

widower or legal guardian of an orphan, as the case may be, of each eligible family or in the name of the community of eligible families,

- (iv) the forest rights vested under this Act shall be heritable, but inalienable.
- (v) the forest land occupied by forest dwellers in excess of the entitlement shall be taken over by the forest department of the concerned State/UT Government;
- (vi) in case of forest villages, the areas of common use including schools, colleges, community centres, grazing lands etc. shall be vested in the village community/Gram Sabha.
- (vii) as far as possible, the State/UT Government shall relocate the forest dwellers in whom the forest rights in respect of forest land are vested, to the forest fringe to avoid honeycombing of forests. This is also intended to facilitate integrated and comprehensive development of forest dwellers by the State/UT Government by providing them basic amenities like communication (roads, telecommunication), education, health, drinking water and irrigation facilities etc.

5. **Promotion of agriculture in conjunction with tree cropping:**

- (i) Ensuring livelihood security of forest dwellers and simultaneously promoting overall conservation and development of forests shall be central to the Act.
- (ii) Notwithstanding anything contained in any other law/rule/guidelines for the time being in force, the Central Government shall support the State/UT Government through an appropriate mechanism aiming at livelihood security coupled with overall conservation and development of forests to
 - a) relocate forest dwellers in whom forest rights are vested to the forest fringe to avoid honeycombing of forests.

- b) facilitate and promote tree cropping on forest lands in respect of which forest rights are vested,

6. Procedure for recognition of forest land rights:

State/UT Governments shall formulate detailed procedure for ascertainment, settlement and recording of forest rights of forest dwellers under Section 4 (i) of this Act. However, following shall be appropriately incorporated as essential elements of the procedure.

(a) Formation of Committees – The State/Union Territory Government shall setup:

1. Village Level Committee (VLC) to ascertain the forest rights for the purpose of this Act. Such committee shall comprise following members:
 - (i) Sarpanch of the village (Chairperson);
 - (ii) Two knowledgeable village elders or senior citizens (at least one being woman) selected for this purpose by the Gram Sabha;
 - (iii) Talathi or Patwari;
 - (iv) Chairman of the Joint Forest Management Committee (if existing) and;
 - (v) Forest/Beat Guard (to be the Secretary of the Committee).

In case of Group Gram Panchayat and for villages other than the main village, a member of Gram Panchayat will be the chairperson.

In case of forest settlements not coming under any Gram Panchayat, the traditionally accepted Mukhiya or village head shall be the chairperson.

2. Block or Taluka Level Review Committee (BLRC) to review such cases where the claimant is aggrieved by the findings of the VLC. This Committee shall comprise following members:

- (i) Member of Zilla Parishad as Chairperson (nominated by Chairperson of Zilla Parishad);
- (ii) Member of Panchayat Samiti (nominated by the Block Pramukh);
- (iii) Naib Tehsildar;
- (iv) Asstt. Tribal Welfare Officer or Asstt. Project Officer (ITDP); and
- (v) Range Forest Officer nominated by the concerned Divisional Forest Officer (to be the Secretary of the Committee).

3. District level Committee (DLC) involving Deputy Collector, Sub-Divisional Forest Officer and the representative of Tribal Welfare Department for taking final decision (Sub Divisional Forest Officer/Assistant Conservator of Forests to be the Convener of the Committee).

(b) Procedure for settlement of claims:

1. Forest dweller shall put forth his claim on forest land in a written application to the VLC with all documentary evidence to support the claim. Map of the forest land (with boundary) claimed by the applicant shall form part of the application. The claim on forest land may relate to (i) encroachment on forest land, (ii) unsettled claim on land in reserved forest arising out of faulty or questionable settlement due to whatsoever reasons, (iii) patta, lease granted by an authority, (iv) conversion of forest villages into revenue villages, and (v) any other category whatsoever, and not covered in categories (i) to (iv) heretofore.

2. The VLC shall examine the claim of the applicant in a general body meeting of the 'Gram Sabha' and record evidence and summary of proceedings. Based on evidence adduced- documentary and oral, the VLC shall record its findings about the claim of the applicant.
3. Adequate publicity shall be given using traditional and modern methods, by the VLC to the time-table for selection of two village elders as Members of the VLC, preferring claims by the applicant(s), and the dates of general body meetings of the 'Gram Sabha' for ascertainment of such claims and announcement of findings therefor. Publicity shall ensure that
 - i. all forest dwellers are informed
 - ii. all forest dwellers are given chance to prefer their claims
4. VLC will give its findings in writing to the claimants in the Gram Sabha.
5. A claimant aggrieved by the findings of the VLC shall be free to move an application before the BLRC for review of his/her case.
6. All claims verified by the VLC shall be forwarded with its findings to the BLRC.
7. BLRC will submit its recommendations to the DLC for final decision. DLC, while taking final decisions, will take following into consideration:
 - (i) DLC must satisfy itself that the name(s) of the forest dwellers exist in the census data of 1981, 1991 and 2001 including the electoral rolls of the area to confirm their existence and continued possession of forest land at least from 25-10-1980.
 - (ii) Forest dwellers had been living on forest land at least from 25-10-1980, and have been in continued possession of forest land till date.
 - (iii) In no case, the Committee shall entertain any claim in which the claimant has not been in possession of the disputed land continuously.

8. Monitoring mechanisms at District and State levels involving officials of Forest, Revenue, Tribal Welfare, Panchayat and other line departments, and representatives of civil societies shall be put in place by the State Governments to keep watch on progress of the process of ascertainment and recognition of claims of forest dwellers.

9. Sensitization workshops and training sessions should be organized with the assistance of knowledgeable NGOs for non-official persons and government officials involved in the process of verification of claims as members of VLC and BLRC.

(c) Nature of evidence to be adduced before the Village/Block Committees:

1. It is necessary to clarify the evidence that may be used to decide the period of land occupation. As registration of a preliminary offence report (POR) by the State Forest Department (SFD) or any such other report by any other department/authority is not necessarily a proof of the claim or otherwise, an assessment of the ground realities as these existed in the relevant time is necessary, and is possible by a verification of natural and situational evidence of the subsisting claim. VLC being a local body and conversant with ground realities shall accordingly record the evidence of the claimant and other knowledgeable villagers about the length of time since the land has been in the claimant's continuous possession. Benefit of doubt should be given to the claimant.

2. A variety of evidence, both oral and/or documentary, establishing the claimed period of continuous possession of forest land can be regarded as proof of the claim, and hence the Committee can accept the following as evidence:

(i) Documentary evidence from any Governmental/Semi-Governmental source;

- (ii) Documentary evidence from any prior research, documentation or publication of a reputed institution, including survey maps;
- (iii) Relevant evidence gathered by more than three members of the VLC including Patwari from a spot verification;

(d) Criteria for accepting claims:

1. While ascertaining the claim, the village level committee shall pay attention to the following criteria
 - (i) All claims where the claimant has government/semi government/other relevant documentary evidence in support, and the claimant has been in continuous possession of forest land at least from 25-10-1980 till date, should be acceptable.
 - (ii) If a claimant does not have documentary evidence in support of her/his claim but the Gram Sabha on the basis of other relevant evidence is of the opinion that the claim is legitimate, such claims should be carefully examined by the VLC, and the benefit of doubt should be given to the claimant.
 - (iii) If the claimant does not have relevant documentary evidence and the Gram Sabha has also rejected her/his claim, the veracity of such claims shall be carefully examined by the VLC, and such claims should be specifically referred to the BLRC.
 - (iv) All claims that are favourably decided, shall be forwarded by DLC to the PCCF of the State/UT Government who in turn shall forward the proposal with his recommendation, to the State/UT Government.
 - (v) State/UT Government shall submit the proposal to the Nodal Agency giving salient details including names, residential particulars of the forest

dwellers and the extent of claim recommended on forest land on family or communitarian basis as the case may be. Each proposal shall accompany a detailed project for promotion of tree cropping in conjunction with agriculture in respect of forest lands on which forest rights are proposed to be vested. Nodal Agency shall examine the proposal under provisions of this Act, and shall convey its decision to the State/UT Government for issuing appropriate notification.

7. Power to issue directions:

In the performance of duties and exercise of powers conferred by this Act, every authority referred to in Section 6 of this Act shall be subject to such general or special directions as the Central Government may, from time to time, prescribe.

CHAPTER III
RECOGNITION AND VESTING OF FOREST RIGHTS IN RESPECT OF MINOR
FOREST PRODUCE

8. Declaration of Minor Forest Produce:

- (i) State/UT Government shall notify in the official gazette, a list of Minor Forest Produce to be considered as such for the purposes of this Act.
- (ii) State/Union Territory Government may, from time to time, by notification, add to or delete from the list, a Minor Forest Produce from the date specified therein.

9. Rights of forest dwellers on Minor Forest Produce:

- (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 Minor Forest Produce in the forest dwellers on communitarian basis as prescribed in Section 9 (ii) of this Act.
- (ii) Recognition and vesting of forest rights under Section 9 (i) of this Act in respect of collection, processing and trade of MFP shall be subject to the conditions that –
 - (a) MFP shall be harvested on a non-destructive and sustainable basis, based on the carrying capacity of the area and provisions of the working plans.
 - (b) the State/UT Government shall assign a defined extent of the forest area by notification, to a forest dependent community.
 - (c) meeting the needs of domestic requirements of forest dwellers on communitarian basis and the right holders of the area shall be the

- first charge on the Minor Forest Produce of the forest area assigned to the community.
- (d) the trade in respect of such Minor Forest Produce, for which any law has been enacted by the State/Union Territory Government, will be in accordance with the provisions of the said law, so long as the said law is in force.
 - (e) the trade in respect of such Minor Forest Produce for which no specific law has been made, shall be in accordance with the procedure, as prescribed by the community State/UT Government.
 - (f) the community shall utilize at least 25% of the sale proceeds on regeneration and development of forest (s) wherefrom Minor Forest Produce is collected.
 - (g) State/UT Government shall make rules for the purposes of implementation of provisions of Section 9 (ii) of this Act.

CHAPTER IV
JOINT FOREST MANAGEMENT

10. Applicability of Joint Forest Management (JFM):

- (i) The State/UT Government shall extend appropriate JFM mechanism to all those forest dwellers and other forest dependent communities in whom forest rights are vested under this Act and who have not yet been covered by JFM. However, those already covered by the existing JFM mechanism shall continue to be so covered.
- (ii) The State/UT Government may make rules for the purpose of Section 10 (i) of this Act.

CHAPTER V
MISCELLANEOUS

11. Nodal Agency:

The Ministry of Environment and Forests in the Government of India shall be the nodal agency for implementation of the provisions of this Act.

12. Duties and responsibilities:

It shall be the duty of the forest dwellers and other forest dependent communities to identify themselves, in the manner as notified by the State/Union Territory Government, with the protection and development of the forest areas in respect of which forest rights have been vested under this Act.

13. Offences and Penalties:

- (i) Whosoever contravenes or abets the contravention of any of the provisions of this Act, shall be accused of committing offence under this Act, and shall be punishable with simple imprisonment for a period which may extend to three months, and
- (ii) In case of the offence being committed more than once, the forest rights of the person who has committed the offence shall be liable to be derecognised.
- (iii) Authorised officer shall be responsible for taking cognizance of and prosecuting the accused in the court of law.

14. Power to make rules:

- (i) The Central government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (ii) 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

353

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.

1. The draft rules of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of forest Rights) Act, 2006 has been forwarded for notification in the Gazette. As per the Act, the rules will come into effect after the expiry of a period of 45 days from the date of notification.

2. These rules have been formulated with the help of a Technical Advisory Group chaired by Shri S.R. Sankaran and vetted by the Ministry of Tribal Affairs and the Ministry of Law. The implications of this Act in ending the insecurity of the tribal population in several areas of the country is considerable. It can be legitimately hoped that state governments would assign it the priority it deserves.

3. It would, however, be desirable if the Prime Minister writes a letter to all Chief Ministers mentioning the notification of the rules and suggesting that they put the institutional arrangements required under the Rules into place as soon as the notification becomes operational. If approved, the draft of the letter to be sent to the Chief Ministers of the states could be obtained from the Ministry of Tribal Affairs.

(R. Gopalakrishnan)
June 14, 2007

*Let's get a Dta
15/6*

II(S)

AS(P)

Principal Secretary to PM

*In response to request for draft letter for
NTA received raising some issues.
Irrespective of the letter to go from PM
which was only a suggestion - facts cited
in the letter raise concern as whether
NTA appreciates the need for timely*

4673/5/PM/07

action as his important

2068/AS(P)/6/07

11/10/07

Act of Parliament. They would
need to be bound down to a
calendar. Discussed with

Principal Secretary. Meeting may be
scheduled for 5 PM on 10 July.

Secretary E.F. may do & invited
day out by DTA. Also (ASCP)

he may request DTA to
invite John St. Antonian Clergymen
of the Task Group on Rules.

hms
11/7/10

~~Dir (A)~~

Meeting held

No. 0 (P)

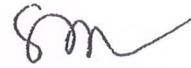
Prime Minister's Office

South Block,
New Delhi - 110 011

It is requested that the Ministry of Tribal Affairs may kindly give in a tabulated form the key differences between the Bill that was introduced in the Parliament based on considerable internal consultation and the subsequent changes suggested by the JPC.

19/2/06
Memo/Dy. No.PC&VT200-6
Date/Date: 1/6/06

on tour



[Sanjay Mitra]
Joint Secretary to PM
Tel.# 2301 8876

Secretary, Ministry of Tribal Affairs. [Ms Meena Gupta]

PMO I.D. No. 560/51/C/3/05-ES-II Dated: 31.5.2006

JS (CRK)
~~JS (PC&V)~~
1/6/06

Dr. No. 2797
Dated: 1/6/06

~~JS (PC&V)~~
1/6/06

1/6

~~JS~~
Toung
M
1/6/06

पी.आर. किन्दिया
P.R. KYNDIAH



(2/18)

मंत्री
जनजातीय कार्य एवं

भारत सरकार
शास्त्री भवन, नई दिल्ली - 110001
MINISTER FOR TRIBAL AFFAIRS &
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110001

Dear Shri Chavanji,

Date October 26, 2006

Please refer to the telephonic discussion I had with you on the
Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

My considered views are as follows:

1. ^{xy} While the Bill should be tribal focus, we can not be insensitive to non-tribal forest dwellers who have been living in the forests for generations. The Joint Parliamentary Committee has suggested that for non Scheduled Tribes forest dwellers, they must have lived in the forest for minimum three generations to entitle to forest rights. (Here, a generation may be defined as 20 or 25 years). This is a sound and reasonable condition. (The title of the Bill, however, should be retained.)
2. ^{as per} Official records, according to the survey, show that as on 31.03.2004, 13.43 lac hectares (1.73%) of Indian recorded forest area has been encroached upon.
3. ^{which} The Bill must confine to settlement of land rights only on this particularly area. It would be reasonable that the cut off date should be 31.03.2004 instead of 1980 which is not reasonable as a new generation of forest dwellers has come into existence since 1980.

Beside, the NDA Government had already notified 1993 as the cut off date.)

4. While the Bill includes 2.5 hectares per nuclear family to be settled, I have been personally consistent in my views that land should be on the basis of the principle of "as is where is".)
5. The land ceiling which was earlier stressed by Ministry of Environment and Forests is open to reconsideration. Further, the concept of the "nuclear family" is being opposed by the Tribal MPs as it is likely to impinge adversely on the community and joint family system and inbuilt traditions.

I must also mention here that these views have concretized after detailed and long interactions and discussions with the

- a) Chairman of the JPC,
- b) All Party Tribal MPS in a well attended general meeting, and
- c) Prominent Congress Tribal MPs individually.

I also held discussion with Smti Brinda Karat, MP on the need that the Bill should be tribal focus. I may also mention that I have taken special note on the significance of the passage by the Parliament and subsequent assent of the President on the **Wildlife Protection Bill**.

With kind regards
Sincerely
P. R. Kyndiah
(P. R. Kyndiah)

**Shri Prithviraj Chavan,
Minister of State
Prime Minister's Office,
South Block,
New Delhi.**

Subject: Brief on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

The Ministry of Tribal Affairs was mandated to formulate a comprehensive Bill for undoing the historical injustice done to the forest dwelling Scheduled Tribes who have been residing in forests for generations but whose rights have not been recorded. The final formulation of the Bill was done to achieve this objective after a wide range of consultations and a general consensus was reached with the various stakeholders – both environmental and tribal activists as well as the Ministries of Environment & Forests, Tribal Affairs and Legal Affairs.

2. The Bill was introduced by the Ministry in the Lok Sabha on 13.12.2005. However, it was referred to the JPC. The JPC has made proposal for introduction of major changes in the Bill prepared by the Ministry namely,

- 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. Deleted the provision relating to recognition of rights in core areas of National Parks and Sanctuaries on provisional basis.
- v. 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.
- vi. 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

16/11

Internal

Reference Note of PS(S) to PM and JS(M) dated 6.11.2006 regarding important issues likely to be discussed during the forthcoming Parliament Session. Brief note on Issue No. 28 - STs (Recognition of Forest Rights) Bill and current status is placed below (Flag-'A') for kind approval and onward submission please.

KA
(Kalpana Awasthi)
8.11.2006

JS(G)

A amended

KA
8/11

JS(A)

ES/2

VI 9.11

KA 8/11/06

3647 JS(G) 11/11
75 JS(A) 11/11

Sl No. 1 (PM)

Most Immediate

PRIME MINISTER'S OFFICE

South Block,
New Delhi

MOTA fkm

The Prime Minister would chair a meeting to discuss the following issues with the Ministry of Environment & Forests on 15th January, 2005 at 10:30 AM (Room No.152, South Block)

1. Issue of unsettled rights of people in forest areas prior to 1980
2. Conversion of forest villages into revenue villages
3. Implications of amendment issued on 7th July 2004 on Environmental Impact Notification, 1994

Ministry is requested to send comprehensive notes on these subjects by 12th January, 2005

SL/
(K.V. Pratap)
Deputy Secretary
Tel. No.2301 7442

1. PS to Minister of Environment & Forests: with a request to the Minister to attend the meeting.
2. Secretary, Ministry of Environment & Forests (Dr. Prodipto Ghosh), may also attend

PMO UO No.250/31/c/1/04-ES.2

dated January 11, 2005

NOO

The following are also requested to attend the meeting:

1. Deputy Chairman, Planning Commission
2. Special Adviser to the Prime Minister
3. Principal Secretary to PM
4. Cabinet Secretary
5. Shri Bhalchandra Mungekar, Member, Planning Commission and Chairman, Standing Committee on Inter-Sectoral Issues of Tribal Development
6. Secretary, Ministry of Tribal Affairs
7. Secretary, Planning Commission
8. Home Secretary
9. Secretary, Ministry of Panchayati Raj
10. Secretary, Department of Legal Affairs

Dir R.E.
PP. put up with
Comments urgent
11/11/05

Today H.
Upadhyay
12/11/05

K.V. Pratap
(K.V. Pratap)
Deputy Secretary
Tel. No.2301 7442
SM
Dr. Sachdev
12/11/05

65
Dr. No. 110/DIR(RK)
Dated 12-1-05

110/DIR(RK)
12/1/05

डा० सं० ५
दिनांक 11/01/05
सचिव (ज. मा.) 11/05

Background material: Issues/Concerns, which need to be considered in the proposed "Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) bill

1. Right of the STs over land possessed by them for habitation and their subsistence agriculture

The threat of eviction consistently looms large in the psyche of the ST population, who have been very deeply rooted in the forest areas for ages. In order to undo the historical injustice, the rights of the STs over land possessed by them for habitation and their subsistence agriculture need to be recognized.

So, if The state said they, it obviously got Overruled by The PRAO. Why?

While extension of the cut off date from 1982 to 1993 is essential to solve the problem, another equally important issue is regarding the process of accepting the claims of STs as the inhabitant of the areas prior to the cut-off date. The Forest Department has generally been insisting on land record or documentary evidence, such as, the first offence report or the encroachment removal proceedings initiated against the claimant prior to the cut-off date. The onus of proving possession through acceptable documentary proof of possession prior to the cut-off date lies with the STs. It is a well-known fact that most of the STs being inhabitant of these areas for ages never got an occasion to get their rights recorded as the revenue authorities never accepted the right of the individuals inside the forest areas.

The most crucial question, therefore, is that of the onus of proof on STs in respect of the possession of land. We need to perhaps approach this issue in a slightly different manner. As is well known, certain communities have been scheduled for particular State/area after meticulously taking various considerations into account, including long duration of their habitation in the concerned area. Therefore, the presumption should be that the members of tribal community scheduled for the particular area in question should be presumed to be the inhabitant of that area unless proved otherwise by the Department. Meaning thereby that the requirement of documentary proof of possession prior to cut-off date should not be insisted upon at least from the members of those communities of STs who are scheduled for that particular area. In respect of these communities, the burden of proof should shift to the Department to prove that they have encroached after the cut-off date.

2. Development of Forest villages

It is estimated that there are around 3000 forest villages in the country. The forest villages are deep inside the forest areas and were established during the British period for supply of labour for the forestry operations. These are well recorded in the records of Forest Department. The condition of STs living in the forest villages is far more precarious and vulnerable due to

displacement threats on one hand and non-implementation of developmental activities on the other, as they often do not have any title over lands. This also often excludes them from the normal developmental activities, such as, housing, drinking water, schools etc. under the programmes of the line Ministries. They often do not have participation in the Panchayati Raj processes. As regards the development of these forest villages, it was the responsibility of the Forest Department but due to general restrictions under the Forest (Conservation) Act and non-availability of funds, most of the forest villages do not even have the minimum basic amenities, such as, hospitals, drinking water, schools, etc.

3. The Conferment of ownership of MFP on tribals

Another issue directly impinging on the interests of the tribal people living in and around the forest relates to "Conferment of ownership rights over the Minor Forest Produce (MFP)" to the tribals. The major issue in this regard is that the term "Minor Forest Produce" has not been clearly defined. The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) gives the rights of ownership of MFP to the respective Gram Sabhas and is inclusive of all the reserved forest areas since it is applicable to all the scheduled areas (Section 4(m) (ii).

The collection of Non-Timber Forest Products (NTFP) 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 NTFP. Despite the transfer of control and management of natural resources to the STs, the collection and trade of NTFP is still monopolized by the Forest Department, Corporation of the State. This is perhaps one of the largest irritant and the source of the exploitation of the STs. The States get major share of revenue from the sale of NTFP. For instance, the tendu patta, provides large amount of revenue to the State Exchequer of Chhattisgarh, Madhya Pradesh, Jharkhand and Orissa. The monopoly of the corporations and the contractor system needs to be urgently done away with as the contractor in most of the tribal areas are understood to have nexus with the naxal groups and pay extortion money to them for their trade. The poor STs are just employed by the contractors as the helpless labourers.

/ The respective Gram Sabhas need to be given the right of ownership of all the MFPs. / 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 State Governments would also need to bring about appropriate legislations/ amendments in their respective Panchyats Acts to confer ownership rights on people from weaker sections working in forests. The Ministry of Environment & Forests have also drafted a model Bill for conferring ownership rights on MFP.

4. Extension of PESA Act to all the scheduled areas into forest villages

The PESA Act needs to be extended to the entire scheduled areas, includes forest areas. This needs to be reconciled that it does not go against the basic spirit, approach and provisions of Indian Forest (Conservation) Act, Wildlife (Protection) Act and several directives of the Hon'ble Supreme Court on the subject (In view of the large scale unrest in the scheduled areas (also happens to be the major non-Himalayan and coastal forest areas of the country), it is necessary that the people are directly empowered and involved in management of their day to day affairs including control/management of natural resources and powers to plan and implement programmes out of the funds devolving through the line Ministries.) It is, therefore, essential that the provisions of PESA are implemented in letter and spirit which would also go a long way in empowering the STs to have a direct reach of our programmes in the scheduled areas and way also arrest the menace of naxalism in a big by involving the youths in the process of development.

5. Recognition of IPRs

The STs have huge knowledge of traditional wisdom acquired by them over centuries. There are large number of practices relating to regeneration/ management of Environment and Forests that ST people observe very religiously. The experts in the ST villages very effectively use the knowledge about herbal medicines and its usage. The TSG may consider if the issues relating to IPRs need to be also addressed through the proposed Bill or left as such to be taken care of by specific Legislation for IPRs.

6. Assigning Forestry Activities to JFMs/SHGs of STs

Most of forestry activities are being undertaken through the contractors in the States. In order to ensure involvement of STs in all forestry operations, including afforestation, removal of timber, arresting fire hazards, wild life protection, these could be assigned to self-help groups or the JFM Committees of tribals living inside or in the vicinity of forests, TSG may consider if this also needs to be addressed through the proposed Bill.

(To be published in
Part II, Section 3,
Sub - section (ii)
of the Gazette of
India, Extra
Ordinary, Dated
the 20th March, 2006.)

Doc. CD-152/2006

RASHTRAPATI BHAVAN
NEW DELHI

Notification

Dated the 17th March, 2006.

S.O. (E).- In exercise of the powers conferred by clause (3) of article 77 of the Constitution, the President hereby makes the following rules further to amend the Government of India (Allocation of Business) Rules, 1961, namely:-

1. (1) These rules may be called the Government of India (Allocation of Business) Two hundred and eighty fifth Amendment Rules, 2006.

(2) They shall come into force at once.

2. In the Government of India (Allocation of Business) Rules, 1961, in the Second Schedule,-

(i) under the heading "MINISTRY OF ENVIRONMENT AND FORESTS (PARYAVARAN TATHA VAN MANTRALAYA)", after entry 47, the following 'NOTE' and entries relating thereto shall be added, namely:-

"NOTE:- The Ministry of Environment and Forests will be responsible for overall policy in relation to forests, except all matters, including legislation, relating to the rights of forest dwelling Schedule Tribes on forest lands.";

.....2/-

(ii) under the heading "MINISTRY OF TRIBAL AFFAIRS (JANJATIYA KARYA MANTRALAYA)", after entry 5, the following entry shall be inserted, namely:-

"5A. All matters including legislation relating to the rights of forest dwelling Scheduled Tribes on forest lands."

A.P.J. Abdul Kalam
President

[File No. 1/22/1/2006-Cab.]

No. 701/3/1/2005-Cab.
GOVERNMENT OF INDIA (BHARAT SARKAR)
CABINET SECRETARIAT (MANTRIMANDAL SACHIVALAYA)
RASHTRAPATI BHAVAN

New Delhi, the 23rd December, 2005
2 Pausa, 1927 (S)


Subject: Constitution of a Group of Ministers (GOM) to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

The Cabinet, in its meeting held on 1.12.2005, while considering the note dated 22.11.2005 from the Ministry of Tribal Affairs regarding 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005' *inter-alia* 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.

2. It has, accordingly been decided, with the approval of the Prime Minister, to constitute a Group of Ministers (GOM) with the following composition:-

- Shri Pranab Mukherjee,
Minister of Defence;
Shri Shivraj V. Patil,
Minister of Home Affairs;
Shri P.R. Kyndiah,
Minister of Tribal Affairs and Minister of Development
of North Eastern Region;
Shri H.R. Bhardwaj,
Minister of Law & Justice;
Shri Mani Shankar Aiyar,
Minister of Petroleum & Natural Gas and Minister of
Panchayati Raj;
Smt. Meira Kumar,
Minister of Social Justice & Empowerment;
Shri A. Raja,
Minister of Environment & Forests;
Shri Subodh Kant Sahay,
Minister of State (Independent Charge) of the Ministry of
Food Processing Industries; and
Shri Kapil Sibal,
Minister of State (Independent charge) of the Ministry of
Science & Technology and Minister of State (Independent
Charge) of the Department of Ocean Development.

3. The Group of Ministers will be serviced by the Ministry of Tribal Affairs


(K.L. Sharma)
for Cabinet Secretary
Tele: 2301 5802

To

Shri Pranab Mukherjee, Minister of Defence.
Shri Shivraj V. Patil, Minister of Home Affairs.

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Shri P.R. Kyndiah, Minister of Tribal Affairs and Minister of Development of North Eastern Region.
Shri H.R. Bhardwaj, Minister of Law & Justice.
Shri Mani Shankar Aiyar, Minister of Petroleum & Natural Gas and Minister of Panchayati Raj.
Smt. Meira Kumar, Minister of Social Justice & Empowerment.
Shri A. Raja, Minister of Environment & Forests.
Shri Subodh Kant Sahay, Minister of State (Independent Charge) of the Ministry of Food Processing Industries.
Shri Kapil Sibal, Minister of State (Independent charge) of the Ministry of Science & Technology and Minister of State (Independent Charge) of the Department of Ocean Development.

Copy forwarded for information to :-

Secretary to the President.
Secretary to the Vice-President.
Principal Secretary to the Prime Minister.


(K.L. Sharma)
Deputy Secretary (Cabinet)

Copy also forwarded, for information to :-

Secretary, Ministry of Tribal Affairs.
Secretary, Department of Legal Affairs.
Secretary, Legislative Department.
Member Secretary, Planning Commission.
Secretary, Ministry of Social Justice and Empowerment.
Secretary, Ministry of Panchayati Raj.
Secretary, Ministry of Environment and Forests.
Secretary, Ministry of Parliamentary Affairs.
Secretary, Department of Land Resources.


(K.L. Sharma)
Deputy Secretary (Cabinet)

* SKB *

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URGENT

PRIME MINISTER'S OFFICE

New Delhi-110011

Subject: The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

Principal Secretary to PM would chair a meeting to discuss the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 on 17th November, 2005 at 4.30 p.m. in his Chamber, South Block, New Delhi.

3. Addressees of this note are requested to kindly make it convenient to attend the meeting.

KA

(Kalpana Awasthi)
Director

Secretary, Ministry of Tribal Affairs
Secretary, Ministry of Environment & Forests

PMO UO NO. 560/51/C/3/05-ESR Dated 11.11.2005

14/11

3728
Dy. No. ...
Date. 16/11

JS(RK)

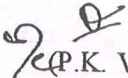
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1452
Dy. MA. ...
Dated ...

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16/11/05
JS(PCM)

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9. PMO may kindly see the revised draft Bill for perusal and for further discussions.


(P.K. Varma)
Deputy Secretary
Tele No. 23074408

Prime Minister's Office (Shri R. Gopalakrishnan, Joint Secretary to PM)
M/o Tribal Affairs' U.O. No.17014/04/2005-S&M/PC&V (Vol.II) dated 14.11.2005

(290)

Minutes of the Meeting to discuss the ST(Recognition of Forest Rights) Bill, 2005 chaired by MOS(PMO) on 28th October, 2005 in South Block, New Delhi

In pursuance of the decision taken in the meeting chaired by Prime Minister on 30.9.2005 at 7-RCR, New Delhi, a meeting to discuss the STs (Recognition of Forest Rights Bill 2005) drafted by Ministry of Tribal Affairs was chaired by MOS(PMO) on 28.10.2005 in South Block in consultation with various participants.

2. List of participants is annexed.
3. MOS(PMO) took the following decisions:
 - a) The M/o Tribal Affairs will pilot the Bill and suggestions on specific Clauses that still need improvement may be given to M/o Tribal Affairs within 7 days.
 - b) On the key issue of settling rights of Tribals for National Parks and Sanctuaries, it was overwhelmingly felt that rights should be vested and if tribals were required to be relocated on grounds of keeping certain areas inviolate for animals then, that manner of relocation of tribals, may be framed in a just and transparent manner. The specific formulation for this will have to be incorporated in the bill.
 - c) Principal Secretary to PM to hold the meeting with Secretary, M/o Tribal Affairs which is piloting the bill, and

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Secretary, MoE&F to ensure that the genuine concerns of MoE&F are responded to, in the bill in its final version.

- d) A request was made by some of the members for the final version of the bill. The draft version after consultations, could be shared with the members so as to respect Parliamentary privilege.

Internal

Chairperson, NAC, vide letter dated 7.9.2005 has suggested that the essential points of view of persons representing interests of environmentalists and of tribals may be called for discussion at the PM's level to take a final view on the inclusion/non-inclusion of National Parks and Sanctuaries in the ST's (Recognition of Forest Rights) Bill. The list of names for PM's consideration as proposed in the letter are

(a) From among environmentalists/wildlife specialists:

- (i) Shri Valmik Thapar
- (ii) Shri K. Ullas Karnath
- (iii) Dr. M.K. Ranjit Sinh and
- (iv) Prof. Madhav Gadgil

(b) From among experts on tribal issues:

- (i) Smt. Aruna Roy
- (ii) Dr. N.C. Saxena
- (iii) Dr. Ganesh Devy and
- (iv) Ms. Madhu Sarin

2. It has also been stated that PM may finalise the most appropriate persons to be invited for the proposed discussion meeting, at his level.

3. In view of the fact that most of these experts comments have already been obtained in the past, few academicians who have conducted studies on the subject may also be considered.

4. File is submitted for finalization of the names for the proposed discussion meeting with PM.

KA
(Kalpana Awasthi)
12.9.2005

JS(G)

to PM
No ..1434-V...
.....12/9/05...
1. JA 11/10/05

1. Chairperson, NAC has sent a letter suggesting an internal consultation. The Chairperson has suggested the following names from the two categories,

a) Four environmetalists/wildlife specialists:

- i) Shri Valmik Thapar
- ii) Shri Ullas Karanth
- iii) Dr. M.K. Ranjit Sinh and
- iv) Prof. Madhav Gadgil

b) Experts on tribal issues:

- i) Smt. Aruna Roy
- ii) Dr. N.C. Saxena
- iii) Dr. Ganesh Devy
- iv) Ms. Madhu Sarin

to be invited for discussion.

2. It is suggested that in addition to the names suggested → Shri Pradip Prabhu who headed the delegation that met the Prime Minister first on this issue and is the head of the Campaign for Survival and Dignity (in which Smt. Madhu Sarin works) should be invited.

3. Four important contemporary scholars from diverse disciplines of social science who have researched and written on the issues of conservation and tribal history and specifically on sanctuaries should also be considered to be invited.

- a) Prof. Ramachandra Guha
- b) Prof. Nandini Sundar
- c) Shri Mahesh Rangarajan
- d) Shri Ashish Kothari

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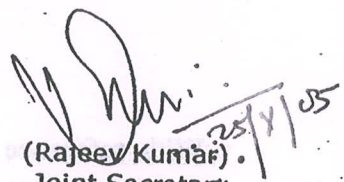
Government of India
Ministry of Tribal Affairs

Sub: "One Day Consultation Workshop" on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

Reference Prime Minister's Office U.O. No. 560/51/C/3/05-ES.II dated 7.10.2005 on the above subject.

2. As desired by PMO, this Ministry had requested the Ministry of Environment & Forests to provide their inputs on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 for the proposed Workshop, which is now being organised by PMO.

3. The Ministry of Environment & Forests have furnished their inputs vide their letter No. 2-3/2004-FC (Pt.1) dated 12.10.2005, a copy of which is enclosed. We have also analysed the observations made by the Ministry of Environment & Forests and prepared our comments thereon. A statement showing the observations of the Ministry of Environment & Forests on the Bill and the stand of this Ministry thereon is enclosed for information of PMO for the proposed Workshop.


(Rajeev Kumar)
Joint Secretary
Tele: 23073489

Prime Minister's Office [Shri R. Gopalakrishnan, Joint Secretary to PM]
M/o Tribal Affairs UO No. 17014/04/2005-S&M/PC&V (Vol.II) dated 25.10.05

MOST IMMEDIATE
BY FAX/SPECIAL MESSENGER

F.No. 2-3/2004-FC (Pt. I)
Government of India
Ministry of Environment and Forests
(F.C. Division)

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110003.
Dated: 12th October 2005.

OFFICE MEMORANDUM

Sub: One day Consultation Workshop on "The Scheduled Tribes (Recognition of Forest Rights) Bill", 2005.

With reference to the Ministry of Tribal Affairs, U.O.No. 17014/04/2005-S&M dated 10.10.2005 on the subject mentioned above, the undersigned is directed to convey the following comments on behalf of the Ministry of Environment and Forests:

1. The proposed Bill of the Ministry of Tribal Affairs (MoTA) is not based on the principle of social equity. It intends to grant rights over forest land only to the Scheduled Tribes, and that too only in the areas in which they are scheduled, covering thereby only a part of the forest dependent communities eligible for grant of traditional rights over forest land. This also violates the principle of Natural Justice for similarly situated communities belonging to other weaker sections of the society, i.e., non-Scheduled Tribes.
2. Forests are a National Natural Resource. Entire population of the country exercises rights over this natural resource either in tangible or intangible terms. Natural resources are the assets of the entire Nation, and it is the obligation of all concerned including the Union and State/Union Territory Governments to conserve and develop these resources. Forests are a vital component to sustain life support systems for the well-being of the mankind on this earth. The Constitution of India too enjoins that the State shall endeavour to protect and improve the environment, and safeguard the forest and wildlife of the country. It is the duty



Meenakshi Datta Ghosh
Secretary
Tel.No. 23074309 (O)
Fax No. 23389028

पंचायती राज मन्त्रालय
 भारत सरकार
 कृषि भवन, नई दिल्ली-110001
 MINISTRY OF PANCHAYATI RAJ
 GOVERNMENT OF INDIA
 KRISHI BHAVAN, NEW DELHI-110 001

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

11th December 2006.

Dear *the Gupta,*

We have just received you U.O. Note of 11th December 2006. We spoke over telephone twice yesterday, Sunday, 10th December 2006, and you did convey that the Ministry of Tribal Affairs has recorded the amendments directed by Cabinet, and obtained the approval of the Minister for Tribal Affairs, and subsequently also the approval of Hon'ble Minister for Law and Justice. You have added that Ministry of Tribal Affairs is continuing to work on further changes, in addition to, and over and above the amendments approved by Minister for Law and Justice and placed before Cabinet on 7th December 2006.

This dialogue between Ministry of Tribal Affairs and Ministry of Law and Justice on 8th and 9th December does not appear to have included Ministry of Panchayati Raj. We treat this matter as extremely urgent and forward to you, without delay, a listing of the amendments proposed by Ministry of Panchayati Raj, at Annexe-1.

For your convenience, we have additionally, also inserted slips at the appropriate places in the draft legislation proposed to be introduced in the current session of Parliament at Annexe-2.

Finally, it may please be noted that the amendments proposed by Ministry of Panchayati Raj are strictly in keeping with the Cabinet decision. Accordingly these amendments are limited to strengthening the role of the Gram Sabha in line with PESA ([Clause 6(8) and Clause 7, sub-clause (1) and (2)], and further to ensuring compatibility with the letter of PESA as was agreed to in the Cabinet meeting of 7th December 2006 [Clause 15, sub-clause (2)].

In keeping with the decision of the Cabinet, a Committee of Ministers is to take a final decision in this respect.

With best wishes,

Yours sincerely,

Meenakshi Datta Ghosh
 (Meenakshi Datta Ghosh)

Encl: As above

Ms. Meena Gupta
 Secretary
 Ministry of Tribal Affairs
 Shastri Bhavan
 New Delhi

31/58
 11/12/06

*Recd at
 1645 hrs. in
 Secy/TAS's
 Office.*

*Pl. examine
 quickly*

Meena

*Copy (PCV)
 11/12/06
 So (PCV)*

"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 forest or forest lands for bona fide livelihood needs.

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

2. Clause 4(6): In this clause 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. The rest of the clause may be deleted.



Minister
Environment and Forests



Minister
Panchayati Raj



Minister
Tribal Affairs

12/12/06

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Minutes of the Meeting of the Ministers of Tribal Affairs, Panchayati Raj, and Environment and Forests on the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006

A meeting was held on 11.12.06 at the residence, and under the chairmanship of, the Minister, Tribal Affairs, to discuss the amendments to the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 as desired by the Cabinet in its meeting held on 7.12.06. The meeting was attended by the Minister, Panchayati Raj and the Minister, Environment and Forests. A number of issues based on the draft amendments made by the Law Ministry to the notice for amendments enclosed with the Cabinet Note, were discussed. It was finally agreed that the following changes would be carried out to the amendments sent by the Law Ministry:

1. Clause 6(8): After the words "of the State Government and" the rest of the sentence will be deleted and substituted with the words "*three members of the Panchayati Raj institution at the appropriate level, appointed by the respective Panchayati Raj institutions, of whom two shall be Scheduled Tribe members and at least one shall be a woman, as may be prescribed*"

2. Clause 15 (renumbered clause 13 as per the amendments): After the words "of any other law for the time being in force", the following proviso shall be added, "*Provided that nothing contained in this Act shall in any way abridge, curtail or diminish the powers of the Gram Sabha under the Panchayats (Extension to Scheduled Areas) Act, 1996, wherever in force*"

2. In addition to the above, the following changes proposed by the Ministry of Tribal Affairs in the amendments suggested by the Ministry of Law & Justice were also noted:

1. Clause 2(o): The definition of the term "*other traditional forest dweller*" be revised as under to bring it in line with the definition of "*forest dwelling Scheduled Tribes*" except for the provision of 'three generations'.

S. No.	Text of amendments	Clause No.
35	Page 12, line 44, <u>for</u> "13" <u>substitute</u> "11";	Clause 13
36	Page 13, - (i) line 3, <u>for</u> "14" <u>substitute</u> "12"; (ii) <u>omit</u> lines 7 to 9;	Clause 14
37	Page 13, <u>for</u> lines 10 to 12, <u>substitute</u> <i>"Act not in derogation of any other law 13. 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."</i>	Clause 15
38	Page 13, - (i) line 13, <u>for</u> "16" <u>substitute</u> "14"; (ii) <u>omit</u> lines 37 to 39; (iii) line 40, <u>for</u> "(g)" <u>substitute</u> "(l)".	Clause 16

Yours faithfully,

(P.R. KYNDIAH)

Copy forwarded to:

1. Ministry of Parliamentary Affairs (Legislative Department), New Delhi
2. Ministry of Law & Justice (Legislative Department), New Delhi
3. Parliament Section, Ministry of Tribal Affairs.

S. No.	Text of amendments	Clause No.
	<p>(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.</p> <p>(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 of the State Government and two members of the Panchayati Raj Institution at the appropriate level, of whom one shall be from Scheduled Tribes and one shall be a woman, as may be prescribed.</p> <p>(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 them in the discharge of their functions shall be such as may be prescribed.”:</p>	
29	Page 11, <u>omit</u> lines 42 and 43;	Clause 7
30	Pages 12, <u>omit</u> lines 1 to 8;	Clause 7 and 8
31	Page 12, line 11, <u>for</u> “9” <u>substitute</u> “7”;	Clause 9
32	Page 12, - (i) line 21, <u>for</u> “10” <u>substitute</u> “8”; (ii) line 21, <u>for</u> “section 9” <u>substitute</u> “section 7”:	Clause 10
33	Page 12, line 29, <u>for</u> “11” <u>substitute</u> “9”	Clause 11
34	Page 12, line 33, <u>for</u> “12” <u>substitute</u> “10”;	Clause 12

S. No.	Text of amendments	Clause No.
	<p>Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:</p> <p>Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:</p> <p>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.</p> <p>(3) The State Government shall constitute 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.</p> <p>(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:</p> <p>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:</p> <p>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.</p> <p>(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.</p> <p>(6) The decision of the District Level Committee on the record of forest right, shall be final and binding.</p>	

S. No.	Text of amendments	Clause No.
23	Page 7, <u>for</u> line 31, substitute "occupation and shall in no case exceed an area of four hectares";	Clause 4 (6)
24	Page 7, <u>omit</u> lines 32 to 38;	Clause 4 (7) and (8)
25	Page 7, - (i) line 39, <u>for</u> "(9)" <u>substitute</u> "(7)"; (ii) line 43, <u>for</u> "(10)" <u>substitute</u> "(8)";	Clause 4 (10)
26	Page 8, - (i) in marginal heading, <u>omit</u> "and responsibilities of Government."; (ii) line 1, <u>for</u> "The" <u>substitute</u> "The holders of any forest right,";	Clause 5(1)
27	Page 8, omit lines 12 to 38;	Clause 5 (1) (e), (2), (3), (4) and (5)
28	Pages 8 to 11, <u>for</u> clause 6. <u>substitute</u> <i>Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and the procedure thereof.</i> "6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both 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 verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee. (2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-	Clause 6

S. No.	Text of amendments	Clause No.
	rehabilitation” <u>insert</u> “prior to the 13 th day of December, 2005”;	
15	Page 5, <u>omit</u> lines 13 to 22;	Clause 3 (2) and (3)
16	Page 5, - (i) line 23, for “(4)” <u>substitute</u> “(2)” (ii) line 26, for “per project” <u>substitute</u> “per hectare”;	Clause 3 (4)
17	Page 6, <u>omit</u> lines 5 to 7;	Clause 3 (5)
18	Page 6, lines 28 and 29, <u>omit</u> “and with the consent of all the right holders and in consultation with independent ecological and social scientists familiar with the area”	Clause 4(2)(b)
19	Page 6, <u>for</u> lines 33 to 40, <u>substitute</u> “(c) the State Government has concluded that other reasonable options, such as, co-existence are not available”;	Clause 4 (2) (c)
20	Page 6, lines 44 and 45, <u>for</u> “National Relief and Rehabilitation Policy of the Central Government” <u>substitute</u> “relevant laws and the policy of the Central Government”;	Clause 4 (2) (d)
21	Page 7, <u>for</u> lines 1 to 3, <u>substitute</u> “the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing”;	Clause 4 (2) (e)
22	Page 7, <u>omit</u> lines 10 and 11;	Clause 4 (2) (f)

S. No.	Text of amendments	Clause No.
	<p>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.</p> <p><i>Explanation:-</i> For the purpose of this clause "generation" relates to a period of 25 years";</p>	
8	Page 3, lines 42 and 43, <u>for</u> "regardless of whether the area involved is a Scheduled Area or not;" substitute "or";	Clause 2 (p) (i)
9	<p>(i) Page 3, <u>after</u> line 43, <u>insert</u> "(ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or"</p> <p>(ii) Page 4, (i) line 1, <u>for</u> (ii) <u>substitute</u> (iii);</p> <p>(ii) line 3, <u>for</u> (iii), <u>substitute</u> (iv);</p>	Clause 2(p)
10	Page 4, line 19, <u>omit</u> "that occur in forest land";	Clause 3 (1)(b)
11	Page 4, line 20, <u>omit</u> "transport";	Clause 3 (1) (c)
12	Page 4, line 32, <u>after</u> "rights of settlement" <u>insert</u> "and conversion";	Clause 3 (1) (h)
13	Page 4, <u>for</u> lines 35 to 38, <u>substitute</u> "(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use";	Clause 3(1) (i)
14	Page 5, line 12, <u>after</u> "entitlement to	Clause 3 (1) (m)

S. No.	Text of amendments	Clause No.
	a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;	
2	Page 2, <u>for</u> lines 18 to 21, <u>substitute</u> "(c) forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for <i>bona fide</i> livelihood needs and includes the Scheduled Tribe pastoralist communities";	Clause 2 (c)
3	Page 2, lines 22 and 23, <u>for</u> "recorded or notified as forest and includes unclassified forests," <u>substitute</u> "falling within any forest area and includes unclassified forests,";	Clause 2 (d)
4	Page 2, <u>omit</u> lines 38 to 41;	Clause 2 (g)
5	Page 3, lines 3, 4 and 5, <u>omit</u> "fuel wood and the like, stones, slates and boulders and products from water bodies including fish, weeds";	Clause 2 (i)
6	Page 3, line 11, <u>for</u> "meaning as in" <u>substitute</u> "meaning as assigned to it in clause (o) of Section 2 of";	Clause 2(n)
7	Page 3, <u>for</u> lines 13 to 39, <u>substitute</u> – '(o) "other traditional forest dweller" means any member or community who for at least three	Clause 2 (o)

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

Copy No. 65

New Delhi, 22 November, 2005

NOTE FOR THE CABINET

Subject: The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

1. Background:

1.1 There exists a spatial relationship between the forest dwelling scheduled tribes and the biological resources in India. The notion of conservation of ecological resources by forest dwelling tribal communities has been referred to in most ancient manuscripts and scriptures that modern humanity knows. Colonial rule somehow ignored this reality for reasons which might have been 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 excluded the bona fide interests of the tribal communities in the regions primarily inhabited by them. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources which they had traditionally used and depended upon.

1.2 It is only recently that forest management regimes have in their policy processes realized that integration of tribal communities who depend primarily on forest resources cannot but be integrated in to their management processes. It is now accepted that forests have the best chance to survive if communities participate in their conservation and regeneration measures. The forest dwelling scheduled tribes, however, face a unique problem of having been alienated from their traditional land holdings in the forests. The forest rights of these forest dwelling scheduled tribes on their ancestral habitat were not adequately recognized and recorded in the consolidation of state forests during

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause-16- Section 15 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 section (2) of that-clause-section 15 enumerates the matters in respect of which rules may be made under the said clause. These matters, *inter alia*, relate to the procedure for and the 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 Level 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 Level 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 Monitoring Committee and the periodic reports and returns to be submitted to the nodal agency by the State Level Monitoring Committee. Sub-clause section (3) of the said-clause-section 15 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.

↑
This is part
of
something else

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the colonial period as well as in independent India, despite the tribes having resided there for generations, resulting in historical injustice to them. Due to non-recognition of forest rights of scheduled tribes, the threat of eviction constantly looms large over them.

1.3 The conditions of the scheduled tribe communities are becoming increasingly more precarious and vulnerable due on the one hand, to displacement threats, and on the other, to lack of access to development programmes, primarily due to non-availability of clear title of land in their favour. STs living in forest lands, even if they have done so for generations, cannot get benefits under schemes of the Government such as "Indira Awas Yojana". The non-conversion of forest villages into revenue villages, eviction of STs from the forest areas, treating them as encroachers in their own land, non-transfer of control/ownership to them over the natural resources, non-implementation of the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, by way of extension to the entire scheduled areas, including forest areas, have further compounded their difficulties.

1.4 Another issue directly impinging on the interests of the tribals living in and around the forest relates to non-conferment of ownership rights over the Minor Forest Produce (MFP) to the tribal people. The collection and marketing of MFP constitute the major source of livelihood for tribal families. It is estimated that up to 70% of the income of most tribal families comes from MFP. The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) enables the rights of ownership of MFP to be given to the respective local communities. Despite this, the collection and trade of MFP continues to be monopolized by the Forest Corporations of the States, and in many cases, e.g. in the collection and sale of *tendu* leaves, which gives large income to several State Governments, trading is being done by the Forest Corporations through contractors. This is a major irritant for the STs, and often viewed as exploitative.

1.5 Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations and non-conferment of traditional rights

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including ownership over minor forest produce are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. 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. This feeling is further fuelled by various activist groups who function in the forest areas of Central India.

1.6 Guidelines issued by the Ministry of Environment and Forests on 18.9.1990 provide that pre-1980 encroachments (i.e. prior to enactment of the Forest (Conservation) Act 1980 on 25.10.1980) are eligible for regularisation, provided the State Governments have evolved certain eligibility criteria in accordance with the local needs and conditions and had taken a decision to regularize such encroachments but could not implement this, either wholly or partly, due to enactment of the Forest (Conservation) Act, 1980. Subsequently, on 5.2.04, the Ministry of Environment and Forests issued another circular to all State Governments/UT Administrations to recognize the traditional rights of the tribal population on forest lands under the Forest (Conservation) Act 1980 where those tribal dwellers have been in continuous occupation of such forest land at least since 31.12.1993. The Hon'ble Supreme Court has, however, stayed the operation of this order.

1.7 In order to recognize occupation of forest land by the FDSTs, the Forest Department has generally been insisting on land records or documentary evidence, such as, a first offence report, or encroachment removal proceedings initiated against the claimant prior to the cut-off date. This has been the biggest hindrance in recognition of these rights under the guidelines of the Ministry of Environment & Forests. Other documentary and corroborative circumstantial evidence, such as records prepared at the time of scheduling an area, or scheduling the tribe, the working plans of the forest departments and documentation of traditional rights, like *nistar*, etc. during the process of declaration of the forests, various research work, Gazetteers, etc. also need to be simultaneously considered to ascertain whether or not the STs were original dwellers or had encroached into the area after the cut-off date.

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1.8 The National Common Minimum Programme of the United Progressive Alliance (UPA) Government, which, inter alia, emphasises the urgent need to redress the problems of the tribal communities dependent on forests and to undo the historical injustice done to them, states:

“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”.

“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.”

2. **The “Scheduled Tribes (Recognition of Forest Rights) Bill, 2005”**

2.1 In order to meet this commitment, it was considered necessary to introduce appropriate legislation on the subject. A Technical Support Group (TSG), comprising representatives of the Ministries of Environment & Forests, Panchayati Raj, Rural Development, Department of Legal Affairs and Planning Commission and six reputed experts with rich experience of, and deep association with, the cause of environmental protection and welfare of tribal people, was constituted, under the Chairpersonship of Secretary (Tribal Affairs) on 28.1.2005 to formulate the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill. The Ministry prepared a draft “Scheduled Tribes (Recognition of Forest Rights) Bill, 2005” and circulated the same, along with a draft Note for the Cabinet, amongst all the Ministries concerned, for their comments. The draft Bill was accepted with suggestions in some cases by all the concerned Ministries, except the Ministry of Environment & Forests. The apprehensions of the Ministry of Environment & Forests were

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duly examined and addressed by the Ministry of Tribal Affairs and the draft Bill was referred to the Ministry of Law & Justice for vetting. The Ministry of Law & Justice (Department of Legal Affairs), after taking into account the views of different Ministries had advised that there seemed to be no legal or Constitutional objection to the proposals contained in the Note and conveyed their concurrence with the same, subject to a few amendments.

2.2 On receipt of the vetted Bill from the Ministry of Law & Justice on 25.4.2005, the Ministry had sent a Note for the Cabinet, along with the draft Bill as vetted, to the Cabinet Secretariat on 28.4.2005 for placing the matter before the Cabinet. The Committee of Secretaries had also discussed the draft Bill in a meeting held on 28.4.2005.

2.3 The Cabinet Note sent by the Ministry could not, however, be taken up for consideration by the Cabinet as, in the meanwhile, it was decided to post the draft version of the Bill on the internet to enable people to get to know the provisions and allay misapprehensions, if any. The draft Bill was accordingly posted on the website of the Ministry (www.tribal.nic.in), along with a note containing the background of the case, the existing legislative/policy frame of the Ministry of Environment & Forests on the subject, the main features of the proposed Bill and the checks and balances provided in the Bill. The members of the public, and all stakeholders were requested to send their views/comments/suggestions on the proposed legislation by 10th July, 2005. Advertisements were also issued in leading national and regional dailies (in English, Hindi and regional languages) all over the country for this purpose.

2.4 This Ministry received an enthusiastic response, with 5634 individuals/organizations from all over the country, sending their comments/suggestions by 20.7.2005. The comments/suggestions received were considered by the Technical Support Group in a meeting held on 21.7.2005, and it was decided that, barring a few changes in the proposed Bill, no substantive changes were required. The Technical Support Group accordingly again prepared a revised draft "Scheduled Tribes (Recognition of

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Forest Rights) Bill, 2005”, which was vetted by the Ministry of Law & Justice on 20.8.2005.

2.5 In the meanwhile, the Ministry of Environment & Forests also prepared a “Model Bill – State/UT Minor Forest Produce (Ownership Rights 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. As the provisions of this Model Bill overlapped with the provisions of the draft “Scheduled Tribes (Recognition of Forest Rights) Bill, 2005” formulated by this Ministry, the Committee of Secretaries discussed if there was need for enacting two Bills in a meeting held on 12.8.2005.

2.6 It was decided that further inputs should be obtained from the Ministry of Environment & Forests on the Scheduled Tribes (Recognition of Forest Rights) Bill and to also organise a “One Day Consultation Workshop” with Wildlife Experts/Environmentalists and Experts on the Tribal Rights, to reconcile divergent opinions, and in particular to examine the issue of inclusion/exclusion of National Parks and Sanctuaries from the purview of the Bill.

2.7 The Ministry of Environment & Forests furnished their observations on the proposed Bill on 12.10.2005. The said observations of the Ministry of Environment & Forests and the comments of this Ministry thereon are at Annexure – B.

2.8 The “One Day Consultation Workshop” was held on 28.10.2005 and provided a forum for further refining the provisions of the Bill in achieving the twin objectives of undoing the historical injustice to the forest dwelling Scheduled Tribes with the concern for protection of environment. It was also decided in the Workshop that the participating Experts may furnish their specific suggestions to this Ministry within a week for further improvements in the Bill.

2.9 The Ministry of Tribal Affairs has examined the suggestions received from various experts and from the Ministry of Environment & Forests, has

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held two separate discussions with the Ministry of Environment & Forests, and has decided to •

- (a) **accept the 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 to remove the flexibility in the cut off date, provided in the draft Bill. The provision in the earlier draft Bill *“or such other date as the Central Government may, by notification in the Official Gazette, specify”* in Section 4(2) has accordingly been deleted;
- (b) **accept the recognition and vesting of the forest rights in the core areas of the National Parks and Sanctuaries** as determined by the Ministry of Environment & Forests on a provisional basis for a period of 5 years, which shall become permanent if the holders of such rights are not relocated within this period with due compensation, and to incorporate the definition of *“core areas”* in the Bill. In Section 2 (b) of the Bill, a provision that *“core areas” means such areas of National parks and Sanctuaries required to be kept as inviolate for the purposes of wildlife conservation as may be determined by notification, by the Ministry of the Central Government dealing with Environment and Forests* has accordingly been added;
- (c) **clarify that occupation of land by 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 to allay apprehensions that every family will get 2.5 hectares irrespective of actual possession. Section 4 (5)(i) of the Bill has accordingly been revised by adding the words *“and shall be restricted to the area under actual occupation and shall”* before the words *“in no case exceed an area of two and one half hectare per nuclear family of a forest dwelling Scheduled Tribe”*;

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- (d) revise 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. The word "*decision*" in the earlier provision in Section 6(2) of the Bill has since been deleted and the Gram Sabhas have been made the initiating authority for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes by receiving claims, consolidating and verifying the claims, and preparing a map delineating the area of each recommended claim for exercise of such rights;
- (e) specify the 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 Bill to avoid any dilution later on. Section 6(8) has accordingly been incorporated to read that "*the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the Departments of Revenue, Forests and Tribal Affairs of the State Government at the appropriate level as may be prescribed*";
- (f) agree to the registration of the title to the forest land 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. Section 4 (5) (ii) of the Bill now provides that "*the title to the extent given shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of single member household*";
- (g) provide that the penalties under the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. This clause has been added in Section 7 of the Bill. This provision now casts a penalty in addition to whatever is provided under other relevant Acts.

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(h) Other suggestions, like, ground level verification of lands in actual occupation of the tribals in the forested areas and taking the aid of aerial photographs available for the period around 1980 for this purpose, the procedure for recognition and verification of forest rights, the procedure to be followed by the authorities at all levels under the Act, the nature of evidence to be taken into account for recognition and vesting of forest rights, etc. would be put in the Rules to be notified after enactment of the proposed Bill for carrying out the provisions of the Act. Various inputs received from experts would also be duly considered while finalising the Rules to provide procedural and other details.

(i) The suggestion that non-tribals and other forest dwellers should also be brought under the purview of the proposed Bill could not, however, be accepted by the Ministry for the reasons given against item No. 2 in Annexure – B.

2.10 The Ministry has accordingly prepared a revised Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 which has been vetted by the Ministry of Law & Justice for the third time on 21.11.2005, a copy of which is at Annexure – C.

3. The Ministry of Tribal Affairs now proposes to introduce the “Scheduled Tribes (Recognition of Forest Rights) Bill 2005” in the Winter Session 2005 of the Parliament. The Rules for carrying out the provisions of the proposed Act, namely, the procedure for recognition of and verification of forest rights, the procedure to be followed by the authorities at all levels under the Act, the authorities under the Act including their composition, and the nature of evidence to be taken into account for recognition and vesting of forest rights, shall be notified only after enactment of the Bill.

The main features of the proposed Bill are as follows:

3.1 Objective:

The objective of the Bill is to undo the historical injustice by recognizing and vesting the forest rights and occupation of forest land to forest

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dwelling Scheduled Tribes who have been residing there for generations and who are integral to the very survival and sustainability of the forest ecosystem, including wildlife, but whose rights could not be recorded. Statement of objects and reasons has been added to explain the concept

3.2 Rights of Forest Dwelling Tribes:

The Bill seeks to recognize and vest forest rights as defined in Section 3 of the proposed Bill in the forest dwelling Scheduled Tribes where they are scheduled, in respect of forest land and their habitat and 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. The Bill further provides that the 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. The Bill further 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. 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 includes 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.

3.3 Duties of Forest Right holders have been defined in Section 5 of Chapter III of the proposed Bill which include responsibility of not carrying out any activity that adversely affects the wild animals, forests and the biodiversity.

3.4 The Authorities to vest forest rights in forest dwelling Scheduled Tribes, including their functions, have been defined in Chapter IV of the proposed Bill. Section 4(a) of the Bill provides that the Sub Divisional Level

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

3.5 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.

3.6 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.

3.7 Checks and balances:

In addition to the new checks and balances provided in the Bill now, the proposed Bill also contains the following provisions to take care of any possible misuse of the forest rights

- a. **Recognition of Forest Rights of only the FDSTs, where they are Scheduled.** There is no distribution of land involved at all and Bill will

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- not cover the entire 8.2 % ST population. Only tribes scheduled for the area living in the forests will benefit. A tribal from an outside area/State will not benefit. The Bill in actual terms will only benefit the tribal population on an "AS IS WHERE IS" basis. Only occupation of land prior to 25.10.80 is being given legal recognition.
- b. Recognition of the actual occupation of land subject to a maximum of 2.5. ha land only is proposed, which in fact restricts land grabbing even within tribal communities.
 - c. All rights would be heritable but NOT alienable or transferable;
 - d. The 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 occupation of land by forest dwelling STs, as per the ground situation, and, is intended to put an end to the issue of so-called encroachment forever. There is no question of abatement of fresh encroachment.
 - e. It has been provided in Section 5(a) in Chapter III of the Bill that the forest right holder shall not indulge in any activity that adversely affects wild animals, forests and 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.
 - f. Penalties have been provided in Chapter V of Bill including de-recognition of the vested right if any offence is committed more than once;
 - g. The Gram Sabha has been designated as the competent authority to initiate the process for determining the nature and extent of individual and/or community forest rights that may be given to Scheduled Tribes by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of such rights. 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;

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- h. The duties of the forest right holders have been provided in Section 5 of Chapter III of the Bill and specific provision has also been made in Section 4(6)(ii) of Chapter III of the Bill that the rights so recognized would include the responsibility and authority of protection, conservation with sustainable use and regeneration of adjoining forests in which community rights have been vested.
- i. It has also been specifically provided in Chapter V that offences under this Act which shall not only be punishable by fine 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.
- j. The Ministry of Environment & Forests will have a role in the process of scrutiny and recognition of rights at all levels, which will be clearly spelt out in the rules. In fact, the role of the Ministry of Tribal Affairs will be extinguished once the land rights are conferred.
- k. There is no move to convert forest land into agricultural holdings – the vesting of rights will be done on “AS IS WHERE IS” basis and definitely no clearing of forests or felling of trees would be permitted.

4. Views of other Ministries/Departments concerned

4.1 The views of the other concerned Ministries/Departments, namely, Ministries of Environment & Forests, Panchayati Raj, Rural Development (Department of Land Resources), Social Justice & Empowerment, Law & Justice (Department of Legal Affairs) and Planning Commission on the Bill were sought before posting the same on the website of the Ministry. While Ministries of Environment & Forests, Panchayati Raj, Rural Development and Ministry of Social Justice & Empowerment had conveyed their views, the Planning Commission did not convey their views, despite efforts made to obtain their views.

4.2 The views of the Ministries of Environment & Forests, Panchayati Raj, Rural Development and Social Justice & Empowerment conveyed before finalisation of the first draft Bill in the month of April, 2005 and before posting of the same on the website of the Ministry for comments by 10th

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July 2005 were examined and the comments of this Ministry thereon are at Annexure - A.

4.3 The Ministry of Panchayati Raj broadly supported the objectives and the format of the draft Bill but desired inclusion of two members of the Intermediate Panchayats in the Sub Divisional level Committee and for appointment of a Tribal Member of the Panchayat as Chairperson or Deputy Chairperson of the District level Committee, proposed in the draft Bill for recognition and vesting of forest rights to forest dwelling Scheduled Tribes. It has been decided that both the Sub-Divisional Level and the District Level Committees shall consist of official members to ensure accountability.

4.4 The Ministry of Rural Development (Department of Land Resources) and the Ministry of Social Justice & Empowerment were fully agreeable to the provisions of the proposed Bill.

4.5 The Ministry of Environment & Forests were not agreeable to the introduction of the proposed Bill mainly on the grounds that the Bill would (i) require denotification of vast tracts of forest lands, elimination of all legal protection for the forest cover leading to irreparable ecological damage of immense proportion, (ii) cause more damage without necessarily being of significant benefit to tribals in the long run, (iii) result in allocation of disproportionate large areas of natural resource of the country to only 8.2% of the population, (iv) lead to loss of large chunk of forest cover by distribution of 2.5 hectare of forest land to each tribal nuclear family, which would be against the goal of National Forest Policy, 1988, (v) not be in the interest of forest and wildlife conservation as its provisions bar the operation of Indian Forest Act, 1927, Forest Conservation Act, 1980 and the Wildlife (Protection) Act, 1972., (vi) put a question mark on the very existence of national parks and sanctuaries, (vii) encourage fresh encroachment and destruction of forests. The Ministry of Environment & Forests consider that the subject "Forests" is the business allocated to that Ministry as per the Government of India (Allocation of

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Business) Rules, 1961 and hence the settlement of rights over forest lands is also their mandate and of no other Ministry. That Ministry was of the view that the provisions of the Forest (Conservation) Act, 1980 and the guidelines of 1990 had sufficient provisions to address the problem and there was no need to bring a separate legislation. They felt that, the solution lay in modification of various orders of the Supreme Court on the various issues and the existing laid down procedure for implementation of the 1990 guidelines.

4.6 The Ministry considered the comments of the Ministry of Environment & Forests and observed that the proposed Bill (i) only strengthened the stand taken by Ministry of Environment & Forests in their own policy statement as recent as December, 2004 on the issue of undoing historical injustice to the forest dwelling Scheduled Tribes whose ethos and culture of conservation is a central theme but who have been affected most by western notions of management of forest through emphasis on production forestry; (ii) sought to provide legislative frame to the stated policy of the Ministry of Environment and Forest of regularizing all eligible cases and existing prior to the cut off date of 25.10.80; (iii) did not envisage de-notification of vast tracts of forest lands and elimination of legal protection for the forest cover and, in fact, proposes to secure their tenurial rights; (iv) encouraged the participation of forest dwelling Scheduled Tribes in the conservation and regeneration measures for sustainability of the forest eco-system, including wildlife, in line with the initiatives of the Ministry of Environment & Forests relating to eco-development, Community Forest Management, Joint Forest Management, etc.; (v) did not envisage fresh allocation of land to tribal community but only recognizes the pre-existing rights over forest and forest land which they were deprived of during the forest reservation process, in keeping with the new forest policy which enunciates that the tribal communities need to be at the center of any conservation strategy; (vi) emphasized use of forest rights only for subsistence and livelihood needs and not for commercial use of any kind

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Major changes made by the Joint Committee in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, which are Annexure - I
AGREEABLE

Section	The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005	The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament	Reasons/impact for which the change is agreeable
2(a)	There was no such definition.	(c) "community forest resource" means customary common forest land within the traditional or customary boundaries of the village, or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access.	The Scheduled Tribes have large number of community rights and addition of this clause would further clarify and strengthen recognition of community rights. May, therefore, be accepted.
2(b)	(b) "core areas" means such areas of National Parks and Sanctuaries required to be kept as inviolate for the purposes of wildlife conservation as may be determined, by notification, by the Ministry of the Central Government dealing with Environment and Forests;	(b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified, by the Central Government after open process of consultation by an Expert Committee, which includes experts from the locality appointed by the Ministry of the Central Government dealing with tribal affairs, and shall also be according to the procedural requirements arising from sub-sections (1) and (2) of section 4.	2(b) As the core areas have not been scientifically defined the definition of critical wild life added by the JPC may be accepted. However, the critical wild life habitats may be determined by an Expert Committee rightfully appointed by the Ministry of Environment and Forests where a representative of the Ministry of Tribal Affairs at senior level could be include.

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<p>Section</p> <p>The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005</p>	<p>The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament</p>	<p>Reasons/impact for which the change is agreeable</p>
<p>2 (g)</p> <p>(g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, the traditional village institutions:</p>	<p>(g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, <u>Padas, Tolas</u> and other traditional village institutions and elected village committees, with full and unrestricted participation of women:</p> <p><u>Explanation-</u> For the purposes of this clause, the term "village assembly" shall be construed according to the definition of "village" as given in clause (p), which applies also to areas covered by the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996:</p>	<p>The definition of the Gram Sabha has further been expanded and may, therefore, be accepted.</p>
<p>3(1)(c)</p> <p>(c) right of ownership access to use or dispose of minor forest produce;</p>	<p>(c) right of ownership access to collect, use, transport and dispose of minor forest produce which has been traditionally collected within or outside village boundaries:</p>	<p>The right with regard to the Minor Forest Produce(MFP) has been expanded to further include collection and transport of MFP as a right and that too from within the or outside the village boundaries as has been traditionally collected. As this definition further strengthened the rights, it may be accepted.</p>
<p>3 (d)</p> <p>(d) other rights of entitlements such as grazing (both settled and transhumant) and traditional seasonal</p>	<p>(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal, resource access of nomadic or pastoralist communities:</p>	<p>The definition of the community rights has been expanded to include fish and other products of water bodies, which may be accepted.</p>

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Section	The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005	The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament	Reasons/impact for which the change is agreeable
3 (h)	resource access of nomadic or pastoralist communities; (h) rights of conversion of forest villages into revenue villages;	(h) rights of settlement of all forest villages, old habitation, unsurveyed villages and other villages in forests whether recorded, notified, or not, into revenue villages;	The amendments suggested in the right with respect to the settlement of forest villages which has now been expanded to include old habitations, unsurveyed villages and other villages in the forests may be accepted.
3 (k)	There was no such right.	(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;	The inclusion of new right of access to bio-diversity and community right to intellectual property and traditional knowledge may be accepted.
3 (m)	There was no such right.	(m) right to <i>in situ</i> rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation.	The inclusion of new right in-situ rehabilitation may be accepted with reference to the displacement prior to the cut-off date
3 (4)	There was no such right.	(4) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-	The inclusion of the new right allowing for diversion of forestland for creation of basic infrastructure in the habitations within the forests may be accepted subject to the felling of trees not exceeding 75 trees per ha.

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4(2)	<p>(a) schools;</p> <p>(b) dispensary or hospital;</p> <p>(c) anganwadis;</p> <p>(d) fair price shops;</p> <p>(e) electric and telecommunication lines;</p> <p>(f) tanks and other minor water bodies;</p> <p>(g) drinking water supply and water pipelines;</p> <p>(h) water or rain water harvesting structures;</p> <p>(i) minor irrigation canals;</p> <p>(j) non-conventional source of energy;</p> <p>(k) skill upgradation or vocational training centres;</p> <p>(l) roads; and</p> <p>(m) community centres;</p>	<p>(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:-</p> <p>(i) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package.</p> <p>Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation</p>	<p>The amendments proposed to confer rights in critical wildlife habitats of national parks and sanctuaries, (which were earlier on provisional basis) and further safeguards to ensure that such settled rights are not violated as provided in the amendments may be accepted</p> <p>may be accepted</p> <p>may be accepted</p>

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<p>Section</p> <p>The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005</p>	<p>The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament</p> <p>shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses:</p>	<p>Reasons/impact for which the change is agreeable</p>
<p>4(4)</p> <p>(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable.</p>	<p>(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next of kin.</p>	<p>may be accepted</p>
<p>4(5)</p> <p>(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.</p>	<p>(2) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed**.</p>	<p>may be accepted</p>
<p>4 (9)</p>	<p>(2) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.</p>	<p>may be accepted</p>

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<p>Section The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005</p>	<p>The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament</p> <p style="text-align: center;">.</p> <p>(10) The forest rights recognized and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.</p>	<p>Reasons/Impact for which the change is agreeable</p>
<p>4(10)</p> <p>Offences and Penalties</p>	<p>Offences and Penalties</p>	<p>May be accepted with respect to STs</p>
<p>9</p> <p>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;</p>	<p>Deleted by the JPC</p>	<p>May be accepted</p>

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<p>Section</p> <p>The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005</p>	<p>The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament</p>	<p>Reasons/impact for which the change is agreeable</p>
<p>or</p> <p>(iv) kills any wild animal or destroys forests or any other aspect of biodiversity; or</p> <p>(v) fells trees for any commercial purpose.</p>	<p>16. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Ac:</p> <p>(e) 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 by the said Committees under clause (v) of sub-section (9) of section 6:</p>	<p>The remaining details, if any, may be incorporated in the Rules to be framed after enactment. The condition of previous publication suggested by the JPC may be accepted</p> <p>May be accepted</p>
<p>16</p>		

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Annexure - II

The following four major changes made by the Joint Committee in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 are NOT AGREEABLE

<p>Issue No. 1</p> <p>The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005</p>	<p>The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament</p>	<p>Reasons for which the change is not agreeable</p> <p style="text-align: center;"><u>Inclusion of forest dwelling Scheduled Tribes only</u></p> <p>The Bill introduced by the Ministry had sought to recognise and vest the forest rights and occupation in forest land in respect of forest dwelling Scheduled Tribes only. The Bill reported by the Joint Parliamentary Committee seeks to cover other traditional forest dwellers also in addition to forest dwelling Scheduled Tribes.</p> <p>The non-tribals and other forest dwellers were kept out of the purview of the Bill introduced by the Ministry for the following reasons:</p> <p>(i) While there may be cases of forest dwellers other than scheduled tribes who had occupied forest land before the cut off date, there is a distinction between the scheduled tribes who are living in forests for generations and in occupation of forest land much before the cut off date and those non-tribals and other forest dwellers who came to such forests much later. Equating such forest dwelling scheduled tribes with the other forest dwellers for the purpose of recognition and vesting of forest rights under the Bill would be a negation of this distinction and put the original rights of age old STs inhabitants existing prior to enactment of Indian Forest Act, 1927 on the same footing as that of the much later entrants.</p> <p>(ii) The Constitution of India provides specific and exclusive provisions for STs and areas inhabited by STs, such as V. Schedule, VI Schedule, etc. which are not covered by the Bill.</p>
<p>Preamble</p> <p>THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005</p> <p>A</p> <p>BILL</p> <p>to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in such forests</p>	<p>Preamble</p> <p>THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) BILL, 2006</p> <p>[Words underlined indicate the amendments suggested by the Joint Committee and asterisks indicate omissions]</p> <p>A</p> <p>BILL</p> <p>to recognise and vest the forest rights and occupation in forest</p>	

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<p>Issue No. The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005</p>	<p>The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament</p>	<p>Reasons for which the change is not agreeable</p> <p>inhabited by STs, such as, V Schedule, VI Schedule, which is a recognition of separate historical, social and political identity of STs. Similarly, the Provisions of the Panchayats (Extension to the Schedule Areas) Act, 1996 enacted in 1996 by way of Constitutional Amendment also treats the Schedule V Areas on a separate pedestal. Thus, there exists reasonable classification even under Article 14 of the Constitution to treat the case of recognition of rights of STs and others separately and on different footing through different procedure.</p> <p>(iii) STs form the majority of the population of forest dwellers, and as per estimates more than 70%. To equate the needs of this 70% or more with that of the 30% or less population is not appropriate.</p> <p>(iv) The statement of objects and reasons of the Bill clearly brings out that the Scheduled Tribes are living in forests for generations and are integral to the very survival and sustainability of forests, forest eco-systems and wildlife. It is well known that the forest dwelling scheduled tribes are residing on their ancestral lands and their habitat for generations and there exists a spatial relationship between the forest dwelling scheduled tribes and the biological resources in India. In fact, the tribal people are inseparable from the ecosystem, and cannot survive in isolation. Such inherent oneness and relation/inter-dependence with nature is non-existent in case of non-STs. There are numerous documents, research works, and writing to highlight the way of life of STs that revolves around forests and nature. The symbiotic relationship of STs with forests, recognised and enunciated in many policy documents including the National Forest Policy, is the way of life and ethos of the tribal communities. It is not so for others who certainly moved in later than STs. This kind of relationship with environment and forests is non-existent in case of non-STs and therefore they can not be placed on the same footing.</p> <p>(v) Section 4(i) of the Bill provides for recognition and vesting of 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. This is the basic criterion for recognition and vesting of forest rights in the forest dwelling scheduled tribes under the Bill.</p>
<p>such forests for generations but whose rights could not be recorded and 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.</p>	<p>land in forest dwelling Scheduled Tribes and other traditional forest dwellers 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.</p>	
<p>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;</p>	<p>WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers 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 other traditional forest dwellers;</p>	

Issue No.	The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005	The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament	Reasons for which the change is not agreeable
	<p>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;</p> <p>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.</p>	<p>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 and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystems;</p> <p>AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to state development interventions.</p> <p>BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-</p>	<p>Recognition and vesting of forest rights in the forest dwelling scheduled tribes under the Bill. This criterion would not be satisfied in the case of non-tribals and other forest dwellers, who are not scheduled for an area.</p> <p>(vi) The Scheduled Areas where most of the forest villages/forest settlements are existing have a population mix of which the scheduled tribes at one time constituted more than 50%. The States having such 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. Regulations to this effect exist in most of the Schedule V States. The Government under these regulations is duly bound to protect the interest of STs and also kind of non-violate nature/separate identity of scheduled areas. The recognition of rights of non-tribals and others in occupation of forest lands in such tribal areas on the same footing would have an adverse impact on the population mix in such scheduled areas as the States have failed in many cases to check the alienation of the ST lands and inward migration of non-tribals. Formally equating the STs and non-STs together would amount to negating such protection available to STs and result in double jeopardy where inward migration into scheduled areas due to developmental, industrial and mining activities could not be regulated resulting in decreasing ratio of ST population and alienation of their land against the various state specific regulations.</p> <p>(vii) 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, which may be difficult to manage.</p> <p>(viii) The operation of the 1990 guidelines issued by Mo Environment & Forests for regularization of encroachment of all persons occupying forest land prior to 25.10.1980 was not barred by the Bill introduced by the Ministry and the same would continue to apply to those forest dwellers who are non-tribals.</p>

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	BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—		<p>In a nutshell, the Bill as reported seeks to cover (1) other traditional forest dwellers also in addition to forest dwelling Scheduled Tribes, (2) who reside not only on forest land but also in close proximity of the forest land and are primarily dependent on forest land or forest resources for their livelihood needs. The Bill, as reported (3) does not prescribe any limit in respect of the area of forest land under occupation for recognition and vesting of forest rights and (4) provides a cut off date of as recent as 13.12.2005 for recognition and vesting of forest rights in respect of such forest dwellers and (5) empowers the Gram Sabha to take a final decision on the record of forest rights. Thus anyone might claim to be a forest dweller primarily dependent on forest land or forest resources for his livelihood needs and might claim as much area of forest land as he can occupy and get it approved in the Gram Sabha, of which he himself could be a member.</p> <p>The enactment of the Bill as reported will have nothing to do with undoing of the historical injustice of the forest dwelling Scheduled Tribes as everybody, whose occupation of forest land may be as recent as 13.12.2005, would be covered for recognition and vesting of forest rights. The entire Preamble of the Bill and the Statement of Objects and Reasons do not match with the Bill as introduced.</p>
2	(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 Scheduled Tribes or tribal communities or other traditional	(2) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional	<p style="text-align: center;"><u>Cut off date of 25.10.80*</u></p> <p>The Bill as introduced provides for a cut off date of 25.10.80 (i.e., the date of coming into effect of the Forest (Conservation) Act, 1980) for recognition and vesting of forest rights in forest dwelling Scheduled Tribes in respect of occupation of forest land. Whereas the Bill as reported provides for the cut off date of 13.12.2005 (i.e. the date of introduction of the Bill in the Lok Sabha) for recognition and vesting of forest rights to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in respect of occupation of forest land.</p> <p>The position in this regard is as under:</p>

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	Tribes or communities had occupied forest land before the 25 th day of October, 1980.	forest dwellers had occupied forest land before the 13 th day of December, 2005.	<p>➤ 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.</p> <p>➤ 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.</p> <p>➤ 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.</p> <p>➤ 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.</p> <p>➤ 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, as the Ministry of Environment & Forests stated, halt of the entire process of recognition even of cases prior to 1980. Hence, the Bill did not provide for the cut off date of 31.12.1993.</p> <p>➤ Providing any recent cut off date, such as, 13.12.2005, census or from the date of passing of the Bill would lead to fresh encroachment as it would be much easier to generate evidence for proving occupation as recent as 13.12.2005 as against occupation prior to 25.10.1980</p> <p>➤ The Bill as introduced seeks to undo historical injustice existing much prior to 25.10.1980 and recognizing age-old occupation of forest land in case of STs. The date of 25.10.1980 is quite appropriate</p> <p>It would not be desirable to prescribe the cut off date of 13.12.2005 for recognition and vesting of forest rights for the following reasons:</p>

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			<p>(i) This cut off date would be too recent.</p> <p>(ii) By recognizing and vesting forest rights in respect of forest land in occupation as on 13.12.2005, we would not be undoing any historical injustice done to the forest dwelling Scheduled Tribes.</p> <p>(iii) All people who have encroached land even very recently before 13.12.2005 will demand recognition of their rights over such encroached land.</p> <p>(iv) The Courts have also accepted 25.10.30 as the cut off date for regularisation of encroachment over forest land. The extension of cut off date to any date after 25.10.80 would unnecessary, draw adverse reaction from the Courts.</p> <p>(v) Evidence in support of the claim over forest land can be fabricated when the cut off date is so recent.</p>
3	<p>(5) Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of section 3, —</p> <p>(1) such land shall 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</p>	<p>(6) Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall 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.</p>	<p><u>Ceiling of 2.5 hectares</u></p> <p>The Bill as introduced had provided for a ceiling of 2.5 hectares of forest land per nuclear family of a forest dwelling Scheduled Tribe to restrict grabbing by elites even within the tribal communities and also because most State forest village rules had recognised this basic unit of land for subsistence on forest land. 6.25 acres per family occupation is quite a reasonable ceiling. This ceiling needs to be restricted to 2.5 hectares. Otherwise, it may lead to fresh encroachments and race to grab the maximum land.</p>

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	<p>occupation and shall in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;</p>		
4	<p>(1) The Gram Sabha shall be the authority for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act by receiving claims, consolidating them and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram</p>	<p>(1) The Gram Sabha shall be the authority for * determining the nature and extent of individual or community forest rights, or both, that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local and 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 and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.</p>	<p><u>Gram Sabha as the competent authority for initiating the process</u></p> <p>The Bill as introduced designates the Gram Sabha as the competent authority for initiating 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, passing a resolution to that effect and forwarding the same to the Sub-Divisional Level Committee. The Gram Sabha has thus been made the authority to make the first recommendation in this regard to the Sub-Divisional Level Committee. The Bill as reported on the other hand makes the Gram Sabha the final authority for preparing the record of forest rights.</p> <p>It may be mentioned that 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 was in tune with the provisions of the PESA Act, 1996 and aims at empowering the local communities in management of their natural resources. The Sub-Divisional Level Committee and the District Level Committee were assigned the work relating to the examination of the resolution passed by the Gram Sabha and preparation and finalisation of the record of forest rights thereafter on the basis of the relevant records and the evidences produced. This was because the preparation of the record of forest rights and final approval of the record of the forest rights, based on the recommendation of Gram Sabha, are quasi-judicial and executive functions involving de-notification of forest land, charges in revenue records, etc. which can only be performed by officials to ensure accountability. Making the Gram Sabha the final authority for</p>

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Issue No.	The provision in the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced in the Lok Sabha on 13.12.2005 Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.	The provision of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament	Reasons for which the change is not agreeable
<p>performed by officials to ensure accountability. Making the Gram Sabha the final authority for preparing of record of forest rights would not be advisable and also legally tenable as the decision relating to assignment of individual/community rights on land are quasi-judicial in nature and governed by various State specific legislation. "Land" being the State subject, necessary amendment/correction in the relevant records have to be governed by State regulations and, therefore, the Sub Divisional Level Committee consisting of SDM, Forest officials, Tribal Affairs officials is the right forum to take action on the recommendation of the Gram Sabha. The Sub Divisional Level Committee cannot be expected to send recommendations of an advisory nature to the Gram Sabha and it would also be inappropriate that the Gram Sabha, a body serviced by village level functionaries, can overrule the Sub Divisional Level Committee. However, it may be accepted to include two ST representatives of the Panchayati Raj Institutions, one male and one female, in the Sub Divisional and District Level Committees.</p>			

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These changes, if accepted, would have far-reaching and extremely 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 further fuel the race, especially amongst the land mafia, forest contractors, persons engaged in business, etc. to grab as much as possible especially in a scenario where the evidence required to prove possession has to be only as recent as 13.12.2005 and all final decisions are to be taken by the Gram Sabha. 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 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. 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. By accepting the Bill reported by the JPC in its present form, we would, perhaps, be doing great injustice to the forest dwelling STs, instead of undoing the historical injustice done to them over the centuries, as was the original objective of the proposed legislation.

Prime Minister's Office

South Block,
New Delhi - 110 011

Subject: Visit to Review Response to the Naxalite problem
in Jharkhand by Principal Secretary to PM : Tour
Note and Action suggested


Please find enclosed a note containing PMO's observations
of the tour and some of the decisions that have been arrived at for
appropriate follow-up action at your end under intimation to this
office.

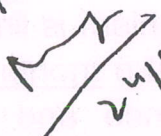

[R. Gopalakrishnan]
Joint Secretary to PM
Tel.# 2301 5944

- Member Secretary, Planning Commission [Shri R.R. Shah]
- Home Secretary [Shri V.K. Duggal]
- Secretary, Ministry of Environment and Forests
[Dr. Prodipto Ghosh]
- Secretary, Ministry of Rural Development
[Dr. Renuka Viswanathan]
- ✓ Secretary, Ministry of Tribal Affairs [Ms Meena Gupta]
- Secretary, Ministry of Panchayati Raj
[Smt. Meenakshi Datta Ghosh]

PMO I.D. No. 670/75/C/6/2006-ES.I Dated: 19.5.2006

Dy. No. 66/Prp/JSR/106
Date 24/5/06


JS (RP)

JS (SI) - Pl. immediately
give a copy of this to JS (RP)
making attention specifically to
point (f) of Working Paper No. 1
for n.a.

24/5/06

JS/Prp/
23/5/06
24/5/06

Visit to Review Response to the Naxalite problem in Jharkhand by Principal Secretary to PM : Tour Note and Action suggested

1. Principal Secretary to Prime Minister led a delegation consisting of officials from the Ministry of Home, Ministry of Rural Development and the Prime Minister's Office to make a first hand assessment of the situation arising from naxalite activities in Jharkhand and the policy response to it. After an initial presentation in the Secretariat by the Chief Secretary and his team on issues of development and law and order facing the State, the delegation chose to visit Latehar one of the district most seriously affected by naxalism in the State. These visits were held on 24th and 25th April, 2006. The team was accompanied by the Chief Secretary, Development Commissioner, DGP and Home Secretary and had the benefit of their views throughout the tour. The team also held discussions with the Deputy Commissioners and Superintendents of Police of the four districts in the region. On 25th, on return to Ranchi, the team had very detailed discussion with the Chief Minister on his understanding of the problem and possible action and areas of Govt support. Both immediate measures and medium-term measures were discussed. Medium Term measures are equally important because, as the Chief Minister observed, the engagement with naxalites is likely to be a long-drawn out affair.

2. Given below is the summary of the observations of the visit. Possible action could be categorized into Immediate Measures and Medium-Term Measures.

Immediate Measures

a) It was felt that though there is widespread agreement that the naxalite issue has to be looked at holistically, the current review mechanism is limited to law and order functionaries. It was suggested that a monthly monitoring system to review the status of naxalite violence and its causes should be held each month chaired by the Chief Secretary and attended to by representatives of both law and order and development departments. This will mean that in addition to departments like Home and Intelligence Agencies, departments like Rural Development, Tribal Welfare,

Forests, Environment, Irrigation, PWD etc. will all be part of the review. Such a review will in addition to reviewing 'hot spots' of naxalite activity which keeps changing, help de-bottleneck projects that may be getting delayed because of inter-departmental problems and in turn spread disaffection. The Chief Minister agreed to the Principal Secretary's suggestion and directed that such an institutional arrangement be put into operation with immediate effect.

b) A similar arrangement would be set up in each district chaired by the District Collector with similar composition. Here again the issue of Naxalism will be discussed holistically and would help to increase the sensitivity of the officials at the cutting-edge level to adopt a nuanced approach to handling issues at the field level. It will report to the Committee headed by Chief Secretary.

c) It was also suggested that joint tours by senior officials should be a routine drill.

[Action : Government of Jharkhand]

Medium Term Measures

(a) At the meeting with the Deputy Commissioners, a view emerged that many youth are attracted to naxalism simply because they are currently unemployed. The NREGA, many felt is a good step forward. The view put forward regarding increasing in the number of days of work to 150 in naxalism-affected districts was discussed and found favour. The Government now has a new opportunity for doing this because the Backward Regions (Districts) Grant Fund is expected to cover all naxalism affected districts and may provide an additionality of about Rs.15 crore per district. More importantly it provides a powerful organizational tool for district planning that can help combine resources and deploy them for an effective local development agenda.

It should be the endeavour that in all the naxalite-affected districts which will soon be BRGF districts, the District Plan should have a supplementary District Employment Plan which could, by combining State Government resources especially of the Forest Department, can endeavour to provide 150 and in some cases up to 200 days of employment. If run effectively this employment

programme can help wean away potential recruits away from naxalite movement.

[Action : Government of Jharkhand;
For information M/o Rural Development, M/o Panchayati Raj]

b) One major problem regarding delivery of services in naxalite affected districts is that while the challenge is above-normal the personnel available for delivery of services is below-normal. Here the reference is not to the quality of personnel but the large number of vacancies in many departments including Police, Forest, Health, Revenue, Engineering and so on. This needs to be addressed primarily by the State Government by creating a database of vacancies and monitoring them till the entire backlog is completely met. This opens up opportunities for engaging people contractually which many State Governments have now adopted as policy with recruitments to be done at the local level. There are large number of vacancies in the forest department which if filled would give employment opportunities to a large number of local candidates. The Police has recently done additional recruitment. The Chief Minister mentioned that some new battalions are being raised which would provide opportunities to local people for employment. It is also important that State Government, utilizing provisions in the NREGA, place dedicated staff for the programme as mandated in the guidelines. Right now the State Government seems to have merely given additional charge to BDOs.

[Action : Government of Jharkhand]

c) The issue of forest clearances delaying development projects, came up. The Director General of Forests who was part of the delegation assured immediate relief to the 8 pending major irrigation projects. At the ground level a large number of projects are delayed because of the protracted nature of the clearance mechanism. The Ministry of Environment and Forests would need to re-look at its procedures to speed up clearances for development projects like, roads, hospitals, irrigation projects and so on. The systemic response to this can come through the two committees at state and District levels mentioned under (a) and (b) under Immediate Measures.

[Action: M/o Environment & Forests, Govt. of Jharkhand]

d) The Chief Minister reasoned out why naxalism is able to attract people in the State. He attributed their attraction to the incapacity of the State Government to respond to the charges leveled by the naxalites of a resource haemorrhage in the state. Jharkhand which reportedly has 40% of India's mineral wealth witnesses large scale mining by public and private sector undertakings often using even unsafe practices like open cast mining (which are never closed as per procedure), all of which gives the local population a feeling that their wealth is being stolen from under their feet. The Chief Minister felt that an industrialization policy that helps value addition within the State and can provide job opportunities to local people may be a solution. The Chief Minister expressed his apprehensions on the proposed National Mineral Policy and felt that the time was extremely inopportune to explore this area as it may be utilized by naxalites to further fan alienation. It appears there is a need to see how a local level compensating mechanism can be explored to assuage feelings of neglect as this issue will have to be confronted by the Central Government sooner than later.

[Action : Planning Commission]

(e) One major problem with Jharkhand is that it seems to have a political democracy deficit at the local level. It is the only state in India which has had its Panchayat elections stayed by the courts. The matter is now under consideration of the Supreme Court. It is imperative that this issue is resolved early. Currently the administrative machinery is not able to draw upon the support of locally elected people to be mobilized as a countervailing force against naxalites. This needs to be responded to with urgency.

[Action : Government of Jharkhand and Ministry of Panchayati Raj]

f). As far as forest-related issues are concerned, the Chief Minister was assured that the Scheduled Tribe and Forest Dwellers (Recognition of Forest Right) Bill, 2005 is currently under consideration of the Joint Parliamentary Committee and is likely to be passed in the Monsoon Session. This would provide considerable relief to a large section of people in the State of Jharkhand. At the GoI level it is important to ensure that the time schedule for having the JPC submit its report in May and passing of the Bill in the Monsoon Session are ensured.

[Action : M/o Tribal Affairs, GOI]

g) There is a railway section called the CIC (Coal India Company Section) of about 80 Kms. which needs to be sanitized as it is constantly under threat from naxalites. The Ministry of Home feels that a road would need to be constructed parallel to the railway track to be able to sanitize this section. This would require speedy environmental clearances.

[Action : Govt. of Jharkhand, M/o Environment & Forests]

h) The Government of Jharkhand raised the issue of a few major roads which, if upgraded, can link with neighbouring states and open up the region. This would also help accelerate the process of industrial development in the State. The first of this is the widening of the Govindpur-Jamtara-Dumka-Sahebgunj Road and help connect with the Kolkata-New Delhi line of the Golden Quadrilateral. The second major demand is to construct a bridge over the Ganga at Sahebgunj Ghat. This will require participation of the Government of Bihar and the clearance of the Gol and Gol intervention was requested.

[Action : D/o Road Transport and Highways, GOI]

i) The Ministry of Home Affairs under the Police Modernisation Programme has a plan to fund Police Stations in Naxalite areas to have proper buildings, quarters for staff, vehicles, equipments and so on. District Plans will have to be prepared for each district along with a State Plan for clearance by the Gol. The Government of Jharkhand was requested to expedite its district and state plans so that early clearance could be accorded and all police stations in the State are upgraded to satisfactory levels of effectiveness.

[Action : Govt. of Jharkhand, M/o Home Affairs]

j) The Chief Minister raised the issue of shortage of officers in the Indian Police Service and State Police Service. The Joint Secretary, Home who was part of the delegation requested to assess the situation and develop a proposal to respond to the problem and forward it to PMO.

[Action : M/o Home Affairs]

k) Jharkhand has also been quite retrograde in its state policy regarding providing ownership rights to the local tribal population in

minor forest produce. Some states with substantial tribal population like Madhya Pradesh and Chhattisgarh have vested rights over collection of nationalized minor forest produce with the tribal population. This will also be hopefully addressed with the passing of the Recognition of Forest Rights Bill which stipulates that rights of collection ought to be with the local communities.

[Action : Govt. of Jharkhand]

1) The Chief Minister made a request that he and a small team of officers would like to make a comprehensive presentation to the Prime Minister on the prospects of development in Jharkhand. This was agreed to.

[Action : PMO]

slowly

Ministry of Tribal Affairs

Subject : Scheduled Tribes (recognition of Forest Rights) Bill, 2005 - meeting of delegations with the Minister, Home Affairs

The undersigned attended the meeting held at the residence of the Hon'ble Minister for Home Affairs on 23.7.2006 at 1.00 PM, wherein a delegation comprising of activists/ NGOs came to call on the Minister. The list of delegates is placed below.

2. In the meeting, delegates made various demands with respect to proposed Scheduled Tribes (recognition of Forest Rights) Bill, 2005. The main points made by the delegates were :

i.) Off date should be 2001 rather 1980.

forest dwellers/ settlers should be given the rights. For non-tribals, there should be strict criteria. The proposed provision should take care of (Tamil) people who came to India after India-Sri Lanka accord (Shastri-Bhandarnaike accord) and were settled in Nilgiris. The Tangya settlers in UP/ Uttaranchal may also be taken care of by this provision.

iii.) Recognition of rights should be verified in the Gram Sabha.

iv.) It should be applicable in Protected Areas also.

3. The Minister for Home Affairs said that the matter has been sent to the MoM and a view would be taken in the matter. He heard the

4. It seems that the delegates were unable to understand/ appreciate the basic tenet of the Bill i.e. the Bill is about recognizing the rights of STs on forests and not about regularization of encroachment/ measure to provide forest land by bypassing the Forest (Conservation) Act, 1980/ laid down procedure. The undersigned is of the opinion that this needs to be made amply clear otherwise in future the proposed Act may face problem in passing the judicial scrutiny as it has happened in case of Ministry of Urban Development sponsored withholding the encroachment removal process for a year.

Submitted please.

[Bharat Lal]
Director (SG)
25.7.2006

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Sl. No.	Provision/Clause	Reasons why change is not acceptable
1	Gram Sabha as the competent authority for approving the forest rights - 6 (1)	<p>The Bill as introduced designates the Gram Sabha as the competent authority for initiating 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, passing a resolution to that effect and forwarding the same to the Sub-Divisional Level Committee. The Gram Sabha has thus been made the authority to make the first recommendation in this regard to the Sub Divisional Level Committee. The Bill as reported on the other hand makes the Gram Sabha the final authority for preparing the record of forest rights.</p> <p>It may be mentioned that 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 was in tune with the provisions of the PESA Act, 1996 and aims at empowering the local communities in management of their natural resources. The Sub Divisional Level Committee and the District Level Committee were assigned the work relating to the examination of the resolution passed by the Gram Sabha and preparation and finalization of the record of forest rights thereafter on the basis of the relevant records and the evidences produced. This was because the preparation of the record of forest rights and final approval of the record of the forest rights, based on the recommendation of Gram Sabha, are quasi judicial and executive functions involving de-notification of forest land, changes in revenue records, etc. which can only be performed by officials to ensure accuracy and accountability. Making the Gram Sabha the final authority for preparing of record of forest rights would not be advisable and also legally tenable as the decision relating to assignment of individual/community rights on land are quasi-judicial in nature and governed by various State specific legislation. "Land" being a State subject, necessary amendment/correction in the relevant records have to be governed by State regulations and, therefore, the Sub Divisional Level Committee consisting of SDM, Forest officials, Tribal Affairs officials is the right forum to take action on the recommendation of the Gram Sabha. The Sub Divisional Level Committee cannot be expected to send recommendations of an advisory nature to the Gram Sabha and it would also be inappropriate that the Gram Sabha, a body serviced by village level functionaries, to have powers to overrule the Sub Divisional Level Committee.</p> <p>However, it may be accepted to include two ST representatives of the Panchayati Raj Institutions, one male and one female, in the Sub Divisional and District Level Committees.</p>

Minutes of the 1st Meeting of the Group of Ministers (GoM) to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 held on 20.7.2006 at 1800 hrs.

The 1st Meeting of the Group of Ministers (GoM) to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was held on 20.7.2006 at 1800 hrs. under the Chairmanship of Shri Pranab Mukherjee, Minister of Defence, wherein the following members were also present:-

- (1) Shri Shivraj V. Patil, Minister of Home Affairs
- (2) Shri P.R. Kyndiah, Minister of Tribal Affairs & Minister of Development of North Eastern Region
- (3) Smt. Meira Kumar, Minister of Social Justice & Empowerment
- (4) Shri A. Raja, Minister of Environment & Forests
- (5) Shri Kapil Sibal, Minister of Science & Technology and Minister of Ocean Development
- (6) Smt. Renuka Chowdhury, MOS(IC) of the Ministry of Women & Child Development

2. The Chairman of the Group welcomed all the members of GoM and gave a brief background and the purpose of the introduction of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 in the Lok Sabha. He mentioned that the basic purpose of introducing the Bill was to confer rights on the forest dwelling Scheduled Tribes (FDST) who were denied such rights, but at the same time to ensure the protection of the forests. The Joint Parliamentary Committee (JPC) had, however, widened the scope of the Bill to cover the other traditional forest dwellers also. He pointed out that the Ministry of Tribal Affairs had indicated in the agenda note the changes made by the JPC which

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were acceptable and which were not acceptable. Since the Joint Committee had given a unanimous report, a broad consensus should be attempted on the various changes made by them before the Bill could be considered by the Parliament. This will also be necessary to reconcile the twin objectives of protection of forest rights of FDSTs and environmental protection as provided in the NCMP. The Chairman highlighted the following four main issues on which the JPC had suggested changes and invited specific views of the members on the same.

- 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

3. The Minister of Tribal Affairs and Minister of Development of North Eastern Region stated that the Ministry had categorized the changes made by the JPC into those which were agreeable to the Ministry and which were not agreeable to the Ministry. He mentioned that there were four basic issues which were not acceptable to the Ministry, which need to be considered by the GoM. These issues are -

- (i) Inclusion of non-tribals and other forest dwellers within the scope of the Bill: He stated that inclusion of non-tribals and other forest dwellers within the scope of the Bill will go against the basic purpose for which the Bill was introduced and the Bill should, therefore, cover the FDSTs alone.

- (ii) Changing of the cut off date of 25.10.1980 to 13.12.2005 for recognition of forest rights: He stated that the cut off date of 25.10.1980 was determined through a process of consultation with all concerned including the Ministry of Environment & Forests. The revision of the cut off date will go against the basic structure of the Bill.
- (iii) Expansion of the ceiling of 2.5 hectares of the forest land per nuclear family of a forest dwelling Scheduled Tribes: He mentioned that the idea was to recognize occupation of forest land on "as is where is basis" but such occupation needed to be restricted. The ceiling of 2.5 hectares of forest land per family occupation was quite a reasonable ceiling.
- (iv) Gram Sabha as the competent authority for approving the forest rights: He pointed out that the Gram Sabha could not be made the competent authority for approving the forest rights, as this would be against the basic structure of governance. The involvement of the Gram Sabha is, however, necessary as 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, consolidating and verifying them and forwarding the same to the Sub Divisional Level Committee.

4. The Minister of Home Affairs stated that it was an important Bill and a careful view had to be taken on the various suggestions made by the Joint Committee. He was, however, inclined to agree with the view that inclusion of

the non-STs within the purview of the Bill will open the floodgates, but suggested that we should also be sensitive to the case of the Scheduled Castes who were residing in the forests. He agreed that the revision of the cut off date from 25.10.1980 to 13.12.2005 will create problems, the ceiling of 2.5 hectares of forest land was adequate and the Gram Sabha could not be made the competent authority for approving the forest rights. He, however, suggested that the suggestion of the JPC for deletion of the provision relating to offences and penalties for forest right holders needed to be looked into carefully. As regards the inclusion of a new right relating to access to biodiversity and intellectual property, he wondered how the tribals would exercise this right. He expressed the fear that others would take advantage of this right in the name of tribals. As regards the right to *in situ* rehabilitation also, he mentioned that it would be difficult for Government to ensure *in situ* rehabilitation of the forest dwelling Scheduled Tribes.

5. The Minister of Environment & Forests also expressed the view that giving absolute power to the Gram Sabha for approving the forest rights will not be advisable. He mentioned that the Ministry of Environment & Forests had earlier revised the cut off date for recognition of rights from 25.10.1980 to 31.12.1993, but this had been stayed by the Supreme Court. The Government had given a commitment to the Supreme Court for adhering to the cut off date of 25.10.1980 and there would be legal impediments if the cut off date was changed to 13.12.2005. He further stated that the Ministry of Environment & Forests had suggested recognition of rights in National Parks and Sanctuaries on provisional basis but JPC had not agreed to this. He also stated that there should be some provision for offences and penalties for forest right holders also in the Bill. He further mentioned that the proposed Bill could not have a overriding provision over the Indian Forest Act, 1927, Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972.

6. The Minister of Social Justice & Empowerment, while referring to the provisions of the National Common Minimum Programme relating to reconciling of the objectives of economic growth and environmental protection as far as tribal communities dependent on forest were concerned, agreed with the views expressed by the Minister of Tribal Affairs on all the four issues but desired that the members of the Scheduled Castes residing in the forests should also be brought within the purview of the Bill.
7. The Minister of Science & Technology and Minister of Ocean Development wanted to know whether the Government had any data regarding the number of ST and non-ST forest dwellers and what was the number of people who are likely to be affected if such non-ST forest dwellers were kept out of the purview of the Bill. It was explained that under the existing policy guidelines, the Ministry of Environment & Forests were not differentiating between the tribals and other forest dwellers for recognition of their rights under the existing policy guidelines. The data relating to such non-ST forest dwellers was, however, not available with the Government of India, but may be available with the State Governments. The Minister of Home Affairs stated that even the State Governments would not be having figures of STs and non-STs in the forests. The Chairman, while agreeing that there should be a reasonable rationale for differentiating between STs and non-STs, pointed out that the basic purpose of the proposed legislation was to recognise and vest forest rights in forest dwelling scheduled tribes who have a distinct status and relationship with respect to forest.
8. The MOS (IC) of the Ministry of Women & Child Development pointed out that the Bill had been introduced on the assumption that the forest dwelling scheduled tribes would be entitled to get the benefits of development schemes if



they remain in the forests whereas our endeavour should be to bring them in the mainstream and integrate them with the rest of the society. She did not favour empowerment of Gram Sabha for approving the forest rights. The Chairman, at this stage, mentioned that the scope of the discussions in the GoM should be limited to the changes made by the JPC in the Bill which were agreeable and not agreeable to the Ministry of Tribal Affairs.

9. After detailed discussion, the following broad consensus was reached with respect to these 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, consolidating and verifying them and forwarding the same to the Sub Divisional Level Committee.
- (iv) The term 'minor forest produce' should not include stones, slates and boulders as suggested by the JPC that might mean giving rights over minerals.
- (v) The right of ownership access to use or dispose of minor forest produce' should not be expanded to cover the right of transport of minor forest produce.

10. Regarding the issue of restricting the scope of the Bill to forest dwelling Scheduled Tribes, there were some differences of opinion, though the general consensus was to limit it to STs only.

11. It was, however, decided that the Chairman would hold further discussions with the Political Parties on the above issues and call for another meeting of the GoM for taking a final view.

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24/7/2006

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First Meeting of the Group of Ministers (GoM) to consider issues relating to the STs (Recognition of Forest Rights) Bill, 2005 held on July 20, 2006

Interventions by Ministry of Panchayati Raj(MoPR)

(i) Expanded scope of the Bill.

Ministry of Panchayati Raj said that recognizing the rights of non-tribals on the same footing as STs for whose benefit the PESA was enacted, would rapidly further marginalize the STs, instead of strengthening their protection as is the objective of the STs Bill, 2005. In this respect, we agree with the Ministry of Tribal Affairs. The scope of the Bill should be restricted to Scheduled Tribes. In fact, the very title of the Bill is restricted to Scheduled Tribes, and includes no other category.

(ii) Cut – off date

Ministry of Panchayati Raj said that we first recommended April 30th 1993 as the cut – off date, since this was the date recommended by the Mungekar Committee on Inter-Sectoral Co-ordination of tribal Affairs. It was also the date on which Part IX of the Constitution was gazetted. Subsequently, MoPR also favored that the cut off date could be pushed to December 24th, 1996, as this was the date on which PESA was enacted. However, the cut-off date being suggested in the STs Bill, 2005 as December 13, 2005 has no particular sanctity, and will only encourage fresh encroachment and unscrupulous elements with false claims of occupation as recent as December 13, 2005.

(iii) The JPC has revised the ceiling for recognition of forest rights from 2.5 ha. Per nuclear family to the area under actual occupation

The MoPR is of the view that 2.5 hectares per nuclear family as the cut off ceiling for recognition of forest rights is appropriate, as opposed to the current suggestion of the JPC that this be enlarged to "area under actual occupation". The latter if incorporated would inevitably encourage tribal elites to occupy increasingly larger tracts of land to the detriment of the genuine occupants of forest land. Additionally, this would also lead to a proliferation of non-tribal interests. Finally, land regularization and land allotments to all STs, SCs and BPL families even on non-forest, revenue lands are invariably subject to a ceiling.

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(iv) **Role of the Gram Sabhas**

MoPR agrees with the amplified definition of the "Gram Sabha", since this suggestion is in conformity with the provisions of PESA.

2. With the permission of the Chair, Ministry of Panchayati Raj sought to share its concerns on several key aspects, which had not been deliberated at all. These were :

(v) **Minor Forest produce**

MoPR believes that the terminology Minor Forest Produce includes seeds, all non-timber forest produce, brush, bamboo, shrubs, herbs, cocoons, honey wax, roots tubers, dead branches, etc. However, the JPC has enlarged the definition of minor forest produce to include all stones, slates and boulders, as well as minor and major minerals like granite, marble as well as wood. MoPR disagrees with this formulation, and is in concurrence with the formulation of minor forest produce as presented by the Ministry of Tribal Affairs, with the additionality of seeds and salt.

(vi) **Transportation within the Forests**

JPC has further extended the rights to minor forest products to include their collection and transportation. MoPR feels that allowing transportation for minor forest produce by trucks or wheel driven vehicles would open the flood gates to contractors and middlemen who would freely enter and exploit the vast MFP resources

(vii) **Offer of in situ rehabilitation to ineligible forest dependant encroacher**

JPC has held that any ineligible and primarily forest dependent encroacher shall be offered *in situ* rehabilitation through employment in afforestation, or other forest-based activities. MoPR is of the view that this clause would negate the primary objectives of the STs Bill, 2005, which is to correct historical injustice and provide remedial justice to STs. This *in situ* rehabilitation clause will definitely operate to the detriment of genuine bonafide tribals, dwelling in forest habitations

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

dated, the 10th November, 2006

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



(Ruchira Pant)

Joint Secretary to the Government of India

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

dated, the 10th November, 2006

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

1. Foreign Secretary
2. Home Secretary
3. Secretary, Ministry of Tribal Affairs
4. Secretary, Ministry of Law & Justice
5. Secretary, Ministry of Panchayati Raj
6. Secretary, Ministry of Social Justice & Empowerment
7. Secretary, Ministry of Environment & Forests
8. Secretary, Department of Science & Technology
9. Secretary, Ministry of Women & Child Development
10. Secretary, Ministry of Food Processing Industries



(Ruchira Pant)

Joint Secretary to the Government of India

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Government of India
Ministry of Tribal Affairs

Subject: Proposal for amendments in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the Joint Committee of Parliament

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 (F/A).

2. The Bill was referred to a 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, 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" (F/B)

3. The Ministry of Tribal Affairs examined the changes made by the Joint Committee in the Bill introduced in the Lok Sabha on 13.12.2005 and prepared 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, along with the stand of the Ministry of Tribal Affairs on each of the changes made by the Joint Committee (F/C).

4. The Ministry of Tribal Affairs felt 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 has to be only as recent as 13.12.2005 and all final decisions regarding vesting of forest rights, including land rights 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 also one of the evidences made acceptable in the Bill as reported. 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.

5. The Cabinet in its meeting held on 1.12.2005, while approving the draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, formulated by the Ministry, had 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.

6. The meetings of the Group of Ministers to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, were held on 20.7.2006 and 13.11.2006 under the chairmanship of Shri Pranab Mukherjee, the then Minister for Defence and now Minister for External Affairs. The stand of the Ministry of Tribal Affairs on the amendments made by the Joint Committee of Parliament on the Bill was placed before the GoM. The stand *inter-alia* was that while many of the changes made by the Joint Committee of Parliament were broadly acceptable to the Ministry of Tribal Affairs with some modifications, the following changes were not acceptable as they were considered to be against the purpose for which Bill was introduced and thereby 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.

7. After detailed discussions, the GoM has decided to recommend the following to the Cabinet :

- (i) The Bill should be restricted to forest dwelling Scheduled Tribes only, and a separate Bill could be introduced for non-tribal forest dwellers.
- (ii) The cut off date of 13.12.2005 as recommended by the Joint Parliamentary Committee be accepted.
- (iii) The ceiling of 2.5 hectares of occupation of land could be raised to 4 hectares or actual possession whichever is lower.
- (iv) The Gram Sabha could not be made the final authority for approving the forest rights. However, the composition of the Committees at each level could be expanded to include one male and one female ST

representative of the Panchayati Raj institutions at the appropriate level.

- (v) The term 'minor forest produce' should not include stones, slates and boulders as suggested by the JPC that might mean giving rights over minerals.
- (vi) The right of ownership access to use or dispose of minor forest produce should not be expanded to cover the right of transport of minor forest produce.

8. The GoM also decided that the Ministry of Tribal Affairs would take further action for revising the Bill on the basis of the reasoning and the stand as given against each change in the statement showing the key differences between the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 and the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the Joint Committee of Parliament, and the recommendations of the GoM, and prepare clause-by clause amendments in consultation with the Ministry of Law & Justice for taking Cabinet's approval for its introduction in the ongoing session of the Parliament. The minutes of the meetings of the GoM are at F/D & E.

9. In the second meeting of the GoM held on 13.11.2006, the Secretary, Ministry of Panchayati Raj had expressed their concerns on the stand of the Ministry of Tribal Affairs in which Ministry of Tribal Affairs had not agreed to certain changes made by the Joint Committee of Parliament while reporting the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006. The Chairman of the GoM directed the Secretary, Ministry of Panchayati Raj to send their suggestions to the Ministry of Tribal Affairs and the Secretary, Ministry of Tribal Affairs, to look into these concerns while preparing clause-wise amendments for consideration of the Cabinet.

10. As per the directions of the Chairman of the GoM, a meeting was held in the chamber of Secretary, Ministry of Panchayati Raj on 24.11.2006 to address the concerns raised by that Ministry and to take a view on each of them for incorporation in the Bill. The position with respect of each of the 12 issues raised by the Ministry of Panchayati Raj is indicated in the statement at F/F. Perusal of the statement would show that except the issues at S.No. 1, 5, 8, 9 and 10 relating to inclusion of the term "in and around" in the definition of "forest dwelling Scheduled Tribes", inclusion of the words "and other" in Section 4(5) of the Bill, recognition of shifting cultivation as a forest right, the provision of fair minimum support price for MFPs and making Government responsible for ensuring that the benefits arising out of exploration, exploitation and use of natural resources are not denied to FDSTs respectively, all the remaining 7 issues have either been dropped, already covered in the Bill or have been incorporated by suitably amending the relevant Sections.

11. As regards the provision of fair minimum support price, it was pointed out that MSP for MFP is a matter of policy and cannot be made a part of forest rights through the legislation under consideration. The policy relating to minimum support price has to be governed through executive instructions, keeping in view the number and the nature of MFPs in different States, the mechanism available for their procurement, value addition and disposal, the level of minimum support price which the States could provide, etc. It was further explained that the PESA Act already provides for mandatory recommendation of the Gram Sabhas or Panchayats at the appropriate level prior to grant of prospecting licence or mining lease and grant of concession for the exploitation of minor minerals in the Scheduled Areas. The Bill is

not overriding that provision of PESA. The Ministry of Panchayati Raj were, however, not agreeable to the stand of the Ministry of Tribal Affairs on these two issues and it was decided that they may, if necessary, further convey their viewpoint in the meeting of the Cabinet for appropriate decision.

12. On the basis of the reasoning and the stand of the Ministry of Tribal Affairs as given against each change in the statement at F/C and to give effect to the recommendations of the GoM and the decisions taken in the meeting with the Ministry of Panchayati Raj, a notice of amendments to amend the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, reported by the Joint Committee of Parliament has been attempted and is placed below (DFA-I). A draft Note for the Cabinet has also been prepared and is placed below (DFA-II).

13. We may refer the file to the Ministry of Law & Justice for examination of the proposed amendments to the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, reported by the Joint Committee of Parliament, from legal and constitutional point of view and for vetting the notice of amendments (DFA-I) and the draft Note for the Cabinet (DFA-II) before the same is sent to the Cabinet Secretariat for soliciting approval of the Cabinet to the proposed amendments.

1381/Secy (L. J.)
Date: 11/11/06

1326
Dy. Secy (L. J.)
Date: 11/11/06

(P.K. Varma)
Consultant
30.11.2006

JS(DP) *[Signature]*
30/11/06

Secy (TA)

Kindly may kindly approve before this is sent to the Ministry of Law & Justice for vetting prior to sending it to the Cabinet.

[Signature]
30/11

MECA

[Signature]
30/11/06

Secy (TA)

May kindly vet the Cabinet Note and the amendments.

[Signature]

Law Secretary's Office
Dy. No. 5034-I
Date: 11/12/06

Ministry of Law & Justice
(Secretary, Legal Affairs) (on tour)
[Signature]
1381/Secy (L. J.)

(मीना गुप्ता/MEENA GUPTA)
सचिव/Secretary
जनजातीय कार्य मंत्रालय
Ministry of Tribal Affairs
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi
11459/06
4/12/06

Ministry of Law & Justice
Department of Legal Affairs

The Ministry of Tribal Affairs has sent a draft Note for the Cabinet regarding proposal for Amendments in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the Joint Committee of Parliament.

2. Vide note dated 12.08.2005 (Flag A) this department has already furnish the comments on the above said matter.
3. The referring Ministry had introduced the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 in the Lok Sabha on 13.12.2005 to recognize the 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 (Annexure -A - The Bill as introduced). The Bill was referred to a 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 presented its report to the Lok Sabha on 23.05.2006 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". (Annexure - B - The Bill as reported).
4. The referring Ministry 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 differences between the Bill as introduced in the Lok Sabha on 13.12.2005 and the Bill as reported by the Joint Committee along with the stand of the referring Ministry on each of the changes made by the Joint Committee, is at Annexure - C. It is further stated that the Cabinet in its meeting held on 01.12.2005 while approving the draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, formulated by the Ministry, has 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.
5. After detailed discussions in the meetings of the Group of Ministers, the following was decided to be recommended to the Cabinet :-
 - (i). The Bill should be restricted to forest dwelling Scheduled Tribes only, and a separate Bill could be introduced for non-tribal forest dwellers.
 - (ii). The cut off date of 13.12.2005 as recommended by the Joint Parliamentary Committee be accepted.

(iii). The ceiling of 2.5 hectares of occupation of land could be raised to 4 hectares or actual possession whichever is lower.

(iv). The gram Sabha could not be made the final authority for approving the forest rights. However, the composition of the Committees at each level could be expanded to include one female and one female ST representative of the Panchayati Raj institutions at the appropriate level.

(v). The term 'minor forest produce' should not include stones, slates and boulders as suggested by the JPC as that might mean giving rights over minerals.

(vi). The right of ownership access to use or dispose of minor forest produce should not be expanded to cover the right of transport of minor forest produce.

6. The Group of Ministers also decided that the referring Ministry would take further action for revising the Bill on the basis for the reasoning and the stand as given against each change as suggested in the Annexure - C of this note and accordingly prepare clause-by clause amendments in consultation with the Ministry of Law & Justice for taking Cabinet's approval for its introduction in the ongoing session of the Parliament.

7. In the second meeting of the GoM held on 13.11.2006, the Secretary, Ministry of Panchayati Raj had expressed their concerns on the stand of the Ministry of Tribal Affairs in which Ministry of Tribal Affairs had not agreed to certain changes made by the Joint Committee of parliament while reporting the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Bill 2006. The Chairman of the GoM directed the Secretary, Ministry of Panchayati Raj to send their suggestions to the Ministry of Tribal Affairs and the Secretary, Ministry of Tribal Affairs, to look into these concerns while preparing clause-wise amendments for consideration of the Cabinet. Copies of the minutes of the meeting of the GoM on 20.07.2006 and 13.11.2006 are at Annexures - D & E respectively.

8. As per the directions of the Chairman of the GoM, a meeting was held on the chamber of Secretary, Ministry of Panchayati Raj on 24.11.2006 to address the concerns raised by that Ministry and to take a view on each of them for incorporation in the Bill. The position with respect of each of the 12 issues raised by the Ministry of Panchayati Raj is indicated in the statement at Annexure-F. Perusal of the statement would reveal that except the issues at S.No.

1,5, 8,9 and 10 of Annexure-F relating to inclusion of the term "in and around" in the definition of "forest dwelling Scheduled Tribes", inclusion of the words "and other" in Section 4 (5) of the Bill, recognition of shifting cultivation as a forest right, the provision of fair minimum support price for MFPs and making Government responsible for ensuring that the benefits arising out of exploration, exploitation and use of natural resources are not denied to FDSTs respectively, all the remaining 7 issues have either been dropped, already covered in the Bill or have been incorporated by suitably amending the relevant Sections.

9. As regards the provision of fair minimum support price, it was pointed out that the Ministry of Tribal Affairs fully supports the concern that MSP for MFP should be provided but this was a matter of policy and could not be made a part of the forest right through legislation under consideration. The policy relating to minimum support price has to be governed through executing instructions, keeping in view the number and the nature of MFPs in different States, the mechanism available for their procurement, value addition and disposal, the level of minimum support price which the States could provide etc. It was further explained that the PESA Act already provided for mandatory recommendation of the Gram Sabhas or Panchayats at the appropriate level prior to grant of prospecting licence or mining lease and grant of concession for the exploitation of minor minerals in the Scheduled Areas. The Bill is not overriding that provision of PESA. The Ministry of Panchayati Raj, however, not agreeable to the stand of the Ministry of Tribal Affairs on these two issues and it was decided that they may, if necessary, further convey their viewpoint in the meeting of the Cabinet for appropriate decision.

10. It is also stated that on the basis of the reasoning and the stand of the referring Ministry as given against each change in Annexure C and to give effect to the recommendations of the Group of Ministers and the decisions taken in the meeting with the Ministry of Panchayati Raj, the referring Ministry proposes to move the notice of amendments to amend the Scheduled Tribes and Other Traditional Forest Dwellers' (Recognition of Forest Rights) Bill, 2006 as reported by the Joint Committee of the Parliament, on the basis of the following main changes which are as below :-

1. Change which are AGREEABLE as such or with minor changes -

1. Definition of 'community forest resource'
[Section 2 (a)]

2. Rename the core areas as 'critical wildlife habitat'. This should be determined by an Expert Committee constituted by the Ministry of Environment & Forests with a representative of the Ministry of Tribal Affairs [Section 2(b)]
3. Revision of the definition of the term "forest dwelling Scheduled Tribes" to include such members or community of the Scheduled Tribes who depend on the forests or forest lands inside the forests for their bona fide livelihood needs even if they are not staying inside the forests but residing nearby [Section 2 (c)]
4. Amplifying the definition of Gram Sabha [Section 2 (g)]. However, the "Explanation; to Section 2 (g) is not necessary as it has the effect of extending provisions of the PESA, Act to non-Scheduled Areas, where "village" would have different meanings under different State Acts relating to Panchayati Raj.
5. Extension of right to collect, use and dispose of MFP, which has been traditionally collected within or outside village boundaries. [Section 3(1)(c)].
6. Amplifying of community rights to include entitlements of fish and other water bodies [Section 3(1)(d)].
7. Expansion of the right with respect to settlement of forest villages to include old habitations, unsurveyed villages and other villages in the forests [Section 3(h)] The word "conversion" would, however, need to be added after the words "rights of settlement".
8. Addition of new clause 'right of access to biodiversity and community right to intellectual property' [Section 3 (k)].
9. Addition of the right to in situ rehabilitation including alternative land in the event of illegal eviction or displacement from forest land of any description without receiving legal entitlement to rehabilitation. This could be acceptable in case of forest dwelling Scheduled Tribes displaced prior to the cut off date of 13.12.2005, as accepted by the GoM [Section 3 (1) (m)].

10. Inclusion of the new right allowing for diversion of forest land for creation of basic infrastructure in the habitations within the forests. This is acceptable subject to felling of trees not exceeding 75 trees "per hectare", instead of "per project". [Section 3 (4)].
11. Conferment of rights in critical wildlife habitats of National Parks and Sanctuaries. This is acceptable subject to certain deletions of provision for consultation and with independent ecological and social scientist familiar with the area and consent of all the right holders as in clause 4(2), 4(2)(b), 4 (2)(c) and 4(2)(e). Section 4(2)].
12. No settlement of the forest right holders shall take place without preparation and communication of resettlement package for secured livelihood and informed consent of the Gram Sabha. [Section 4(2)(d) and Section 4(2)(e)].
13. No resettlement shall take place until facilities and land allocation at the resettlement location are complete. Also a proviso that critical wild life habitat should not be diverted by the State and Central Government for any other use. [Section 4(2)(f)].
14. Changing the cut off date from 25.10.1980 to 13.12.2005, as decided by the GoM. [Section 4(3)].
15. 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 [Section 4(4)].
16. Partly agree that 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 complete. [Section 4(5)].
17. Forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the FCA, requirement of payment of NPV [Section 4(9)].

18. 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 [Section 4(10)].
19. Empowerment of the holder of any forest right, Gram Sabha and the village level institutions to protect the wild life, forest, adjoining, catchment areas, water sources and preservation of the habitate of the FDSTs from any destructive practices. [section 5].
20. Deletion of the duties of the forest right holders as envisaged in the Bill as introduced. [Section 5 of the Bill as introduced].
21. Deletion of existing Section on Offences and Penalties [Section 9].
22. Previous publication of rules [Section 16(1)].
23. The number of members of the Sub-Divisional Level Committee, District Level Committee and the State Level Monitoring Committees and the procedure to be followed [Section 16(1)(e)].
24. No amendment need be included in the notice for amendments with respect to the additions and deletions effected by the Joint Committee and agreed to by the ministry of Tribal Affairs as per details in Annexure-C.

II Changes which are NOT AGREEABLE are as follows :

A. Major changes

1. Inclusion of non-ST forest dwellers [Preamble, Section 1(1), Section 2(o), Section 3, Section 4].
2. Removal of any ceiling of land to be vested. (The ceiling would be fixed at 4 hectares, as decided by the GoM)[Section 4 (6)].
3. Gram Sabha as the competent authority for approving the forest rights. [Section 6(1)].

B. Consequential changes – NOT AGREEABLE

1. Revision of the definition of "forest dwelling Scheduled Tribes" to include the members or community of the Scheduled Tribes who primarily reside in the close proximity of forests. However, Section 2(c) has been revised to cover those FDSTs who depend on forests or forest lands for bona fide livelihood needs even if they are not staying inside forests.[Section 2 (c)].
2. Revision of the definition of "forest land" to mean land of any description recorded or notified as forest including unclassified forest. [Section 2 (d)].
3. Revision of the definition of the term "minor forest produce" to include fuel wood and the like stones, states and boulders, which may be interpreted to include minor and major minerals like granite, marble, etc. The term "minor forest produce" can also not include products from water bodies including fish weeds and the like. Fish and products of water bodies are covered in Section 3(1)(d). [Section 2 (i)].
4. Addition of new category of persons, namely, "traditional forest dweller" to mean any member or community that is residing in, or in close proximity of the forest land and primarily dependent on forest land or forest resources for their livelihood needs. [Section 2 (o)].
5. Change of the definition of the term "village" to cover non-Schedule Areas. [section 2 (p)].
6. Inclusion of the words "that occur in forest land" in the clause relating to community rights [Section 3 (1)(b)].
7. Inclusion of right of transport of MFP in Section 3(1) (c).
8. Inclusion of timber, minerals, environmental and cultural services in the forest rights. (Section 3 (10)(i)).
9. Vesting of rights to include the lands occupied by the families of forest dwelling Scheduled Tribes and other traditional forest dwellers earlier or leased to them by the Forest Department and taken away subsequently by the Forest Department or other agencies. [Section 3 (2)].

10. Enlargement of the forest rights to guarantee general things, such as, food, fiber, health, communication and the like. [Section 3(3)].
11. Provision relating to vesting of equal rights in the female members of the Scheduled Tribes and other traditional forest dwellers as it is already included in Section 4 (4). [Section 3 (5)].
12. Informed consent of all individuals to the resettlement and to the package. [Section 4(2)(e)].
13. Right of the community to their original habitation, if unsatisfied with the rehabilitation. [Proviso to Section 4 (2) (f)].
14. Section 4 (7) becomes redundant due to deletion of clause 4(ii) of the Bill as introduced from the Bill as reported.
15. Right to shifting cultivation, which is not specifically recognized as a forest right [Section 4(8)].
16. Giving full decision making powers to communities that partially or fully practice shifting cultivation over land use or any land that falls within the traditional boundaries or range of that community. [Section 4 (8)].
17. Deletion of the provisions relating to the duties and responsibilities of holders of forest rights also for protection of wildlife, forest and biodiversity, etc. [Section 5(1)].
18. Requiring the Government to ensure that harvested minor forest produce is sold at fair minimum support price. [Section 5 (1)(e)].
19. Making the Government responsible for ensuring that the benefits arising out of any explorations, exploitations and use of natural resources are not denied and adequate compensation is given for any damages cause by such activities. [Section 5(2)].
20. The Government being made responsible for protecting the forest rights of the FDSTs and other traditional forest dwellers and for prohibiting others from violating the provisions of the Act and taking punitive action against them. [Section 5 (3)].

21. The Government being made responsible for protecting the right to access of biodiversity and the community right to the intellectual and traditional knowledge related to forest biodiversity and cultural diversity. The right to biodiversity, etc. is already provided under Section 3 (1) (k). [Section 5 (4)].
 22. Non acquisition or diversion of forest land without prior intimation and prior consent of Gram Sabha and the affected persons without paying adequate and equal compensation and proper rehabilitation .[Section 5 (5)].
 23. Authorities and Procedure for Vesting of Forest Rights [Sections 6 (1) to 6 (12)].
 24. Provision relating to constitution of one or more committees or other institutions by the Gram Sabhas to consider matters that fall within the purview of the Gram Sabha.
 25. In situ rehabilitation of ineligible and primarily forest dependent encroachers through employment in afforestation or in other forest based activities [Section 8].
 26. The provision that the directions of the Central Government to every authority referred to in Chapter IV of the Bill shall be consistent with the provisions of this Act and shall not result in the curtailing or abrogation of any of the rights recognized under this Act. [Section 14].
 27. The condition that the provisions of the Act shall prevail if the provisions of any other law for the time being in force or any decree, judgement, award or order of any Court are in contravention to the provisions of the Act. [Section 15].
11. The referring Ministry accordingly prepared the amendment notice in consultation with the Ministry of Law & Justice (Legislative Department) to give effect to the recommendations of the Group of Ministers and the decisions taken in the meeting with the Ministry of Panchayati Raj by amending the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 as reported by the Joint Committee of Parliament, as the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 under the same title as was that of the Bill as introduced in the Lok Sabha on 13.12.2005. A copy of the same is placed at Annexure-G.

12. Approval of the Cabinet is solicited to accept the recommendations of the Group of Ministers and the decisions taken in the meeting with Ministry of Panchayati Raj as given in para 5 of this Note and to move official amendments (as placed in Annexure-G) in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 as reported by the Joint Committee of Parliament with such modifications of drafting nature as may be considered necessary.

13. Being a matter of policy there appears to be no legal or constitutional objection to the proposal. Hence, we may concur in the same.

IS 1171
By No. 1171
Date 4/12/06

May kindly see.

(D.R.Meena)
Joint Secretary & Govt. Counsel
04.12.2006

Office
No. 5080-1
Date 4/12/06

Law Secretary.

JM
4/12/06

4260-1916
4/12/06

Secretary L/S

No 11457/06
4/12/06

4/12/2006

Legislative I

By no. 1646-L.I
4/12/06

-15-

Ministry of Law and Justice
Legislative Department

The Scheduled Tribes (Recognition of Forests Rights) Bill, 2005 was introduced in Lok Sabha on 13.12.2005. Thereafter, it has been referred to the Joint Committee of both the Houses of Parliament for examination and report. The Joint Committee 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 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 Forests Rights) Bill, 2006.

2. The Joint Committee has made several amendments with respect to clause 2 of the said Bill, i.e., definitions relating to competent authority, community forest resource, critical wildlife habitat, forest dwelling scheduled tribes, forest land, gram sabha, minor forest produce, traditional forest dweller and village.

The Joint Committee has also made amendments in clauses 3, 4, 5, 6, 7, 8, 14, 15, and 16.

3. The Cabinet in its meeting held on 1.12.2005, while approving the draft Scheduled Tribes (Recognition of Forests Rights) Bill, 2005, formulated by the Ministry, had decided that a Group of Ministers be constituted to-

- (a) harmonize the issues brought up during discussions in the Cabinet and
- (b) consider Official Amendments to the Bill.

4. The Cabinet Secretariat, vide their Memo dated 23.12.2005, constituted a Group of Ministers (GoM) to consider the issues relating to the Bill as per the decision of the Cabinet mentioned above. Accordingly, the meetings of the Group of Ministers to consider the issues relating to the Scheduled Tribes (Recognition of Forests Rights) Bill were held on 20-7-2006 and 13-11-2006.

5. After detailed discussion in the meetings of GOM, the following was decided to be recommended to the Cabinet:

- (i) the Bill should be restricted to the forest dwelling scheduled tribes only and a separate Bill could be introduced for non-tribal forest dwellers;
- (ii) the cut off date of 13.12.2005 as recommended by the Joint Parliamentary Committee be accepted;
- (iii) the ceiling of 2.5 hectares of occupation of land could be raised to 4 hectares or actual possession whichever is lower;
- (iv) the Gram Sabha could not be made the final authority for approving the forest rights and the composition of the Committees at each level could be expanded to include one male and one female ST representative of the Panchayati Raj Institutions at the appropriate level;
- (v) the term minor forest produce should not include stones, slates and boulders as suggested by the JPC as that might mean giving rights over minerals;
- (vi) the right of ownership access to use or dispose of minor forest produce should not be expanded to cover the right of transport of minor forest produce.

6. The administrative Ministry, the Ministry of Tribal Affairs examined the Report of the Joint Committee and recommended to the Group of Ministers and decided to accept certain recommendations.

Committee and the GoM. Accordingly, the administrative Ministry has prepared a draft Note for the Cabinet seeking its approval for moving necessary **Official Amendments** in respect of the Bill as reported by the **Joint Committee of the Parliament**.

7. A draft amendment notice has been prepared in consultation with the officers of the administrative Ministry to give effect to the proposals contained in the Note for the Cabinet and is placed at **Annexure-G**.

8. The draft Note for the Cabinet has been examined in the Department of Legal Affairs, vide their notes dated 4.12.2006 at pp.5-14/ante. **Department of Legal Affairs** have stated that there appeared to be no constitutional or legal objections to the proposal and the same being a matter of policy, they have concurred in.

9. We may also concur in the proposal.

(Signature)
(R. Sreenivas)
Assistant Legislative Counsel
Tel : 23389142
04-12-2006

JS & LC (Dr. Sanjay Singh)

Sanjay Singh
4-12-06

Secretary

Sanjay Singh
4/12/2006

M L J

Sanjay Singh
4/12/06

Secretary

Sanjay Singh
4/12/2006

JS & LC (Dr. Sanjay Singh)

Sanjay Singh
4-12-06

M/o Tribal Affairs
Smt. Ruchira Pant JS.

May also direct the Mem-

Sanjay Singh

Sanjay Singh
5/12/06

May kindly approve his draft Note for the Cabinet, as approved by Ministry of Law. It will circulate today so that it can be included in his agenda for his Cabinet meeting tomorrow.

MTA

Sanjay Singh
5/12/06

F-11381
डा० सं०.../सचिव (ज. मा.)/...
दिनांक... 5/12/06

1129 F
Dr. No. JS/RI/06
Date 05/12/06

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

Reference notes at pp.5-16/N.


2. The Ministry of Law & Justice have concurred in the draft Note for the Cabinet and prepared a revised draft amendment notice to give effect to the proposals contained in the Note for the Cabinet.

3. As per the instructions issued by the Cabinet Secretariat, 60 copies, both in English and Hindi + additional copies equivalent to the number of Departments consulted in the matter are to be sent to the Cabinet Secretariat. Further, (i) a copy of the Draft Note for consideration of the Cabinet is to be forwarded to PMO at the time of inter-Ministerial consultations and the comments of the PMO awaited for 15 days, (ii) comments of the PMO are to be taken into account while finalising the Note without making a reference to this in the body of the note, (iii) a copy of the note in its final form is to be forwarded to the PMO when copies of the note are sent to the Cabinet Secretariat, and (iv) the fact about having consulted the PMO at draft stage and a copy of the note in its final form having been sent to the PMO is to be stated in the communication sent to the Cabinet Secretariat forwarding the requisite number of copies of the note.

4. In this case, we have not made inter-Ministerial consultations and have mentioned in the Cabinet Note that the concerned Ministries/Departments, namely, Ministries of Environment & Forests, Panchayati Raj, Social Justice & Empowerment, Law & Justice (D/o Legal Affairs), etc. have participated in the meetings of the GoM. They have been asked to submit their comments/suggestions/views on the proposed amendments during the meeting of the Cabinet. We had also not sent a copy of the draft Cabinet Note to PMO for their comments before finalising the same.

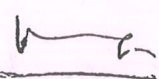
5. It is proposed that we may send 65 copies of the Note for the Cabinet (English version) to the Cabinet Secretariat and endorse a copy of the same to the PMO and state this fact in the communication to the Cabinet Secretariat forwarding the requisite number of the copies of the note. The Hindi version of the Cabinet Note will be sent later.

6. JS(RP) may kindly sign the fair Note for the Cabinet placed below before the same is sent to the Cabinet Secretariat, as in DFA.


(P.K. Varma)
Consultant
5.12.2006

or F/A

1550
.../Dy. No. ...PC&M2006
Date 05/12/06

~~JS(RP)~~

5/12/06
Consultant (PC&V)

~~So (PC&V)~~
5/12/06

Slavo 1 (185100)

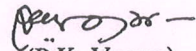
Slavo 2 (185100)

Hindi Section of the Ministry has provided the Hindi version of the Note for the Cabinet relating to the proposal for amendments in the ST Bill reported by the Joint Committee of Parliament which is placed below.

2. As regards the notice of amendments to the Bill (Annexure-G), the matter was discussed with Dr Sanjay Singh, JS & LC, Legislative Department, who stated that we should either enclose the Hindi version of the notice, duly vetted by the OL Wing of that Department or enclose the English version of this notice itself, alongwith the Hindi version of the Cabinet Note, as an emergent measure, and during the meeting of the Cabinet, the Minister of Tribal Affairs can explain that the Hindi version of the notice of amendments was being prepared by the Ministry of Law & Justice (Legislative Department) and the same would be sent to the Parliament at the time of the introduction of the amendments.

3. JS (RP) may kindly sign the note for the Cabinet in Hindi before the same is sent to the Cabinet Secretariat as in the draft placed below.

✓DFA


(P.K. Varma)
Consultant
6.12.2006

~~JS(RP)~~ File may be submitted for information
MT Secy (Tribal Affairs)
7/12/06
~~consultant(PC&V)~~

~~7/12/06~~
~~SO(PC&V)~~

No. 3 (Issue) A. 241-367/Con

Slavo. 10/ (Issue)

Slavo 5 (Receipt)

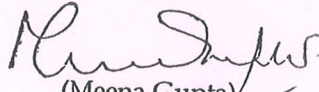
Ministry of Tribal Affairs

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:

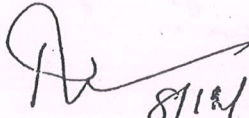
- (a) Other traditional forest dwellers would also be included for recognition of forest rights, provided they have lived in the forests for three generations. A "generation" in this context will mean 25 years.
- (b) The role of the Gram Sabha would be strengthened in line with PESA.
- (c) A Committee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

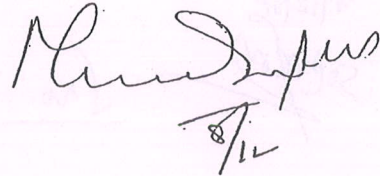

(Meena Gupta)
Secretary (TA)
8.12.2006

MTA


8/12/06



For further action, please.



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

the Chairman of GoM (vide 29/11)

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DRAFT

Minutes of the 2nd Meeting of the Group of Ministers (GoM) to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 held on 13.11.2006 at 1100 hrs.

9 Documents

The 2nd Meeting of the Group of Ministers (GoM) to consider recommendations of the Joint Parliamentary committee (JPC) relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was held on 13.11.2006 at 1100 hrs. under the Chairmanship of Shri Pranab Mukherjee, Minister of External Affairs, wherein the following members were also present:-

- (1) Shri Shivraj V. Patil, Minister of Home Affairs
- (2) Shri P.R. Kyndiah, Minister of Tribal Affairs
- (3) Shri Subodh Kant Sahay, Minister of State (Independent Charge), Ministry of Food Processing Industries.
- (4) Shri Namo Narain Meena, Minister of State, Ministry of Environment & Forests

Shri Prithviraj Chavan, Minister of State in the Prime Minister's Office also attended the meeting, as a special invitee.

2. The Chairman of the Group welcomed all the members of GoM and stated that since the last meeting of the GoM held on 20.7.2006, discussions had been held with the tribal Members of Parliament, Members of the Joint Parliament Committee and others on the various issues relating to the Bill. He stated that the Bill was introduced with the primary purpose of undoing the historical injustice meted out to the STs, and this primary concern and focus can not be allowed to be diluted in any manner. He further mentioned that while the GoM had reached a broad consensus in its first meeting on most of the contentious recommendations of the JPC except inclusion of non STs within the purview of the Bill, we need to now take a final decision on these issues, namely, (i) change of cut of date of 25.10.1980 for recognition of forest rights, (ii) revision of the ceiling of 2.5 hectares of occupation of forest land, (iii) recognition of forest rights of non-tribal forest dwellers who had lived in the forests for minimum three generations, (iv) the definition of the term 'minor forest produce' to exclude stones, slates and boulders which might mean giving rights over minerals, (v) the right of ownership and access to use or dispose of minor forest produce to

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exclude the right of transport of minor forest produce, and (vi) the role of Gram Sabha – whether it should be a recommendatory body or a final authority. He requested members to give their considered opinion keeping in view the primary concern of maintaining the tribal focus of the Bill. He also asked Secretary, Tribal Affairs if she wished to clarify any of the issues.

3. At this stage, Secretary (Tribal Affairs) pointed out that the rights proposed to be given to ST forest dwellers were a set of three rights, viz, land and cultivation rights, MFP collection rights and traditional rights. Non-forest dwellers, if included, could not be given the entire set of rights but only land and cultivation rights since they neither collected MFP, nor had any traditional rights inside forests. She also stated that another issue on which the view of the GoM was required related to the placement of the Bill in the Ninth Schedule to the Constitution as recommended by the Joint Committee. The Chairman of the Group however, stated that the inclusion of the Bill in the Ninth Schedule to the Constitution would not preclude it from being justiciable.

4. The Minister for Home Affairs stated that though the Bill had rightly been introduced with focus on STs, there were people belonging to other weaker sections of the society mainly the Scheduled Castes also residing in the forests, whose occupation rights also need to be recognised and, if possible, by the same Bill. While agreeing that the Gram Sabha could not be made the final authority for approving the forest rights, he questioned the desirability of prescribing a ceiling of 2.5 hectares of occupation of forest land per nuclear family as the ceiling laws of many States provided for higher ceiling for occupation of lands.

5. On an enquiry from the Chairman of the Group about the views of the tribal MPs on the above issues, the Minister for Tribal Affairs explained that though tribals constituted more than 70% of the population of the forest dwellers, the rights of the remaining 30% non-tribals also need to be recognized, of course under separate criterion and a more stringent process. He was of the view that recognition of rights of occupation over forest land would remain restricted to around 13.43 lakh hectares, which is the figure of encroachment as reported by the Ministry of Environment and Forests. He further stated that recognition should be on "as is where is basis", i.e., without any upper ceiling, and the cut off date should also be extended to a more recent date as suggested by the JPC.

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6. The Minister of State (IC), Food Processing Industries suggested that while the forest rights of the ST forest dwellers need to be given on priority, it should not result in a battle for rights between the ST forest dwellers and non-ST forest dwellers, further fuelling social tensions, especially with reference to Jharkhand where even Panchayat elections have not taken place due to dispute over reservation under the PESA Act. He emphasized the need for having a balanced approach and suggested that while the proposed Bill may retain its focus on recognition of forest rights of only the forest dwelling Scheduled Tribes (FDSTs), another Bill for the recognition of the rights of non-STs should also be piloted, preferably simultaneously.

7. The Minister of State (Environment & Forests) expressed the view that the proposed Bill should be in conformity with the Wildlife Act. He pointed out that the previous Government had issued orders extending the cut off date till 13.12.1993 for regularisation of the rights, but the Supreme Court had stayed operation of the orders of the Ministry of Environment & Forests. He mentioned that in view of the above decision of the previous Government, questions might be raised about the logic of fixing the cut off date of 25.10.1980 for regularisation of rights.

8. The Secretary, Ministry of Panchayati Raj raised the issues relating to (i) expansion of the definition of FDSTs to include the members of STs, who were residing in and around the forests (within 5 kilometer radius of forests) and were deriving their livelihood from the forests; (ii) vesting of rights on land occupied by the families of FDSTs leased to them by the Forest Department and taken away subsequently by the Forest Departments, as in the case of tribals of Madhya Pradesh, Jharkhand and Chhattisgarh; (iii) vesting of equal rights in female members of the STs; (iv) empowerment of traditional institutions as per the PESA Act, (v) prior approval of the Gram Sabha for diversion of forest lands for development projects, etc. At this stage, Secretary (Tribal Affairs) pointed out that the suggestion relating to diversion of forest lands for non-forestry purposes, with the prior approval of the Gram Sabha, could not be accepted as diversion of forest land was being allowed by the Ministry of Environment & Forests under the Forest (Conservation) Act, 1980. Even PESA talks of consultation in cases of acquisition of land and not the diversion of forest land. The Chairman asked the Secretary, Ministry of Panchayati Raj to submit their suggestions to the Ministry of Tribal Affairs and further directed Secretary, Ministry of Tribal Affairs to look into these concerns while preparing clause wise official amendments for consideration of the Cabinet.

9. MOS in the Prime Minister's Office responded to the discussion and stated that the Joint Committee had given several recommendations, most of which were acceptable to the administrative Ministry and only 4-5 major recommendations were not acceptable. He was of the firm view that the present Bill should cover only STs. As regards recognition of the rights of non-STs, he stated that the rights of the non-tribals could continue to be processed and recognized under the guidelines of the Ministry of Environment & Forests and, if considered necessary the Ministry of Environment & Forests could also consider bringing legislation for recognition of land rights of the non-tribal forest dwellers. He was also of the view that if scope of the present Bill would be expanded to cover non STs, the Ministry of Tribal Affairs might have to transfer handling this subject and piloting of the present Bill to the Ministry of Environment & Forests. He further expressed the view that the cut of date of 25.10.1980 should be retained, as STs have, in any case, been residing inside the forests from a much prior period. He, however, agreed that a flexible view could be taken on increasing the ceiling limit beyond 2.5 hectare to 3.5 or 4 hectares, of course only for STs.

10. Responding to the discussion, the Chairman expressed the view that inclusion of the non-ST forest dwellers within the scope of the proposed Bill would dilute the tribal character of the Bill and the purpose of the proposed legislation would be defeated.

11. After detailed discussions, the following broad consensus was reached:

(i) The Bill should be restricted to forest dwelling Scheduled Tribes only, and a separate Bill could be introduced for non-tribal forest dwellers. *if necessary.*

(ii) The cut off date of 25.10.1980 provided in the Bill introduced on 13.12.2005 in Lok Sabha should not be revised.

(iii) The ceiling of 2.5 hectares of occupation of land could be raised to 4 hectares or actual possession whichever is lower.

(iv) The Gram Sabha could not be made the final authority for approving the forest rights. However the composition of the Committees at each level could be

expanded to include one male and one female ST representative of the Panchayati Raj institutions at the appropriate level

12. It was decided that the Ministry of Tribal Affairs would take further action for revising the Bill as suggested in the Annexure to the agenda and accordingly prepare clause by clause amendments in consultation with the Ministry of Law & Justice for taking Cabinet approval for its introduction in the forthcoming session of the Parliament.



Slav G1 (12/11/06)

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SECRET
MOST IMMEDIATE

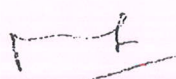
COPY NO. 22

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

Shastri Bhavan, New Delhi-110001
Dated, the 27th November 2006

Sub: 2nd meeting of the Group of Ministers (GOM) to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 held on 13.11.2006 at 1100 hrs. - Minutes thereof

The undersigned is directed to circulate the minutes of the 2nd Meeting of the Group of Ministers (GoM) to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 held on 13.11.2006 at 1100 hrs. in Media Room No. 12, Ministry of External Affairs, South Block, New Delhi.



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

To

1. Shri Pranab Mukherjee, Minister : External Affairs
2. Shri Shivraj V. Patil, Minister of Home Affairs
3. Shri P.R. Kyndiah, Minister of Tribal Affairs
4. Shri H.R. Bhardwaj, Minister of Law & Justice
5. Shri Mani Shankar Aiyar, Minister of Panchayati Raj, Minister of Youth Affairs & Sports and Minister of Development of North Eastern Region.
6. Smt. Meira Kumar, Minister of Social Justice & Empowerment
7. Shri A. Raja, Minister of Environment and Forests
8. Shri Kapil Sibal, Minister of Science & Technology and Minister of Earth Sciences
9. Smt. Renuka Chowdhury, MOS (IC) of the Ministry of Women & Child Development
10. Shri Subodh Kant Sahay, MOS (IC) of the Ministry of Food Processing Industries

SECRET

dc
Issued
28/11/06

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SECRET

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

dated, the 27th November, 2006

Copy, along with a copy of the minutes, forwarded to the **Cabinet Secretary**, for information.

(Ruchira Pant)
Joint Secretary to the Government of India

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

dated, the 27th November, 2006

Copy, along with a copy of minutes, forwarded for information to:

1. Foreign Secretary
2. Home Secretary
3. Secretary, Ministry of Tribal Affairs
4. Secretary, Ministry of Law & Justice
5. Secretary, Ministry of Panchayati Raj
6. Secretary, Ministry of Social Justice & Empowerment
7. Secretary, Ministry of Environment & Forests
8. Secretary, Department of Science & Technology
9. Secretary, Ministry of Women & Child Development
10. Secretary, Ministry of Food Processing Industries

(Ruchira Pant)
Joint Secretary to the Government of India

SECRET

Minutes of the 2nd Meeting of the Group of Ministers (GoM) to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 held on 13.11.2006 at 1100 hrs.

The 2nd Meeting of the Group of Ministers (GoM) to consider recommendations of the Joint Parliamentary committee (JPC) relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was held on 13.11.2006 at 1100 hrs. under the Chairmanship of Shri Pranab Mukherjee, Minister of External Affairs, wherein the following members were also present:-

- (1) Shri Shivraj V. Patil, Minister of Home Affairs
- (2) Shri P.R. Kyndiah, Minister of Tribal Affairs
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- (4) Shri Namo Narain Meena, Minister of State, Ministry of Environment & Forests

Shri Prithviraj Chavan, Minister of State in the Prime Minister's Office also attended the meeting, as a special invitee.

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maintaining the tribal focus of the Bill. He also asked Secretary, Tribal Affairs if she wished to clarify any of the issues.

3. At this stage, Secretary (Tribal Affairs) pointed out that the rights proposed to be given to ST forest dwellers were a set of three rights, viz, land and cultivation rights, MFP collection rights and traditional rights. Non-forest dwellers, if included, could not be given the entire set of rights but only land and cultivation rights since they neither collected MFP, nor had any traditional rights inside forests. She also stated that another issue on which the view of the GoM was required related to the placement of the Bill in the Ninth Schedule to the Constitution as recommended by the Joint Committee. The Chairman of the Group however, stated that the inclusion of the Bill in the Ninth Schedule to the Constitution would not preclude it from being justiciable.

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5. On an enquiry from the Chairman of the Group about the views of the tribal MPs on the above issues, the Minister for Tribal Affairs explained that though tribals constituted more than 70% of the population of the forest dwellers, the rights of the remaining 30% non-tribals also need to be recognized, of course under separate criterion and a more stringent process. He was of the view that recognition of rights of occupation over forest land would remain restricted to around 13.43 lakh hectares, which is the figure of encroachment as reported by the Ministry of Environment and Forests. He further stated that recognition should be on "as is where is basis", i.e., without any upper ceiling, and the cut off date should also be extended to a more recent date as suggested by the JPC.

6. The Minister of State (IC), Food Processing Industries suggested that while the forest rights of the ST forest dwellers need to be given on priority, it should not result in a battle for rights between the ST forest dwellers and non-ST forest dwellers, further fuelling social

tensions, especially with reference to Jharkhand where even Panchayat elections have not taken place due to dispute over reservation under the PESA Act. He emphasized the need for having a balanced approach and suggested that while the proposed Bill may retain its focus on recognition of forest rights of only the forest dwelling Scheduled Tribes (FDSTs), another Bill for the recognition of the rights of non-STs should also be piloted, preferably simultaneously.

7. The Minister of State (Environment & Forests) expressed the view that the proposed Bill should be in conformity with the Wildlife Act. He pointed out that the previous Government had issued orders extending the cut off date till 13.12.1993 for regularisation of the rights, but the Supreme Court had stayed operation of the orders of the Ministry of Environment & Forests. He mentioned that in view of the above decision of the previous Government, questions might be raised about the logic of fixing the cut off date of 25.10.1980 for regularisation of rights.

8. The Secretary, Ministry of Panchayati Raj raised the issues relating to (i) expansion of the definition of FDSTs to include the members of STs, who were residing in and around the forests (within 5 kilometer radius of forests) and were deriving their livelihood from the forests; (ii) vesting of rights on land occupied by the families of FDSTs leased to them by the Forest Department and taken away subsequently by the Forest Departments, as in the case of tribals of Madhya Pradesh, Jharkhand and Chhattisgarh, (iii) vesting of equal rights in female members of the STs; (iv) empowerment of traditional institutions as per the PESA Act, (v) prior approval of the Gram Sabha for diversion of forest lands for development projects, etc. At this stage, Secretary (Tribal Affairs) pointed out that the suggestion relating to diversion of forest lands for non-forestry purposes, with the prior approval of the Gram Sabha, could not be accepted as diversion of forest land was being allowed by the Ministry of Environment & Forests under the Forest (Conservation) Act, 1980. Even PESA talks of consultation in cases of acquisition of land and not the diversion of forest land. The Chairman asked the Secretary, Ministry of Panchayati Raj to submit their suggestions to the Ministry of Tribal Affairs and further directed Secretary, Ministry of Tribal Affairs to look into these concerns while preparing clause wise official amendments for consideration of the Cabinet.

9. MOS in the Prime Minister's Office responded to the discussion and stated that the Joint Committee had given several recommendations, most of which were acceptable to the administrative Ministry and only 4-5 major recommendations were not acceptable. He was of the firm view that the present Bill should cover only STs. As regards recognition of the rights of

non-STs, he stated that the rights of the non-tribals could continue to be processed and recognized under the guidelines of the Ministry of Environment & Forests and, if considered necessary the Ministry of Environment & Forests could also consider bringing legislation for recognition of land rights of the non-tribal forest dwellers. He was also of the view that if scope of the present Bill would be expanded to cover non STs, the Ministry of Tribal Affairs might have to transfer handling this subject and piloting of the present Bill to the Ministry of Environment & Forests. He further expressed the view that the cut of date of 25.10.1980 should be retained, as STs have, in any case, been residing inside the forests from a much prior period. He, however, agreed that a flexible view could be taken on increasing the ceiling limit beyond 2.5 hectare to 3.5 or 4 hectares, of course only for STs.

10. Responding to the discussion, the Chairman expressed the view that inclusion of the non-ST forest dwellers within the scope of the proposed Bill would dilute the tribal character of the Bill and the purpose of the proposed legislation would be defeated.

11. After detailed discussions, the following broad consensus was reached:

- (i) The Bill should be restricted to forest dwelling Scheduled Tribes only, and a separate Bill could be introduced for non-tribal forest dwellers.
- (ii) The cut off date of 13.12.2005 as recommended by the Joint Parliamentary Committee was accepted.
- (iii) The ceiling of 2.5 hectares of occupation of land could be raised to 4 hectares or actual possession whichever is lower.
- (iv) The Gram Sabha could not be made the final authority for approving the forest rights. However the composition of the Committees at each level could be expanded to include one male and one female ST representative of the Panchayati Raj institutions at the appropriate level

12. It was decided that the Ministry of Tribal Affairs would take further action for revising the Bill as suggested in the Annexure to the agenda and accordingly prepare clause by clause amendments in consultation with the Ministry of Law & Justice for taking Cabinet approval for its introduction in the forthcoming session of the Parliament.

DRAFT minutes sent to
Secretary, Panchayati Raj
DRAFT on 30.11.2006

(565)

Minutes of the meeting held between the Secretary, Ministry of Panchayati Raj and Secretary, Ministry of Tribal Affairs on 24.11.2006 to address the concerns of the Ministry of Panchayati Raj relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

In the second meeting of the Group of Ministers (GOM) on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, held on 13.11.2006, under the chairmanship of Shri Pranab Mukherjee, Minister of External Affairs, the Secretary, Ministry of Panchayati Raj had expressed their concerns on the stand of the Ministry of Tribal Affairs in which Ministry of Tribal Affairs had not agreed to certain changes made by the Joint Committee of Parliament while reporting the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006. In this connection, she raised issues relating to –

- (i) Expansion of the definition of FDSTs to include the members of STs, who were residing in and around the forests (within 5 kilometer radius of forests) and were deriving their livelihood from the forests;
- (ii) Vesting of rights on land occupied by the families of FDSTs leased to them by the Forest Department and taken away subsequently by the Forest Departments, as in the case of tribals of Madhya Pradesh, Jharkhand and Chhattisgarh;
- (iii) Vesting of equal rights in female members of the STs;
- (iv) Empowerment of traditional institutions as per the PESA Act;
- (v) Prior approval of the Gram Sabha for diversion of forest lands for development projects, etc.

The Chairman of the Group asked the Secretary, Ministry of Panchayati Raj to send their suggestions to the Ministry of Tribal Affairs and further directed the Secretary, Ministry of Tribal Affairs, to look into these concerns while preparing clause-wise amendments for consideration of the Cabinet.

2. Secretary, Ministry of Tribal Affairs, however, arranged a meeting with the Secretary, Ministry of Panchayati Raj on 24.11.2006 in the latter's chamber to discuss the issues raised by the Ministry of Panchayati Raj and clarify the stand of the M/oTA on each of them. The meeting was also attended by Shri Rajeev Kumar, former Joint

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Secretary in the Ministry of Tribal Affairs and Ms. Aditi Mehta, Joint Secretary,
Ministry of Panchayati Raj.

3. After detailed discussions, the following position emerged in respect of various issues:-

Sl.No.	Issue	Position
1	<p>Expansion of the definition of the term "forest dwelling Scheduled Tribes" (FDSTs) to include the members or community of the Scheduled Tribes who primarily reside in and around the forests and depend on the forests or forest lands for their livelihood needs.</p> <p>(Section 2 (c) of the Bill reported by the Joint Committee)</p>	<p>After discussion on the issue, it was agreed that the definition of the term "forest dwelling Scheduled Tribes" in clause 2 (c) of the Bill reported by the Joint Committee would be revised to include such members or community of the Scheduled Tribes who cultivate forest lands inside the forests for their bonafide livelihood needs. This would enable those FDSTs who are deriving their livelihood from the forest areas even if they are not staying inside forests but residing nearby.</p>
2	<p>Recognition and vesting of Rights on land occupied by the families of FDSTs leased to them by the Forest Departments and taken away subsequently by the Forest Departments or other agencies.</p> <p>(Section 3(2) of the Bill reported by the Joint Committee)</p>	<p>It was explained to the Ministry of Panchayati Raj that this right was already covered by Section 3 (g) of the Bill reported by the Joint Committee, which provided for the forest rights relating to conversion of <i>Pattas</i> or leases or grants issued by any local authority or any State Government on forest lands to titles. It was, however, agreed that the fact of occupation of forest lands by the families of FDSTs leased to them by the Forest Departments and taken away subsequently by the Forest Departments or other agencies would be specifically included as one of the evidences for acceptance of claims of FDSTs while framing the Rules for implementation of the Act.</p>
3	<p>Vesting of equal rights in female members of STs vis-à-vis land allotted to them.</p> <p>(Section 3(5) of the Bill reported by the Joint Committee)</p>	<p>It was pointed out to the Ministry of Panchayati Raj that the provision under Section 3(5) of the Bill reported by the Joint Committee was redundant as the same was already covered by the subsequent Section 4(4) of the Bill reported by the Joint Committee. There is no need to repeat the same.</p>

4	<p>Constitution of one or more Committees or other institutions by the Gram Sabha to consider matters that falls within the purview of Gram Sabha.</p> <p>(Section 7(7) of the Bill reported by the Joint Committee)</p>	<p>It was pointed out that GOM had already taken a view on this issue that the Gram Sabha could not be made the final authority for approving the forests rights.</p>
5	<p>No eviction or removal of FDSTs from forest land under his occupation till the recognition and verification procedure is complete.</p> <p>(Section 4(5) of the Bill reported by the Joint Committee)</p>	<p>Ministry of Panchayati Raj desired that this Section may be revised to include the words "and other" between the words "forest" and "land" appearing in this clause to take care of FDSTs who were forcibly displaced from their original habitats due to State development and other interventions. It was pointed out that the words "and other" if included in this Section, as suggested by the Ministry of Panchayati Raj, would cover lands other than forests, which are outside the purview of this Bill. Hence, this was not accepted.</p>
6	<p>Inclusion of the representatives of the PRIs, especially in the level of Gram Panchayat and the Block Panchayat in the Expert Committee, referred to in Section 2(b) of the Bill reported by the Joint Committee.</p>	<p>The GoM had already agreed to include one male and one female ST member of the Panchayati Raj Institutions each in the Sub Divisional Level Committee, District Level Committee and State Level Monitoring Committee, referred to in clause 6 of the Bill, besides the officers of the Departments of Revenue, Forests and Tribal Affairs of the State Government, at the appropriate level for the purposes of vesting of forest rights.</p>
7	<p>Right of access to bio-diversity and community right to intellectual property and traditional knowledge relating to bio-diversity and cultural diversity.</p> <p>(Section 3(k) of the Bill reported by the Joint Committee)</p>	<p>It was pointed out to Ministry of Panchayati Raj that the Ministry of Tribal Affairs has already accepted this as a forest right of FDSTs under Section 3.</p>
8	<p>Giving full decision making powers to the communities that partially or fully practise shifting cultivation over land use on any land that falls</p>	<p>It was explained to Ministry of Panchayati Raj that shifting cultivation was not specifically recognized as a forest right on account of environmental concerns. In any case this was also covered in general terms</p>

	<p>within the traditional boundary or range of that community.</p> <p>(Section 4(8) of the Bill reported by the Joint Committee.</p>	<p>by Section 3 (l) of the Bill reported by the Joint Committee relating to other traditional rights customarily enjoyed by the FDSTs.</p>
9	<p>Grant of power to FDSTs to sell the harvested minor forest produce and the provision of fair minimum support price.</p> <p>(Section 5(1)(c) of the Bill reported by the Joint Committee)</p>	<p>It was explained to Ministry of Panchayati Raj that ownership over minor forest produce as provided in Section 3 of the Bill includes the power to sell.</p> <p>As regards the provision of fair minimum support price, it was pointed out that M/oTA fully supports the concern that MSP for MFP should be provided but this was a matter of policy and could not be made a part of the forest right through legislation under consideration. Example of MSP for various commodities like wheat, rice, sugarcane, etc was given where MSP is provided through executive decision at a rate fixed by the Agricultural Commission for Costs and Prices (CACP). The policy relating to minimum support price has to be governed through executing instructions, keeping in view the number and the nature of MFPs in different States, the mechanism available for their procurement, value addition and disposal, the level of minimum support price which the States could provide, etc.</p> <p>The Ministry of Panchayati Raj, however, did not fully subscribe to this view and wanted that the Bill should guarantee fair minimum support price for the MFP through the legislation.</p>
10	<p>Making the Government responsible for ensuring that the benefits arising out of any exploration, exploitation and use of natural resources are not denied and adequate compensation is given to FDSTs for any damages caused by such activities.</p> <p>(Section 5(2) of the Bill reported by the Joint Committee)</p>	<p>It was explained that the PESA Act already provided for mandatory recommendation of the Gram Sabhas or Panchayats at the appropriate level prior to grant of prospecting licence or mining lease and grant of concession for the exploitation of minor minerals in the Scheduled Areas. The Bill is not overriding that provision of PESA. In any case the Bill cannot incorporate provisions, which were in the nature of promises. The Ministry of Panchayati Raj were, however, not agreeable to this stand and wanted that the Bill should</p>

		have some kind of provision for ensuring these benefits to the FDSTs.
11	<p>Prior consultation with the Gram Sabha or the Panchayat at the appropriate level before acquisition or diversion of forest land without paying adequate and equal compensation and proper rehabilitation.</p> <p>(Section 5(5) of the Bill reported by Joint Committee)</p>	<p>It was explained to the Ministry of Panchayati Raj that the acquisition of land was different from diversion of forest land. The Forest (Conservation) Act 1980 provides for diversion of forest land for non-forestry purposes and not for acquisition of land. The provision relating to diversion of forest land for non-forestry purposes with the prior approval of the Gram Sabhas or Panchayats could not be accepted as diversion of forest land was being allowed by the Ministry of Environment & Forests under the Forest (Conservation) Act, 1980.</p>
12	<p>Making the Government responsible for protecting the right to access bio-diversity and the community right to intellectual and traditional knowledge related to forest bio-diversity and cultural diversity.</p> <p>(Section 5(4) of the Bill reported by the Joint Committee)</p>	<p>Such a provision extending promises cannot be incorporated in the Bill in the nature of rights.</p>

4. There was thus a broad consensus on all the issues excepting the issues relating to the provision of fair minimum support price for MFPs harvested by the FDSTs and the provision for ensuring them the benefits arising out of any exploration, exploitation and use of natural resources and grant of adequate compensation for any damages caused by such activities.

5. It was decided that the Ministry of Tribal Affairs would suitably incorporate the concerns as agreed above and proceed further as per the procedure for finalization of the Bill. The Ministry of Panchayati Raj would convey their concerns on these two issues where consensus could not be reached during the meeting of the Cabinet when amendments to the Bill are considered by the Cabinet.
