06

11/12/06

Ministry of Tribal Affairs

Placed below are two notes one addressed to Cabinet Secretary and Secretary, Ministry of Environment and Forests and Secretary, Ministry of Panchayati Raj, in connection with the amendments to be made to the Scheduled Tribes and Other Forest Dwellers Bill. Minister may kindly approve before these notes are sent.

(Handwritten signature)

(Meena Gupta)
Secretary (TA)
11.12.2006

Sl. No. 5203/157(A) 108
Dated 11.12.06

MTA
(Handwritten signature)
11/12/06

(Handwritten signature)
Secretary (TA)

(Handwritten signature)

(Handwritten signature)
Sd/-
Secretary (TA)

11/12/06

S/no 1-3 (Issue) 11/2-4/c

The notes placed below
have been sent

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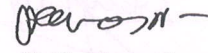
No.F.17014/4/2005-S&M(PC&V)(Pt.)

Government of India
Ministry of Tribal Affairs

Subject: Amendments to the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the JPC

✓ E/x
The minutes^v of the meeting of the Ministers of Tribal Affairs, Panchayati Raj, and Environment & Forests on the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, duly signed by all the three Ministers have been received and are placed below.

2. As desired, the copies of these minutes may be sent to Ministry of Environment & Forests and Ministry of Panchayati Raj for their information and necessary action, as in DFA.


(P.K. Varma)
Consultant
13.12.2006

JS(RP)

MT
13/12/06

~~Copy sent to P. Varma~~

8
13/12/06
So (PCV)

Slono. A (Issue) - 1/30/06

"other traditional forest dweller" means any member or community who has for at least three generations prior to 13th day of December, 2005 primarily resided in and who depends on the forests or forest lands for bona fide livelihood needs.

Explanation:- For the purpose of this clause "generation" relates to a period of 25 years";.

- (ii) In Clause 4(6) of the Bill, the words "and shall in no case exceed an area of four hectares" only need to be added after the word "occupation" at the end of the said clause.
- (iii) In clause 6 of the Bill, in sub-clause (8), the representation of the members of the Panchayati Raj Institutions in the Sub Divisional Level Committee, the District Level Committee and State Level Monitoring Committee should remain at 'two' of whom one shall be from Scheduled Tribes and one shall be a woman.

F/1429
डा. सं. / सचिव (क. व. त.) /
बिनाक. 12.12.06

6. A meeting of the Ministers of Tribal Affairs, Panchayati Raj and Environment & Forests was held on 11.12.2006 at the residence, and under the chairmanship of, the Minister, Tribal Affairs, to discuss the draft amendments made by the Ministry of Law & Justice to the notice for amendments enclosed with the Cabinet Note. The minutes of the said meeting are placed below.

36/36

7. Based on the decision taken in the said meeting at the residence of Minister for Tribal Affairs, a revised notice, addressed to the Secretary General, Lok Sabha, as from the Minister for Tribal Affairs, for moving official amendments to the Scheduled Tribes & Other ^{Traditional} Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the JPC has been prepared and is placed below.

DFA

8. Before the file is submitted to the Minister for Tribal Affairs, we may get the draft notice vetted from the Ministry of Law & Justice, Legislative Department. They may also be requested to provide the Hindi version of the notice for official ^{Traditional} amendments, based on the Hindi version of the Scheduled Tribes & Other ^{Traditional} Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the JPC, so that the same could also be sent to the Secretary General, Lok Sabha simultaneously.

DFA

F/B

(P.K. Varma)
Consultant
12.12.2006

JS(RP)

*Reference to the above ...
The Panchayati Raj and ...
They will be sending their response to the Ministry ...
keeping in mind the minutes of the meeting ...
held between Minister of Tribal Affairs, Minister ...
Panchayati Raj and Minister of Environment and ...
Forests.*

1601
अनु. / डी. नं. ... / पी. के. वर्मा
(सचिव / डा. सं. ...)

Dr. No. 5337 (TA)/03
Date 12.12.06

Am (A)

JS(RP)

Amendments 1-11-201
rtu

Government of India
Ministry of Tribal Affairs

Subject: Amendments to the Scheduled Tribes & Other ^{Traditional} Forest Dwellers
(Recognition of Forest Rights) Bill, 2006 reported by the JPC

slm 5 (Receipt) - H 39-66/c

It may be recalled that the Cabinet in its meeting held on 7.12.2006 had considered the amendments proposed by this Ministry to the Scheduled Tribes & Other ^{Traditional} Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the JPC. The minutes of the Cabinet meeting have not been received so far, but it is understood that the Cabinet, while deliberating the Scheduled Tribes (Recognition of Forest Rights) Bill, approved the bill with the amendments put up to the Cabinet with the following changes:

- (a) Other traditional forest dwellers would also be included for recognition of forest rights, provided they have lived in the forests for three generations. A 'generation' in this context will mean 25 years.
- (b) The role of the Gram Sabha would be strengthened in line with PESA.
- (c) A Committee of Ministers would approve the amendments.

2. The Ministry had accordingly sent a note the Secretary (Law) to work on these amendments without waiting for the minutes of the Cabinet meeting.

3. The Ministry of Law & Justice had accordingly made certain changes in the "Official Amendments" suggested in the Bill reported by the Joint Committee, in the light of the decisions taken in the meeting of the Cabinet held on 7.12.2006. The amendments, as prepared by the Ministry of Law & Justice were then sent to Secretary, Ministry of Panchayati Raj and Secretary, Ministry of Environment & Forests, on 11.12.2006 for sending their views to this Ministry by 11.12.2006.

4. The comments of the Ministry of Panchayati Raj have been received which are placed below. The comments of the Ministry of Environment & Forests have not been received.

5. The official amendments, prepared by the Ministry of Law Justice, were also examined by this Ministry and the following changes were suggested in the amendments prepared by the Ministry of Law & Justice:

- (i) The definition of the term "other traditional forest dweller" in Clause 2(o) of the Bill, as incorporated by the Ministry of Law & Justice be revised as under to bring it in line with definition of "forest dwelling Scheduled Tribes" :-

Endorsement No. 17014/4/2005-S&M/PC&V

dated, the 18th July, 2006

Copy, alongwith a copy of the Note for Group of Ministers, forwarded to the Cabinet Secretary, with the request that he may kindly make it convenient to attend the meeting.


(Rajeev Kumar)

Joint Secretary to the Government of India

Endorsement No. 17014/4/2005-S&M/PC&V

dated, the 18th July, 2006

Copy, with a copy of the Note for Group of Ministers, forwarded for information and necessary action to:

- 1. Defence Secretary (12) (13) ✓
- 2. Home Secretary
- 3. Secretary, Ministry of Tribal Affairs — (14)
- 4. Secretary, Ministry of Law & Justice — (15)
- 5. ✓ Secretary, Ministry of Panchayati Raj — (16)
- 6. Secretary, Ministry of Social Justice & Empowerment — (17)
- 7. Secretary, Ministry of Environment & Forests — (18) ✓
- 8. Secretary, Department of Science & Technology — (19) ✓
- 9. Secretary, Department of Ocean Development — (20) ✓
- 10. Secretary, Ministry of Women & Child Development — (21)
- 11. Secretary, Ministry of Food Processing Industries — (22) ✓


(Rajeev Kumar)

Joint Secretary to the Government of India

No.17014/4/2005-S&M/PC&V
Government of India
Ministry of Tribal Affairs

legislation for redressing the historical injustice done to tribal communities and for clear assertion of their legal rights on land. The Ministry constituted a Technical Support Group (TSG) on 28.1.2005 comprising representatives of the Ministries of Environment & Forests, Panchayati Raj, Rural Development, Department of Legal Affairs and Planning Commission and six reputed experts in environmental protection and welfare of tribal people under the Chairpersonship of Secretary (Tribal Affairs). The Ministry prepared a draft "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" on the recommendations of the TSG, which was posted on the website of the Ministry for inviting the views/comments/suggestions from members of the public and all stakeholders. Based on the comments/suggestions received from the individuals/organisations from all over the country, the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was further modified.

2.2. A "One Day Consultation Workshop" was held on 28.10.2005 to further refine the provisions of the Bill to achieve the twin objectives of undoing the historical injustice to the forest dwelling Scheduled Tribes and to protect the environment.

2.3. In pursuance of the discussions, in the One Day Workshop and further discussions with the Ministry of Environment & Forests, certain modifications were made in the draft Bill, which was vetted by the Ministry of Law & Justice for the third time on 21.11.2005.

**3. MAIN FEATURES OF THE SCHEDULED TRIBES
(RECOGNITION OF FOREST RIGHTS) BILL, 2005**

3.1. The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, prepared by the Ministry (i) seeks to undo the historical injustice by recognizing and vesting the forest rights and occupation of forest land to forest dwelling Scheduled Tribes who have been residing there for generations and who are integral to the very survival and sustainability of the forest eco-

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system, including wildlife, but whose rights could not be recorded; (ii) recognises and vests forest rights in the forest dwelling Scheduled Tribes where they are scheduled, in respect of forest land and their habitat; (iii) provides that the forest rights determined for vesting in the core areas of the National Parks and Sanctuaries shall be granted on provisional basis for a period of five years; (iv) provides that recognition and vesting of forest rights to forest dwelling Scheduled Tribes in respect of forest land and their habitat shall be subject to the condition that such tribes or tribal communities had occupied forest land before 25.10.1980; (v) provides that no forest dwelling Scheduled Tribes shall be evicted or removed from forest land under their occupation till the recognition and verification procedure is complete. Further, such forest rights shall be restricted to the area under actual occupation and shall in no case exceed an area of 2.5 ha per nuclear family of the forest dwelling Scheduled Tribe; shall be exercised only to the extent vested; and include the responsibility of protection, conservation and regeneration of forests; to be heritable but not alienable or transferable and in respect of land where a title is vested or recognized to be registered, jointly in the name of both the spouses in case of married persons, and in the name of the single head in case of single member-household.

3.2. The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 also defines the duties of forest right holders which include responsibility of not carrying out any activity that adversely affects the wild animals, forests and the bio-diversity. It also defines the Authorities for vesting forest rights in forest dwelling Scheduled Tribes, including their functions. The Bill also contains detailed provisions for contravention of the provision of the Act and also for offences by Government authorities.

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on 13.12.2005, has since presented its report to the Lok Sabha on 23.5.2006, which was also laid on the Table of the Rajya Sabha on the same day. The Joint Committee has made several major amendments to the Bill introduced in the Lok Sabha on 13.12.2005 and reported a revised Bill titled "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006". A copy of the "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006", reported by the Joint Committee is at Annexure – D.

6.2. In brief, the Joint Committee has inter alia –

- (i) expanded the scope of the Bill and brought within its purview the non-tribals and other traditional forest dwellers also;
- (ii) extended the cut off date for recognition and vesting of forest rights from 25.10.1980 to 13.12.2005 (the date of introduction of the Bill in the Lok Sabha);
- (iii) revised the ceiling of occupation of forest land for recognition of forest rights from 2.5 hectares per nuclear family to the area under actual occupation;
- (iv) renamed the core areas in the National Parks and Sanctuaries as 'critical wildlife habitat' and provided for conferring rights in such critical wildlife habitats on regular basis, instead of provisional basis;
- (v) added the definition of "community forest resource";
- (vi) expanded the definition of MFP to include stones, boulders, slates, fuel wood and right on community forest resources, including timber, minerals, environmental and cultural services;
- (vii) extended the right to minor forest produce to further include collection and transport of minor forest produce;
- (viii) amplified the community rights to include entitlements of fish and other water bodies;

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4. CABINET APPROVAL TO THE DRAFT BILL AND ITS INTRODUCTION IN LOK SABHA

The Cabinet in its meeting held on 1.12.2005 approved the draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, formulated by the Ministry. The Cabinet also decided that a Group of Ministers be constituted to (a) harmonise the issues brought up during discussions in the Cabinet; and (b) consider official amendments to the Bill. After approval of the Cabinet, the Ministry has introduced the Bill in the Lok Sabha on 13.12.2005. A copy of the Bill as introduced in the Lok Sabha on 13.12.2005 is at Annexure-A. The Bill was, however, referred to a Joint Committee of the Parliament.

5. AMENDMENTS PROPOSED BY THE MINISTRY OF PANCHAYATI RAJ TO THE BILL INTRODUCED IN THE LOK SABHA AND THE STAND OF THE MINISTRY OF TRIBAL AFFAIRS THEREON

The Ministry of Panchayati Raj submitted a Note for the GOM on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, proposing certain amendments to various provisions of the Bill. A copy of the Note for the GOM, received from the Ministry of Panchayati Raj, is at Annexure - B. A statement indicating the stand of the Ministry of Tribal Affairs on the amendments proposed by the Ministry of Panchayati Raj is at Annexure - C. The position, however, has substantially changed due to amendments suggested by the Joint Committee of Parliament in the Bill as reported. Comments of the Ministry of Tribal Affairs on each of the specific amendment are given at Annexure - E.

6. THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) BILL, 2006, REPORTED BY THE JOINT COMMITTEE

6.1. The Joint Committee of Parliament, which examined the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 introduced in the Lok Sabha

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- (ix) expanded the rights with respect to settlement of forest villages to include old habitations, unsurveyed villages and other villages in the forests;
- (x) added a new clause relating to 'Right of access to bio-diversity and community right to intellectual property;
- (xi) included a new right to in-situ rehabilitation;
- (xii) included the right relating to Government providing for diversion of forest land for the purpose of schools, hospitals, etc.
- (xiii) amplified the definition of the term 'Gram Sabha';
- (xiv) made the Gram Sabha the final authority for approving the record of forest rights instead of the District Level Committee and diluted the role of the Sub Divisional Level Committee by proposing that it act in an advisory capacity to the Gram Sabha;
- (xv) conferred new right to communities and individuals to return to the original habitation if unsatisfied with the rehabilitation;
- (xvi) provided that no resettlement shall take place until facilities and land allocation at the resettlement location are complete. Also included a proviso that critical wildlife should not be diverted by the State and Central Government for any other use;
- (xvii) made the rights being heritable but not alienable or transferable and in the absence of a heir, the heritable right shall pass on to the next of kin;
- (xviii) made the conferring of the forest rights free of all encumbrances and procedural requirements, including clearance under the FCA, requirement of payment of NPV;
- (xix) provided for the right of land to forest dwelling STs who can establish that they were displaced from their dwellings and cultivation without land compensation due to State development intervention and where the land has not been used

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for the purpose for which it was acquired within five years of the said acquisition;

- (xx) deleted the existing Section on Offences and Penalties;
- (xxi) provided for previous publication of rules; and
- (xxii) provided for the number of members of the Sub Divisional Level Committee, District Level Committee and the State Level Monitoring Committee and the procedure to be followed.

6.3. The Ministry of Tribal Affairs has examined the changes made by the Joint Committee in the Bill introduced in the Lok Sabha on 13.12.2005. A statement indicating the key differences between the Bill as introduced in the Lok Sabha on 13.12.2005 and the Bill as reported by the Joint Committee and the comments of the Ministry of Tribal Affairs on the changes made by the Joint Committee, is at Annexure – E.

6.4. A perusal of the statement at Annexure-E would show that the changes made by the Joint Committee, if accepted, would have far-reaching and adverse consequences for the forest dwelling STs. Each of these major amendments introduced by the JPC will individually have deleterious impact on STs. For example, inclusion of non-tribals and other forest dwellers who came to such forests much later and who are more vocal and vociferous as compared to the Scheduled Tribes would lead to a flurry of claims from all such non-tribals at the cost of the original forest dwelling STs, who would tend to be pushed out. Similarly, making the cut off date for recognition and vesting of forest rights as recent as 13.12.2005 would enable the non-tribals and other traditional forest dwellers to generate evidence in support of their claims over forest land and all such people who have encroached land even very recently before 13.12.2005 will demand recognition of their rights over such encroached land. Removal of the ceiling of 2.5 hectares would encourage the land mafia, forest contractors, persons engaged in business, etc. to grab as much land as possible especially since evidence required to prove possession

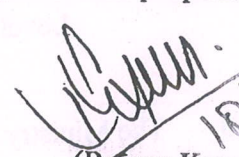
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meeting held on 1.12.2005; and (b) considering official amendments to the Bill as reported by the Joint Committee (Annexure-D) as per suggestions given by the Ministry of Tribal Affairs in Annexure-E in column 4 against each clause amended/deleted/included by the Joint Committee of Parliament.

9. The Minister of Tribal Affairs has seen and approved the proposal in this note.

Place: New Delhi
Date: 18.7.2006


(Rajeev Kumar)
Joint Secretary to the Govt. of India
Ministry of Tribal Affairs
Tele: 23073489

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has to be only as recent as 13.12.2005 and all final decisions are to be taken by the Gram Sabha. The Scheduled Areas where most of the forest villages/forest settlements exist, have a population mix of which the scheduled tribes at one time constituted more than 50%. The States are required to protect the alienation of land belonging to the scheduled tribes and check inward migration of non-tribals to such scheduled areas. Regulations to this effect exist in most of the Schedule V States. The recognition of rights of non-tribals and others in occupation of forest lands in such tribal areas on the same footing as tribals would have an adverse impact on the population mix in such scheduled areas. Formally equating the STs with the non-STs would amount to negating such protection available to STs. The designation of the Gram Sabha as the final authority for recording the forest rights, that too of every forest dweller, not only STs, would make it a 'free for all' with possibility of claims being made over as much area of forest land as can be occupied and proof of occupation fabricated to get it approved in the Gram Sabha. Such approval is not likely to be difficult as the member himself/herself will be a member of the Gram Sabha, and part of the deciding authority. There are strong possibilities of individuals supporting one another's claims in the Gram Sabha, as oral evidence is acceptable. The combined impact of all these changes would be exponential in nature and would not be undoing the historical injustice done to the forest dwelling Scheduled Tribes over the centuries, as was the original objective of the Bill as introduced.

7. In this connection, it would be pertinent to mention that as per the recent amendment made to the Government of India (Allocation of Business) Rules, 1961, on 17.3.2006, the Ministry of Tribal Affairs is concerned with "All matters, including legislation relating to the rights of forest dwelling scheduled tribes on forest lands".

8. The above position is submitted to the Group of Ministers for (a) harmonizing the issues brought up during discussions in the Cabinet in its

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Committees shall consist of officers of Departments of Revenue, Forests and Tribal Affairs in the process of settlement of forest rights under the Act.

10.5 Offences under the Act

Provisions for penalty for contravention of the provision of the Act and also for offences by Government authorities under this Act have been provided in Chapter V of the proposed Bill. A fine of Rs. 1,000/- has been considered appropriate. The Bill, in addition, provides for de-recognition of forest rights in case the offence is committed more than once. The penalties provided under the proposed Bill shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

10.6 Miscellaneous provisions

Chapter VI contains the miscellaneous provisions, including the following:

- a. **Nodal Agency:** The Ministry of the Central Government dealing with Tribal Affairs or any other officer or authority authorized by the Central Government in this behalf shall be the Nodal Agency for the implementation of the provisions of the Act.
- b. **Central Government to provide directions:** The Bill provides that in the performance of duties and exercise of powers by or under the Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.
- c. **Operation of other laws not barred:** The operation of other laws to the extent they do not contravene the provisions of this Act would not be barred.

11-4/10

MINUTES OF THE MEETING HELD ON 28.9.2006 IN THE PMO UNDER THE CHAIRMANSHIP OF MOS IN THE PMO TO RESOLVE THE ISSUES CONCERNING REPORT OF THE JPC ON THE STs (RECOGNITION OF FOREST RIGHTS) BILL.

A meeting was held in the PMO on 28th September, 2006, under the Chairmanship of Shri Prithiviraj Chavan, MOS, PMO with Ms. Brinda Karat, Hon'ble MP to discuss the report submitted by the JPC on the Scheduled Tribes (Recognition of Forest Rights) Bill 2005 and to resolve certain issues. Meeting was attended by Ms. Meena Gupta, Secretary, Ministry of Tribal Affairs; Shri Pulok Chatterji, Additional Secretary, PMO; Shri R. Gopalakrishnan, Joint Secretary, PMO; Shri Rajeev Kumar, Joint Secretary, Ministry of Tribal Affairs and Mrs. Kalpana Awasthi, Director, PMO.

2. The MOS welcomed Ms. Brinda Karat to the meeting. He stated that he shared the concern of the JPC towards STs and expressed the resolve of the Government to undo the historical injustice meted out to the STs by putting a legislative frame in place for recognition of their forest rights. He observed that most of the recommendations made by the JPC were by and large acceptable to the Government as they further strengthened the Bill and its objective. However, a few issues required further discussion as they may not be in consonance with the objective to recognize the forest rights of Scheduled Tribes while simultaneously and effectively preserving forests and wildlife.

3. Ms. Karat stated that the JPC was all through conscious and guided by the fact that the STs face tremendous hardships in the forests in terms of tenurial insecurity and livelihood opportunities vis-à-vis forests and all the recommendations are to further strengthen the Bill. She, however, mentioned that there are large number of forest dwellers other than the STs also in the forest areas for a long time and their rights also need to be simultaneously recognized by the same Bill. According to her, it would be a great injustice to the other forest dwellers if their rights were not recognized. She further stated that the cut off date of 25.10.1980 as proposed in the Bill "as introduced" is meaningless because it does not recognize

rights of those who have settled in the forests during the past 25 years. This would amount to injustice to almost an entire generation.

4. It was explained by the Secretary (TA) that the objective of the Bill is to undo the historical injustice meted out to the STs whose life style is intimately linked with the preservation of the forest for sustenance and survival. The non-tribals have entered into the forests much later and recognizing their rights on the same footing through the same Bill would amount to great injustice to the STs for a number of reasons including:

- the failure to recognize the classification which exists between STs and non-STs;
- the STs are scheduled for each State, whereas there is no scheduling in case of non-STs making false claims by the latter easier.
- several non-ST claimants may be immigrants from others or from other countries in case of border areas, such as Assam, etc.
- the States have not been able to effectively check the inward migration of non-STs to the scheduled areas which they were bound to do and recognition of non-ST rights in forests, will further and on a legal basis dilute the ST population in tribal/scheduled areas.
- a flurry of claims are likely to be made by all such non-tribals who are more vocal and vociferous as compared to the STs and the focus will shift to setting up of claims of non-tribals over those of tribals.
- the social and political dynamics of the Gram Sabha are likely to be used by the non-STs in their favour.

The other important aspect of distinction between STs and non-STs relate to ownership rights of Minor Forest Produce (MFP) and other traditional forest rights, which are enjoyed traditionally, and historically only the STs. The inclusion of non-STs in the Bill will seriously erode the traditional regime of rights of STs enjoyed by them for collection of MFP. The proposed amendment of the JPC would amount to extending these traditional rights of STs to others as well resulting in a greater

injustice. The combined impact of the inclusion of non-STs, extension of cut off date to 13.12.2005 as well as some other clauses proposed would be deleterious to the interests of STs as well as forests and wildlife. She, therefore, opined that if the rights of the non-forest dwellers are to be recognized, it should be done through a separate and more rigorous process either under a separate legislation or through implementation of the 1990 guidelines issued by the Ministry of Environment and Forest, with necessary amendments. She further explained that the cut off date of 25.10.1980, being the date when the Forest (Conservation) Act 1980 came into force, has, in practice, been recognized as the cut off date. There are pronouncements of the Hon'ble Supreme Court also on the subject and extending the cut off date would unnecessarily invite judicial scrutiny, which could very well be adverse. In any case, if forest rights of STs dwelling in forests prior to 25.10.,1980 are recognized, it would be adequate as they have been staying in the forests historically and certainly much prior to 1980. If the Bill is aimed at undoing the historical injustice, the cut off date of 1980 is not too distant in history.

5. Ms. Karat stated that the JPC did recognize that ST forest dwellers and other forest dwellers should be treated differently and, therefore, while the date of 13.12.2005 had been proposed for STs by the JPC, for the non-STs the requirement of occupation for three generations had been proposed. When asked how many years were meant by 'three generations', she stated generally it was considered that cut off year would be 1975. She stated that she did not agree with having two separate legislations i.e. for STs and non-STs or with the Ministry of Environment and Forests' guidelines being implemented for non-STs, whereas the legislation concerned only STs.

6. The Additional Secretary in the PMO expressed the view that we need to simultaneously keep the issue of protection and preservation of forests and wild-life in the core focus of the Bill and since the Forest (Conservation) Act 1980 is an important milestone in that direction, it would not be advisable to dilute the cut off date from 25.10.1980 to any other subsequent date. The options of extending the date to 13.12.2005 i.e. the date of the introduction of Bill in Parliament or 12 years

prior to the date of introduction (being the period of adverse possession) would not be appropriate.

7. After Ms. Karat left discussions continued internally.
8. After discussing the options in respect of these two issues, the need to make a distinction between STs and other forest dwellers and keep them on a different footing with a more stringent process of recognition, through a separate legislation or order at a separate time was accepted, in principle. As the consensus on the first two issues of the inclusion of the non-STs and the extension of the cut-off date from 1980 to 2005 could not be reached, discussion on the other three contentious recommendations of the JPC, i.e. removal of ceiling of 2.5 hectares, autonomy of Gram Sabha to take decision in the matter and the expansion of the forest rights to include rights over timber and minerals could not take place.
9. However, during discussion after Ms. Karat left, it was generally agreed that the Gram Sabha cannot be made the final authority for decision making as suggested by the JPC, though the ceiling of 2.5 hectares may be considered for upward revision to say 3.5. hectares or 4 hectares only in case of STs. As regards rights over minerals and timber, the view was that this could not be accepted.
10. The MOS, PMO desired that the GOM may meet at the earliest and finalise the Government's position and pilot the Bill in the coming winter session of the Parliament.
11. The meeting ended with a vote of thanks to the Chair.



Ref No. : BK/2006/III/238

29th August, 2006

To,

The Prime Minister
Government of India

Respected Pradhan Mantri ji,

I write to express our deep disappointment and concern at the failure of the Government to bring the Scheduled Tribes (Recognition of Forest Tribes) Bill 2005 in the just concluded session of Parliament. The Joint Parliamentary Committee (JPC) had submitted its unanimous recommendations over three months ago. I along with other colleagues had raised the matter in Parliament requesting for an explanation for the delay. The Chairman of the Rajya Sabha taking serious note of the issue had allotted time for a discussion for the following day. If this had been held more light could have been shed on the Government's position but as it happened the House was disrupted by the opposition.

It had been decided in the UPA-Left Coordination Committee meeting of July 22 that Government would hold talks on the Bill with the Left parties. In the absence of any such discussions I would like to reiterate the understanding of the CPI(M) on the four JPC recommendations on which the Government has expressed its reservations in the July meeting, namely (1) extension of the cut-off year from 1980 to 2005 (2) the inclusion of non-tribal traditional forest dwellers in the ambit of the Bill (3) removal of the ceiling of 2.5 hectares and (4) extension of rights of gram sabhas in deciding the beneficiaries. You will kindly appreciate that these taken together are crucial to the JPC recommendations without which the Bill will not undo but add to the injustices suffered by tribal communities. In fact these recommendations are in tune with the assurance given in the UPA Government's Common Minimum Programme namely "Eviction of tribal and other forest dwelling communities from forest areas to be discontinued." (Section on Scheduled castes and Scheduled tribes).

Apart from the moral and justice-based premises of the JPC recommendations which I need not repeat here, I would request you to kindly refer to the Government's and specifically the Ministry of Environment and Forests (MOEF) guidelines and circulars from time to time which reflect positions already accepted and implemented by the Government which are similar to the recommendations of the JPC. I enclose a note on these.

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ब.म.स./V.I.R. 98090221
हायरी सं./Diary No.
दिनांक/Date 01/09/06

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I would also like to draw your kind attention to the recently passed Wild Life Protection Amendment Bill. The JPC recommendations on settlement of rights of tribals and traditional forest dwellers in protected areas and the process of identification of "core" and "buffer" areas have been to a certain extent incorporated in the official amendments moved by the MOEF which had been suggested by us. The amendments strike a balance between the needs of conservation and the rights of local communities. This is welcome and should strengthen the process of resolving the reservations that the Government has on the JPC recommendations.

There is a misinformed view that the JPC recommendations are against conservation and protection of India's wild life. A careful study of the recommendations make it clear that the JPC sets out a regime which while protecting the rights of tribals and traditional forest dwellers differentiates between the two, keeping the focus on tribal rights. It holds no quarter for encroachers who have exploited the wealth of the forests for private commercial gain. Any delay in the passage of the Bill with the inclusion of the JPC recommendations will not only be an injustice to tribals but will also help the real encroachers who continue to enjoy benefits they have no right to.

I request you Sir, to reconsider the issues at hand and ensure that the all party recommendations of the JPC are accepted and implemented by the Government which will be to its credit.

With regards,

Yours sincerely,

Brinda Karat

BRINDA KARAT

(I mailed to Mo
on 27 9 06.)

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Government of India
Ministry of Tribal Affairs

Brief Note on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 for
the meeting of Minister of State in Prime Minister's Office.

The Ministry of Tribal Affairs had introduced the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 in the Lok Sabha on 13.12.2005 to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in such forests for generations but whose rights could not be recorded. The Bill was, however, referred to the Joint Committee of both the Houses of Parliament for examination. The Joint Committee of Parliament, which examined the Bill introduced in the Lok Sabha on 13.12.2005, has presented its report to the Lok Sabha on 23.5.2006, which was also laid on the Table of the Rajya Sabha on the same day. The Joint Committee has made several major amendments to the Bill introduced in the Lok Sabha and reported a revised Bill titled "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006".

2. In brief, the Joint Committee has inter alia -

- (i) { expanded the scope of the Bill and brought within its purview the non-tribals and other traditional forest dwellers also;
- (ii) extended the cut off date for recognition and vesting of forest rights from 25.10.1980 to 13.12.2005 (the date of introduction of the Bill in the Lok Sabha);
- (iii) revised the ceiling of occupation of forest land for recognition of forest rights from 2.5 hectares per nuclear family to the area under actual occupation;

- (iv) renamed the core areas in the National Parks and Sanctuaries as 'critical wildlife habitat' and provided for conferring rights in such critical wildlife habitats on regular basis, instead of provisional basis;
- (v) added the definition of "community forest resource";
- (vi) expanded the definition of MFP to include stones, boulders, slates, fuel wood and right on community forest resources, including timber, minerals, environmental and cultural services;
- (vii) extended the right to minor forest produce to further include collection and transport of minor forest produce;
- (viii) amplified the community rights to include entitlements of fish and other water bodies;
- (ix) expanded the rights with respect to settlement of forest villages to include old habitations, unsurveyed villages and other villages in the forests;
- (x) added a new clause relating to 'Right of access to bio-diversity and community right to intellectual property;
- (xi) included a new right to in-situ rehabilitation;
- (xii) included the right relating to Government providing for diversion of forest land for the purpose of schools, hospitals, etc.
- (xiii) amplified the definition of the term 'Gram Sabha';
- (xiv) made the Gram Sabha the final authority for approving the record of forest rights instead of the District Level Committee and diluted the role of the Sub Divisional Level Committee by proposing that it act in an advisory capacity to the Gram Sabha;
- (xv) conferred new right to communities and individuals to return to the original habitation if unsatisfied with the rehabilitation;
- (xvi) provided that no resettlement shall take place until facilities and land allocation at the resettlement location are complete. Also included a proviso that critical wildlife should not be diverted by the State and Central Government for any other use;

- (xvii) made the rights being heritable but not alienable or transferable and in the absence of a heir, the heritable right shall pass on to the next of kin;
- (xviii) made the conferring of the forest rights free of all encumbrances and procedural requirements, including clearance under the FCA, requirement of payment of NPV;
- (xix) provided for the right of land to forest dwelling STs who can establish that they were displaced from their dwellings and cultivation without land compensation due to State development intervention and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition;
- (xx) deleted the existing Section on Offences and Penalties;
- (xxi) provided for previous publication of rules; and
- (xxii) provided for the number of members of the Sub Divisional Level Committee, District Level Committee and the State Level Monitoring Committee and the procedure to be followed.

3. The Ministry of Tribal Affairs has examined the changes made by the Joint Committee in the Bill introduced in the Lok Sabha on 13.12.2005. A Statement indicating the key differences between the Bill as introduced by the Ministry and the Bill as reported by the Joint Committee and the comments of the Ministry thereon has already been sent to the Prime Minister's Office, vide U.O.No.17014/4/2005-S&M/PC&V dated 19.6.2006. While majority of the changes made by the Joint Committee are broadly acceptable with some changes to the Ministry of Tribal Affairs, the following changes cannot be accepted being against the interests of the Scheduled Tribes and the environment :-

- i) Expansion of the scope of the Bill to cover non-tribals and other forest dwellers;
- ii) Change of cut off date 25.10.1980 for recognition of forest rights;
- iii) Revision of the ceiling of 2.5 hectares of occupation of forest land;

- iv) Gram Sabha as the final authority for approving the forest rights; and
- v) Expansion of the definition of "Minor Forest Produce" to include stones, slates, boulders, fuel wood, timber, minerals, etc.

4. The Ministry of Tribal Affairs is of the view that the above changes made by the Joint Committee, if accepted, would have far-reaching and adverse consequences for the forest dwelling STs. Each of these major amendments introduced by the JPC will individually have deleterious impact on STs. The combined impact of all these changes would be exponential in nature and would very likely perpetuate, rather than undo the historical injustice done to the forest dwelling Scheduled Tribes over the centuries, as was the original objective of the Bill as introduced. The detailed reasons why the recommendation of the JPC relating to these 5 points cannot be accepted are given in the Annexures-I, II, III, IV and V.

I. WHY NON-TRIBALS AND OTHER FOREST DWELLERS HAVE BEEN KEPT OUT OF THE PURVIEW OF THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

The non-tribals and other forest dwellers have been kept out of the purview of the Bill for the following reasons:

- The scheduled tribes have been living in forests for generations and are in occupation of forest land much before 25.10.1980.
- The Scheduled Tribes are integral to the survival and sustainability of forest eco systems, including wildlife, and cannot survive in isolation. Such inherent oneness and relation/inter-dependence with nature is non-existent in case of non-STs.
- There exists reasonable classification even under Article 14 of the Constitution to treat the case of recognition of rights of STs and others separately.
- STs form the majority of the forest dwellers and as per estimates are more than 70%.
- The objective of the Bill is to undo this historical injustice by recognizing generations old habitat and occupation of STs on the forest land. There is no historical injustice with non-STs who migrated much later.
- Section 4(i) of the Bill provides for recognition and vesting of forest rights in the FDSTs, where they are scheduled. Scheduling is proof that the STs concerned are original inhabitants of the area. This criterion would not be satisfied in the case of non-tribals and other forest dwellers who are not scheduled for the area.
- The States having scheduled areas are required to protect the alienation of land belonging to the scheduled tribes and check inward migration of non-tribals to such scheduled areas. The recognition of rights of non-tribals and others in occupation of forest lands in such scheduled areas would have an adverse impact on the population mix in such scheduled areas.
- Inclusion of the non-tribals and other forest dwellers within the purview of the Bill for recognition of their forest rights may lead to a flurry of claims from all such non-tribals, who are in any case more vocal and vociferous as compared to the scheduled tribes. Due to political dynamics at Gram Sabha level, this may lead to a situation where the recognition of the rights of the scheduled tribes for whom the Bill is conceived may lose focus.
- The expansion of the Bill to include the non-tribals may also lead to the claims from the illegal migrants from the neighbouring countries, who had encroached forest lands or settled in the forests in the border States of the country, particularly the North-Eastern States, for recognition and vesting of forest rights over forest lands under their occupation.

- In case the rights of the non-ST forest dwellers are to be recognised, it should be done through a separate, more rigorous process. The operation of the 1990 guidelines issued by M/o Environment & Forests for regularization of encroachment is in any case not barred by the Bill and the same would continue to apply to others.

II. WHY CUT OFF DATE OF 25.10.1980, AND NOT 13.12.2005 (THE DATE OF INTRODUCTION OF THE BILL IN THE LOK SABHA), FOR RECOGNITION AND VESTING OF FOREST RIGHTS

- The Bill originally prepared by the Ministry had provided for the cut off date of 25.10.1980 or such other date as the Central Government may, by notification in the Official Gazette, specify for recognition and vesting of forest rights under the Act.
- The Ministry of Environment & Forests were, however, not agreeable to keep the cut off date open ended on the ground that they had filed an affidavit in the Supreme Court clarifying that 25.10.1980 would be the cut off date for settlement of rights of tribals and that the open ended date proposed in the Bill would be against the interest of forest conservation.
- On the insistence of the Ministry of Environment & Forests and as per the decision taken in a "One Day Consultation Workshop" on 28.10.2005 with the Wildlife Experts/Environmentalists and Experts on Tribal Rights, the flexibility in the cut off date was removed.
- The rationale behind fixing the cut off date of 25.10.1980 was that the Forest (Conservation) Act, 1980 had come into effect on this date. The cut off date of 25.10.1980 has thus been recognised in practice as the cut off date. The Bill in any case seeks to undo historical injustice which would mean a period existing much prior to 25.10.1980.
- The Ministry of Environment & Forests had issued a circular on 5.2.2004, extending the cut off date till 31.12.1993 for regularization of the rights, but the Supreme Court has stayed the operation of this Order resulting in the halt of the entire process of recognition even of occupation prior to 1980, as stated by the Ministry of Environment & Forests.
- The revision of the cut off date will go against the basic structure of the Bill.

Whether any relaxation advisable : The date could perhaps be changed to 13.12.1993, a period of 12 years prior to introduction of the Bill, as 12 years or so is normally the period for recognition of adverse possession of Government land.

III. Why a ceiling of 2.5 hectares for occupation of forest land per nuclear family of forest dwelling Scheduled Tribe for recognition of forest rights instead of area under actual occupation

- The ceiling of 2.5 hectares has been provided to restrict land grabbing by elites even within tribal communities.
- Most State forest villages rules recognise this basic unit of land for subsistence on forest lands.
- The Technical Support Group constituted by the Ministry to formulate the Bill had considered that the ceiling of 2.5 hectares for occupation of forest land per nuclear family of forest dwelling Scheduled Tribe was adequate for recognition of their forest rights.
- Removal of the ceiling of 2.5 hectares would encourage the land mafia, forest contractors, persons engaged in business, etc. to grab as much land as possible especially since evidence required to prove possession is usually thin on the ground.

Whether any relaxation is possible: A higher unit, say 3.5 or 4.5 hectares, could be considered. However a ceiling is absolutely essential.

IV. WHY THE GRAM SABHA CANNOT BE DESIGNATED AS THE FINAL AUTHORITY FOR APPROVING THE FOREST RIGHTS

- As per the Bill, Gram Sabha has been designated as the competent authority to initiate the process for determining the nature and extent of individual or community forest rights or both by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of such rights. The Gram Sabha is required to pass a resolution to that effect and forward the same to the Sub-Divisional Level Committee.
- The Sub Divisional Level Committee shall examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.
- The District Level Committee shall consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.
- The Bill also provides for a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights. The Sub Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the Departments of Revenue, Forest and Tribal Affairs of the State Government at the appropriate level.
- The involvement of Gram Sabha, a democratic institution at the grass root level, for initiating the process of recognition of forest rights of individuals/community is in tune with the provisions of the PESA Act, 1996 and aims at empowering the local communities in management of their natural resources.
- The preparation and finalisation of the record of forest rights on the basis of the relevant records and the evidence produced are official functions, which need to be performed by an official committee to ensure accountability. For this reason, the Bill provides for inclusion of officers of the Departments of Revenue, Forest and Tribal Affairs as members of these Committees.
- The designation of the Gram Sabha as the final authority for recording the forest rights, that too of every forest dweller, not only STs, would make it a 'free for all' with possibility of claims being made over as much area of forest land as can be occupied and proof of occupation fabricated to get it approved in the Gram Sabha. Such approval is not likely to be difficult as the member himself/herself will be a member of the Gram Sabha, and part of the deciding authority. There are strong possibilities of individuals supporting one another's claims in the Gram Sabha, as oral evidence is acceptable.
- The Gram Sabha requires a quorum for any decision and this is as low as 1/20th in some States and upto 1/3rd in other States. This would encourage dominance of entrenched interests and politicization of the functioning of the Gram Sabha, which may push the claims of the Scheduled Tribes for recognition of their rights in the background.

Whether any relaxation is possible: The Sub-Divisional Level Committee and the District Level Committee could include two tribal elected representatives from the Panchayat bodies (one male and one female)

V. WHY THE DEFINITION OF "MINOR FOREST PRODUCE" CANNOT BE EXPANDED TO INCLUDE STONES, SLATES, BOULDERS, FUEL WOOD, TIMBER, MINERALS, ETC.

- The inclusion of "stones, slates and boulders" in the definition of term "Minor Forest Produce" is not desirable as it may be interpreted to include minor and major minerals, like, granite, marble, etc. The intention is to define Minor Forest Produce of plant origin over which the Scheduled Tribes had traditional rights which are sought to be recognised and vested as per the Bill.
- As per PESA Act, 1996, the prior recommendation of the Gram Sabha or the Panchayats for grant of prospecting licence, mining lease or concession for exploitation by auction is required for minor minerals only.
- It would also not be desirable to include timber as the forest rights as the right to timber was never traditionally enjoyed by the STs.
- The fuel wood also cannot be defined as the Minor Forest Produce since
 - fuel wood in the form of dead branches, etc. is permissible under *Nistar* rights.

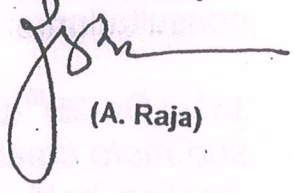
Whether any relaxation is possible: No.

- (d) *The specific nature and limits on the right, i.e. collection of usufructs, quantities of water that may be taken and when, particular species that may be harvested and when, numbers of cattle that may be grazed and when, extent of land that may be occupied (for shifting or settled cultivation, habitations), etc.*
- (e) *The extent to which the resource may be modified, e.g. conversion of pristine forest to agriculture (shifting or settled), planting of new species, etc.*
- (vii) *The process by which the traditional entitlements are to be identified and recognized. This would relate to the question of the nature, composition, and spatial jurisdiction of the authority identifying the right, the procedures to be followed, and the kinds of evidence to be relied upon. Certain well-established principles of justice must be adhered to:*
 - (a) *No one may sit in judgment in his own case. Accordingly, there must be clear independence of the authority identifying the right, from the claimant entity.*
 - (b) *All relevant stakeholders must have the right to represent their case. Thus, while claimants must have the right to press their claim, since other stakeholders may be adversely impacted by incorrect determination of a particular claimed right, they too must have the right to represent their interest. In particular, the entity with the legal responsibility for safeguarding the forest resources for the nation as a whole, must have clear involvement.*
 - (c) *The determination must be based on evidence of the claim actually available and admissible in terms of the general principles and laws which apply, and not on extraneous considerations. In particular, it must be kept in mind that while the adversarial nature of typical civil proceedings ensures that evidence produced will be subject to challenge from one's adversary, in this case, chances of similar challenge are slight.*

I believe that the draft Bill prepared by my Ministry seeks to address these aspects with greater completeness and attention to insights from the relevant social and natural science disciplines than the version of the Ministry of Tribal Affairs. In order to facilitate enlightened debate on the issues, my Ministry has also prepared a detailed Approach Paper. Both documents are available with your office.

I await your further guidance in the matter.

Yours sincerely



(A. Raja)

Dr. Manmohan Singh
 Hon'ble Prime Minister of India,
 South Block,
 New Delhi - 110 011.

TRIBAL LAND RIGHTS BILL: A CHRONOLOGY

1. On 24.1.2005 PM after review of issues of tribal misery on account of evictions etc with MoEF, asks Ministry of Tribal Affairs (MTA) to prepare a bill for settling tribal land rights. The basic issue is that lands, which were with adivasis, are wrongly represented as encroachments. Ministry of Tribal Affairs mandated for preparing Bill. MoEF present at meeting at Minister/Secretary/DG level.
2. MTA prepares draft Bill on 15.3.2005. Drafting committee includes DG MOEF.
3. In the wake of Tiger disappearance a misinformed campaign begins that tribal land rights will decimate forests. Wild life NGOs and MOEF find common ground. Tribal Bill languishes.
4. MTA asked to put Bill on Web on 19.8.2005 and gets comments to allay apprehensions.
5. Meanwhile MOEF drafts model law on MFP (as per NCMP).
6. Since MTA has covered the issue of MFP also in its Bill, PMO asks Cabinet Secretary to examine both bills.
7. Tribal MPs across parties petition PM, NAC chairperson on speedy introduction Bill. Both assure early introduction. Budget session gets over – 5.8.2005.
8. PM assures the country on Tribal Rights Bill on Independence Day Address.
9. Cabinet Secretary gives opinion on 19.8.2005 that only the MTA Bill needs to be proceeded with. PM agrees and approves on 23.9.2005. MTA sends final version for Cabinet on 23.8.2005.
10. NAC Chairperson writes to PM on 7.9.2005 for a discussion on reconciling views with reference to rights on sanctuaries. Suggests a consultation.
11. On 29th Sept MOEF, to skew the pitch and delay introduction, *suo moto* creates a new draft Bill, reportedly in compliance of CCTA meeting held on 25.8.2005. CCTA was wrongly informed that the

Tribal Land Rights Bill envisaged giving each nuclear family 2.5 hectares of land wherever there was no such provision (Minutes 4.7).

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11. Consultation as suggested by NAC Chairperson held on 30th September, 2005 chaired by PM. At this meeting Wild Life NGOs plead for introduction of alternative bill of MOEF. NAC suggestion was to discuss limited issue of sanctuaries and its exclusion/inclusion in the Tribal Rights Bill. It is clarified that views given in the MOEF version of Bill may be seen for incorporation (if found relevant) in the Tribal Land Rights Bill. Consultation scheduled for 28th October, 2005.

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12. Government position is clear. The only Bill under consideration is of the MTA. Only issue to be resolved: What to do with rights of people in sanctuaries, national parks. Should National Parks/Sanctuaries be excluded from the purview of the Bill. Wild Life NGOS and Forest officials want to thwart the Bill. Primarily through delaying tactics as evident from the issues raised in the note.

Submission by Dr Mahesh Rangarajan
(Independent Researcher and Visiting Professor in Environmental History,
Dept. of History, Jadavpur University, Kolkata)
Meeting at the Office of the Prime Minister, Dr Manmohan Singh
Friday October 28, 2005

LOGIC OF THE BILL

The Draft Bill by the Ministry of Tribal Affairs is but a small step in the direction of amelioration.

The logic of the Bill is sound and so are the principles. This does not apply to all its provisions. It is strongest on the issue of land tenure. By limiting the land area to 2.5 hectares it minimizes the chance of hired labor and actually reduces the scope for land alienation provided there is sufficient states support for the new titleholder. Section 4, Clause 3 making the forest rights heritable but not alienable or transferable is welcome.

It is significant critics see recognition of land rights of 2.5 hectares as retrograde despite land tenure reform being an accepted consensus of all governments since independence. It is equally notable that tribal societies are not seen by them as responsible enough or perhaps Scheduled Tribe citizens of the Union not mature enough to reject a scheme that is not in their interests. Such a mindset is hardly conducive to a democratic law-governed state.

TRIBAL SOCIETY TODAY

The observations on the nature of tribal land tenure by Mr. Thapar (Thapar, 2005b) are accurate on specifics. They are apt to be misleading in grasping the overall picture for three simple reasons.

Firstly, 8 per cent of the population of the Union of India is Scheduled Tribals and no generalization can be made on the basis of the three studies quoted by him. As would be known to any scholar of the social and humanistic disciplines, there are a variety of forms of tenure among Adivasis. In eastern India, BB Chaudhuri famously contrasted those of the Santhals with those of other neighboring tribes.

Second, the basic premise of the observations that Adivasis do not own land except in joint tenures is a reflection of a *stereotype* about Adivasi societies common among laypersons. Recent work is reflected in work such as Archana Prasad (2003). There was a tribe-caste continuum, but the complex changes in the colonial period; both land colonization by non-tribal settlers and forest reservation rendered *Adivasis* marginal.

Third, it is inaccurate to argue that Scheduled Tribals cannot be dependent on agriculture. The excellent work by the administrator anthropologist Kumar Suresh Singh on assimilation begins with the point that the tribal in India is for purposes of productive activity a peasant. It is indeed true that shifting cultivation was historically of central importance but a variety of studies of 19th and 20th century India (summarized and reviewed in Rangarajan 2005) have shown how and why shifting cultivation declined in intensity and scope.

Having made these points, it is important that non-agricultural activities essential to livelihood or for that matter such joint tenure systems as exist (*khuntkati* in Jharkhand) be provided for. But this has to be done at a state specific level and cannot be attempted in Union legislation.

PROTECTED AREAS

There have been valid and serious doubts raised on specific implications for conservation outside the Protected Areas.

There is serious concern about the scope, powers and responsibility of the Forest Department not being affixed clearly enough. This is essential to curb arbitrary behavior in the future (Prasad 2005).

Community level institutions in turn require far more support and elaboration given the very real threats to the biota that exist both within and without. There is a need to strengthen the capacity and capability of the ground level institutions and analysts of such institutions have put several serious proposals. (Kalpavriksh, July 2005).

The actual presence of habitations or cultivated plots on the ground requires revivification by a transparent process involving more modern technologies such as satellite mapping. Specific studies such as those in Tadoba Andhari

Tiger Reserve show there is a great disparity in the kinds of impact between different kinds of habitations, in this case Adivasi settlements within the reserve and non Adivasi ones on its rim (Nagendra *et al*, In Press). Close state level surveys as the one on Maharashtra done under the aegis of the Bombay Natural History Society also show up a disparity in the kind of village size and possible impacts. This can help in prioritizing settlements in case of relocation (Pande, 2005). Such a process is required in all certainty for the PAs. This is best done at a state level but should not be left only to the Forest Department. The latter needs partners not only at the Gram Sabha level but also in the form on institutions and qualified professional organizations.

RELOCATION FROM PAs

The issue of relocation from the PAs is an especially vexed one due to the manner of most such displacements in the past. There is a fair degree of scientifically sophisticated biological research that shows that such relocation can reduce the level of conflict between large mammals and crops, cattle or people (for a review see Madhusudan and Mishra, 2003). What bears emphasis is that – as with the biology – until recently the sociological work on such relocations was also mostly anecdotal.

This is no more the case with increasingly nuanced and sophisticated accounts being available (Kabra 2003, Shahabuddin *et al* 2003, 2005, Karanth 2005). Some of these works have been drawn upon in the recent Tiger Task Force Report (MoeF 2005) but a reiteration of their core findings would help focus the discussion on PAs.

The issue of human settlements in the PAs requires serious consideration. There is little question that the expansion of agriculture has been a secular factor in denudation: in many ecotypes the reservation of forest for timber or as hunting ground helped keep the landscape intact in part or whole.

The Tiger Task Force report earlier this year endorsed the principle of having some areas as much as 1 per cent of the land mass as inviolate, having no biomass or resource extraction or human habitation (MOEF 2005). The National Biodiversity Strategy and Action Plan goes further and suggests a total area of 2 per cent (Kalpavriskh and TPCG, 2005). At present

the total PA coverage is around five per cent but only a fraction of this land is free of human presence or habitation.

It is here that the TTF and NBSAP have an approach that is significant. Both favor a process of transparency, dialogue and consultation. The very fact the principle of having inviolate areas has acceptance must be emphasized. Those who study wildlife or engage in its advocacy need not feel alone. They do have a right to share their views and rich experiences, but they would do well to look at why the same idea gains wider acceptance when raised at such fora.

There are only three choices in this matter.

One is to move all those who live in the designated inviolate areas out.

This does not seem feasible or practical.

Two, the status quo can continue. This is not desirable, mainly because there are genuine and real conflicts with landscape integrity and there is genuine loss of amenities to people, cattle or stock.

Three, there can be a carefully selective process of relocation in a just, transparent, open manner.

CASE STUDIES OF RELOCATION

Here, it is useful to make a very brief mention of three patterns in the process of relocation. These are not anecdotal accounts, which can be as unreliable in societal issues as they are with biological ones. They are published papers.

A positive case: A rare, perhaps exceptional case where relocation has been able to raise living standards and been done in a transparent manner was in Bhadra Tiger Reserve, Karnataka. A variety of factors, including coordination between Union and the state, civil and forest authorities and committed voluntary groups. K Karanth (2005 In press) shows also how many of those who moved were from a dominant peasant community. All evacuees were given irrigated land in a command area.

A positive case that turned negative: Kuno in Madhya Pradesh has been studied ably by Kabra (2003). Sahariya STs were relocated in a process that was corruption free, fair to women as owners and executed with consultation with elected representatives. The follow up shows a very different picture, with a loss of amenity mainly due to water scarcity and lack of fodder. The

Voluntary group that supported relocation continues to do so. But its founders argue on the basis of the experience that relocation be a last not a first option. Sahariyas have *neither* made a transition to agriculture nor does the older mix of livelihoods continue. (Sharma and Kabra. In press).

A negative case: A full-length study of Sariska where there has been some relocation and is slated to be much more shows a much more grim picture. Land allotted under a new package of 2005 is low in acreage, poor in quality and ground water deficient. State level policy guidelines are an impediment not an aid to effective and just relocation (Shahabuddin et al 2005 b: 66-71).

Even this brief summary of three cases will make five points evident.

- a. Relocation can only be done after a comprehensive survey not only of numbers of settlements or persons but also of a socio economic profile of those who reside in PAs.
- b. This needs to be done at the state level but in a transparent manner and not solely by the Forest Department.
- c. There is no option to the kind of serious and hard science done in the Bhadra case about impacts and consequences. This will help prioritize whether and where such relocation is a must.
- d. The actual exercise has to be designed in a manner that enhances livelihoods and not impoverishes households or persons. The Sariska case with the design by the Wildlife Institute of India stands out as a case of what not to do in contrast to the effectiveness of civilian administration and voluntary groups in Bhadra.
- e. Those with a lower degree of reliance on sedentary agriculture are the most vulnerable. The case of Sariska, three fourths of affected persons being Gujjars, a mostly pastoral OBC community is similar to that of the *maldaharis* of Gir. Such assessments need serious sociological and economic studies, **not** anecdotal evidence (for excellent studies see Dayal 2005 and Choudhary 2000).

The Tiger Task Force recommended a time bound survey and process of design of relocation plans. This principle can be applied to other PAs. It is a matter of policy choice as to how these areas are to be determined and affixed.

A last point may be made about the PAs. While keeping the landscapes intact with their biota is a positive social good, the cost cannot be borne inequitably by those who have the least. Of all the communities in India, the

STs lag behind in almost all indicators: education, land holding, longevity and endowment. Conversely, the transformation of their lot has to proceed with the task of conservation. The two are interlinked and inter dependent.

The principle of entitlement for Adivasis in common with several other ameliorative policies or legislative measures cannot be a substitute for larger change in executive policy. These would include preferential employment, redistribution of cultivated land held in excess of land ceiling, assistance to raise farm productivity and help with resource harvesting.

The core principle of the Bill is the recognition of land rights. In the case of PAs, this meeting needs to consider other options including relocation. Needless to add, this will then involve looking at non-Adivasi groups as well. But to reiterate a point raised in the NBSAP, the community level institutions and the role of the state government in general and the Forest Department in particular needs more elaboration and clarification. The PAs in terms of conservation function do not exist in isolation and such measures are critical.

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शु. शिगामा
ए. राजा
A. RAJA



मंत्री
पर्यावरण एवं वन
भारत सरकार
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20th October, 2005

F. No. 2-3/2004-FC(PLIII)

Respected Sir, Vansikram :

Kindly recall that you had taken the initiative to set-up the Cabinet Committee on Tribal Affairs (CCTA), whose mandate includes the question of rights of local communities over forest resources. Accordingly, my Ministry prepared a draft bill in response to the directions of the CCTA on the subject. A meeting was also convened by you on 30th September, 2005 with representatives of NGO groups, to which officers of my Ministry as well as the Department of Tribal Affairs were invited, to discuss various approaches to the

Subsequently, my Ministry has received a U.O. Note dated 3rd October 2005 from your office, copy enclosed, which, I feel, is inconsistent with the decisions taken in the meeting held by you on 30th September 2005. To recapitulate, it was agreed that the Ministry of Environment & Forests, and Department of Tribal Affairs, would discuss their respective versions of the Bill, and attempt to arrive at an agreed draft, to be discussed in a workshop to be convened by PMO in early November 2005. The UO note from your office, on the other hand, in effect asks my Ministry to stop all further work on the subject.

I believe that the complexity of the issue, and its deep social, political, economic, and environmental ramifications, call for a far more comprehensive and nuanced approach than is apparent in the draft Bill prepared by the Ministry of Tribal Affairs, which has confined itself to one, albeit a critical, aspect of the issue.

What precisely are the issues as perceived by the Ministry of Environment & Forests? I summarize them as follows:

- (i) Forest dependent communities comprise a much wider set than those classified as "tribals" in the anthropological sense, or "Scheduled Tribes" under our Constitution. Nor is it correct to suppose that non-tribals in notified forest lands were not traditionally dependent on forests for their livelihoods, and in that sense are necessarily "encroachers". It is also an empirical fact that many forest settlements contain both tribal and non-tribal communities who have lived together since before recorded history. Any attempt to endow one part of such populations with legal rights to forest resources, and not others, who with justification perceive their own claims as equally valid, may lead to confrontation and social upheaval.

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- (ii) While the Forest Acts 1865/1878 may not have provided for legal recognition to the traditional entitlements of forest dwelling communities, this lacuna was addressed in the Indian Forest Act of 1927. Following the enactment of the Forest (Conservation) Act 1980, a process was put in place to realize these rights throughout the country. The only legal impediment to the process is the interim orders of the Supreme Court of 2000, 2001, and 2004. It is, of course, true that progress was slow, the reasons for which are now clearly understood.
- (iii) Various forest dwelling communities have evolved in respect of their adaptation (livelihood) strategies, either spontaneously, or in response to our development efforts under the Five Year Plans. In particular, several communities have given up foraging strategies, and/or shifting cultivation. On the other hand, some have taken to terraced or conventional settled agriculture. *Clearly, it would be meaningless to grant legal rights in respect of traditional entitlements which have since been abandoned spontaneously by the communities themselves.* On the other hand, where new claims are made, in the sense that they are not in relation to traditional entitlements, e.g., in respect of private property rights over forest lands which have been converted to settled agriculture, or new kinds of usufruct right two further questions arise:
- (a) Should these *new claims be given legal recognition*, particularly where they may adversely impact forest resources, and therewith, society as a whole, and when the Constitution mandates a national commitment to conserving the environment; and if so:
- (b) What would be an *appropriate period of limitation, and extent* of, such new claims, since without such limitation, strong perverse incentives would be created to constantly occupy new forest lands?
- (iv) A further consideration relates to the question, to what extent are the traditional entitlements to be given legal recognition, if the status of the natural resource has changed in the meantime? For example, species that were earlier hunted/gathered may now be endangered and accordingly, given legal protection as Scheduled Species under the Wildlife (Protection) Act. Alternatively, the original domain of the entitlements may already have been converted to alternative use, e.g. submergence by hydropower reservoirs.
- (v) What is to be done in respect of clear "encroachers", i.e. communities which have simply appropriated forest lands without any history of traditional claims?
- (vi) The traditional entitlements to be recognized, as well as any non- traditional claims, may relate to the following typologies:
- (a) *Type of resource*, i.e. specified usufructs, water, land for shifting cultivation, land for settled agriculture, land for habitations, etc.
- (b) *Entity on whom it devolves*, i.e. particular tribe/community as a whole, part of the tribe/community, e.g. village, hamlet, clan, lineage, etc.
- (c) *Domain*, i.e. the spatial area over which the particular right is to be exercised over the specified resource, and by the entity on which it devolves.

SONIA GANDHI
CHAIRPERSON
NATIONAL ADVISORY COUNCIL



10-1178/CP/NAC/05

2, MOTI LAL NEHRU PLAC
NEW DELHI - 110 01
PHONES : 011-2301 866
011-2301 865
FAX : 011-2301 864

7th September, 2005

Dear Prime Minister,

As you are aware, Environmentalists and Wildlife Experts have expressed their concerns regarding the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill, 2005. Given the implications of this Bill, it would be essential for points of view representing tribal interests and those representing interests of environmentalists and wildlife specialists, to be taken into consideration and discussed before finalization of the draft Bill. The question of whether the provisions of the Bill should cover National Parks, Reserves and Sanctuaries is, to my mind, of particular importance.

2. . . . The views of the Ministry of Tribal Affairs in this regard, are know. However, keeping in mind the immense implications of the legislation, I wonder whether you might consider holding a discussion at your level with a few outside experts from both sides, to take a final view on the inclusion/non-inclusion of National Parks and Sanctuaries in the Tribal Rights Bill. For your consideration, some names that come to mind are (i) Shri Valmik Thapar, (ii) Shri K. Ullas Karanth, (iii) Dr. M.K. Ranjit Sinh and (iv) Prof. Madhav Gadgil as experts on wildlife and (i) Smt. Aruna Roy, (ii) Dr. N.C. Saxena, (iii) Dr. Ganesh Devy and (iv) Ms. Madhu Sarin as experts on tribal issues. Of course, you will be the best judge on who would be the most appropriate persons to invite.

With regards,

Yours sincerely,

Dr. Manmohan Singh,
Prime Minister of India,
South Block,
New Delhi.

No. 12970 /P.,

Bhubaneswar, Dated the 6th September, 2005.

From:

Dr. R.V. Singh,
Special Secretary to Govt.
Tel: (0674) 2402098.
E-mail : rv_ms@yahoo.com
ssplg@ori.nic.in

To

Shri Rajiv Kumar,
Joint Secretary,
Ministry of Tribal Affairs,
Room No.722, A-Wing,
Shastri Bhawan, New Delhi - 110 001
E-mail Address: rajeevkumar@nic.in

Sub: The Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005; A Critique.

Sir,

With reference to your letter No.1701-4/4/2005-S&M(pt.), dated 3.6.05 on the above subject, I send herewith a note containing a Critique of 'Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005'. It is hoped that this may be of some use.

Yours faithfully,

Enclosures: As above.

[Signature] 6/9/05
Special Secretary to Government.

Memo No. 12971(2) /P., Bhubaneswar, Dated. the 6th September, 2005

Copy alongwith the copy of Note on 'Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005' A Critique, forwarded for kind perusal.

- i) Shri Pradipto Ghosh, IAS, Secretary to Government of India. Ministry of Environment & Forest, 4th Floor, Paryavaran Bhawan. C.G.O. Complex, New Delhi- 110 003.
- ii) Shri J.C. Kala, IFS., Director General (Forest) and Special Secretary to Govt. of India, Ministry of Environment & Forest, 4th Floor, Paryavaran. CGO Complex, New Delhi- 110 003.

[Signature] 6/9/05
Special Secretary to Government

Memo No. 12972 /P., Bhubaneswar Dated 6th September, 2005

Copy alongwith a copy of 'Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005' forwarded to the Principal Secretary to Prime Minister, South Block, New Delhi- 110-001

[Signature] 6/9/05
Special Secretary to Government

as yielded by Law Justice

20-08-2005(FINAL VERSION)

SECRET
ANNEXURE

No. ____ of 2005

THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

A

BILL

to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes including those who were forced to relocate their dwelling due to state development interventions.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Scheduled Tribes (Recognition of Forest Rights) Act, 2005.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commencement

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) "bonafide livelihood needs", in relation to forest dwelling Scheduled Tribes, means the use of forests and forest based products for subsistence of such Tribes or for their own consumption and includes barter and sale of such forest based products for their household needs;

(b) "commercial purpose" includes a forest based activity where such activity is used for profit or for large scale trade or mercantile purposes;

(c) "forest dwelling Scheduled Tribes" means the members or community of Scheduled Tribes who primarily reside in and around forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bonafide livelihood needs;

(d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks;

(e) "forest rights" means the forest rights referred to in section 3;

(f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses, permitted by the Government;

(g) "Gram Sabha" means a village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level and in case of State having no Panchayats, the traditional village institutions;

(h) "habitat" includes the area comprising the customary habitat and such habitats in reserved forests and protected forests, of Primitive Tribal Groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;

(i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "Scheduled Area" means any Schedule Area as referred to in clause (l) of article 244 of the Constitution;

(l) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;

18 of 2003.

(m) "village" means-

(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996;

40 of 1996.

(ii) any area referred to as a village in any State law relating to Panchayats, other than a Schedule Area;

(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

53 of 1972.

(n) "wild life" means has the same meaning as assigned to it in clause (37) of section 2 of the Wildlife (Protection) Act, 1972.

CHAPTER II

FOREST RIGHTS

3. For the purposes of this Act, the following rights which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes, namely:-

Forest rights of forest dwelling Scheduled Tribes defined.

(a) right to hold and live in the forest land under the individual common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;

(b) community rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;

(c) right of ownership access to, use or dispose of minor forest produce;

(d) other community rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) right, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of conversion of forest villages into revenue villages;

(i) rights of settlement of old habitations and unsurveyed villages, whether notified or not;

(j) right to access to biodiversity and community right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity;

(k) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(l) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;

(m) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) but excluding the right of hunting and unsustainable use.

CHAPTER III

RIGHTS OF FOREST DWELLING SCHEDULED TRIBES

Recognition of and vesting of forest rights in forest dwelling Scheduled Tribes.

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in the forest dwelling Scheduled Tribes, where they are scheduled, in respect of forest land and their habitat including right to collect, utilize or transfer minor forest produce in such manner as may be prescribed.

(2) The recognition and vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Tribes or tribal communities had occupied forest land before the 25th day of October, 1980 or such other date as the Central Government may, by notification in the Official Gazette, specify.

(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable **excepting for the right conferred by clause (g) of section 3.**

(4) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed.

(5) Where the forest rights recognized and vested under sub-section (1) are in respect of land mentioned in clause (a) of section 3, -

(i) such land under the occupation of an individual on the date of commencement of this Act in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;

(ii) the title to the extent given shall be registered jointly in the name of the male member and his spouse;

(6) The forest rights recognized and vested under sub-section (1) in the forest dwelling Scheduled Tribe shall -

(i) be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes;

(ii) include the responsibility and authority of protection, conservation with sustainable use and regeneration of adjoining forests in which community rights have been vested.

(7) In case any forest right recognised and vested under sub-section (1) is disputed by any State Government or local authority, the Competent Authority appointed by the Central Government shall consider the records prepared at the time of declaring the area as a Scheduled Area, and while notifying any tribe to be or deemed to be a Scheduled Tribe under article 342 of the Constitution, along with evidence and then pass an appropriate order in the matter:

Provided that no order denying or refusing to grant any forest right shall be passed unless the aggrieved member or members of the community are given an opportunity of being heard.

Duties of holders of forest rights.

5. The holder of any forest right under this Act shall ensure that, -

(a) save as those sustainable use activities that are permitted under such rights, no activity shall be carried out that adversely affects the wild life,

STATEMENT OF OBJECTS AND REASONS

Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the rich traditions of the country where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas for production forestry somehow ignored the *bona fide* interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belong and depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have initiated action to recognize the occupation and other rights of the forest dwellers and have in their policy processes realised that integration of tribal communities who depend primarily on the forest resource cannot but be integrated in their designed management processes. There is a recognition of the fact It underlines that forests have the best chance to survive if communities participate in its conservation and regeneration measures. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests from becoming abode of undesirable elements.

2. It is, therefore, proposed to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Scheduled Tribes. This Bill is a logical culmination of the process of recognition of forest rights. The recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations, and which includes both ~~bona fide needs of forest land for sustenance and usufructs from forest based resources,~~ are is the fundamental basis on which the proposed legislation stands.

3. The Bill, *inter alia*, provides for the following matters, namely:-

(i) it reinforces and utilises the rich conservation ethos that tribal communities have traditionally shown and cautions against any form of unsustainable or destructive practices;

(ii) it lays down a simple procedure for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes so that rights, which stand vested in forest dwelling tribal communities, become legally enforceable through corrective measures in the formal recording system of the executive machinery;

(iii) it provides for adequate safeguards to avoid any further encroachment of forests and seeks to involve the democratic institutions at the grassroots level in the process of recognition and vesting of forest rights;

(iv) it addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to the Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

4. The Bill seeks to achieve the above objects.

of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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forest and the biodiversity in the local area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reforestation;

(b) adjoining catchment areas, water sources and other ecologically sensitive areas are adequately protected;

(c) the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) any activity in violation of any of the provision of—

(i) the Wildlife Protection Act, 1972;

(ii) the Forest (Conservation) Act, 1980; or

(iii) the Biological Diversity Act, 2002,

is intimated to the Gram Sabha and to the forest authorities;

(e) decisions taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

53 of 1972.

69 of 1980.

18 of 2003.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. (1) The Gram Sabha shall be the authority to initiate any action for determining the extent of forest rights that may be given to the forest dwelling Scheduled Tribes within the local or customary limits of its jurisdiction under this Act.

Authorities to vest forest rights in forest dwelling Scheduled Tribes and the procedure thereof.

(2) Every action under sub-section (1) shall be initiated in such manner and subject to such procedure as may be prescribed.

(3) A Sub-Divisional Level Committee shall examine the decision taken by the Gram Sabha.

(4) The composition and functions of the Sub-Divisional Level Committee and the procedure to be followed by it in the discharge of its functions shall be such as may be prescribed.

(5) Any person aggrieved by the decision of the Gram Sabha may prefer an appeal to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(6) Every appeal under sub-section (5) shall be preferred within sixty days from the date of decision of the Gram Sabha.

(7) There shall be constituted a District Level Committee with such composition and functions as may be prescribed to consider the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval.

(8) Any person aggrieved by the decision of the Sub-Divisional Committee may prefer an appeal to the District Level Committee in such manner as may be prescribed and the District Level Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(9) In discharging the functions under this Act, the District Level Committee shall follow such procedure as may be prescribed.

(10) Every appeal under sub-section (8) shall be preferred within sixty days from the date of decision of the Sub-Divisional Level Committee.

(11) The decision of the District Level Committee shall be final and binding and the Gram Sabha shall maintain the records accordingly.

State Level
Monitoring
Committee.

7. (1) The State Government shall constitute a State Level Monitoring Committee with such composition and functions as may be prescribed.

(2) The State Level Monitoring Committee shall examine the record of recognised and vested rights of forest dwelling Scheduled Tribes submitted by the District Level Committee and conduct periodic inquiry into the process of recognition and vesting through random selection of sites.

(3) The State Level Monitoring Committee shall submit to the nodal agency such periodic returns and reports as may be called for by that agency along with the recommendations of the Committee for appropriate action.

CHAPTER V

OFFENCE AND PENALTIES

Penalties.

8. If any holder of any forest right conferred by or under this Act or any other person –

(i) contravenes or abets the contravention of any of the provisions of this Act; or

(ii) commits a breach of any of the conditions of the forest right vested or recognised under this Act; or

(iii) engages in unsustainable use of forest or forest produce; or

(iv) destroys wildlife, forests or any other aspect of biodiversity; or

(v) fells trees for any commercial purpose,

he shall be guilty of an offence against this Act and be punished with a fine which may extend to one thousand rupees and in case of the offence is committed more than once, the forest right of the person who has committed the offence shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha may decide.

Offences by
members or
officers of
authorities
under this Act.

9. Where any authority or officers or member of such authority contravenes any provisions of this Act or any rule made thereunder shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with imprisonment which may extend to thirty days or with fine which may extend to five thousand rupees, or with both:

Provided that nothing contained in this sub-section shall render any member of the authority or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the

commission of such offence.

10. No court shall take cognizance of any offence under section 9 of this Act unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Monitoring Committee and the State Monitoring Committee has not proceeded against such authority.

Cognizance of offences.

CHAPTER VI

MISCELLANEOUS

11. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Members to be public servants.

45 of 1860.

12. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority referred to in Chapter IV including its Chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

13. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

Nodal agency.

14. In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time

Power of Central Government to give directions.

15. Save as otherwise provided in this Act, this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

16. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the procedure for and the manner of recognition and verification of forest rights under sub-section (4) of section 4;

(b) the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings under sub-section (2) of section 6;

(c) the composition and functions of the Sub-Divisional Committee and the procedure to be followed by it in the discharge of its functions under sub-section (4) of section 6;

(d) the manner of preferring an appeal to the Sub-Divisional Committee under sub-section (5) of section 6;

(e) the composition and functions of the District Level Committee under sub-section (7) of section 6;

(f) the manner in which an appeal may be preferred to the District Level Committee under sub-section (8) of section 6;

(g) the procedure to be followed by the District Level Committee under sub-section (9) of section 6;

(h) the composition and functions of the State Level Committee under sub-section (1) of section 7;

(i) the periodic reports and returns to be submitted to the nodal agency by the State Level Committee under sub-section (3) of section 7;

(j) any other matter is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the rich traditions of the country where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas for production forestry somehow ignored the *bona fide* interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belong and depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have in their policy processes realised that integration of tribal communities who depend primarily on the forest resource cannot but be integrated in their designed management processes. It underlines that forests have the best chance to survive if communities participate in its conservation and regeneration measures. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests from becoming abode of undesirable elements.

2. It is, therefore, proposed to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Scheduled Tribes. The recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations and which includes both *bona fide* needs of forest land for sustenance and usufructs from forest based resources are the fundamental basis on which the proposed legislation stands.

3. The Bill, *inter alia*, provides for the following matters, namely:—

(i) it reinforces and utilises the rich conservation ethos that tribal communities have traditionally shown and cautions against any form of unsustainable or destructive practices;

(ii) it lays down a simple procedure for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes so that rights, which stand vested in forest dwelling tribal communities, become legally enforceable through corrective measures in the formal recording system of the executive machinery;

(iii) it provides for adequate safeguards to avoid any further encroachment of forests and seeks to involve the democratic institutions at the grassroots level in the process of recognition and vesting of forest rights;

(iv) it addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to the Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

P.R.KYNDIAH.

The August, 2005.

SECRET
MOST IMMEDIATE
COPY NO 2

No. 171/2/3/2005-Cab-III
Government of India (भारत सरकार)
Cabinet Secretariat (मंत्रिमंडल सचिवालय)
Rashtrapati Bhawan (राष्ट्रपति भवन)

New Delhi, dated the 5th August, 2005.

OFFICE MEMORANDUM

Subject: Need for enacting two Bills, namely, "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" and the "Model Bill - State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" for conferring ownership rights in respect of minor forest produce, including tendu patta, on all those people from the weaker sections who work in forests.

No. 23
Dated 5/8/2005
JS(RK)/100

Cabinet Secretary will take a meeting of Committee of Secretaries at 12.00 Noon on Friday the 12th August, 2005 in the Committee Room of Cabinet Secretariat, Rashtrapati Bhawan to discuss the attached notes (Doc. No.60/ Cab.III/2005) received from Ministry of Tribal Affairs and (Doc. No. 61/Cab.III/2005) received from Ministry of Environment & Forest on the above subject.

2. Kindly make it convenient to attend the meeting.

AS(PCA)

JS(RK)

8/8/05

As discussed Today W. on low
As say (M) moved to on low
Under Secretary to the Govt. of India
Tel: 23019017

(Gulshan Kumar)
Under Secretary to the Govt. of India
Tel: 23019017

- Dr. Prodipto Ghosh, Secretary, M/o Environment and Forests
- Smt. P. Jyoti Rao, Secretary, M/o Tribal Affairs
- Shri Wajahat Habibulla, Secretary, M/o Panchayati Raj
- Smt. Sarita Prasad, M/o Social Justice & Empowerment
- Smt. Gauri Chatterji, Secretary, D/o North Eastern Region
- Shri R.R. Shah, Member Secretary, Planning Commission
- Shri R.L. Meena, Secretary, D/o Legal Affairs
- Shri Pratyush Sinha, Secretary, D/o Land Resources

AS(PCA)

Copy with enclosures also forwarded to Shri T.K.A. Nair, Principal Secretary to Prime Minister.

(Gulshan Kumar)
Under Secretary to the Govt. of India
Tel: 23019017

INTERNAL CIRCULATION:
CS/Secy (C)/AS/JS(ARS)/JS(RK) / Dir.(RR)



S.K.Batra
Deputy Secretary (PR)
Tel.No.23388770

सत्यमेव जयते

By epl. Messengers

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पंचायती राज मन्त्रालय

भारत सरकार

कृषि भवन, नई दिल्ली-110001

MINISTRY OF PANCHAYATI RAJ

GOVERNMENT OF INDIA

KRISHI BHAVAN, NEW DELHI-110001

D.O.No.R-12011/6/2004-PR

Dated 17th February, 2005.

Dear Shri Rajeev Kumar,

Please refer to your D.O.letter 17014/4/2005-S&M (Pt) dated 14th February, 2005 addressed to Addl. Secretary (PR) regarding setting up of a Technical Support Group for formulation of "Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill".

We have gone through the Draft Bill. In regard to clause 4(2) relating to composition of Sub Divisional level Committee, it is suggested that in the Committee, there should be two Members of the Intermediate Panchayats in addition to the Members mentioned in the composition.

In regard to clause 4(3), it is felt that with the Collector as the Chairman of the District Level Committee, the concern of Tribal may not get articulated. It is therefore, suggested that it would be appropriate if the Chairperson or Deputy Chairperson of the District level Committee is a Tribal Member of the Panchayat.

I shall be grateful if you kindly make these modifications in the Draft Bill.

This issues with the approval of Secretary(PR).

~~SECRET~~
17/2

Yours sincerely,

(S.K.Batra)

Shri Rajeev Kumar,
Joint Secretary,
Ministry of Tribal Affair,
Shastri Bhawan,
New Delhi - 110 001.

80M
17/2/05
Dr. Sood

406/JS(RK)
18/2

1. Definition of 'Shifting Cultivation' as adopted by FAO

2. In Section 3 add-

Provided that no one, who, in the opinion of the Gram Sabha has been in occupation of the disputed land for 'many' years, shall be dispossessed until his claim as been varified by the competent authority.

Provided further that the ineligible occupant shall be provided with an alternative means of livelihood preferably in terms of GOI circular of 20.12.1990.

3. Add in Para 5

(3) At the end of the above process a map shall be prepared for each ~~the~~ habitats duly authenticated by the concerned Gram Sabhas, Revenue and Forest Departments which shall form the basis for all future disputes about forest lands.

4. 'Halifat' has to be introduced as a concept.

5. Shifting Cultivators' issue may be seperately provided.

P.D. Sharma

18/2/05

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MOST IMMEDIATE

OUT-TO-DAY

PRIME MINISTER'S OFFICE

New Delhi-110011

With reference to letter No. 17014/4/2005-S&M(Pt) dated February 14, 2005 enclosing a copy of the 'Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill', the following suggestions may be examined/considered by the Committee.

1. The Bill is applicable to Scheduled Tribes and forests dwellers. Forests dwellers are defined as those "who primarily reside in and around forests". This would include rural poor and other non-tribal communities who may have encroached upon and occupied forests lands. It would also include persons with commercial interests who may have set up bases in forests areas for commercial purposes, like land mafias, contractors, etc. The objective of the Act is purely to provide protection to people of Scheduled Tribes who have been traditionally living in forests. Therefore, the Act should be strictly applicable only to Forest Dwelling Scheduled Tribes.

2. The Bill is not applicable to Jammu & Kashmir and the Andaman & Nicobar Islands. It is not clear why these territories have been excluded. There are a large number of forest dwelling tribes in the Andaman & Nicobar Islands, for instance.

3. The definition of 'forests land' includes protected forests, reserved forests, National Parks and Wild Life Sanctuaries. The position in this matter would need to be clarified with regard to Wild Life Parks and sanctuaries.

4. There is no cut-off date for regularization of encroachments or settlements. Under Section 3(2), the cut-off date for only those Scheduled Tribes who have migrated and occupied forests lands has been kept as 31.12.1993. The lack of any cut-off date for tribal settlers on forests lands may encourage continuous encroachment of forests lands in the years to come and therefore, clarity would need to be given. Hence, the date of enactment of the Forests (Conservation) Act (which is 1980) could be considered to be provided as the cut-off date in the Bill. This is also in line with the Supreme Court's orders in the matter.

5. Under Section 3 (3), forests rights include rights of Scheduled Tribes to 'shifting cultivation' and 'rotational cultivation'. This can create extensive damage to forests lands. For years now, there has been thinking within the Government regarding ways and means to discourage 'shifting cultivation'. This provision could actually encourage the destructive practice of shifting cultivation. Rights to 'shifting cultivation' and 'rotational cultivation' may not be included in the Bill.

Received at
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Handled over by
Secty (TA) Mummally
in file with
copy sent to
13/2/05

22/2/05

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21-2-2005

152/JS(RK)

22/2/05

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6. The provisos under Section 3 (3) include the responsibilities of tribal people for protection, conservation and regeneration of forests. In the interests of these eco-sensitive areas, these responsibilities should be spelt out more specifically and in greater detail. Further more, the responsibilities should also specifically include the protection of wild life.
 7. The Bill should provide that no State Government or other authority or individual or community shall clear any forests lands or trees which have grown naturally on that land or any non-forestry purposes including re-afforestation except with the prior approval of the Central Government.
 8. The Bill should have a clear provision to discourage use of any forest area for agriculture if it was not already under agricultural use before the enactment of the Forests (Conservation) Act.
 9. The Bill should have a specific provision to provide adequate checks and counter checks to keep away vested interests from forests lands.
 10. Under Section 4 (2) (d) of Chapter IV of the Bill, the sub-Divisional level Committee should include two respected civil society members from the sub-Division/Block/Taluk, at least one of them being a woman, recognized for their understanding of forests rights tenurial issues, appointed by the District Level Committee, *preferably from among the forests dwelling Scheduled Tribes of the sub-Division or District.*
 11. Under Section 4(3), the Chairman of the Zilla Parishad should be the Chairman of the District-level Committee.
 12. Under Section 4 (3) (e), the District-level Committee should include either :
 - (I) a renowned non-Governmental person known for his understanding of tribal forests issues, elected by the civil society members of the sub-Divisional level Committees ;
 - OR**
 - (II) a Scheduled Tribe Member of Parliament / MLA of the District.
 13. Under Section 4 (4) (e), the State-level monitoring Committee could include three (not two) recognized non-governmental persons known for their understanding of tribal forests issues.
 14. The Bill does not spell out the role on powers of the Gram Sabha, sub-Divisional-level Committee, District-level Committee and State-level Committee. This has clearly to be spelt out.

- (17)
15. The Bill does not spell out the procedure for identification of encroachers/settlers for regularization. This needs to be spelt out in detail in the Rules.
 16. The penalty for contravention of the provisions of the law is limited to a simple imprisonment of up to 30 days. However, for the contraventions like hunting, trekking, poaching or causing harm to wild life, the penalties should be the same as those provided in the relevant laws for protection of wild life.


V. Vidyavathi^{18/2}
(V. Vidyavathi)
Deputy Secretary

Smt. Jyothi Rao, Secretary, Ministry of Tribal Affairs

PMO UO NO. 250/40/C/2/2004-ES-II


Dated Feb. 2005

Slow Sec (10)

From: "Madhu Sarin" <msarin@satyam.net.in>  Add to Address Book

To: "rishi jain" <rishi_jain_rishi@yahoo.com>

CC: "Pradip Prabhu" <kasht@sancharnet.in>, "Sanjay Upadhyay" <su@vsnl.com>, "Prashanto Chandra Sen" <senprashanto@rediffmail.com>

Subject:  Suggested additions to 18.2 draft bill

Date: Mon, 21 Feb 2005 14:42:12 +0530

Dear Mr Rajeev Kumar,

I am attaching the version of the bill we agreed upon on the 18th evening to which I have added two or three important additions pointed out by Pradip and a couple by myself. Please see the formulation related to protected areas. That may help overcome the apprehensions of the wildlife conservationists to some extent.

The changes are in track changes mode and should be self-evident if the mode is turned on.

Best regards,
Madhu Sarin

BRIEF FOR PM'S MEETING WITH CONSERVATIONISTS
AND TRIBAL RIGHTS ACTIVISTS REGARDING THE
TRIBAL RIGHTS BILL

1. Chairperson, NAC vide letter dated 7.9.2005 has suggested a meeting of the PM with some experts from the conservation side and the Tribal Rights side on this specific subject of action regarding sanctuaries in the proposed Tribal Rights Bill. AS(P) had suggested that a brief be prepared.
2. The Tribal Rights Bill is already in the Cabinet after the Cabinet Secretary has gone through the issue in detail with related Ministries and felt that the version of the Ministry of Tribal Affairs is a comprehensive one. The Cabinet Secretary has, however, flagged the issue of sanctuaries being initially taken out of the purview of the draft Bill for later consideration after adequate safeguards have been developed and rules framed.
3. This was examined in the Prime Minister's Office. It was felt that a solution acceptable both to conservationists and the Tribal Rights Activists can be framed.
4. On the one hand it must be borne in mind that a large number of these settlements are in areas subsequently declared as National Parks/Sanctuaries. The Wild Life Protection Act, 1972 is very clear that all rights had to be settled prior to the notification of the sanctuary. However in practice this was rarely done and a situation

has been created in which people are trapped within the sanctuary area. They cannot be doubly wronged. The cause of conservation requires that they be relocated as quite often human and animal co-existence is not possible. We can agree with the conservationists on this point and agree to relocate people from within the sanctuaries/national parks in a manner that does not infringe their right to property.

5. This can be done by :-

- (a) formally taking out National Parks, Tiger Reserves and Sanctuaries from the purview of the Draft Bill.
- (b) Giving the tribal settlers provisional title deeds with the condition that until such time the Government relocates them, they will continue to be in possession of the land that they currently occupy.
- (c) Preparing a time bound plan for relocation.

6. The above suggestion or provisional/temporary *Pattas* liable for relocation can be a win-win solution which pleases both the conservationists and the tribal rights activists. We are agreeing to both relocation as well as creating a time-boundness to it which should satisfy the conservationist. The Tribal Rights activist should be satisfied that there is an assertion of tribal right to property and that all eligible people would be given *Pattas*, which make them liable for relocation but does not infringe the Right to Property.

7. Relocation, of course, is a huge and complex task. It may be noted that out of 1500 villages located in Tiger sanctuaries, only 80 villages have been relocated in the last 30 years. For accomplishing this task, it is suggested that a Joint High Level Committee of the MoEF, Ministry of Tribal Affairs and Forest Secretaries of all the concerned States/UTs be set up to -

- identify all those forest dwellers living in the 1500 odd villages in the Tiger Reserves and Sanctuaries;
- clearly identify the availability and extent of land in the fringe areas of the Parks where villages exist for the re-settlement of persons identified under the previous step;
- see to what extent the identified lands would be able to accommodate the forest dwellers in the villages;
- calculate the total costs that would be involved for effective rehabilitation of the forest dwellers on these lands;
- work out a cost sharing mechanism between the States and the Centre;
- give recommendations for setting up a national fund and state funds for undertaking the task, and
- draw up a realistic road map with time frames for completing the task.

8. This, however, would require redefining what is considered core among the National Parks/Sanctuaries. For example, all tiger habitats may be considered to be core areas. Such a distinction is required because there has been an indiscriminate declaration of National Parks/Sanctuary areas trapping a large number of human habitation into them with hardly any green cover or animal life. Given the cost of relocation it would be a wise option for the Government to identify such areas which has also been recommended by the Tiger Task Force. The provision in the Wild Life Protection Act says that sanctuaries and national parks cannot be notified unless rights for people have been settled and they have been re-located. This has been indifferently enforced in the past which has given rise to the present problems. This provision may be adequately strengthened for sanctuaries and national parks that may be notified in future.

9. In order to assuage the fears of the conservationists, it is suggested that the following steps should be substantially completed or at least effectively initiated before the passage of the Tribal Rights Bill :

(a) Amendment to the Wild Life Act to provide that -

(i) complaint is substituted by charge-sheet for faster cognizance;

- (ii) a special provision is instituted to prevent suspension of sentence during appeal by the accused;
 - (iii) punishment is calibrated to distinguish between poacher, agent and large volume trafficker;
 - (iv) general consent is taken from the States in advance for investigation of wildlife cases by the CBI;
 - (v) Wildlife Special Courts are established to expedite trial; and
 - (vi) a statutory annual independent audit is mandatorily undertaken by an approved panel of outside experts of all National Parks and Tiger Reserves with the added proviso that the audit reports are to be placed on the Table of both Houses.
- (b) The establishment of a Wildlife Crime Bureau.
 - (c) Giving statutory autonomy to Project Tiger and making the Prime Minister the permanent ex-officio Chairman of its Steering Committee.
 - (d) Creation of two separate Departments of Environment and Forests under two different Secretaries.
 - (e) Instituting steps for setting up a separate National Parks Service as an All-India Service.

10. The Tribal Rights Bill provides that land and other rights are to be given only to the pre-1980 tribal forest dwellers. Thus, the proper identification of the pre-1980 tribal forest dwellers becomes very important. PMO has already approved detailed draft guidelines for the identification of the pre-1980 tribal forest dwellers based on a method of community participation. These guidelines could be made part and parcel of the Tribal Rights Bill.

11. On facts, the following is reiterated

- (a) no area is being diverted through the Tribal Rights Bill as the said land is already under occupation/cultivation.
- (b) The land so settled is likely to be to the extent of about 0.8 million hectares on an approximate calculation. The Ministry of Environment and Forests reports 1.3 million hectares under such occupation of which it has already settled 0.3 million. Given the fact that the Bill is restricted to tribal people only, about 20% of the people may get excluded, limiting the settlement to 0.8 million hectares.
- (c) This regularization should be seen against the fact that, post-independence, over one million hectares of actual forest land has been diverted to develop projects for mining, power industry etc.

पी.आर. किन्डिया
P.F. KYNDIAH



DO No. 17014/4/2005-SEM (1)

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मंत्री
जनजातीय कार्य एवं
पूर्वोत्तर क्षेत्र विकास
भारत सरकार
शास्त्री भवन, नई दिल्ली - 110001
MINISTER FOR TRIBAL AFFAIRS &
DEVELOPMENT OF NORTH EASTERN REGION
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110001

May 4, 2005

Dear Dr Singhji,

This is the most opportune moment when the names of this Government would be etched in the annals of history with golden letters if we settle land rights of those forest dwelling tribal communities who are the poorest of the poor and have been inhabiting in their ancestral habitat for ages in symbiotic relationship with the eco-system but also have been historically denied recognition through faulty reservation process in the past. The enactment of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, which as per your directions given on 19.1.05 has been drafted by my Ministry in a record time, is the most appropriate and a historic step in the direction of fulfilling our Government's commitment made in the National Common Minimum Programme. In my view the forests have the best chance to survive if the forest rights of the forest dwelling scheduled tribes (FDSTs), are recognised and they feel integrated in the management and control of the forests on which they have been dependent for generations. I strongly believe that the forest dwelling tribal is the most effective conservationist as he lives in forests, by the forests and for the forests.

I am writing this letter to allay any misgivings that is being created by those interested in commercial exploitation of forests and wild life, in the minds of all right thinking people through baseless and motivated media campaign. An impression has been created that our Government is not concerned about forests and wildlife and the proposed Bill while granting forest rights to the poorest of the poor FDSTs would cause irreparable ecological damage.

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I may add that the Government has been taking a consistent view on this central theme of integrating communities living in and around forest in to every aspect of managing forests. All policy statements, including the Forest Policy, 1988, circulars, guidelines, Government Orders issued by the Ministry of Environment and Forests have been espousing the cause of tribal communities and emphasising the need for putting these communities at the centre of any conservation measure. Our Forest Policy stresses that forests are a first charge to the tribal communities and their domestic and livelihood needs are paramount and superior to any other commercial needs. The Draft Environment policy -2004 also in no uncertain terms provides for legal recognition of traditional rights of forest dwelling STs.

I want to reiterate that the Bill has been drafted so as to strike a balance and to achieve the twin objective of environmental conservation and the justice to the STs as promised in National Common Programme and stated in the President Address to Parliament on 25th Feb.2005. The Bill provides far more checks and balances than the existing Legislative policy frame of the Ministry of Environment and Forests. The specific provisions include –

- Recognition of Forest Rights of only the forest dwelling scheduled tribes, where they are Scheduled; There is no distribution involved at all and only the occupations as per the real ground situation existing for generations are being given legal recognition so as to avoid day to day harassment thereby creating conducive grounds for the undesirable elements to step in.
- All rights would be heritable but inalienable or non-transferable;
- The use of the forest rights has been restricted to the subsistence and livelihood needs alone;
- The commercial use of any kind has been specifically excluded;

- Cut-off date of 25.10.1980 has been provided in the body of the Bill. (It is only a one-time exercise to recognise the age old occupations as per the ground situation intended to put an end to the issue of encroachment for ever.)
- It has been provided that the forest right holder shall not indulge in any activity that adversely affects the wild life, forest and the biodiversity in the local area.
- Penalties have been provided including de-recognition of the vested right if any offence has been committed more than once;
- Gram Sabha has been made the competent authority to initiate the process of recognition of rights and preparation of the records.
- Involvement of the democratic institution is in tune with the provisions of PESA Act, 1996 and aims at empowering the local communities in management of their natural resources;
- The duties of the forest right holders have been provided.
- Specific provision has also been made that the rights so recognized would include the responsibility of protection, conservation and regeneration of forests.
- It has also been specifically included that engagement in any unsustainable use or destruction of wild life, forests, or any other biodiversity or felling of trees would constitute an offence under this Act.

The objections of the Ministry of Environment and Forests, who were involved in the process of drafting the Bill, have been duly answered by my Ministry and included in the Cabinet Note. After going through the comments of all the concerned Ministries and our comments thereon the Bill has been vetted by the Ministry of Law and Justice. The cabinet note has already been sent to the Cabinet Secretariat, which somehow could not be included in the agenda for the Cabinet meeting scheduled for 4.5.05

I want to re-emphasise that this is the right time to recognise the contributions of a community who have silently been at the forefront of all conservation measures since time immemorial and

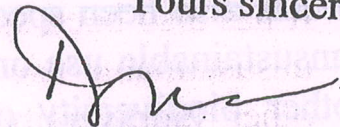
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by granting security to the land on which they survive and exist by no means would impact the forests but on the contrary help the States in checking the commercial vested interests and other unscrupulous elements who want to exploit and utilise our forests for illegal activities and individual gains.

This is an opportunity for our Government under your able leadership to present a model before the world community at large that by recognising forest rights to forest dwelling communities, a historical wrong has been corrected and conservation of biodiversity has the best chance to succeed when communities who live around it have the greatest stake in conservation.

I have my apprehension that if the Bill is not introduced in the current session of the Parliament, would send wrong signals and may have adverse repercussion in the minds of the tribals at large.

With personal regards

Yours sincerely,



(P. R. Kyndiah)

Dr. Manmohan Singh,
Hon'ble Prime Minister of India,
South Block, New Delhi.

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**POINTS FOR DISCUSSION IN THE PMO IN RESPECT OF THE
SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

I. The issues accepted by the Ministry of Tribal Affairs for incorporation in the draft Bill

i. **Cut off date of 25.10.1980 for recognition and vesting of forest rights to forest dwelling Scheduled Tribes in respect of forest land under their occupation and the flexibility in the cut off date, provided in the draft Bill, has been removed; [Section 4(2)]**

ii. **Recognition and vesting of the forest rights in the core areas of the National Parks and Sanctuaries on a provisional basis for a period of 3 years, which shall become permanent if the holders of such rights are not relocated within this period with due compensation; [Proviso to Section 4(1)]**

As regards "core areas", the definition of "core areas" has been incorporated in the draft Bill. [Section 2(d)]

iii. **Clarification that occupation of any individual or family or community on the date of commencement of the Act shall be restricted to the area under actual occupation and shall in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe; (This should allay apprehensions that every one will get 2.5 hectares irrespective of actual possession) [Section 4 (5)(i)]**

iv. **Revision of the role of the Gram Sabha and to entrust them the authority of only initiating the process for determining the nature and extent of the individual and/or community forest rights; [Section 6(1)]**

v. **Involvement of officers of Departments of Revenue, Forests and Tribal Affairs in the Sub Divisional, District Level and the State Level Monitoring Committees in the process of settlement of forest rights under the Act; [Section 6(8)]**

vi. **Registration of the title to the forest land jointly in the name of both the spouses where married, and in the case of a single person headed households, in the name of the single head; [Section 4(5)(ii)]**

vii. **Penalties under this Act shall be in addition to and not in derogation of the provisions of any other Law for the time being in force. [Proviso to Section 7]**

II. Issues raised by the Ministry of Environment & Forests during the meeting on 4.11.2005 that have not been agreed to

i. Act should cover both tribals and non-tribals as approximately 40% of forest dwellers are non-tribals. Coverage of tribals

alone will cause social divisions and unrest and lead to decimation of existing forests by those deprived.

(MOTA's response: Mandate of Mo TA is for tribals only, even among forest dwellers tribals more underprivileged; parallel Bill can be brought by MOEF if considered necessary)

- ii. The area of forest cleared and converted to settled agriculture (i.e., the outer boundaries) should be first determined by the State, and only within the boundaries of that area Gram Sabha should identify individual claims of cultivation.

(MOTA's response: This would require two processes, would be cumbersome and would take far too long. Besides it would be very difficult to identify small plots being cultivated inside forests)

- iii. The termination of different rights (individual cultivation, MFP, traditional rights) should have separate and different procedures.

(MOTA's response: This is not practicable, besides the Forest Department through its field level representative is to be involved in the determination of the rights)

- iv. Shifting cultivation rights should also be a right that should be determined.

(MOTA's response:)

III. Issues raised by MOEF that have been agreed to/partially agreed to and incorporated

- i. Gram Sabha should not be given the right to examine or verify individual claims. They should only consolidate and forward.
- ii. The composition of the Sub Divisional Level Committee and the District Level Committee should consist only of officials and should be spelt out in the Act. This is necessary for ensuring accountability.
- iii. Rights other than cultivation rights (which will be individual) should be on group basis and these should be spelt out in detail indicating the manner in which and area over which it is to be exercised.

No. 171/2/3/2004-CA III
CABINET SECRETARIAT

Sub: MOMP Item No. 1-ii: The CPA will legislate the proposed
legislation for conferring ownership rights in teak and other
forest produce, including tendu patil, on the tribal people
from the weaker sections who work in forests.

Prime Minister's Office was directed in regard to the
"Scheduled Tribes (Recognition of Forest Rights) Bill, 2004" drafted by the
Ministry of Tribal Affairs, and all "State" Forest Rights Bill, 2004
(Ownership Right of Forest Dependent Community) Act, 2004 drafted by
the Ministry of Environment & Forests, to a Committee of Secretaries to
finalize its recommendations in the light of the fact that both Bills
addressed the same issue and the same section of tribal people. It
been advised that COS may evaluate the need for two separate Bills.

2. Cabinet Secretary has decided that the Ministry of Tribal Affairs of
the Ministry of Environment & Forests may prepare a press note on the
respective proposed legislation and send the same to the Secretary
copies of the Bill in the format of a COS note for consideration of COS by
29th July, 2005

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To

Smt. P. Jyoti Rao, Secretary, Ministry of Tribal Affairs

Dr. Precipra Ghosh, Secretary, Ministry of Environment & Forests

Comments on The "Model Bill – State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" prepared by the Ministry of Environment and Forests

A major issue which directly impinges on the interests of the tribals living in and around the forests relates to non-conferment of ownership rights over the Minor Forest Produce (MFP) to the tribal people. The collection of MFP and its marketing thereof constitute the major source of livelihood for a tribal family. It is estimated that up to 70% of the income in most of the cases comes from the MFP. The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) gives the rights of ownership of MFP to the respective local communities. Despite the transfer of control and management of natural resources to the STs, the collection and trade of MFP is largely monopolized by the Corporations of the Forest Department of the States. There are still a number of cases, such as, in case of Tendu leaves, where trading is being done by Forest Corporations through the contractors. The poor STs are just employed by the contractors as the helpless labourers. This is one of the largest irritants and the source of the exploitation of the STs. The States get major share of revenue from the sale of MFP. For instance, sale of the tendu patta, provides revenue to the State Exchequer of Chhattisgarh, Madhya Pradesh, Jharkhand and Orissa. As a result, social unrest in one form or the other has also been surfacing in most of the scheduled areas of the country where more than 50% of the ST population lives.

In the above background, the comments of the Ministry of Tribal Affairs on the proposed "Model Bill – State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" (referred to hereinafter as Model Bill) are as under:

- (i) The Model Bill does not define the term "minor forest produce" comprehensively and excludes bamboo and cane from MFPs whereas the ST Bill prepared by this Ministry clearly defines the term "minor forest produce" to include all non-timber forest produce of plant origin, including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;
- (ii) The Model Bill does not straight away confer the ownership rights of minor forest produce and simply provides sort of guidelines to the States. The PESA

Act, 1996 already provides that the Panchayats and the Gram Sabhas shall be endowed with the ownership of minor forest produce but the said Act, being a Model Act, has remained inoperative so far. As per the proposed Model Bill prepared by the Ministry of Environment & Forests, there is no compulsion for the State Governments to come out with State Acts. Even if they do, given the discretion left to States, it may go the PESA way with State Governments ensuring that villagers get little more than what they already have.

- (iii) On the other hand, the ST Bill prepared by the Ministry seeks to recognize and vest various forest rights, including the right of access to, use or dispose of minor forest produce, in the forest dwelling Scheduled Tribes. On the basis of the suggestions received by this Ministry on the ST Bill, the Ministry proposes to incorporate the word "ownership" in Section 3(c) of the proposed ST Bill to read as "right of ownership, access to, use or dispose of minor forest produce".
- (iv) The Model Bill assumes that people collect MFPs only from the forests immediately adjoining their villages when, in practice, certain communities specializing in collecting particular MFPs collect them from much larger landscapes. Access of such groups to their traditional collection areas would be excluded.
- (v) The Model Bill excludes national parks and sanctuaries from its purview despite little scientific evidence that NTFP collection is harmful for wildlife conservation. Large number of people dependent on NTFPs in these areas would be negatively impacted. The ST Bill on the other hand covers national parks and sanctuaries also.
- (vi) As per the Model Bill, the equation of JFM committees with 'Forest Dependant Communities' (FDCs) is problematic. In most States, JFMCs are not even legal entities. The formation of JFM often excludes the really forest dependent people. The proposed definition also leaves those communities being considered as FDCs who are not part of the JFM Committee. The

conferment of community right is better on the basis of well defined identities, such as, village etc.

- (vii) As per the PESA Act, the ownership of minor forest produce is conferred on the Panchayats and the Gram Sabha, which covers all the tribals, whereas the Model Bill prepared by the Ministry of Environment & Forests restricts the Forest Dependent Community to include a few people constituting themselves in JFM Committees.
- (viii) The Model Bill empowers the State Government to define what a FDC is by recognizing the JFM Committees as per clause 2(d) instead of the communities doing so themselves through an open and transparent process. There is a great danger of genuine FDCs being further deprived of MFP access in the process. On the contrary, the definition and list of STs is very specific without any ambiguity. The ST Bill clearly defines the "forest dwelling scheduled tribes" and the "forest rights" sought to be recognized and to be vested including the MFPs.
- (ix) Clause 2(g) of the Model Bill defines a 'Right Holder' as per forest settlement proceeding though settlements have not been done in large areas. In clause 2(f), ownership of MFPs is only granted to such 'Right Holders'. This would exclude millions of people whose rights have not been settled to date.
- (x) As different communities collect different NTFPs, calculating 'net income', as defined in Clause 2(i) of the draft legislation, would not be possible.
- (xi) The Model Bill provides for 'non-destructive harvesting' on 'Sustained Yield' principle as prescribed in working plans – but working plans are not always specific about most NTFPs.
- (xii) The Model Bill empowers ~~empowers~~ the states to allow MFP Corporations to continue marketing rights. In such a scenario where most of the high value MFPs such as Tendu leaves are being traded by State forests Corporations, NTFP collectors will continue getting only wage labour and not 'ownership' rights.

Sl.No. 139 (R)

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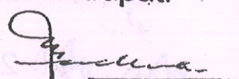
MOST IMMEDIATE
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COPY NO 2

No. 171/2/3/2005-Cab-III
Government of India (भारत सरकार)
Cabinet Secretariat (मंत्रिमंडल सचिवालय)
Rashtrapati Bhawan (राष्ट्रपति भवन)

New Delhi, dated the 24th August, 2005.

Subject : Need for enacting two Bills, namely, "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" and the "Model Bill - State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" for conferring ownership rights in respect of minor forest produce, including tendu patta, on all those people from the weaker sections who work in forests.

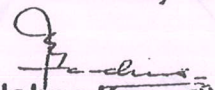
The undersigned is directed to enclose a copy of the minutes of the meeting of Committee of Secretaries (Doc. No. 66/2005-CA.III) held at 12:00 Noon on Friday the 12th August, 2005 in the Committee Room of the Cabinet Secretariat, Rashtrapati Bhawan.


(Gulshan Kumar)

Under Secretary to the Govt. of India
Tel: 23019017

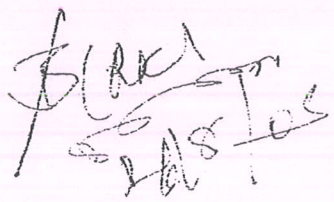
- Dr. Prodipto Ghosh, Secretary, M/o Environment & Forests
- Smt. P. Jyoti Rao, Secretary, Ministry of Tribal Affairs.
- Shri Wjahat Habibulla, Secretary, Ministry of Panchayati Raj.
- Smt. Sarita Prasad, M/o Social Justice & Empowerment.
- Smt. Gauri Chatterji, Secretary, Department of North Eastern Region.
- Shri R.R. Shah, Member Secretary, Planning Commission.
- Shri R.L. Meena, Secretary, Department of Legal Affairs.
- Shri Pratyush Sinha, Secretary, Department of Land Resources.

Copy with enclosure also forwarded to Shri T.K.A. Nair, Principal Secretary to Prime Minister.

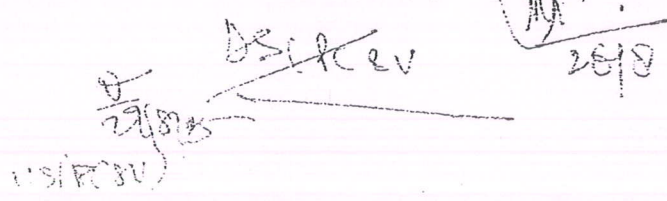

(Gulshan Kumar)

Under Secretary to the Govt. of India
Tel: 23019017

INTERNAL CIRCULATION ; (One copy)
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Pl. Keep in secret.



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7/11/05

SECRET
MOST IMMEDIATE

No.171/2/3/2005-CA.III
CABINET SECRETARIAT

28th July 2005

Sub: NCMP Item No. L-8: The UPA will urge the states to make legislation for conferring ownership rights in respect of minor forest produce, including tendu patta, on all those people from the weaker sections who work in forests.

Prime Minister's Office has directed to refer the Bills - (i) "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" drafted by the Ministry of Tribal Affairs, and (ii) "State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" drafted by the Ministry of Environment & Forests, to a Committee of Secretaries to finalize its recommendations in the light of the fact that both the Bills addressed the same issue and the same section of society. It has also been advised that COS may evaluate the need for two separate Bills.

2. Cabinet Secretary has desired that the Ministry of Tribal Affairs and the Ministry of Environment & Forests may prepare a presentation on their respective proposed legislation and send the presentation, along with copies of the Bill, in the format of a COS-note for consideration of COS, by 29th July, 2005.

[Signature]
(Rajeev Ranjan)
Director
Tel: 23792018

To
✓ Smt. P. Jyoti Rao, Secretary, Ministry of Tribal Affairs

Dr. Prodipto Ghosh, Secretary, Ministry of Environment & Forests

20/7/05
28/7/05
28/7/05

Dr. No. (OS) 2/3/2005-CA.III
Dated: 28/7/2005

True copy along with minutes of meeting has already been sent to [unclear]

1031 | DSCPC (60) | OS

28/7/05
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Notification of Rules under The STs and Other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006.

The draft Rules under the above Act have been prepared. Prime Minister has directed the MoEF to expedite the identification and demarcation of the Critical Wildlife Habitats as required under the provisions of the Act. This work has commenced. The Rules under the Act are expected to be notified as soon as the work of identification and demarcation of the Critical Wildlife Habitats has been completed across the country.

Internal

Minister of Tribal Affairs vide his letter dated 3.10.2007 (F/A) addressed to PM has requested for the early notification of the Rules under STs & Other Traditional Forests Dwellers (Recognition of Forests Rights) Act, 2006 as the Rules have already been finalized by the Ministry of Tribal Affairs and sent M/o Law & Justice for their concurrence. He has specifically mentioned that the Rules as approved did not contain any reference to Critical Wild Life Habitat. The reason being the provision of the Act under Chapter I Section 2 (b) and Chapter III Section 4 (b) are comprehensive and explicit enough.

2. PM directed on 14.9.2007 that the Ministry of Environment and Forests should fix a time limit for identification of critical wildlife habitats.

3. File is submitted for kind information and further instructions please.

KA
(Kalpana Awasthi)
10.7.2007

~~JS(G)~~

hms
10/07/07

~~He (A)~~

urgently
We may seek a report from Secy. MEF about present status of identification of critical Wildlife habitats and timely closure of application.

Principal Secretary

Asst. Secy

18/7/07

11/6/07

hms
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Dir (A)

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11/7/2007

belongs to a community other than a forest dwelling scheduled tribe, then it shall be in the name of the spouse who is a member of the forest dwelling scheduled tribe.”

Section 5(a) : Section may be modified as:

Save as those activities that are permitted under such rights, no activity that adversely affects the wild life, forest and the biodiversity in the area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes, shall be carried out, except for the purposes of reafforestation.

Section 6(1) : It is suggested that Oorukuttam be made the authority to initiate any action under Section 6(1).

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RECOMMENDATIONS OF THE SUB-GROUPS ON THE NATURE OF COMMENTS

Group	Comments examined	Nature of comments			CNR
		G+	G-	SR	
Group-I Members: Ms. Vandana Shiva Dr. BD Sharma Sanjay Upadhyay	1 to 34	--	(Sl. Nos. 1-34) <i>(All 34 were rejected)</i>	SR=5 (Sl. Nos. 6, 8, 10, 13, 14) SL=16 <i>change</i> <i>(18-34) by all members 10-24 (Monday)</i>	13
Group-II Members: SR Shankaran Ms Madhu Sareen Dhrupad Chaudhry	35-59	(Sl. Nos. 38, 44, 48, 54-58)	(Sl. Nos. 35, 36, 37, 39, 40, 41, 42-43, 45, 46, 47, 49, 50, 51, 52, 53, 59)	SR=13 SL=1 (Sl. Nos. 37, 38, 40, 41, 44, 48, 49, 52, 54-58)	11
Group-III Members: Pradip Prabhu, DP Roy, Prashanto Sen	60-90 & 128-5634	(Sl. Nos. 60-84) <i>83-84</i> 5506-5634 (Sl. Nos. 129-140, 141-171, 176-2255, 2538-5630)	(Sl. Nos. 60-90) <i>60-81 90</i> <i>7 29</i> (Sl. Nos. 82-83, 86, 87, 88, 89)	SR=1 (Sl. Nos. 51) SL=1 (Sl. No. 84) <i>TR of Prabhu</i>	30
Group-IV Members: Kush Verma, MS Tariq, CA Tirkey	91-127	1 (Sl. No. 123)	(Sl. Nos. 91, 92, 93, 94-106, 107-108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 124, 125, 126, 127)	SR=1578 (Sl. Nos. 128, 141, 165, 172-178, 2196, 2197, 2198, 2199, 2202-2203, 2205, 2207-2211, 2215, 2255, 2539, 2541-2568, 2602-4118, 5002-5006, 5054, 5060) <i>SR=1</i> (Sl. Nos. 110) 121 SR=11 (Sl. Nos. 93, 121, 122)	3929
Total		5539	95	SR=1599, SL=19=1618 <i>To KCO Party</i>	4016

G+ : General comments in favour of the Bill
 G- : General comments against the Bill
 SR/SL: Substantive relating to Rules/Law
 CNR: Change not required

also suggested by
2 person 1-2 12/12/22

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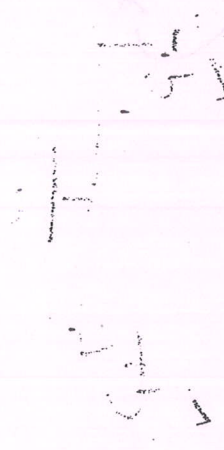
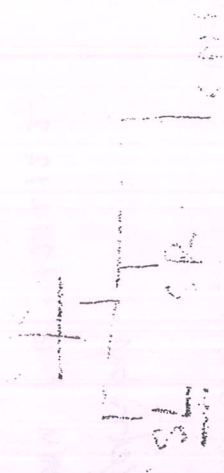
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Internal

Based on the News-Item captioned "Modi gives Forest Lands to Tribals" appearing in the newspaper – The Hindu dated 3rd October, 2007, Ministry of Environment & Forests directed the Conservator of Forests, Central I/C of Regional Office located in Bhopal to conduct an enquiry into the matter on top priority basis and to submit a detailed report urgently.

2. However, the Ministry has submitted the present position in this regard. The State Govt. of Gujarat vide its letter dated 27.1.1994 had submitted a proposal to us for regularization of forest land under unauthorized cultivation prior to 25.10.1980. The proposal was for regularization of 39,750.59 ha. of forest land involving 50,860 cultivators in 8 districts viz. Vadodra, Panch Mahals, Bharuch, Surat, Dangs, Valsad, Sabarkantha and Vanskantha. The status of the forest area sought for regularization was Reserve Forest. The proposal was examined and in-principle approval was issued vide letter dated 17.10.1994 for de-reservation of 39,750.59 ha. of forest land for regularization of encroachment on forest land that had taken place before 24.10.1980 stipulating certain conditions. The State Government submitted the compliance report vide letter dated 16.6.2000 (and corrected by Nodal Officer letter dated 31.7.2000) for diversion of 21082.33 ha. of forest land in favour of 34,441 eligible encroachers.
3. On receipt of the compliance and after its examination, MoEF issued final approval under Section 2 of the Forest (Conservation) Act, 1980 for diversion of 21,082.33 ha. of forest land for regularization of encroachment that have taken place before 24.10.1980 in respect of 34,441 cases.
4. The State Government of Gujarat again vide their letter dated 2.12.2005 submitted another proposal for regularization of forest land for an additional area of 1,113.60 ha. of forest land for regularization of 1,151 encroachers. By then the Supreme Court of India vide its order dated 23.11.2001 had restrained the Central Government from permitting regularization of any encroachment whatsoever without leave of the Hon'ble Court. Accordingly, MoEF informed the State Government of Gujarat vide letter dated 23.3.2006 that the issue of regularization of pre-1980 encroachments on forest

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Internal

Reference note on pre-page wherein report from the Secretary, MoEF about the present status of identification of critical wildlife habitats and likely date of completion was sought.

2. MoEF, vide its letter dated 9.10.2007, stated that the tentative time frame for delineation of 'Critical Wildlife Habitats' has already been communicated to PMO(F/A). The whole exercise of identification of Critical Wildlife Habitats is likely to take at least one year. Further, the Ministry has also framed guidelines for declaration of Critical Wildlife habitats, which are to be communicated to the State Govts shortly. A copy of the guidelines is enclosed(F/B). In addition to this, all the Chief Secretaries have been requested to constitute State level Committees for declaration of Critical Wildlife habitats, vide D.O. letter from the Secretary (E&F) on 30.8.2007.

3. Comments

In this regard, it is stated that MoEF had already communicated this likely time schedule to this Office on 13.8.2007. However, subsequently; PM had upon review of the position stated that the time limit for the issue should be completed soonest possible as the non-issue of the Notification is holding up the notification of the Tribal Act itself. This was communicated to the Ministry vide this Office letter dated 15. 9.2007.

4. From the above, it is clear that the Ministry has not condensed the time limit in view of PM's directions. Besides the key responsibilities of the Ministries concerned as well as the monitoring with the states as to the progress in this regard has also not been indicated.

5. If agreed to, we may request the Ministry to prepare a detailed calendar at the earliest.

6. File is submitted for kind information and further instructions, please.

(Kalpana Awasthi)

11.10.2007

JS(G)

Please see a report urgently
as directed by Principal Secretary
about the present status of
identification of Critical wildlife
habitats and likely date of
completion. DFA re. 22-23
X. 12/10/07

Something Extra Last Page (LP) Slav 81 (R)

P.C. Sen: 24/4

62

THE SCHEDULED TRIBES AND FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) BILL 2005

17/02/05

Preamble

An Act to recognize the forest rights and occupation of Scheduled Tribes in forest land who have been residing for generations but whose rights could not be recorded and provide for a framework for recording, recognizing and the nature of evidence that may be adduced for rights of other forest dwellers, in-respect of forestland and forest based resources.

The rights so recognized shall include responsibility of sustainable use, biodiversity conservation and maintaining the ecological balance and thereby the Act seeks to strengthen the conservation regime while ensuring livelihood and food security of the Scheduled Tribes and Forest Dwellers.

This Act has become necessary because many of these rights on their ancestral lands, were not adequately recognized in the consolidation of state forests during the colonial period as well as in Independent India resulting in historical injustice to the forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.

The Act also seeks to address the long standing insecurity of tenurial and access rights of Scheduled Tribes and forest dwellers.

CHAPTER-I

PRELIMINARY

- 1 (1) This Act may be called The Scheduled Tribes And Forest Dwellers (Recognition Of Forest Rights) BILL 2005
- (2) It extends to the whole of India except the State of Jammu and Kashmir and Andaman and Nicobar group of Islands
- (3) It shall come into force on such dates as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II-

DEFINITIONS

2 (1) In this Act, unless the context otherwise requires

a) a) "Forest Rights" mean secure tenurial and/or ownership rights of Scheduled Tribes and Forest Dwellers over forest land and forest based resources as enumerated in Section 3(3) of this Act. Forest rights means communal group or individual rights and interests of Scheduled tribes and forest dwellers where:

- (i) The rights and interests are possessed under the traditional laws acknowledged, and/or traditional customs observed by

63
the scheduled tribes and forest dwellers with respect to forest land and

- (ii) The scheduled tribes and forest dwellers have a connection with such forest land and
- (iii) Includes rights as enumerated in Section 3(3) of this Act as well as statutory rights if any with respect to such forest land which have not been given effect to.

(b) "Pattas ,Leases and Grants" includes temporary or permanent leases or grants by whatever name called on forest and forest land granted by any state department or local authority.

(c) "Entitlement" means access and usufruct rights to land and minor forest produce including grazing, concessions, privileges, favours and unrecorded (to be discussed) customary practices recognized by earlier princely states/zamindari/other intermediary regimes.

(d) "Forest land" means land of any description falling within the legal definition of forest and forest land and includes existing, proposed and deemed, protected forests, reserved forests , national parks and sanctuaries.

(e) PESA means the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996

(f) "Claim" is an assertion for recognition of a forest right to a Competent Authority, submitted in writing and reasons recorded thereof

(g) "Claimant" means forest dwellers or Scheduled Tribe who have migrated to an area other than where they are scheduled who file claim (s) for rights under this Act.

~~"Forest dwellers" are those individuals and/or communities who primarily reside in and around forests and includes Scheduled Tribes who have migrated to an area where they are not scheduled, and would further include nomadic and pastoralist communities and depend on the forests for bonafide livelihood needs.~~ "Forest dwellers" are persons and /or forest communities who reside in and around forests and are dependent on forest and forest produce for their livelihood particularly Scheduled Tribes and nomadic and pastoralist communities but does not include persons who along with their family have possession/ownership of more than 2.5 ha of land. (Including scheduled tribes who have migrated to areas where they are not scheduled could result in persons who have no connection with forests making claims. If there are tribe members who have migrated to other forest areas they would any way fall within the ambit of the Act as forest dwellers and hence be protected under the Act.)

(h)

64.246

Provided that a person living within _____ kilometers in the vicinity of a forest shall be deemed to be living in and around that forest

“Forest Community” means a conglomeration of families having shared cultural values and tradition living in and around forests and recognized as such in any government records/gazetteers or more than one academic works including those in the fields of sociology anthropology. (to be discussed whether we need to put in the stipulation with respect to recognition in various works.)

“Competent Authority” would include means a Gram Sabha, Sub Divisional level committee , District Level Committee and all appellate authorities under this Act.

(h) Shifting Cultivation- means

(i) Shifting Cultivator- means those individuals or communities who practice shifting cultivation by whatever name called

(j) “Minor Forest Produce” is all non-timber forest produce of plant origin including bamboo, brush wood, skumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and their like, which is used by the Scheduled Tribes and forest dwellers for their bonafide and livelihood needs.

(k) Nodal agency- means the Ministry of Tribal Affairs, or any other designated agency appointed on their behalf.

(l) Gram Sabha – Gram Sabha would consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level.

(m) Village- shall be defined as under the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996 PESA for schedule V areas and under the respective State Panchayat Acts for areas other than scheduled areas. For North Eastern States where there are no Panchayats , Gram Sabha would mean traditional village institution.

(n) Sub Divisional Level Committee- is a Sub Divisional Level Committee as defined under Section 4(2)

(o) District Level Committee- is a District Level Committee as defined under Section 4(3)

(p) Monitoring Committee- is a State Level Committee as defined under Section 4(4)

(q) Inquiry means a determination whether or not forest rights exists in relation to a particular area (the determination area).

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER-III

RIGHTS OF FOREST DWELLERS

- 65
- Retained as earlier
- 3 (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government hereby grants recognition to vests Forest Rights ~~of~~ Scheduled Tribes ~~in scheduled areas~~ where they are scheduled, in respect of forest land and forest based resources including minor forest produce.

Provided that in case any forest right so recognized vested is disputed by any state department or local authority, a representation may be made by it before the competent authority and -the Competent Authority, shall after mandatorily considering the records prepared at the time of scheduling an area, and while scheduling the tribe along with evidence enumerated in Section 5(1) and then ~~reasoned order~~ passed a reasoned order either accepting or rejecting the representation of the state government or the local authority before denying the individual and/or community right.

- (2) The rights of the forest dwellers other than Scheduled Tribes mentioned in Section 3(1) would be recognized subject to presentation of after a forest dweller presents a claim to the Competent authority and the same has being subject to been recognized after a due a verification procedure under Chapter IV, ~~after giving due regard to nature of admissible evidence under Chapter V of this Act.~~

The recognition of rights of Scheduled Tribes who have migrated would follow the same procedure as defined under Chapter IV and Chapter V in case such migrated scheduled tribes want their forest rights recognized in the area where they have migrated. (to be discussed whether to maintain this or not.)

Provided that rights of such forest dwellers or migrated Scheduled Tribes who have occupied forest land after before 31.12. 93 would not be recognized under this Act. (This deadline can be misused by the state. It will be difficult for forest dwellers to prove that they ave been in occupation before 1993.- To be discussed.)

- (3) Such forest rights would include rights of Scheduled Tribes and Forest Dwellers to:
- forest land under their occupation for habitation or for subsistence agriculture and/or

- 229
- b) rights, and /or uses, entitlements of forest dwellers granted/recognized by in erstwhile princely states, Zamindari or such Intermediary regimes, and/or
 - c) access to and ownership of minor forest produce, and/or
 - d) other use rights or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic /pastoralist communities and/or
 - e) shifting cultivation and rotational cultivation, and/or
 - f) habitation for Primitive Tribal Groups
 - g) disputed lands such as orange areas in Madhya Pradesh and Chhatisgarh, Dalli lands in Maharashtra , Gair Mazarua Am Lands in Bihar and, Khuntkatti Lands in Jharkhand and such lands where claims are disputed under any other nomenclature and/or
 - h) Conversion of Pattas or leases issued by any local authority or any State department on forest lands to permanent titles,
 - i) Forest villages, old habitation and unsurveyed villages, whether notified or not and includes those where process of conversion into revenue village is not complete.
 - j) access to bio diversity and community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity
 - k) any other traditional right not listed above, excluding hunting.

Provided however that such forest rights under Section 3 are exercised for bonafide livelihood needs and not for exclusive commercial purposes. For the purpose of this Act commercial purpose means

Provided further that the rights to forest land in no case would exceed 2.5 ha per family of the Scheduled Tribe or a Forest Dweller

Provided further that such rights so recognized would include the responsibility of protection conservation and regeneration of forests.

(3) In the context of North Eastern States such rights which are already recognized under various state or Autonomous District Council or Autonomous Regional Council laws or which are accepted under traditional and customary law would not be interfered with.

4) Such vested forest rights under this Act shall be inheritable but not alienable or transferable.

CHAPTER IV

AUTHORITIES UNDER THE ACT

4(1) Gram Sabha- Gram Sabha would consist of all adult members of a village whose names are included in the electoral rolls at the village level;

4(2) Sub Divisional Level Committee - There shall be a Sub Divisional Level Committee consisting of

- a. Sub Divisional Magistrate who will be the Chairperson
- b. Sub Divisional Level Forest Officer
- c. Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP) who will be the Secretary
- d. Two respected civil society members from the Sub- Division/ Block/Taluka, atleast one of them being a woman, recognized for their understanding of forest rights tenurial issues in the area to be appointed by the District Collector

4(3) District Level Committee- There shall be a District Level Committee comprising

- a. Collector who shall be the Chairperson
- b. Chairman of the Zilla Parishad
- c. Divisional Forest Officer
- d. District Level Tribal Development /Welfare Officer, who shall be the Member Secretary
- e. A renowned non-government person known for her/his understanding of tribal-forest issues.
- f. In the case of the North Eastern States a representative selected by the confederation of tribal councils such as autonomous regional councils.

4(4) State Level Monitoring Committee- There shall be a State Level Monitoring Committee comprising

- a) Secretary in charge of Tribal Welfare
- b) Commissioner/Director Scheduled Tribe
- c) Secretary Forests
- d) Principal Chief Conservator of Forests
- e) Two renowned non-government person known for her/his understanding of tribal-forest issues.

CHAPTER V

CONDUCT OF ENQUIRY BY THE COMPETENT AUTHORITY

5(1) Notwithstanding anything contained in any other law for the time being in force in case of a dispute being raised under Section 3(1) of the Act or a claim being made under Section 3(2) of the Act the Sub divisional committee shall inquire into the claims/disputes before a meeting of the

gram sabha where a minimum of 50% members of the gram sabha are present

Provided that if despite three consecutive meetings of the gram sabha being held the requisite number of members are not present the inquiry shall be conducted in the presence of the members of the gram sabha present in the fourth meeting.

5(2) The sub divisional Committee shall be free to regulate the conduct of its enquiry however it shall ensure that :

- i) all concerned claimants are informed, Traditional methods of publicity in the local language including the advertisements in the local newspaper shall be used to inform the people about the meeting of the gram sabha where any claim under the Act is to be decided.
- ii) Directions are issued to the field staff of rural development (department?), social welfare (department?), ICDS, for disseminating information and the said bodies will be bound to comply with such directions of the sub divisional committee. (check on whether it is necessary to have this clause.)
- iii) all claimants have an opportunity to make their claims in their language.
- (iv) A timetable giving the dates and time of meetings of the gram sabha where the claim is to be enquired into shall be prepared and publicized atleast two weeks before the scheduled date of the meeting.
- (v) An inspector and an Area Officer shall be appointed by the sub divisional magistrate to ensure that various meetings are conducted in a disciplined and regulated manner to enhance local women and men's participation.
- (vi) Information of the task of the committee, its aims, objectives and procedure shall be made available in the village square, Gram Panchayat office of all villages, Panchayat Samiti and Tehsil office as well as to ICDS, RD, health and education department staff.
- (vii) Evidence as contemplated under Part of this Act is taken into consideration

5(3) Subject to Sections 132 and 133 of the Code of civil Procedure the Sub Divisional Committee acting as a court shall have the power to take evidence, summon any person whose attendance is considered necessary either to be examined as a party or to give evidence as a witness or to produce any document for the purpose of any inquiry or case arising under this Act. Any person present in the meeting of the Gram Sabha before which the enquiry is taking place may be required by the Sub Divisional Ocmmittee to give

- evidence or to produce any document then and there in his possession or power.
- Provided that no person shall be ordered to attend unless the person resides within the sub division.
- 5(4) If any person on whom a summons to attend as a witness or produce any document has been served fails to comply with the summons, the Sub Divisional Committee may issue a bailable warrant of arrest and order him to furnish security for appearance or impose a fine not exceeding Rs
- 5(5) If any party to a proceeding before the Sub Divisional Committee does not appear on the date fixed for hearing after due service of summons or notice on him the case may be heard and determined in his absence or may be dismissed in default as the case may be.
- 5(6) A party against whom an order has been passed under Section 5(5) may apply within thirty days from the date of such order or knowledge of the order in case the notice or the summons was not duly served to have it set aside on the ground that he was prevented by any sufficient cause from paying the requisite proceed fee for service of summons or notice on the opposite part or from appearing at the hearing and the Revenue Officer may, after notice to the opposite party which was present on the date on which such order was passed and after making such enquiry as he considers necessary set aside the order passed.
- 5(7) When an application filed under Sub Section (6) is rejected the party aggrieved may file an appeal to the District Level Committee.
- 5(8) Except as provided in sub section (6) and (7) or except where a case or proceeding before the Sub Divisional Committee has been determined on merits no appeal shall lie from an order passed under this section
- 5(9) After holding an enquiry, the Sub Divisional Committee shall make a determination of the matters covered in the inquiry and shall state the findings of fact on the basis of which such determination has been made.
- 5(10) The Sub Divisional Committee shall while exercising its powers under this Act between the claimants and/or state/authorities shall be a court which shall determine the rights and status of the parties before it and nothing contained in any other law shall be deemed to limit or otherwise effect the inherent powers of the Sub Divisional Committee to make such orders as may be necessary in the ends of justice and for achieving the purpose of this Act.

CHAPTER VI

APPEALS.

- 6(1) Any person aggrieved by the determination of the Sub divisional Committee under Section 5(9) or an order passed under Section 5(7) shall file

5 (2) The District Collector shall pursuant to vesting of forest rights to Scheduled Tribes under Section 3(1) and other forest dwellers under Section 3(2) issue Orders recognizing the forest rights and effecting necessary entries in the revenue and forest records specifying the nature and extent of such forest rights in a time bound manner as prescribed under the Rules under this Act.

CHAPTER VI

Miscellaneous

6(1) Power to make Rules- The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

6(2)-The Ministry of Tribal Affairs shall be the Nodal Agency and shall be responsible for implementation of this Act.

6(3) Penalty for contravention of the Provisions of the Act- Who ever contravenes or abets the contravention any of the provisions of Section 3, shall be punishable with simple imprisonment for period which may extent to thirty days.

6(4) Operation of other laws not barred - Save as provided under this Act the operation of other laws to the extent they do not contravenes the provisions of this Act would not be barred.

6(5) Savings-

Do we provide for wexecution of the order or should the determination by the committee merely be a record of the rights.

an appeal to the District Level Committee within 60 days of the receipt of the determination on any question of law or fact arising out of such determination.

Provided that the District Level Committee may if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period allow it to be filed within such extended period as requested for by the applicant. (Check on time limit of the appeal.)

6(2) The District Level Committee shall hear the appeal and may make such orders as it thinks appropriate by reason of its decision.

6(3) The orders that may be made by the District Level Committee shall include an order affirming or setting aside the decision or determination of the tribunal or an order remitting the case to be heard and decided again either with or without the hearing of further evidence, by the Sub Divisional Committee.

6(4)

CHAPTER V

NATURE OF EVIDENCE AND RECORDING OF FOREST RIGHTS

5. Nature of Evidence:

5 (1) The evidence for recognition of claims under Section 3(2) are laid down hereunder.

- a) Government Records published or not and would also include Gazetteers, Census Settlement Records Governments Orders, Commission Reports, Circulars, Quasi Judicial and Judicial Records or
- b) Documentary evidence from any prior research or documentation of a reputed institution, including survey maps or
- c) Relevant circumstantial evidence including witnesses of neighbours and of senior citizens and local inquiry by a local committee or
- d) An affidavit submitted by the claimant which is approved in the Gram Sabha.

Recording of Forest Rights

COMMENTS OF STATE GOVERNMENTS/UTS ON THE DRAFT "THE SCHEDULED TRIBE (RECOGNITION OF FOREST RIGHTS) BILL, 2005

S.No.	Date	Name of the State/UT	Comments/Suggestions
1	8.7.2005	Tripura	<p>1. The proposed provision should include the following also:-</p> <p>(i) Nothing has been provided in the proposed Bill for the new ST families which will be emerging due to expansion of the existing families. As the right is heritable only but not alienable or transferable, the right will lead to fragmentation of the forest land among the emerging families of the children of the holder family in the long run and also lead to inadequacies of habitat and livelihood sources.</p> <p>So provision should be made in the law for similar recognition and vesting of forest rights to the emerging ST families also.</p> <p>2. The cut off date for recognition and vesting of forest right should be fixed at much later period, as large number of tribal habitations have sprung after 1980 due to shifting of tribal families for various reasons like search for new Jhum land, superstitions belief, out break of disease, nomadic habit of some of the tribes etc. Shifting of tribal families is taking place as late as 2005 A.D. on the process of Regrouping of tribal families. As there is no alternative Govt. land for the settlement of tribals, all the tribal families including those in the new habitations who were originally in habitants of forest land, should be covered under the proposed Act. The cut off date should be interpreted accordingly so that the poor and landless tribals of the state do not get thrown out of the ambit of the benefit of the proposed Act.</p> <p>3. The forest rights recognized and vested under Sub-section (1) in the forest dwelling Scheduled Tribes shall -</p> <p>(i) be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes,</p> <p>The right to forest resources for only livelihood purposes</p>

			<p>scope of economic up-gradation of the tribals. Once the law comes in to force, the area of livelihood sources in the forest for the tribals will be limited to the two and one-half hectares only, in other words the forest area available for the tribal families for jhuming and agri and agri allied activities will be limited to the area over which right has been vested. This will prove heavily inadequate for livelihood and food security.</p> <p>In view of the above, scope of commercial activity along side use of forest resources in the vested area for livelihood should be allowed for economic up-gradation, security and stability of the tribals. This scope should be provided at least till the tribal families achieve sustainable economic stability. However, the condition of protection, conservation and regeneration of forests along side the consumption may be enjoined bent on economic uplift of the tribal families.</p>
2	5.8.2005	Andaman & Nicobar Islands	<p>There are six Scheduled Tribes in this UT. Of them, the Great Andamanese, Onges, Jarawas, Sentinelese and Shompen are classified as Primitive Tribes. These hunting and gathering PTGs have been the forest dwellers from time immemorial. They depend entirely on forest and marine resources for their subsistence and survival. If this Bill is passed in its present form in view of sec.3(m) of the draft bill the Primitive Tribal Groups living in the A & N Islands will be deprived of their means of very survival, as hunting of wild pig etc. for their subsistence would become illegal.</p> <p>The other Tribe, namely – the Nicobarese, notwithstanding being more advanced than the other Primitive Tribal Groups, still depends on forest resources. This Tribe living in the Nicobar District has already been conferred with the hunting right under Section 65 of the Wild Life (Protection) Act, 1972.</p> <p>It is suggested that the PTGs of this UT will have to be permitted to continue enjoying their traditional right to hunt for their bonafide subsistence and the Nicobarese Tribe should be conferred with the hunting right for their bonafide subsistence under the proposed draft Bill similar to that provided under the Wild Life Act. A special proviso may perhaps be added to clause 3(m) of the said draft Bill.</p> <p>Save for this, we have no other suggestion to offer on the other clauses of the draft Bill.</p>

3	28.7.2005	Kerala	<p>Section 2 (c) : Forest dwelling Scheduled Tribes must find mention in some records prepared before the 25th October, 1980 and officially kept by the forest or any other Department of government.</p> <p>Section 2 (d) : It is suggested that the rights granted shall be limited to the bonafide use of the tribals only in sanctuaries and National Parks in view of the judgement of the Hon'ble Supreme Court prohibiting commercial exploitation of any natural resources from the protected areas.</p> <p>Section 2 (f) : The traditional tribal hamlets inside the forest may be treated as forest village.</p> <p>Section 2 (g) : It is suggested that in Kerala, the Oorukootams (Hamlet Samithies) Which are traditional village institutions in tribal settlements may be included in the definitions for the purpose.</p> <p>Section 2 (h) : It may be left origin including bamboo, brush to the State for defining the 'minor wood, stumps, cane, honey, wax and forest produce.'</p> <p>Section 3 (a) : The Section does not stipulate any cut-off date establishing this right. It is suggested that 25.10.1980 may be prescribed as the cut-off date. The phrase "<u>does not include shifting cultivation</u>" may be inserted in the section.</p> <p>Section 3 (c) : It is suggested that the section may be modified as "right of access to use or dispose of minor forest produce through the local institutions tribals like Oorukutams, Vana Samrakshna Samithy, Eco Development Committees exclusively constituted by tribals for forest protection and management.</p> <p>Section 3 (f) : It is suggested to recast the section as "Rights in or over disputed forest lands under any nomenclature in any State where claims prior to 25.10.1980 are disputed".</p> <p>Section 3 (g) : The following modification is suggested for this Section. "Rights for</p>
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conversion of patta or leases or grants issued by any local authority or any State Government on forest lands prior to 25.10.1980 to Possession Certificates.”

This is to prevent alienation of the land.

Section 3 (j) : The Section may be modified as: “Right to access to bio-diversity excluding the rare, endangered and threatened species and community right to intellectual property, traditional knowledge related to forest bio-diversity and cultural diversity.”

Section 4 (1) The word ‘the exclusive’ may be inserted between the words ‘including’ and ‘right’ as given below;

“Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognizes and vests forest rights in the forest dwelling Scheduled Tribes where they are Scheduled, in respect of forestland and their habitat including the exclusive right to collect, utilize or transfer MFP in such manner as may be prescribed.”

Provided that the right to hold and live in the forest land as per Section 3(a) will be limited to the tribal occupation established prior to 25.10.1980.

Section 4(4) : The phrase ‘prior to 25.10.1980’ may be inserted as below:

“Save as otherwise provided, no member of a forest dwelling Scheduled Tribes shall be evicted or removed from forest land under his occupation till the recognition and- verification – procedure is completed in such manner as may be prescribed, where such disputes originated prior to 25.10.1980.”

Section 4.5(2) : The following is suggested - “The title to the extent given shall be in the name of the male member and his spouse, but, it either spouse

3

communities along with the constitution of the committees at various levels, including the procedure and nature of evidences involved for verification of their claims. The meetings of the TSG were again held on 7.2.2005, 12.2.2005 and 18.2.2005 and the Bill was finalized. A copy of the Bill as finalized by TSG and duly signed by the non-official Members is enclosed. **In view of the PMO's comments, the Bill as finalized by the TSG on 18.2.2005 has, further been revised to restrict it only to the STs.**

(2) The Bill has not been made applicable to Jammu & Kashmir due to Article 370 of the Constitution. As regards the Andaman & Nicobar Islands, the population of the STs is very very small as compared to the non-STs. When the earlier Bill was for both STs & non-STs, its operation was not extended to A&N Islands as, in any case there are special Regulations in force in respect of Andaman & Nicobar Islands. In any case recognition of forest rights of the PTGs and the other STs of A&N did not have the same dimension in terms of persistent threat of removal of encroachment **as in the case of other areas of main land inhabited by the STs. However, in view of the fact that Bill now confers right only on STs, its operation has been extended to A&N Islands also.**

(3) The proposed Bill seeks to regularize the habitations and occupations of the ST communities in the protected forests, reserved forests, and national parks and even in the wild life sanctuaries. The reasons are historical & obvious as Forest dwelling tribal people, and forests are inseparable. One cannot survive without the other. The notion of conservation of ecological resources by forest dwelling tribal communities have been referred to by most ancient manuscripts and scriptures that modern humanity knows. **The colonial rule somehow ignored this reality for more economic gains and probably for good reasons prevalent at that time. Post independence, in our enthusiasm to protect natural resources we continued with colonial legislations and adopted more internationally accepted notions of conservation rather than learning from our rich traditions where conservation is embedded in the ethos of tribal life.** The reservation processes for creating wilderness and forest areas for production forestry somehow left the bona fide interests of the tribal community much to be desired in the legislative frame that we enacted in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting genuine claims to resources where they belong and depended upon. **The modern conservation approaches also advocate exclusion rather than integration and advocate survival of only wildlife.** It is only recently that forest management regimes have in their policy processes realized that integration of tribal communities who depend primarily on the forest resources cannot but be integrated in their designed management processes. It underlines that forests have the best chance to survive if communities participate in its conservation and regeneration measures. Insecurity of tenure and

fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests becoming abode of undesirable elements. The STs are residing inside sanctuaries and national parks and in fact their presence is also necessary for the survival of these parks as they only perform forestry operations. That was precisely the reasons behind the concept of forest villages. **The Ministry has, therefore, included national parks and sanctuaries in the proposed Bill though Ministry of Environment & Forests have pleaded their exclusion.** In view of the fact that proposed Bill is now restricted to recognition of rights of only STs & that too for occupation/ forest rights existing prior to 25.10.1980, inclusion of national parks & sanctuaries is considered essential to have a human face to the management of these areas. More & more areas are being added in National Parks & sanctuaries and thereby creating a potential risk of continued conflicts in future.

- (4) The cut-off date of 25.10.1980 i.e. the date of enactment of the Forests (Conservation) Act, 1980 has been provided.
- (5) The provisions relating to the shifting cultivation and rotational cultivation in the definition of forest rights has since been removed from the proposed Bill.
- (6) A separate Section 3(8) has been added to provide the duties of the forest right holders and specific provision has already been added in Section 3(6) that the rights so recognized would include the responsibility of protection, conservation and regeneration of forests. It has also been specifically included in Chapter 6 that engagement in any unsustainable use or destruction of wild life, forests, or any other biodiversity or felling of trees would constitute an offence under this Act which shall not only be punishable but if any offence is committed by any forest right holder more than once his forest right would be de-recognized after following a due process.
- (7)-(8) It has been provided in Section 3(8A) that the forest right holder shall ensure that forest land or trees which have grown on forest land would not be cleared for any non-forestry purposes, including re-forestation.
- (9) Number of checks and balances have been provided in the proposed Bill to take care of any possible misuse of the provisions. The specific provisions include -
 - All rights would be heritable but inalienable or non-transferable;
 - The cut off date of 1980 has been provided and all the occupations or acquisition of forest rights must exist prior to the cut-off date. The use of the forest rights has been restricted to the subsistence and livelihood needs alone;
 - The commercial use of any kind has been specifically excluded;

- Specific Section has been added enumerating the duties of forest right holders;
- Penalties have been provided in Chapter 6 including de-recognition of the vested right if any offence has been committed more than once;
- Gram Sabha has been made the competent authority to initiate the process of recognition of rights of individuals/community and preparation of the records in favour of forest right holder. Involvement of the democratic institution at the grass root level is in tune with the provisions of PESA Act, 1996 and aims at empowering the local communities in management of their natural resources;
- The sub-Divisional and district level committees have representatives of the democratic institutions, NGOs, Experts from society, officials of revenue, forest and tribal development department and thus seek to provide a most representative forum for correct recording of the forest rights.
- Appellate powers have been given to the Sub-Divisional and the district-level committees;
- The State-level monitoring committee has also been put in place which has also been mandated to conduct periodic check through random selection of sites;
- The Gram Sabha is supposed to prepare map giving details of the rights and at the same time also identify ineligible encroachers;
- It has also been provided in the Rules that the nodal agency would prepare maps of appropriate resolution through satellite imagery to help know the present status of occupation of forestland for habitation and agriculture.

- (10)-(14) The composition of the committees along with their functions have been suitably modified. The composition and functions of Gram Sabha and the committees have specifically been outlined in the Bill/Rules.
- (15) The procedure for identification of forest rights along with identification of ineligible encroachments have been provided in the rules in Chapter III including the nature of evidences in Chapter V.
- (16) Detailed provision for penalty for contravention of the provision of the Act and also the offences by Government authorities under this Act have been provided. A simple imprisonment up to 30 days has been considered appropriate as the proposed Bill also, in addition, provides for de-recognition the forest rights in case the offence is committed more than once. The penalties provided under Indian Forest Act, Forest Conservation Act, 1980 and other legislations are in any case there and not barred by this Act.
3. The following documents are accordingly sent herewith for perusal/consideration by the PMO:-
- (i) Minutes of the meetings of the TSG held on 5.2.2005, 6.2.2005, 7.2.2005 and 18.2.2005 (Annexure-I, II & III)

- (ii) Draft Bill finalized by the TSG (Annexure-IV)
- (iii) Draft Bill amended to incorporate changes suggested by the PMO. (Amended version of TSG's Bill) (Annexure-V)
- (iv) Draft Bill after transferring provisions relating to procedure (Annexure-VI) - *the Draft Rules -*
- (v) Draft Rules to be notified after enactment of the Act (Annexure-VII)
- (vi) The Statement of Objects and Reasons (Annexure-VIII)

Rajeev Kumar
 (Rajeev Kumar)
 Joint Secretary

50/1/22

Prime Minister's Office (Ms. V. Vidyavathi, Dy. Secretary), South Block, New Delhi.

Ministry of Tribal Affairs' U.O. No.17014/4/2005-S&M dated 23.2.2005.

*Issued through
 Pen Book today.
 A
 23/2/05*

Views of the DGF &SS, MoEF, member, Technical Support Group, on the draft (3-2-2005) "Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act, 2005"

The proposed Act seeks to address and set right the historical injustice done to the tribal particularly

- (a) Rights to tribal communities living in forest areas prior to coming into force of the Forest (Conservation) Act, 1980 (25-10-1980), but were left unsettled in government records
- (b) Giving land rights to tribal living in forest villages and practicing agriculture on these lands for several generations
- (c) Engaging Adivasi communities in the greening of degraded forestlands and increasing forest cover

2 The draft Act goes much beyond the above as it does not simultaneously ensure forest conservation and sanctity of National Parks (NPs) and Wildlife Sanctuaries (WLSs). If enacted in the present form, it will result in massive destruction of forests and ecology of the country, and large-scale encroachments of forestlands by the groups and land mafia with vested interests in the garb of being tribal and forest dwellers.

3. In the draft Act,

- (i) There is no cut-off-date for regularization of encroachments. It is desirable that the date of enactment of the Forest (Conservation) Act may be provided as cut-off-date.
- (ii) Section 10 of Chapter 2 provides for in-situ rehabilitation of all families of tribals and rural poor who do not fall in the category of eligible persons for endowment of rights under provision 3 (1) to 3 (9) of the Act by granting them heritable but inalienable conditional pattas. This may lead to the entire forest land being assigned by way of pattas to the persons found eligible under provisions of 3 (1) to 3 (9), and to the ineligible persons under 3 (10). This provision may have a far-reaching effect and may result in large-scale destruction of forests in the country.
- (iii) In the draft Act, the forest areas falling inside the NPs, WLSs and other eco-sensitive areas are also covered for endowment. It is necessary to exclude the same, otherwise the very existence of the NPs and WLSs may be threatened. The bonafide persons in such cases may be rehabilitated ex-situ.
- (iv) The proposed Act is likely to encourage continuous encroachments of the forestlands, and it will be extremely difficult to evict the new encroachers.
- (v) The procedures for identifying the eligible persons for the purpose of section 3 (1) to 3 (9) are likely to be misused by the vested interests as only lower level functionaries of the government will be involved. It is necessary that the list is finalized by the district level officers along with public representatives, partly verified by independent group consisting of NGOs, conservationists and senior officers. It is also necessary that the extent of total area under encroachments tallies with the satellite imageries of the area to ensure that the total area found

eligible for regularization does not exceed the actual area under non-forestry uses.

- (vi) It is desirable that the role of the MoEF is clearly defined.
- (vii) The proposed Act should be consistent with the national forest policy, national wildlife action plan and basic principles of forest conservation. In the present form it appears contradicting all the above.

- 5 From time to time, detailed guidelines for recognizing the tribal rights, conversion of forest villages into revenue villages and regularization of encroachments have been issued. These guidelines have been in consistence with the conservation strategy. Unfortunately, because of various reasons at the state government level, no proposals for resolution of disputes under these guidelines have been formulated. It is absolutely necessary that the draft Act carry forward from the existing system by making minimum possible changes with specific objectives.
- 6 In view of the above, I am of the opinion that the draft Act needs to be modified suitably so that it is consistent with the conservation strategies of the government, does not result in massive encroachments and destruction of forests, excludes NPs and WLSs and eco-sensitive areas, discourages use of any forest area for agriculture if it was not already under agricultural use before enactment of the Forest (Conservation) Act, provides adequate checks and counter-checks to keep away vested interests, clearly defines as to who will be eligible for benefits under the Act. In the present form the draft Act may defeat the very purpose for which is purportedly being made.

(N K Joshi)
 DGF & SS
 February 07, 2005

(24)

(including as a right or concession)		
Dependence on grazing (including as a right)	67% have grazing, 60% have it as a recorded right (of 36 NPs responding)	83% have grazing, 68% have it as a recorded right (of 187 Sanctuaries responding)
Total population inside PAs	At least 3 million, estimated on the basis of figures from about 200 NPs and Sanctuaries	

Subject: Formulation of 'Scheduled Tribes and forest Dwellers (Recognition of Forests Rights) Bill'

Reference Prime Minister's Office U.O. No.250/40/C/2004-ES.II dated 18.2.2005 on the above subject.

2. The para-wise position in respect of the suggestions given by the PMO is as follows :-

- (1) It may be mentioned that this Ministry had started the drafting of the Bill on receipt of PMO's U.O. Note No.250/04/C/1/05-ESII dated 25.1.2005 mandating the Ministry to formulate a "Scheduled Tribe & Forest Dwellers (Recognition of Forest Rights) Act". A Technical Support Group (TSG) was accordingly established on 28.1.2005 as advised by the PMO. In the first meeting of the non-official members of the TSG was held on 5th and 6th Feb., 2005 itself, it was clarified that the Ministry was in favour of drafting a Bill only for recognition of the rights of STs as historical injustice has been done in respect of STs who have been living in and around forests for generations. It was further clarified that there are strong documentary evidences prepared at the time of scheduling the Scheduled Areas and then scheduling the Tribes and also under various documents, such as, the working plans of the Forest Department and documentation of traditional rights, such as NISTAR, etc. during the process of declaration of the forests, various research work, gazetteers, etc. It was specifically brought to the notice of the non-official members of the TSG that the issue of recognition of the rights of the non-STs (as proposed in the draft Bill circulated by one non-official member of the TSG) needs to be examined very carefully as there was inherent danger in recognizing everybody's rights including the STs solely through local committees, who would find it difficult to reject claims in view of local pressure. It was also clarified that it was necessary to define the target population and the areas and proper distinction need to be made between the STs and the non-STs. As envisaged in the draft Bill prepared and circulated by the non-official member of the TSG, the forest rights of the STs and other non-ST forest dwellers were proposed to be recognized through the process of inquiries and on the basis of evidence to be taken by the Gram Sabhas and then the block or taluk level revenue committees and finally by the district level committees. When the consensus amongst the non-official members was to include all the forest dwellers other than STs in the proposed Bill, the Ministry proposed a clear distinction between the STs and the non-STs and, therefore, Section 3(1) was introduced to vest the rights in the STs for the areas they are scheduled and a separate procedure was provided in Section 3(2) for the recognition of forest rights of the other forest dwelling

Comments of Backward Classes & Tribal Development Division, Planning Commission on the proposed Draft Bill "The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill 2005.

I. Preamble:

- 1. In para 2 responsibility clause should also include the Forest department also.
- 2. In Para 4. Forest dwellers should be defined.

II. Chapter I

- 1. The need to exclude the Andaman & Nicobar group of Islands.

III. Chapter II

- 1. The need to define entitlement. If it need to be defined it should also include the water related rights and mining.
- 2. The claimant if he is ST and migrates to non Scheduled areas may create problem and it should be more clearly in the definition.
- 3. Shifting cultivation should be defined as it is under different contexts.
- 4. As the Bill addresses STs and Other Forest Dwellers the suitable nodal agency may also have to be involved like the Forest Department/ Rural Department.

IV. Chapter III

- 1. Under para 3 (1) line 2 Sheduled Tribes word should also include the Other Forest Dwellers.
- 2. Under para 3 (3) the right over forest land should include only the present extent of occupied land and this should be clearly spelt out.

V. Chapter IV


- 1. Under 4 (2) d. Civil society members should include Tribal women.
- 2. There should be proper representation of Tribal elders/ Gram Sabha representative for protecting the tribal traditional rights over forest land.

15/2/10
 M. S. N. Srinivasulu
 Sr. Secy

Chapter-V: Nature of Evidence and Recording of Rights

Section 5 (2) : The final authority for recognizing forest rights, has been vested in the District Collector. At local level, this may be misused. The final authority for approval should vest in the Central Government.

General: The note dated 07-02-2005 of DGF & SS may also be considered as appropriate. The important points which need to be considered are possible encroachments by vested interests, in-situ rehabilitation of in-eligible persons, inclusion of national parks and sanctuaries, not defining the role of Ministry of Environment and Forests, inconsistencies with Forest Policy and Acts. An effort needs to be made to make the proposed act compatible with Forest Policy, Wildlife Action Plan, Indian Forest Act, Wildlife Protection Act and Forest (Conservation) Act, as far as possible.


(N.K. Joshi)
DGF & SS
18-02-2005

**THE SCHEDULED TRIBES AND FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS)
BILL 2005**

Preamble

An Act to recognize the forest rights and occupation of Scheduled Tribes in forest land who have been residing for generations but whose rights could not be recorded and provide for a framework for recording, recognizing and the nature of evidence that may be adduced for rights of other forest dwellers, in respect of forestland and forest based resources.

The rights so recognized shall include responsibility of sustainable use, biodiversity conservation and maintaining the ecological balance and thereby the Act seeks to strengthen the conservation regime while ensuring livelihood and food security of the Scheduled Tribes and Forest Dwellers.

This Act has become necessary because many of these rights on their ancestral lands, were not adequately recognized in the consolidation of state forests during the colonial period as well as in Independent India resulting in historical injustice to the forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.

The Act also seeks to address the long standing insecurity of tenurial and access rights of Scheduled Tribes and forest dwellers.

CHAPTER-I

PRELIMINARY

1 (1) This Act may be called The Scheduled Tribes And Forest Dwellers (Recognition Of Forest Rights) BILL 2005

(2) It extends to the whole of India except the State of Jammu and Kashmir and Andaman and Nicobar group of Islands

(3) It shall come into force on such dates as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II-

DEFINITIONS

2 (1) In this Act, unless the context otherwise requires

a) "Forest Rights" mean secure tenurial and/or ownership rights of Scheduled Tribes and Forest Dwellers over forest land and forest based resources as enumerated in Section 3(3) of this Act.

(b) "Pattas, Leases and Grants" includes temporary or permanent leases or grants by whatever name called on forest and forest land granted by any state department or local authority.

(c) "Entitlement" means access and usufruct rights to land and minor forest produce including grazing, concessions, privileges, favours and unrecorded customary practices recognized by earlier princely states/zamindari/other intermediary regimes.

(d) "Forest land" means land of any description falling within the legal definition of forest and forest land and includes existing, proposed and deemed, protected forests, reserved forests, national parks and sanctuaries.

- (e) PESA means the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996
- (f) "Claim" is an assertion for recognition of a forest right to a Competent Authority, submitted in writing and reasons recorded thereof
- (g) "Claimant" means forest dwellers or Scheduled Tribe who have migrated to an area other than where they are scheduled who file claim (s) for rights under this Act.
- (h) "Forest dwellers" are those individuals and/or communities who primarily reside in and around forests and includes Scheduled Tribes who have migrated to an area where they are not scheduled, and would further include nomadic and pastoralist communities and depend on the forests for bonafide livelihood needs.
- (i) "Competent Authority" would include a Gram Sabha, Sub Divisional level committee, District Level Committee and all appellate authorities under this Act.
- (j) Shifting Cultivation- means
- (k) Shifting Cultivator- means those individuals or communities who practice shifting cultivation by whatever name called
- (l) "Minor Forest Produce" is all non-timber forest produce of plant origin including bamboo, brush wood, skumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and their like, which is used by the Scheduled Tribes and forest dwellers for their bonafide and livelihood needs.
- (m) Nodal agency- means the Ministry of Tribal Affairs, or any other designated agency appointed on their behalf.
- (n) Gram Sabha - Gram Sabha would consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level.
- (o) Village- shall be defined as under the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996 PESA for schedule V areas and under the respective State Panchayat Acts for areas other than scheduled areas. For North Eastern States where there are no Panchayats, Gram Sabha would mean traditional village institution.
- (p) Sub Divisional Level Committee- is a Sub Divisional Level Committee as defined under Section 4(2)
- (q) District Level Committee- is a District Level Committee as defined under Section 4(3)
- (r) Monitoring Committee- is a State Level Committee as defined under Section 4(4)
- (2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER-III

RIGHTS OF FOREST DWELLERS

- 3 (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government hereby vests Forest Rights to Scheduled Tribes where they are scheduled, in respect of forest land and forest based resources including minor forest produce.

Provided that in case any forest right so vested is disputed by any state department or local authority, the Competent Authority, shall mandatorily consider the records prepared at the time of scheduling an area, and while scheduling the tribe along with evidence enumerated in Section 5(1) and then reasoned order passed before denying the individual and/or community right.

One paper Extra
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THE SCHEDULED TRIBES AND FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) BILL 2005

Preamble

An Act to vest and recognise the forest rights and occupation of Scheduled Tribes in forest land who have been residing there for generations but whose rights could not be recorded; to provide for a framework for recording and recognizing the forest rights and the nature of evidence that may be adduced for rights of other forest dwellers, in respect of forestland and their habitat.

The rights so recognized shall include responsibility and authority for sustainable use, biodiversity conservation and maintenance of ecological balance and thereby the Act seeks to strengthen the conservation regime while ensuring livelihood and food security of the Scheduled Tribes and Forest Dwellers.

This Act has become necessary because many of these rights on ancestral lands were not adequately recognized in the consolidation of state forests during the colonial period as well as in Independent India resulting in historical injustice to the forest dwellers who are integral to the very survival and sustainability of the forest ecosystems.

The Act also seeks to address the long standing insecurity of tenurial and access rights of Scheduled Tribes and forest dwellers.

CHAPTER-I

PRELIMINARY

- 1 (1) This Act may be called The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill 2005
- (2) It extends to the whole of India except the State of Jammu and Kashmir and Andaman and Nicobar group of Islands
- (3) It shall come into force on such dates as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II-

Definitions

- 2 (1) In this Act, unless the context otherwise requires:
 - a) "Claim" is an assertion for recognition of a forest right to a Competent Authority, submitted in writing along with evidence thereof
 - b) "Claimant" means forest dwellers or Scheduled Tribes who have migrated to an area other than where they are scheduled who file claim (s) for rights under this Act.
 - c) "Competent Authority" includes the Gram Sabha, Sub Divisional Level committee, District Level Committee and all Appellate authorities under this Act.
 - d) District Level Committee is a Committee as defined under Section 4(3) of this Act
 - e) "Forest dwellers" are those individuals and/or communities who primarily reside in and around forests and includes Scheduled Tribes who have migrated to an area where they are not scheduled, and would further include nomadic and pastoralist communities and all of whom depend on the forests and/or forest lands for bonafide livelihood needs.
 - f) "Forest land" means land of any description falling within the legal definition of forest and forest land and includes unclassed forests, existing, proposed and deemed, protected forests, reserved forests, wildlife sanctuaries and national parks.
 - g) "Forest Rights" mean secure individual and/or community tenure and/or ownership rights of Scheduled Tribes and Forest Dwellers over forest land and their habitat as enumerated in Section 3(3) of this Act.
 - h) Forest villages- mean such settlements which have been established inside the forests by the forest department for forestry operations or which were converted into forest villages through the forest

- reservation-process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements and by whatever other name called for such villages. It further includes lands for cultivation and other uses in forest villages, permitted by the forest departments.
- i) Gram Sabha – means village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level and shall further include palli sabhas, ward sabhas and any other village assembly mandated by PESA. Where forests/forest lands are used seasonally by nomadic/pastoral communities, representatives of such groups shall be included in the definition of Gram Sabha. For North Eastern States where there are no Panchayats, Gram Sabha would mean traditional village institution.
 - j) “Minor Forest Produce” means all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and their like, which are used by the Scheduled Tribes and forest dwellers for their bonafide and livelihood needs.
 - k) State Monitoring Committee- is a Committee as defined under Section 4(4) of this Act
 - l) Nodal agency- means the Ministry of Tribal Affairs, or any other designated agency appointed on their behalf.
 - j) “Pattas ,Leases and Grants” includes temporary or permanent leases or grants by whatever name called on forest and forest land granted by any state department or local authority.
 - k) Shifting Cultivation means a traditional form of agricultural practice - including rotational cultivation in upland slopes and other landscapes requiring lands being left fallow for various periods for restoration/rejuvenation.
 - l) “Shifting cultivation lands” means arable lands including lands under cultivation along with land left fallow in the cultivation cycles for restoration and rejuvenation.
 - m) Shifting Cultivator- means those individuals and/or communities who practice shifting cultivation by whatever name called.
 - n) Sub Divisional Level Committee- is a Sub Divisional Level Committee as defined under Section 4(2) of this Act
 - o) Village- shall mean as defined under the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 for schedule V areas and under the respective State Panchayat Acts for areas other than Scheduled Areas. It may further include forest villages, old habitations/settlements and unsurveyed villages, whether notified or not. For North Eastern States where there are no Panchayats, village would mean traditional village.
- (2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER-III

RIGHTS OF FOREST DWELLERS

- 3(1) Notwithstanding anything contained in any other law for the time being in force, the Central Government hereby vests Forest Rights to Scheduled Tribes where they are scheduled, in respect of forest land and their habitat including minor forest produce.

Pursuant to the vesting of the forest rights under this Act, the Gram Sabha shall determine the nature and extent of such rights after intimation to the neighbouring Gram Sabhas and Sub Divisional Committee as per the Rules. The forest rights so determined shall then be forwarded to the District Collector for effecting necessary entries in the revenue and forest records in a time bound manner as prescribed under the Rules under this Act.

Provided that in case of conflicting resolutions of the neighbouring Gram Sabhas with respect to the nature and extent of forest rights, the sub divisional level committee shall be the deciding authority.

The District Level Committee shall be the final appellate authority against any such decision.

Provided that in case any forest right so vested is disputed by any state department or local authority, the Competent Authority shall mandatorily consider the records prepared at the time of scheduling an area, and while scheduling the tribe along with evidence enumerated in Section 5(1) and then pass a reasoned order before denying the individual and/or community right.

- (2) The rights of forest dwellers including Scheduled Tribes who have migrated from the area where they are scheduled would be recognized after they present claim(s) to the Competent authority and the same has been recognized after a due verification procedure under the Rules made under this Act and after giving due regard to nature of evidence under Chapter V of this Act.

Provided that such forest dwellers or migrated Scheduled Tribes have occupied forest land or acquired forest rights before 31.12. 93.

- (3) Such forest rights would include individual and/or community rights of Scheduled Tribes and Forest Dwellers to:

- a) forest land under their occupation for habitation or for self cultivation for livelihood needs and/or
- b) rights such as nistar by whatever name called and /or uses in erstwhile princely states, Zamindari or such intermediary regimes, and/or
- c) access to and ownership of minor forest produce, and/or
- d) other use rights or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic /pastoralist/ fishing communities, fishing and/or
- e) shifting cultivation, rotational cultivation and shifting cultivation lands and/or
- f) habitat and habitation for Primitive Tribal Groups/ pre agricultural communities
- g) review of disputed claims over forest land arising out of defective or incomplete settlements or lack of forest settlement during the process of notifying lands as protected/reserve forests or deemed protected/reserve forests (Pradin wanted this inserted based on PP. 21 of 1990)
- g)h) disputed lands such as orange areas in Madhya Pradesh and Chhatisgarh, Dalli lands in Maharashtra, Gair Mazarua Lands in Bihar and, Khuntkatti Lands, in Jharkhand and such lands where claims are disputed under any other nomenclature in any State and/or
- h)i) conversion of Pattas or leases or grants issued by any local authority or any State department on forest lands to permanent titles,
- h)j) conversion of Forest villages into revenue villages and includes those where process of conversion into revenue village is not complete.
- i)k) settlement of old habitations and unsurveyed villages, whether notified or not
- k)l) access to bio diversity and community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity
- l)m) right to protect, regenerate and /or conserve or manage any community forest resource which they have been traditionally protecting and conserving, including the authority to impose penalties on such persons who contravenes the rules of conservation laid down by the community.
- m)n) rights which are already recognized under various state or Autonomous District Council or Autonomous Regional Council laws or which are accepted under traditional and customary law in the North Eastern States (I feel the way we had kept this separate earlier was better - Madhu)
- n)o) any other traditional right not listed above excluding hunting

Provided however that such forest rights under Section 3 are exercised for bonafide livelihood needs and not for exclusive commercial purposes.

Provided further that the rights to forest land in no case would exceed 2.5 ha per nuclear family of the Scheduled Tribe or a Forest Dweller in the case of household based settled cultivation and shall vary based on site specific conditions and usage patterns in the case of shifting cultivation and or community rights. (this norm cannot apply to land for shifting cultivation or community lands- Madhu)

Provided further that such rights so recognized would include the responsibility and authority for protection, conservation and regeneration of forests and biodiversity.

Provided further that the recognition and exercise of rights within Wildlife Sanctuaries and National Parks shall be in consonance with the objectives of wildlife and biodiversity conservation by ensuring that the establishment, management and monitoring of protected areas takes place with the

full and effective participation of, and full respect for the rights of local forest dwelling communities mandated by the Convention of Biological Diversity.

4) Such vested forest rights under this Act shall be heritable but not alienable or transferable.

~~5) Title shall be conferred free of all encumbrances, including requirements of Net Present Value and Compensatory Afforestation for diversion of forest land. (As pointed out by Radip, this very important point got left out during the revisions)~~

56) Duties of Forest Right Holder- Whoever, under Section 3(1) and Section 3(2) is vested or whose forest rights are recognized shall ensure that

- a) save as those activities that are permitted under the terms of such rights no activity shall be carried out that adversely affects the forest and the biodiversity in the local area
- b) protected areas, catchment areas, water sources and other ecologically sensitive areas as the case may be are adequately protected
- c) their habitat is preserved from any form of destructive practices affecting their cultural and natural heritage
- d) any activity that adversely affects the forest, wildlife and the biodiversity is intimated to the Gram Sabha or the Forest Authorities
- e) appropriate measures are taken in the Gram Sabha to regulate access to community forest resources and to combine conservation with sustainable use ~~stop any activity which adversely affects the forest and the biodiversity.~~

CHAPTER IV

Authorities and their Functions under the Act

- 4(1) (i) The Gram Sabha shall be the authority for receiving and recognising claims.
 ii) The Gram Sabha shall be the authority to impose penalties on such persons who contravenes the rules of conservation laid down by the community.
 iii) The Gram Sabha shall be the authority for Rregulating access to the community forest resources.

- 4(2) (i) Sub Divisional Level Committee – There shall be a Sub Divisional Level Committee consisting of
- a) Sub Divisional Magistrate who will be the Chairperson
 - b) Sub Divisional Level Forest Officer who shall be the Vice Chair Person
 - c) Tribal Member of the Panchayat from the Sub Division nominated by the Zilla Parishad.
 - d) Two respected civil society members from the Sub- Division/ Block/Taluka, atleast one of them shall be a woman, recognized for their understanding of forest rights tenurial issues in the area to be appointed by the District Collector.
 - e) Sub Divisional Level Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP) who will be the Member Secretary.

(ii) The Sub Divisional Level Committee shall be the authority for recommending the resolution of the Gram Sabha on the claims to the District Level Committee and to hear appeals from claimant(s) aggrieved by the resolution of the Gram Sabha.

4(3) District Level Committee-

- (i) There shall be a District Level Committee comprising
- a. Collector who shall be the Chairperson
 - b. Divisional Forest Officer who shall be the Vice Chair Person
 - c. Tribal Member of the Zilla Parishad nominated by the Zilla Parishad
 - d. Two respected civil society members, atleast one of them being a woman, at the district level known for her/his understanding of tribal-forest issues nominated by the Tribal Commissioner/Director
 - e. In the case of the North Eastern States a representative selected by the confederation of tribal councils such as autonomous regional councils.

f. District Level Tribal Development /Welfare Officer, who shall be the Member Secretary
(ii) The District Level Committee shall be the final appellate authority. under this Act.

(iii) The Collector as the Chairperson of the District Level Committee shall issue the Order for effecting necessary entries in the revenue and forest records specifying the nature and extent of such accepted forest rights

(iv) The District Level Committee shall furnish an annual record of forest rights to the State Level Monitoring Authority.

4(4) State Level Monitoring Committee-

(i) There shall be a State Level Monitoring Committee comprising

a) Secretary in charge of Tribal Welfare shall be the Chairman

b) Principal Chief Conservator of Forests who shall be the Vice Chair Person

c) Director Revenue

c) Two renowned non-government person known for her/his understanding of tribal-forest issues nominated by the Nodal Agency.

d) Commissioner/Director Scheduled Tribe who shall be the Member Secretary.

ii) The State Level Monitoring Committee shall examine the annual record of settled claims submitted by the District Level Committee and conduct at least one annual inquiry into the process of settling claims through random selection of sites .

iii) The State Level Monitoring Committee shall submit an annual report to the Nodal Agency along with their recommendations for appropriate action .

CHAPTER V

Nature of Evidence and Recording of Forest Rights

5. Nature of Evidence:

5 (1) The evidence for recognition of claims under Section 3(2) includes.

a) Government Records published or not and would also include Gazetteers, Census, Settlement Records Governments Orders, Commission Reports, Circulars, Quasi Judicial and Judicial Records including preliminary offence report by whatever name called and/or

b) Documentary evidence from any prior research or documentation of a reputed institution, including survey maps and/or

c) Relevant circumstantial evidence including witnesses of neighbours , senior citizens and local inquiry by a local committee of at least three members, of whom, at least one should be a woman, and appointed by the Gram Sabha and/or

d) Any authentic record from erstwhile princely state or province and /or

e) Oral evidence of those claimants, who cannot read or write, reduced to writing

f) Traditional structures and symbols establishing its antiquity.

g) Prior-Resolution of the Gram Sabha on any forest right.

Recording of Forest Rights

5 (2) The District Collector shall pursuant to vesting of forest rights to Scheduled Tribes under Section 3(1) and other forest dwellers under Section 3(2) issue Orders recognizing the forest rights and effecting necessary entries in the revenue and forest records specifying the nature and extent of such forest rights in a time bound manner as prescribed under the Rules under this Act In Scheduled V Areas the Collector shall be empowered to take up correction of land records relating to forests rights even after expiry of the period of limitation.

5(3) The forest rights so vested or recognized in respect of land where a title is vested or recognized shall be registered jointly in the name of the husband and wife.

CHAPTER VI

Offence under the Act

6. Penalty for contravention of the Provisions of the Act-

6(1) If any forest right holder or any other person

a) contravenes or abets the contravention any of the provisions of Section 3 or
b) who commits a breach of any of the conditions of the forest right so vested or recognized under this Act,
or

c) who engages in unsustainable use or

d) destroy biodiversity or

f) fells trees for any commercial purpose

shall be guilty of an offence against this Act and be punished with a fine as decided by the Gram Sabha and /or District Level Committee and/or in case of offence repeated more than once their forest right be de recognized after a due process followed by the District Level Committee on the recommendation of the Gram Sabha..

6(2) Offences by Government or Authorities under this Act- Where any competent authority or officers/members of such authority do not follow the due process prescribed under this Act and Rules made thereunder he/shes shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with a fine of five thousand rupees and /or imprisonment upto thirty days Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if s/he proves that the offence was committed without his knowledge or that s/he exercised all due diligence to prevent the commission of such offence.

CHAPTER VII

Miscellaneous

7. Officers to be public servants

Every authority referred to in Chapter IV including the chairperson, members, member-secretary and other officers referred to in the same Chapter and every other officer exercising any of the powers conferred by this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

8. Protection of action taken in good faith

(1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against the Authority as referred to in Chapter IV including its chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

9. The Ministry of Tribal Affairs shall be the Nodal Agency and shall be responsible for implementation of this Act.

10. Power to make Rules- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such rules may include measures with respect to all or any of the following matters, namely



- a) procedure for filing of claims,
- b) publicity for hearing in transparent manner,
- c) verification of claims, appeals,
- d) time frame for effecting necessary entries as a consequence of vesting or recognizing forest right, as the case may be.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

11. Operation of other laws not barred – Save as provided under this Act the operation of other laws to the extent they do not contravene the provisions of this Act would not be barred.

National Status	Kind of dependence
State	Full dependence
Territory	Partial dependence
Local authority	No dependence
Other	Other

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From: "Madhu Sarin" <msarin@satyam.net.in> Add to Address Book

To: "rishi jain" <rishi_jain_rishi@yahoo.com>

CC: "Pradip Prabhu" <kasht@sancharnet.in>, "Sanjay Upadhyay" <su@vsnl.com>, "Prashanto Chandra Sen" <senprashanto@rediffmail.com>

Subject: Data on people in PAs

Date: Mon, 21 Feb 2005 15:36:36 +0530

Dear Rajeev,

During both the official meetings of the TSG, Mr N K Joshi suggested that protected areas be kept out of the ambit of the new bill. Both times, I received no response to the question of how an estimated population of 3 to 3.5 million living within and around PAs could be left hanging without their rights being recognised. I am sure this is going to be the most contested aspect of the bill with the wild life conservationists also likely to protest vehemently against our providing for rights within PAs being recognised. That is why I have suggested the formulation that special management arrangements for PAs be provided for subject to recognition of rights and full and informed participation of the people living within them in PA management as agreed to by Gol under the programme of work under the Convention on Biological Diversity. Just as the FCA created havoc for recognition of the rights of forest dwellers, the wildlife protection act has made life hell even for those rights are legally recognised but whose ancestral lands have subsequently been declared protected areas. Recent Supreme Court orders have made the situation particularly acute.

I had suggested that you include this in the note you prepare for the cabinet and you had asked for the source of the estimated population within PAs. I am copying below a summary of the findings of an IIPA study done in 1989. A recent study done by Shekhar Singh has come to very similar figures but unfortunately, Shekhar hasn't yet written up the findings in a publishable form. Ashish Kothari on behalf of KalpaVriksh and I, on behalf of Vasundhara, an NGO based in Orissa have recently filed an intervention application in the Supreme Court in which also we have included the data below as one of our major grounds. Any plans to 'relocate' millions of people outside PAs are unrealistic and totally contrary to the objective of securing tribal rights over their habitats - where will all these people go?

Madhu

Findings of the Report titled "National Parks and Sanctuaries: A Status Report" published by the Indian Institute of Public Administration in 1989, summarized below:

Human Dependence on Protected Areas in India

Kind of dependence	National Parks	Sanctuaries
Population inside (mostly pre-dating declaration of the PA)	56% (of 32 NPs responding)	72% (of 100 Sanctuaries responding)
Population adjacent (many of which traditionally dependent on PA's resources)	83% (of 23 NPs responding)	87% (of 115 Sanctuaries responding)
Rights and leases inside PAs	43% (of 44 NPs responding)	68% (of 187 Sanctuaries responding)
Dependence for fuelwood (including as a right or concession)	54% (of all NPs and Sanctuaries responding)	
Dependence for NTFPs	47% (of all NPs and Sanctuaries responding)	

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SECRET
CABINET MATTER
TIME BOUND

No.17014/4/2005-S&M
Government of India
Ministry of Tribal Affairs

Shastri Bhawan, New Delhi
Dated: March 14, 2005

OFFICE MEMORANDUM

Subject: Draft Cabinet Note on 'The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005'.

The undersigned is directed to forward herewith a copy of the draft Note for the Cabinet, duly approved by the Minister of Tribal Affairs, in respect of 'The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005'. This Ministry has been mandated to finalise the Bill on priority basis so that it could be introduced in the current session of the Parliament.

2. This Ministry has also prepared the draft 'The Scheduled Tribes (Recognition of Forest Rights) Rules, 2005', for carrying out the provisions of the proposed Act and which prescribe (i) the procedure for recognition and verification of forest rights, (ii) the procedure to be followed by the authorities at all levels under the Act, (iii) authorities under the act including their composition and (iv) the nature of evidence to be taken into account for recognition and vesting of forest rights. It may be stated that these rules may be finalized and notified only after enactment of proposed Bill. A copy of the draft Rules is, however, being enclosed to clarify the procedural details necessary to operationalise the provisions of the proposed Bill.

3. It is requested that your comments may kindly be furnished urgently on the draft Note for the Cabinet and the proposed Bill and the draft Rules so as to reach us not later than **30th March, 2005 positively**. In case your comments are not received by this date, it would be presumed that your Ministry/Department has no comments to offer.

g/c
(Rajeev Kumar)
Joint Secretary to the Govt. of India
Tel: 23073489

1. The Secretary, Ministry of Environment & Forests, Paryavaran Bhawan, CGO complex, Lodhi Road, New Delhi-100 003.
2. The Secretary, Ministry of Panchayati Raj, Krishi Bhawan, New Delhi-110 001.
3. The Secretary, Ministry of Rural Development, Department of Land Resources, Krishi Bhawan, New Delhi-100 001.
4. The Secretary, Ministry of Social Justice & Empowerment, Shastri Bhawan, New Delhi.
5. The Secretary, Ministry of Law & Justice (Department of Legal Affairs), Shastri Bhawan, New Delhi.
6. Dr. G.B. Panda, Adviser (BC & TD), Planning Commission, Yojana Bhawan, New Delhi.

g/g
15/3/05

43
URGENT

PRIME MINISTER'S OFFICE

New Delhi-110011

Subject: Formulation of 'Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill.

Ministry of Tribal Affairs may refer to this office UO of even number dated 18-2-2005 and their UO No. 17014/4/2005-S&M dated 23-2-2005.

2. The following may be considered while finalizing the above Bill:

Dy. No.....JS(RK)/05
Dated.....

In the list of definitions in Section 2(1), the words "bonafide livelihood means" and "commercial purposes" have not been defined. Definitions of these words are important as their interpretation will critically determine the impact both on tribals as well as on forest environment.

3. Ministry of Tribal Affairs may bring the matter before the Cabinet at the earliest so that the Bill may be introduced in the current Session of the Parliament.

Dy. No. 643 JS(RK)/05
Dated 4/3/05

V. Vidyavathi
(V. Vidyavathi)
Deputy Secretary

Secretary, Ministry of Tribal Affairs

PMO UO No.

Dated: 1-3-2005

560/51/c/3/05-ES-II

Most urgent
JS(RK)

discuss
3/3/05

Dy. No. /D.S.(S&M)/2005
Dated: 27-2-05

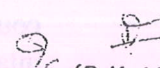
discuss

discuss

Subject: Formulation of "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005"

Reference PMO's U.O. No.560/51/C/3/05-ES.II dated 1.3.2005 on the above subject.

2. This Ministry has considered the suggestions made by PMO and defined the words "bona fide livelihood means" and "commercial purposes" and included the same in the list of definitions in Section 2(1) of the proposed Bill.
3. This Ministry had also prepared a draft Note for the Cabinet for seeking the approval of the Cabinet to (i) the draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 and (ii) the draft Scheduled Tribes (Recognition of Forest Rights) Rules, 2005 and referred the same to the Ministry of Law & Justice for advice on the feasibility of the proposed legislation from legal and constitutional points of view and to vet the draft Note for the Cabinet and the draft Bill and draft Rules, as per the procedure laid down for initiating proposals for legislation in Parliament, as contained in the Manual of Parliamentary Procedures in the Government of India. The Ministry of Law has, however, advised this Ministry to seek the comments of all other concerned Ministries/Departments and incorporate the same in the draft Note for the Cabinet along with our own comments and thereafter refer the file to them for advice. The Ministry of Law has also advised that the Rules can be framed only after the proposed Act on the subject comes into existence. Therefore, this Ministry may refer only the Bill for the time being.
4. In view of the above advice of Ministry of Law, this Ministry has revised the draft Note for the Cabinet to seek the approval of the Cabinet for the proposed "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" only and have circulated the same amongst the Ministries concerned for their comments before 30.3.2005. The draft "Scheduled Tribes (Recognition of Forest Rights) Rules, 2005", which contain the provisions for carrying out the provisions of the proposed Act, have, however, also been circulated to clarify the procedural details necessary to operationalise the provisions of the proposed Bill. The Ministries have been asked to comment on the provisions of the Rules also though the same as per the advice of Ministry of Law may be finalized and notified only after enactment of the proposed Bill. Copy of the OM No.17014/4/2005-S&M dated 14.3.2005 along with copy of the draft Cabinet Note, draft Bill and the draft Rules is enclosed.
5. It may be mentioned that the draft "Scheduled Tribes (Recognition of Forest Rights) Rules, 2005", prepared by this Ministry, prescribe (i) the procedure for recognition and verification of forest rights, (ii) the procedure to be followed by the authorities at all levels under the Act, (iii) authorities under the act including their composition and (iv) the nature of evidence to be taken into account for recognition and vesting of forest rights. Views of the State Governments, who will ultimately implement the provisions proposed in the Bill, have not been taken. PMO may kindly advise regarding circulation of the draft Bill/Rules to the States giving them 15 days' time to respond.


(P.K. Varma)
Deputy Secretary

Prime Minister's Office (Smt. Vidyavathi, Dy. Secy) South Block, New Delhi
Ministry of Tribal Affairs' U.O. No.17014/4/2005-S&M dated 15.3.2005

Arrival by hand vide letter

Book No. 02 on dt 15-3-05

PC

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**Most Immediate
By Special Messenger**

F.No.2-3/2004-FC
Government of India
Ministry of Environment & Forests
(F.C. Division)

Paryavaran Bhawan, C.G.O. Complex,
Lodi Road, New Delhi-110003.
New Delhi, the 30th March 2005

Dy. No. 12/9 JS(RK)/05
Dated 31/3/05

OFFICE MEMORANDUM

Sub: Draft Cabinet Note on the "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005".

Sir,

With reference to the Ministry of Tribal Affairs' Office Memorandum No.17014/4/2005-S&M dated:14-3-2005 on the above-mentioned subject, the undersigned is directed to convey that the Ministry of Environment and Forests **does not agree** with introduction of the proposed Bill for enactment of "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" in view of the following facts:

1. The approach adopted in the proposed Bill requiring de-notification of vast tracts of forestlands, and elimination of all legal protection for the forest cover, will lead to irreparable ecological damage of immense proportion. Decimation of forests as a result of enactment of proposed Act, is likely to lead to more frequent and intense natural calamities like floods, soil erosion, adversely affecting livelihoods of people. The precious biological diversity, wildlife, and the natural resource base for maintenance of the carbon, nitrogen, and oxygen cycles, are also likely to be affected adversely and irreparably.
2. While there is no doubt that the non-recognition of traditional rights of tribals over their ancestral domain, constitutes a historical injustice to them, but the approach in the proposed bill is likely to cause more damage, without necessarily being of significant benefit to tribals in the long run. The whole issue needs to be looked at from perspectives of ecological science, equity and overall costs to the society.
3. Forests are a National Natural Resource. Hence, the whole population of the country enjoys rights over this natural resource either in tangible terms or intangible terms. Also, it is the duty of the every citizen of the country to protect forests and environment as per the Directive Principles laid down in the Constitution. It implies that every citizen of the country enjoys rights over forests. Therefore, it would not be appropriate to allocate disproportionately large areas of natural resource of the country, to only 8.2% of the population.

Handwritten notes: 12/9 JS(RK)/05, 31/3/05

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Dy. No. 12/9 JS(RK)/05
Dated 31/3/05

4. The draft bill aims at distribution of 2.5 ha of forest land to each tribal nuclear family which will result in the loss of large chunk of forest cover. This is against the goal of National Forest Policy, 1988 to have one third of the geographical area of the country under forest and tree cover and also the country's commitment to Sustainable Forest Management.
5. In the meeting held on 19-01-2005, the Ministry of Environment and Forests had made it clear that there is no necessity of bringing a fresh legislation as sufficient provisions already exist under Forest (Conservation) Act, 1980, and the guidelines issued in 1990 thereunder. What is required is modification of the orders of the Supreme Court regarding stay on dereservation of forests, regularization of eligible categories of encroachments and letter dated 5-2-2004 of the Ministry of Environment and Forests.
6. The subject "Forests" is the business allocated to the Ministry of Environment and Forests as per Government of India (Transaction of Business) Rules, 1961 and hence it is implied that settlement of rights over forest lands is also the mandate of the Ministry of Environment and Forests and of no other Ministry including the Ministry of Tribal Affairs.
7. The Ministry of Environment and Forests has already filed an affidavit in the Supreme Court requesting for modification of various orders and have also clarified that 25-10-1980 would be a cut off date for settlement of rights of Tribals while the proposed bill keeps the date open ended which would be against the interests of Forest Conservation.
8. The Ministry of Environment and Forests feels that the provisions of Forest (Conservation) Act, 1980 and the guidelines of 1990 have sufficient provisions to address the problem. What is required now, non existent earlier, is a clearly laid down procedure for the implementation of the 1990 guidelines.
9. The proposed Act will not be effective because the Ministry feels that following orders of the Supreme Court will still be operative even after the intended promulgation of new Act:
 - (i) Ban on dereservation of Reserved Forests.
 - (ii) Ban on regularization of encroachment.
 - (iii) Ban on dereservation of National Parks and Sanctuaries.
 - (iv) Stay on the operation of order dated 5-2-2004 of the Ministry of Environment and Forests.
10. The proposed Act is not in the interest of Forest and Wildlife Conservation as it intends barring the operation of Indian Forest Act, 1927, Forest (Conservation) Act, 1980, and the Wildlife (Protection) Act, 1972 so far as their provisions are in contradiction with the proposed new Act

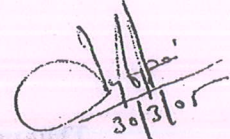
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11. Further, under Forest (Conservation) Act, 1980, Ministry of Environment and Forests stands committed to regularisation of pre-1980 eligible encroachments and conversion of forest villages into revenue villages. This commitment takes into consideration all the forest dwellers including tribals. Fulfilment of this commitment under Forest (Conservation) Act, 1980, will benefit the tribals.
 12. Up-liftment of the socio-economic status of the people living in and around the forest areas in terms of providing them education, employment, basic facilities and to give them earning capacity by inculcating various skills, has been the mandate of various Line Departments other than Forest Department. Forests have to be utilised mostly for providing subsistence support to such people, so that the conservation of natural resources is not compromised. Failure on the development front should not be compensated by any mechanism which leads to irreparable damage of our natural resource base. The Draft Bill, *inter-alia*, proposes to compensate the failure on the developmental/welfare fronts by distributing natural resource base of the country.
 13. The draft bill puts a question mark on the very existence of National Parks and Sanctuaries where the current policy is to shift the habitations outside the protected area under a suitable rehabilitation plan/package.
 14. In the proposed Act, the power of settlement of claims has been vested in Gram Sabha/Sub divisional Committee/District Committee which is a local level institution and there is every likelihood that for practical reasons, the interests of forest and wildlife conservation would be overlooked and taken over by local vested interests.
 15. There is no cut off date fixed in the proposed bill which is very desirable.
 16. The proposed Act is likely to encourage fresh encroachments and destruction of forests and it is feared that the situation may also become difficult to control.
 17. There is no role for Ministry of Environment and Forests which is the Nodal Ministry for all matters related to Forests, Wildlife and Environment.
 18. Last but not the least, the MoEF has issued a circular on 21-12-2004 restraining the eviction of tribals from the forest lands and as such there should not be any immediate problem to be addressed. Ministry has also issued a circular on 03-01-2005 for one time dispensation under Forest Conservation Act, 1980 for certain developmental works for a period of two years aiming at a balance between development and forest conservation.

In view of the above-mentioned points and the discrepancies in the proposed legislation, there is no need of the any new legislation in the matter. There are good chances that the proposed legislation may act against the basic tenets of the National

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Forest Policy, 1988 and the goals as enshrined in Directive Principles of our Constitution, posing thereby, a threat to the ecological security of the country. The Ministry of Environment and Forests strongly feels that the subject should be dealt by no Ministry other than Ministry of Environment and Forests, and there is no need to bring a separate legislation and the solution lies in modification of the orders of the Supreme Court coupled with a well laid down procedure for the implementation of 1990 guidelines.

This issues with the approval of the Minister of Environment and Forests.



(ANURAG BAJPAI)

Asstt. Inspector General of Forests

**Shri Rajeev Kumar,
Joint Secretary,
Ministry of Tribal Affairs,
Government of India,
Shastri Bhawan, New Delhi.**

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No.R-12011/6/2004-PR
Government of India
Ministry of Panchayati Raj

Dated 29th March, 2005.

OFFICE MEMORANDUM

SUB : Draft Cabinet Note on 'The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

The undersigned is directed to refer to Ministry of Tribal Affairs O.M. No.17014/4/2005-S&M dated 14.3.2005 on the above subject.

In this regard it is stated that we had earlier intimated our comments to the Ministry of Tribal Affairs vide our letter dated 17.2.2005 about the composition of the Sub-Divisional level Committee and the District level Committee. In the meeting of the TSG, held on 18.2.2005, AS(PR) had also stressed the need to include the Panchayats. However, in the final draft received now, the points raised by this Ministry have not been addressed.

Panchayats in all the three tiers have been given a marginal role in the recognition and vesting of forest rights of the Forest Dwelling Scheduled Tribes. Further, empowering the Gram Sabhas without the organisational framework of the Gram Panchayats will be difficult to work. The preclusion of the Sarpanch and other functionaries of the Panchayat in the Gram Sabha Committee will also act to nullify the authority of local self Government since some of the items vested in the Panchayats as per Eleventh Schedule such as collection and marketing of Minor Forest Produce have a direct bearing on the recognition and vesting of Forest Rights. Expansion of principles of PESA to the tribal villages will meet both ends. With these modifications, the Ministry supports the objectives and format of the draft.

(D.P.Singh)

Deputy Secretary to the Govt. of India

Ministry of Tribal Affairs
(Shri Rajeev Kumar, Joint Secretary,
Shastri Bhawan,
NEW DELHI)

Dy. No. 588
D.S. (S&M)/2005
Dated 4.4.05

Dy. No. 1325 JS(RK)/05
Dated 4/4/05

~~D.S. (S&M)~~
4/4/05

P. P. Singh
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4/4/05

Pradip Prabu's Suggested Changes in Bold Italic & Underlined

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THE SCHEDULED TRIBES AND FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) BILL 2005

Preamble

An Act to recognize and vest the forest rights and occupation rights of Scheduled Tribes in forest land who have been residing for generations but whose rights could not be recorded; and provide for a framework for recording, recognizing and the nature of evidence that may be adduced for rights of other forest dwellers, in respect of forestland and forest based resources.

The rights so recognized shall include responsibility and authority for ^{biodiversity} conservation, maintaining the ecological balance and biodiversity and sustainable use and thereby the Act seeks to strengthen the conservation regime while ensuring livelihood and food security of the Scheduled Tribes and Forest Dwellers.

This Act has become necessary because many of these rights on their ancestral lands, were not adequately recognized in the consolidation of state forests during the colonial period as well as in Independent India resulting in historical injustice to the forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.

The Act also seeks to address the long standing insecurity of tenurial and access rights of Scheduled Tribes and forest dwellers.

CHAPTER-I

PRELIMINARY

- 1 (1) This Act may be called The Scheduled Tribes And Forest Dwellers (Recognition Of Forest Rights) BILL 2005
- (2) It extends to the whole of India except the State of Jammu and Kashmir and Andaman and Nicobar group of Islands
- (3) It shall come into force on such dates as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II-

DEFINITIONS

- 2 (1) In this Act, unless the context otherwise requires:
 - a) "Claim" is an assertion for recognition of a forest right to a Competent Authority, submitted in writing along with evidence thereof
 - b) "Claimant" means forest dwellers or Scheduled Tribe who have migrated to an area other than where they are scheduled who file claim (s) for rights under this Act.
 - c) "Competent Authority" includes the Gram Sabha, Sub Divisional Level committee, District Level Committee and all appellate authorities under this Act.
 - d) District Level Committee- is a District Level Committee as defined under Section 4(3) of this Act
 - e) "Forest dwellers" are those individuals and/or communities who primarily reside in and around forests and includes Scheduled Tribes who have migrated to an area where they are not scheduled, and would further include nomadic, pastoralist and fishing communities and depend on the forests for bonafide livelihood needs.
 - f) "Forest land" means land of any description falling within the legal definition of forest and forest land and includes unclassed forests, existing, proposed and deemed, protected forests, reserved forests, national parks and sanctuaries.

- g) "Forest Rights" mean secure tenurial and/or ownership rights of Scheduled Tribes and Forest Dwellers over forest land and forest based resources as enumerated in Section 3(3) of this Act.
 - h) Forest villages - means such settlements which have been established by the state departments in the past for forestry operations or which were converted into forest villages through the Reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements and by whatever other name called for such villages. It further includes lands for cultivation and other uses permitted by the state departments.
 - i) Gram Sabha – means Village Assembly, which shall ordinarily consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level. For North Eastern States where there are no Panchayats, Gram Sabha would mean traditional village institution.
 - j) "Habitat of PTGs and/or Pre Agricultural Communities" means the forest lands and forest resources over which were the PTGs and/or Pre Agricultural Communities enjoyed traditional rights of access and use.
 - k) "Minor Forest Produce" is all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and their like, which is used by the Scheduled Tribes and forest dwellers for their bonafide and livelihood needs.
 - l) Monitoring Committee- is a State Level Committee as defined under Section 4(4) of this Act
 - m) Nodal agency- means the Ministry of Tribal Affairs, or any other designated agency appointed on their behalf.
 - n) "Pattas, Leases and Grants" includes temporary or permanent leases or grants by whatever name called on forest and forest land granted by any state department or local authority.
 - o) PESA means the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996
 - p) Shifting Cultivation- means traditional slash and burn agriculture practice in upland slopes and other landscapes requiring lands being left fallow for various periods for restoration/rejuvenation
 - q) Shifting Cultivation Lands means lands under cultivation along with land left fallow in the cultivation cycle for natural restoration and rejuvenation as arable fallow lands.
 - r) Shifting Cultivator- means those individuals or communities who practice shifting cultivation by whatever name called.
 - s) Sub Divisional Level Committee- is a Sub Divisional Level Committee as defined under Section 4(2) of this Act
 - t) Village- shall be defined as under the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996 PESA for schedule V areas and under the respective State Panchayat Acts for areas other than scheduled areas. It may further include forest villages, old habitations/ settlements and unsurveyed villages, whether notified or not. For North Eastern States where there are no Panchayats, village would mean traditional village.
- (2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER-III

RIGHTS OF FOREST DWELLERS

- 3 (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government hereby vests Forest Rights to Scheduled Tribes where they are scheduled, in respect of forest land and forest based resources including minor forest produce.

On the receipt of a Resolution of the Gram Sabha claiming any forest right or suo moto as the case may be, the District Level Committee, within a reasonable time and after due notice, shall clarify/verify such claims in the Gram Sabha, after due consideration of the evidence as described under Chapter V of this Act and decide with the consent of the Gram Sabha the nature, extent and modalities of enjoyment of such right.

Provided further that such rights so recognized would include the responsibility ^{duty} of protection, conservation and regeneration of forests.

- 4) Such vested forest rights under this Act shall be inheritable but not alienable or transferable.
- 5) Duties of Forest Right Holder- Whoever, under Section 3(1) and Section 3(2) is vested or whose forest right is recognized shall ensure that
- no activity shall be carried out that adversely affects the forest and the biodiversity in the local area, save as those activities that are permitted under the terms of such rights
 - catchment areas, water sources and other ecologically sensitive areas are adequately protected
 - their habitat is preserved from any form of destructive practices affecting their cultural and natural heritage
 - intimate the Gram Sabha and/or the Forest Authorities if any person is indulging in any activity which adversely affects the forest and the biodiversity in the local area.
 - Take appropriate measures in the Gram Sabha to stop any activity which adversely affects the forest and the biodiversity in the local area.

CHAPTER IV AUTHORITIES AND THEIR FUNCTIONS UNDER THE ACT

- 4(1)(i) Gram Sabha- Gram Sabha would consist of all adult members of a village whose names are included in the electoral rolls at the village level;
- (ii) The Gram Sabha shall be the authority where the claimant presents the claim for recognition
- (iii) The Gram Sabha shall be the authority who will recommend the claims to the Sub-Divisional Committee after such claims have been duly verified by the Local Committee.
- 4(2)(i) Sub Divisional Level Committee – There shall be a Sub Divisional Level Committee consisting of
- Sub Divisional Magistrate who will be the Chairperson
 - Sub Divisional Level Forest Officer who shall be the Vice Chair Person
 - Two respected civil society members from the Sub- Division/ Block/Taluka, atleast one of them being a woman, recognized for their understanding of forest rights tenurial issues in the area to be appointed by the District Collector in consultation with the Nodal Agency.
 - Sub Divisional Level Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP) who will be the Member Secretary.
- (ii) The Sub Divisional Level Committee shall recommend the resolution of the Gram Sabha on the claims to the District Level Committee
- 4(3) District Level Committee-
- There shall be a District Level Committee comprising
 - Collector who shall be the Chairperson
 - Divisional Forest Officer who shall be the Vice Chair Person
 - Chairman of the Zilla Parishad
 - Two respected civil society members, atleast one of them being a woman, at the district level known for her/his understanding of tribal-forest issues to be appointed by the District Collector in consultation with the Nodal Agency. (In the case of the North Eastern States a representative selected by the confederation of tribal councils such as autonomous regional councils.)
 - District Level Tribal Development /Welfare Officer, who shall be the Member Secretary
 - The District Level Committee shall be the appellate and the final authority for the accepting or rejecting the claims under this Act.
 - The Collector as the Chairperson of the District Level Committee shall issue the Order for effecting necessary entries in the revenue and forest records specifying the nature and extent of such accepted forest rights

Provided that in case any forest right so vested is disputed by any state department or local authority, the Competent Authority, shall mandatorily consider the records prepared at the time of scheduling an area, and while scheduling the tribe along with evidence enumerated in Section 5(1) and then reasoned order passed before denying the individual and/or community right.

- (2) The rights of the forest dwellers other than Scheduled Tribes mentioned in Section 3(1) would be recognized after a forest dweller presents a claim to the Competent authority and the same has been recognized after a due verification procedure under the Rules made under this Act, Section 3(2) and after giving due regard to nature of admissible evidence under Chapter V of this Act. The recognition of rights of forest dwelling Scheduled Tribes who have migrated from the area where they are scheduled would follow the same procedure as defined under the Rules made under this Act and Chapter V in case such migrated scheduled tribes want their forest rights recognized in the area where they have migrated. Provided that such forest dwellers or migrated Scheduled Tribes have occupied forest land or acquired forest rights before 31.12. 93.

- (3) Such forest rights would include rights of Scheduled Tribes and Forest Dwellers to:

- a) forest land under their occupation for habitation or for (subsistence agriculture) personal cultivation for livelihood and/or
- b) rights and /or uses, entitlements of forest dwellers in erstwhile princely states, Zamindari or such intermediary regimes, and/or
- c) access to and ownership of minor forest produce, and/or
- d) other use rights or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic /pastoralist communities and/or
- e) shifting cultivation and rotational cultivation, and/or
- f) habitat of for Primitive Tribal Groups
- g) disputed lands such as orange areas in Madhya Pradesh and Chhatisgarh, Dalli lands in Maharashtra, Gair Mazarua Am Lands in Bihar and, Khuntkatti Lands in Jharkhand and such lands where claims are disputed under any other nomenclature and/or
- h) disputed lands in occupation/ or can establish that they were forcibly evicted prior to the initiation of forest settlements and / or their rights were not enquired and / or commuted before notifying these lands as forests under respective laws.
- i) lands in occupation/ or can establish that they were forcibly evicted where forest settlements have not been completed and / or their rights were not enquired before notifying these lands as deemed/private forests under respective laws.
- j) Conversion of Pattas or leases issued by any local authority or any State department on forest lands to permanent titles,
- k) Forest villages, old habitation and unsurveyed villages, whether notified or not and includes those where process of conversion into revenue village is not complete.
- l) access to bio diversity and community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity
- m) rights which are already recognized under various state or Autonomous District Council or Autonomous Regional Council laws or which are accepted under traditional and customary law in the North Eastern States
- n) right to protect, regenerate and/or conserve and manage any forest land which they have been traditionally protecting and conserving (as a common property resource of the community), including the authority to impose penalties on such persons who contravene the rules of conservation laid down by the community.
- o) Right to be consulted/associated in the formulation of Working Plans with regard to the forest land within the boundaries of the village and/or such forest land which the Community has traditionally exercised access/monitored/control
- p) any other traditional right not listed above excluding hunting

Provided however that such forest rights under Section 3 are exercised for bonafide livelihood needs and not for exclusive commercial purposes.

Provided further that the rights to forest land in no case would exceed 2.5. ha per nuclear family of the Scheduled Tribe or a Forest Dweller

Draft Not to be Quoted – 16/02/05

(iv) The District Level Committee shall furnish an annual record of settled claims to the State Level Monitoring Authority.

4(4) State Level Monitoring Committee-

(i) There shall be a State Level Monitoring Committee comprising

a) Secretary in charge of Tribal Welfare shall be the Chairman

b) Secretary Forests who shall be the Vice Chair Person

c) Principal Chief Conservator of Forests

d) Two renowned non-government person known for her/his understanding of tribal-forest issues to be appointed by the District Collector in consultation with the Nodal Agency.

e) Commissioner/Director Scheduled Tribe who shall be the Member Secretary.

ii) The State Level Monitoring Committee shall examine the annual record of settled claims submitted by the District Level Committee and conduct at least one annual inquiry into the process of settling claims through random selection of sites.

iii) The State Level Monitoring Committee shall submit an annual report to the Nodal Agency along with their recommendations.

CHAPTER V

NATURE OF EVIDENCE AND RECORDING OF FOREST RIGHTS

5. Nature of Evidence:

5 (1) The evidence for recognition of claims under Section 3(2) are laid down hereunder.

a) Government Records published or not and would also include Gazetteers, Census, Settlement Records Governments Orders, Commission Reports, Circulars, Quasi Judicial and Judicial Records including preliminary offence report by whatever name called and/or

b) Documentary evidence from any prior research or documentation of a reputed institution, including survey maps and/or

c) Relevant circumstantial evidence including witnesses of neighbours, senior citizens and local inquiry by a local committee of at least three members, of whom, at least one should be a woman, and appointed by the Gram Sabha and/or

d) Any authentic record from erstwhile princely state or province and /or

e) Oral evidence of those claimants, who cannot read or write, reduced to writing along with traditional structures and symbols establishing its antiquity.

Recording of Forest Rights

5(2) The District Collector shall pursuant to vesting of forest rights to Scheduled Tribes under Section 3(1) and other forest dwellers under Section 3(2) issue Orders recognizing the forest rights and effecting necessary entries in the revenue and forest records specifying the nature and extent of such forest rights in a time bound manner as prescribed under the Rules under this Act.

5(3) The forest rights so vested or recognized in respect of land where a title is vested or recognized shall be registered jointly in the name of the husband and wife.

CHAPTER VI OFFENCE UNDER THE ACT

6. Penalty for contravention of the Provisions of the Act-

6(1) If any forest right holder or any person who contravenes or abets the contravention any of the provisions of Section 3 or who commits a breach of any of the conditions of the forest right so vested or recognized under this Act, or who engages in unsustainable use or destruction of biodiversity or fell trees for any commercial purpose shall be guilty of an offence against this Act and shall be punished with a fine as decided by the Gram Sabha or District Level Committee

as the case may be or defined under the Rules and/or their forest right be de recognized after a due process followed by the Competent Authority.

6(2) Offences by Government or Authorities under this Act-

Where any offence under this Act has been committed -

- (a) by any department of Government, the head of the department; or
- (b) by any authority under this Act, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority; shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of; or is attributable to any neglect on the part of any officer, other than the head of the department, or in the case of an authority, any person other than the persons referred to in clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER VII
MISCELLANEOUS

7. Officers to be public servants

Every officer referred to in Chapter IV and the chairperson, members, member-secretary, other officers and employees referred to in the same Chapter and every other officer exercising any of the powers conferred by this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

8. Protection of action taken in good faith

- (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.
- (2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.
- (3) No suit or other legal proceeding shall lie against the Authority as referred to in Chapter IV and its chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.]

9. Expenses of Authorities under the Act to be defrayed out of the Consolidated Fund of India: The salaries and allowances payable to the members and the administrative expenses of the Authorities under the Act including salaries, allowances and pension payable to, or in respect of the officers and other employees of the Authorities shall be defrayed out of the Consolidated Fund of India.

10. The Ministry of Tribal Affairs shall be the Nodal Agency and shall be responsible for implementation of this Act.

11. Power to make Rules-

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such rules may include measures with respect to all or any of the following matters, namely
 - a) procedure for filing of claims,
 - b) publicity for hearing in transparent manner,

Signature

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- c) verification of claims, appeals,
- d) time frame for effecting necessary entries as a consequence of vesting or recognizing forest right, as the case may be.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

12. Operation of other laws not barred – Save as provided under this Act the operation of other laws to the extent they do not contravene the provisions of this Act would not be barred.

THE SCHEDULED TRIBES AND FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS)
BILL 2005

Preamble

An Act to recognize the forest rights and occupation of Scheduled Tribes in forest land who have been residing there for generations but whose rights could not be recorded and to provide for a framework for recording, recognizing and the nature of evidence that may be adduced for rights of other forest dwellers, in respect of forestland and forest based resources.

The rights so recognized shall include responsibility and authority for sustainable use, biodiversity conservation and maintaining the ecological balance and thereby the Act seeks to strengthen the conservation regime while ensuring livelihood and food security of the Scheduled Tribes and Forest Dwellers. (I think this is okay as it stands but the word 'authority' should be included to ensure devolution of power to gram sabhas for honouring their conservation responsibility. One of the biggest shortcomings of JFM is that while several responsibilities are thrust on the shoulders of JFM committees, they are given no power or authority (including against corrupt local FD staff) to honour them. Similarly, in thousands of cases of community based forest and biodiversity conservation, the biggest handicap villagers face in keeping out forest destroyers is the lack of clear power and authority - the "kya tere baap ka jungle hai?" syndrome). In Schedule V areas, such authority can be devolved to gram sabhas through PESA once this Act recognizes rights and management authority over traditionally used areas irrespective of their being outside village boundaries or being RFs or PFs. In other areas, section 28 of IFA transferring powers of government to village communities could be used - whether this is provided in the rules or here can be decided but the provision must be there. The Act itself must at least recognize the link between responsibilities and the authority necessary for honouring them).

This Act has become necessary because many of these rights on their tribals' and other forest dwellers' ancestral lands, were not adequately recognized in the consolidation of state forests during the colonial period as well as in Independent India resulting in historical injustice to the forest dwellers whose livelihoods and cultures have a symbiotic relationship with are integral to the very survival and sustainability of diverse the forest and other ecosystems. (There isn't only ONE forest ecosystem but a diversity of them including grassland, riverine, wetland and marine ecosystems which overlap and interact with each other).

The Act also seeks to address the long standing insecurity of tenurial and access rights of Scheduled Tribes and forest dwellers.

CHAPTER-I

PRELIMINARY

- 1 (1) This Act may be called The Scheduled Tribes And Forest Dwellers (Recognition Of Forest Rights) BILL 2005
- (2) It extends to the whole of India except the State of Jammu and Kashmir and Andaman and Nicobar group of Islands
- (3) It shall come into force on such dates as the Central Government may, by notification in the Official Gazette, appoint.

No. of 2005

THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

A

BILL

to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes including those who were forced to relocate their dwelling due to state development interventions.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

1. (1) This Act may be called the Scheduled Tribes (Recognition of Forest Rights) Act, 2005.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commencement.

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) "bonafide livelihood needs", in relation to forest dwelling Scheduled Tribes, means the use of forests and forest based products for subsistence of such Tribes or for their own consumption and includes barter and sale of such forest based products for their household needs;

(b) "commercial purpose" includes a forest based activity where such activity is for large scale trade or mercantile purposes;

(c) "competent authority" means an authority appointed by the Central Government

(d) "core areas" shall mean such areas of National Parks and Sanctuaries required to be kept as inviolate for the purposes of wildlife conservation as may be determined by the Ministry of Environment & Forests.

(e) "forest dwelling Scheduled Tribes" means the members or community of Scheduled Tribes who primarily reside in forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bonafide livelihood needs;

(f) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks;

(g) "forest rights" means the forest rights referred to in section 3;

(h) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses, permitted by the Government;

(i) "Gram Sabha" means a village assembly, which shall consist of all adult members of a village and in case of State having no Panchayats, the traditional village institutions;

(j) "habitat" includes the area comprising the customary habitat and such habitats in reserved forests and protected forests, of Primitive Tribal Groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;

(k) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

(l) "nodal agency" means the Ministry of the Central Government dealing with tribal affairs or any officer or authority authorised by the Central Government in this behalf for the implementation of the provisions of this Act;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Scheduled Area" means any Schedule Area as referred to in

clause (1) of article 244 of the Constitution;

(o) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;

18 of 2003.

(p) "village" means—

(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996;

40 of 1996.

(ii) any area referred to as a village in any State law relating to Panchayats other than a Schedule Area;

(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

(q) "wild life" means any species of animal listed in Schedules I, II, III and IV of the Wildlife (Protection) Act, 1972.

53 of 1972.

CHAPTER II

FOREST RIGHTS

3. For the purposes of this Act, the following rights which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes, namely:—

Forest rights of forest dwelling Scheduled Tribes defined.

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;

(b) community rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;

(c) right of ownership access to, use or dispose of minor forest produce;

(d) other community rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) right, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed land under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases of grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of conversion of forest villages into revenue villages;

(i) rights of settlement of old habitations and unsurveyed villages, whether notified or not;

(j) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving

for sustainable use;

(k) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wildlife

CHAPTER III

RIGHTS OF FOREST DWELLING SCHEDULED TRIBES

Recognition of and vesting of forest rights in forest dwelling Scheduled Tribes.

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in the forest dwelling Scheduled Tribes, where they are scheduled, in respect of forest land and their habitat including right to collect, utilize or transfer minor forest produce in such manner as may be prescribed:

Provided that forest rights determined under this Act for vesting in the core areas of the National Parks and Sanctuaries shall be granted on provisional basis for a period of three years from the date of coming into force of this Act.

Provided further that such provisional rights in such core areas shall become permanent if the holders of such rights are not relocated within this period with due compensation.

(2) The recognition and vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Tribes or tribal communities had occupied forest land before the 25th day of October, 1980.

(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable.

(4) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed.

(5) Where the forest rights recognized and vested under sub-section (1) are in respect of land mentioned in clause (a) of section 3, -

(i) such land should be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;

(ii) the title to the extent given shall be registered jointly in the name of both the spouses where married and in the case of single person headed households, in the name of the single head.

(6) The forest rights recognized and vested under sub-section (1) in the

forest dwelling Scheduled Tribe shall -

(i) be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes;

(ii) include the responsibility and authority of protection, conservation with sustainable use and regeneration of adjoining forests in which community rights have been vested.

(7) In case any forest right recognised and vested under sub-section (1) is disputed by any State Government or local authority, the Competent Authority shall consider the records prepared at the time of declaring the area as a Scheduled Area, and while notifying any tribe to be or deemed to be a Scheduled Tribe under article 342 of the Constitution, along with evidence and then pass an appropriate order in the matter:

Provided that no order refusing to grant any forest right shall be passed unless the aggrieved member or members of the community are given an opportunity of being heard.

(8) Forest rights shall be conferred free of all encumbrances, including requirements of net present value and compensatory afforestation for diversion of forest land.

Duties of holders of forest rights.

5. The holder of any forest right under this Act shall, -

(a) save for those activities that are permitted under such rights, not indulge in any activity that adversely affects the wild life, forest and the biodiversity in the local area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reafforestation;

(b) ensure that adjoining catchment areas, water sources and other ecologically sensitive areas are adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) intimate to the Gram Sabha and to the forest authorities any activity in violation of any of the provisions of -

(i) the Wildlife Protection Act, 1972;

(ii) the Forest (Conservation) Act, 1980; or

(iii) the Biological Diversity Act, 2002,

(e) decisions taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

53 of 1972.

69 of 1980.

18 of 2003.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual and/or community forest rights that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act by receiving claims, consolidating and

Authorities to vest forest rights in forest dwelling Scheduled

verifying them and preparing a map delineating the area of each recommended claim for exercise of such rights in a format as prescribed. The Gram Sabha shall then pass a resolution to this effect and thereafter forward the same to the Sub-Divisional Level Committee.

Tribes and the
procedure
thereof.

(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee and the Sub-Divisional Level Committee shall consider and dispose of such petition:

Provided that every such petition shall be preferred within sixty days from the date of resolution of the Gram Sabha.

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(3) There shall be constituted a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee.

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) There shall be constituted a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.

(6) The decision of the District Level Committee shall be final and binding.

(7) There shall be constituted a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and submit to the nodal agency such returns and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the Departments of Revenue, Forest and Tribal Affairs at the appropriate level as prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by the authorities in discharge of their functions shall be such as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

Penalties.

7. If any holder of any forest right conferred by or under this Act or any other person -

(i) contravenes or abets the contravention of any of the provisions of this Act; or

(ii) commits a breach of any of the conditions of the forest right vested or recognised under this Act; or

(iii) engages in unsustainable use of forest or forest produce; or

(iv) destroys wildlife, forests or any other aspect of biodiversity; or

(v) fells trees for any commercial purpose,

he shall be guilty of an offence against this Act and be punished with a fine which may extend to one thousand rupees and in case the offence is committed more than once, the forest right(s) of the person who has committed the offence shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha may decide.

Provided that these penalties shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Offences by members or officers of authorities under this Act.

8. Where any authority or officer or member of such authority contravenes any provisions of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Provided that nothing contained in this sub-section shall render any member of the authority or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

9. No court shall take cognizance of any offence under section 8 of this Act unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

Cognizance of offences:

CHAPTER VI

MISCELLANEOUS

10. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Members to be public servants.

45 of 1860.

11. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority referred to in Chapter IV including its Chairperson, members, member secretary, officers and other employees for anything which is in good faith done or

intended to be done under this Act.

12. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

Nodal agency.

13. In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

Power of Central Government to issue directions.

14. Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

15. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) the procedure for and the manner of recognition and verification of forest rights under sub-section (4) of section 4;

(b) the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings under sub-section (1) of section 6;

(c) the composition and functions of the Sub-Divisional Level Committee and the procedure to be followed by it in the discharge of its functions under sub-section (9) of section 6;

(d) the manner of preferring a petition to the Sub-Divisional Level Committee under sub-section (2) of section 6;

(e) the composition and functions of the District Level Committee under sub-section (9) of section 6;

(f) the manner in which a petition may be preferred to the District Level Committee under sub-section (4) of section 6;

(g) the procedure to be followed by the District Level Committee under sub-section (9) of section 6;

(h) the composition and functions of the State Level Monitoring Committee under sub-section (9) of section 6;

(i) the reports and returns to be submitted to the nodal agency by the State Level Monitoring Committee under sub-section (7) of section 6;

(j) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or

be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The Commission of Ecological Resources by forest dwelling tribal communities have been referred to in several paragraphs and sections. The Commission has also stated that the rights of forest dwelling tribal communities should be protected. After independence, an emphasis to protect tribal resources, we continued with colonial legislation and adopted more intelligently adapted notions of conservation which have flowing from the traditions of the country where conservation is embedded in the ethos of tribal life. The reservation process for protection and forest areas for production forestry schemes ignored the forest rights of the tribal communities from legislative framework in the regions where tribal communities primarily inhabit. The simplicity of tribal and their general ignorance of modern legislative framework precluded them from asserting their genuine claims to resources in areas which they belong and depended upon. The modern conservation approaches and systems have been imposed upon them. It is only recently that forest management agencies have initiated action to recognize the occupation and other rights of the forest dwellers and have in their policy processes realized that tribal communities who depend primarily on the forest resources cannot but be integrated in their designed management processes. There is a recognition of the fact that forests have the best chance to survive if communities in its conservation and regeneration measures. Insecurity of tenure and fear of eviction from forest lands where they have lived and labored for generations are perhaps the biggest factors which tribal communities feel emotionally as well as physically. The need to protect tribal lands and forest lands. This is not only a matter of social justice but also a matter to save our forests from becoming zones of ecological deserts.

3. It is therefore proposed to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Scheduled Tribes. This Bill is a logical continuation of the process of recognition of forest rights. The inclusion of forest rights in the forest dwelling Scheduled Tribes on all kinds of forest lands for protection which includes forest land for sustenance and shelter from forest based resources is the fundamental basis on which the proposed legislation stands.

3. The Bill inter alia provides for the following matters, namely:-

- (i) It recognizes and affirms the tribal communities who have traditionally shown and continue to show a dependence on forest resources;
- (ii) It lays down a simple procedure for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes so that rights which stand vested in forest dwelling tribal communities become legally enforceable through appropriate measures in the formal recording system of the executive machinery;
- (iii) It provides for adequate safeguards to avoid any further encroachment of forest and seeks to involve the democratic institutions at the grassroots level in the process of recognition and vesting of forest rights;
- (iv) It addresses the long standing and genuine demand of granting a secure and enforceable right to tribal communities whose right to the forest in their forest and thereby safeguarding the time-honoured rights by giving a permanent status to the Scheduled Tribes dwelling in the forests of communities in accordance with the tribal system.

4. The Bill seeks to achieve the above objects.

F R RYINBAH
NEW DELHI

91

STATEMENT OF OBJECTS AND REASONS

Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the rich traditions of the country where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas for production forestry somehow ignored the *bona fide* interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belong and depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have initiated action to recognize the occupation and other rights of the forest dwellers and have in their policy processes realised that tribal communities who depend primarily on the forest resource cannot but be integrated in their designed management processes. There is a recognition of the fact that forests have the best chance to survive if communities participate in its conservation and regeneration measures. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests from becoming abode of undesirable elements.

2. It is, therefore, proposed to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Scheduled Tribes. This Bill is a logical culmination of the process of recognition of forest rights. The recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations, which includes forest land for sustenance and usufruct from forest based resources, is the fundamental basis on which the proposed legislation stands.

3. The Bill, *inter alia*, provides for the following matters, namely:—

(i) it reinforces and utilises the rich conservation ethos that tribal communities have traditionally shown and cautions against any form of unsustainable or destructive practices;

(ii) it lays down a simple procedure for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes so that rights, which stand vested in forest dwelling tribal communities, become legally enforceable through corrective measures in the formal recording system of the executive machinery;

(iii) it provides for adequate safeguards to avoid any further encroachment of forests and seeks to involve the democratic institutions at the grassroots level in the process of recognition and vesting of forest rights;

(iv) it addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to the Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The August, 2005.

P.R.KYNDIAH.

SECRET

CABINET SECRETARIA
 DOC. NO.
 617-1-05
 /CAB-III/051
 COPY No. 2

F.No.2-4/2004-FP
 Government of India
 Ministry of Environment & Forests

Paryavaran Bhawan, CGO Complex,
 Lodhi Road, New Delhi-110003
 Dated: 01:8.2005

NOTE FOR COMMITTEE OF SECRETARIES

Sub: Conferring Ownership Rights of Minor Forest Produce to the Forest
 Dependent Communities.

Forests are crucial for the well being of humanity. The role of forests in maintaining ecological balance, environmental stability and sustainable economic development is well known. However, with the ever increasing demand on the forest resources for goods and services, the forests are under tremendous biotic pressure. Considering the crucial role forests play in ecological stability, socio-economic well being and development of a country, the Government of India, in its National Forest Policy, 1988, has aimed at having a minimum of one-third of its geographic area under forest and tree cover. Despite so much of pressure on the forests in India, we have been able to maintain a reasonably good forest and tree cover of the country, which has shown an upward trend in the past 5 years. The total forest and tree cover of the country is estimated 23.68% viz. 20.64% forest cover and 3.04% tree cover of its geographical area.

2. The Provisions of the "Panchayats (Extension to the Scheduled Areas) Act, 1996" (PESA) endows the Ownership of Minor Forest Produce to

Gram Sabha outside reserve forests. However PESA does not define Minor Forest Produce and does not extend to reserve forests, National Parks and Sanctuaries. It is generally seen that the states are not implementing PESA in true spirit with regards to endowment of ownership to Gram Sabhas. Hence there is a need to frame legislation for conferring ownership rights of minor forest produce to forest dwelling community to resolve the conflicts arising in the implementation of PESA.

3. The National Common Minimum Programme (NCMP) item no. L-8 of the Union Government mentions that the State Governments will be urged to make legislation conferring ownership rights in respect of minor forest produce, including tendu patta, on people from weaker sections working in forests. To give affect to the above, a Draft Model Bill for Conferring Ownership Rights in respect of Minor Forest Produce (MFP) on Forest Dependent Community was prepared by this Ministry and circulated to all the State Government/ UTs as well as to the concerned Central Ministries on 09.2.2005, requesting for their comments on the draft bill. A Workshop was also organised with the representative of State/ UT Governments and the concerned Central Ministries on 18.4.2005. The observation/ comments of the States of Andhra Pradesh, Arunachal Pradesh, Bihar, Chattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Mizoram, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttaranchal and West Bengal were received. The Ministries of Panchayati Raj, Social Justice & Empowerment, Development of North Eastern Region and Planning Commission have also been consulted in the matter.

560, 136(R)

OUT-TO-DAY 274

PRIME MINISTER'S OFFICE

**South Block
New Delhi-110011**

PM No. 166
वि. सं. .../सचिव (ज. भा.)/...
दिनांक .../10/2005

Dy. No. 2521 JS(RK)/05
Date: 10/10/2005

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In pursuance of the directions of PM in the meeting chaired by him on 30.9.2005, the Ministry of Tribal Affairs is requested to organize a "One Day Consultation Workshop on 27th or 28th October, 2005 inviting the participants as mentioned in the enclosed list.

2. The M/o Tribal Affairs is requested to obtain the inputs on the Bill from Ministry of Environment & Forests by 14.10.2005.

3. The Ministry is requested to circulate the notes submitted by Shri Valmik Thapar and Ms Aruna Roy among the participants immediately.

4. Ministry is requested to kindly do the needful under intimation to this office.

(R. Gopalakrishnan)
Joint Secretary

Secretary, Ministry of Tribal Affairs

PMO UO NO. 560/51/C/3/05-ES-II Dated 7.10.2005

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Dy. No. 1325 JS(RK)/05
Dated 10/10/05

Statement Showing Cases (Category Wise) For Forest Land Under FC ACT, 1980

ANCENTIAL

State: All State

Case Status: APPROVED+INPRINCIPLE

During the Period: 25/10/1980 to 29/08/2005

AS ON: 29/08/2005

CATEGORY OF PROJECT	Number of Cases	
	APPROVED+INPRINCIPLE	Total Land Diverted (Ha.)
REFERENCE		
DISPENSARY/HOSPITAL	162	118,497.009
DISPUTED SETTLEMENT CLAIMS	33	104.870
DRAINAGE WATER	0	0.000
ENCROACHMENTS	1265	1,703.901
FOREST VILLAGE CONVERSION	57	365,682.248
HYDEL	15	40,986.807
IRIGATION	234	110,180.810
MINING	1779	88,663.045
OTHERS	1199	95,450.077
RAILWAY	3157	111,008.435
REHABILITATION	121	6,635.472
ROAD	33	16,735.594
SCHOOL	2608	18,726.570
TERMINAL	117	2,509.711
TRANSMISSION LINE	22	4,080.940
T.L. ELEC	1479	24,723.520
WIND POWER	43	167.342
TOTAL	8	496.831
	12332	1,006,353.182

BY FAX / BX Hand

No.11-60/2005-FC
Government of India
Ministry of Environment and Forests
(FC Section)

Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-110003
Date: 05.09.2005

212

VULS

Subject: Information regarding diversion of Forest lands for Mining industry, large dams etc.

The undersigned is directed to refer to the Ministry of Tribal Affairs Office Memorandum No. 17014/04/2005-PC & V, dated 25th August 2005 on the above subject and to send herewith the information on the above subject, as directed.

Jagdish Chander
(JAGDISH CHANDER)
Section Officer

11/11
Dy. No. JS/PC&V/05
Dated 12-9-05

To
Ministry of Tribal Affairs,
(Attn. Shri P. K. Varma, Dy. Secretary)
Shastri Bhavan
New Delhi-110001.

1817
Dy. No. JS(RK)/05
Dated 12/9/05

3ed today
Encl. As above:
12/9/05

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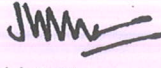
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8. The above note has the approval of Secretary (Environment & Forests).

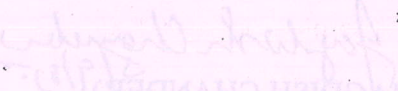
Ministry of Environment and Forests
(FC Section)
Forest lands for Mining Industry, Large
CGO Complex, Lodhi Road
New Delhi-110003
Date: 02.09.2002


(J.V.Sharma)

Deputy Inspector General of Forests (FP)

Tele Fax 24360549

The undersigned is directed to refer to the Ministry of Tribal Affairs Office
Memorandum No. 17014A04/2002-FC & V, dated 25th August 2002 on the above subject
and to send herewith the information on the above subject, as directed


(JAGDISH CHANDER)
Section Officer

Ministry of Tribal Affairs,
(Attn: Shri B. K. Varma, Dy. Secretary),
Shakti Bhawan
New Delhi-110001

Dy. No. 137/2002
Date: 13/9/02

As above
13/9/02



(Draft with changes as suggested by the TSG on the basis of comments received from the stakeholders)
5-08-2005(Tentative)

SECRET
ANNEXURE

No. _____ of 2005

THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

A
BILL

to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes including those who were forced to relocate due to state development interventions.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

1. (1) This Act may be called the Scheduled Tribes (Recognition of Forest Rights) Act, 2005.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short	title,
extent	and
commencement.	

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) "bonafide livelihood needs", in relation to forest dwelling Scheduled Tribes, means the use of forests and forest based products for subsistence of such Tribes or for their own consumption and includes barter and sale of such forest based products for their household needs;

(b) "commercial purpose" includes a forest based activity where such activity is used for profit or for large scale trade or mercantile purposes;

(c) "forest dwelling Scheduled Tribes" means the members or community of Scheduled Tribes who primarily reside in and around forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bonafide livelihood needs;

(d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks;

(e) "forest rights" means the forest rights referred to in section 3;

(f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements by whatever name called for such villages and includes lands for cultivation and other uses, permitted the Government;

(g) "Gram Sabha" means a village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level and in case of State having no Panchayats, the traditional village institutions;

(h) "habitat" includes the area comprising the customary habitat and such habitats in reserve and protected forests, of Primitive Tribal Groups and pre-agricultural communities and other forest dwelling scheduled tribes;

(i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, cane, tassar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "Scheduled Area" means any Schedule Area as referred to in clause (l) of article 244 of the Constitution;

40 of 1996.

(l) "Sustainable use" shall have the same meaning as in the Biological Diversity Act, 2002;

(m) "village" means-

(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996;

(ii) any area referred to as a village in any State law relating to Panchayats, other than a Schedule Area;

(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

(n) "wildlife" means wildlife as defined in the Wildlife (Protection) Act, 1972

CHAPTER II

FOREST RIGHTS

3. For the purposes of this Act, the following rights which are secure individual and/or community tenure, shall be the forest rights of forest dwelling Scheduled Tribes, namely:-

Forest rights of forest dwelling Scheduled Tribes defined.

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;

(b) community rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to, use or dispose of minor forest produce;

(d) other community rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) right, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of conversion of forest villages into revenue villages;

(i) rights of settlement of old habitations and unsurveyed villages, whether notified or not;

(j) right to access to bio-diversity and community right to intellectual property and traditional knowledge related to forest bio-diversity and cultural diversity;

(k) right to protect, regenerate and /or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(l) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;

(m) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) but

excluding the right of hunting and unsustainable use.

CHAPTER III

RIGHTS OF FOREST DWELLING SCHEDULED TRIBES

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in the forest dwelling Scheduled Tribes, where they are scheduled, in respect of forest land and their habitat including right to own, collect, utilize or transfer minor forest produce in such manner as may be prescribed.

Recognition of and vesting of forest rights in forest dwelling Scheduled Tribes.

(2) The recognition and vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Tribes or tribal communities had occupied forest land before the 25th day of October, 1980 or such other date as the Central Government may, by notification in the Official Gazette, specify.

(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable excepting for 3(g).

(4) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under her/his occupation till the recognition and verification procedure is completed in such manner as may be prescribed.

(5) Where the forest rights recognized and vested under sub-section (1) are in respect of land mentioned under Section 3(a), -

(i) such land under existing individual occupation in no case would exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;

(ii) the title to the extent given shall be registered jointly in the name of husband and wife;

(6) The forest rights recognized and vested under sub-section (1) in the forest dwelling Scheduled Tribe shall -

(i) be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes;

(ii) include the responsibility and authority of protection, conservation with sustainable use and regeneration of adjoining Forests in which community rights have been vested.

(7) In case any forest right recognized and vested under sub-section (1) is disputed by any State Government or local authority, the Competent Authority appointed by the Central Government shall consider the records prepared at the time of declaring the area as a Scheduled Area, and while notifying any tribe to be or deemed to be a Scheduled Tribe under article 342 of the Constitution, along with evidence and then pass an appropriate order in the matter:

Provided that no order denying or refusing to grant any forest right shall be passed unless the aggrieved member or members of the community are given an opportunity of being heard.

Duties of holders of forest rights.

5. The holder of any forest right under this Act shall ensure that, —

(a) save as those sustainable use activities that are permitted under such rights, no activity shall be carried out that adversely affects the wild life, forest and the biodiversity in the local area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purpose including reforestation;

(b) adjoining catchment areas, water sources and other ecologically sensitive areas are adequately protected;

(c) the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) any activity in violation of the Wildlife Protection Act, Forest Conservation Act and the Biodiversity Act is intimated to the Gram Sabha and to the forest authorities;

(e) decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. (1) The Gram Sabha shall be the authority to initiate any action for determining the extent of forest rights that may be given to the forest dwelling Scheduled Tribes within the local and/or customary limits of its jurisdiction under this Act.

Authorities to vest forest rights in forest dwelling Scheduled Tribes and the procedure thereof.

(2) Every action under sub-section (1) shall be initiated in such manner and subject to such procedure as may be prescribed.

(3) A Sub-Divisional Level Committee shall examine the decision taken by the Gram Sabha.

(4) The composition and functions of the Sub-Divisional Level Committee and the procedure to be followed by it in the discharge of its functions shall be such as may be prescribed.

(5) Any person aggrieved by the decision of the Gram Sabha may prefer an appeal to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(6) Every appeal under sub-section (5) shall be preferred within sixty days from the date of decision of the Gram Sabha.

(7) There shall be constituted a District Level Committee with such composition and functions as may be prescribed to consider the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval.

(8) Any person aggrieved by the decision of the Sub-Divisional Committee may prefer an appeal to the District Level Committee in such manner as may be prescribed and the District Level Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(9) In discharging the functions under this Act, the District Level Committee shall follow such procedure as may be prescribed.

(10) Every appeal under sub-section (8) shall be preferred within sixty days from the date of decision of the Sub-Divisional Level Committee.

(11) The decision of the District Level Committee shall be final and binding and the Gram Sabha shall maintain the records accordingly.

7. (1) The State Government shall constitute a State Level Monitoring Committee with such composition and functions as may be prescribed.

State Level
Monitoring
Committee.

(2) The State Level Monitoring Committee shall examine the record of recognised and vested rights of forest dwelling Scheduled Tribes submitted by the District Level Committee and conduct periodic inquiry into the process of recognition and vesting through random selection of sites.

(3) The State Level Monitoring Committee shall submit to the nodal agency such periodic returns and reports as may be called for by that agency along with the recommendations of the Committee for appropriate action.

CHAPTER V

OFFENCE AND PENALTIES

• Penalties and
de-recognition
of forest rights.

8. If any holder of any forest right conferred by or under this Act or any other person –

(i) contravenes or abets the contravention of any of the provisions of this Act, or

(ii) commits a breach of any of the conditions of the forest right vested or recognised under this Act; or

(iii) engages in unsustainable use of forest or forest produce; or

(iv) destroys wildlife, forests or any other aspect of bio-diversity; or

(v) fells trees for any commercial purpose,

he shall be guilty of an offence against this Act and be punished with a fine which may extend to one thousand rupees and in case of the offence is committed more than once, the forest right of the person who has committed the offence shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha may decide.

Offences by
members or
officers of
authorities
under this Act.

9. Where any authority or officers or member of such authority contravenes any provisions of this Act or any rule made thereunder shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with imprisonment which may extend to thirty days or with fine which may extend to five thousand rupees, or with both:

Provided that nothing contained in this sub-section shall render any member of the authority or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the

commission of such offence.

Cognisance of offences.

10. No court shall take cognizance of any offence under section 9 of this Act unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Monitoring Committee and the State Monitoring Committee has not proceeded against such authority.

CHAPTER VI

MISCELLANEOUS

Members to be public servants.

11. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code

45 of 1860.

12. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against the Authority as referred to in Chapter IV including its Chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

13. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

Nodal agency.

14. In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

Power of Central Government to give directions.

15. Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

16. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the powers, such rules may provide for all or any of the following matters, namely:-

(a) the procedure and for manner of recognition and verification of forest rights under sub-section (4) of section 4;

(b) the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings under sub-section (2) of section 6;

(c) the composition and functions of the Sub-Divisional Committee and the procedure to be followed by it in the discharge of its functions under sub-section (4) of section 6;

(d) the manner of preferring an appeal to the Sub-Divisional Committee under sub-section (5) of section 6;

(e) the composition and functions of the District Level Committee under sub-section (7) of section 6;

(f) the manner in which an appeal may be preferred to the District Level Committee under sub-section (8) of section 6;

(g) the procedure to be followed by the District Level Committee under sub-section (9) of section 6;

(h) the composition and functions of the State Level Committee under sub-section (1) of section 7;

(i) the periodic reports and returns to be submitted to the nodal agency by the State Level Committee under sub-section (3) of section 7;

(j) any other matter is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the country's rich traditions where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas for production forestry somehow ignored the bona fide interests of the tribal community from legislative frame work in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belong and depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have in their policy processes realised that integration of tribal communities who depend primarily on the forest resource cannot but be integrated in their designed management processes. It underlines that forests have the best chance to survive if communities participate in its conservation and regeneration measures. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests from becoming abode of undesirable elements.

2. It is, therefore, proposal to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Scheduled Tribes. The recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations and which includes both bona fide needs of forest land for sustenance and usufructs from forest based resources are the fundamental basis on which the proposed legislation stands.

3. The Bill, *inter alia*, provides for the following matters, namely:-

(i) it reinforces and utilises the rich conservation ethos that tribal communities have traditionally shown and cautions against any form of unsustainable or destructive practices;

(ii) it lays down a simple procedure for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes so that rights, which stand vested in forest dwelling tribal communities, become legally enforceable through corrective measures in the formal recording system of the executive machinery;

(iii) it provides for adequate safeguards to avoid any further encroachment of forests and seeks to involve the democratic institutions at the grassroots level in the process of recognition and vesting of forest rights;

(iv) it addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

P.R.KYNDIAH.

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MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters in respect of which rules may be made under the said clause. These matters, *inter alia*, relate to the procedure and for manner of recognition and verification of forest rights, the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings, the composition and functions of the Sub-Divisional Committee and the procedure to be followed by it in the discharge of its functions, the manner of preferring an appeal to the Sub-Divisional Committee, the composition and functions of the District Level Committee, the manner in which an appeal may be preferred to the District Level Committee, the procedure to be followed by the District Level Committee, the composition and functions of the State Level Committee and the periodic reports and returns to be submitted to the nodal agency by the State Level Committee. Sub-clause (3) of the said clause provides that the rules are required to be laid before Parliament.

2. The aforesaid matters relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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PRKYMIDIAI

NEW DELHI

**BRIEF FOR PM'S MEETING WITH CONSERVATIONISTS
AND TRIBAL RIGHTS ACTIVISTS REGARDING THE
TRIBAL RIGHTS BILL**

1. Chairperson, NAC vide letter dated 7.9.2005 has suggested a meeting of the PM with some experts from the conservation side and the Tribal Rights side on this specific subject of action regarding sanctuaries in the proposed Tribal Rights Bill. AS(P) had suggested that a brief be prepared.
2. The Tribal Rights Bill is already in the Cabinet after the Cabinet Secretary has gone through the issue in detail with related Ministries and felt that the version of the Ministry of Tribal Affairs is a comprehensive one. **The Cabinet Secretary has, however, flagged the issue of sanctuaries being initially taken out of the purview of the draft Bill for later consideration after adequate safeguards have been developed and rules framed.**
3. This was examined in the Prime Minister's Office. It was felt that a solution acceptable both to conservationists and the Tribal Rights Activists can be framed.
4. On the one hand it must be borne in mind that a large number of these settlements are in areas subsequently declared as National Parks/Sanctuaries. The Wild Life Protection Act, 1972 is very clear that all rights had to be settled prior to the notification of the sanctuary. However in practice this was rarely done and a situation

has been created in which people are trapped within the sanctuary area. They cannot be doubly wronged. The cause of conservation requires that they be relocated as quite often human and animal co-existence is not possible. We can agree with the conservationists on this point and agree to relocate people from within the sanctuaries/national parks in a manner that does not infringe their right to property.

5. This can be done by :-

- (a) formally taking out National Parks, Tiger Reserves and Sanctuaries from the purview of the Draft Bill.
- (b) Giving the tribal settlers provisional title deeds with the condition that until such time the Government relocates them, they will continue to be in possession of the land that they currently occupy.
- (c) Preparing a time bound plan for relocation.

6. The above suggestion or provisional/temporary *Pattas* liable for relocation can be a win-win solution which pleases both the conservationists and the tribal rights activists. We are agreeing to both relocation as well as creating a time-boundness to it which should satisfy the conservationist. The Tribal Rights activist should be satisfied that there is an assertion of tribal right to property and that all eligible people would be given *Pattas*, which make them liable for relocation but does not infringe the Right to Property.

7. Relocation, of course, is a huge and complex task. It may be noted that out of 1500 villages located in Tiger sanctuaries, only 80 villages have been relocated in the last 30 years. For accomplishing this task, it is suggested that a Joint High Level Committee of the MoEF, Ministry of Tribal Affairs and Forest Secretaries of all the concerned States/UTs be set up to -

- identify all those forest dwellers living in the 1500 odd villages in the Tiger Reserves and Sanctuaries;
- clearly identify the availability and extent of land in the fringe areas of the Parks where villages exist for the re-settlement of persons identified under the previous step;
- see to what extent the identified lands would be able to accommodate the forest dwellers in the villages;
- calculate the total costs that would be involved for effective rehabilitation of the forest dwellers on these lands;
- work out a cost sharing mechanism between the States and the Centre;
- give recommendations for setting up a national fund and state funds for undertaking the task, and
- draw up a realistic road map with time frames for completing the task.

8. This, however, would require redefining what is considered core among the National Parks/Sanctuaries. For example, all tiger habitats may be considered to be core areas. Such a distinction is required because there has been an indiscriminate declaration of National Parks/Sanctuary areas trapping a large number of human habitation into them with hardly any green cover or animal life. Given the cost of relocation it would be a wise option for the Government to identify such areas which has also been recommended by the Tiger Task Force. The provision in the Wild Life Protection Act says that sanctuaries and national parks cannot be notified unless rights for people have been settled and they have been re-located. This has been indifferently enforced in the past which has given rise to the present problems. This provision may be adequately strengthened for sanctuaries and national parks that may be notified in future.

9. In order to assuage the fears of the conservationists, it is suggested that the following steps should be substantially completed or at least effectively initiated before the passage of the Tribal Rights Bill :

- (a) Amendment to the Wild Life Act to provide that -
 - (i) complaint is substituted by charge-sheet for faster cognizance;

- (ii) a special provision is instituted to prevent suspension of sentence during appeal by the accused;
 - (iii) punishment is calibrated to distinguish between poacher, agent and large volume trafficker;
 - (iv) general consent is taken from the States in advance for investigation of wildlife cases by the CBI;
 - (v) Wildlife Special Courts are established to expedite trial; and
 - (vi) a statutory annual independent audit is mandatorily undertaken by an approved panel of outside experts of all National Parks and Tiger Reserves with the added proviso that the audit reports are to be placed on the Table of both Houses.
- (b) The establishment of a Wildlife Crime Bureau.
 - (c) Giving statutory autonomy to Project Tiger and making the Prime Minister the permanent ex-officio Chairman of its Steering Committee.
 - (d) Creation of two separate Departments of Environment and Forests under two different Secretaries.
 - (e) Instituting steps for setting up a separate National Parks Service as an All-India Service.

10. The Tribal Rights Bill provides that land and other rights are to be given only to the pre-1980 tribal forest dwellers. Thus, the proper identification of the pre-1980 tribal forest dwellers becomes very important. PMO has already approved detailed draft guidelines for the identification of the pre-1980 tribal forest dwellers based on a method of community participation. These guidelines could be made part and parcel of the Tribal Rights Bill.

11. On facts, the following is reiterated

- (a) no area is being diverted through the Tribal Rights Bill as the said land is already under occupation/cultivation.
- (b) The land so settled is likely to be to the extent of about 0.8 million hectares on an approximate calculation. The Ministry of Environment and Forests reports 1.3 million hectares under such occupation of which it has already settled 0.3 million. Given the fact that the Bill is restricted to tribal people only, about 20% of the people may get excluded, limiting the settlement to 0.8 million hectares.
- (c) This regularization should be seen against the fact that, post-independence, over one million hectares of actual forest land has been diverted to develop projects for mining, power industry etc.

CABINET SECRETARIAT

Doc. No. 66/2005-CA.III

MINUTES OF THE MEETING OF COMMITTEE OF SECRETARIES

Venue : Committee Room, Cabinet Secretariat
Rashtrapati Bhavan.

Date of meeting : 12.8.2005

Time of meeting : 12.00 Noon.

PRESENT

- Shri B.K. Chaturvedi, Cabinet Secretary
- Shri Baleshwar Rai, Secretary (Coordination)
- Dr. Prodipto Ghosh, Secretary, M/o Environment and Forests
- Shri Wajahat Habibullah, Secretary, M/o Panchyati Raj
- Smt. Sarita Prasad, Secretary, M/o Social Justice & Empowerment
- Smt. Gauri Chatterji Secretary, D/o North Eastern Region
- Shri J.C. Kala, D.G. Special Secretary, M/o Environment and Forests
- Smt. Suman Swarup Sr. Consultant, Planning Commission
- Shri D.P.Sharma, Additional Secretary, D/o Legal Affairs
- Shri V.S. Sampath, Additional Secretary, D/o Land Resources
- Shri G.K. Prasad, Addl. D.G. M/o Environment and Forests
- Shri Rajive Kumar ,Joint Secretary, Cabinet Secretariat
- Shri Rajiv Kumar, Joint Secretary, M/o Tribal Affairs
- Shri J.V. Sharma, DIG, M/o Environment and Forests
- Shri Rajiv Ranjan, Director, Cabinet Secretariat
- Shri Anurag Bajpai, AIG, M/o Environment and Forests

Tribes (Recognition of Forest Rights) Bill, 2005" and the "Model Bill - State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" for conferring ownership rights in respect of minor forest produce, including tendu patta, on all those people from the weaker sections who work in forests.

A meeting of the Committee of Secretaries, under the chairmanship of Cabinet Secretary, was held on 12th August, 2005 at 12.00 Noon in the Committee Room, Cabinet Secretariat, to discuss the two notes (Doc. No.60/05/CA.III and No.61/05/CA.III) received from the Ministry of Tribal Affairs and the Ministry of Environment & Forests, respectively.

2. Joint Secretary, Ministry of Tribal Affairs made a presentation on the draft "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" (the draft Bill) drafted by the Ministry of Tribal Affairs compared with "Model Bill - State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" (the model Bill) drafted by the Ministry of Environment & Forests. Non-conferment of ownership rights over the Minor Forest Produce (MFP) to the tribal people was one of the major historical injustices done to Forest Dwelling Scheduled Tribes (FDSTs) who inhabited the forests for generation and were in occupation of forest land. The collection of MFP and its marketing constituted the major source of livelihood of a FDST family. It had been estimated that MFP contributed about 70% of the income of the tribal people. The modern conservation approaches resulted in exclusion of tribals from conservation and protection of forests. In reality, forests had the best chance to survive if the community participates in its conservation and re-generation measures. The Panchayats (Extension) to the Scheduled Areas Act, 1996 (PESA) gave the rights of ownership of MFP to the respective local communities. But PESA, being a model legislation, did not become effective due to majority of States not taking initiative to back it by supportive legislation. Hence, the collection and trade of MFP was still largely monopolized by the MFP corporations of the State Governments. The exploitation of various minor produce just provided employment to the Scheduled Tribes as labourers resulting in social unrest in one form or the other. The NCMP of UPA Government had the following provisions relating to Tribals:

- (i) "UPA will urge the States to make legislation for conferring ownership rights in respect of minor forest produce, including, tendu patta."
- (ii) "The UPA administration will take all measures to reconcile the objectives of economic growth and environmental conservation particularly as far as tribal communities dependent on forests are concerned."
- (iii) "Eviction of tribal communities and other forest dwelling communities from forest areas will be discontinued. Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation. The rights of tribal communities over mineral resources, water resources etc. as laid down by law will be fully safeguarded."

3. According to the Ministry of Tribal Affairs, the draft Bill addresses above components of NCMP by recognizing and vesting forest rights to various FDSTs in respect of forest land. Such forest rights were to be exercised for bona fide livelihood

adequate checks and balances for the misuse of the provisions. De-recognition of forest rights had been provided in case of an offence committed more than once by the right holder. Recognition of forest rights of only FDSTs, scheduled for the area, living in the forests would benefit from the draft Bill. All rights would be inheritable but inalienable or non-transferable. The use of forest rights would be restricted to the subsistence and livelihood needs alone. The forest rights-holders would not indulge in any activity adversely affecting the wildlife, forests and biodiversity of the local areas. Gram Sabha would be the competent authority to initiate the process of recognition of rights and preparation of the records. This would further empower local committees in management of their natural resources as mandated in the provisions of PESA Act. The draft version of the Bill was put on the Internet to enable people to send their comments. More than 5000 individuals/organizations had sent their comments/suggestion, majority supporting the draft Bill. The draft Bill defined rights of various FDSTs indicating ownership over MFP, duties of forest rights-holders, the authorities, including their functions and the offences under the Act. The proposed draft Bill provided more checks and balances than the existing legislation/policy guidelines of the Ministry of Environment & Forests. The draft Bill had provisions of conferring ownership rights to FDST whereas the model Bill provided only guidelines to the States on the subject. The draft Bill defines the term 'Minor Produce' to include all non-timber forest produce of plant origin whereas the model Bill did not define MFP and excludes many items. The draft Bill sought to recognize and vest various forest rights including the right of ownership, access to, use or dispose off minor produce in contrast to the Model Bill providing only guidelines to the States. There was no compulsion for State Governments to come out with the State Acts. The draft Bill had provisions that Gram Sabha would decide the area of collection of MFP including National Parks and Sanctuaries whereas the Model Bill only allowed access to adjoining forest areas for MFP's collection. The draft Bill conferred the ownership of MFP on the Panchayats and Gram Sabha as per the PESA Act whereas the Model Bill only recognizes Joint Forest Management Committees (JFMCs) which are not legal entities and often excluded the real people dependent on forest. The draft Bill provided for a procedure for recognition and vesting of forest rights to be initiated by Gram Sabha and finalized by the committee of officials of Revenue, Forest and Tribal departments whereas the Model Bill defined a right-holder as per various forest settlement proceedings which were incomplete in large parts of the country, thereby ignoring millions of people whose rights had not been settled till date. The model Bill, instead of conferring full ownership rights, empowered the State Governments to allow MFP Corporation to continue marketing rights thus denying the full rights to FDSTs. The provisions of the model Bill were contrary to the provisions of the PESA Act. Therefore, there was no need for enacting the Model Bill proposed by the Ministry of Environment & Forests and the draft Bill of the Ministry of Tribal Affairs adequately addressed the issue of conferment of ownership rights over the MFP to the FDSTs for their subsistence and livelihood needs. Further, procedural details would be worked out after enactment of the draft Bill.

4. Secretary, Ministry of Environment & Forests made a separate presentation on the model Bill drafted by the Ministry of Environment & Forests. The Ministry took a number of initiatives in the light of the provisions contained in the NCMP for conferring ownership of MFPs to forest dwelling communities and a model legislation on the subject had been provided by the Ministry which was pending with the Ministry of Law for vetting. Till now, 3.65 lakh hectare of forest land had been regularized to eligible encroachers. 510 forest villages had been converted into revenue villages. The Ministry had issued detailed guidelines on the recognition of tribal rights on forest land and provided that no eviction of forest dwellers, including tribals, till the process of verification of their traditional rights of forest land was completed. Public utility projects, upgradation of roads in forest areas and permission to the right-holders to collect stones/slates/boulders from forest areas for their bona fide domestic use had

243) been issued. The model legislation addressed the livelihood and poverty Alleviation issues by allowing collection processing and trade in MFP by the Forest Dependent Community (FDC) on the principle of care and share. National Parks, Sanctuaries and other such areas to be identified by the State Governments would be out of the purview of the model Bill. Members of the Joint Forest Management Committee, Gram Sabha, Cooperative Societies and Eco-development Committees have been recognized as the FDCs. The State Governments had been empowered to identify FDCs, MFPs, assignment of areas, collection and transport of MFP and trade in MFP. Different FDCs could be assigned different forest areas and the harvesting could be allowed on a non-destructive and sustainable basis. The trade in MFPs could gradually pass on to the community and the State Governments would endeavour to repeal the present law at the earliest in order to pass the ownership of MFPs to the communities. Some of the States were heavily dependent on MFPs revenue and taking away this right at one go might create financial problems for the State Governments. The model Bill also provided the scheme of sharing of the net income from MFPs. The Supreme Court, by its various orders, had banned the de-generation of forest, the regularization of encroachments and stayed the implementation of the guidelines of the Ministry on the recognition of rights on forest land. The Ministry was pursuing the matter in the apex court.

5. The draft Bill proposed by the Ministry of Tribal Affairs was silent on the rights of non-tribals occupying the forest land, superceded the Indian Forest Act, 1927, Forest Conservation Act, 1980 and Wildlife Act and conferred the power to determine the rights by Gram Sabhas which may create a situation of the applicant being the judge in his own case or under personal interest overriding the interest of forest conservation. He added that the dual responsibility of recognizing rights of forest dwellers would only lead to confusion.

6. To a pointed query, Secretary, Ministry of Environment & Forests replied that each family wholly dependent on forest for livelihood was member of JFMCs on the basis of care and share. Forest official was the Member-Secretary of the Executive Committee. It was added that any single legislation or dispensation would not work effectively in every part of the country because of the diverse relationship of the community and forest. It was necessary to differentiate between rights involving physical occupations of the land and rights accruing without actually occupying the land i.e. community rights. The conversion of community rights to individual rights may adversely affect the efforts of forest conservation and could lead to massive deforestation. The recognition of rights of only one set of FDCs would result in massive social tension.

7. In reply, Joint Secretary, Ministry of Tribal Affairs added that only STs had been traditionally living in the forest areas for centuries and other communities had joined later. The number of non-tribals, wholly dependent on forests for livelihood was negligible compared to FDSTs. Therefore, the Ministry was restricting the provisions for only FDSTs. Involvement of democratic institutions was in tune with the provisions of the PESA Act. Moreover, Gram Sabha would only initiate the process of recognition of rights and a final decision would be taken by the Official Committee represented by the Depts. of Revenue, Forests and Tribal Development. The recognition of forest rights of only the FDSTs, where they are scheduled, would not involve distribution of and to the entire ST population. In totality, this would only affect less than 1% of the total forest area of the country.

3. Secretary, Ministry of Panchayati Raj informed that the provisions of PESA required State Governments to consult tribal communities in the constitution of Village Panchayats and Gram Sabhas in Schedule Areas. Some of the State Governments had complied with the provisions of PESA by harmonizing the provisions of other legislations in the States in respect of the ownership of MFP. The State Governments of Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Orissa and

Rajasthan had already taken the appropriate steps in that direction. He further added that the genesis of Naxalite problems and massive de-forestation had indicated strained working relationships between STs and forest conservation measures. It was necessary to integrate and involve forest dependent communities in the survival and sustainability of forestry system. The time had come to revisit the approaches of forest conservation and wildlife protection.

9. Secretary, Ministry of Social Justice & Empowerment added that the draft Bill of Ministry of Tribal Affairs did not include Scheduled Castes and Other Backward Classes living and depending on MFPs. She advised that the synthesis of the draft Bill and the model Bill should be thought of in order to develop an effective and well-meaning legislation for the recognition of FDCs.
 10. Secretary, Dept. of Development of North Eastern Region added that the JFMCs, being a homogeneous and focused group, worked well in the forest areas whereas Gram Sabha was a defused entity with mutually contradictory interests of the members. She supported the model Bill drafted by the Ministry of Environment & Forests.
 11. The representative from the Ministry of Law opined that the objective of the Bill would decide the appropriate provisions. Since the Model Bill drafted by the Ministry of Environment & Forests was intended to be guidelines for the State Governments to formulate their legislation, it would not be practical to compare the provisions of the draft Bill and the model Bill. The purposes of the two Bills were different.
 12. The representative from the Planning Commission informed that the model Bill was a comprehensive and practical approach to a common legislation to serve the interests of all the communities depending on the forest for livelihood. She added that a Central Bill without bringing the State Governments on board would not work.
 13. Secretary (C&PG), Cabinet Secretariat added that non-tribals residing in and around forests would only be less than 10% - 15% of the total population and hence the draft Bill proposed by the Ministry of Tribal Affairs would benefit majority of the FDSTs. But he suggested that the rights of the non-tribal should also be protected by formulating correct terminology.
 14. Cabinet Secretary concluded by highlighting the premises, features and its impact on the rights of the FDSTs in respect of both the proposed Bills. It was decided that Cabinet Secretary would take a view in the matter after considering the exact text of the draft Bill and the model Bill along with the various suggestions discussed above.
-

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14 Cabinet Secretary concluded by highlighting the premises, features and its impact on the rights of the FDGs in respect of both the proposed Bills. It was decided that Cabinet Secretary would take a view in the matter after considering the exact text of the draft Bill and the model Bill along with the various suggestions discussed above.

In view of PM's Address on Independence Day and the NCMP commitments (Item Nos. 8, 22 & 23) for providing rights to the tribals, it becomes imperative that the introduction of STs (Recognition of Foreign Rights Bill 2005) is done in Parliament during the current Session. For the introduction of the same, the Ministry has taken the following steps:-

- (a) M/o Tribal Affairs has clearly stated on the proposed model Bill – "State/U.T. Minor Forest Produce (Ownership Right of Forests dependent Community) Act 2005 of the M/o Environment & Forests by stating that it is not required. The M/o Tribal Affairs is of the view that "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" adequately address the issue of conferment of ownership rights over the minor forest produce to the forest dwelling Scheduled Tribes who are dependent on MFPs for their subsistence and livelihood needs. The Ministry, therefore, does not consider the need for enacting the "Model Bill – State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005", proposed by the M/o Environment & Forests. The procedural details may be provided in the rules to be framed after enactment of the ST Bill. This was stated in the note circulated for the Committee of Secretaries (Flag 'A') The COS held its meeting on the 12th of August, 2005. The Report of COS would be obtained by the end of this week.
- (b) The Ministry, as per instructions of PMO, had put the proposed Bill on the website of the Ministry: The Ministry received an overwhelming response from the individuals/organizations from all over the country either supporting the Bill or opposing the same. The various suggestions obtained were considered by 4 sub-group of the Technical Support Group. These issues were addressed by the TSG and it was decided that barring a few changes in the proposed Bill, no substantive changes were required. TSG also prepared a revised draft on the basis of suggestions received from various stake-holders. The Ministry is now taking further action to finalize the Bill in consultation with the M/o Law and Justice.

X | 2. If agreed to, the PMO may convey Cabinet Secretariat to circulate the finally amended version of the draft Bill for the next Cabinet Meeting so that the introduction of the Bill could be done in this Session itself.

3. Submitted for kind instructions, please.

KA
(Kalpana Awasthi)
17.8.2005

JS(M)

For approval - X.

Sanjay Mitra
17/8

L. Secy to PM
6269/9/05
19/8/05

As(P)
[Prl Secy]

21941AS(P)16/05
1567/bis(A)/9/05

Continued overleaf

From pre-page

4. This matter needs careful consideration in view of two sharply divided sects of opinion among the stake-holders and the knowledgeable section of the public. It will be difficult to bring this Bill to Parliament during the current Session which is scheduled to finish on 25th August, 2005.
5. I have obtained copies of the earlier Draft Bill (Flag `A') and the Revised Draft Bill (Flag `B'). The NAC Secretariat has prepared a comparative chart of the two Bills, a copy of which is placed at Flag `C'.
6. It would be advisable to proceed further on the matter only after receipt and examination of the report of the Committee of Secretaries, since two overlapping Bills have been prepared by the Ministries of Tribal Affairs and Environment & Forests. At present, we have only the views of the Ministry of Tribal Affairs.
7. The Ministry of Tribal Affairs is said to have received 5634 responses on its website after the Bill was placed there. A proper decision could be taken after more information is obtained from the Ministry about the broad categories of the responses and the numbers in each category.
8. Attention is also drawn to the letter written by Chairperson, NAC to the Prime Minister (Flag `D'). The highlighted portion on page 1 of the letter suggests that National Parks, Tiger Reserves and Sanctuaries should be kept out of the purview of the Bill. The Revised Bill at Flag `B' has not exempted National Parks, Tiger Reserves and Sanctuaries from its purview. This matter needs to be re-examined by the Ministry.
9. Furthermore, in the interest of protection of wild-life, wild-life habitats and conservation of forests, the following clauses of the Revised Draft Bill at Flag `B' perhaps also need re-examination :-
 - (i) Section 3 (m) of the Revised Draft Bill lays down that any other traditional right not specifically listed in the law, that is customarily enjoyed by the forest dwelling Scheduled Tribes, shall be recognised, provided that such rights exclude the right of hunting and unsustainable use. This clause could be subject to misuse and misinterpretation and open the doors for undesirable exploitation of forests. It would be difficult for authorities to determine whether a right is customary or not. Since sections 3 (a) upto 3 (l) spell out the specific right that shall be enjoyed by tribal forest dwellers, there is no need to keep section 3 (m) as a residual clause. Section 3 (m) could, therefore, be deleted.

(ii) Section 4 (4) of the Revised Draft Bill at Flag 'B' says that no forest dwelling Scheduled Tribe member shall be evicted till the recognition and verification procedure is completed in such manner as may be prescribed. PMO has been pressing MoEF to issue revised guidelines for the identification of pre-1980 forest settlers. These draft guidelines have been approved by PMO and sent to MoEF quite sometime back. It is a matter of concern that MoEF has still not issued these guidelines. This matter has also been highlighted in para (a) on page 2 of the letter of Chairperson, NAC at Flag 'D'. It is important that MoEF should immediately issue these revised guidelines. Once this is done, the same guidelines could be incorporated in detail in the Scheduled Tribes (Recognition of Forest Rights) Bill or in the Rules thereunder. Subsequently, section 4 (4) of the Revised Bill would become redundant and could be deleted.

10. In her letter at Flag 'D', Chairperson, NAC has also made certain suggestions that certain other organisational and structural measures should be put in place before the enactment of the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill. These measures are listed at paras (b) to (f) in page 2 of the letter. These measures were to be looked into by the Task Force on Tiger Reserve. Now that the report of the Task Force has been received, PMO could simultaneously take up the implementation of these measures with the MoEF. It is suggested that most of these measures should be put in place before the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill is taken up for passing in the forthcoming Winter Session of Parliament.

11. The suggestions in paras 6 to 10 above are submitted for approval.

19/8/05
(Pulok Chatterji)
19.8.2005

Pl. speak the
on page 10
A.L.P. 19/8

Principal Secretary

ES-II SECTION

DT. No. 22856

DT. 5/10/05

Prime Minister

Discussed with Pt. Sen. The CS recommendations have since been received. JS(G) may please examine in the light of its recommendations and put up a self-contained note for PM along with the above suggestions.

25/8/05

JS(G)

1. Cabinet Secretary was requested by the PMO that a Committee of Secretaries examine the two Bills, namely, "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" drafted by the Ministry of Tribal Affairs and the "Model Bill – State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" drafted by the Ministry of Environment and Forests.
2. The Cabinet Secretary has examined the matter and felt that "the Draft Bill" of the Ministry of Tribal Affairs is the preferred option for addressing the issue of confirmation of the Rights and the Ministry of Environment and Forests need not proceed with what was only a model law.
3. The Cabinet Secretary has also come up with a suggestion on the Draft Bill of the Ministry of Tribal Affairs under point 13 of the note. This could be accepted except with reference to 13 (d) where he says that "National Parks and Sanctuaries may initially be taken out of the purview of the Draft Bill or considered for implementation after proper safeguards have been developed and rules framed."
4. The anxiety on National Parks/Sanctuaries has been created because of the immediate context of the Tiger crisis which has been gone into detail by the Tiger Task Force. The Task Force also suggests relocation in core areas but also highlights the need both for having a new paradigm of inclusive conservation and that if relocation is required in unavoidable cases it shall be based on a scientific assessment of the core area and that there should be a time-bound programme for this. It may be borne in mind that so far out of 1500 villages related to Tiger Sanctuaries only 80 villages have been relocated in the last 30 years.
5. It would not be fair to put the rights of these people on hold on an indefinite basis and instead the opportunity should be utilized to force the issue of conservation and relocation by giving temporary "provisional" pattas which will become permanent if people are not relocated within a defined timeframe of two years in the maximum. This will therefore aid the cause of conservation. It would have to be selectively done only in those areas where it is absolutely necessary to relocate people.
6. It may be pertinent to mention here that this entire issue of Rights on Tribal Land adversely affecting wild life conservation was hyped up by the wild life conservationists based on misrepresentation of facts. No land that is presently not in possession is being regularized. Secondly, the total

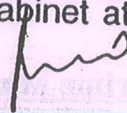
area of such occupation (which the MoEF calls "encroachments") is only → 13.43 lakh ha that is 1.74% of the 768.436 lakh ha of recorded forest area in the country. Under this, already 3.65 ha of land that is 0.47% has been regularized by MoEF. Given the fact that the Bill is restricted to Scheduled Tribes only, a percentage (60% to 70%) of this land would be eligible for record of rights. This conferral of basic land rights which is a democratic political right of the adivasi who is the first dweller should be seen against the fact that over 10 lakh ha of land have been given over by the Ministry of Environment and Forests legally for mining, industry, and other development projects. Given the tremendous expectations of the tribals for recognition of their long overdue rights it is essential that the Government decide on this matter urgently.

7. For effective implementation, Cabinet Secretary has suggested two Committees at the Central level –

- A Committee headed by the Prime Minister with the Ministers in-charge of the Ministry of Environment and Forests, Ministry of Home Affairs and Ministry of Tribal Affairs as members and
- A Committee headed by the Cabinet Secretary with Secretaries of Ministry of Environment and Forests, Home Affairs and Tribal Affairs along with the representatives of the State Governments, as members

These Committees should include the Ministries of Panchayati Raj which is mandated to oversee Panchayati Raj Extension in Scheduled Areas (PESA) and Ministry of Rural Development which would be able to fund the greening of degraded land under NREGA as an option that combines livelihood security and conservation. ←

8. With these changes the Cabinet Secretary's suggestion to give a go ahead to the Draft Bill given by the Ministry of Tribal Affairs may be accepted and the Ministry directed to place the Bill in the Cabinet at the earliest.


[R. Gopalakrishnan]
August 29, 2005

AS (P)

Principal Secretary to PM

PM

9. We could agree with the recommendations of the CoS that the draft Bill of the Ministry of Tribal Affairs should be brought forward and that

1/10/05
29/8

S 'G' to PM

By No 601-S

Date 29/8/05

NOTIFICATION

No. 22861

Date 5/10/05

→

there is no need to pursue the draft Bill prepared by the Ministry of Environment and Forests. If this is approved by PM, the two Ministries could be informed accordingly.

10. The Ministry of Tribal Affairs could further be informed to take action to obtain Cabinet approval on the draft Bill prepared by it so that it could be introduced in Parliament during the forthcoming Winter Session.

11. The Ministry of Tribal Affairs could also be advised that before processing the draft Bill any further, it may first consider the suggestions given in paras 8 and 9 on pages 2&3 /notes.

12. Simultaneously, the Ministry of Environment and Forests may be asked to initiate action on the suggestions given in paras 1 (except sub- paras (v) and (vi)) and 4 of the note of the undersigned dated 22.08.2005 at flag "X" which has been approved by PM. The MoEF may be asked to send, within two weeks, their considered views on the proposals in sub- paras (v) and (vi) of para 1. PMO may like to ensure that substantive action on all the suggestions given in paras 1 & 4 of the note at Flag "X" has been completed before the Tribal Rights Bill of the Ministry of Tribal Affairs is taken up for consideration by Cabinet and Parliament.

Shri taken

Pl. speak done on para (12) *Shri* AS (P) 31/8

[Signature]
31/8/05
(Pulok Chatterji)
31.08.2005

[Signature]

~~Principal Secretary~~

Paragraphs 9, 10, 11 & 12 could be approved for follow up action.

~~Prime Minister~~

Shri
19

Mamendra Singh
23.9.2005

AS(P)
JS(G)

May like to follow-up on these orders and prepare a brief for PM on the Tribal Rights Bill.

[Signature]
23/9/05

22869
5/10/05

28/PM/6.105
Secy to PM 119
No. 6635-6/05
31/8/05

JS(G)



सत्यमेव जयते

Meena Gupta,
Secretary
Tele: 23381652
Fax : 23073160

GOVERNMENT OF INDIA

जनजातीय कार्य मंत्रालय

MINISTRY OF TRIBAL AFFAIRS

शास्त्री भवन, नई दिल्ली-110001

SHASTRI BHAWAN, NEW DELHI-110001

Website: www.tribal.nic.in

D.O. NO.17014/4/2005-PC&V

28th October, 2005.

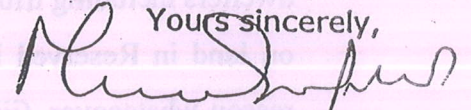
Dear Dr. Ghosh,

Kindly refer to the telephonic discussion I had with you today after the consultation workshop with the experts organized by PMO on the proposed Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was over.

2. While the comments sent by the Ministry of Environment and Forests vide their letter No.2-3/2004-FC(Pt.I) dated 13th October, 2005, in response to our U.O. NO.17014/04/2005-S&M dated 10th October, 2005, were discussed in the workshop today, it would be worthwhile to hold further discussions between the Ministry of Environment and Forests and this Ministry to finalise the Bill to our mutual satisfaction. Therefore, as agreed we will be meeting on 4th November, 2005 at 10.30 A.M. in your office.

3. Meanwhile, I would request you to kindly direct the concerned officials to send their written comments, if any, for improvement of the proposed ST Bill to us, before our proposed meeting on 4th November, 2005 so as to give us a chance to look at the suggestions in advance. I am marking a copy of this letter to the DG (Forests) whom I have spoken to separately.

Yours sincerely,


(Meena Gupta)

Dr. Prodipto Ghosh,
Secretary,
Ministry of Environment and Forests,
CGO Complex, Paryavaran Bhawan,
New Delhi-110003.

Copy to Shri J.C. Kala, DG and Special Secretary (Forests), Ministry of Environment and Forests, New Delhi.

95
GOVERNMENT OF INDIA
MINISTRY OF TRIBAL AFFAIRS
SHASTRI BHAWAN, NEW DELHI-110011
FOREST RIGHTS (RECOGNITION AND VESTING) BILL, 2005

A
BILL

to recognize and vest forest rights in the forest dwellers and other forest dependent communities, including tribals, following due procedure, and to simultaneously ensure conservation and development of forests in general.

WHEREAS the Central Government has always been concerned about welfare of the people living in and around forest areas who are dependent on forests for their subsistence;

AND WHEREAS conservation of our natural resources including that of forests is essential for well-being of not only those who live in and around the forest areas, but of the entire humanity;

AND WHEREAS forest lands and Minor Forest Produce constitute main source of livelihood for forest dwellers and other forest dependent communities;

AND WHEREAS a number of enabling instruments, including guidelines, under the Forest (Conservation) Act, 1980 were put in place to bestow forest land rights on forest dwellers including tribals, in respect of (i) encroachment on forest land, (ii) unsettled claim on land in Reserved Forests arising out of faulty or questionable settlement due to any reason whatsoever, (iii) patta, lease granted by any authority and (iv) conversion of forest villages into revenue villages;

AND WHEREAS Joint Forest Management guidelines were issued to encourage the States to involve forest dependent communities in protection and management of forests, and to allow them, in return, share of forest produce including Minor Forest Produce on 'care and share' principle;

AND WHEREAS legal support is desirable to achieve the objectives of these instruments;

AND THEREFORE it has become necessary to put in place an effective, practical, quick, transparent, and above all a dedicated legal system to bestow forest rights in respect of forest land on forest dwellers and other forest dependent communities, including tribals.

BE it enacted in the Fifty-sixth Year of the Republic of India as follows:-

CHAPTER I
INTRODUCTION AND DEFINITION

1. Short title, extent and commencement:

- (i) This Act may be called the Forest Rights (Recognition and Vesting) Act, 2005.
- (ii) It shall extend to the whole of India except the State of Jammu and Kashmir.
- (iii) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (iv) It shall not be applicable in National Parks and Wildlife Sanctuaries.

2. Definitions:

In this Act, unless the context otherwise requires –

- (i) 'Forest dweller' means any individual, including a tribal, who inhabits the forest land;
- (ii) 'Forest land' means land of any description falling within any notified forest area;
- (iii) 'Forest rights' mean rights of a forest dweller on
 - (a) family or communitarian basis to live on the forest land and to carry out 'permitted activities' on such land;
 - (b) communitarian basis to collect, process and trade the Minor Forest Produce in a manner prescribed through legislation by the State/Union Territory Government and its consumption, or sale to others;

- (iv) 'Communitarian basis' means based on or relating to a community of families having common traditions and inhabiting a well defined area and any other group of individuals notified as such by the State/Union Territory Government;
- (v) 'Joint Forest Management' means a mechanism that involves people in protection and management of forests, and in return for the services of the people, ensures their share in forest produce including Minor Forest Produce;
- (vi) 'Permitted activities' mean
- (a) construction in an eco-friendly manner, to be regulated by the State/UT Government, of a house for habitation for self and other members of 'eligible family', on not more than twenty percent of the area in respect of which forest rights are vested under Section 4 of this Act;
- (b) agriculture in conjunction with tree cropping; extraction and sale of wood, timber and other material from cultivated trees; collection, processing and sale of 'MFP' from cultivated crops and cultivated trees; utilization of cultivated trees or any part thereof for 'bonafide purpose';
- (vii) 'Family' means a family of forest dwellers comprising husband, wife and their children; or widow, or widower or legal guardian of an orphan;
- (viii) 'Eligible family' means family satisfying the condition mentioned under Section 4 (ii) (a) of this Act.
- (ix) 'Entitlement' means total area of encroachment of forest land including the area of forest villages and forest area involved in pattas, leases, grants, etc. as on 25.10.1980 per eligible family of

forest dwellers in the State/UT, to be notified by the State/UT Government with prior concurrence of the Nodal Agency.

- (x) 'Minor Forest Produce (MFP)' means non-timber forest produce of plant origin notified by the State/UT Government as MFP in the official gazette, and includes brush wood, stumps, bamboo, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;
- (xi) 'Bonafide purpose' means use for personal subsistence like repair, construction of house for habitation of self and other members of the family, making of tools, implements, furniture etc. for self and family's use;
- (xii) 'Forest villages' mean authorized settlements established inside the forest areas and recognized as such by the State/UT Government;
- (xiii) 'Right holder' means a person who has been given any right over forest produce at the time of forest settlement proceedings as published in the Government Gazette.
- (xiv) 'Working plan' means a silvicultural management plan of the forest division, prepared on the basis of Working Plan Code, prescribed by the Central Government.
- (xv) 'Sustained basis' means the process of harvesting the yield of Minor Forest Produce in perpetuity from any forest land (s) without impairing the long-term productivity.
- (xvi) 'Carrying capacity' of a forest land means its potential to yield Minor Forest Produce on a sustained basis.

(xvii) 'Non-destructive harvesting' means the harvesting methodology and technique on the basis of sustained yield principle, as prescribed in the working plan that does not cause irreversible damage to the plants and the forest.

(xviii) 'Authorised officer' means a forest officer not below the rank of a Forest Range Officer notified as such by the State/UT Government for the purpose of Section 11 of this Act.

CHAPTER II
RECOGNITION AND VESTING OF FOREST RIGHTS IN RESPECT OF FOREST
LAND

3. Declaration of entitlement for forest land:

- (i) State/UT Government shall work out and notify in the official gazette, the entitlement as defined in Section 2 of this Act.

4. Rights of forest dwellers on forest land:

- (i) Notwithstanding anything contained in any other law for the time being in force, the Central Government hereby recognizes and vests forest rights in respect of forest land in the forest dwellers on family or communitarian basis, after due process of verification and recognition of such rights as prescribed in Section 6 of this Act.
- (ii) Recognition and vesting of forest rights under Section 4 (i) of this Act shall be subject to the conditions that –
- (a) the existing family of the forest dwellers has been continuously occupying forest land since birth and at least one of them/one of their parents has/had been in continuous occupation of forest land at least since 25th October 1980;
 - (b) the extent of forest land admissible for vesting in each eligible family shall be at the rate of entitlement; and
 - (c) total area of forest land vested under this Act in forest dwellers in any State /UT shall not exceed the total area of encroachment of forest land reported by that State/UT as per Annexure.
- (iii) the title deed of the forest land vested under Section 4 of this Act shall be registered jointly in the name of husband and wife; or widow, or