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File No.17014/04/2005-S&M/PC&V
(Vol. XIII)

Ministry of Law

Approved by

SECRET

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

COPY NO. _____
New Delhi, _____ November, 2006

NOTE FOR THE CABINET

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

1. BACKGROUND

1.1 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 (Annexure – A -The Bill as introduced).

1.2 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" (Annexure – B -The Bill as reported).

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

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2.1. The Joint Committee has made many major and minor changes in the Bill. As regards the major changes, the Joint Committee has in brief inter alia -

- (i) expanded the scope of the Bill introduced in the Lok Sabha on 13.12.2005 and brought within its purview the non-tribals and other traditional forest dwellers also;
- (iii) 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);
- (iv) 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;
- (v) renamed the core areas in the National Parks and Sanctuaries as 'critical wildlife habitat' and provided for conferring rights in such critical wildlife habitats on regular basis, instead of provisional basis;
- (vi) added the definition of "community forest resource";
- (vii) 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;
- (viii) extended the right to minor forest produce to further include collection and transport of minor forest produce;
- (ix) amplified the community rights to include entitlements of fish and other water bodies;
- (x) expanded the rights with respect to settlement of forest villages to include old habitations, unsurveyed villages and other villages in the forests;
- (xi) added a new clause relating to 'Right of access to bio-diversity and community right to intellectual property;
- (xii) included a new right to in-situ rehabilitation;

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- (xiii) included the right relating to Government providing for diversion of forest land for the purpose of schools, hospitals, etc.
- (xiv) amplified the definition of the term 'Gram Sabha';
- (xv) made the Gram Sabha the final authority for approving the record of forest rights instead of the District Level Committee and diluted the role of the Sub Divisional Level Committee by proposing that it act in an advisory capacity to the Gram Sabha;
- (xvi) conferred new right to communities and individuals to return to the original habitation if unsatisfied with the rehabilitation;
- (xvii) provided that no resettlement shall take place until facilities and land allocation at the resettlement location are complete. Also included a proviso that critical wildlife should not be diverted by the State and Central Government for any other use;
- (xviii) made the rights being heritable but not alienable or transferable and in the absence of a heir, the heritable right shall pass on to the next of kin;
- (xix) made the conferring of the forest rights free of all encumbrances and procedural requirements, including clearance under the FCA, requirement of payment of NPV;
- (xx) provided for the right of land to forest dwelling STs who can establish that they were displaced from their dwellings and cultivation without land compensation due to State development intervention and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition;
- (xxi) deleted the existing Section on Offences and Penalties;
- (xxii) provided for previous publication of rules; and
- (xxiii) provided for the number of members of the Sub Divisional Level Committee, District Level Committee and the State Level Monitoring Committee and the procedure to be followed.

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2.2. The Ministry of Tribal Affairs has examined the changes made by the Joint Committee in the Bill introduced in the Lok Sabha on 13.12.2005. A statement indicating the 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, is at Annexure – C.

2.3. The Ministry of Tribal Affairs felt that some of 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,

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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 the 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.

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3. CONSTITUTION OF A GROUP OF MINISTERS (GoM) TO CONSIDER ISSUES RELATING TO THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

3.1 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.

4. DISCUSSIONS IN THE MEETINGS OF THE GoM ON THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL HELD ON 20.7.2006 AND 13.11.2006

4.1 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 each of the changes made by the Joint Committee of Parliament on the Bill, as in Annexure-C, was placed before the GoM. The stand 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 major changes were inter alia 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;

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- 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.

5. **RECOMMENDATIONS OF THE GoM**

5.1 After detailed discussions in the meetings of the GoM, 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 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.

5.2 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

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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.

5.3. 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 held on 20.7.2006 and 13.11.2006 are at Annexures - D & E respectively.

5.4. 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 Annexure-F. Perusal of the statement would reveal that except the issues at S.No. ~~1, 2, 3~~, 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 ¹⁰ issues have either been dropped, already covered in the Bill or have been incorporated by suitably amending the relevant Sections.

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5.5. 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 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.

6. NOTICE TO BE MOVED IN THE PARLIAMENT FOR ADOPTION OF THE MOTION TO AMEND THE SCHEDULED TRIBES & OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) BILL, 2006, AS REPORTED BY THE JOINT COMMITTEE

6.1 On the basis of the reasoning and the stand of the Ministry of Tribal Affairs as given against each change in Annexure C and to give effect to the recommendations of the GoM and the decisions taken in the meeting with the Ministry of Panchayati Raj, the Ministry of Tribal Affairs proposes to move the notice of amendments to amend the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 as reported by the

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Joint Committee of the Parliament, on the basis of the following main changes which are Agreeable and Not Agreeable as summarized below :-

- I. Changes 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. Amplification 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 bio-diversity 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)]

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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 wildlife, forest, adjoining

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catchment areas, water sources and preservation of the habitat 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 Committee 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)]

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3. Revision of the definition of the term "minor forest produce" to include fuelwood and the like stones, slates 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-Scheduled 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 (1) (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, fibre, education, 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.

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15. Right to shifting cultivation, which is not specifically recognised 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 caused 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. [Section 7]
25. In situ rehabilitation of ineligible and primarily forest dependent encroachers through employment in afforestation or in other forest based activities [Section 8]

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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 recognised 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].

6.2. The Ministry of Tribal Affairs has 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. This note has been seen and concurred by the Ministry of Law & Justice (Department of Legal Affairs and Legislative Department).

7. CONSULTATION WITH OTHER MINISTRIES

7.1 The concerned Ministries/ Departments, namely, Ministries of Environment & Forests, Panchayati Raj, Social Justice & Empowerment, Law & Justice (Department of Legal Affairs), etc. have participated in the meetings of the GoM. They have been asked to submit their comments, suggestions and views on the proposed amendments during the meeting of the Cabinet.

8. APPROVAL OF THE CABINET

8.1 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

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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.

9. The Statement of Implementation Schedule in respect of the above proposals has been given in the **Appendix**.

10. This Note has been approved by the Minister for Tribal Affairs.

Place: New Delhi

Date: _____ November, 2006

(Ruchira Pant)

Joint Secretary to the Government of India

Tele: 23383622

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APPENDIX

Statement of Implementation Schedule

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

Gist of decisions requiring approval	Project benefits/results	Time schedule for implementation/ reporting to Cabinet Secretariat
Approval to the amendment Notice to be moved in Parliament in the 'Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, reported by the Joint Committee of Parliament, at Annexure-G.	The enactment of the Bill with amendments would undo the historical injustice by recognizing and vesting the forest rights in the forest dwelling Scheduled Tribes who have been residing there for generations and who are integral to the very survival and sustainability of the forest eco-systems, but whose rights could not be recorded. This would also strengthen the conservation regime by recognizing the permanent stake of the Forest Dwelling Scheduled Tribes.	<ol style="list-style-type: none"> 1. After approval of the Cabinet, action will be taken to move the Amendment Notice in Parliament. 2. A copy of the said Notice will be forwarded to the Cabinet Secretariat.

(Ruchira Pant)
Joint Secretary to the Govt. of India
Ministry of Tribal Affairs
Tele: 23383622

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Annexure-G

New Delhi, the November, 2006

To

The Secretary General,
Lok Sabha,
New Delhi.

Sir,

I give notice of my intention, to move the following amendments after the adoption of the motion that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 as reported by the Joint Committee be taken into consideration, namely :-

S. No.	Text of amendments	Clause No.
1	Page 1, <u>omit</u> "and Other Traditional Forest Dwellers" wherever they appear.	Title, Preamble and Clause 1
2	Page 2, <u>for</u> lines 9 to 17 <u>substitute</u> "(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 in the Ministry of Environment & <i>cont.</i>	Clause 2(b)

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S. No.	Text of amendments	Clause No.
	Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein 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;	
3	Page 2, for lines 18 to 21, substitute "(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 bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities";	Clause 2 (c)
4	Page 2, lines 22 and 23, for "recorded or notified as forest and includes unclassified forests," substitute "falling within any forest area and includes unclassified forests,";	Clause 2 (d)
5	Page 2, omit lines 38 to 41;	Clause 2 (g)
6	Page 3, lines 3, 4 and 5, omit "fuel wood and the like, stones, slates and boulders and products from water bodies including fish, weeds";	Clause 2 (i)

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S. No.	Text of amendments	Clause No.
7	Page 3, line 11, for the words "meaning as in" <u>substitute</u> "meaning as assigned to it in clause (o) of Section 2 of";	Clause 2(n)
8	Page 3, <u>omit</u> lines 13 to 39;	Clause 2 (o)
9	Page 3, lines 42 and 43, <u>for</u> "regardless of whether the area involved is a Scheduled Area or not," <u>substitute</u> "or";	Clause 2 (p) (i)
10	(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" (ii) Page 4, (i) line 1, <u>for</u> (ii) <u>substitute</u> (iii); (ii) lines 3, <u>for</u> (iii), <u>substitute</u> (iv);	Clause 2(p)
11	Page 4, lines 11 and 12, <u>omit</u> "and other traditional forest dwellers on all forest lands;"	Clause 3 (1)
12	Page 4, lines 15 and 16, <u>omit</u> "or other traditional forest dwellers";	Clause 3 (1) (a)
13	Page 4, line 19, <u>omit</u> "that occur in forest land";	Clause 3 (1)(b)
14	Page 4, line 20, <u>omit</u> "transport";	Clause 3 (1) (c)
15	Page 4, line 32, <u>after</u> the words "rights of settlement" <u>insert</u> "and conversion";	Clause 3 (1) (h)

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S. No.	Text of amendments	Clause No.
16	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)
17	Page 5, — (i) line 10, <u>omit</u> "and other traditional forest dwellers" (ii) line 12, <u>after</u> "entitlement to rehabilitation" <u>insert</u> "prior to the 13 th day of December, 2005";	Clause 3 (1) (m)
18	Page 5, <u>omit</u> lines 13 to 22;	Clause 3 (2) and (3)
19	Page 5, — (i) line 23, <u>for</u> "(4)" <u>substitute</u> "(2)" (ii) line 26, <u>for</u> "per project" <u>substitute</u> "per hectare";	Clause 3 (4)
20	Page 6, <u>omit</u> lines 5 to 7;	Clause 3 (5)
21	Page 6, — (i) line 14, <u>omit</u> "(a)" (ii) <u>omit</u> lines 17 and 18;	Clause 4(1)
22	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	Clause 4(2)(b)

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S. No.	Text of amendments	Clause No.
	familiar with the area”	
23	Page 6, <u>for</u> lines 33 to 40, <u>substitute</u> “(c) the State Government has concluded that other regional options, such as, co-existence are not available”;	Clause 4 (2) (c)
24	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)
25	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)
26	Page 7, <u>omit</u> lines 10 and 11;	Clause 4 (2) (f)
27	Page 7, — (i) line 13, <u>omit</u> “and to other traditional forest dwellers”; (ii) lines 15 and 16, <u>omit</u> “or other traditional forest dwellers”;	Clause 4 (3)
28	Page 7, line 24, <u>omit</u> “or other traditional forest dweller”;	Clause 4 (5)
29	Page 7, <u>for</u> line 31, <u>substitute</u> “occupation and shall in no case exceed an area of four hectares of	Clause 4 (6)

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S. No.	Text of amendments	Clause No.
	forest dwelling Scheduled Tribe individual or family”;	
30	Page 7, <u>omit</u> lines 32 to 38;	Clause 4 (7) and (8)
31	Page 7, <u>→</u> (i) line 39, <u>for</u> “(9)” <u>substitute</u> “(7)”; (ii) line 43, <u>for</u> “(10)” <u>substitute</u> “(8)”; (iii) lines 44 and 45, <u>omit</u> “and other traditional forest dwellers”;	Clause 4 (10)
32	Page 8, line 1, <u>for</u> “The” <u>substitute</u> “The holders of (ii) any forest right”; (i) <i>in marginal heading, omit “and responsibilities of Government.”;</i>	Clause 5(1)
33	Page 8, lines 6 and 7, <u>omit</u> “and other traditional forest dwellers”;	Clause 5 (1) (c)
34	Page 8, omit lines 12 to 38;	Clause 5 (1) (e), (2), (3), (4) and (5)
35	Pages 8 to 11, <u>for</u> clause 6, <u>substitute</u> the “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.	Clause 6

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

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S. No.	Text of amendments	Clause No.
	<p>(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-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</p>	

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S. No.	Text of amendments	Clause No.
	<p>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> <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 Scheduled Tribe members of the Panchayati Raj Institution at the appropriate level, of which at least 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>	
36	Page 11, <u>omit</u> lines 42 and 43;	Clause 7
37	Pages 12, <u>omit</u> lines 1 to 8;	Clause 7 and 8
38	Page 12, line 11, <u>for</u> “9” <u>substitute</u> “7”;	Clause 9
39	Page 12, — (i) line 21, <u>for</u> “10” <u>substitute</u> “8”;	Clause 10

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S. No.	Text of amendments	Clause No.
	(ii) line 21, <u>for</u> "section 9" <u>substitute</u> "section 7";	
40	Page 12, line 29, <u>for</u> "11" <u>substitute</u> "9"	Clause 11
41	Page 12, line 33, <u>for</u> "12" <u>substitute</u> "10";	Clause 12
42	Page 12, line 44, <u>for</u> "13" <u>substitute</u> "11";	Clause 13
43	Page 13, — (i) line 3, <u>for</u> "14" <u>substitute</u> "12"; (ii) omit lines 7 to 9;	Clause 14
40 44	Page 13, <u>for</u> lines 10 to 12, <u>substitute</u> "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."	Clause 15
41 45	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> "(f)".	Clause 16

Act not in
 derogation of any
 other law.

Yours faithfully,

(P.R. KYNDIAH)

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

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.

Sl No 63 (R)

298

PRIME MINISTER'S OFFICE

3 Dols

SOUTH BLOCK
NEW DELHI 110 011

The issue of including non-forest tribal dwellers in the purview of the Scheduled Tribes (Recognition of Forest Rights) Bill has been raised. In this connection it has been felt that a second Bill could be introduced. A reference that may be useful to the discussion is enclosed which relates to a notification in 1949 in Central Provinces and Berar declaring certain forest dwelling communities as equivalent to Adivasis for rights on forest land. This is only for information and exploring if similar notifications exist elsewhere.

[Handwritten signature]

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

TS (RP)

[Handwritten mark]

Secretary, Ministry of Tribal Affairs

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

Dated: 27.11.2006

Encls: As above

1. *[Handwritten initials]*

[Handwritten initials]

discuss with dept (R)
Friday. He desired that
we may take note of this
the bill of drafting of rules under the bill
is found as we are concerned with tribals
around with the equivalent & Adivasis for
central given to equivalent purpose of this bill.
Encl (CV)
Encl (RP) / Consultant
Dir JP / const (R)

Director (JP)
Dy. No. 255
Date: 6/12/06

[Handwritten signature]
Encl (CV)

PHC-126
28/11/06

Dy. No. 120/pmc
JS (RP)/06
06/12/06

Dy. No. JS (RP)/06
06/12/06

06/12/06 To up
[Handwritten initials]

(३) इस प्रकार अधिकारी और कच्चा पान के इच्छुक कई व्यक्तियों में से इस प्रकार कच्चा पान का अधिकार गृहयोगी रखते, यदि कोई ही, को उद्भूत होगा, और जिन्हीं के गृहयोगी रखने के अभाव में इस प्रकार कच्चा पान का अधिकार उम्र कम से उद्भूत होगा जिस में हस्तान्तरण के विषय में उम्र रखने का अधिकार उन व्यक्तियों को उन्नावधिकार में मिला होता यदि वह रखते भर गई होती, और ऐसे व्यक्तियों के अभाव में वह अधिकार उस रियासत का, अथवा भूमि अधिकारी (टेन्वीर होन्डर) को प्रसंगवत् अजिव-उम्र मज में समाविष्ट अभिनामों (शर्तों) के अनुसार, उद्भूत होगा.

(४) आगम पदधारी (अफसर माल) वे अनुपाल निश्चित करेगा जिनके अनुयाय जप-खंड (२) के आधीन निश्चित (जमा की हुई) राशि का बंटन, उनको व्यक्तियों के बीच लगान के अयोजन तथा कृषि के आवश्यक व्ययों के लिये दी गई पेशियों (अग्रियों) के प्रति शोधन के विषय में, किया जावेगा, और आगम पदधारी तदनुसार शोधन करेगा.

कृषि प्रयोजनों के लिये भूमि धारण करने वाली रखते, उस भूमि की मुकृषि सुधार करने का के हेतु अथवा पूर्वोक्त प्रयोजन के लिये उसके उपयोग का अधिक मुगम बनाने के हेतु अधिकार उस भूमि में, स्वयं ही, अपने सेवकों, पट्टेधारियों (लेसोज) अभिनामों (मुन्तारों) अथवा अन्य प्रतिनिधियों के द्वारा, कृषिगृह, कुएँ या तालाब बनाने अथवा उसमें कोई दूसरे सुधार करने का अधिकारिणी होगी.

पर ऐसा सुधार किसी अन्य भूमि को धति या न्हास न पहुंचाव.

भावाथ—इस खंड के प्रयोजनाय कृषिगृह में ऐसे निवासगृह का समावेश होगा जिसमें वह रखते अथवा उसका पट्टेधारी, आश्रित या सेवक रहते हों.

१०. यह आदेश जिस क्षेत्र पर प्रवृत्त है उस सम्पूर्ण क्षेत्र के लिये अथवा उसके किन्हीं भागके लिये इस अवयव में विज्ञप्ति द्वारा अन्तर्गत जिस जाति को आदिवासी जाति का समान घोषित करे उस जाति को रखते की भूमि के अधिकार ऐसी जाति न भिन्न जाति के जन को हस्तान्तरित न लिये जावेगे जब तक कि इष्टी कमिन्तर (प्रति-प्रायश्चित्त) के पद से अलप आगम पदधारी (अफसर माल) के लक्ष्यके कारणों के अभाव पर अनुमति न दे दे.

नागपुर, तारीख ३१ मार्च १९४६.

संख्या ३६६२-७७७-१२.—मध्यप्रान्त की रियासतों में भूमि अधिकार आदेश १९४६ के खंड १० में की गयी व्यवस्था के अनुसार प्रांतीय सरकार घोषित करती है कि इसके साथ दी गई अनुसूची में कतायी गयी जातियाँ इस आदेश की पहली अनुसूची में कतायी गयी रियासतों में सम्मिलित क्षेत्र के लिये आदिवासी जातियाँ होंगी—

अनुसूची

- (१) अगारिया, (२) आंध, (३) अरख, (४) असुर, (५) वाडा, (६) वेगा,
- (७) वलद, (८) बजारा, (९) गेना, (१०) गेरा, (११) भारिया, भूमिया, (१२) भतरा, (१३) भील, (१४) भुईहार, (१५) भुईया, (१६) भूमिया, (१७) भुयान
- (१८) विभिया, (१९) विभवार, (२०) वि-हील (या वि-हीर), (२१) विशार, (२२) चरवा, (२३) छेरिका, (२४) चिक, (२५) चिकवा, (२६) चोक, (२७) डेवार, (२८) धाकंड, (२९) चांगड, (३०) धनवार, (३१) धारकड, (३२) धोकग, (३३) धुदवा,
- (३४) डोरिया, (३५) डोगिहार, (३६) डोरला, (३७) गदवा, (३८) गांडा,

*मिलना. †संबंधित. ‡दी गई. §बंटवार. ¶कोई अन्वय पदधारी जिसका पद जिलाधीश के पद से कम न हो.

33/2/46
 जिलाधीश
 जिलाधीश की सेवा में
 कल्याण समिति जन्दिहापुर
 पंजीयन क्र. 10868
 जिला सरगुजा (मं प्र०)

३००

- (३६) गंडवा गाडा, (३७) घागी, (३८) घासिया, (३९) गोंड, (४०) गोंडिया, (४१) क...
- (४२) क्वार, (४३) क्वेट, (४४) खाडिया, (४५) खारिया, (४६) खेरवार, (४७) खि...
- (४८) किसान, (४९) खडिनूर, (५०) कोन, (५१) कोनाम, (५२) कोली (दीप)
- (५३) कोय, (५४) कोयक, (५५) कोरवा, (५६) काया, (५७) कुदुक, (५८) को...
- (५९) माडिया, (६०) माहकून, (६१) माहारा, (६२) मंभवार, (६३) नंभी, (६४) न...
- (६५) मारिया, (६६) मटकारा, (६७) मंवार, (६८) मुरिया, (६९) नगर...
- (७०) नागासिया, (७१) नांगवर्ता, (७२) निहाल, (७३) प्राभा, (७४) उरांव, (७५) पाव...
- (७६) पाविया, (७७) पत्तिहा, (७८) पंडो, (७९) पंका, (८०) परिहा, (८१) परजा...
- (८२) परभान, (८३) प्यरिया, (८४) पोविया, (८५) राजतिया, (८६) संवतार, (८७) सीता, (८८) सवर, (८९) तूरी, (९०) तुरिया, (९१) वाडे मोहार

स्थित दान्ना खाते की भूमि का परिचय

११. (१) कृषक (काश्तकार) न होने वाली स्थित अपने खाते की भूमि की या तो स्वयं अथवा किसी अन्य व्यक्ति के द्वारा खेती करना छोड़ दे, और एक वर्ष भूमि ग्राम अवशेष (बकिया) हो जाने दे, और वह ग्राम छोड़ दे जिसमें वह सामान्यतः रहता है, तो ग्राम पदवार (अफतार माल) कृषि वर्ष (किसानी माल) के अन्त में किसी समय, ऐसी उद्घोषणा (अज्ञात) और परिपूर्य* के पश्चात् जैसी कि विनिर्दिष्ट (मुकरर) की जावे, उस खाने की भूमि को स्थित घोषित कर सकता और उसका कब्जा ले सकता

(२) यदि कृषक (काश्तकार) अपने खाते की भूमि की या तो स्वयं अथवा किसी अन्य व्यक्ति के द्वारा खेती करना छोड़ दे, और एक वर्ष का लयान अवशेष (बकिया) जाने दे, और वह ग्राम छोड़ दे जिसमें वह सामान्यतः रहता है, तो भूमि अधिकारी (टेन्चर होल्डर) कृषि वर्ष के अन्त में किसी भी समय तहसीलदार के आदेशानुसार सूचना दायर कर सकता जिसमें उसका आशय प्रकट किया गया हो कि वह उस खाने की भूमि को परिचय ले सकता

(३) ऐसी सूचना उदासीनता के अन्तर्गत प्रकाशित की जावेगी जैसी विनिर्दिष्ट (मुकरर) की जावे और ऐसे प्रकाशन पर वह भूमि अधिकारी (टेन्चर होल्डर) उस खाते की भूमि में प्रवेश करने का अधिकारी होगा

खंड २८ के उप-खंड २ (ख) के अधीन और खंड ११ के उप-खंड (२) के संदर्भ में सूचना के प्रकाशन की प्रणाली-कम विनिर्दिष्ट करने के लिये नियम

१. खंड ११ के उप-खंड (२) के अधीन भूमि अधिकारी द्वारा दायर की सूचना इन नियमों से प्रचलन प्रपत्र में होगी और उसके साथ उसकी तीन प्रतियाँ होंगी सूचना के प्रकाशन के लिए आदेशक शुल्क (तलवाना फॉस) के रूप में उसके साथ १५ न्याय-शुल्क मुद्रांक (वर्ग की स्टांप) रहेगा

२. सूचना देने की जाने पर तहसीलदार, उनकी एक प्रति तहसील कार्यालय में, एक प्रति जिस ग्राम में खाते की भूमि स्थित है अथवा जिस ग्राम से खाते की भूमि की जाती है उस ग्राम में किसी प्रमुख स्थान में और एक प्रति उस ग्राम में, जिसमें सामान्यतः रहता है, कि कवावेगा. पश्चात् तहसीलदार मूल सूचना पर प्रविष्ट करेगा जिसमें उसके प्रकाशन की प्रणाली बताई जावेगी

*जांच. विवेका. रिक्ति.

S.No 66(R)

NON-CONTENTIOUS BUT IMPORTANT ISSUES IN THE JPC RECOMMENDATIONS

In the din around the major issues, some technical but important recommendations of the JPC are in danger of being forgotten. Among these are recommendations that should be entirely non-contentious, including the following:

Evidence (JPC section 6(12))

Among the biggest obstacles to the recognition of forest rights historically has been the constant insistence on documentary evidence of claims. For instance the 1990 MoEF guidelines required a Primary Offence Report to establish pre-1980 occupation - an impossibility for the vast majority of the forest population¹.

The JPC's recommendation is critical to ensuring that proceedings under this Bill are not stalled in the same manner. Leaving this out could undermine the entire process of verification.

Limits of Forest Rights and Jurisdiction of the Gram Sabha (amendment to preambular text in JPC section 3(1) and amendment to section 6(1))

Section 6(1) of the original Bill reads "The Gram Sabha shall be the authority to initiate...within the local limits of its jurisdiction" etc. Similarly, there is no statement of the extent to which forest rights may apply.

This seemingly harmless omission / phraseology is dangerous because the limits of the gram sabha are frequently interpreted to mean the revenue limits of the village, which, in some States²

excludes government forests. This has been used by the Madhya Pradesh Forest Department to deny the PESA requirement of gram sabha jurisdiction over MFP etc. within reserved forests.

Needless to say this interpretation would defeat the very purpose of this Act. The JPC has therefore recommended that the words "local limits" be replaced with "local and customary limits", as well as a clarification in section 3 that forest rights apply to all forest lands.

Definition of a Village (amendment to section 2(o) - JPC s. 2(p))

The current definition of a village provided by section 2(o)(ii) states that, outside the Scheduled Areas, the term "village" shall mean any area referred to as a village in any State law relating to panchayats. This implies that the reference is to a revenue village, which in many States in fact consist of several actual settlements or hamlets and may stretch over huge areas (revenue villages in Tamil Nadu, for instance, sometimes have a diameter of more than 20 kilometers). In many areas with mixed non-tribal and tribal and/or mixed forest dwelling and non-forest dwelling populations, forest dwellers will live in only some of these hamlets. Their rights will then be determined by a gram sabha including non-forest dwellers and potentially more socially powerful communities, in addition to being enormous in size (with thousands of members). Therefore it is vital that a village be defined by the Act as referring to an actual hamlet, not to a revenue village.

Section 4(a) of PESA defines a gram sabha as the assembly of a village, which

¹ This requirement was removed in the 30.10.2002 MoEF letter (which only referred to tribals) and subsequently clarified in the 12.05.2005 and 03.11.2005 MoEF circulars (for all forest dwellers). However the Forest Department continues to insist on such evidence. Inquiry forms in Gujarat under the 03.11.05 circular, for instance, list a POR as the only acceptable form of evidence for a claim.

² Not all - we know that Maharashtra is an exception and that Tamil Nadu and Madhya Pradesh are not.

keep his file
car
consider
tab

S(10)
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(P/20)

To no
M
6/12

"shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affair in accordance with traditions and customs." The JPC has recommended that this should be applied to all areas covered by this bill rather than just to Scheduled Areas. Should there be questions raised with regard to the constitutionality of such a provision in a Central Act, a clarification can be made that the definition of village is only for the purposes of this Act.

• *Precedence of this Law Over Other Laws (amendment to section 14 - JPC s. 15)*

In connection with the above is section 14 itself, which concerns the relationship of this legislation to other laws. The original Bill stated that, save as otherwise provided, this law shall apply "in addition to and not in derogation of" other laws. This should be read with section 4(1) of the Act, which states that "Notwithstanding any other law for the time being in force... the Central government hereby recognises and vests forest rights..."

Read together this implies that, while *vesting of rights* is protected by the non obstante clause of section 4(1), *exercise of rights* may come under the jurisdiction of other laws. A court could easily take this interpretation given that most other interpretations would imply that there is no need for section 14 to exist.

This would produce legal chaos, for instance by providing that FCA clearance or Forest Department permission before a right could be exercised (since the Act does not bar either). The MoEF / FD may be bound by the Act to give that clearance, but there would be ample opportunities for legal ambiguity and delaying tactics. One should remember that this Act is also being passed in a hostile judicial environment.

The JPC has recommended that this section be replaced with a straightforward clause - as provided in many other legislations - that this Act shall prevail in case it is contravened by any other legislation or court order (the latter being required due to the Supreme Court interim orders that have barred recognition of rights or regularisation of title). This would clarify the legal situation greatly. Concerns regarding wildlife protection etc., if that is the motivation behind the confusing original clause, should be addressed in the scope of the Act itself, rather than through tinkering with this provision.

Applicability of FCA Clearance to Forest Rights (amendment to section 4(8) - JPC s. 4(9))

As above, if section 14 is not changed, a right recognised under the Act could still need FCA clearance to be exercised - given that this Act does not explicitly bar the applicability of FCA clearance. Whatever may be decided about section 14, at the least FCA clearance should be explicitly removed. Otherwise, again, the implementation of this Bill will become impossible.

Definition of "Forest Dwelling" (section 2(c))

The original Bill provides that only those who live *in* forest lands are to be considered forest dwelling. This definition, taken literally, implies that the Bill will defeat itself - as only those who live on forest lands are eligible, once rights to habitation are recognised and their habitations cease to be forest land, the Bill will cease to apply to them!

Moreover this ignores the enormous population of people who live near forests and depend on them but whose habitations may technically fall within revenue land. The JPC recommendation in this regard is far better.

Procedure In Case of Gram Sabha Failure to Act (JPC section 6(10)(a)(iii))

The original Bill provides no procedure if the gram sabha fails to act. Since section 6(1) in the original Bill makes the gram sabha the authority to initiate the process of recognition of rights, if the gram sabha fails to act, the Act is stalled. The reality in many

forest areas is that, particularly where organisations are weak, it would be quite easy for forest authorities or others to simply prevent the gram sabha from either convening or deciding on these matters. The JPC's recommendation in this regard is to provide an explicit responsibility to the Sub-Divisional Level Committee to convene the gram sabha in case of a failure to act, which then means that this Committee can be held accountable should it fail to do so as well. While this could be clarified to provide that this should only be done after a certain time period, etc. (to prevent domination of gram sabha meetings), such a responsibility is necessary to ensure that the Act is not sabotaged in this fashion.

Internal

Shri D. Raja, MP in his letter dated 16th October, 2007 addressed to the PM has stated that the delay in notifying the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act is amounting to betrayal of the people and of the commitment that the Government made to tribes and forest dwellers.

2. In this regard, it is stated that the draft Rules under the above Act have been prepared. PM has directed the MoEF to expedite the identification and demarcation of the Critical Wildlife Habitats as required under the provisions of the Act. This work has commenced. The Rules under the Act are expected to be notified as soon as the work of identification and demarcation of the Critical Wildlife Habitats has been completed across the country.

3. Principal Secretary to PM chaired a meeting on 23.10.2007 with the Secretaries of Law, Environment & Forests and Tribal Affairs to fix a time limit for identification of Critical Wildlife Habitats. Ministry of Environment & Forests has been requested to depute special teams with senior level officers to the various State Governments to nominate experts and report the progress on weekly basis of the various States. He also directed that an action plan timetable letter to all Chief Secretaries of States from Principal Secretary to PM should also submitted. The State-wise progress should be monitored rigorously. Secretary, Environment & Forests has been directed to submit the same within a week.

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

KA
(Kalpana Awasthi)
25.10.2007

JS(G)

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25/10

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PM may also like to be informed.

25/10

[Handwritten signature]

[Handwritten signature]
25/10

47

19282/5/1007-7

25/10/07

P.M

M. K. Singh
26.10.2007

24.10.07
VI

16/AS(P) 4/07
117 2/12

17660/Pm/107

10/11/2007

JS(G)

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26/10

ES-2
KA 26/10/07

land was pending with the Supreme Court of India. The Hon'ble Court had granted stay on any regularization of encroachment till further orders. The State Government may, therefore, consider approaching the Supreme Court for exemption on a case basis. Since then MoEF does not have any communication on the issue from the State Government of Gujarat.

5. The above position is submitted by the Ministry through MOS(F & WL) for kind information of the Prime Minister.

(Kalpana Awasthi)
17.10.2007

~~JS(B)~~

Handwritten signature
18/10/07

6. According to media reports, the Supreme Court has taken cognizance of the alleged action of the State Govt. mentioned in para 1. If so, MoEF may be advised to impugn itself and file an appropriate appeal. Further, MoEF may be asked to take up the matter with the State Govt. to ensure that no illegal/irregular distribution of forest land takes place.

AS W
Principal Secretary

P.M

The proposals in paragraph (b) could be approved.

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19/10

~~P.M.~~

M. Manoj Kumar Singh
20.10.2007

~~JS(B)~~

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22/10/07

~~JS(A)~~

ES-2
Letter 20/10/07

16/14031/07
762331

Subject: Record of Discussions of the Meeting on Scheduled Tribes (Recognition of Forest Rights) Bill on 12th July, 2006 at 10.30 a.m. in South Block, New Delhi.

Prime Minister chaired a meeting which was attended by the Ministers of Tribal Affairs, Environment & Forests, Law and Defence to discuss the JPC's suggestions on Scheduled Tribes (Recognition of Forest Rights) Bill.

2. The JPC has made proposal for introduction of major changes in the Bill prepared by the Ministry. These issues were already settled in the discussions in the course of preparation. While some suggestions, wordings and definitions are acceptable and the Ministry of Tribal Affairs is amenable to change. However, the others are major ones, which are unacceptable and will change the tenor and focus of the proposed Bill from the Tribal to others, are as follows:

S.No.	Changes Proposed by JPC	Deleterious Impact
1.	Expanded the scope of the Bill and brought within its purview the non-tribals and other traditional forest dwellers also.	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. The issue of settling rights of non-tribal could be dealt through extant guidelines issued by MoE&F. However, legal protection of law required for ST only.
2.	Extended the cut off date for recognition and vesting of forest rights from 25.10.1980 to	Making the cut off date for recognition and vesting of forest rights as recent as 13.12.2005 would enable the non-tribals and

	13.12.2005 (the date of introduction of the Bill in the Lok Sabha).	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.
3.	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.	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 land.
4.	Deleted the provision relating to recognition of rights in core areas of National Parks and Sanctuaries on provisional basis.	This will have an adverse impact on the survival of wildlife and conservation efforts. The TTF recommended relocation of persons from the core areas to enable survival of wildlife.
5.	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.	This will result in mining of minerals, which are classified as major minerals. Including timber will result in large scale felling of trees and deforestation.
6.	Made the Gram Sabha the final authority for approving the record of forest rights instead of the District Level Committee and diluted the role of the Sub Divisional Level Committee by proposing that it act in an advisory capacity to the Gram Sabha.	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

7.	Conferred new right to communities and individuals to return to the original habitation if unsatisfied with the rehabilitation.	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
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Therefore, it was concluded that JPC's suggestions were not tenable.

3. It was decided that the GoM ^(Flag 'A') meeting be convened immediately and in the matter other leaders may also be informally ^{KA} consulted. Subsequently, the Ministry of Tribal Affairs should bring a Cabinet Note to this effect, at the earliest.

Prl. Secy to PM
Dy. No. 615/51
Date.....

JS(M)

^{KA}
(Kalpana Awasthi)
12.7.2006

Office he may inform MOT & RM's appropriately. May like to see b/i.

AS(P)

Sanjay Kumar
13/7/06 13.7.2006

Prl Secy

~~.....~~ Dta please.

145/0106
13/7
60/JSM/1416

ES-2
Letter KA
14/7/06
Dtl (CA)

SM
13/7

JS(M)
13/7

PM chaired a Meeting on 12.7.2006 which was attended by the Ministers of Defence, Tribal Affairs, MoE&F and Law to discuss the amendments suggested by the Joint Parliamentary Committee's (JPC) suggestions on the STs(Recognition of Forest Rights Bill) 2005. PM directed that the GoM constituted to consider the issues raised by the JPC relating to the suggestions on this Bill may be held at the earliest.

2. Accordingly, the Defence Minister held the Meeting on 20.7.2006 and vide his letter-dated 25.7.2006, has forwarded the Minutes of the Meeting (F/A). The details of the detailed discussions and the broad consensus reached with respect to the 4 major issues are as follows:

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

3. In addition, other issues on which consensus was reached are as follows:

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

(ii) 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.

4. It was decided that the Chairman would hold further discussions with the political parties and call for another meeting of the GoM for taking a final view.

5. If agreed to, we may request that the Chairman of the GoM to hold the above-proposed meeting with the political parties, at the earliest so that the Bill is introduced in the current Monsoon Session.

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

KA
(Kalpana Awasthi)
26.7.2006

~~JS(G)~~

...
Raksha Nautri is meeting the
Opposition on this -
As per 5 notes

Dir (G) (S) 642
KA
27/7

9 | JS(G) | 1/10
27/7

7/C
Smt. Brinda Karat, MP, Rajya Sabha and Chairperson of the JPC to study the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 in her letter dated 29th August, 2006 (Flag-'A') addressed to PM has requested that the all party recommendations of the JPC be accepted and implemented by the Government. She has stated that it is a misinformed view that the JPC recommendations are against conservation and protection of India's wild life. She has stated that any delay in the passage of the Bill with the inclusion of the JPC recommendations will not only be an injustice to tribals but will also help the real encroachers who continue to enjoy benefits they have no right to.

2. She stated that

- i) The rights of non-tribal traditional forest dwellers have already been recognized by Government at least until 1993.
- ii) 3.75 lakh hectares has already been regularized for pre-1980 forest dwellers tribal and non-tribal.
- iii) The land so regularized has ceiling but was done on an "as is where is" basis.
- iv) The cut-off year of 1980 has itself been shifted by Government to at least 1993 which means that 1980 is not a sacrosanct date for the Government.
- v) Government has acknowledged difficulties in distinguishing between the different sections occupying land.
- vi) Government's position differs from that of the Supreme Court.

3. The Ministry of Tribal Affairs had submitted its views on the JPC recommendations and highlighted that if the coverage would be inclusive of non-tribals then Ministry of Tribal Affairs domain, as per Allocation of Business Rules would not permit it

to legislate on non-tribals. It would also shift the focus from the really deprived category to include the others.

4. If agreed to, we may forward a copy of the Note submitted by her on accepted positions of Government on tribal and forest dwellers rights (Flag-'A-1') to the Ministry of Tribal Affairs for their comments. The important point, which is missed out, is that the same issues which were raised by the Ministry of Environment & Forests are being raked up under the pretence of giving equitable justice to the non-tribals also.

5. In addition, the MPs from the North East have also expressed in their memorandum (Flag-'B') on the matter of their non equivocal opposition towards the detrimental recommendations of the JPC for the inclusion of the non deserving non-STs in the garb of traditional forest-dwellers within the purview of the Bill. If agreed to, we may forward this memorandum to the Ministry of Tribal Affairs also at the earliest. The GOM under Defence Minister has also submitted its report to this office on 24.7.2006 and it was decided that the RM, would hold discussions with the Political Parties on the above issue and call for another meeting of the GOM for taking a final view. If agreed to, we may await their final view.

6. File is submitted for kind perusal and further instructions please.

KA
(Kalpana Awasthi)
7.9.2006

~~JS(G)~~

7. PDS (Pno) had fashioned a consensus on this issue prior to it being presented in Parliament. Could we request Mr (Pno) to kind a meeting with Mr Bhandari (where Mr TA could also be called) to mutually appreciate the respective positions so that we can minimize

areas of difference and
have the meeting of the
comy after that.

For consideration

Pr
8/9/06

Propose meeting to Mr

The proposed in paragraph (7)
could be approved.

Pr
8/9

MoS (PMO)
~~Pr~~

I have spoken to
Ms. Brinda Karat, M.P. &

I have requested her to
attend a meeting in the PMO
at 3pm on 28 Sept 2006, to
resolve the matter. Points for
internal discussion may be kept
ready. File may be submitted to PM
after the meeting.

Pr
26/9/06

Principal Secy

Office of MoS (PMO)

Dy. No .. 11.45.f.....

Date ... 9/9/06

Pr
8/9

Meeting held with
Smt Brinda Karat M.P. MoS PMO

17. 6/10/17
8/9
49/J1(5)/1/02

3) closed. In RFA, AS (P) JS(C) w Dr (A)

attended. RFA has been asked to

send a note on the view that can

be taken on issues on which there

divergence between JPC and

Government.

[Signature]

28/9/06

~~Dr (A)~~ ES-2 ^{28.9.06}

KA
29/9/06.

Internal

MOS(PMO) chaired a meeting in his office on 28th September, 2006 relating to the issues raised by Smt. Brinda Karat, MP and Member, JPC on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

2. The meeting was attended by Smt. Brinda Karat, Member, JPC, Secretary, Ministry of Tribal Affairs, AS(P), JS(G), JS, Ministry of Tribal Affairs, PS to MOS(PMO) and the undersigned.

3. The draft minutes of the meeting are placed at Flag-'A' 14^{1/2} for kind consideration and approval please.

KA
(Kalpana Awasthi)
4.10.2006

JS(G)

This may be seen as meeting second to be retained as file and not as minutes. If agreed, (a) the point on surveying area to 4 hectares or actual possession whichever is lower can be conceded on Non Title Forest Dwellers as a cr-media it could be suggested that a new bill to be brought after assessing impact of this could be considered later & separately. On cut-off date, ~~and~~ on from the recommendations being vetted by Sub-Divisional & District Commissioners prior to allotment and restrict

544/85-1/1012
3679/AS(P)/10106
3158/JS(G)/10137x
55.5/Dir/Atos, 4/10

ref of 6 st's, these are non-negotiable.

As the next step, Roy may be requested to hold the final meeting with select members of the JPC as an exercise in persuasion on these points after which it could be taken up in the Cabinet.

AS (P)

AS (P)
9/15/06
5/10/06

Mos (P/M)

Shank
9/10/2006

JS (G)

SM
9/10

1184-F (Mos (P/M)) / 06
1:00 AM

Din KA ES-2
10/10/06 KA 10/10/06

Internal

With reference to the instructions on Note placed at F/A, a draft letter from MOS (PMO) to Raksha Mantri is placed at F/B for kind approval, please.

13/11

13/10

KA
(Kalpana Awasthi)
12.10.2006

As amended:

Sanjayprata
13/10

Any view
JS(M)
13/10
Prin Secy

The letter could be sent after showing to PM for his information/orders.

15/10

Prin Secy

sir,
PM wants MOS (PMO) to also speak to Shri Kyndiah to obtain his views also

May like to see before the letter is issued.

16/10

~~Prin Secy~~

As desired by PM, I spoke to Shri Kyndiah. He has submitted his views in writing (letter enclosed). His views now are radically different from the consensus arrived in PMO as is reflected in our draft letter. Reconciliation does not seem possible.

MOS (PMO) Prin. Secy
JS (M)
24/10
25/10
P.S. DPM (S)

Prin Secy

26/10

675/PM/G/86
16/10
2004-6/PPM
13/10/06

344(2500)/G/06

MOS (PMO) Office
Dy. No 1209
Date 25.10.06

The consensus arrived in the PMO along with the views of the Minister of Tribal Affairs may be communicated to Shri Pranab Mukherjee, External Affairs Minister for consideration in the GoM.

Manmohan Singh
(Manmohan Singh)
Prime Minister
October 29, 2006

Principal Secretary to PM

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138/α

JS(M)

80m
30/10

12/10

JS(G)

direct call (PMS) / Draft amended to incorporate directions (B)
Handwritten initials
5/10

Dir (IA)

KA ... 31/10/06

PS V. PMS (PMS)
MMS (PMS) has approved the draft.

M's direction has been incorporated in the draft which may please be seen (Page 15)
I append this

4-F/MOS(PMS)/06
31/10/06

3158/JS(G)/06
31/10
16675/PM/G/06
30/10

Dir (KA)

Handwritten signature
ES-2 31.10.06
Issue letter
31/10/06

Proposed sent to PMS
MOS (PMS) 31/10
31/10
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31/10

1. The issue of including non-tribal forest dwellers in the purview of the Scheduled Tribes (Recognition of Forest Rights) Bill was raised in the recommendations of the JPC. In further discussion, it was stated that this Bill could make a provision to include forest dwellers (non-ST) who occupy land for the last three generations (not possible without indicating a specific year) in the category of eligible beneficiaries.

2. The document enclosed has been obtained from Government of Chhattisgarh where the then Central Provinces and Berar have actually designated certain castes to be treated as Scheduled Tribes for the purpose of benefits from forests. The Gazette Notification of the Government dated 31st March 1949 is enclosed.

etc

3. When the issue comes up for discussion in the Cabinet prior based on GoM, Government of India, it could be suggested that wherever such official records exist categorizing certain non-Scheduled Tribes to be deemed as Scheduled Tribes for benefits from forests they could come under the purview of the Bill. For this again a cut off date could be prescribed. The formulation could be as follows:

"If on official records if any non-Scheduled Tribes have been declared by a Gazette Notification of any State Government/Provincial Government to be deemed to have equivalence to tribes in terms of resources from forests, their lands could also be considered for regularization."

4. This is for consideration. If agreed we may forward this to Ministry of Tribal Affairs. *Alternatively this could be desired while formulating the "second bill" to non-tribes by DTA*

(R. Gopalakrishnan)
November 23, 2006

~~AS(P)~~
~~Principal Secretary to PM~~

~~MOS(PMO)~~

~~Prin. Secy.~~

Could be forwarded
Kline ReITA.

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23/11/06

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JS(GST)

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25/11

317-6/PPM
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175(G)/06 28/11

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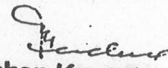
No.701-T/2/2007-CA.V
GOVERNMENT OF INDIA/BHARAT SARKAR
CABINET SECRETARIAT/MANTRIMANDAL SACHIVALAYA
RASHTRAPATI BHAVAN

New Delhi, dated 24th October, 2007.

Subject: - Rules under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Tribes) Act.

The undersigned is directed to send herewith a copy of the minutes of the meeting of Committee of Secretaries held at 12.00 Noon on 18.10.2007 in the Committee Room of Cabinet Secretariat, Rashtrapati Bhavan, New Delhi on the above subject.

(Encls. Doc. No. CAV/64/2007)

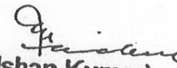

(Gulshan Kumar)
Under Secretary to the Govt. of India
Tel: 2-301 9017

To

- Shri G. B. Mukerji, Secretary, Ministry of Tribal Affairs.
- Shri T. K. Viswanathan, Secretary, Department of Legal Affairs/
- Shri K. N. Chaturvedi, Secretary, Legislative Department.
- Ms. Meena Gupta, Secretary, Ministry of Environment & Forests.

Copy with enclosures also forwarded to: -

✓ Shri T. K. A. Nair, Principal Secretary to Prime Minister.


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

Internal circulation (Only one copy).

CS/Secy.(C)/JS (CSK)/JS (SBA)/DS (SM)

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- (ii) At the hearing, the State government shall in the local language
- (a) Describe the areas and boundary of the proposed critical wildlife habitat;
 - (b) Details of the various habitations and persons to be affected
 - (c) Data provided in the application to the Ministry of Environment and Forests

6. Subsequent Action by the Ministry of Environment & Forests

- (i) The Ministry of Environment and Forests may notify the critical wildlife habitat taking into account the recommendations of the State level Expert Committee and the Central Expert Committee and make this information public.
- (ii) Such notification will be in English and in the official language of the state, and posted on the web.

Attn.

Mrs. Gopalakrishnan, J.S., P.M.O.

14/11

(1-2/14)

1/2

STATEMENT ON CRITICAL WILDLIFE HABITAT

The preamble of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 talks of the responsibilities and the authority for sustainable use, conservation of biodiversity and maintenance of the ecological balance.

Section 2 (b) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 defines a "Critical Wildlife Habitat" as 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 inviolate for wildlife conservation.

Therefore identification of the Critical Wildlife Habitat is central to the Act.

This august house has also enacted the Wildlife (Protection) Act, 1972 with a view to ensure the ecological and environmental security of the country by protecting wildlife. The Act provides for declaration of Protected Areas - namely - National Parks, Wildlife Sanctuaries, Conservation and Community Reserves to achieve the aforesaid objectives.

As on date, there are total 657 PAs including 28 Tiger Reserves covering about 15.59 million ha which constitutes about 4.8% of the total geographical area of the country.

Though all the Protected Areas are important from the point of view of biodiversity and ecological security of the country, in view of the provisions for redetermining the critical wildlife habitats as envisaged under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the following time frame is proposed to facilitate the implementation of the Act.

For Tiger Reserves, statutory provisions already exists under section 38V of the Wildlife (Protection) Act, 1972 for establishing core or critical tiger habitats, which is under process and likely to be identified by December 2007.

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For rest of the PAs, State Forest Departments through their internal expertise shall identify the critical habitat as soonest possible, so that while going through the process of determining and vesting of the rights to the scheduled tribes and forest dwellers, due caution and attention is paid to keep biodiversity and ecological security of the country intact. This will facilitate the Ministry to finally determine and notify the critical wildlife habitat as per the process that will be laid down in the rules and smooth implementation of the Act.

Section 1 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 defines 'Critical Wildlife Habitat' as a geographical area of National Parks and Sanctuaries which has been notified by the Government of India or State Government as a Critical Wildlife Habitat and which is essential for the protection of the wildlife therein.

The Ministry has been entrusted with the responsibility of identifying the Critical Wildlife Habitats in the National Parks and Sanctuaries and other areas notified as Critical Wildlife Habitats. The Ministry has been entrusted with the responsibility of identifying the Critical Wildlife Habitats in the National Parks and Sanctuaries and other areas notified as Critical Wildlife Habitats.

As on date, there are 107 National Parks and Sanctuaries covering about 12.39 million hectares which constitute about 32% of the total geographical area of the country.

Though all the proposed areas are important from the point of view of biodiversity and ecological security of the country, in view of the provisions for redesignating the critical wildlife habitats as envisaged under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the following areas are proposed to be notified as the implementation of the Act.

For Right to Forests, statutory provisions already exist under section 35 of the Wildlife (Protection) Act, 1972 for establishing core or critical habitat which is under process and likely to be identified by Department.

Internal

Prime Minister directed the Ministry of Environment & Forests to complete the process of defining core or critical tiger habitats at the earliest so as not to affect implementation of the STs and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. — F/X Accordingly, Principal Secretary to PM chaired a meeting and directed that this be completed under section 38V of the Wildlife (Protection) Act, 1972 as per prescribed procedure before → F/Y 31.12.2007. It was stated that critical habitats relating to rhino and lion should also be defined through a separate administrative order. It had been further directed that the EFC proposal for improving the relocation package of people from critical wildlife habitats should be got ready and shared with the PMO, and efforts should be taken to clear the same before 15.12.2007.

2. Ministry has intimated that

a) the EFC meeting was held on 5.12.2007 under the Chairmanship of Secretary, E&F.

b) for critical tiger habitats, the Tiger States were requested for the needful. A meeting of Chief Wildlife Wardens, Field Directors and Scientists from the Wildlife Institute of India was held on 29.11.2007 at New Delhi, under the Chairmanship of DGF & SS. Based on the proposals received and discussions with State representatives, the critical tiger habitat as required under section 38V of the Wildlife (Protection) Act, 1972, as amended in 2006, has been finalized. The draft summary record of the meeting containing the details of area relating to core or critical tiger habitat (State-wise/Reserve-wise), along with draft letter to tiger States is at F/D. The State Chief Wildlife Wardens have been asked to notify the critical tiger habitats by 20.12.2007. The Wildlife Division is required to do the needful for identifying the lion/rhino critical habitats.

3. File is submitted for kind information of the Prime Minister as Minister-in-charge of the Ministry of Environment & Forests.

(Kalpana Awasthi)
13.12.2007

JS(V)

JS(G)

AS(P)

12/15/12/07
775
18/12/07

11/11/26/07

775

JS(G)

AS(P)

65 2
10/12/07

Subject : Notification of Core or Critical Tiger Habitats by State Governments

1. Government of India in the Ministry of Environment and Forests had decided that the core areas in the Tiger Reserves should be notified as critical tiger habitats under the Wildlife Protection Act, Section (38-V). Accordingly instructions were issued to state governments who have to do the notification for each tiger reserve.
2. Ministry of Environment and Forests was directed to follow this up on a daily basis. The deadline was 20th December, 2007.
3. After follow up, so far out of 36 tiger reserves (28 + 8) except for 4 tiger reserves, all others have either been notified or have taken a decision for notification. (In some states, references are being made to Department of Law etc., causing a slight delay in the notification)
4. A substantial amount of the work has therefore been completed and the remaining will be followed up for early notification.
5. Given the fact that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules are to be notified on 1st January, 2008, this information is being forwarded. Prime Minister wanted to be apprised of the situation.

*it should be all visible reserves ensure at all for services
 reject critical for habitats most possible*

ps: After this note, Madhya Pradesh has also issued notifications leaving only Orissa

[Signature]

(R. Gopalakrishnan)
 December 31, 2007

AS(P) (left 2 hrs)
Principal Secretary to PM

[Signature]
 3/12

17/c

PM

Manoj Kumar Singh
 2.1.2008

Arvind Singh

Pl. see for urgent follow up.

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Orissa has also notified decision on notification yesterday. So

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

- 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;
- 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.

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

(a) harmonise the issues brought up during discussions in the Cabinet; and (b) consider official amendments to the Bill. After approval of the Cabinet, the Ministry has introduced the Bill in the Lok Sabha on 13.12.2005. A copy of the Bill as introduced in the Lok Sabha on 13.12.2005 is at Annexure-C. The Bill has also been referred to a Joint Committee.

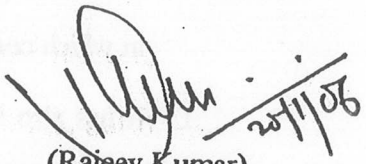
13. **SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) RULES**

After enactment of the Bill, the Ministry of Tribal Affairs proposes to notify the Scheduled Tribes (Recognition of Forest Rights) 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.

14. The above position is submitted to the Group of Ministers for (a) harmonizing the issues brought up during discussions in the Cabinet in its meeting held on 1.12.2005; and (b) considering official amendments to the Bill.

15. The Minister of Defence has seen and approved the proposal in this note.

Place: New Delhi
Date: 20.1.2006


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

Internal

This is in continuation of my internal note for holding a meeting on the S.T. (Rights) Bill scheduled at 10.30 a.m. on Wednesday, 12 July in 7-RCR.

PM desired to have RM also for the above meeting. He may please be invited. | A

The venue of the meeting may please be shifted to SB instead of 7-RCR. Date and time remain the same. | B

B.V.R.
10/7

(B.V.R. Subrahmanyam)
PS to PM
10.07.06

~~JS (M)~~

Copy to: 1. Principal Secretary
2. AS(P)

We spoke. Pl. take follow up action on 'A' & 'B'.

Di (A)

*Sanil
KA
11/7*

JR
11.7

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11-7-06

66/PM/6/06
11/7

Internal

PM wishes to hold a meeting on the S.T. (Rights) Bill. This has been scheduled at 10.30 a.m. on Wednesday, 12 July in 7-RCR. 17

The Ministers of Tribal Affairs; Environment & Forests and Law could be invited. From PMO, MOS (PMO), Principal Secretary, AS(P) & JS(M) could attend please.

A brief has already been asked for PM's perusal during his trip to Kolkata on 11.7.06.

B.V.R.
10/7

(B.V.R. Subrahmanyam)
PS to PM
10.07.06

JS(M)

CHIEFS' COUNCIL

CHURACHANDPUR DISTRICT, MANIPUR-795 128

Regd. No. 2600 of 1978

Head Office :
Thangzam Road,
Hill Town, CCpur.
☎(03874)234148

Ref. No. MO/No.4/CC-CCPur/2002

Date 06-07-2005

To,

The Joint Secretary
Ministry of Tribal Affairs,
Room No. 722, A-Wing,
Shastri Bhavan, New Delhi.

Subject : Inviting views/suggestions on the Draft the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

Sir,

With reference to your Circular No. 17014/4/2005 (S&M(Pt.) dated the 3rd June, 2005 on the above cited subject, we, the undersigned have the honour to furnish our findings and views that the Draft Bill "THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005" may not be applicable to the Hill Areas of Manipur and therefore viewed that the words 'and Manipur' be added after the words "Jammu and Kashmir" at claus (2) of Section 1 of the said Bill for the following grounds:-

1. The ownership of the Hill Village lands of Manipur State does not vest in the State Government of Manipur nor the Union of India but the Scheduled Tribes who are occupying/possessing their respective village lands since time immemorial.
2. There are two types of Hill Village lands having their respective specific boundaries viz- (1) the Chief of the Village is the absolute sole owner of his entire village land among the Chin-Kuki-Mizo-Zomi-Hmar group of Tribals since time immemorial and (2) the Khullakpa and the villagers are co-owners of the village land among the Naga group Tribals. These ownership of land are under their respective Tribal Custom and, such right, title and interest on land amount to "Property" within the meaning of Article 300A of the Constitution of India. Therefore, the Government is bound to acquire any part or portion or whole of any Hill village land if and when require for any purpose under the relevant provision of the Land Acquisition Act, 1894 as done in the cases of Loktak Project, Khoupum Dam Project, Khuga Dam Project, etc.
3. At least 80% of the total population of the Scheduled Tribes of Manipur State are living under poverty line and their livelihood mainly depends on Forest i.e. shifting Jhum cultivation. There is no alternative remedy yet. Allotment of 2.5 Ha or more Hill land and issue of separate patta to a household will soon create landless problems because, the poor family will compel to sell or mortgage the land to rich people. No question of landless problem arise under the Chief's land since time immemorial.
4. The Hilly villages along with their Chiefs were/are given legally recognition in the Schedule to the Manipur State Hill-Peoples (Administration) Regulation, 1947.
5. The Manipur Hill Areas (Acquisition of Chief's Rights) Act, 1967 is not enforceable, because, the acquisition of Rights of the Chiefs without being acquisition of ownership of land under the Land Acquisition Act, 1894 is meaningless.
6. If the Draft "THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005 is passed and extended to the Hill Areas of Manipur, it will amount to the detriment of ownership and enjoyment of land of the Scheduled Tribes of Manipur who are governing themselves under

CHIEFS' COUNCIL

CHURACHANDPUR DISTRICT, MANIPUR-795 128

Regd. No. 2600 of 1978

Head Office:

Thangzam Road,
Hill Town, CCpur.
☎(03874)234148

Ref. No.

Date

- 2 -

7. In support of the legal position mentioned in the foregoing paras 1 to 5, a DOCUMENT bearing letter No. 5/7/66-R dated 01-01-1968 of the Secretary to the Government of Manipur is enclosed herewith in 2 (two) sheets for your kind reference.

Yours faithfully,

(Khaikholien Haokip)
Secretary

(T. Dongzakai Gangte)
President

(Pumzadou Thangsing)
Joint Secretary

(Paudomang Ngaihte)
Vice President

(Thangchinlian Guite)
Adviser

The Chiefs' Council, Churachandpur, Manipur.

Copy to :

1. The Hon'ble Union Minister
(Tribal Affairs/Doner)
Govt. of India, New Delhi
- for information and necessary action please.
2. Shri Mani Charanamei
Hon'ble M.P. (Lok Shabha)
- for information and necessary action please.
3. Shri Rishang Keishing
Hon'ble M.P. (Rajya Sabha)
Govt. of India
- for kind perusal and necessary action please.
4. The Minister (T.D. & Hill)
Govt. of Manipur
- for information and necessary action please.
5. The Chairman
Hill Areas Committee
Govt. of Manipur
- for information and necessary action please.
6. _____

Prime Minister's Office

(Parliament Section)

'Proceedings in Parliament'

(Salient features)

November 29, 2007

Rajya Sabha

"walk out by NDA"

As soon as the House assembled at 11.00 am, members from NDA led by BJP were on their legs. Smt. Sushma Swaraj alleged that the Govt. was not giving any respect to the important and crucial issues raised by them such as Taslima Nasreen's shifting out of Kolkata, and the passage of AIIMS Bill which led to resident doctors of AIIMS going to strike and said that the BJP and their allies would not participate in the proceedings of the House for the whole day today and would also not participate in the BAC meetings. Thereafter the NDA members staged *walk out in protest*.

"strike by AIIMS doctors"

Shri Rajniti Prasad (RJD) raised the issue of strike by the doctors of AIIMS protesting against the passing of AIIMS Bill by the Parliament. Shri Prasad referred to the statement of the AIIMS doctors saying that they would not treat any MP in future. Shri Mangni Lal Mandal and Prof. Ramdeo Bhandari said, this was an insult of the Parliament and demanded that doctors should be punished for their statement. MOS(PA), Shri Pachouri said that the Govt. would take note of the concern of the members.

"protest by SP members"

On the SQ 201 relating to the Deptt. of Atomic Energy reg. "Nuclear Fuel Supply from Russia", Smt. Jaya Bachchan and other members from SP, supported by some members from CPM, considering the importance of the matter, wanted to ask more supplementary questions but were not allowed by the Chairman saying that as per established practice in the House, only three supplementaries could be allowed. The Members from SP kept on protesting saying that keeping in view the importance of the Question, as per tradition, more supplementaries could be allowed by the Chairman. But the Chairman did not agree and the next Question was taken up.

"walk out by CPM"

During Question Hour, when Shri S. Regupathy MOS (E&F) was answering his SQ No. 207 reg. "Notification on the Rights of the Forest Dwellers", Smt. Brinda Karat, by way of supplementary, wanted to know from the Govt. that why the Act and Rules had not yet been notified and how could the Act be implemented without notifying the Rules framed under the Act. Other members from CPM and SP also supported Smt. Karat and charged that the Govt. was unduly delaying the notification of the Act and the Rules and evicting the forest dwellers. Replying to the supplementary of Smt. Karat, MOS (E&F) replied that the Govt. was taking all steps to see that the rules were notified as early as possible and also said that the Govt. was serious and taking prior action. be taken as per the preamble of the Act. Smt. Brinda Karat and other members from CPM and SP were not satisfied with the reply of the Minister and were continuously saying that how the Govt. could implement the Act without notifying the rules. When no reply came from the Minister, the members from CPM led by Smt. Karat staged a *walk out* in protest.

Please keep on file on Tshojels bit.

ES-2/16 KA 20/11/07

Zero Hour
"alleged remarks
on LTTE by a
Union Minister"

During Zero Hour, AIADMK members led by Dr. V. Maitreyan wanted to raise the issue for which they had already given notices, regarding reported remarks, in support of LTTE by a Union Minister in the UPA Govt. As soon as the Dy. Chairman informed them that their notice was not allowed by the Chair, they rushed to the well of the House demanding immediate opportunities for raising their issue. After the assurance of the Chair that they would be allowed to speak but not on the basis of their notices, they resumed their seats and raised the issue.

Both Houses

"Protect ethnic
Indians in
Malaysia"

Rajya Sabha

In the Rajya Sabha, Shri Tiruchi Siva (DMK) raised the reported ill-treatment with Indians in Malaysia, who had migrated and settled, especially from Tamil Nadu, by the citizens as well as the Govt. of Malaysia. Associating himself with the concern of Shri Siva, Shri D. Raja (CPI-M) informed the House that though the Indians were given the ethnic citizenship of that country, they were being undermined and were not provided equal democratic and human rights. They were protesting peacefully on 24th November, 2007 demanding equal rights, but they were abused, killed and threatened by the administration of the Malaysian Govt. Shri D. Raja suggested that our Govt. should take up this matter with the Malaysian Govt. with whom we had a good diplomatic relationship.

Lok Sabha

In the Lok Sabha also during Zero Hour, Shri S.K. Kharaventhan raised the issue of ill treatment meted out to Tamilians in Malaysia. Raising the issue he said that recently in Malaysia, during a demonstration by Indians, mostly Tamils, were lathicharged and teargassed by the police. Some people were arrested. He urged the Government of India to take steps to protect the ethnic Indians in Malaysia. Speaker advised members not to say anything that would affect relations with the friendly country. Cutting across party lines, all Tamil Members, urged Government to take up the matter with the Malaysian Government. Associating with the issue, BJP Members also stood on their legs and stated that the temples were also being demolished. As a result, there was din over the issue. Despite the repeated requests from the Speaker stating that any country could not be discussed in such a manner in the House. As the uproar continued, at a point of time, Speaker directed that the live telecast of the proceedings be stopped and the TVs be switched off. When the din still continued, the Speaker, at 12.30 pm, *adjourned the House till 1.00 pm.*

Adjournment

R. Sharma
29/11/07
(Rajinder Sharma)
Under Secretary (Parlt.)
29.11.2007

PS (S) to PM

PS (J) to PM

PS to MOS(PMO)

JS(G)

No.17014/4/2004-S&M(Pt.)
Government of India
Ministry of Tribal Affairs

Secret

(xiii) The Model Bill is somehow more elaborate in conferring powers on Forests and Police officers for search and seizure than the conferment of ownership rights over MFPs on the FDCs.

(xiv) The provisions of the Model Bill are contrary to the provisions of PESA Act.

8. The Ministry of Tribal Affairs is of the view that "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" adequately addresses the issue of conferment of ownership rights over the minor forest produce to the forest dwelling scheduled Tribes, who are dependent on MFPs for their subsistence and livelihood needs. The Ministry, therefore, does not consider the need for enacting the "Model Bill. - State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005", proposed by the Ministry of Environment & Forests. The procedural details may be provided in the rules to be framed after enactment of the ST Bill.

9. The above position is submitted to the Committee of Secretaries for information and consideration.


(RAJEEV KUMAR)

Joint Secretary to the Govt. of India
Ministry of Tribal Affairs
Tele: 23073489

Place: New Delhi
Date: 1.8.2005

*Repeated
I have made this
page a part of
other of
doc.*

Minutes of the meeting of the Technical Support Group constituted to formulate the 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005' held on 21.7.2005

A meeting of the Technical Support Group (TSG) was held on 21.7.2005 in Secretary(TA)'s Chamber. The list of participants in the said meeting is at Annexure. The representative of the Ministry of Environment & Forests did not attend the meeting of the TSG, despite repeated requests made to them during the course of the meeting.

2. As Secretary(TA) was held up elsewhere, Shri Rajeev Kumar, Joint Secretary welcomed all the members of the TSG and informed the members that Secretary (TA) would be joining little later. It was decided that Smt. Sudha Pillai, Additional Secretary (Panchayati Raj) may in the meantime chair the meeting. Smt. Pillai further welcomed all the members and after a brief introduction requested Sh. Rajeev Kumar, JS, to brief the Committee.

3. Giving the background of the case, Shri Rajeev Kumar, stated that the Ministry had prepared a draft of "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" and circulated the same amongst all the Ministries concerned for their comments. The draft Bill was approved by all the concerned Ministries with suggestions in some cases, except the Ministry of Environment & Forests. After examining the objections of the Ministry of Environment & Forests and giving point-wise comments thereon, the Ministry had referred the draft Bill to Ministry of Law & Justice for their advice and vetting of the draft Bill. On receipt of clearance from the Ministry of Law & Justice, the Ministry had sent a Note for the Cabinet, along with the draft Bill as vetted by the Ministry of Law & Justice, to the Cabinet Secretariat on 28.4.2005 for placing the matter before the Cabinet. The Cabinet Note sent by the Ministry could not, however, be taken up for consideration by the Cabinet. In the meanwhile, it was decided to post the draft version of the above 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, the social activists, academicians, anthropologists, the experts working for the cause of environmental protection and welfare of tribal people and other stakeholders were requested to send their views/comments/suggestions on the proposed legislation by 10th July, 2005. Advertisements were also issued in the leading national and regional dailies (in English, Hindi and regional languages) all over the country for this purpose.

4. Shri Rajeev Kumar, JS, informed the Committee had received a overwhelming response from the individuals/ organizations from all over the country and as many as 5634 individuals/organizations had sent their comments/suggestions upto 20.7.2005, either supporting the Bill or opposing the same. While some of the comments have been sent by the individual stakeholders, large number of comments have been received in the form of resolutions supported by many individuals. He stated that the Ministry had compiled all the comments/suggestions in the form of a statement and the TSG has to take a view on the various general/specific comments and decide whether changes were required to be made in

Bill Process

No.17014/4/2005-S&M/PC&V
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12. 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)]
13. 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)]
14. 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)]
15. 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)]
16. Deletion of existing Section on Offences and Penalties [Section 9]
17. Previous publication of rules [Section 16 (1)]
18. 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 [Section 16 (1)(e)]

II. Important issues which are NOT AGREEABLE – Annexure-II:

1. Inclusion of non-ST forest dwellers [Preamble, Section 1(1), Section 2(o), Section 3, Section 4]
2. Changing the cut off date of 25.10.1980 to 13.12.05 [Section 4 (3)]
3. Expansion of ceiling of 2.5 ha [Section 4 (6)].
4. Gram Sabha as the competent authority for approving the forest rights. [Section 6(1)]

III. Some minor and consequential issues, which are NOT AGREEABLE

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- falls within the traditional boundaries or range of that community [Section 4(8)]
12. 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)]
 13. Grant of power to sell the harvest minor forest produce and provision of fair minimum support price. [Section 5 (1) (e)]
 14. 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 caused by such activities. [Section 5 (2)]
 15. 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)]
 16. 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. [Section 5 (4)]
 17. 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)]
 18. Authorities and Procedure for Vesting of Forest Rights [Sections 6 (1) to 6 (12)]
 19. 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. [Section 7]
 20. In situ rehabilitation of ineligible and primarily forest dependent encroachers through employment in afforestation or in other forest based activities [Section 8]
 21. 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 recognised under this Act. [Section 14]

1. Notes on N-12 to 15 may kindly be seen which provides a background of the issue under discussion which is about notifying the Act and the Rules of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This was a much debated legislation and represented the political Government's commitment to providing rights over land historically in possession of Scheduled Tribes and other Forest Dwellers but denied to them for decades after independence for want of government records. The Act was under preparation since 2005 and finally was passed by the Parliament in 2006 and received the assent of the President on 29th December, 2006.
2. The Act provides that the Act will become operative "on such date as the Central Government may by notification in the official gazette appoint."
3. The Act has not yet been notified.
4. The exercise of preparing the Rules under the Act was undertaken by an Expert Committee constituted by the Ministry of Tribal Affairs under Shri S.R. Sankaran through a consultative process which involved the Ministry of Environment and Forests. The draft rules were published for comments on 19.6.2007. Comments have been received and the Ministry is expected to notify both the Act and Rules on any day after 45 days from 19.6.2007 after Ministry of Tribal Affairs has reviewed the responses.
5. The Act under Section 4(2) provides "*that the forest rights recognized 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:*
 - a) *the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;*
 - b) *it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;*

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- c) *the State Government has concluded that other reasonable options, such as, co-existence are not available;*
- d) *a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;*
- e) *the free informed consent of the Gram Sabha in the areas concerned to the proposed resettlement and to the package has been obtained in writing;*
- f) *no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package;*

The operative portion to note is that the rights recognized under this Act can in the case of "critical wild life habitats" be subsequently modified or resettled. The Act does not presume a situation in which rights are dependent on the notification of the critical wild life habitat. This is amply clear in the law. The Act is flawed and Section 4(2) may kindly be perused.

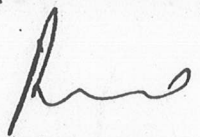
6. The present position being proposed seems to be: ☺

- a) The Act is not to be notified until critical wild life habitats are defined by the Ministry of Environment and Forests. The Ministry of Tribal Affairs have intimated vide its letter dated 24.8.2007 (FR) that in such case the schedule of distribution of title deeds would be delayed.
- b) The Government is here proposing to delay notification of the Act and the Rules on the grounds that critical wildlife habitats need to be defined first before the distribution of title deeds begin. The Law passed by the Parliament states that rights would accrue and if in case of critical wildlife habitats which are to be deemed "inviolable spaces" where human habitation is to be avoided, people could be relocated. The law as it exists is, therefore, sensitive to wildlife conservation but not at the expense of tribal rights. It seeks to combine the two objectives by providing rights in the first place and then also provide for relocation once the area is notified as critical wild life habitat. The Government position proposed to be taken now by not notifying the Act in the

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pronounced commitment to the "aam admi", its NCMP framework, the statements made in the President's Address, the Prime Minister's address on consecutive independent day occasions, and the entire parliamentary proceedings that led to the enactment of a landmark legislation in favour of one of the most vulnerable sections of India's poor. Parliamentarians are unlikely to concede such latitude to the Government and the resulting acrimony may result in presenting the Government as ambivalent on issues concerning the poor.

7. Is there a way out, is the issue. A practical solution would be to notify the Act and Rules on schedule and in the Rules specifically provide for "provisional" title deeds to people in national parks/sanctuaries wherein it is clearly stated that they are liable to relocation if the area is declared subsequently as critical wildlife habitat. This would be in keeping with the spirit and letter of the law and help avoid the policy and political misadventure that non-notification of the Act/Rules would entail.


[R. Gopalakrishnan]
29th August, 2007

AS(P)

Principal Secretary to PM

PM

8. Principal Secretary had held discussions with Secretary-Tribal Affairs, Secretary-MoEF and Law Secretary on this important issue.

9. Concern was expressed that as soon as the Rules are notified under the Act, Pattas will be issued not only for the National Parks and Sanctuaries but also within the "critical wildlife habitats" long before such habitats have actually been delineated and notified by the Ministry of Environment &

Rules until such time the wildlife habitat is defined is empirically incorrect because people exist in those areas. The Government has not been able to relocate them so far. People are not being reintroduced into the critical wildlife habitat and instead the law is providing for them for being removed. Such a removal has to be conditional on the Government relocating them because they would have the right to land which may not necessarily be the same land on which they are currently residing. The action of the Government in not notifying the Act and Rules until such time the critical wildlife habitat is defined may not be tenable for the following reasons:

- This is not an unanticipated situation or something that has cropped up anew. This was anticipated and provided in the law under section 4(2).
- The existence of people in area subsequently declared as sanctuaries/national parks has to be understood in context. When the Wildlife Protection Act, 1972 was promulgated, section 21,22, 23 and 24 provided for settling of rights of people in those areas and exclude such land from the limits of the proposed sanctuary if in those areas, people were living. The fact that these sanctuaries were notified without going through this procedure of settlement of rights has created this situation. Can poor tribal and traditional forest dwellers be doubly wronged for inaction of the Government? Especially, after it has been corrected by the new Law.
- The non notification of the Act and Rules would mean that the entire tribal rights issue which is legislated from the point of view of individual right to property and right to life is contingent on bureaucratic efficiency of mapping the critical wildlife habitat. Especially when the law clearly provides that such identification follows the Act/Rules and not precede it as is sought to be done.

Simply put, the law as passed by the Parliament is clear that the rights that accrue under this Act of Parliament are not circumscribed by any definition of the critical wildlife habitat which the Act itself under section 4(2) see as a subsequent activity. The Ministry of Environment and Forests may want to make this activity precede the notification. If on this ground, the Government delays notification of the Act and Rules therein, the position of the Government would be politically challenged. It is also likely to embarrass the Government hugely in terms of going back on its

Forests. There is already tremendous pressure from several States to quickly finalise and notify the Rules and commence the distribution of Pattas. Demand for early settlement of the rights of forest dwellers is rapidly rising due to the expectation created by the passage of this Act. Once the Pattas are issued and forest dwellers' rights are settled, it will be a herculean task to subsequently shift them out of the critical wildlife habitats. The entire exercise of identifying, delineating and notifying the critical wildlife habitats could then easily become redundant.

10. It was further noted that the Ministry of Environment & Forests is likely to take at least 8 to 10 months to identify and establish "critical wildlife habitats". Drawing up of alternative packages and obtaining the consent of the Gram Sabhas for the resettlement of forest dwellers who are found within these habitats is likely to take considerably more time. It can be safely assumed that resettlement of forest dwellers outside the critical wildlife habitats is not likely to begin for another year or so.

...

11. In order to save these core areas of the National Parks and Sanctuaries as inviolate spaces for wildlife, it was felt necessary to immediately provide a safeguard.

12. For instance, it was considered whether a provision could be made in the Rules that, pending finalisation and notification of critical wildlife habitats, the Rules will not be applicable to National Parks and Sanctuaries. However, Law Secretary was of the opinion that making such a provision in the Rules would not be legally viable.

13. Section 1(3) of the Tribal Rights Act lays down that the Act shall come into force from such date as the Central Government may notify. The Central Government has not yet notified the Act. Law Secretary was of the opinion that the Act itself cannot be brought into force till such time as the "critical wildlife habitats" are notified. This is because the notification of the "critical wildlife habitats" is an integral part of the Act.

14. MoTA have now written to PMO informing, in effect, that the Act will not be brought into force till the critical wildlife habitats are notified by MoEF. MoEF have informed that the exercise of identifying the critical wildlife habitats is commencing.

15. The position stated by the two Ministries in para 14 may be noted. MoEF may be asked to expedite the process of identification of the critical wildlife habitats with a sense of urgency

27/8
(Pulok Chatterji)
29.8.2007

Principal Secretary

[Signature]
29/8/07

Prime Minister

As suggested by, Ministry of, the file is now retained by the Ministry of, you may get, and Mahan Koral's letter dt. 11.08.07 dt 7/9/07

The same will be in the file of, Ministry of, the Ministry of, the Ministry of, note on the matter in para 7 of the, the use of, etc.

For information.

[Signature]
13/9

[Signature]
P.M.

INTERNAL

The communications at flags 'A' and 'B' were discussed with PM by Principal Secretary and the undersigned. PM has already issued instructions that MoEF may be asked to expedite the identification of the critical wildlife habitats. Principal Secretary may like to speak to Secretary MoEF in this regard.

↓
25/9
(Pulok Chatterji)
25/09/2007

Principal Secretary

Spoken; let send another written communication also.

Adlin
25/9/07

AT EP

J. (A)

hms
25/9/07

ES-2
PPS on Tribal Rights Act.
KA
26/9/07

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11/09/2007

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Issue reminder on letter at F/x
KA 15/c

ES-2

26/9/07

The Ministry of Environment and Forests should be asked to fix a time limit for the issue of the notification relating to critical wildlife habitats. This task should be completed soonest possible as the non issue of this notification is holding up the notification in Tribal Act. itself.

Munna Han Singh

14.9.2007

For immediate follow up action

Principal Secretary

JLL
14/9

AS (E) 14/9
JT (AS)

hms 14/9
DFA placed below
KA 15/9/07

15/C

JS (G)

Internal

1. FR is a letter addressed to the Principal Secretary from Secretary, Ministry of Environment and Forests on action proposed to be taken by the Ministry of Environment and Forests in relation to implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
2. The Act of the Parliament received the assent of the President on 29th December, 2006.
3. The draft notification of the rules was published on 19th June, 2007 and are to be finalized after the expiry of a period of 45 days. The period is now over. Under the draft notification under section 16 there is a provision for **“declaration and notification of critical wild life habitat.”** It states that the “Central Government in the Ministry of Environment and Forests shall within six months of the date of the Act and the Rules coming into force, issue detailed guidelines regarding the nature of the data collected, the process of collection, validation of date, its interpretation, role of expert committee, the process of consolidation among others in determining the Wild Life Habitat.” The point to note is that the notification of Rules precedes the exercise of definition/demarcation of critical wild life habitat.

The format given for this under Rule 16(3) provides guidelines on the notification of critical wild life habitat. The Expert Committee is to consist of the following members.

- Two independent ecological/wild life experts familiar with the area concerned.
- Two independent experts in social and tribal issues familiar with the area concerned one of whom may a member of the ST.
- Member nominated by the Ministry of Tribal Affairs.

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- o Member nominated by the Ministry of Environment and Forests.
- o Chief Wild Life Warden of the State/his or her nominee.

Needless to say, any constitution of an Expert Committee has to be in consonance with this rule. After the process described under this section is gone through, the Central Government can issue a notification of a critical Wild Life Habitat and then initiate the process of creating inviolate areas for wild life conservation in such critical wild life habitat where forest rights maybe modified or holders of forest right may be resettled as per Section 4 of the Act.

4. It is important to reiterate here that the objective of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is to provide rights to the Scheduled Tribes and other Forest Dwellers on lands in their historical possession. They are liable to be relocated after it has been conclusively proved after going through the due process that in the larger public interest, certain areas are inviolate and therefore they are liable to be resettled from such areas. Rights belong to the people and duty belongs to the Government to ensure the declaration of critical wild life habitat after going through the due process.

5. Therefore, rights may not be understood as benefaction by the government. MoEF is mandated to ensure protection of critical wildlife habitat to be able to modify rights not to delay it from coming into place. It needs to be made abundantly clear therefore that rights cannot be in a state of suspended animation until such time as the Government in the Ministry of Environment and Forests has completed defining the "critical wild life habitat" because it is not a precondition for the right to be operative but a requirement if right has to be modified.

6. It therefore, naturally follows that it is in the interest of government to reduce the timelines prescribed in the enclosed calendar. This is initially a desk exercise done simultaneously not

sequentially across states and approved by the national committee provided in the Rules. Its verification in the field is to ensure that people have a right to question the demarcation. The entire exercise can be completed in 60-90 days.

7. The key issue is, does the government think it can delay the notification of Rules on the ground that the governmental exercise of defining critical wildlife habitats will take 'X' amount of time? The answer is that it may be difficult, in fact, impossible, for the following reasons.

- a) Such delay of notification on the ground of defining wild life habitats can be questioned in a Court of Law since this Act is for conferral of rights primarily and therefore such conferral is the "core" issue and definition of wild life habitat a "residual" issue (WP/Sanctuaries cover only 5% of total forest area). State governments that have tribal population are likely to take initiative in the matter as well as interveners on behalf of tribal rights.
- b) Legal opinion may be that there are some sundry Acts passed by Parliament/Assemblies which languish for rules not being notified. Can such a situation be visualized for this much-debated landmark piece of legislation on which PM/President have gone public on several occasions in national addresses like Independence Day, Address to Parliament, etc.? Unlikely. Parliamentarians who passed the law may demand answers from the Government if it delays notification. May be even political action in the streets might.
- c) It would be difficult for the Government to make a credible defense of the delay on an issue as vital as this because political democracy often sets its own pace.
- d) The Government may also want to decide how its scorecard will look if it delays notification. The overwhelming logic is that it will be forced to notify grudgingly these Rules shortly and in the process, it would have squandered away any

goodwill from such a measure and instead seen first as capitulating to amateur opinion that belittles the power of history and political democracy and next to political adversaries who will claim credit for having brought the government to its knees for trying to scuttle an agenda that vitally affects 7% of the most vulnerable of India's population.


[R. Gopalakrishnan]
August 17, 2007

Pl. see us v. t
the draft bill
we have had
with the legal cond. &
advise


Principal Secretary to PM

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17/8

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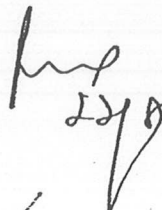
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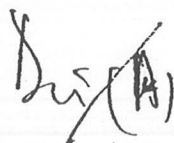

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17/8/07

Government of India
Ministry of Tribal Affairs

declared. The Ministry has, therefore, requested the Ministry of Environment & Forests to take all necessary action for determination of the critical wildlife habitats in the national parks and sanctuaries expeditiously without waiting for the Act and the Rules to come into force so that the vesting of the forest rights is not delayed after the notification of the Act and the Rules (Annexure-IV). The Prime Minister's Office were also apprised of this position on 24.8.2007 (Annexure-V).

7. The Ministry of Environment & Forests has informed the Prime Minister's Office and this Ministry that they are likely to take about a year to complete the whole exercise of identification of critical wildlife habitats (Annexure-VI).

8. On this issue, the Prime Minister has also directed the Ministry of Environment & Forests on 15.9.2007 to fix a time limit for the issue of the notification referring to Critical Wildlife Habitats. The Prime Minister has further directed that this task should be completed soonest possible as the non-issue of this notification is holding up the notification of the Tribal Act itself (Annexure-VII).

9. The above position is submitted to the Committee of Secretaries for consideration.



[Dr. Bachittar Singh]
Joint Secretary to the Govt. of India
Ministry of Tribal Affairs
Tele: 23073489

Place: New Delhi
Date: 11.10.2007

No.F.17014/02/2007-PC&V(Vol.VI)

Government of India

Ministry of Tribal Affairs

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 to the Ministry on 11.5.2007.

4. The draft rules submitted by the TSG were examined in the Ministry and, after vetting by the Ministry of Law & Justice (Legislative Department), the same were pre-published in the Gazette of India on 19.6.2007 for inviting comments from the public within a period of 45 days before their finalization, as required under the Act (Annexure-II).

5. The Ministry received a large number of comments/suggestions on various clauses of the draft rules from the Members of the Parliament, Central Ministries, State Governments, legal practitioners, academicians, wildlife experts and general public. The Ministry has prepared the revised draft rules in the light of the comments/ suggestions received and referred the same to the Ministry of Law & Justice on 28.9.2007 for approval and vetting before publication in the Gazette. The Department of Legal Affairs have cleared the draft rules, which have now been referred to the Legislative Department on 5.10.2007 for vetting. The same are awaited from the Legislative Department. This Ministry is regularly in touch with them for expediting the same.

6. It may be mentioned that the Ministry of Environment & Forests, while furnishing their comments on the draft rules, had expressed the view that the forest rights in protected areas should be vested with Tribal and Other Traditional Forest Dwellers only after Critical Wildlife Habitats are declared. Unless this is done, keeping the Critical Wildlife Habitats inviolate (by resettling the people elsewhere) may become very difficult (Annexure-III). This Ministry is of the view that the suggestion given by the Ministry of Environment & Forests, if accepted, will have an effect of deferring the vesting of forest rights in Protected Areas with tribal and other traditional forest dwellers and would delay the process of implementation of the Act. Under the Act, there is no provision to defer the process of vesting of forest rights till Critical Wildlife Habitats are

New Delhi, October 11, 2007

NOTE FOR THE COMMITTEE OF SECRETARIES

Subject: Rules under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

The Parliament enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing for generations but whose rights could not be recorded. The Act has been published in the Gazette of India, Extraordinary, Part-II, Section 1 on 2.1.2007 (Annexure-I).

2. In order to carry out the provisions of the Act, the Ministry of Tribal Affairs constituted a Technical Support Group (TSG) on 12.2.2007 under the chairmanship of Shri S.R. Sankaran, Secretary (Retired), Ministry of Rural Development, for framing Rules under the Act. The TSG consisted of non-officials from various disciplines and also officials from the Ministries of Environment & Forests, Law & Justice, Rural Development (D/o Land Resources), Panchayati Raj, State Governments, Research Institutions and Joint Secretary (TA) as Member Secretary.
3. The TSG held 5 meetings at New Delhi on 1.3.2007, 14.3.2007, 29-30.3.2007, 11-12.4.2007 and 25-27.4.2007 on various aspects of the formulation of the rules. The Sub Groups of the TSG also held meetings at Hyderabad, Pune, Ranchi, New Delhi and Shillong on 3.4.2007, 4-5.4.2007, 9.4.2007, 13.4.2007 and 23.4.2007 with the State Governments/UT Administrations in the region to take care of the State-specific variations. The Chairman, TSG, submitted the draft

Secret

Most Immediate
Copy No. 05

No.F.17014/02/2007-PC&V(Vol.VI)
Government of India
Ministry of Tribal Affairs

New Delhi, October 11, 2007

Subject: Rules under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – meeting to be taken by Cabinet Secretary at 12.00 noon on 16.10.2007 in the Committee Room, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi

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Reference Cabinet Secretariat's Memo No.701-T/2/2/2007-CA.V dated 8th October, 2007 on the above subject.

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- 2. A background note on the above subject is circulated herewith for discussion in the meeting.
- 3. Kindly make it convenient to attend the meeting.

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[Dr. Bachittar Singh]
Joint Secretary to the Govt. of India
Tele: 23073489

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To

- 1. Shri T.K. Viswanathan, Secretary, Department of Legal Affairs.
- 2. Shri K.N. Chaturvedi, Secretary, Legislative Department.
- 3. Ms. Meena Gupta, Secretary, Ministry of Environment & Forests
- 4. Shri G.B. Mukherji, Secretary, Ministry of Tribal Affairs

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Copy, along with the background note, also forwarded to:-

- ✓ Shri T.K.A. Nair, Principal Secretary to Prime Minister.

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Copy to Cabinet Secretariat (Shri Gulshan Kumar, Under Secretary), Rashtrapati Bhawan, New Delhi, for information w.r.t. their Memo No.701-T/2/2/2007-CA.V dated 8th October, 2007. Seven copies of the background note are sent herewith for internal circulation.

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[Dr. Bachittar Singh]
Joint Secretary to the Govt. of India

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Central Committee

560/51/C/2/07 ES 2 Vol. 11 1 AC

September 11, 2007

Dr. Manmohan Singh
Prime Minister
Government of India
New Delhi

Dear Dr. Manmohan Singhji,

This is to draw your urgent attention to the delay in notification of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Bill 2006. The Bill was passed in both Houses of Parliament in December 2006. The Committee for Drafting Rules was formed in March 2007 and submitted the Draft Rules in May 2007. These were put up on the website for public comment on June 19th, 2007. The last date decided by the Ministry was July 31, 2007. It was expected that the Rules would be finalized and the Act notified. However more than 6 weeks later this has not been done.

The announcement of the Act without its notification has led to a serious situation for tribals in many areas. Forest officials who have been responsible for denial of tribal rights have taken advantage of the delay between the Act and its notification to evict tribals from many areas. Land cultivated by tribals for decades is being dug up for plantations by the forest department in some states in an obvious attempt to preempt the recognition of the tribal rights on that land. At the same time there are reports of connivance between land mafia and officials to take illegal possession of land. This is a most untenable situation.

The delay is inexplicable. I request you to urgently intervene on this issue so as to ensure that an important achievement of the UPA Government is not weakened or even subverted by the non-notification of the Act.

With best wishes

Yours sincerely

Prakash Karat
(Prakash Karat)
General Secretary

Urgent
Ack PM / *Prakash Karat*

Jul 11.9

Please acknowledge
& then ask Principal
Secretary of NSCPC to
discuss

MJ
11.9
Already discussed Jul. 9

Prakash Karat
12.9

9/11/07
17/9
13692/PM/07
11/9

10869/AS/9/07
11654-PPD
17/9/07

10434/Dir(A)/07
12/9/07

A.K. Gopalan Bhawan, 27-29, Bhai Vir Singh Marg, New Delhi 110001

Tel. 23344918, 23364165, 23363692, 23747435, 23747436, Fax: 23747483

email: cc@coim.org website: http://www.coim.org

This has been separately
informed. Individual notifications
remaining to be done will be
followed up

hms.

2/11/08

~~ASUT~~ ~~2/11~~

→
~~Prinpal Secretary~~

~~2/11~~

~~2/11~~

hms
2/11

~~Dr. G.A.~~

ES-X

K.O.F.

KA
3/1/08

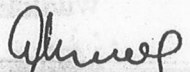
2/11/08
III

Government of India
Ministry of Environment & Forests

Paryavaran Bhawan,
CGO Complex, Lodi Road,
New Delhi-110003

Apropos to the telephonic conversation between the Director, PMO and the Deputy Inspector General (WL) held on 25.9.2007. In this regard, kindly find enclosed the copies of the following documents with respect to the Scheduled Tribes & Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 for the agenda for 4th meeting of NBWL:

- i) Guidelines to notify critical wildlife habitat including constitution and functions of Expert Committee, scientific information required and resettlement and matters thereto.
- ii) Package proposed in the EFC for relocation of villages from crucial wildlife habitats in Tiger Reserves for providing inviolate space to tigers and other wild animals
- iii) Strengthening protection in tiger reserve (Tiger protection Force).


(Dr. Anmol Kumar)
Deputy Inspector General (WL)

The Director (Attn: Ms. Kalpana Awasthi), Prime Minister's Office, South Block, New Delhi.

U.O. No. 6-36/2006 WL-I (pt)

Dated: 25th September 2007

ES-2
PPS. urgent.
kt
26/9/07
K.O.f of Tribal Rights Act.
kt
27/9/07
IV 27.9.07

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ms

27/9

Dir (A)

953163

10624-1 Dir(A)/07

1

Government of India
Ministry of Environment & Forests

Guidelines to notify critical wildlife habitat including constitution and functions of Expert Committee, scientific information required and resettlement and matters incidental thereto.

As envisaged in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Critical Wildlife Habitats are to be declared by the Central Government in the Ministry of Environment and Forests after a process of consultation by Expert Committees. In this regard, these guidelines are issued, which include both criteria as well as the process.

1. Application for notification of critical wildlife habitat :

- (a) The State Government shall initiate the process for notification of critical wildlife habitats by submitting proposals on a case by case basis, to the Ministry of Environment and Forests, under intimation to the nodal agency under the said Act. The application shall include, among others, information as required under these guidelines. The proposals of the State Govt. shall be based on the recommendations of the State level committee set for the proposal.

2. Criteria and Process for deciding Critical Tiger/wildlife habitats in tiger reserves / protected areas

With the aim of maintaining viable populations of tiger and other faunal and floral species to conserve biodiversity and life support ecological systems in natural wilderness areas, the following criteria would be followed:

- a. Delineation of critical tiger/wildlife habitat (inviolable space/habitat) required for the sustenance of a viable populations of tiger and other wild animals in tiger

reserves and protected areas vis-à-vis the Wildlife (Protection) Act, 1972, as amended in 2006, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

b. A minimum inviolate space of 800-1000 sq. km. should be maintained as the inviolate area to support a viable population of tiger in tiger landscapes, based on tiger life history parameters, territory sizes and populations viability analysis.

c. For National Parks and Sanctuaries, other than Tiger Reserves, critical wildlife habitat area should be demarcated on the basis of species area curves specific for each bio-geographical area, as classified by the Wildlife Institute of India (Rodgers and Panwar, 1988). The size of the inviolate area within each critical habitat zone will be based on its potential to harbor viable populations of umbrella species (endemic species, top carnivores, mega-herbivores, indicator, wild relatives of species of economic value, endangered and threatened, and migratory species), which would serve to conserve the entire biodiversity of the area.

d. Besides National Parks and Sanctuaries, identified corridors of significant wildlife values should also be examined according to the above criteria for delineation as critical wildlife habitat.

3. Expert Committees, their composition and functions

3.1 For completing the process of deciding inviolate areas as per the criteria prescribed above, the following Committees would be constituted:

Central Committee

a. Additional DG Forests (Wildlife)

Chairman

b. Director, WII, Dehradun

Member

- | | |
|-------------------------------------|-----------------|
| c. Shri Valmik Thapar, | Member |
| d. Shri Mahendra Vyas | Member |
| e. Member Secretary, NTCA | Member |
| f. Inspector General of forest (WL) | Member Convener |

Chief Wildlife Warden of the concerned State and concerned Protected Area Manager may be co-opted as and when required.

3.2 The Central Committee would examine, on a case-by-case basis, proposals received from States for declaration of critical wildlife habitats in tiger reserves/protected areas, within 30 days of its receipt, and submit the proposals to the Ministry of Environment and Forests for final notification.

3.3 State Level Committee

- i. The State Government shall notify a State level Committee with the following composition:
- | | | |
|----|---|-----------------|
| a. | State Chief Wildlife Warden | Chairman |
| b. | Representative of Ministry of Environment and Forests, Government of India | Member |
| c. | Representative from the Ministry of Tribal Affairs, Government of India | Member |
| d. | Two State level experts in the field of wildlife | Members |
| e. | One local representative in the field of sociology/conservation or a representative from Gram Sabha | Member |
| f. | Protected Area Manager | Member Convener |

3.4 Terms of Reference for State level Expert Committee

- (i) The Expert Committee shall determine the extent of inviolate area required for wildlife conservation, based on above criteria, evidence and analysis presented by the State Government in its application; deliberations during the consultation and other studies or information from its own investigation;

- (ii) The Expert Committee, in arriving at such a decision, may, among others,
 - (a) have the power to summon witnesses, call for documents, and undertake any other actions or investigations it feels necessary;
 - (b) consult the Gram Sabhas that would fall within or are dependent on resources within the proposed critical wildlife habitat, the Director of the concerned National Park or Sanctuary, Divisional Forest Officer as well members of the civil society organizations working on social and environmental issues in the area.
- (iii) The Expert Committees may further
 - (a) independently verify that complete and correct information was provided to the concerned Gram Sabha which are included in the proposed critical wildlife habitat
 - (b) act on requests from concerned Gram Sabhas and provide support to collect relevant information on the proposed critical wildlife habitat
- (iv) The State Government or any affected Gram Sabha or individual may send objections, comments or additional evidence to the Expert Committee on its decision within 30 days from the date of first hearing of the State Committee.
- (v) The Expert Committee shall consider these submissions and give a final recommendation to the Ministry of Environment and Forests within 15 days.

4. Information to be submitted with application for critical wildlife habitat

The State Government shall include the following information while submitting the application for critical wildlife habitat, namely: -

- (i) Physical, topographical and ecological details along with relevant maps of the areas to be determined as critical wildlife habitat;
- (ii) Location of human habitations within the proposed critical wildlife habitat along with their demographic, economic and social details;
- (iii) A list of families and settlements likely to be affected by the declaration of the critical wildlife habitat;

- (iv) Scientific studies including documentation of biodiversity that provide the ecological data on the habitat and population of the significant plant and animal species;
- (v) Data on human animal conflict and assessment of impact of human presence on animal numbers and animal habitat;
- (vi) Studies on the extent of dependence and interaction of the affected communities with the forest resources within the proposed critical wildlife habitats;
- (vii) Resolution of the Gram Sabha certifying that in areas included within the proposed critical wildlife habitats, the process of recognition and vesting of rights has been completed;
- (viii) Resolution of the Gram Sabha certifying that the affected Gram Sabhas have been informed in writing that it is proposed to include their habitations and habitats in critical wildlife habitats and that a copy of the complete proposal prepared by the State Government for the same has been provided to it;
- (ix) The State Government ensure that the requirement under Sections 4(2)(b) and 4(2)(c) of the Act has been fulfilled and the basis therefore.

5. Consultation for determining critical wildlife habitat

- (i) The State level Expert Committee shall initiate open process of consultations on the said application in the following manner:
 - (a) One or more hearings close to or within the critical wildlife habitat, ensuring that reasonable opportunity is provided for all affected to attend the said hearings;
 - (b) Public notices in local languages shall be issued, broadcast on the radio, posted on the web and all appropriate publicity methods used at least thirty days prior to public hearings;
 - (c) Gram Sabhas can invite additional experts to be present and participate in the public hearing.

Internal

Reference PM's instructions for MoEF on the issue of Notification relating to critical wildlife habitats on 14.9.2007.

2. In this regard, directions were communicated to MoEF vide this Office letter dated 15.9.2007 (placed at F/X). Subsequently, reminder was issued on 27.9.2007 (placed at F/Y).

3. In this regard, MoEF, vide letter dated 4.10.2007, has stated that the guidelines to notify critical wildlife habitat including constitution and functions of Expert Committee, scientific information required and resettlement and matters thereto have been finalized by MoE&F and submitted to Ministry of Tribal Affairs. However, the details for expediting the implementation, fixing key responsibilities and time frames have not been stated as yet. This will adversely affect the Notification of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

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

K/A
(Kalpana Awasthi)

4.10.2007

JS(G)

15/10/07
Discussed.
18/10/07

the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat;

- (iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available;
- (iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfills the requirements given in the National Relief and Rehabilitation Policy;
- (v) the informed consent of the Gram Sabhas concerned, and of the persons affected, to the resettlement programme has been obtained;
- (vi) the facilities and land allocation at the resettlement location are provided under the said programme, otherwise their existing rights shall not be interfered with.

3. In the light of the above, it may be desirable to request the Law Secretary to give the legal advice on the matter in writing.

(R. Gopalakrishnan)
September 27, 2007

~~AS(P)~~

Principal Secretary to PM

Discussed with Pet. Secy. It was suggested that since PM has already issued order in this regard, the matter may be followed up with MOEF accordingly. and its response put up.

3/x

Act (P) 3/x
JJC (A) 3/x
ES 2 on min order 10/10/07
to MOEF
the law already written to
MOEF based on PM's orders.

(A)/4/10624/2007

...

Subject :- Rules under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

A meeting of the Committee of Secretaries chaired by Cabinet Secretary was held on 16th October 2007 at 12 noon in the Committee Room of Cabinet Secretariat, to consider the note received from the Ministry of Tribal Affairs, on the above subject.

2. Joint Secretary, Ministry of Tribal Affairs (MoTA) briefed the Committee of Secretaries on the background of the subject, salient points of which are mentioned below:-

- (a) The Parliament enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to recognize and vest the forest rights and occupation in forest land. The Act was published in the Gazette on 2.1.2007.
- (b) In order to carry out the provisions of the Act, M/o Tribal Affairs constituted a Technical Support Group (TSG) on 12.2.2007. The Draft Rules were submitted by the TSG to the Ministry on 11.5.2007, which was examined in the Ministry and after vetting by M/o Law & Justice (Legislative Department), the same got pre-published in the Gazette on 19.6.2007 for inviting comments from the public within a period of 45 days before their finalization, as required under the Act.
- (c) The Ministry received a large number of comments / suggestions from Members of the Parliament, Union Ministries, State Governments, academicians, wildlife experts etc. and prepared the revised Draft Rules and submitted the same on 28.9.2007 for approval to the Ministry of Law & Justice.
- (d) The Department of Legal Affairs, Ministry of Law & Justice have cleared the Draft Rules which is now referred to the Legislative Department of M/o Law & Justice on 5.10.2007 for vetting.

SECRET

Copy No. 5

**CABINET SECRETARIAT
RASHTRAPATI BHAVAN**

Doc. No. CD (CA-V)-64/2007

MINUTES OF THE MEETING OF COMMITTEE OF SECRETARIES

Venue: Committee Room, Cabinet Secretariat.

Date of Meeting: 16-10-2007.

Time of Meeting: 12.00 Noon

PRESENT

Shri K.M. Chandrasekhar, Cabinet Secretary.

Shri T.K. Viswanathan, Secretary, Department of Legal Affairs.

Shri K.N. Chaturvedi, Secretary, Legislative Department.

Shri G.K. Prasad, Additional DG, Ministry of Environment & Forests.

Dr. C.S. Kedar, Joint Secretary, Cabinet Secretariat.

Dr. S.B. Agnihotri, Joint Secretary, Cabinet Secretariat.

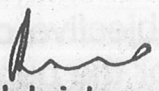
Dr. Bachittar Singh, Joint Secretary, Ministry of Tribal Affairs.

Shri Sanjeeb Mishra, Deputy Secretary, Cabinet Secretariat.

9. Based on the above, the submission is as follows:

- Ensure the notification of Critical Tiger Habitats in Tiger Reserves which can be done by 3rd December, 2007;
- Make a *suo moto* statement in the House preferably tomorrow that the Government will notify the Act and Rules of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act in the first week of December, 2007.

For consideration.


[R. Gopalakrishnan]
28th November, 2007

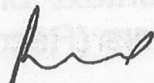
AS(P) [Separate Copy]

Principal Secretary to PM

P. Srinivas Urs
28/11

A&P
TS/SS
29/11

Assessed.
29/11


29/11

KA
29/11/07

Subject: Notification of Critical Tiger Habitat in Tiger Reserves

1. The Notification of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Act 2006 is presently on hold for prior declaration of Critical Wild Life Habitats.
2. In this connection, it was clarified earlier that it is possible to declare "core or Critical Tiger Habitat areas of National Parks and Sanctuaries where it has been established on the basis scientific and objective criteria that such areas are required to be kept as inviolate for the purpose of tiger conservation" as per the provisions of 38 V of the Wild Life (Protection) Act, 1972.
3. The Ministry of Environment and Forests has completed the detailing exercise and identified the Core or Critical Habitat Areas as proposed by States and has communicated approval of the Ministry for notification to be done by the States. This communication has been issued vide the letter no.1501/11/2007-PT(Part) dated 3rd December, 2007. States have been given time upto 20.12.2007 for notification.
4. This removes the anxiety in wild life circles regarding tiger conservation in the context of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
5. The law as it exists provides for identification of critical tiger habitats only in tiger reserves through the provisions of the Wildlife Protection Act, 1972. Identification of other critical Wildlife Habitats are provided for only under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. A similar exercise can be undertaken once that Act and Rules get identified.
6. However, as decided earlier, administrative orders for similar identification (without legal validity) needs to be considered for sanctuaries with Rhino and Lion population. In this connection, while Kaziranga and Manas get covered as tiger reserves, 3 rhino reserves Pabitra, Orang (Assam) and Jaldapara (West Bengal) will need to be

Internal

This is with reference to this Office letter dated 6.12.2007 to the Law Secretary seeking an opinion whether it is legally possible to notify and operationalise the ST's & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act at the stage when the Ministry of Environment & Forests is in the process of identification of critical wildlife habitats in consultation with the States.

2. Law Secretary has advised that the Government has substantially undertaken all the measures for bringing into force the said Act while the process of identification of critical wildlife habitat in other protected areas of the country is continuing. Legally there is no bar to bring the Act into force while this exercise is continuing. In view of the above, there is no legal impediment for bringing the Act into force.

3. File is submitted for kind information please.

KA
(Kalpana Awasthi)
7.12.2007

JS(G)

AS(P)

AS(P)

JS(L)

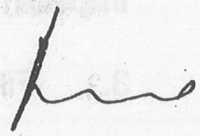
AS(P)
7/12

Dir (A) 10.2.1912 TODAY

protected as well as Gir Sanctuary for Lions in Gujarat. These are only administrative orders and should in no way be a deterrent to the notification of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

7. Since there has been considerable anxiety expressed in Parliament on the delay in the notification of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 by Parliamentarians cutting across party lines, it would be appropriate if an announcement could be made in the Parliament that the Act would be notified immediately to become operational with a prospective date of 30th December, 2007. If agreed, a *suo moto* statement could be made in the House on Wednesday or Thursday by the Prime Minister as Minister of Environment and Forests to this effect.

8. For appropriate consideration.



[R. Gopalakrishnan]
December 4, 2007

We may discuss at Mr. Singh's convenience.

AS (P)

Yes, on the 4th or 6th.

Principal Secretary to PM

AS (P)
JKK
4/12

10-30 AM on 6th Dec. We may inform by post | by TA | Dir Forest / Dnsr NSEA

AS (L) | JS (L) In our office

Dir (A) Telephonically informed
KJ 5/12/07
ESTD
4/12

-10-

Internal


With reference to your letter dated 18.6.2007 (F/A) addressed to Secretary, M/o Tribal Affairs suggesting that a letter from PM to CMs regard informing them about the Rules Notification for the STs and other Traditional Dwellers Recognition of Forests Rights Act 2006 and suggesting that the preparatory action to ensure the entire distribution of title deeds is done in a planned way as per the scheduled calendar, the draft letter was awaited from the Ministry.

2. The Ministry instead of complying with the same had stated vide letter dated 28.6.2007 (F/B) that as per Act, the Rules can be finally notified after 45 days i.e. upto 8.8.2007, as draft Notification was on 19/23.6.2007. It has stated that (i) after inviting comments/suggestions from the public within a period of 45 days is required. (ii) Besides as per the Act, the MoEF needs to lay down the criteria for determination and Notification of the critical wildlife habitats for the purpose of the Act, which it has not done so far. Hence, the finalization of the Rules is going to take about 3-4 months for coming into effect. (iii) The issue of awareness generation through printing of materials and posters in the regional languages sensitizing the District level committees by the nodal Ministry i.e. M/o Tribal Affairs will also take considerable time. Therefore, it would not be possible to progress before 3-4 months i.e. before October 2007.

3. Comments

This was kept for discussion in Principal Secretary to PM's meeting on 10.7.2007. In this regard, it is stated that certain activities can be initiated parallely or simultaneously instead of being done serially. The general data collection forms of various committees etc can easily be initiated by the states at the earliest so that the groundwork is done for the implementation as soon as the rules are notified and tabled in Parliament. The Parks/Sanctuaries are a miniscule portion of total forest areas. The Central Govt, at best, would develop standard prototypes of materials which then be disseminated among the states which in turn can undertake the task of printing at state or district levels.

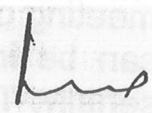
4. If agreed to, we may seek the draft letter from Ministry from PM to CMs on the above issue immediately after 8.8.2006 i.e. after the comments are assimilated in the Notification. They can be in the nature of guidelines for states to initiate action in terms of forming various level committees.

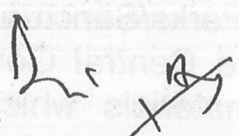


(Kalpana Awasthi)
12.7.2007

JS(G)

1) My may not work to CM's at this stage and here we may accept the position of air
Mth.

2) However, we need to indicate target dates for notifying Rules and summarise the main points decided at Punjab faculty level
review


17/7


Discussed with  KA
JS(G) 17/7/07

VI 10/7/07

ES-Z
Put up on 30/7/07
KA
12/8/07

(e) While furnishing comments, the Ministry of Environment & Forests expressed the view that forest rights in protected areas should be vested with Tribal and Other Traditional Forest Dwellers only after Critical Wildlife Habitats are identified. The M/o Environment & Forests has informed the Prime Minister's Office and M/o Tribal Affairs that it would take about a year to complete the whole exercise of identification of Critical Wildlife Habitats.

(f) Prime Minister has directed to fix a time limit and that this task ought to be completed as soon as possible as the non-issuance of this notification of Critical Wildlife Habitats is holding up the notification of the Tribal Act itself.

3. Cabinet Secretary desired to know what are the constraints in expediting the various processes/activities from the M/o Environment & Forests and Law Secretary, Secretary, D/o Legal Affairs. The representative of M/o Environment & Forests highlighted Section 4(2) of the Act where the forest rights have been recognized and resettlement provisions have been provided for, subject to fulfillment of six conditions mentioned in items (a) to (f) of Section 4(2). He also stated that Ministry has taken steps to set up committees at all the State levels and are issuing guidelines to carry out identification of Critical Wildlife Habitats. He expressed concern that unless these identification are done it will be administratively difficult to implement the Act. Cabinet Secretary observed that the one-year time frame work appears to be too long and desired to know if this time frame can be shortened.

4. Law Secretary observed that the Act would cover the entire country and that identification of Critical Wildlife Habitats area is provided in this Act. The Rights on Tribals and Other Forest Dwellers would be statutorily recognized. He also highlighted the Section 2 (o) and stated that Secretary, Tribal Affairs in a High Level meeting had expressed concern that this could be administratively difficult to implement and has a potential to create law and order problem.

5. Secretary, Legislative Department explained that the whole procedure of identification begins with the gram sabha and goes up to a district level committee. These are explained in Section 6 of the Act. He also stated that the intent of the two Acts, i.e., the present Act under discussion and Wildlife Protection (Amendment) Act of 2006 need to be viewed in an integrated perspective and hence identifying the Critical Wildlife areas is of importance before implementing the Act itself.

6. Cabinet Secretary desired to know the extent of area which is affected by the process of identification of Critical Wildlife Habitats and whether this can be segregated from the notification of implementing the Act.

7. The representative of Ministry of Environment & Forests stated that only 8% of the area is likely to be affected and therefore M/o Environment & Forests is concerned about protection of such critical areas in National Parks and sanctuaries. Law Secretary stated that it would entail an amendment to the Act, which could be a time consuming process.

8. Cabinet Secretary finally observed that the identification of Critical Wildlife Habitats and need of resettlement if any are mandated provisions of the Act. He suggested that M/o Tribal Affairs and M/o Environment & Forests may resolve the outstanding issues in order to compress activity time lines, bring forward the date of notification and time period required may be indicated against activities in consultation with Ministry of Law. Joint Secretary (CSK) may participate in the deliberations of the group.

9. After deliberations, the following decisions were taken by the Committee of Secretaries:-

- (i) Ministry of Tribal Affairs and Ministry of Environment & Forests and Ministry of Law & Justice may indicate various stages and time periods with an objective to compress time lines and bring forward the date of notification of this Act after the identification of "Critical Wildlife Habitats".
- (ii) A review meeting will be taken up after a month on this subject.

Subject: Notification of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act

1. Today at the Parliament briefing for questions of the Ministries held by PM, Prime Minister expressed his deep concern about the anger in the Parliament on the delay in the notification of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Act and Rules. The MoS (PMO) and MoS (Environment and Forests) also spoke about the need to notify this urgently.
2. It may be recalled that at the meeting chaired by Principal Secretary on this issue, the following decisions were taken:
 - a) Notify the Tiger Wildlife Habitats in Tiger Reserves before 31 December;
 - b) Make an announcement in the Parliament about the notification of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act to remove uncertainty.
3. Clearly there is a political urgency to expedite the Act and the Notification.
4. It is possible to notify the tiger habitats in the next three days because the core areas which are already defined are only being redefined as critical tiger habitats based on scientific criteria as provided in the Wildlife Act. Director (Project Tiger/NTCA) is willing to produce the maps and the draft notification by 30th November, 2007. These could be notified by 3rd December, 2007 (by states)
5. Secretary, Tribal Affairs who was present at the meeting stated that the Act and Rules of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act could be notified any time when he is given the clearance.
6. The desirable course of action for the Government could be to make a statement tomorrow that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights)

Act would be notified not in January as scheduled earlier but in the first week of December. There is no activity, repeat no activity, that requires delay by another month.

7. It may also be stated that there is no environmental concern that would be addressed by delaying the Act by one more month for the following reasons:

- a) Critical Tiger Habitats in Tiger Reserves would stand defined;
- b) There is no reference to Critical Wildlife Habitats in other sanctuaries/natural parks which can therefore come into effect only with the notification of the Tribal Rights Act which has an explicit provision;
- c) The most important point missed in the discussion is that people are already historically living in these areas and no material difference is being made in the situation of the park or the people by delaying the Notification. Can the Government evict them to enhance Wildlife conservation? It cannot, because if it could, it would have done so earlier. The notification of the Act empowers this relocation after following the procedure. Therefore it is a plus for environmental conservation in the real sense as for the first time serious relocation would become possible but not by being bundled out as refugees but as right-bearing citizens entitled to relocation as per terms specified. The argument that once the rights are assigned through the Tribal Rights Law, it would be difficult to remove people is simply not correct because in the current regime there is no relocation that is happening. It is also self-evident that relocation is ultimately a political choice of the Government in power in the State and after the Act has been unanimously passed in the Parliament no State Government will venture to do any relocation except within the terms of the new Act. So no purpose is being served by the delay except for allowing the Government to be cornered politically.

8. It may also be mentioned that Government is trying to facilitate the relocation on a parallel track in terms of enhancing payment for relocation.

Internal

Subject: Condemnation of the delay to notify rules for STs & Other Traditional Forests Dwellers (Recognition of Forests Rights) Act, 2006

- On receipt of the consent of the President on 29.12.2006, the "STs & Other Traditional Forests Dwellers (Recognition of Forests Rights) Act, 2006" was published in the Gazette on 2.1.2007. The Act provided for it to become effective from the date on which the Government notifies it. The Rules for the Act were also placed on the public domain in July, 2007 giving a time of 45 days for response. However, both the Act and the Rules have not been notified.

- In a meeting in PMO, it was decided that the Act/Rules need not be notified unless "critical wildlife habitats" mentioned in the Act passed by Parliament are first identified and notified. This decision was taken in August, 2007.

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

MoEF has prepared guidelines for defining critical wildlife habitats. It does not make clear the timeframe.

The condemnation of the delay to notify Rules raised by the CPM cannot effectively be responded to by Government at this point in time.

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proposed Bill/Act, 2005 the Words 'Forests Dwelling Scheduled Tribes' in section 2 (c) of the and means the member or community of Scheduled Tribes who primarily reside in and around forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest land for bonafied livelihood needs. The Scheduled Tribes living in the Hills Area of Manipur are not Forest Dwelling Scheduled Tribes but they are simply the Scheduled Tribes of Manipur State. They regarded themselves as living in their own land not living in the forest of the Forest Departemnt, Manipur. In case they are living in the forest land they will not be able to do jhuming in the forest area without permission from the Authority of the Government. But no such permission of any authority of State Government of Manipur is required to be obtained by the Scheduled Tribes for doing jhuming in the Hill Areas of manipur.

6. RIGHTS ALREADY IN POSSESSION OF SCHEDULED TRIBES OF MANIPUR : The forest right proposed to be given to forest dwelling Scheduled Tribes is difined in Section 3 of the proposed Bill/Act, namely, (a) right to hold and live in the forest land, (b) rights such as nister; (c) right to access to use or dispose of minor forest produce; (d) other rights of uses or entitlements such as grazing; (e) right to habitat and habitation; (f) rights in or over disputed lands; (g) rights for conversion of Patta to tittles (h) rights of conversion of forest village into revenue village, etc. are already vested to the Scheduled Tribes of Manipur and there is no need for making legislation afresh for the Scheduled Tribes of Manipur.

7. RECOGNITION OF AND VESTED OF FOREST RIGHTS IN FOREST DWELLING SCHEDULED TRIBES : In Chapter - III Section 4 and Sub - section (1) to (7) of the Bill/Act the right to be recognised and vested to forest Dwelling Scheduled Tribes are clearly given. The area of land holding per family fixed under Section 4. sub-section (5) (i) is 2.5 hectares irrespective of the size of members of the family. As already pointed out earlier, the Scheduled Tribes of Manipur are practicing jhum cultivation in the forests lands, and a family requires 1 to 2 hec. of land for doing jhum cultivation every year. The normal cycle of jhuming in the Hill areas of Manipur varies from 10 to 15 years depending upon the size of the land and the number of families living in the village. In case the proposed Bill/Act is passes by parliament and enforced in the State of manipur, the Scheduled Tribes living in Manipur will immediately faced hardship and problems at the time of applicatrion. The rights mentioned in Section 4 of the Bill/Act were partly or wholly already vested to the Scheduled Tribes of Manipur and there is no need for further making legislation on the matter.

Under the facts and circumstances mentioned above on the issues and matters of Scheduled Tribes (Recognition of Forests Rights) Bill, 2005, we earnestly and hopefully request you kindly to add the word 'manipur State' after the words Jammu and Kashmir in Section 1 sub-section (2) as to read 'It extends to the whole of India except the State of Jammu and Kashmir and Manipur States' in the larger interests of the Scheduled Tribes of Manipur and in the interests of justice to one and all.

Yours faithfully,

1. (Mr. LALHRIET HMAR) 6/7/05
Chairman, I.T.L.C.

2. (Mr. T.HAUKHOLAIN) 6/7/05
Gen. Secretary, I.T.L.C.

3. (Mr. L.B.SONA) 6/7/05
Chairman
Zomi Council

4. (Mr. H.K. JOUTE) 6/7/05
President,
Hmar Inpui

5. (Mr. HOLKHOLUN LHUNGDIM,) 06/7/05
President,
Kuki Inpi Churachandpur

6. (Mr H. NENGSONG) 6/7/05
President
Paite Tribe Council/HQ

Mr. T. Hangkhanpa
(Mr. T. HANGKHANPAU)
President
United Zou Organisation

Mr. K. K. K.
9. (Mr. KAIKHANMANG)
President
Tedim Chin Union

Mr. H. H.
11. (Mr. HEMKHOSEI)
President (Acting)
Mate Tribe Council

L. Haopu
13. (Mr. L. HAOPU HAOKIP)
Gen. Secretary
Thadou Tribe Council

Mr. K. K.
8. (Mr. KAMKHOLAL)
President
Vaiphei Peoples Council

Mr. T. H. J.
10. (MR. TH. JAMCHINTHANG)
President
Simte Tribe Council

Mr. D. A. G.
12. (Mr. D. ANGAM GANGTE)
Gen. Secretary
Gangte Tribe Union

Memo No. ITLC/7/Memo/03:
July, 2005.

Dated, Churachandpur, the 6th

Copy to:-

1. Shri Rishang Keishing, Hon'ble M.P. (Rajasabha)
2. Shri Mani Cheranamei, Hon'ble M.P. (Loksabha)
3. Shri H.T. Sangliana Hon'ble M.P. (Loksabha)
4. Shri T. Phungzathang, Hon'ble Minister (TD), Manipur.
5. Shri Ngamthang Haokip, Hon'ble Minister (Forest), Manipur.
6. Shri Gaikhanngam, Hon'ble Minister (Power), Manipur.
7. Shri Francis Ngajokpa, Hon'ble Minister (Edn.), Manipur.
8. Shri N. Songchinkhup, Hon'ble Chairman (HAC), Manipur.
9. Shri T.N. Haokip, Hon'ble Speaker (Manipur)
10. Shri T. Manga Vaiphei, Hon'ble MLA (Manipur)
11. Shri Thangsuo Baite, Hon'ble MLA (Manipur)
12. Shri Dr. Chaltonlien Amo, Hon'ble MLA (Manipur)
13. Shri Chungkhokai Doungel, Hon'ble MLA (Manipur)
14. Shri Thangminlien Kipgen, Hon'ble MLA (Manipur)
15. Shri P.S. Henry Paotei, Hon'ble MLA (Manipur)
16. Shri R.K. Thekho, Hon'ble MLA (Manipur)
17. Shri A. Aza, Hon'ble MLA (Manipur)
18. Shri D. Shaiza, Hon'ble MLA (Manipur)
19. Shri Wungnaosang Keishing, Hon'ble MLA (Manipur)
20. Shri Z. Mangaibou, Hon'ble MLA (Manipur)
21. Shri Samuel Jendai, Hon'ble MLA (Manipur)
22. Shri B.D. Behring, Hon'ble MLA (Manipur)
23. Shri D.K. Korungthang, Hon'ble MLA (Manipur)
24. The Chief Secretary, Government of Manipur.

for kind information and taking necessary action

T. Haukholian
(T. HAUKHOLIAN)
General Secretary

1066-DS(BE) 05



HEADQUARTER: LAMKA, MANIPUR
(Apex body of Hmar Inpui, Kuki Inpi & Zomi Council)

Ref. No.....

Date.....

Dated, Churachandpur, the 6th July, 2005.

To:-

Shri Rajeev Kumar,
Joint Secretary,
Ministry of Tribal Affairs,
Room No.722, A- wing,
Shastri Bhavan,
New Delhi - 110 001

Subject : *Submission of a representation in the matter of Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 suggesting for certain modifications thereof.*

Sir,

While appreciating the concern of the Central Government for the welfare of the Scheduled Tribes living in India by introduction of the proposed Bill known as Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, we, the undersigned Public Leaders, on behalf of the people of Scheduled Tribes of Manipur in general and the Scheduled Tribes people of Churachandpur District in particular, have the honour to submit this representation on the subject cited above before you for favour of your kind perusal and taking necessary action.

2. That, we would like to suggest that the words 'Manipur State' shall be added after the words Jammu and Kashmir occurred in Section 1 (2) of the Bill which will read as follows:-
Sect. 1 (2): It extends to the whole of India except the State of Jammu and Kashmir and Manipur State.

3. That, the reasons for not extending the proposed Bill/Act, 2005 are briefly stated as under:-

(i) PECULIAR STATUS OF SCHEDULED TRIBES OF MANIPUR: The tribals living in the states of Manipur, at present occupy 9/10th of the total geographical area of 22327.0 sq.kms of the States and the population of tribals subsequently recognised by the Central Government as Scheduled Tribes under Article 342 of the Indian Constitution. Manipur States is divided into 9 (nine) Districts and 5 (five) districts occupied by Scheduled Tribes having a total population of 9,83,074 as per a provisional figures of 2001 Census of Manipur. There are 33 (thirty three) recognised Scheduled Tribes in Manipur. These Tribes are having their own customs and cultures from time immemorial and their customs and cultures were distinctly different from other Scheduled Tribes living in other States in India.

(ii) POSSESSION OF LAND: The tribals living in the Hill Districts of Manipur were having land ownership in the name of the Chief or Khulakpa over the land with the jurisdiction of the village since time immemorial. The Villager were at liberty to use the land for Jhuming and other purposes by clearing the vegetation for raising agricultural crops on rational basis. After the annexation of Manipur by the British, the boundaries of several villages were defined more clearly on the ground as well as on paper so as to prevent any encroachment from one village to another village.

(iii) CREATION OF MANIPUR STATE HILL PEOPLE (ADMINISTRATION) REGULATION, 1947: Knowing fully aware of the distinctive of customs and cultures of the Tribal people living in the Hill areas of Manipur, the Maharaja of Manipur has made a REGULATION known as the Manipur State Hill Peoples (Administration) Regulation, 1947 and this Regulation, 1947 was made applicable to all the Hill Peoples of the Manipur States. In Chapter - IV of Section 60 to 64 of the said Regulation, it has been laid down the procedure for settlement of land dispute within and without the village or villages

(iv) THE RIGHT OF OWNERSHIP OF LAND BY THE VILLAGE CHIEF/ KHULLAKPA RECOGNISED BY THE COURT OF LAW: The Hon'ble Judicial Commissioner, Manipur has held and recognised the right of ownership of land in the Hill Area of Manipur in his judgement in Civil Writ Application No.20 of 1958 (Reported in 1961 AIR Manipur 31) between Luitang Khullakpa and others Vs. Deputy Commissioner, Manipur and held that there are 2 (types) of land in hill areas namely (1) Land in such of the villages in the Hill Areas as are included in the Scheduled to Manipur State Hill People (Administration) Regulation, 1947 and (ii) land in the villages which are not included in the said Regulation for the sake of easy reference, the part judgement of the Hon'ble Judicial Commissioner in the aforesaid Civil Writ Application No.20 of 1958 is reproduced as under :

'Section 60 to 64 of the Manipur State Hill People (Administration) Regulation, 1947 indicated that ownership of land and right to cultivation are recognised in the Hill Villages of the Union Territory of Manipur. This ownership is situated within the boundaries of the Hill Villages has been recognised by the Government. This is true in respect of land in the Lambui Village in Ukhrul Division of Manipur. Hence the Government cannot claim that the Villagers are in possessions of the land only during the pleasure of the Government. Such rights in land amount to Property within the meaning of art. 31 of the Constitution and the Government cannot deprive the villagers of their rights in the property in question save by authority of law which mean that they cannot be deprived of their property by means of executive action by offering and ex-gratia payment.'

From the above mentioned Judgement of the Hon'ble Judicial Commissioner, Manipur it is obviously clear that the Tribals in the Hill Areas of Manipur have got a legal rights over the land which is under their occupation and possession.

4. PROBLEM TO BE FACED BY TRIBALS WHILE ENFORCING THE PROVISION OF THE PROPOSED Scheduled Tribes (Recognition of Forests Rights) Bill/Act, 2005: Section 2 (d) of the Bill/Act define the words 'FOREST LAND' means land of any description falling within any forest area and includes unclassified forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks. As per the figures given in the Statistical Bulletin of Forests Department, Manipur (1997-98) the forests area is shown as 17,418.0 sq.kms of which reserved forest is 1467.0 sq.kms and protected forest is 4171.0 sq.kms and other forests is 11,780.0 sq.kms and ownership of forest is shown as State Forest Department and the ownership of private individuals is shown as nil in the same Bulletin. There is conflicting rights between the Hill Tribes and Forests Department, Manipur over Protected Forests (4171.0 sq.kms) and Unclassified forests (11,780.0 sq.kms). The total area of protected forests and unclassified forests is 15,951.0 sq.kms over which the Scheduled Tribes claimed that ownership is vested to the Tribal Peoples whereas the Forests Department, Manipur claims that it is vested to the Forests Department, Manipur. Therefore, in the event of enforcing of the proposed Scheduled Tribes (Recognition of Forests Rights) Bill/Act, 2005, there will be a legal fighting between the Forests Department, Manipur and the Scheduled Tribe people of Manipur over the ownership of land in the Hill Areas of Manipur.

- i. 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 the flexibility in the cut off date, provided in the draft Bill, has been removed; [Section 4(2)]
- ii. accept the recognition and vesting of the forest rights in the core areas of the National Parks and Sanctuaries on a provisional basis for a period of 3 years, which shall become permanent if the holders of such rights are not relocated within this period with due compensation; [Proviso to Section 4(1)]

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

- iii. clarify that occupation of any individual or family or community on the date of commencement of the Act shall be restricted to the area under actual occupation and shall in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe; (This should allay apprehensions that every one will get 2.5 hectares irrespective of actual possession) [Section 4 (5)(i)]
- iv. 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; [Section 6(1)]
- v. 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 Act; [Section 6(8)]
- vi. the registration of the title to the forest land jointly in the name of both the spouses where married, and in the case of a single person headed households, in the name of the single head; [Section 4(5)(ii)]
- vii. provide that the penalties under this Act shall be in addition to and not in derogation of the provisions of any other Law for the time being in force. [Proviso to Section 7]

7. This Ministry is, however, not agreeable to the suggestion that non-Tribals and other forest dwellers should also be brought within the purview of the proposed Bill. The rationale for not agreeing to this suggestion has already been conveyed to PMO, vide this Ministry's U.O. Note of even number dated 25.10.2005, referred to above.

8. The Ministry has accordingly prepared a revised draft Bill after incorporating the modifications indicated in para 6 above. A copy of the revised Draft Bill is enclosed at Annexure-IV. The portions in bold are those as were in the draft Bill vetted by the Ministry of Law. The portions which have been struck out are those which were in the draft Bill vetted by the Ministry of Law but are proposed to be deleted. Portions which are underlined are those which have been incorporated based on the suggestions accepted by the Ministry.

5.10.05 159/4

Government of India
Ministry of Tribal Affairs

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

This is in continuation of this Ministry's U.O. Note of even number dated 25.10.2005 whereby the comments of this Ministry on the observations made by the Ministry of Environment & Forests, vide their letter No.2-3/2004-FC(Pt.1) dated 12.10.2005, were furnished to PMO for the workshop.

2. In the "One Day Consultation Workshop", which was organised by the PMO on 28.10.2005 mainly to discuss the agenda of inclusion/exclusion of National Parks and Sanctuaries from the purview of the Bill, it was decided that the participating Experts may furnish their specific suggestions to this Ministry for incorporation in the draft Bill. Further, the Secretary (Tribal Affairs) may hold another round of discussions with Secretary (E&F) to finalise the Bill to the mutual satisfaction of both.

3. After the Workshop, Secretary (Tribal Affairs) had written a letter to the Secretary (Environment & Forests) on 28.10.2005 (copy enclosed at Annexure-I) to send their written comments, if any, for improvement of the proposed ST Bill to this Ministry before the proposed meeting to enable us to have a look at the suggestions in advance. No comments were, however, received from the Ministry of Environment & Forests.

4. The Secretary (Tribal Affairs) had a meeting in Secretary (E&F)'s chamber on 4.11.2005 to further discuss the areas of concern for further improvement of the Bill to the satisfaction of both. During the meeting, the Ministry of Environment & Forests gave a statement containing clause-by-clause suggestions for amendment in the draft Bill. (Copy enclosed at Annexure-II)

5. This Ministry has also received suggestions from the following Experts (enclosed at Annexure-III):

1. Shri Valmik Thapar
2. Shri M.K. Jiwrajika,
3. Shri K. Ullhas Karanth
4. Dr. M.K. Ranjitsinh
5. Dr. M.D. Madhusudan
6. Shri P.K. Sen
7. Ms. Smita Gupta
8. Ms. Bina Agarwal
9. Shri Prabhat Patnaik, Ms. Aruna Roy,
Shri S.R. Sankaran, Shri Jean Dreze and others
10. Shri Pradip Prabhu
11. Ms. Nandini Sundar
12. Shri Shankar Gopalakrishnan
13. Ms. Madhu Sarin

6. The various suggestions given by the Ministry of Environment & Forests and the Experts have been examined in the Ministry and it has been decided to:

Committee by proposing that it act in an advisory capacity to the Gram Sabha.

vii. Conferred new right to communities and individuals to return to the original habitation if unsatisfied with the rehabilitation.

3. Subsequently, MOS(PMO) held discussions with Ms. Brinda Karat of JPC on the above issues on 28.9.2006. The following points emerged:

JPC and
member
of JPC

- i. On the issue of land rights to non-tribal forest dwellers, it could be appropriate to consider a new Bill at a later date, after assessing the impact of this particular enactment.
- ii. Issues like the cut-off date, rights over minerals and timber and Gram Sabha recommendations to be vetted by Sub Divisional and District Committee prior to conferring land rights, were also discussed. However, it was felt that these aspects formed the core of the proposed legislation and it is not desirable to accept any dilution.
- iii. A flexible view could be taken on increasing the ceiling limit beyond 2.5 to 3.5 or 4 hectares only for STs. Increasing the area to 4 hectare or actual possession whichever is lower, could be conceded.

4. In the meanwhile, the Minister of Tribal Affairs also submitted the views on the JPCs suggestions, wherein he stated that:

A com
chaired by
SAM is
now
examining
the issue

- i. While the Bill should ^{have} be tribal focus, one can not be insensitive to non-tribal forest dwellers who have been living in the forests for generations. The title of the Bill, however, should be retained.
- ii. The Bill must confine to settlement of land rights only on the particular area, which as per official survey records, show that as on 31.3.2004, 13.43 lakh hectares (1.73%) of Indian recorded forest area has been encroached upon. It would be reasonable that the cut off date should be 31.3.2004 instead of 1980, which is not reasonable as a new generation of forest dwellers has come into existence

since 1980. Besides, the NDA Government had already notified 1993 as the cut off date that land should be on the basis of the principle of "as is where is".

5. As per PM's directions on 29.10.2006 the issues on which consensus had been arrived in PMO and views of the Minister of Tribal Affairs were forwarded on 31.10.2006 by MOS(PMO) to Shri Pranab Mukherjee, External Affairs Minister, head of GOM to discuss in the forthcoming GOM. Hence, this Bill is likely to be considered by the GOM on 15.11.2006.

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J.S.L. (M.)

Wildlife Experts/Environmentalists (4x2=8+4 = 12)

1. Shri Valmik Thapar, Ranthambore Foundation
2. Shri K. Ullas Karanth, Director, Wild Life Conservation Society
3. Dr. M.K. Ranjit Singh, Vakanar Gujarat – yet to suggest
4. Prof. Madhav Gadgil, Indian Institute of Science – yet to suggest
5. Shri Bittoo Sehgal, Editor, Sanctuary Magazine
6. Dr. N.D. Madhusudan, Nature Conservation Foundation, Mysore
7. Shri M.K. Jeevarajika – suggested by Shri Valmil Thapar
8. Shri P.K. Sen - - do -

Tribal Rights Issues Experts (5x2=10+5 total 15)

1. Shri Pradip Prabhu, Campaign for Survival and Dignity
2. Ms. Madhu Sarin
3. Shri Ganesh Devy
4. Ms Aruna Roy
5. Shri Jean Dreze
6. Shri Sanjay Upadhyay
7. Ms. Sunita Narain
8. Shri S.R. Sankaran
9. Shri Ramachandra Guha
10. Ms. Nandini Sundar
11. Shri Mahesh Rangarajan
12. Shri Prabhat Patnaik
13. Ms. Smita Gupta

Ministry Officials

1. Secretary, M/o Environment and Forests
2. DG, Forests
3. Secretary, M/o Tribal Affairs
4. Joint Secretary (Shri Rajiv Kumar), M/o Tribal Affairs

PMO Officials

- Shri Pulok Chatterji, AS
Shri R. Gopalakrishnan, JS
Smt. Kalpana Awasthi, Director

Wildlife Experts/Environmentalists (4x2=8+4 = 12)

1. Shri Valmik Thapar, Ranthambore Foundation
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9. Shri Ramachandra Guha
10. Ms. Nandini Sundar
11. Shri Mahesh Rangarajan
12. Shri Prabhat Patnaik
13. Ms. Smita Gupta

Ministry Officials

1. Secretary, M/o Environment and Forests
2. DG, Forests
3. Secretary, M/o Tribal Affairs

PMO Officials

- Shri Pulok Chatterji, AS (PMO)
Shri R. Gopalakrishnan, JS (PMO)
Smt. Kalpana Awasthi, Director (PMO)

those of the Panchayats (Extension to the Scheduled Areas) Act, 1996.

(iii) Sec 2 (a) of the draft legislation applies to forest dependent community such as Joint Forest Management Committee, Gram Sabha, Village Council, Eco-development Committee, as notified by the State Government. The legislation does not apply to the individuals.

(iv) The definition of Authorized officer has been included in section 2 (n). This has been done as the term has been used in section 14(b).

(v) Section 8 of the Draft Legislation provides for the benefit sharing arrangement. 25% of the net income from the trade in Minor Forest Produce is to be utilized in generation and development of forest area and the remaining 75% to be distributed among the forest dependent community.

(vi) Section 14 (b) has been added to take care of Government Forest land (s) owned by Government departments other than department of forests such as Revenue, Panchayati Raj etc.

6 The Ministry of Law, Legislative Department were requested on 17.5.2005 to examine the draft legislation and vet the same. They were reminded on 27.6.2005. However they are yet to vet the draft

Decision of the Committee of Secretaries is sought on the proposed model legislation on Conferring Ownership Rights of Minor Forest Produce to the Forest Dependent Communities.

8-26

4. The Ministry of Social Justice & Empowerment and Ministry of Development of North Eastern Region have expressed their support to the draft model bill. The comments of Ministry of Panchayati Raj and Planning Commission on the draft bill are placed at **Annexure 1& 2**. As suggested by Planning Commission Section 1(2) has been modified to include National Parks and Sanctuaries. As per the suggestion of Ministry of Panchayati Raj Gram Sabha has been included in the definition of Forest Dependent Community. On the basis of discussion with the State Governments and comments of the Central Ministries, the bill has been amended appropriately and a copy of the amended bill is placed at **Annexure -3**.

5. The salient features of the proposed bill are as follows:

- (i) It extends to the Government forest lands in the whole of the States/ Union Territories. However State Governments may exclude National Parks and sanctuaries because of Supreme Court Order banning commercial harvesting of forest produce and other lands depending on state specific situation which may vary from state to state.
- (ii) Forest Dependent Community has not been defined so far including in PESA. This has now been defined in the proposed bill and as per the definition "Forest Dependent Communities" means a group of individuals constituted into a Joint Forest Management Committee, and / or any other group of individuals, including Gram Sabha. Gram Sabha has been included in the definition of Forest Dependent Community in order to make the provisions of this legislation compatible with

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

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

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

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

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

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

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

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

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

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

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

- The Bill originally prepared by the Ministry had provided for the cut off date of 25.10.1980 or such other date as the Central Government may, by notification in the Official Gazette, specify for recognition and vesting of forest rights under the Act.
- The Ministry of Environment & Forests were, however, not agreeable to keep the cut off date open ended on the ground that they had filed an affidavit in the Supreme Court clarifying that 25.10.1980 would be the cut off date for settlement of rights of tribals and that the open ended date proposed in the Bill would be against the interest of forest conservation.
- On the insistence of the Ministry of Environment & Forests and as per the decision taken in a "One Day Consultation Workshop" on 28.10.2005 with the Wildlife Experts/Environmentalists and Experts on Tribal Rights, the flexibility in the cut off date was removed.
- The rationale behind fixing the cut off date of 25.10.1980 was that the Forest (Conservation) Act, 1980 had come into effect on this date. The cut off date of 25.10.1980 has thus been recognised in practice as the cut off date. The Bill in any case seeks to undo historical injustice which would mean a period existing much prior to 25.10 1980.
- The Ministry of Environment & Forests had issued a circular on 5.2.2004. extending the cut off date till 31.12.1993 for regularization of the rights, but the Supreme Court has stayed the operation of this Order resulting in the halt of the entire process of recognition even of occupation prior to 1980, as stated by the Ministry of Environment & Forests.
- The revision of the cut off date will go against the basic structure of the Bill.

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

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

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

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

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

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

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

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

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

Whether any relaxation is possible: No.



पृथ्वीराज चव्हाण

राज्य मंत्री

PRITHVIRAJ CHAVAN

Minister of State

OUT-TO-DAY

प्रधान मंत्री कार्यालय

नई दिल्ली-110 011

PRIME MINISTER'S OFFICE

NEW DELHI - 110 011

U.O. No.560/51/C/3/05-ES II.

31, October 2006

Respected Shri Mukherjee,

You may kindly recall earlier discussions regarding the JPC Report on the Scheduled Tribes (Recognition of Forest Rights) Bill. A follow up meeting was recently held by me with the Ministry Officials and Smt. Brinda Karat, MP and Member, JPC. (The following points emerged:

On the issue of land rights to non-tribal forest dwellers, it could be appropriate to consider a new Bill at a later date, after assessing the impact of this particular enactment.

Issues like the cut-off date, rights over minerals and timber and Gram Sabha recommendations to be vetted by Sub Divisional and District Committees prior to conferring land rights, were also discussed. However, it was felt that these aspects formed the core of the proposed legislation and it is not desirable to accept any dilution.

A flexible view could be taken on increasing the ceiling limit beyond 2.5 to 3.5 or 4 hectares only for STs. Increasing the area to 4 hectares or actual possession whichever is lower, could be conceded.

Against this background may I request you to kindly consider holding a final meeting with the select members of the JPC on these issues, after which a meeting of the GOM could be held to prepare the matter for consideration by the Cabinet. This would facilitate the passage of the Bill in the forthcoming Winter Session.

The views of the Minister, Tribal Welfare which are at variance with this is also enclosed for your information.

with warm regards,

Yours sincerely,

Prithviraj Chavan
(Prithviraj Chavan)

Shri Pranab Mukherjee
Minister of External Affairs
South Block
New Delhi 110001

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

Brinda Karat

The Government has made it known that it is against four of the crucial recommendations made by the Joint Parliamentary Committee to strengthen the tribal Bill namely (1) extension of the cut-off year from 1980 to 2005 (2) the inclusion of non-tribal traditional forest dwellers in the ambit of the Bill (3) removal of the ceiling of 2.5 hectares and (4) extension of rights of gram sabhas in deciding the beneficiaries.

Not only are these recommendations in tune with the assurance given in the UPA Government's Common Minimum Programme namely "Eviction of tribal and other forest dwelling communities from forest areas to be discontinued." (Section on Scheduled castes and Scheduled tribes) but as argued in this note these recommendations reflect the positions taken by the Government and the Ministry of Environment and Forests from time to time as reflected in their circulars.

The year 1980 as cut-off year was first suggested by the Ministry of Environment and Forests (MOEF) in a circular on 18-9-1990 which directed State Government to "settle disputed areas, convert forest villages into revenue villages and regularize pre-1980 eligible encroachments as a one time dispensation." This regularization extended to all forest dwellers tribal and non-tribal. Moreover no ceiling was put on regularization of land.

3. 74 lakh hectares of land was regularized for all forest dwellers without any ceiling in eight States.

The Supreme Court on November 23 2001 banned further regularization of encroachments. The court also made no differentiation between tribals and non-tribals. However the MOEF intervened to protect tribal rights and through its circular dated 30-10-2002 reiterated that the Supreme Court guidelines did not overrule the 1990 guidelines for regularization of pre-1980 encroachments and regularization should continue.

On 3-2-2004 and 5-2-2004 the MOEF issued further circulars shifting the cut-off year from 1980 to 1993. In extending the cut-off, again no differentiation was made between tribals and traditional forest dwellers and no ceiling was put.

However once again the Supreme Court intervened and stayed the said circular on 23-2-2004. The Court also directed Governments to clear all post-1980 encroachments which was calculated at around 14.85 lakh hectares.

Consequent to the various Supreme Court guidelines 1.52 lakh hectares of land was cleared from encroachments. This led to great hardship as genuine forest dwellers including tribals were also evicted. After the UPA Government came to power MOEF issued another circular on December 21, 2004 which stayed all evictions on the grounds that genuine rights holders were also affected.

From the above the following points emerge:

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

Thus the JPC recommendations on which the Government now has reservations actually emanate from the positions taken earlier by the Government itself. Moreover to use the Supreme Court orders as reason to keep 1980 as cut-off year is also untenable since Government has already moved beyond that.

JPC Recommendations:

(1) and (2) : The JPC recommendation to extend 1980 cut-off year till December 2005 is not a blanket extension but limited only to tribals. Recognition of non-tribal forest dweller rights is only pre-1980.

What is the calculation of the amount of land involved? According to statistics given to Parliament at present 13.43 lakh hectares of land is identified as "encroached" post-1980. It could be reasonably assumed that of this land, tribal held land would not be more than half. This is an infinitesimal amount, lower even than one per cent of the total forest land and a very small token to meet the grand aim of redressing historical injustice to tribals that the Bill sets out to do.

The JPC recommendation will enable Government to implement the Supreme Court orders for post-1980 evictions for about half of the land encroached by non-tribals, which the Government has not yet been able to do. But even assuming that the amount of land held by tribals could be more than the estimate, a Bill to enhance tribal rights can not and should not become an instrument to evict tribals which is what is going to happen, as past experience shows, if 1980 is kept as the cut-off year. There is little documentation with tribals to prove occupation. Lakhs of tribals are being displaced from

forest land due to various projects. Considering that in just five years from 2001 to 2006 as much as 5.73 lakh hectares of land has been converted for "non-forestry" purposes by Government (Expert Committee report to the Supreme Court) it would be extremely unjust and unfair not to regularize tribal held forest land

For the first time a legal definition has been given through the JPC recommendation for traditional forest dwellers, namely those who have lived in the forest for three generations. This will prevent encroachments by commercial vested interests.

(3) As mentioned earlier there has been no ceiling put on 3.75 lakh hectares of land already regularized. To introduce a ceiling now would therefore clearly be discriminatory. It surely cannot be the Government intention to take back any portion of land already regularised. Secondly it is well known that tribal held land in the main is dependent on rain, has low productivity and is usually dry, hilly, stony land. The average ceiling for dry land in different States is 21 acres. To put a ceiling of 2.5 hectares for tribals would be unjust. Thirdly the concept of "nuclear family" for tribals is problematic. Property rights, customary laws and inheritance rights differ across the country for different tribes. In many communities daughters have equal rights in property therefore the term "nuclear" would have to be defined in terms of any "adult" son or daughter. With this proviso instead of the Bill being one aimed at regularization of existing occupation, it would turn out to be a forest land distribution programme which is certainly not the intention of the Bill. Fourthly, to take away land in the name of ceiling implementation that tribals have traditionally owned would lead to widespread protest that would defeat the very purpose of the Bill. Since again, not much land is involved there is no reason to insist on a ceiling. No fresh land is to be distributed only existing occupation is to be regularized on an "as is where is" basis as was done earlier.

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

Government of India
Ministry of Tribal Affairs

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

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

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

the main draft Bill or whether some of the suggestions could be incorporated in "The Scheduled Tribes (Recognition of Forest Rights) Rules, 2005" to be notified after enactment of the Act for carrying out the provisions of the proposed Act.

5. Shri D.P. Roy, Joint Secretary, Ministry of Rural Development, expressed the view that the Ministry of Tribal Affairs should have circulated the comments/suggestions received amongst the members of the Group in advance for examination. Shri M.S. Tariq, ALA, Ministry of Law & Justice stated that it was for the Administrative Ministry to see whether any changes were required in the draft Bill on the basis of the comments/suggestions received by it and thereafter the same could be examined by the Ministry of Law & Justice. It was explained that all suggestions received till 20.7.2005 have been incorporated and placed before the TSG for their consideration. Shri S.R. Sankaran, Joint Secretary, Ministry of Rural Development, however, complimented the Ministry of Tribal Affairs on the Bill and stated that there were certain misconceptions about the proposed Act in the Media, which needed to be allayed and the same have very effectively been explained in the note inviting comments. Dr. B.D. Sharma stated that specific issues could be placed before TSG for consideration and could be taken up for discussion. Dr. Dhruvad Choudhary expressed that in view of the time constraint, broad common issues could first be seen from the comments/suggestions and considered by the TSG. He mentioned that a number of meetings have been held in the North-Eastern part of the country on the subject and one of the concerns raised therein was as to how the Bill was going to deal with the situation in the North-East where there were no Gram Sabhas. Shri Sanjay Upadhyay suggested that some kind of profiling needed to be done for according weightage to the respondents and sweeping remarks/comments needed to be discounted. Ms. Vandana Shiva felt that there were three main issues, which needed to be considered, viz, compilation/analysis of issues raised, jurisdictional matters, and the comments/suggestions made in the various workshops/meetings, etc. held on the Bill. Shri Pradip Prabhu, however, suggested that the Members of TSG could break up in Sub Groups of 3-4 members, and each group could examine the comments/suggestions compiled by the Ministry. The TSG decided to accept this suggestion.

The Secretary(TA) also joined the meeting of the TSG. While again welcoming the members, Secretary(TA) expressed happiness over the enthusiast response received from all stakeholders. She requested members to examine the comments with all seriousness so that a powerful and succinct piece of legislation striking a fine balance between the environment and the tribals could be brought forward before the Parliament.

6. It was decided that the Sub Groups could categorise various comments as "General Positive (G +)", "General Negative (G -)", and thereafter on examination of "Specific Recommendations (SR)", suggest whether "Changes are Required in the Law/or Rules (SL/SR)" or "Change Not Required (CNR)". In case Sub Groups suggest changes, it may be specified whether changes are required in the main Bill or to be incorporated in the Rules to be framed after enactment of the Bill. The following Sub Groups were accordingly formed:

- Sub Group-I - comprising of Ms. Vandana Shiva, Dr. B.D. Sharma and Sh. Sanjay Upadhyay for considering the comments/suggestions from S.No.1 to 34.

Sub Group-II : comprising of Shri S.R. Sankaran, Ms. Madhu Sarin and Dr. Dhruvad Choudhury for considering the comments/suggestions from S.No.35 to 59.

Sub Group-III - comprising of Shri Pradeep Prabhu, Shri D.P. Roy, JS(Rural Development) and Shri Prashanto Sen, Advocate for considering the comments/suggestions from S.No.60 to 90 and from S.No.128 to 5634.

Sub Group-IV - comprising of Shri Kush Verma, ED(TRIFED), Shri M.S. Tariq, ALA, Ministry of Law & Justice and Shri C.A. Tirkey, SRO, Planning Commission for considering the comments/suggestions from S.No.91 to 127.

7. The sub groups examined and categorized each comments in these categories. Shri Rajeev Kumar, JS, summarised the broad issues which had generally been raised by many individuals/organizations and before taking up the report of each sub group it was decided to first deliberate on some common points which are raised in many comments. After having due regard to the numerous suggestions that have come from a varied sections of society on the draft Bill and after careful scrutiny of all the responses, the following issues emerged which necessitated due reply -

1. The Draft Bill is un-constitutional.

The said Bill by no stretch of imagination can be considered as un-constitutional. The right to livelihood has been held to be part of the right to life itself in innumerable interpretations of the fundamental rights of citizens of India. The recognition of right to habitation on a piece of land for subsistence and bona fide livelihood needs is the most basic right of all the fundamental rights guaranteed to the people of this country, especially in cases where such occupations are existing even prior to the cut off date of 1980. The Constitution specifically provides in its Directive Principles of State Policy to promote the economic interest of STs and other weaker sections. It has been further stated that it is the duty of the State to raise the standard of living of the marginalized and this Bill is precisely aimed at fulfilling these Constitutional objectives. The Constitution of India also provides for special protection to the STs both in Scheduled Areas and tribal areas and outside it. It was thus reiterated by the TSG that the Draft Bill, which has already been validated by the Ministry of Law and Justice, is constitutional and flows from the basic tenets of the Constitution.

2. The said draft Bill is not required.

In view of the various circulars and orders issued by the Ministry of Environment & Forests on similar subject, but not entirely meeting the intent and spirit of this Bill, a number of suggestions by Forest Officers concluded that the proposed Bill is only a logical culmination of the process commenced by the M/o E&F for the settlement of bonafide claims of forest dwelling STs in 1990s. The Draft Bill only provides for a robust legal framework and sanctity to the on-going administrative efforts of the M/o E&F in this direction. It was further felt by the TSG that this Bill is a long-overdue legal frame to give sanctity to a consistent view

taken by the Government on the central theme of integrating forest dwelling STs living in and around forests into every aspect of management of forests.

3. The said Draft Bill is anti-environment and anti-forest and wild life.

It was felt by the TSG that the said Draft Bill is not anti-environment. As stated at point 2 above, the draft Bill only seeks to provide a legislative frame to the existing policy framework of the Ministry of Environment & Forests. Numerous provisions in the Draft Bill point out that the Bill, while recognizing and vesting forest rights, is conscious of the bio-diversity needs of the region and such forest rights include the responsibility of protection, conservation and regeneration of forests. It has been further mandated under the proposed law that no activity shall be carried out that adversely affects wild-life, forests and the bio-diversity in the area, including clearing of forest land or tree. The holder of any forest right is also duty bound to protect the catchments areas, water sources and other ecologically sensitive areas. The right holder is further duty bound to report any activity that adversely affects the wild life, forests and the bio-diversity to both the Gram Sabha and to the forest authorities. In addition to the above, it has specifically been provided that apart from the recognition and vesting of forest right, the provision 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. Such other laws would invariably include the Wildlife (Protection) Act, The Bio-diversity Act, The Forest (Conservation) Act, The Indian Forest Act, The SCs/STs Atrocities Act, The Protection of Human Rights Act and other relevant legislations. It was thus felt that the Draft Bill is not anti-forests but mandates adequate safeguards that protect the environment in and around such recognized and vested forest rights. The proposed Bill only seeks to provide a human face to the conservation regime by undoing the historical injustice to the forest dwelling STs who are integral to the very survival and sustainability of forest eco-system.

4. Any Legislation on "forest" is within the exclusive purview of M/o E&F as per Allocation of Business Rules; hence M/o TA is not authorized to enact the Bill.

The objective of the proposed Bill is not to violate or transgress into the mandate or domain of Ministry of Environment & Forests. The Bill simply proposes to correct a historical wrong of non-recognition of forest rights of tribal communities. The subject of the proposed Bill is not merely forests but forest-tribal interface, including rights of tribals existing even before the reservation process under forest laws. In any case, it is the prerogative of the Government to assign any subject to any Ministry and the Government has mandated the Ministry of Tribal Affairs to formulate the proposed Bill to redress the historical injustice done to tribal communities and for clear assertion of their legal rights on land. The TSG decided to request the Government for early legislation on the subject.

5. Land is a State subject and hence the Central Government through the M/o TA is not competent to legislate on land.

It was felt by the TSG that the issue at hand is not a restricted understanding of "land" but of "forest land". Forest (which includes forest land) is a concurrent subject and hence both the Central and State Govts. are competent to legislate upon the same. Hence any such suggestion was duly rejected by the TSG.

6. **The said Bill would result in distribution of land.**

The TSG unanimously rejected the stand and reiterated that the draft Bill does not at any stage propose to distribute the land. The limited objective of the bill is to recognize and vest forest rights, as enumerated in the draft Bill, in the forest dwelling STs where they are scheduled. The draft bill does not envisage at any stage distribution of forest lands. The Bill also does not cover the entire 8.2% ST population. The Bill in actuality will benefit the tribal population only on "as is where is basis" and the guidelines of the Ministry of Environment & Forests also provide for such recognition without any ceiling of 2.5 hectares.

7. **The said Bill should grant community ownership and not individual ownership.**

The TSG felt that the draft Bill does not prohibit the recognition of community ownership over forest rights through Gram Sabha instead of individual ownership. However, experience has shown that individual title and, in this case, joint title in the name of husband and wife would serve much more significant purpose from the livelihood perspective.

8. **The said Bill regularises the encroachments.**

It was felt by the TSG that the proposed Bill is aimed at recognizing and vesting of forest rights to genuine occupants of forest land who have existed prior to the relevant process and whose bonafide right of such occupation could not be recorded in the settlement process. Further, the nature of evidence that may be adduced to verify bona fide claims, would be expanded in the Rules to be drafted later. The procedure as envisaged in the draft Bill would put in place a more holistic and fair treatment of genuine claimants on forestland. Thus, it is not about regularizing encroachment but recognition of genuine occupants of forest land and their bona fide rights of such occupation. In any case, this exercise is intended to be one time exercise and not an ongoing one.

9. **The said Draft Bill covers the STs and not other forest dwelling communities.**

The proposed Bill covers the STs because it is the forest dwelling STs who have been residing there for generations and who are integral to the very survival and sustainability of the forest eco-system, including wildlife, but whose rights could not be recorded on the forest land under their occupation.

10. **The draft Bill should exclude national parks and sanctuaries.**

The TSG strongly endorsed the view that the Protected Areas should not be excluded from the purview of the Bill. No protected areas would be put to risk by the proposed Bill. The existence and dependence of tribal communities is embedded in the National Forest Policy, 1988 and even the Wildlife Act. A detailed procedure of settlement of rights is laid down in both National Parks and Sanctuaries. Hence, the TSG felt that the Draft Bill seeks to recognize and vest rights in Protected Areas of all descriptions with a view to ensure that right holders enjoy the entitlements of

compensation and rehabilitation whenever extinguishments of rights is deemed necessary on the legal principle that every right provides a remedy.

11. **The STs Bill and the draft Bill on conferring ownership of MFP by the M/o E&F covers the same subject and hence this Bill may not be necessary.**

It was felt by the TSG that the M/o E&F's model legislation on conferring of MFP is very very limited and covers only one aspect of the entire ST Bill [Section 3(c)]. The M/o E&F's model Bill does not define the term 'minor forest produce' comprehensively, does not straightaway confer the ownership rights of minor forest produce and simply provides guidelines to the States and there is no compulsion for the State Governments to come out with State Acts, excludes national parks and sanctuaries, does not confer ownership of MFP on all the tribals but restricts the forest dependent community to include a few people constituting themselves as JFM committees, whereas the ST Bill defines the term minor forest produce comprehensively, seeks to recognize and vest various forest rights, including the right of access to, use and dispose of minor forest produce in the forest dwelling tribes and covers the national parks and sanctuaries with a view to cover people dependent on NTFPs in these areas also. The two Bills are hence incomparable to the mandate of the proposed bill i.e. the STs Forest Rights Bill covers a large number of bona fide forest rights in a forest land and is not limited to MFP. Additionally, another Central Legislation, The Provisions of Panchayats (Extension to Scheduled Areas) Act (PESA) already covers the subject of ownership of MFP and, hence, it is the M/o E&F's model legislation, when seen in comparison with the STs Forest Rights Bill and PESA legislation, which seems unnecessary.

12. **The Central Act such as the proposed Bill has no power to grant powers to the Gram Sabha.**

It was felt by the TSG that the Central Government was well within its powers to assign any agency, including the Gram Sabha functions as proposed in this Bill, for smooth implementation of the Act.

13. **The proposed draft Bill overrides the penalties under the Wild Life Act.**

It was clarified by the TSG that the said draft Bill does not override the applicability of the Wildlife Act. In fact, the provision relating to fine which can be imposed by the Gram Sabha and subsequent provision of de-recognition of forest right is in addition to and not in lieu of the provisions in the Wildlife Act. The Section relating to penalties in the proposed draft Bill is more in the nature of the safeguards for abuse of forest rights rather than a provision to override the Wildlife Act. It was thus felt by the TSG that this fear is misplaced.

14. **The cut of date may be changed from the present 25.10.1980 to any date so decided by the Central Government from time to time.**

It was felt by the TSG that this flexibility needs to remain in the Bill as an addition of an explanation that such change of date can only be effected after careful and reasoned explanations and the unique circumstances that may arise because of

which such date needs to change. It was thus felt by the TSG that no change in the said clause is necessary.

15. On which date the nuclear family needs to be assessed for the purpose of this draft Bill.

It was unanimously felt by the TSG that the date of identifying the nuclear family should be the date on which the proposed Bill is passed.

8. The Sub-Groups, thereafter, presented their reports and the suggestions made by them in respect of all the important comments, and especially the ones, which were critical of the Bill, were discussed by the entire TSG. After going through each of the suggestions carefully, decisions were taken regarding the suggestions which needed to be accepted for incorporating changes in the Bill or in the Rules to be notified later. The following table gives the summary of the recommendations:-

Group	Comments examined	Nature of comments			
		G+	G-	SR	CNR
Group-I Members: Ms. Vandana Shiva Dr. BD Sharma Sh. Sanjay Upadhyay	1 to 34	--	12	SR=5 SL=1 change suggested by 17 persons Total persons: 22	12
Group-II Members: Sh. SR Sankaran Ms Madhu Sareen Sh. Dhruvād Chaudhry	35-59	--	11	SR=13 SL=1 Total persons: 14	11
Group-III Members: Sh. Pradip Prabhu, Sh. DP Roy, Sh. Prashanto Sen	60-90 and 128-5634	1 3927	29 2	SL=1 Total persons: 1 SR=28 Total persons: 1578	30 3929
Group-IV Members: Sh. Kush Verma, Sh. MS Tariq, Sh. CA Turkey	91-127	1	34	SL=1 SR=4 changes suggested by 2 persons Total persons: 2	35
Total		3929	88	SR=50; SL=4 Total persons: 1617	4017

G+ : General comments in favour of the Bill

G- : General comments against the Bill

SR/SL: Substantive comments requiring changes in Bill (SL) or in Rules (SR)

CNR: Change not required

9. It was decided that there were no substantive changes as per the rationale and the spirit of the Bill that the tenurial insecurity of the forest dwelling STs needed to be addressed and the forest rights as defined in the Bill needed to be conferred to

undo the historical injustice. It was further decided to constitute a small Sub-Group of the TSG consisting of Shri Pradeep Prabhu, Ms. Madhu Sarin and Mr. Sanjay Upadhyay to give effect to the decisions of the TSG by making necessary amendments in the proposed Act on the basis of the recommendations. It was decided that the Bill, as revised on the basis of recommendations of the TSG, may be taken up for early finalisation as per the established procedure. The Secretary(TA) expressed sincere thanks to all the members of the TSG for their active participation in the deliberations and to each of the Sub-Groups for minutely going through the comments.

10. The meeting of the TSG ended with thanks to the Chair.

List of participants in the meeting of the TSG held on 21.7.2005 in Secretary(TA)'s Chamber, Shastri Bhawan, New Delhi

-
1. Smt. P. Jyoti Rao, Secretary,
Ministry of Tribal Affairs - Chairperson
 2. Smt. Sudha Pillai,
Additional Secretary
Ministry of Panchayati Raj - Member
 3. Shri D.P. Roy, Joint Secretary,
Ministry of Rural Development - Member
 4. Dr. G.B. Panda, Advisor,
Planning Commission - Member
 5. Shri M.S. Tariq, ALA,
Ministry of Law & Justice - Member
 6. Ms. Vandana Shiva, A-60, Hauz Khas
New Delhi-110016. - Member
 7. Ms. Madhu Sareen,
48, Sector 4, Chandigarh-160 001. - Member
 8. Shri Pradip Prabhu,
3 Yezdeh Behram, Malyari Dahanu
Road, 401602,
Thane District, Maharashtra. - Member
 9. Shri Sanjay Upadhyay,
278, Sector 15-A,
NOIDA, 201301, Uttar Pradesh. - Member
 10. Dr. Dhruvad Choudhary,
Scientist-in-charge,
G.E. Pant Institute of Himalayan
Environment and Development, Vivek Vihar,
Itanagar, Arunachal Pradesh - Member
 11. Shri Prasanto Sen, Devyani, No.6,
Nizamuddin East (Near No.3 Nizamuddin
East), New Delhi-110 013. - Member
 12. Dr. B.D. Sharma, Bharat Jan Andolan - Special Invitee
 13. Shri Kush Verma, ED, TRIFED. - Special Invitee

(DRAFT- Not To Be Quoted)

THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL 2005

Preamble

An Act to recognise and vest the forest rights and occupation in forest land of forest dwelling Scheduled Tribes who have been residing there 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 that may be adduced for such recognition and vesting in respect of forestland and their habitat.

The rights so recognized shall include responsibility and authority for sustainable use, biodiversity conservation and maintenance of ecological balance and thereby the Act seeks to strengthen the conservation regime while ensuring livelihood and food security of the forest dwelling Scheduled Tribes. This Act has become necessary because many of these forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of state forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystems.

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

Chapter-I

Preliminary

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

Chapter II

Definitions

- 2 (1) In this Act, unless the context otherwise requires:
 - a) "Competent Authority" includes the Gram Sabha, Sub Divisional Level Committee, District Level Committee and all Appellate authorities under Chapter IV of this Act.
 - b) "Forest dwelling Scheduled Tribes" are those individuals and /or communities of Scheduled Tribes who primarily reside in and around forests and includes Scheduled Tribes pastoralist communities and who depend on the forests and/or forest lands for bonafide livelihood needs.
 - c) "Forest land" means land of any description falling within the legal definition of forest and forest land and includes unclassed forests, existing, proposed and deemed, protected forests, reserved forests, sanctuaries and national parks.
 - d) "Forest Rights" mean secure individual and/or community tenure and/or ownership rights of forest dwelling Scheduled Tribes over forestland and their habitat as enumerated in Section 3(6) of this Act.
 - e) "Forest villages" mean such settlements which have been established inside the forests by the forest department for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements and by whatever other name called for such villages. It further includes lands for cultivation and other uses, permitted by the forest departments.
 - f) "Gram Sabha" means village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level. For North Eastern States where there are no Panchayats, Gram Sabha would mean traditional village institutions.

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

- h) "Nodal agency" means the Ministry of Tribal Affairs, or any other designated agency appointed on their behalf.
 - i) "Pattas, Leases and Grants" includes temporary or permanent leases or grants by whatever name called on forest and forest land granted by any state department or local authority to forest dwelling Scheduled Tribes.
 - j) "State Monitoring Committee" is a Committee as defined under Section 4(4) of this Act
 - k) "Village" shall mean as defined under the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 for schedule V areas and under the respective State Panchayat Acts for areas other than Scheduled Areas. It may further include forest villages, old habitation/settlements and unsurveyed villages, whether notified or not. For North Eastern States where there are no Panchayats, village would mean traditional village by whatever name called.
- (2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

Chapter-III

Rights of Forest Dwelling Scheduled Tribe

- 3 (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government hereby recognises and vests Forest Rights to forest dwelling Scheduled Tribes where they are scheduled, in respect of forest land and their habitat including minor forest produce in the manner prescribed under the Rules.
- 3(2) No forest dwelling Scheduled Tribes shall be evicted or removed from forest land under their occupation till the recognition and verification procedure is complete as prescribed under the Rules.
- 3(3) In case any forest right so vested is disputed by any state department or local authority, the Competent Authority shall mandatorily consider the records prepared at the time of scheduling an area, and while scheduling the tribe along with evidence enumerated in Section 5(1) and then pass a reasoned order before denying the individual and/or community right.
- 3 (4) Such forest rights would include rights of forest dwelling Scheduled Tribes to
- a) forest land under their occupation for habitation or for self cultivation for livelihood needs and/or
 - b) rights such as nistar by whatever name called and /or uses in erstwhile princely states, Zamindari or such intermediary regimes, and/or
 - c) access to and ownership of minor forest produce, and/or
 - d) other use rights or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic /pastoralist/ communities, fishing and/or
 - e) habitat and habitation for Primitive Tribal Groups/ pre agricultural communities
 - f) disputed lands where claims are disputed under any nomenclature in any State and/or
 - g) conversion of Pattas or leases or grants issued by any local authority or any State department on forest lands to titles, and/or
 - h) conversion of Forest villages into revenue villages and includes those where process of conversion into revenue village is not complete and/or
 - i) settlement of old habitation and unsurveyed villages, whether notified or not and/or
 - j) access bio diversity and community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity and/or
 - k) right to protect, regenerate and /or conserve or manage any community forest resource which they have been traditionally protecting and conserving, including the authority to impose penalties on such persons who contravene the rules of conservation laid down by the community and/or

- rights which are already recognized under various state or Autonomous District Council or Autonomous Regional Council laws or which are accepted under traditional and customary law in the North Eastern States and /or
- m) any other traditional right not listed above excluding hunting.

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

Provided further that the rights to forest land in no case would exceed 2.5 ha per nuclear family of the forest dwelling Scheduled Tribe

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

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

3(6) The forest rights so vested or recognized in respect of land where a title is vested or recognized shall be registered jointly in the name of the husband and wife.

3 (7) Duties of Forest Right Holder- Whoever, under Section 3(1) is a forest right holder shall ensure that interalia:

- a) save as those activities that are permitted under the terms of such rights no activity shall be carried out that adversely affects the wild life, forest and the biodiversity in the local area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reafforestation.
- b) catchment areas, water sources and other ecologically sensitive areas are adequately protected.
- c) their habitat is preserved from any form of destructive practices affecting their cultural and natural heritage.
- d) any activity that adversely affects the wild life, forest and the biodiversity is intimated to the Gram Sabha and/or the forest authorities.
- e) appropriate measures are taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity.

CHAPTER IV

Authorities and their Functions under the Act

- 4(1) (i) **The Gram Sabha** shall be the authority for recognition and vesting of such rights to forest dwelling Scheduled Tribes.
- ii) The Gram Sabha shall regulate access to the community forest resources.

- 4(2) (i) **Sub Divisional Level Committee** – There shall be a Sub Divisional Level Committee as prescribed under the Rules under this Act.
- (ii) The Sub Divisional Level Committee shall be the authority for hearing appeals from any forest dwelling Scheduled Tribe aggrieved by the resolution of the Gram Sabha.

4 (3) **District Level Committee-**

- (i) There shall be a District Level Committee as prescribed under the Rules under this Act.
- (ii) The District Level Committee shall be the final appellate authority under this Act.
- (iii) The District Level Committee shall consider the record of forest rights prepared by the Sub Divisional Level Committee for final approval.

4(4) **State Level Monitoring Committee-**

- i) There shall be a State Level Monitoring Committee as prescribed by Rules under this Act.

The State Level Monitoring Committee shall examine the record of recognized and vested rights submitted by the District Level Committee and conduct periodic inquiry into the process of recognition and vesting through random selection of sites.

(n) The State Level Monitoring Committee shall submit periodic report to the Nodal Agency along with their recommendations for appropriate action.

CHAPTER V

Offence under the Act

6. Penalty for contravention of the Provisions of the Act - ,

6(1) If any forest right holder or any other person

i) contravenes or abets the contravention any of the provisions of Section 3 or

ii) who commits a breach of any of the conditions of the forest right so vested or recognized under this Act, or

iii) who engages in unsustainable use or

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

v) who fells trees for any commercial purpose

shall be guilty of an offence against this Act and be punished with a fine as decided by the Gram Sabha and/or District Level Committee and/or in case of offence committed more than once, their forest right be de recognized after a due process followed by the District Level Committee on the recommendation of the Gram Sabha..

6(2) **Offences by Government or Authorities under this Act-** Where any competent authority or officers/members of such authority do not follow the due process prescribed under this Act and Rules made there under he/she shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with a fine of five thousand rupees and /or imprisonment upto thirty days.

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

6(3) **Cognisance of Offence-** No court shall take cognizance of any offence under Section 6 (2) of this Act Unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher competent authority gives a notice of not less than sixty days to the State Monitoring Committee and the State Monitoring Committee has not proceeded against such Authority.

CHAPTER VI

Miscellaneous

7. Officers to be public servants

Every authority referred to in Chapter IV including the chairperson, members, member-secretary and other officers referred to in the same Chapter and every other officer exercising any of the powers conferred by this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

8. Protection of action taken in good faith

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

(2) No suit or other legal proceeding shall lie against the Central Government or the State

List of Recommended

RECOMMENDATIONS OF THE SUB-GROUPS ON THE NATURE OF COMMENTS

Group	Comments examined	Nature of comments			
		G+	G-	SR	CNR
Group-I Members: Ms. Vandana Shiva Dr. BD Sharma Sanjay Upadhyay	1 to 34	--	12 (Sl. Nos. 1,2,3,4,5,7,9,11,12,15,16,17) (All 34 are negative)	SR=5 (Sl. Nos. 6, 8, 10, 13, 14) SL=1 change suggested by all from Sl. Nos. 18-34 jointly	12
Group-II Members: SR Shankaran Ms Madhu Sareen Dhruvad Chaudhry	35-59	--	11 (Sl. Nos. 35, 36, 39, 42-43, 45, 46, 47, 50, 53, 59)	SR=13 (Sl. Nos. 37, 38, 40, 41, 44, 48, 49, 52, 54-58) SL=1 (Sl. Nos. 51) Total Persons: 14	11
Group-III Members: Pradip Prabh, DP Roy, Prashanto Sen	60-90 & 128-5634	1 (Sl. No. 83)	29 (Sl. Nos. 60-81, 82, 85, 86, 87, 88, 89, 90)	SL=1 (Sl. No. 84) Total Persons: 1	30
Group-IV Members: Kush Verma, MS Tariq, CA Tirkey	91-127	3927 (Sl. Nos. 129-140, 142-164, 166-171, 179-2192, 2194, 2195, 2200-2201, 2204, 2206, 2209, 2212-2214, 2216-2254, 2256-2536, 2538, 2540, 2569, 2570-2601, 4120-5001, 5007-5053, 5055-5059, 5061-5634)	2 (Sl. No. 2537, 4119)	SR=28 (Sl. Nos. 128, 141, 165, 172-178, 2196, 2197, 2198, 2199, 2202-2203, 2205, 2207-2211, 2215, 2255, 2539, 2541-2568, 2602-4118, 5002-5006, 5054, 5060) Total Persons: 1578	3929
Total		3929	34 (Sl. Nos. 91, 92, 93, 94-106, 107-108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119-120, 124, 125, 126, 127)	SL=1 (Sl. Nos. 121) SR=4 changes in rules suggested by 2 persons i.e. Sl. Nos. 121-122) Total Persons: 2	88
				SR=50; SL=4 Total Persons: 1617	4017

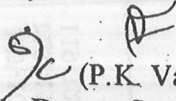
G+ : General comments in favour of the Bill
G- : General comments against the Bill
SR/SL: Substantive relating to Rules/Law
CNR: Change not required

of Tribal Affairs is not authorized to enact the Bill, Land is a State subject and Ministry of Tribal Affairs is not competent to legislate on land, the Bill would result in distribution of land, etc. These issues were addressed by the TSG and it was decided that, barring a few changes in the proposed Bill, no substantive changes were required as per the rationale and spirit of the Bill that the tenurial insecurity of the forest dwelling STs needed to be addressed and the forest rights as defined in the Bill needed to be conferred to undo the historical injustice. The TSG also prepared a revised draft "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005", on the basis of the suggestions/comments received from various stakeholders. The TSG further decided that whatever other changes were required, the same would be incorporated in the draft "The Scheduled Tribes (Recognition of Forest Rights) Rules, 2005", to be notified after the enactment of the Act.

6. A copy of the minutes of the meeting of the TSG held on 21.7.2005 is at **Annexure-III**. The draft "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005", as revised by the TSG on the basis of the suggestions/comments received from various stakeholders, is also appended at **Annexure-IV**. The Ministry is now taking further action to finalise the Bill in consultation with the Ministry of Law & Justice, etc.

7. PMO may kindly see for information and further directions so that the Bill could be tabled for introduction during the current session of the Parliament.

8. This issues with the approval of Hon'ble MTA & DONER.


(P.K. Varma)
Deputy Secretary

Prime Minister's Office (Sh R.Gopalakrishnan, JS to PM) South Block, New Delhi
Ministry of Tribal Affairs' U.O.No.17014/4/2005-S&M(Pt.) dated 8.8.2005.

garnil
[Signature]
8/8/05

Government of India
Ministry of Tribal Affairs

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

Reference PMO's I.D. Note No.560/51/C/3/05-ES.II dated 17.5.2005 on the above subject.

- 2 As desired by the PMO, this Ministry had posted the draft version of "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" 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 checks and balances provided in the Bill. The members of the public, the social activists, academicians, anthropologists, the experts working for the cause of environmental protection and welfare of tribal people and other stakeholders were requested to send their views/comments/suggestions on the proposed legislation by 10th July, 2005 (Copy at **Annexure-I**). Advertisements were also issued in the leading national and regional dailies (in English, Hindi and regional languages) all over the country for this purpose.
3. This Ministry had received a overwhelming response from the individuals/organizations from all over the country and as many as 5634 individuals/organizations had sent their comments/suggestions upto 20.7.2005, either supporting the Bill or opposing the same. The comments/suggestions received were compiled and placed before the Technical Support Group constituted for formulating the Bill, in a meeting convened on 21.7.2005, under the chairpersonship of Secretary (TA) for taking a view on the various general/specific comments and to decide whether any changes were required to be made in the main draft Bill or whether some of the suggestions could be incorporated in "The Scheduled Tribes (Recognition of Forest Rights) Rules, 2005" to be notified after enactment of the Act for carrying out the provisions of the proposed Act (Copy of the comments compiled is at **Annexure-II**).
4. The numerous suggestions that had come from a varied sections of society on the draft Bill were considered by four Sub Groups of TSG - Sub Group-I comprising of Ms. Vandana Shiva, Dr. B.D. Sharma and Sh. Sanjay Upadhyay, Sub Group-II - comprising of Shri S.R. Sankaran, Ms. Madhu Sarin and Dr. Dhruvad Choudhury, Sub Group-III - comprising of Shri Pradeep Prabhu, Shri D.P. Roy, JS(Rural Development) and Shri Prashanto Sen, Advocate, and Sub Group-IV - comprising of Shri Kush Verma, ED(TRIFED), Shri M.S. Tariq, ALA, Ministry of Law & Justice and Shri C.A. Tirkey, SRO, Planning Commission. The Sub Groups were requested to examine the general and specific comments and to indicate whether any changes were required in the main bill or to be incorporated in the Rules to be framed.
5. On examination, the TSG found that in several comments, general issues/apprehensions were raised, such as, the draft Bill is unconstitutional, the Bill is not required, the Bill is anti-environment and anti-forest and wildlife, the Ministry

14. Shri S.R. Sankaran, Retd. Secretary - Special Invitee
Ministry of Rural Development
15. Dr. S.M. Sirajuddin, Deputy Advisor, Planning Commission
16. Shri A. Kachhap, Dy. Advisor(TD), Planning Commission
17. Shri C.A. Tirkey, SRO, Planning Commission
18. Shri S. Chatterjee, JS, Ministry of Tribal Affairs
19. Shri Rajeev Kumar, JS, Ministry of Tribal Affairs
20. Dr. R.M. Dubey, Director, Ministry of Tribal Affairs
21. Shri P.K. Varma, DS, Ministry of Tribal Affairs
22. Shri Pradeep Kumar, US, Ministry of Tribal Affairs

Draft Amendments prepared

on 11.12.2006

Government of India
Ministry of Tribal Affairs

New Delhi, December, 2006

To

The Secretary General,
Lok Sabha,
New Delhi.

Sir,

I give notice of my intention, to move the following amendments after the adoption of the motion that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 as reported by the Joint Committee be taken into consideration, namely :-

S. No.	Text of amendments	Clause No.
1	Page 2, <u>for</u> lines 9 to 17 <u>substitute</u> "(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 in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein	Clause 2(b)

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by Joint Committee, with amendments, was passed by the Lok Sabha today. A notice to the Secretary General, Rajya Sabha for consideration and passing of the Bill, as passed by the Lok Sabha, has also been issued.

2/147-150/c

✓ 117/c

+ 121/c

2. It may be stated that the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 introduced in the Lok Sabha on 13.12.2005, had contained a financial memorandum as sub-clause (a) of clause 2 of the said Bill had provided for appointment of an officer or authority as competent authority to deal with disputes relating to forest rights, thereby involving certain expenditure. The Joint Committee, while reporting the revised Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, has deleted this clause. The said Bill has been passed by the Lok Sabha accordingly. There is no involvement of any expenditure now on this account.

3. The matter was discussed with the Legislative Officer in the Bill Office of the Rajya Sabha Secretariat, who informed that a letter on the above lines is required to be sent from the Hon'ble MTA to the Secretary General, Rajya Sabha Secretariat, before the Bill is taken up for consideration and passing by the Rajya Sabha.

+ JFA

4. A draft letter from Hon'ble MTA to the Secretary General, Rajya Sabha Secretariat is accordingly put up for approval.

(P.K. Varma)
Consultant
15.12.2006

Dy. No. 536/JS (TA) 106
Dated 18/12/06

JS(RP)

18/12

Secretary (TA)

[Handwritten Signature]
18/12

MTA *[Signature]*
18/12/06

F/1429
डा. सं. .../सचिव (ज. शा.)/...
दिनांक 18/12/06
18/12/06
SO (RPW)
18/12/06

Slno. 21 (Issue) - 15/12

Slno 22 (R) - 14/12/06

Slno. 23 (R) - 14/12/06