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Minutes of the meetings of the non-official members of the Technical Support Group constituted to formulate the 'Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill' held on 5th and 6th February, 2005

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A preliminary informal meeting of the non-official Members of the Technical Support Group (TSG) was held on 5.2.2005 in Secretary(TA)'s Chamber. The list of participants in the said meeting is at Annexure-I.

2. At the outset, Secretary(TA) welcomed all the Members of the TSG, especially Shri Sankaran who made it convenient to attend. She explained that the Ministry of Tribal Affairs was entrusted with the responsibility of drafting a comprehensive legislation titled '**Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill**' as per the directive of the Prime Minister's Office with the help of the TSG. The bill was required to be made ready by mid-February, 2005 to enable its introduction in the ensuing Budget Session of the Parliament. Initiating the discussions, she stated that there were a number of issues regarding the forest tribal interface which needed to be addressed while formulating the proposed Bill and that the Ministry would go by the advice of the TSG. She mentioned that the TSG has to spell out the issues which needed to be included in the Bill and which need not be included. She stated that while drafting the Bill, we have to tread the path carefully so that the provisions of the proposed Bill do not conflict with other Acts, namely, the Indian Forest Act, Forest (Conservation) Act, PESA Act, Bio-diversity Act, etc.

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3. Secretary(TA) stated that the Ministry of Tribal Affairs had identified the basic issues which needed to be addressed. These issues related to (i) Right of the STs over land possessed by them for habitation and their subsistence agriculture, (ii) Development of Forest Villages (iii) the Conferment of ownership rights over the Minor Forest Produce (MFP) to the tribals, (iv) Extension of PESA Act to all the Scheduled Areas into Forest Villages, Recognition of Intellectual Property Rights (IPRs) and (vi) Assigning Forestry activities to JFMs/SHGs of STs. The concerns to be addressed under these items had already been explained in the background material circulated to the members of the TSG. Secretary(TA) further mentioned that there were other issues also which needed to be considered while drafting the proposed legislation, namely, such as the issue of land alienation, displacement of tribals due to projects, conversion of forest villages into revenue villages. The Bill is to be drafted sensitively and in harmony with the existing legislations so that a fine balance is struck between the environment and the tribals and it should be a powerful and succinct piece of legislation.

4. During the discussion, the members of TSG raised a number of points as mentioned below:-

Shri Pradip Prabhu:

- The Ministry of Environment & Forests were already in the process of framing a legislation on Minor Forest Produce.
- The Ministry of Panchayati Raj were quite pro-active in ensuring the implementation of the PESA Act and we should stay out of this issue.
- The Group also should flag the issue of IPRs of tribals.
- The issue of recognition of forest rights should be an agenda of land reforms and put in the IX Schedule.
- The issue relating to shifting cultivation should also be addressed while drafting the Bill.
- As regards afforestation, the guidelines issued by the Ministry of Environment & Forests should be improved upon.

Ms. Madhu Sareen:

- The forest dwellers were deprived of their basic rights. As they could not have domicile certificates, they were deprived of the benefits of various developmental activities, such as, Indira Awas Yojana, etc.
- Regeneration of forests have been excellent wherever communities were involved
- Integrated development of forest villages should be simultaneously taken up
- Recognition of rights should be linked with forest conservation and the process of forest conservation should be in the hands of Gram Sabha
- Governance of forests should be a part of PESA.
- Focus should be on restoration of land rights and usufruct rights
- While addressing the IPRs of forest dwellers, the international dimension should also be considered.
- Conservation of forests should be linked with the livelihood of the people.
- The issue of protected areas under the Wildlife (Protection) Act, 1972, should also be addressed.
- The rights of pre-agriculture communities and shifting cultivators also need to be considered.

Shri Sanjay Upadhyay:

- The 'Scheduled Tribes', the 'forest dwellers' and 'recognition of rights' were the three key words which needed to be defined while drafting the proposed legislation.
- The other issues which needed to be taken up were (i) settlement of rights of STs and forest dwellers in various legislations, such as, Forest Act, PESA, Wildlife Protection Act, etc.
- Distinction is to be made between the STs and the Scheduled Areas
- Act to be drafted keeping in view situation prevailing in different parts of the country
- International instruments on the issues to be kept in view

Shri S.R. Sankaran:

- We should not lose this opportunity to recognize the rights of the tribals and introduce the Bill.
- The judgment of the Supreme Court relating to the forest was not a bar to the proposed legislation.
- The proposed Bill should have overriding provisions over all other Acts/Legislations.

Shri Taradutt:

- The States should be consulted before the Bill is finalized because the Act would be implemented by the State Governments.
- Due to non-consultation of States, the Act may not be implemented effectively by the State Governments, as in the case of PESA Act.
- Before drafting the proposed Bill, we should have details of areas under shifting cultivation and should incorporate provisions for development of land.
- There should be time bound programme for survey and settlement of land in the States.
- The fact that many scheduled areas have ST population much less than 50% should be kept in mind.

Dr. Dhruvad Choudhary:

- The draft Bill circulated does not reflect the realities of the situation prevailing in the North-East.
- Care needs to be taken for making suitable provisions in respect of shifting cultivation and the State legislations should also be taken care of.
- The proposed Bill does not provide the credit facility, which also needs to be kept in view.
- While defining the recognition of rights, the situation on account of settlement/encroachment of land by illegal immigrants, as in Assam, may also be kept in view.

Dr. B.D. Sharma:

The proposed Bill should be a piece of comprehensive legislation. It should have the overriding provisions over the other Acts/Legislations, such as, Indian Forest Act, Forest (Conservation) Act, etc. and rights should be conclusively conferred/vested without ambiguity.

It was decided that the non-official members of the Technical Support Group should meet again on 6.2.2005 to take up clause by clause examination of the tentative draft Bill and redraft the Bill taking into account the views expressed by the various members.

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Minutes of the meeting of the non-official members of the TSG held on 6.2.2005 at India Habitat Centre, Lodi Road, New Delhi

The non-official members of the TSG again met on 6.2.2005 at India Habitat Centre, Lodi Road, New Delhi to examine the clause by clause examination of the tentative draft Bill. The list of participants is at Annexure-II.

Initiating the discussion, Shri Rajeev Kumar, Joint Secretary in the Ministry of Tribal Affairs, explained that the process of recognition of rights over the forest lands already existed in the Indian Forest Act. However, the procedure laid down in this regard was not followed properly. He stated that the recognition of rights of the forest dwellers in the present draft Bill envisage recognition of rights of the non-STs also, [which needs to be examined very carefully.] The forest rights include the right to Minor Forest Produce (MFP) and that the tribal area would also need to be defined properly. He emphasized that recognition of rights should correlate to the documented evidences, such as, records prepared at the time of scheduling the scheduled areas and declaring Scheduled Tribes by Presidential notification. He also pointed out the inherent danger in recognizing everybody's rights, including STs solely through local committees, who would find it difficult to reject claims in view of local pressures.

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Shri S. Chatterjee stated that while drafting the proposed Bill, it would be necessary to define the target population and the areas and a proper distinction would need to be made between the Scheduled Areas and the non-STs.

Shri Pradip Prabhu mentioned that the scheduling of areas was an act of historical injustice to the tribals - while the areas dominated by the militant tribals were scheduled, the areas inhabited by non-militant tribals were not scheduled. He mentioned that while drafting the proposed Bill we should redress the injustice. Instead of conferring rights, we should recognize the rights.

Ms. Madhu Sareen stated that the rights of the tribals displaced on account of projects and relocated elsewhere should also be taken care of.

The non-official members of TSG thereafter took up the clause by clause examination of the tentative draft Bill. It was decided that a presentation may be made before the official as well as non-official members of the TSG in the meeting which had been convened on the next day, i.e. 7.2.2005.

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Minutes of the meeting of the Technical Support Group constituted to formulate the 'Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill' held on 7th February, 2005

The Meeting of the Technical Support Group (TSG) was held on 7.2.2005 in Secretary(TA)'s Chamber. The list of participants in the said meeting is at Annexure.

2. Secretary(TA) welcomed the members of the TSG and explained that the proposed legislation was necessitated due to non-implementation of the various guidelines of Ministry of Environment & Forests relating to forest-tribal interface. There were several legislations impinging on the interests of the tribals. The provisions relating to MFP in the PESA Act needed to be conferred on Forest Dwellers (FDs) and reconciled with the provisions of other acts, such as, Indian Forest Act, etc. She further mentioned that while drafting the proposed legislation, rights of nomadic tribes, tribes engaged in jhum cultivation and the rights of the communities over forest land also needed to be taken care of. She also emphasized the need for drafting a very stable and serious Act in time-bound manner.
3. After the address of Secretary(TA), a presentation was made by Sh. Rajeev Kumar, Joint Secretary, regarding the issues/concerns which needed to be considered by the TSG and the strategies to be adopted while formulating the proposed Bill. Sh. Rajeev Kumar, Joint Secretary, Ministry of Tribal Affairs emphasized that the recognition of rights needed to be related to some sort of evidence. He mentioned that while a cut-off date for solving the problem was essential, the main issue to be considered related to the process of accepting the claims of STs as the inhabitant of the area for recognizing the rights. He stated that the Forest Department has generally been insisting on land record or documentary evidence such as the first offence report or the encroachment removal proceedings initiated against the claimant prior to the cut-off date. The onus of proving possession through acceptable documentary proof of possession prior to the cut off date lies with the STs. It is a well-known fact that most of the STs being inhabitant of these area for ages never got an occasion to get their rights recorded as the revenue authorities never accepted the right of the individuals inside the forest areas.
4. He further stated that the most crucial question, therefore, was that of shifting onus of proof from STs to the Forest Department in respect of the possession of land. According to him, this issue needed to be approached in a slightly different manner. He explained that certain communities had been scheduled for particular State/area after meticulously taking various considerations into account, including long duration of their habitation in the concerned area. Therefore, the presumption should be that the members of tribal community scheduled for the particular area in question should be presumed to be the inhabitant of that area unless proved otherwise by the Department. Meaning thereby that the requirement of documentary proof of possession prior to cut-off date should not be insisted upon at least from the members of those communities of STs who are scheduled for that particular area. In respect of these communities, the burden of proof should shift to the Department to prove that they have encroached after the cut off date.
5. Sh. Rajeev Kumar further stated that the proposed Bill should be drafted to recognize the rights of the Scheduled Tribes and those Forest Dwellers whose records are well established/documented, like in case of STs, i.e., when scheduling the Scheduled Areas in 1950 and thereafter declaring STs through Presidential notification. In case, we attempt to recognize the rights of

everybody on forests lands, there is a danger that the genuine inhabitants of the areas may be left out and many ineligible persons get the rights as the proposed local committees would find it difficult to reject anybody's claim due to local pressure.

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6. Sh. S.K. Batra, Deputy Secretary, Ministry of Panchayati Raj, at this stage mentioned that he had been deputed by the Secretary to represent the Ministry. He mentioned that he had been advised to convey the views of the Ministry of Panchayati Raj on the issue. He stated that if the PESA Act administered by the Ministry of Panchayati Raj was implemented more vigorously and to other States, there would be no need for the proposed Bill. He mentioned that his Ministry has recently convened a conference of the Ministers of Panchayati Raj in the States, wherein a number of recommendations have been made for implementing the provisions of the PESA Act and for strengthening the monitoring mechanism.

7. Shri D.R. Meena, Joint Secretary, D/o Legal Affairs mentioned that as per the Allocation of Business Rules, the Ministry of Tribal Affairs could frame a law for tribals only. It was pointed out to him that the proposed Bill will be finalized after consultation with all the Ministries concerned and the concerns expressed by the Ministry of Law would be duly taken care of.

8. Dr. S.M. Sirajuddin, Deputy Advisor, Planning Commission expressed the view that forest dwellers needed to be defined carefully and clearly in the proposed Bill and should certainly avoid recognizing everybody's right without correlation to some kind of evidence.

9. Sh. N.K. Joshi, DG(Forests) and Special Secretary, Ministry of Environment & Forests expressed the view that the proposed Bill sought to address and set right the historical injustice done to the tribals, particularly

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

He stated that the draft Bill should simultaneously ensure forest conservation and sanctity of National Parks (NPs) and Wildlife Sanctuaries (WLSs). He emphasized that it should not lead to destruction of forests and ecology of the country, and large-scale encroachments of forestlands by the groups and land mafia with vested interests in the garb of being tribal and forest dwellers. He argued for conferring these rights on STs.

He further stated that in the draft Act,

- (i) There is no cut-off-date for regularization of encroachments. It is desirable that December, 1993 may be kept as cut-off date as in the Ministry of Environment & Forests' circular.
- (ii) Section 10 of Chapter 2 provides for in situ rehabilitation of all families of tribals and rural poor who do not fall in the category of eligible persons for endowment of rights under provision 3 (1) to 3 (9) of the Bill by granting them heritable but inalienable conditional pattas. This provision may have a far-reaching effect and may result in large scale destruction of forests in the country.

- (iii) In the draft Bill, the forest areas falling inside the NPs, WLSs and other eco-sensitive areas are also covered for endowment. It is necessary to exclude the same.
- (iv) The procedures for identifying the eligible persons through local committees may lead to large scale regularization through oral evidences as it would be difficult to resist local pressures.
- (v) The proposed Bill should be consistent with the national forest policy, national wildlife action plan and basic principles of forest conservation. In the present form it appears contradicting all the above.

Shri Joshi further stated that from time to time, detailed guidelines for recognizing the tribal rights, conversion of forest villages into revenue villages and regularization of encroachments have been issued. These guidelines have been in consistence with the conservation strategy. Unfortunately, because of various reasons at the state Government level, no proposals for resolution of disputes under these guidelines have been formulated. It is absolutely necessary that the draft Bill carries forward from the existing system and ensures recognition of rights of Forest Dwellers.

In view of the above, Shri Joshi was of the opinion that the draft Act needs to be modified suitably so that it is consistent with conservation strategies of the Government, does not result in regularization of ineligible encroachments and destruction of forests, excludes NPs and WLSs and eco-sensitive areas. He opined that, in the present form, the draft Act may defeat the very purpose for which it is purportedly being made.

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10. Sh. Pradip Prabhu stated that while recognizing the rights, the regime of community ownership rights and management of forests also needed to be taken care of. He also mentioned that the PESA Act needed to be extended to the other areas as well.

11. Sh. Wilfred Lakra, MD, TRIFED, expressed the view that the rights of tribals already existed under the various Acts, which only needed to be recognized. He stated that the forests belonged the community (as in the case of Jharkhand, Bastar in Chhattisgarh) and expressed that such rights are duly recognized.

12. Ms. Vandana Shiva stated that there was a need to have a comprehensive law and the proposed Bill should not restrict to historical polarization only. She mentioned that the proposed Bill should address the issue relating to constant eviction and displacement of tribals, community rights, right to access to a bio-diversity, recognition of traditional rights, as also the intellectual property rights. She emphasized various examples in the country where common property resources have been protected due to participatory efforts of the community.

13. Ms. Madhu Sareen reiterated the stand taken in the informal meeting on 5th and 6th further. She further strongly pleaded for protection of traditional knowledge related to forest biodiversity and cultural diversity and stated that there were certain tribes, particularly in Himalayan region, who were moving their cattle from one area to another. She mentioned that the grazing and trans-humant rights of such nomadic tribes also needed to be recognized in the proposed Bill.

14. Shri Sanjay Upadhyay mentioned that while defining the terms "Scheduled Tribes", "Forest Dwellers" and "Recognition of Rights", care needed to be taken that their definition were not in conflict with the provisions of the various legislations. He examined each clause in the existing draft Bill carefully

and corrected as per the discussions putting it in legal framework. The revised version was mailed to all non-official members for further correction in view of the discussions in the meeting.

15. Shri Prasanto Sen also supported the views of Shri Sanjay Upadhyay and stated that the recognition of rights had to be linked with some sort of evidence.

16. Dr. Dhruvad Choudhary again reiterated that the situation prevailing in the North-East needed to be kept in mind while drafting the proposed Bill and suitable provisions made to take care of the interests of tribals engaged in shifting cultivation.

17. Shri Pradip Prabhu emphasized that the proposed Bill should address the issues relating to Intellectual Property Rights (IPRs) of tribals, shifting cultivation and afforestation also and there was a need to improve upon the guidelines.

18. Shri S. Chatterjee, Joint Secretary, Ministry of Tribal Affairs, expressed the view that the proposed Bill should restrict to the Scheduled Tribes and should be implemented effectively.

19. Summing up the discussions, the Secretary (TA) emphasized the necessity of completion of the exercise by the TSG in a time bound manner as the Ministry had been mandated to make the Bill ready latest by 20.2.2004 to enable its introduction in the ensuing Budget Session of the Parliament.

20. It was decided that the TSG may take up the clause by clause examination of the proposed Bill in the light of the views expressed by the various members. The draft Bill was further scrutinized and corrected by the members. It was also decided that the non-official members of the TSG may meet again on Saturday, the 12th February, 2005 for giving a final shape to the proposed Bill. The non-official members agreed to go clause by clause and bring their written suggestion in the next meeting of 12.2.2005 so that the Bill may be finalized and circulated to all members (official and non-official) for consideration in a meeting to be held on 18.2.2005.

The meeting ended with a vote of thanks to the Chair.

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

A meeting was held in the PMO on 28.9.2006 under the Chairmanship of Shri Prithviraj Chavan, MOS, PMO with Ms. Brinda Karat, Hon'ble MP to discuss the report submitted by the JPC on the Scheduled Tribes (Recognition of Forest Rights) Bill 2005 and to resolve certain issues. Meeting was attended by Ms. Meena Gupta, Secretary, MoTA, Sh. Pulok Chatterji, Addl. Secy., PMO, Shri R. Gopalakrishnan, Joint Secretary, PMO, Shri Rajeev Kumar, Joint Secretary, MoTA and Mrs. Kalpana Awasthi, Director, PMO.

2. The MOS welcomed Ms. Brinda Karat to the meeting. He stated that he shared the concern of the JPC towards STs and expressed to resolve of the Government to undo the historical injustice meted out to the STs by putting a legislative frame in place for recognition of their forest rights. He observed that most of the recommendations made by the JPC were by and large acceptable to the Government as they further strengthened the Bill and its objectives. However, a few issues required further discussion as they may not be in the overall interest of the twin objective of recognizing the forest rights of STs as well as simultaneous and effective preservation of forests and wildlife -

- 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.

3. Ms. Karat expressed that the JPC was all through conscious and guided by the fact that the STs face tremendous hardships in the forests in terms of tenurial insecurity and livelihood opportunities vis-à-vis forests and all the recommendations are to further strengthen the Bill. She, however, mentioned that there are large number of forest dwellers other than the STs also in the forest areas for a long time and their rights also need to be simultaneously recognized by the same Bill. According to her, it would be a great injustice to the

other forest dwellers if their rights were not recognized. She further stated that the cut off date of 25.10.1980 as proposed in the Bill "as introduced" is meaningless because it does not recognize rights of those who have settled in 25 years. This would amount to injustice to almost an entire generation. She further argued that a more stringent cut off date of three generation has therefore been proposed for the non-STs.

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

- non-recognition of reasonable classification which exists between STs and non-STs,
- the STs being scheduled for the State whereas there is no such scheduling in case of non-STs,
- Inclusion of some non-STs who may be immigrants from other States or even the country in case of border area, such as Assam, etc.
- the States have not been able to effectively check the inward migration of non-STs to the scheduled areas which they were duly bound to do,
- possibility of flurry of claims from all such non tribals who are more vocal and vociferous as compared to the STs,
- possibilities of social and political dynamics of the Gram Sabha being used by the non-STs in their favour.

The other important aspect of distinction between STs and non-STs relate to ownership rights of MFP and other traditional forest rights which are enjoyed traditionally and historically only by the STs. The inclusion of non-STs in the Bill will seriously erode the traditional regime of rights of STs enjoyed by them for collection of MFP. The proposed amendment of the JPC would amount to extending these traditional rights of STs to others as well resulting in a greater injustice. The combined impact of inclusion of non-STs, extension of cut off date to 13.12.05, revision of ceiling of 2.5 hectares on 'as is whereas basis', expansion of definition of MFP to include stones, slates, boulders, fuel-wood,

timber, minerals, etc. and making the Gram Sabha as the final authority for approving forest rights where quorum low ranging from 5 to 30% or so would be deleterious to the interests of STs as well as forests and wildlife. She, therefore, opined that if the rights of the non-forest dwellers are to be recognized, it should be done through a separate and more rigorous process either under a legislative framework or through 1990 guidelines issued by the MoEF with necessary amendments. She further explained that the cut off date of 25.10.1980, being the date when The Forest(Conservation) Act, 1980 came into force, has, in practice, been recognized as the cut off date. There are pronouncements of the Hon'ble Supreme Court also on the subject and extending the cut off date would unnecessarily put the Bill to a more stringent and perhaps adversely disposed off judicial scrutiny. In any case, the forest rights of the STs would be sufficiently recognized with respect to the cut off the date of 25.10.1980, as they are staying in the forests historically and certainly much prior to 1980. If Bill is aimed at undoing the historical injustice, the cut off date of 1980 is not too distant in history.

5. The Additional Secretary in the PMO expressed the view that we need to simultaneously keep the issue of protection and preservation of forests and wild life in the core focus of the Bill and since The Forest (Conservation) Act, 1980, is an important milestone in that direction, it would not be advisable to dilute the cut off date from 25.10.1980 to any other subsequent date. The options of extending the date to 13.12.05 i.e. the date of the introduction of the Bill in Parliament or 12 years prior to this date of introduction, being the date of adverse position, would not be appropriate.

6. After discussing the options in respect of these two issues, the need to make a distinction between STs and other forest dwellers and keep them on a different footing with more stringent process of recognition through a separate process at a separate time was well appreciated and agreed to, in principle. As the consensus on the first two issues of the inclusion of the non-STs and the extension of cut-off date from 1980 to 2005 could not be reached, discussion on the other three issues i.e. revision of ceiling of 2.5 hectares, the authority of the Gram Sabha and the expansion of the definition of MFP could not take place. The MOS PMO desired that the efforts should, therefore, be made to reach the consensus and pilot the Bill in the coming winter session of the Parliament.

7. However, during discussion after Ms.Karat left, it was generally agreed that the Gram Sabha cannot be made the final authority for decision making as suggested by the JPC though the ceiling of 2.5 hectares may be considered for upward revision to say 3.5 hectares to 4 hectares, of course only in case of STs.

The meeting ended with the vote of thanks to the Chair.

CHAPTER II-

DEFINITIONS

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

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

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

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

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

(d) "Forest village" means all Forest villages, Forest Settlement villages, Fixed demand holdings, all types of Taungya settlements including the 'temporary' ones set up by state forest departments in the past for which secure land and forest rights have still not been granted

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

(f) "Claim" is an assertion for recognition of an individual and/or community/common forest right to a Competent Authority, submitted (why have we removed the option of oral submissions?) in writing and reasons (or evidence?) recorded thereof

(g) "Claimant" means individual and/or a group/community of forest dwellers or Scheduled Tribe who have migrated to an area other than where they are scheduled who file claim (s) for rights under this Act. (I am not convinced that the non-migrated STs should be excluded from this process/category)

(h) "Forest dwellers" are those individuals and/or communities who primarily reside in and around forests and includes Scheduled Tribes who have migrated to an area where they are not scheduled, and would further include fisher, nomadic and pastoralist communities and who depend on the concerned forests/forest land for bonafide livelihood needs.

(i) "Competent Authority" would include a Gram Sabha, Sub Divisional level committee, District Level Committee, their specified equivalents in the North Eastern states and all appellate authorities under this Act- (need state and central level authorities also)

(j) Shifting Cultivation- means rotational cultivation on upland slopes which requires lands being left fallow for various periods for restoration/rejuvenation.

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

(l) Shifting Cultivation land, including fallow land under natural regeneration in the shifting cultivation cycle, means arable (and not forest) land.

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

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

(o) Gram Sabha - Gram Sabha would shall consist of all adult members of a village or a group

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village level. In the case of unsurveyed villages and/or old habitations/forest villages which do not come under any Gram Panchayat, or where electoral roles have not been maintained, Gram Sabha shall consist of all resident adults

(e)(p) Village- shall be defined as under the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA) for schedule V areas and under the respective State Panchayat Acts for areas other than scheduled areas (but there are many unsurveyed villages or settlements considered 'encroachments' by state FDs and probably also forest villages in some states which do not come under any gram Panchayat - we need to provide for them also as they are likely to have the most marginalised forest dwellers). For North Eastern States where there are no Panchayats, Gram Sabha would mean traditional village institution. (We need to ensure representation of fisher/nomadic/pastoral other seasonal use communities dependent on local forest resources where appropriate - where will that come? We also need to provide for multi-village institutions dealing with traditional use patterns transcending single village boundaries).

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(p)(q) Sub Divisional Level Committee- is a Sub Divisional Level Committee as defined under Section

(q)(r) District Level Committee- is a District Level Committee as defined under Section

(r)(s) Monitoring Committee- is a State Level Committee as defined under Section

(t) State Tribunal for recognizing Forest Rights- is a tribunal with judicial powers appointed by GoI under this bill, and whose costs shall be borne by MoTA, who shall be the final authority for deciding on appeals against decisions of the competent authority (this could be combined with the monitoring committee in (s) above but should be beyond the influence and control of state authorities to ensure that the bill is not misused for diverting forest land to other interest groups)

(u) Central Tribunal/Forest Rights Authority is a statutory body set up by GoI/MoTA/inter-ministerial Committee? for overall supervision and monitoring implementation of this Act in a transparent and just manner.....

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

CHAPTER-III

RIGHTS OF FOREST DWELLERS

3 (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government hereby vests Forest Rights to Scheduled Tribes where they are scheduled, in respect of forest land and forest based resources including ownership of minor forest produce. (But surely there needs to be some transparent mechanism for identifying which forest rights are vested on which STs and on which basis which has space for facilitating negotiated agreements related to competing claims. Otherwise there could be chaos as far as assertion of 'community' rights is concerned. There is also the grave danger of landless tribals (or non-tribals using the former) for grabbing large chunks of forest land. The proviso below would only lead to years of litigation/disputes after the damage is done. This could also leave the most marginalised and remote STs out of the Bill's ambit with their not even finding out about the rights and entitlements this bill bestows on them. There needs to be a process which enables all such right holders to assert their claims and these being recorded in a transparent manner)

Politics of Property rights

Provided that in case any forest right so vested is disputed by any state department or local authority, the Competent Authority shall mandatorily consider the records prepared at the time of scheduling

- (2) The rights of the forest dwellers other than Scheduled Tribes mentioned in Section 3(1) would be recognized after a forest dweller presents a claim to the Competent authority and the same has been recognized after a due verification procedure under Chapter IV after giving due regard to nature of admissible evidence under Chapter V of this Act. (My view is that we should stick to the same procedure of filing claims for everyone with the proviso that the claims of STs will be accepted on the spot after resolving any conflicts with other ST claimants while those of the rest will need to go through a more stringent verification procedure. To ensure that all potential claimants file claims, awareness about the new law should be spread to remote areas through setting up jathas which move around to spread the message and provide assistance in filing claims)

The recognition of rights of Scheduled Tribes who have migrated would follow the same procedure as defined under Chapter IV and Chapter V in case such migrated scheduled tribes want their forest rights recognized in the area where they have migrated.

Provided that such forest dwellers or migrated Scheduled Tribes have occupied forest land before 31.12.93. At the behest of the amicus curiae and CEC, MoEF was asked last Friday to file an affidavit this Friday (Feb 18) indicating whether they favour 1980 or 1993 as the cut off date - need to check from MoEF/CEC what is happening on this count.

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

- a) forest land under their occupation for habitation or for subsistence agriculture and/or
b) rights and /or uses, entitlements of forest dwellers in erstwhile princely states, Zamindari or such intermediary regimes, and/or
c) access to and ownership of minor forest produce from areas traditionally used by them, and/or
d) other common property ownership and/or use rights or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of fisher/ nomadic /pastoralist communities/communities and/or
e) shifting cultivation and rotational cultivation, on a household and/or community basis, and/or
f) their traditional habitations for Primitive Tribal Groups
g) disputed lands such as erstwhile nistari jungles and/or orange areas in Madhya Pradesh and Chhattisgarh; Dalli lands in Maharashtra; Gair Mazarua Am-Lands (being renamed Anabad Jharkhand Sarkar lands) in Bihar and; Khuntkatti Lands in Jharkhand; unsurveyed areas, Reserved Lands, Protected Lands, Unreserved lands, Khesra forests, Gramya Jungles and other such categories of forest lands under the jurisdiction of Revenue and/or Forest Department in Orissa and such lands where claims are disputed under any other nomenclature and/or
h) Conversion of Pattas, or leases or grants issued by any local authority or any State department on forest lands to permanent titles,
i) Conversion of Forest villages, old habitations and unsurveyed villages, whether notified or not and including those where the process of conversion into revenue village is not complete (I feel the yellow bit can be deleted), into revenue villages.
j) access to local bio-diversity and community rights to intellectual, managerial and traditional knowledge related to forest biodiversity and cultural diversity
k) Community forests and other common lands for meeting diverse bonafide livelihood needs.
k)l) any other traditional right not listed above excluding hunting
minor minerals and local water bodies? Shouldn't these also be mentioned?

Provided however that such forest rights under Section 3 are exercised for bonafide

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Provided further that the individual rights to forest land in no case would exceed 2.5. ha per family (but this needs to be different for irrigated and unirrigated land) of the Scheduled Tribe or a Forest Dweller and common property/community rights to forests, common lands, pasture lands shall be site specific based on customary usage and/or recorded rights and negotiated with other claimant user communities. In the case of individually cultivated shifting cultivation lands, the permissible area per household shall be multiplied by the number of years of the shifting cultivation cycle while in the case of community owned shifting cultivation land, the area shall be based on customary ownership.

Provided further that such rights so recognized would include the responsibility with concomitant authority (and resources as appropriate) for of-protection, conservation and regeneration of forests and biodiversity.

Provided further that the recognition and exercise of rights within Wildlife Sanctuaries and National Parks shall be in consonance with the objectives of wildlife and biodiversity conservation by ensuring that the establishment, management and monitoring of protected areas takes place with the full and effective participation of, and full respect for the rights of local forest dwelling communities mandated by the Convention of Biological Diversity.

Influence Int of Law.
Full and effective participation by 2008 of indigenous and local communities in full respect of their rights and recognition of their responsibilities in the management of existing and the establishment and management of new, protected areas" (The said Programme of Work also "Recalls the obligations of Parties towards indigenous and local communities in accordance with Article 8(j) and related provisions". This is from the programme of work agreed to under the CBD last Feb – how can we integrate it's essence in the bill? That recognition of rights in PAs needs to be accompanied by transforming PA management/governance such that local communities are treated as active management partners – can we use this law to overcome some of the deadly provisions of the Wildlife Protection Act which had made life hell for the tribals/forest dwellers?

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

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

CHAPTER IV

AUTHORITIES UNDER THE ACT

4(1) Gram Sabha- Gram Sabha would consist of all adult members of a village whose names are included in the electoral rolls at the village level; need to provide for unsurveyed, unrecognized, old habitation type settlements which may not have electoral rolls? Also need to provide for representation of non-resident seasonal users/right holders such as nomadic pastoralists. Claims related to common lands used by multiple villages would also require provision for multi-village gram sabhas, equivalent of Pargana level tribal institutions.

4(2) Sub Divisional Level Committee – There shall be a Sub Divisional Level Committee consisting of
a. Sub Divisional Magistrate who will be the Chairperson

- 41
- c. Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP) who will be the Secretary
 - d. Two respected civil society members from the Sub- Division/ Block/Taluka, at least one of them being a woman, recognized for their understanding of forest rights/-tenurial issues in the area to be ~~appointed by the District Collector~~ this is problematic – Should be by an academic/activist organisation with the required credentials. Institutions such as TiSS, tribal research centres, could be assigned the task of preparing lists of suitable candidates from which the Collector could select?
 - e. In the case of the North Eastern States
(If we have the zila parishad chairman at the district level, we should have the Panchayat Samiti chairs coming within the sub-division here)
Hasn't this become too dominated by the bureaucracy?

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

- a. Collector who shall be the Chairperson
- b. Chairperson ~~man~~ of the Zilla Parishad
- c. Divisional Forest Officer
- d. District Level Tribal Development /Welfare Officer, who shall be the Member Secretary
- e. A (why only one at this level? I think it should be two as at the sub-division level) renowned non-government person known for her/his understanding of tribal-forest issues.
- f. In the case of the North Eastern States a representative selected by the confederation of tribal councils such as autonomous regional councils.

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

- a) Secretary in charge of Tribal Welfare
- b) Commissioner/Director Scheduled Tribe
- c) Secretary Forests
- d) Principal Chief Conservator of Forests
- e) Secretary Revenue
- f) Director land records ??
- ge) Two renowned non-government persons, at least one of them being a woman, known for her/his understanding of tribal-forest issues

4(5) State Tribunal for recognizing Forest Rights- There shall be a tribunal with judicial powers appointed by GoI under this bill in each state and UT, and whose costs shall be borne by MoTA, who shall be the final authority for deciding on appeals against decisions of the competent authority (this could be combined with the monitoring committee above but should be beyond the influence and control of state authorities to ensure that the bill is not misused for diverting forest land to other interest groups)

4(6) Central Tribunal/Forest Rights Authority – There shall be a statutory Forest Rights Authority set up by GoI/MoTA/inter-ministerial Committee? for overall supervision and monitoring implementation of this Act in a transparent and just manner.....

At all levels, special efforts shall be made to involve local community representatives, NGOs and experts who can advise on the ecological implications of the claims, in order to take decisions that are in line with the overall need to conserve natural ecosystems and biodiversity.

CHAPTER V

NATURE OF EVIDENCE AND RECORDING OF FOREST RIGHTS

5. Nature of Evidence:

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

- a) Government Records published or not and would also include Gazetteers. Census reports. Settlement

Commission Reports, Circulars, Quasi Judicial and Judicial Records, pattas and parchas given by erstwhile rulers, zamindars or village chiefs or

- 42
- b) Documentary evidence from any prior research or documentation of a-reputed institutions/individuals, including reports/publications of renowned anthropologists/Anthropological Survey of India reports, survey maps or
 - c) Relevant circumstantial evidence including witnesses of neighbours and of senior citizens and local inquiry by a local committee or
 - d) An affidavit submitted by the claimants which is approved in the Gram Sabha.

Recording of Forest Rights

5 (2) The District Collector shall pursuant to vesting of forest rights to Scheduled Tribes under Section 3(1) and other forest dwellers under Section 3(2) issue Orders recognizing the forest rights and effecting necessary entries in the revenue and forest records specifying the nature and extent of such forest rights in a time bound manner as prescribed under the Rules under this Act. (The danger here is that section 3(1) may leave the STs at the mercy of revenue/forest officials as in the past with no transparent procedure with multi-disciplinary involvement ensuring that their rights are duly recorded. Maybe what we should provide for is that the competent authorities record the rights of STs while simultaneously accepting claims of others?)

(Here, we also need to think seriously about what additional safeguards may be required) - is there no need for final clearance at the state and central levels? Or will making the penalties for wilfull misuse of the act more stringent for transferring land to ineligible people be good enough?

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CHAPTER VI

Miscellaneous

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

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

6(3) Penalty for contravention of the Provisions of the Act- Who ever contravenes or abets the contravention of any of the provisions of Section 3, shall be punishable with simple imprisonment for a period which may extend to thirty days (is this enough in case fraudulent transfer of large land areas to ineligible persons/agencies is detected? I think it needs to be more stringent - maybe one to five years depending on the severity of the offence. What is the penalty for violation of the FCA? We mustn't forget that the pressures for misuse will be enormous with industry, MNCs, mining companies and real estate agents itching to lay their hands on forest lands.

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

6(5) Savings- In the case of PAs.....

In the rules, we should provide for the district collector of each district with forest land creating a cadre drawn from civil society organisations, leaders of traditional tribal Panchayats and retired front line govt staff to function as a jatha for launching a campaign in each area making people aware of the new law and assisting them with understanding procedures and filing claims. This could be on the pattern of the literacy campaign, gyan vigyan samiti etc. MoTA could make available a budget of say Rs 1 lakh per subdivision at the disposal of the tribal/social welfare officer for the jatha's activities.

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Comments of the Ministry of Tribal Affairs on the suggestions given in Annexure-I to Chairperson, National Advisory Council's letter No.499/CP/NAC/05 dated 21.2.2005 relating to draft "Scheduled Tribe & Forest Dwellers (Recognition of Forest Rights) Bill, 2005"

- I. It may be mentioned that this Ministry was mandated to formulate a "Scheduled Tribe & Forest Dwellers (Recognition of Forest Rights) Act". A Technical Support Group (TSG) was accordingly established on 28.1.2005. In the first meeting of the non-official members of the TSG was held on 5th and 6th Feb., 2005 itself, it was clarified that the Ministry was in favour of drafting a Bill only for recognition of the rights of STs as historical injustice has been done in respect of STs who have been living in and around forests for generations. It was further clarified that there are strong documentary evidences prepared at the time of scheduling the Scheduled Areas and then scheduling the Tribes and also under various documents, such as, the working plans of the Forest Department and documentation of traditional rights, such as NISTAR, etc. during the process of declaration of the forests, various research work, gazetteers, etc. The amended Bill is now restricted to recognition of rights of the STs only.
- II. The Bill has not been made applicable to Jammu & Kashmir due to Article 370 of the Constitution. As regards the Andaman & Nicobar Islands, the population of the STs is very very small as compared to the non-STs. When the earlier Bill was for both STs & non-STs, its operation was not extended to A&N Islands as, in any case there are special Regulations in force in respect of Andaman & Nicobar Islands. In any case recognition of forest rights of the PTGs and the other STs of A&N did not have the same dimension in terms of persistent threat of removal of encroachment as in the case of other areas of main land inhabited by the STs. However, in view of the fact that Bill now confers right only on STs, its operation has been extended to A&N Islands also.
- III. The proposed Bill seeks to regularize the habitations and occupations of the ST communities in the protected forests, reserved forests, and national parks and even in the wild life sanctuaries. The reasons are historical & obvious as Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The notion of conservation of ecological resources by forest dwelling tribal communities have been referred to by most ancient manuscripts and scriptures that modern humanity knows. **The colonial rule somehow ignored this reality for more economic gains** and probably for good reasons prevalent at that time. Post independence, in our enthusiasm to protect natural resources we continued with colonial legislations and adopted more internationally accepted notions of conservation rather than learning from our rich traditions where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas for production forestry somehow left the bona fide interests of the tribal community much to be desired in the legislative frame that we enacted in the regions where tribal communities primarily inhabit. The simplicity of tribals and

Quote on
colonisation

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their general ignorance of modern regulatory frameworks precluded them from asserting genuine claims to resources where they belong and depended upon. **The modern conservation approaches also advocate exclusion rather than integration and advocate survival of only wildlife.** It is only recently that forest management regimes have in their policy processes realized that integration of tribal communities who depend primarily on the forest resources cannot but be integrated in their designed management processes. It underlines that forests **have the best chance to survive if communities participate in its conservation and regeneration measures.** Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests becoming abode of undesirable elements. The STs are residing inside sanctuaries and national parks and in fact their presence is also necessary for the survival of these parks as they only perform forestry operations. That was precisely the reasons behind the concept of forest villages. **The Ministry has, therefore, included national parks and sanctuaries in the proposed Bill though Ministry of Environment & Forests have pleaded their exclusion.** In view of the fact that proposed Bill is now restricted to recognition of rights of only STs & that too for occupation/ forest rights existing prior to 25.10.1980, inclusion of national parks & sanctuaries is considered **essential to have a human face to the management of these areas.** More & more areas are being added in National Parks & sanctuaries and thereby creating a potential risk of continued conflicts in future.

- IV. The cut-off date of 25.10.1980 i.e. the date of enactment of the Forests (Conservation) Act, 1980 has been provided.
- V. The provisions relating to the shifting cultivation and rotational cultivation in the definition of forest rights has since been removed from the proposed Bill.
- VI. A separate Section 3(8) has been added to provide the duties of the forest right holders and specific provision has already been added in Section 3(6) that the rights so recognized would include the responsibility of protection, conservation and regeneration of forests. It has also been specifically included in Chapter 6 that engagement in any unsustainable use or destruction of wild life, forests, or any other biodiversity or felling of trees would constitute an offence under this Act which shall not only be punishable but if any offence is committed by any forest right holder more than once his forest right would be de-recognized after following a due process.
- VII-VIII. It has been provided in Section 3(8A) that the forest right holder shall ensure that forest land or trees which have grown on forest land would not be cleared for any non-forestry purposes, including re-forestation.
- IX. It is estimated that there are around 3000 forest villages in the country. These villages are deep inside the forest areas and were established during the British period for supply of labour for the

forestry operations. These villages are well recoded in the records of Forest Department. The Ministry of Environment & Forests are not in favour of shifting the forest villages from the forests and it is their stated policy (enclosed) to convert these forest villages into revenue villages. The process of conversion of forest villages into revenue villages is already on and a number of forest villages have already been converted into forest villages. Towards this objective, the Planning Commission has also appointed a Tripartite Committee in the Ministry of Environment & Forests having representation of the Ministry of Tribal Affairs, National Commission for Scheduled Tribe and the Planning Commission for considering the proposals of State Governments for development of these forest villages. The funds to the tune of Rs. 230 crores have also been provided by the Planning Commission under this Ministry's Scheme of Special Central Assistance to Tribal Sub Plan during 2005-06 for development of these forest villages. The Ministry of Environment & Forests have also issued a general circular on 3.1.2005 (enclosed) to all the State/UT Governments according general approval under Section 2 of Forest (Conservation) Act, 1980, allowing diversion of forest land to Government Departments for providing basic and essential developmental facilities in the tribal/forest villages, such as, schools, dispensary/hospital, electric and communication lines, drinking water, etc. So, there is no logic in shifting these forest villages as their existence is essential for forestry operations. Any move to shift these villages is likely to aggravate dissatisfaction amongst the forest dwelling Scheduled Tribes further, making it conducive for naxal outfits to take advantage of the situation and wean away the peace-loving tribal people from their habitat to join their outfits, thereby creating a law and order situation.

X. The position is as indicated in item No.VII and VIII above.

XI. Number of checks and balances have been provided in the proposed Bill to take care of any possible misuse of the provisions. The specific provisions include -

- All rights would be heritable but inalienable or non-transferable;
- The cut off date of 1980 has been provided and all the occupations or acquisition of forest rights must exist prior to the cut-off date. The use of the forest rights has been restricted to the subsistence and livelihood needs alone;
- The commercial use of any kind has been specifically excluded;
- Specific Section has been added enumerating the duties of forest right holders;
- Penalties have been provided in Chapter 6 including de-recognition of the vested right if any offence has been committed more than once;
- Gram Sabha has been made the competent authority to initiate the process of recognition - of - rights of individuals/community and preparation of the records in favour of forest right holder. Involvement of the democratic institution at the grass root level is in tune with the provisions of PESA Act, 1996 and aims at empowering the local communities in management of their natural resources;
- The sub-Divisional and district level committees have representatives of the democratic institutions, NGOs, Experts from society, officials of revenue, forest and tribal

development department and thus seek to provide a most representative forum for correct recording of the forest rights.

- Appellate powers have been given to the Sub-Divisional and the district-level committees;
- The State-level monitoring committee has also been put in place which has also been mandated to conduct periodic check through random selection of sites;
- The Gram Sabha is supposed to prepare map giving details of the rights and at the same time also identify ineligible encroachers;
- It has also been provided in the Rules that the nodal agency would prepare maps of appropriate resolution through satellite imagery to help know the present status of occupation of forestland for habitation and agriculture.
- Woman representative is also included in the committees.

XII-XVI. The composition of the committees along with their functions have been suitably modified. The composition and functions of Gram Sabha and the committees have specifically been outlined in the Bill/Rules.

XVII. The procedure for identification of forest rights along with identification of ineligible encroachments have been provided in the rules in Chapter III including the nature of evidences in Chapter V.

XVIII. Detailed provision for penalty for contravention of the provision of the Act and also the offences by Government authorities under this Act have been provided. A simple imprisonment up to 30 days has been considered appropriate as the proposed Bill also, in addition, provides for de-recognition the forest rights in case the offence is committed more than once. The penalties provided under Indian Forest Act, Forest Conservation Act, 1980 and other legislations are in any case there and not barred by this Act.

Comments on the Draft Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill

Chapter 1: Preliminary

It deals with various definitions. Hence, no comments.

Chapter 2: Rights of tribals and poor forest dwellers.

This Chapter has proposed the manner in which title to forest land has to be defined.

Since it deals with the forest land, this Department has no comments to offer however, it is in agreement with the provisions of this Chapter in principle. One suggestion can be considered i.e., highest priority to be accorded to the preparation and updating of land records in tribal areas with active participation of tribal community. The following steps may, therefore, be considered:

IMP

- a) Comprehensive survey operations to be undertaken to create record of rights wherever necessary.
- b) Tribal community/Panchayat/Gram Sabhas to be actively associated with the process of updating of land records.
- c) Adequate number of tribal youths be trained in methods of updating of land records before starting of survey and re-survey.
- d) Collector/DC in the Fifth Scheduled Areas be empowered to take up correction of records even after expiry of period of limitation.
- e) Immediate enjoyment survey to establish rights of the tribals to be undertaken in collaboration with representatives of NGOs, community based organizations and political parties.
- f) Complete ban on all forms of transfer of tribal land.

Chapter 3: Procedure for verification of claims:

This Chapter defines the composition of the local Committee to be constituted to verify the claims. The composition suggested for this Committee appears to be in order as it, more or less conforms to the recommendations of Shri B.N. Yugandhar Committee. In Clause 4(3), the composition of the District level Committee has been indicated. However, the Chairperson of this Committee has not been indicated. The District level Committee should be headed by the Collector/DC of the District.

The procedure for disposal of claims etc. appears to be in order.

Chapter 4: Evidence and Criteria for Acceptance of Claim:

The procedure proposed for nature of evidence to be adduced before the local/block level Committee appears to be in order.

Chapter 5: Publicity and Training of Committee Members:

The proposed method of training and publicity appears to be in order.

Chapter 6: Miscellaneous:

This chapter deals with verification of rights and conflict resolution methods. It appears to be alright and this Ministry has no objection to its acceptance.

What are the comments on? The Bill itself has nothing about publicity?



सत्यमेव जयते

भारत सरकार
ग्रामीण विकास मंत्रालय
भूमि संसाधन विभाग

ब्लॉक सं० 11, छटा तल, सी०जी०ओ० कॉम्प्लेक्स, लॉधी रोड, नई दिल्ली 110 003

GOVERNMENT OF INDIA
MINISTRY OF RURAL DEVELOPMENT
DEPARTMENT OF LAND RESOURCES

Block No. 11, 6th Floor, CGO Complex, Lodhi Road, New Delhi-110 003

D.P. Roy
Director(LR)
Telefax: 24360946

No. No. 15015/7/2004-LRD
Dated 16th February, 2005

Dear Shri Kumar,

Kindly refer to your d.o. No. 17014/4/2005-S&M(Pt.) dated 14th April, 2005 regarding meeting of the TSG for formulation of "Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill".

The comments of the Ministry of Rural Development on the provisions of the above Bill are sent herewith. I have been directed to attend the next meeting of the TSG to be held on 18th February, 2005.

With regard,

Encl. As above.

Yours sincerely,

(E.P. Roy)

Shri Rajeev Kumar
Joint Secretary
Ministry of Tribal Affairs
Shwasti Bhawan
New Delhi

Pl. bring in the
meeting
W
WCSM

1. Ministry of Tribal Affairs has now formulated the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill. The Ministry should be complimented for addressing this very vital issue with both the sensitivity and the caution it called for and for doing this on time.
2. The Bill has proposed clear distinction between Scheduled Tribes and non-Scheduled Tribes in the matter of vesting of rights in keeping with the suggestion made by PMO. The Bill restricts rights only to Scheduled Tribes.
3. The Bill has not been made applicable to Jammu and Kashmir due to Article 370 of the Constitution but its operation has been extended to Andaman & Nicobar Islands given the fact that it now confers rights only to STs.
4. The Ministry's comments on why it feels it essential to have the same regime for national parks and wild life sanctuaries is being reproduced in full:

"The reasons are historical and obvious as Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The notion of conservation of ecological resources by forest dwelling tribal communities have been referred to by most ancient manuscripts and scriptures that modern humanity knows. The colonial rule somehow ignored this reality for more economic gains and probably for good reasons prevalent at that time. Post independence, in our enthusiasm to protect natural resources we continued with colonial legislations and adopted more internationally accepted notions of conservation rather than learning from our rich traditions where conservation is embedded in the ethos of tribal life. The reservation process for creating wilderness and forest areas for production forestry somehow left the bona fide interests of the tribal community much to be desired in the legislative frame that we enacted in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting genuine claims to resources where they belong and depended upon. The modern conservation approaches also advocate exclusion rather than integration and advocate survival of only wildlife. It is only recently that forest management regimes have in their policy processes realized that integration of tribal communities who depend

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primarily on the forest resources cannot but be integrated in their designed management processes. It underlines that forests have the best chance to survive if communities participate in its conservation and regeneration measures. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests becoming abode of undesirable elements. The STs are residing inside sanctuaries and national parks and in fact their presence is also necessary for the survival of these parks as they only perform forestry operations. That was precisely the reason behind the concept of forest villages. The Ministry has, therefore, included national parks and sanctuaries in the proposed Bill though Ministry of Environment and Forests have pleaded their exclusion. In view of the fact that proposed Bill is now restricted to recognition of rights of only STs and that too for occupation/forest rights existing prior to 25.10.1980, inclusion of national parks and sanctuaries is considered essential to have a human face to the management of these areas. More and more areas are being added in National Parks and sanctuaries and thereby creating a potential risk of continued conflicts in future."

The point of view taken by the Ministry is completely justified and a new conservation paradigm based on inclusion of the adivasis needs assertion as it is both ethically and environmentally sound. The key issue is that the existence of the adivasis has been prior to the boundary-making for sanctuaries. Without this provision, the entire Act would be meaningless.

5. Very importantly the cut-off date of 25.10.1980, i.e. the date of enactment of the Forests (Conservation) Act, 1980 has been provided as indicated by PMO.
6. The provision relating to shifting cultivation and rotational cultivation in the definition of forest rights has been removed from the proposed Bill on suggestions from PMO.
7. A separate Section has been added to provide the duties of forest right holders that the rights recognized would include the responsibility of protection, conservation and regeneration of forests.

8. As may be seen under (9) of the note, a number of checks and balances have been provided to take care of the any possible misuse of the provision.

9. This is a landmark legislation in the matter of providing rights to adivasis which has been their due and which has eluded them so far. Given the fact that now the Bill is ready, the Ministry may be directed to bring it to the Cabinet early and have it passed in the current session of the Parliament.

(R. Gopalakrishnan)
February 25, 2005


~~VSEP~~

Principal Secretary to PM

Substantial improvements have been made in the draft Bill placed at Annexure VI. Most of the concerns listed in the note of the undersigned dated 17.02.2005 appear to have been addressed.

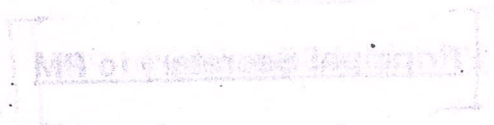
- 2. A few matters, however, still need to be addressed :
 - I In the list of definitions in Section 2 (1), the words "bona-fide livelihood means" and "commercial purposes" have not been defined. Definitions of these words are important as their interpretation will critically determine the impact both on tribals as well as on forest environment.
 - II It needs to be laid down either in the Act or in the Rules that State level indicators showing the status of forests on the date of coming into force of the Act would be developed. A mechanism would also have to be identified to assess impact of the law on these indicators on an annual basis.
 - III There should be a provision that the MoE&F, in consultation with the States, would evolve guidelines for sustainable levels of harvesting NTFPs for different forest

types by sub-ecological zones. These guidelines would then be circulated and explained to all concerned authorities and stakeholders.


28/2/05

(Pulok Chatterji)
28.02.2005

Principal Secretary





पृथ्वीराज चव्हाण
राज्य मंत्री
PRITHVIRAJ CHAVAN
Minister of State

OUT-TO-DAY

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31/10
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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.

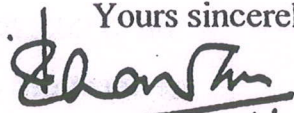
Issues like the cut-off date, rights over minerals and timber and Gram Sabha recommendations to be vetted by Sub Divisional and District Committees prior to conferring land rights, were also discussed. However, it was felt that these aspects formed the core of the proposed legislation and it is not desirable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

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

*OSD
31/10/06
P.P.
31/8
OSD*

आर. किन्दिया
A.R. KYNDIAH



मंत्री
जनजातीय कार्य एवं

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

Dear Shri Chavanji,

Date October 26, 2006

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

My considered views are as follows:

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

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

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

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

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

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

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

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

Note given by the Ministry of
Panchayati Raj after the
meeting of GoM held on 13.11.05

**NOTE FOR THE SECOND MEETING OF THE GROUP OF
MINISTERS ON THE SCHEDULED TRIBES (RECOGNITION OF
FOREST RIGHTS) BILL, 2005.**

The Ministry of Tribal Affairs (MoTA) had introduced the above Bill in the Lok Sabha on 13.12.2005. The Bill was referred to a Joint Parliamentary Committee (JPC) before which the Ministry of Panchayati Raj (MoPR) also deposited and presented the position of the Ministry. Our written comments, based on PESA, as per flag 'A' had also been sent.

The JPC had made several important amendments to the Bill whereupon, a Group of Ministers (GoM) had been set up to harmonise the conflicting points of view.

The consensus reached by the GoM was as follows (page 2 of 25 of Note).

The Bill was to be restricted to the Scheduled Tribes

2.2(i): The cut of date of 25.10.1980 should not be revised.

2.2(ii): The ceiling of 2.5 hectares of tribal occupation on forest land be retained.

2.2(iii): The Gram Sabha need not be made the final authority for approving 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 forward the same to the Sub Divisional Level Committee.

2.2 (iv): Minor Forest Produce should not include stones, boulders, implying right over to ~~ride~~ over minerals.

2.2(v): There should not be rights for (motorized) transport for disposal/use of minor forest produces.

It was decided that the Chairman would hold further discussions with the Political Parties and call for another GoM for taking a final decision.

3.: Many recommendations of the JPC, which the MoTA referred to as minor and consequential changes which are not agreeable (Sic) i.e. have not been accepted by the MoTA, (Annexure 'A' (page 6-7 of 25) Many of these are major issues and according to the MoPR, these issues cannot be held to be minor.

MOTA does not agree with:

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Position of MoPR	Position of MoTA
<p>MoTA has not agreed to the expanded definition of FDSTs forwarded by the MoPR to include the term "in and around" the forests. It may be reiterated that the MoPR had stressed this formulation as 50% of all tribals reside within one Kilometer radius of forests as they had been traditionally disposed from the center to the periphery due to colonial and post independence forest policy. While these STs have been removed from forest land by successive governments, they continue to derive their livelihood from the forest, forging, collecting MFP etc. After spending the day within the forest, these STs are forced to return home to the forest periphery where they dwell. It is the rights of these STs that was sought to be protected in this Section.</p>	<p>Revision of the definition of 'fdST' to include the members or community of the STs who primarily reside in the close proximity of forests (Sec.2(c).</p>
<p>III.8 : Vesting of rights on land occupied by the families of FDSTs leased to them by the Forest Departments and taken away subsequently by the Forest Department or other agencies must be recognized for the purposes of recognition of Forest rights. In fact, large concentrations of dispossessed Tribals in Madhya Pradesh, Jharkhand and Chhattisgarh are example where tribals had been allotted lands and given forest pattas which were subsequently cancelled.</p>	<p>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 or other agencies [Section 3 (2)]</p>
<p>III. 10: The MoPR strongly feels that the vesting of equal rights in female members of the STs is not a negotiable proposition. Female STs must have equal rights vis- a- vis lands to be allotted.</p>	<p>The MoTA feels that the provision u/s 3 (5) relating to vesting of equal rights in the female members of STs and other forest dwellers is major minor issue, to which the MoTA is not agreeable.</p>

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B

Mo-1A does not agree to

<p>III.19: Non application of which would be a clear violation of PESA.</p>	<p>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)</p>
<p>IV.6 : The MoPR had requested and recommended for inclusion of additional words "<u>and other</u>" in this item. This is because man <u>lands</u> in PESA areas are today being acquired in tribal regions for non developmental purpose such as private industries, industrial housing complexes. It is important to explicitly state the composition and type of land which will be given to STs in the event of displacement due to State development and other interventions.</p>	<p>Eviction or removal from forest land of forest dwelling Scheduled Tribes or other traditional forest dwellers till the recognition and verification procedure is completed. This is acceptable subject to deletion of the words "or other traditional forest dweller". [Section 4 (5)]</p>
<p>Sec.2(b) (page 10) With regard to the composition of the Expert Committee, the representative of the PRIs, especially in the level of Gram Panchayat and the Block Panchayat should be included in the Expert Committee which should include experts from the locality rather than experts appointed by the Central/State Ministry for Tribal Affairs. The latter would have no local knowledge as compared to representatives of the people institutions. Again in PESA areas of Schedule V States, PESA is especially empowering enactment which vests particular emphasis on traditional peoples' institutions.</p>	<p>Notified by the Central Government after open process of consultation by an Expert Committee, which includes experts from the locality appointed by the Ministry of the Central Government dealing with tribal affairs and shall also be according to the procedural requirements arising from sub-section (1) and (2) of section 4.</p>
<p>3(k) - Page 12: The right of settlement of all forest villages, old habitation, unsurveyed villages and other villages in forest whether recorded, notified, or not, into revenue villages has been accepted.</p>	<p>(k) Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.</p>

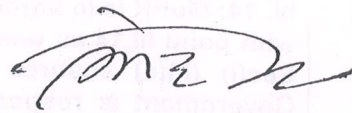
MOTA does not agree to:

(5/8)

<p>III. 11: MoPR is in favour of giving full decision making powers to the communities that partially or fully practice shifting cultivation over land use or any land that falls in which in the traditional boundaries or range of that community.</p>	<p>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)]</p>
<p>III.13: Refers to Sec 5 (1)(e). The power to sell and harvest minor forest produce to the tribals and the provision of fair minimum support price is supported by the MoPR. In fact, the MoTA is in the forefront for championing the cause of MFP fair deal to tribals through ensuring legitimate remuneration for MFP.</p>	<p>Grant of power to sell the harvest minor forest produce and provision of fair minimum support price [Section 5 (1)(e)].</p>
<p>III. 14: MoPR is in agreement with point III.14 as under PESA Sec(i) (k)(e) ensures that the Government is 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. This clause is a conformity provision deriving from PESA Sec 4 (k) (l), m(iii).</p>	<p>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)]</p>
<p>III.17: PESA has clearly defined the village and the powers of the Gram Sabha and the powers of the Gram Sabha is a mandatory provision whereby (i) states that "the Gram Sabha or the Panchayat at the appropriate level, shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects.</p>	<p>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)].</p>

There is either a clerical or typographical error in that on page 8 (para 16), the MoTA is not in agreement with 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)). However, on page 12 Section 3 (e) this right has been conceded.

Again GOM denied the right of transport of MFP (pages 3 (Sec 2,2 (V)). This has been conceded vide Sec 3 (1) © Page 11.



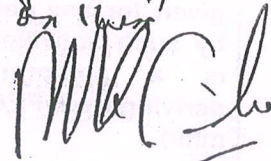
(Aditi Mehta)
Joint Secretary

12/11/06

~~AS (BKS)~~

I fully endorse the views of JF (AM).
We may argue with the Govt on this.
10ms

SRR



12.11.06

MPR

~~(No. 2/R)~~

No. H-12018/1/2006-BC
Planning Commission
(Backward Classes Division)

Dy. No. MIS DS (NGO)
W/O T. A.
Date: 10/2/06

क्रमांक/डयू. नं. PC&V/200
दिनांक/Date

Yojana Bhavan, Sansad Marg,
New Delhi - 110 001

30th January, 2006

OFFICE MEMORANDUM

Subject: Note from Shri Digvijay Singh, Ex-Chief Minister, Madhya Pradesh on resolving land issue related to Tribals and Weaker Sections.

Undersigned is directed to forward a copy of the letter received from the Prime Minister's Office along with the note handed over to Prime Minister by Shri Digvijay Singh on the above mentioned subject. The Ministry of Tribal Affairs is requested to provide their comments for onward transmission to the Prime Minister Office at an early date, please.

257
Dy. No. DS/PC&V/200
Dated 10-2-06

Shri Rajiv Kumar
Joint Secretary
Ministry of Tribal Affairs,
Shastri Bhavan,
New Delhi - 110 001

JS (RP)
May kindly see & direct C.P. & B. to prepare
Shri A. Kachhap
Deputy Adviser (TD)

Dy. No. JS/PC&V/06
Date 2/2

Dy. No. 41/06 JS/PP/06
Date 3-2-06

DS/ASST
Pertains to C&R.
2/2/06
DS/C&R

May kindly prepare a copy of his communication for action on "The real issue of ST and Forest"

10/2/06
(C. 5059441)

10/10/06
PC&V/1
- 111

SI- No 1 (R)

प्रधान मंत्री कार्यालय
PRIME MINISTER'S OFFICE

नई दिल्ली-110 011
New Delhi-110011

Please find enclosed a note handed over to the Prime Minister by Sh. Digvijay Singh on resolving land issues related to tribals and weaker sections.

The undersigned has been desired to request that the issues raised by Sh. Singh may kindly be considered appropriately.

KA
(Kalpana Awasthi)
Director

Dr. Balachandra Mungekar, Member
Planning Commission

PMO UO No.560/03/C/12/2004-ES.II

Dated: 20.09.05

सदस्य (डा.बी.एस.) का कार्यालय
O.o Member (Dr. B.M.)
अनुसूचित जाति/Section Division
दिनांक/Date 21/11/06

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The land issues have been one of the major factors in fomenting dissent against the Government. The dacoity problem in Chambal was also the result of delayed justice and land issues.

In naxalism also land alienation of tribals and weaker sections is one of the major reasons for people turning against the State. The issue of land is a State subject. But after the Zamindari abolition Act and Land Ceiling the issue of land reform has never been taken seriously. The issues relating to land are as follows :

1. Poor land records
2. Poor maps
3. Land alienation of weaker sections
4. Delays in resolving land disputes
5. Delays in land mutation cases and division of Revenue Khata of family land holding.
6. Demarcation dispute between the Forest and the Revenue Department on peripheral revenue land in forest areas.

Therefore there is a need for a Commission at the National level to look into all these issues and bring about a comprehensive strategy to deal with land issues. The terms of reference can include the above mentioned issues.

land in the river valleys. The Britishers brought in the Indian Forest Act 1927 taking away the rights of the forests from the tribals and made provisions in the Forest Act that took away the inherent rights of the people. They also started the process of scientific exploitation of the forest areas and they also set up the Forest Research Institute in Dehradun and Forest Services. Some of the enlightened rulers also took up Scientific Management of Forest to raise their revenue.

After independence, the Government of India transferred the rights of the forest to the States and different State Governments exploited the forests to raise their revenue. Unfortunately the inherent rights of the tribals and the forest dwellers were restricted to the nistari rights where they were given the right to free grazing and fuelwood but the timber and non timber produce remained with the State Government. Over the years because of the unholy nexus between the forest contractors and the representatives of the Government and the incentive of getting tribal votes encouraged large scale felling of forests.

In 1976 the Constitution was amended and the issue of forest was brought under the Concurrent list from the State List to enable the Parliament to pass the Wildlife Conservation Act.

The denudation of the forests became alarming and in 1980 the Forest Conservation Act was passed by the Parliament at the prime minister Mrs. Indira Gandhi's initiative. By enacting the Forest Conservation Act, the Government of India took away the rights of State Governments of converting the forest land for non forest use. The State Government had to seek permission from the Government of India for all development work within the forest area even if it meant taking an electric line through the forest. The cut-off date of 25th October, 1980 was decided for regularizing the encroachments of the forest dwellers on forest land

The definition of forest as mentioned in the Forest Conservation Act was of a forest as defined in the Indian Forest Act 1927. But in 1996 the Supreme Court enlarged the definition of forest to cover those areas also which were notified as village forests in the revenue land. This gave immense power in the hands of the officers in the Paryavaran Bhavan and anyone who wanted to set up an industry or take mining leases or take up projects of irrigation, road, power in which even a fraction of an acre had to use all their resources to get a clearance from the Paryavaran Bhavan in New Delhi. In

Andolan he managed to influence the Government to set up a committee to look into the tribal issues. A committee was set up under Shri Dilip Singh Bhuria Ex. M.P, to extend the provisions of part IX of the Constitution concerning Panchayats to the Scheduled Areas. . The Bhuria committee produced a revolutionary report which was submitted to the Government of India and Dr BD. Sharma was able to influence Shri Purno Sangma who was the then Speaker of the Lok Sabha to get the recommendations of the Bhuria committee report incorporated in a Constitution amendment which was known as the Panchayat Extension to the Scheduled Areas Act 1996 (PESA) Shri Purno Sangma, himself a tribal, influenced all political parties to pass this bill with very wide ranging ramifications in the Parliament without any discussion. Through this, the Gram Sabha was empowered to take decisions on issues of land, water, forest and minerals. The relevant laws and rules of Government of India and the State Government are yet to be amended to make PESA implementable.

The Scheduled Tribe Recognition of Forest Rights Bill-2005 is a honest attempt to give the rights to the forest dwellings to Scheduled Tribes, but the safety valves incorporated in the bill will negate very intent of the Government.

Every decision of the Gram Sabha will go for ratification to the Sub Divisional Committee and the District Committee. The composition of the Committee has been kept open to be decided through rules to be framed later. Any Government which may not be sensitive to the cause of the tribals can veto any proposal of the Gram Sabha (Section 6)

Unfortunately in the debate between the supporters and opponents of this Bill, the important issue of livelihood of forest dwellers is completely lost. What is important is to provide livelihood to all the forest dwellers and not only to the Scheduled Tribe forest dwellers. Although majority of the forest dwellers belong to the Scheduled Tribe, but there are a large number of SC and OBCs whose economic condition is not much different from the STs and their rights cannot be ignored. We will not be able to look after the interest of the tribal effectively until and unless we involve the other forest dwellers also.

The forest cannot be conserved by the forest employees alone. Until and unless the stake holders that are the forest dwellers are involved in the conservation and preservation of forest including wild life. The forest should

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the total revenue from timber and non-timber forest produce of all States in the country are added up it would be less than Rs. 3000 crores and if the State Governments are compensated of their loss either totally or to a major extent, the State Governments shall not object to it. The amount of money that is being spent on STs through the Tribal sub plan could easily be used to compensate the State Governments in Scheduled areas and from the budget in the non-schedule areas

Therefore instead of going into the merits and demerits of the scheduled tribe bill there is a need to redraft the Indian Forest Act so that the abundant natural resources of forest become a major source of livelihood and employment for the forest dwellers and at the same time the forest and the wild life are scientifically managed to scientifically manage forests and wild life. We can regenerate our denuded forest land through the involvement of the stake holders who are the forest dwellers. This was successfully done in Europe in 20s and 30s , why this cannot be done in India ?

A GANDHI
CHAIRPERSON
NATIONAL ADVISORY COUNCIL



2, MOTI LAL NEHRU PLACE
NEW DELHI - 110 011
PHONES : 011-2301 8669
011-2301 8654
FAX : 011-2301 8646

February 21, 2005

Dear Shri Kyndiah,

I have had the opportunity to see an early draft of the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill, 2005 being prepared by your Ministry in pursuance of a commitment made in the NCMP. A copy of the draft Bill seen by me is attached. The NAC too, under my Chairpersonship, has suggested a set of measures for the protection and welfare of tribal forest dwellers. Undoubtedly this a matter that the UPA Government needs to take forward.

At the same time, the concerns of wildlife and forests need to be taken into account. The Bill should protect as many features of the Forest Conservation Act (FCA) of 1980 as possible. The Bill should provide adequately to conserve the integrity of forests. The FCA, 1980 is a regulatory and not a prohibitory law. It has, in fact, helped augment tribal livelihoods at many places by preventing the reckless diversion of forests. The real issue is its rational implementation. The land mafias had continued to degrade the prime forests of the country until the enactment of the FCA, 1980. Between 1950 and 1980, almost 4.8 million hectares of forest land was diverted for non-forestry purposes.

As I can see, the following provisions have been kept in the Bill that are in consonance with the Forests (Conservation) Act and the laws for the protection of wild life :

- Rights of Scheduled Tribes forests dwellers are only restricted to non-timber forest produce. No rights are being extended to forest timber in order to prevent indiscriminate felling of trees, etc.

Contd... /-

Handwritten notes:
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MSO (S.A.)

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RD
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JS (RF)
23/2/05

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23/2/05
MSO

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23/2/05
MSO (S.A.)



: 2 :

- Rights of the Scheduled Tribes forests dwellers are not being extended to hunting.
- Rights to Scheduled Tribes forest dwellers are being limited to those related to bonafide livelihood supporting activities and do not include activities for commercial purposes.

However, the Bill clearly supercedes and is in contravention of the following provisions of the Forests (Conservation) Act, 1980 :-

- ↳ Section 2 of the Forests (Conservation) Act provides that no forest lands or any portion thereof can be used for any non-forestry purpose except with the prior approval of the Central Government. This will no longer be applicable once the Bill is passed.
- ↳ Section 2 of the Forests (Conservation) Act also provides that no forest lands can be assigned by way of lease, etc. to any private person, etc. except with the prior approval of the Central Government. This provision too, will no longer be applicable once the Bill is passed.

In this regard, I am forwarding to you certain comments on the Draft Scheduled Tribes and Forests Dwellers (Recognition of Forests Rights) Bill, 2005 in Annexure 1 to this letter. You may like to examine and incorporate these suggestions at the time of finalizing the Bill for the approval of the Cabinet.

With good wishes,

Yours sincerely,

Shri PR Kyndiah
Minister of Tribal Affairs
Government of India,
Shastri Bhawan,
New Delhi.

Encl: As above.

ANNEXURE 1**Comments on the Draft Scheduled Tribes and Forests Dwellers (Recognition of Forests Rights) Bill, 2005**

- I. The Bill is applicable to Scheduled Tribes and Forests Dwellers. Forests dwellers are defined as those "who primarily reside in and around forests". This would include rural poor and other non-tribal communities who may have encroached upon and occupied forests lands. It would also include persons with commercial interests who may have set up bases in forests areas for commercial purposes, like land mafias, contractors, etc. The objective of the Act is purely to provide protection to people of Scheduled Tribes who have been traditionally living in forests. Therefore, the Act should be strictly applicable only to FOREST DWELLING SCHEDULED TRIBES.
- II. The Bill is not applicable to Jammu & Kashmir and the Andaman & Nicobar Islands. It is not clear why these territories have been excluded. There are a large number of forest dwelling tribes in the Andaman & Nicobar Islands, for instance.
- III. The definition of 'forests land' includes protected forests, reserved forests, National Parks and Wild Life Sanctuaries. It is necessary to exclude at least National Parks and Wild Life Sanctuaries or else their very existence may be threatened.
- IV. There is no cut-off date for regularization of encroachments or settlements. (Under Section 3(2), the cut-off date for only those Scheduled Tribes who have migrated and occupied forests lands has been kept as 31.12.1993.) The lack of any cut-off date for tribal settlers on forests lands is likely to encourage continuous encroachment of forests lands in the years to come till all such lands have been converted into non-forestry use. Hence, the date of enactment of the Forests Conservation Act (which is 1980) should be clearly provided as the cut-off date in the Bill. This is also in line with the Supreme Court's orders in the matter.
- V. Under Section 3(3), forests rights include rights of Scheduled Tribes to 'shifting cultivation' and 'rotational cultivation'. This can create extensive damage to forests lands. For years now, there has been thinking within the Government regarding ways and means to discourage 'shifting cultivation'. This provision could actually encourage the destructive practice of shifting cultivation. Rights to 'shifting cultivation' and 'rotational cultivation', therefore, should not be included in the Bill.
- VI. The provisos under Section 3(3) include the responsibilities of tribal people for protection, conservation and regeneration of forests. In the interests of these eco-sensitive areas, these responsibilities should be spelt out more

P. 84

specifically and in greater detail. Further more, the responsibilities should also specifically include the protection of wild life.

- VII. The Bill should provide that no State Government or other authority or individual or community shall clear any forests lands or trees which have grown naturally on that land for any non-forestry purposes including re-forestation, except with the prior approval of the Central Government.
- VIII. The Bill should provide that the total area found eligible for regularization should not exceed the actual area under non-forestry use. (The extent of total area under encroachment/settlement on the ground should tally with the satellite images of such areas.)
- IX. The Bill should provide that, to the extent possible, the roughly 3000 forest villages should be shifted in clusters to the edges of the forests and near the roadsides where infrastructure and other facilities are available. This process should be completed within 18 months of the coming into force of the law.
- X. The Bill should have a clear provision to discourage use of any forest area for agriculture if it was not already under agricultural use before the enactment of the Forests (Conservation) Act.
- XI. The Bill should have a specific provision to provide adequate checks and counter-checks to keep away vested interests from forests lands.
- XII. Under Section 4 (2) (d) of Chapter IV of the Bill, the sub-Divisional level Committee should include two respected civil society members from the sub-Division/Block/Taluk, at least one of them being a woman, recognized for their understanding of forests rights tenurial issues, appointed by the District Collector, *preferably from among the forests dwelling Scheduled Tribes of the sub-Division or District.*
- XIII. Under Section 4(3), the Chairman of the Zilla Parishad should be the Chairman of the District-level Committee.
- XIV. Under Section 4 (3) (e), the District-level Committee should include either :
 - i. a renowned non-Governmental person known for his understanding of tribal forests issues, elected by the civil society members of the sub-Divisional level Committees ;
 - or
 - ii. a Scheduled Tribe Member of Parliament / MLA of the District.
- XV. Under Section 4 (4) (e), the State-level Monitoring Committee should include three (not two) recognized non-governmental persons known for their understanding of tribal forests issues.
- XVI. The Bill does not spell out the role and powers of the Gram Sabha, sub-Divisional-level Committee, District-level Committee and State-level Committee. This has to be clearly spelt out.

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

Lidily refer to your letter No. PVT/CP/12/03 dated 21.12.2003 regarding the scheduled tribes and forest dwellers (Recognition of Forest Rights) Bill, 2003 prepared by this Ministry.

At the very outset, I would like to convey our sincere regards for having personal interest in fulfillment of social justice pertaining to tribal people as contained in the NCMPT and also thankful for the suggestions on the proposed Bill and the concerns raised by the members of the Bill and representatives of various tribal organizations.

The Bill is intended to achieve the main objective of the proposed Bill to make the tribal members by recognizing and vesting the forest rights and empowers them to forest land to forest dwellers. Scheduled tribes who have been residing there for generations but whose rights could not be recorded. These rights would be recorded and vest in the tribal members and will be not subject to any other law or regulation.

The Bill also provides for the regularization of the forest dwellers who have been residing in the forest land for a long time but whose rights could not be recorded. These rights would be recorded and vest in the tribal members and will be not subject to any other law or regulation.

The Bill also provides for the regularization of the forest dwellers who have been residing in the forest land for a long time but whose rights could not be recorded. These rights would be recorded and vest in the tribal members and will be not subject to any other law or regulation.

पी.आर. किन्डिया
P.R. KYNDIAH



मंत्री
जनजातीय कार्य एवं
पूर्वोत्तर क्षेत्र विकास
भारत सरकार

शास्त्री भवन, नई दिल्ली - 110001
MINISTER FOR TRIBAL AFFAIRS &
DEVELOPMENT OF NORTH EASTERN REGION
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110001

D.O. No.F.17014/4/2005-S&M/

February 24, 2005

Respected Madam,

Kindly refer to your letter No.499/CP/NAC/05 dated 21.2.2005 regarding draft 'Scheduled Tribes and Forest Dwellers (Recognition of Forests Rights) Bill' being prepared by this Ministry.

2. At the very outset, I would like to convey my sincere gratitude for taking personal interest in fulfillment of crucial issues pertaining to tribal people as contained in the NCMP. I am also thankful for the suggestions on the proposed Bill and the concerns shown for protection of wildlife and conservation of forests vis-à-vis the welfare of tribal forest dwellers.
3. As you are kindly aware, the main objective of the proposed Bill is to undo the historical injustice by recognizing and vesting the forest rights and occupation in forest land to forest dwelling Scheduled Tribes who have been residing there for generations but whose rights could not be recorded. Many of these forest rights on ancestral lands and habitat were not adequately recognized in the consolidation of state forest since colonial period resulting in historical injustice to the forest dwelling Scheduled Tribes, who are integral to the very survival and sustainability of the forest eco-systems, including wildlife. In fact, the forests inhabited by tribals are inseparable with wildlife and cannot survive in isolation. This Ministry is conscious of the fact that, while protecting the interests of forest dwelling Scheduled Tribes, due importance has to be accorded to protection of wildlife and conservation of forest as well.



UNIVERSITY OF DELHI
DEPARTMENT OF SOCIOLOGY

Delhi School of Economics, Delhi -110007
Telephone: 27667858, 27667725, 9868076576, Fax. 91-11-27667858

3rd November 2005

R. Gopalkrishnan
Joint Secretary to PM
Prime Minister's Office
New Delhi 110011

Dear Mr. Gopalkrishnan,

Subj: Changes to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

Further to the meeting held at the PMO on 28th October 2005, where we were asked to send any comments on the bill within seven days, I have a few suggestions:

1. Include the essence of the rules within the Act: It is essential that the rules regarding the procedure and verification of forest rights, the composition of the various committees and the nature of evidence for forest rights should be part of the Act itself. Leaving the composition of the committees to the discretion of the government, as the bill currently does, offers the possibility that in future the rules may be changed to exclude tribal and community representatives and give undue power to the forest department. I do not accept the argument that the rules are too detailed to be put into the bill, I think they are critical to ensuring that the Act works according to the spirit in which it was drafted.

The existing draft rules, Sec 3 (9) which note that the District Collector shall effect necessary entries in the revenue and forest records after rights have been recorded by the District level Committee (DLC) should also add that these records will be made publicly available in the local language at the panchayat office or other suitable place in the village.

2. Other Forest Dependent Communities: It is extremely important to extend the scope of the Act to other forest dependent communities, and not simply scheduled tribes, in order to ensure natural justice. Perhaps one way might be for the District level Committee to draw up a schedule of such eligible communities for the purposes of this Act, or for the gram sabhas to determine the status of such persons based on criteria such as length of residence, traditional usage etc, or a combination of both.

3. 1980 Cut off date: This date is arbitrary and will exclude a large number of eligible persons, including people who have been displaced by large development projects. A recent date should be provided.

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4. **Backup powers needed for Sec 5:** In the absence of any powers, it is not at all clear how the holder of any forest right will ensure that no adverse activities affecting forests, wildlife etc. are carried out. In fact some of the provisions under this Section are extremely vague, such as 5 (c). What if the gram sabha takes no action when violations are reported to them? Is failure to ensure that no destruction takes place under Sec 5 an offence under Sec 8 (ii)? Section 8 also has a number of problems and needs to be clarified in itself and in relation to Sec 5.

5. **Female headed households:** Currently Sec 4 (5ii) allows for titles only in the name of male member and his spouse. This should be extended to female headed households, and perhaps read: "the title should be registered in the name of both the spouses where married, or in the case of single person headed households, in the name of the single person, male or female."

6. **Clarity with respect to other acts:** The relationship between this Bill and other existing acts, especially the Forest Act and the Wildlife Protection Act needs to be clarified further. In addition, I presume 3 (j) on the right to access biodiversity and community right to intellectual property will override other acts on this issue, and the latter will have to be modified accordingly.

7. **Protection against Land Acquisition:** If land rights under Sec 4(3) are heritable, but not alienable or transferable (and I'm not sure this clause should be applied to all such lands regularized), they should also be explicitly protected against land acquisition.

8. **Protected Areas:** On the question of protected areas, the PMO and the two Ministries concerned might want to look at the management of protected areas elsewhere, e.g. Europe. The emphasis should be on meeting conservation objectives, as against spatial classifications. For far too long, Indian forestry has assumed that purposes and places can be mapped onto each other so that each type of area – protected area, reserved forest, village forest – meets only one kind of need. Given the existence of biodiversity outside protected areas, and settlements within, the issue is skillful management of diverse objectives which or may not compete with each other, and not a rough and ready exclusion of some objectives. It is only when institutions lack the necessary skills and knowledge to manage effectively that they resort to such blunt instruments as exclusion of people from protected areas.

I have addressed here only a few of the major issues I have with the bill. I trust that at least some of them will be taken on board.

Thank you.

Yours sincerely,

Nandini Sundar
(Professor of Sociology)

cc: Mr. Rajeev Kumiar
Joint Secretary
Ministry of Tribal Affairs
New Delhi

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**Statement of the Dialogue on the
Scheduled Tribes (Recognition of Forest Rights) Bill, 2005**
(Delhi, 23-24 September 2005)

A Dialogue on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was held at the Department of Sociology, Delhi School of Economics on 23-24 September 2005. This Dialogue was convened by the Centre for the Study of Developing Societies (CSDS) and the Department of Sociology, Delhi School of Economics.

In addition to members of the academic community and retired civil servants (like Mr. S.R. Sankaran and Dr. B.D. Sharma), there were over a hundred participants from organisations on all sides of the debate – see list below.

After two days of discussion and debate on various aspects of the Forest Rights Bill, the concluding statement below was drafted in the last session of the Dialogue. Not all the issues discussed at the Dialogue may find reflection in the statement but it reflects an effort, of all those who were present in this last session, to identify areas of broad agreement on basic principles and outstanding concerns pertaining to the Bill. We are releasing this statement in the interests of having a timely impact on the finalisation of the bill before it is tabled.

Basic Principles

We support the Bill's objective of correcting the historical injustice done to forest dwelling communities through the seizure of their lands and forests and, thereby, addressing the livelihood insecurity that plagues the daily lives of forest dwellers. We believe that the recognition of the rights of forest dwelling communities is urgently required. The ongoing brutal evictions of these communities are unjust, unconstitutional and damaging to the broader agenda of conservation.

Moreover, we believe that the present structure of forest management is not conducive to either conservation or to respect for communities' rights. A view was also expressed that recent judicial interventions have, rather than addressing the problem, exacerbated the situation and made it difficult to recognize rights. [Together these have formed one part of the larger frame of industrialization and commercialization of natural resources that has taken place since Independence, a trend that has adversely affected both forests and forest communities.] Challenging these processes is an imperative.

In this context, the recognition and strengthening of forest dwellers' rights is crucial to secure effective conservation. Communities need to be involved and empowered in and through conservation efforts. This should also be seen in the light of the fact that misplaced and sometimes alarmist claims on matters where the scientific data is not clear, rather than

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addressing the genuine issues of conservation, result in further alienation of communities. [Conservation efforts, particularly struggles against environmentally destructive development and industrial projects, provide a space for building more alliances between conservationists and people's movements.]

Finally, in connection with the Bill itself, we believe that the gram sabha must be authorized and strengthened to be the primary authority in the process of determination of rights, so as to ensure that the process is democratic, open and not subject to the vested interests of the forest authorities.

Areas of Concern

In addition to these overall areas of agreed principles, the meeting also decided to take special note of several areas of concern with the current draft of the Bill. These areas of concern have been identified by the broad agreement of the participants.

The first issue that arises is that much greater clarity is required about the institutional structures and mechanisms through which rights will be recognized as well as exercised. The role of other institutions, particularly state agencies, needs to be clearly defined. Section 15 of the Act, which provides that this law is only "in addition to other laws", is confusing in this regard and needs to be revised. If the Indian Forest Act is left untouched, without incorporating provisions of the bill, this will be tantamount to making the bill useless. Further, in terms of institutional structures, one other highly problematic provision is section 4(7), which provides for an appeal by State agencies directly to the Central government. This is liable to abuse. Finally, the Bill should ensure that the burden of proof in case of any challenge to a right is on the challenging person or authority, not on the right-holder.

Secondly, the exclusion of some communities from the purview of the Bill is highly problematic. Many non-ST forest dwelling communities suffer from the same injustice and livelihood insecurities as forest dwelling Scheduled Tribes. The current Bill also provides no recourse for recognizing the rights of both ST and non-ST communities who have been forcibly evicted by the Forest Department or displaced without rehabilitation. It will also be socially divisive.

Thirdly, there is a question about whether a cutoff date (currently 25-10-1980) should be included in the body of the statute at all. The linking of rights recognition to an arbitrary cutoff date is an area of concern and debate, and the question of the rights of those who are deemed ineligible remains highly problematic.

Fourth, the Bill is currently unclear about the jurisdiction of a village community, which should be clearly defined as the village's customary boundaries (not the revenue boundaries, which may exclude reserved and other government forests). As well, traditional

access and control over forest resources outside these village boundaries should be recognized.

Fifth, the authority of the gram sabha to regulate and manage common resources, including penalizing violators of community decisions on conservation, needs to be strengthened. The current Bill imposes an arbitrary limit of Rs. 1000/- on penalties and does not empower the gram sabha to have any role in penalizing offenders; these provisions need to be revised.

Sixth, in connection both with penalties and with wider conservation initiatives, the accountability, responsibility and limits of the powers of state institutions and agencies need to be defined more clearly. This should include requiring the state to create institutional mechanisms for enabling and empowering communities to exercise their rights and powers, particularly on questions of sustainability and conservation. Such mechanisms should also help ensure that there is equitable sharing of costs and benefits between local communities, the state and other actors benefiting from conservation.

Seventh, there are concerns that the current Bill's conservation provisions are necessary but may not be sufficient. Do the current provisions of the Bill compromise the interests of wildlife? There are areas of scientific ambiguity around concepts and terms such as sustainability, biodiversity, "impacts on wildlife" etc.; which the current Bill needs to be cognizant of. Ignoring such ambiguities opens possibilities of abuse, both by state agencies seeking to restrict community rights and by other actors seeking to exploit loopholes for purposes of environmental destruction.

Eighth, the Bill should also be clearer about restricting or halting projects that require mass environmental destruction.

Ninth, in connection with this, the penal provisions of the Bill (section 8) are far too sweeping and vague and require clarification and restriction. Once such clarification has occurred (along with revisions of the penalties to make them more stringent, etc.), the Bill must also ensure that the principle of avoiding double jeopardy – namely that a person should not be tried twice for the same offence – is followed and that penalties under this Act will not be followed by penalties under other Acts as well.

Tenth, other ambiguous terms such as "bona fide livelihood needs", "subsistence" and "commercial purpose" are also used in the definitions contained in the Act. These terms are too vague and require either redefinition or clarification so as to ensure that the purpose of these restrictions is clear.

Eleventh, the provisions of section 10 (requiring a sixty day notice period before prosecuting officials in violation of the Act) should be suitably amended so as to ensure that the provisions of section 9 do not become ineffective.

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Twelfth, the treatment of indigenous knowledge in the Bill needs to be revised, so as to avoid the potential of privatizing indigenous knowledge through creating "community patents". The relationship between this clause and existing IPR laws should be clarified.

Members of the following organizations and institutions participated: All India Coordinating Forum of the Adivasi/Indigenous Peoples (AICFAIP); Ashoka Trust for Research in Ecology and the Environment (ATREE); Action Aid; Bharat Jan Andolan; Campaign for Survival and Dignity; Environmental Defense Firm (ELDF); Environment Justice Initiative, Human Rights Law Network (EJI, HRLN); Ford Foundation; GRAIN International; Indian National Trust for Art and Cultural Heritage (INTACH); Indira Gandhi National Centre for the Arts (IGCNA); Jagrit Adivasi Dalit Sangathan (JADS); Kalpavriksh; National Campaign for the People's Right to Information (NCPRI); National Foundation for India (NFI); Nature Conservation Foundation (NCF); People's Union for Civil Liberties (PUCL); People's Union for Democratic Rights (PUDR); Society for Promotion of Wastelands Development (SPWD); Society for Rural Urban and Tribal Initiative (SRUTI); TARU Leading Edge; The Energy and Resources Institute (TERI); Vasundhara; Wildlife Trust of India (WTI); Winrock International India; and World Wildlife Fund (WWF).

Academic institutions: Centre for the Study of Developing Societies (CSDS); Centre for the Study of Law and Governance, JNU; Department of Sociology, Delhi School of Economics; Institute of Economic Growth (IEG); Institute for Human Development (IHD); National Institute of Rural Development (NIRD); and the Nehru Memorial Museum and Library (NMML).

Subject: Letter from Minister of Environment and Forests dated 20th October 2005 on an alternative draft Bill on Tribal Land Rights

1. Minister of Environment and Forests has written a letter to the Prime Minister regarding an alternative draft Bill the Ministry has prepared on the direction of the Cabinet Committee on Tribal Affairs (CCTA). The Minister feels that the PMO UO note dated 3rd October 2005 is inconsistent with the decisions taken in the meeting taken by the Prime Minister on 30th September 2005 where according to the Minister, it was decided that the Ministry of Environment and Forests and Department of Tribal Affairs would prepare a commonly agreed draft on the subject. In fact, that at no point of time did the Prime Minister who chaired the meeting, nor MOS, (PMO) suggest or direct such a course of action and instead MOS (PMO), while concluding the meeting, had asked the Ministry of Environment and Forests to give their inputs to the Tribal Rights Bill to in build its concerns.

2. Based on decisions taken on 21st January 2005 in an inter-Ministry consultation, Ministry of Tribal Affairs was mandated to prepare this Bill. It is a normal Cabinet practice to have the views of different Ministries factored for the preparation of the Cabinet draft. In this present case the DG, Forests of the Ministry of Environment and Forests was made even a Member of the Drafting Committee of the Tribal Rights Bill as a part of the Technical Resource Support Group. In addition, the Ministry can take its view in the Cabinet before a final decision. It is never the practice that alternative versions are prepared on the same Bill by multiple Ministries and instead the Ministry assigned the task receives inputs from multiple sources. Therefore, the only logical response was to ask the Ministry to give its inputs.

3. The Minister has been misinformed that subsequent to the meeting on 30th September a note has sent by PMO on 3rd October 2005 altering the consensus. In fact, the note of the PMO/intended as a clarification of facts because it came to the notice of PMO that Ministry of Environment and Forests attempted this version based on a decision of the Cabinet Committee on Tribal Affairs. The CCTA in turn was not aware of the background in the matter.

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4. As may be seen, there has been a misrepresentation to the Minister by linking the PMO UO note which is a communication of a decision already taken by the PM on file on 23rd September 2005 with the meeting of 30th September called to discuss the limited issue of rights in sanctuaries.

5. The Ministry of Environment and Forests is consciously trying to sabotage the Tribal Rights Bill which is for basic survival rights of the poorest section of Indian society. Officials of the Ministry are taking public positions against the NCMP-stated position in favour of the poor. It would be wrong to let this pass without punishment. The Director General of Ministry of Environment and Forests has gone public on this issue in the newspaper dated 21st October 2005 (copy enclosed). The officials of the Ministry have also consciously misrepresented the facts to the Minister to create a misunderstanding which is not a healthy practice and needs to be nipped in the bud. It is proposed that Cabinet Secretary may be asked to examine this issue and take punitive action against officers who have willfully distorted facts or gone public.

x

6. The draft reply to the Minister is placed below for consideration of approval.

7. The chronology of the Tribal Land Rights Bill placed below substantiates the note which may kindly be gone through.

A slightly modified draft reply is submitted for approval. Re: 'x', Cab. Sec. could be asked to seek a clarification from Secretary MoEF and forward the same with his views.

(R. Gopalakrishnan)
October 26, 2005

~~AS (P)~~

27/10/05

Principal secretary to PM

MOS(PMO)

PM

A. speak to me in the context of the meeting taken by Mos (Pmo) recently.

~~AS~~

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31/x

IS(G)

Prl. Secy to PM
Dy. No 2618-S/05
Date 27/10/05

01/15/10/05

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SECRET
COPY No. _____

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

New Delhi, March , 2005

NOTE FOR THE CABINET

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

1. **Background:**

1.1 There exists a spatial relationship between the forest dwelling scheduled tribes and the biological resources in India.

The notion of conservation of ecological resources by forest dwelling tribal communities has been referred to by most ancient manuscripts and scriptures that modern humanity knows. The colonial rule somehow ignored this reality for more economic gains and probably for good reasons prevalent at that time. Post independence, in our enthusiasm to protect natural resources we continued with colonial legislations and adopted more internationally accepted notions of conservation rather than learning from our rich traditions where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas for production forestry somehow left the bona fide interests of the tribal community much to be desired in the legislative frame that we enacted in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting genuine claims to resources where they belong and depended upon. The modern conservation approaches adopted by many countries, who have themselves pushed their indigenous people out of their natural habitat also advocate exclusion rather than integration and advocate survival of only wildlife without a symbiotic interface with humans, in our case the Forest Dwelling Scheduled Tribes (FDST).

1.2 It is only recently that (forest management regimes) have in their policy processes realized that integration of tribal communities who depend primarily on the forest resources cannot but be integrated in their designed management

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processes. The understanding is gaining grounds that forests have the best chance to survive if communities participate in its conservation and regeneration measures. The forest dwelling scheduled tribes, however, face a unique problem of having been alienated from their traditional land holdings in the forests. The forest rights of these forest dwelling scheduled tribes on ancestral lands and their habitat, despite their being residing there for generations, were not adequately recognized and recorded in the consolidation of state forests during the colonial period as well as in Independent India, resulting in historical injustice to them though they are integral to the very survival and sustainability of the forest eco systems, including wildlife. In fact, the tribals are inseparable with the ecosystem, including wildlife, and cannot survive in isolation. Due to non-recognition of forest rights of scheduled tribes, the threat of eviction consistently looms large in the psyche of the scheduled tribes who have been very deeply rooted in the forest areas for ages. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This feeling is further fuelled by the various activist groups spread in the forest areas of Central India, which also happen to be the Scheduled Areas of the country rich in natural resources, including minerals. This historical injustice now needs correction before it is too late to save our forests becoming permanent abode of undesirable elements.

1.3 As is well known, the conditions of the Scheduled Tribe communities traditionally living in symbiotic relationship with the forest are further becoming far more precarious and vulnerable due to displacement threats in view of ever increasing demand for conservation of forests on one hand, and tardy implementation of developmental activities for welfare of STs, mainly due to non-availability of clear cut title of land in their favour. For instance, poor STs living in forest lands for ages cannot take benefits under various schemes of the Government such as "Indira Awas Yojana". This results in a situation where they

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do not even have a homestead and as such their own address. The non-conversion of forest villages into revenue villages, eviction of STs from the forest areas, treating them as encroachers in their own land, and non-transfer of control/ownership over the natural resources, including the Minor Forest Products to the local communities, non-implementation of the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, by way of extension to the entire scheduled areas, including forest areas, have further compounded their miseries.

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

1.5 As regards recognition of the occupation of forest land by the FDSTs, the existing Policy framework in the form of guidelines issued by the Ministry of Environment and Forests, provides that the pre-1980 encroachments (i.e. prior to enactment of the Forest (Conservation) Act 1980 on 25.10.1980) are considered

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eligible provided the State Governments have evolved certain eligibility criteria in accordance with the local needs and conditions and had taken a decision to regularize such encroachments but could not implement either wholly or partly due to enactment of the Forest (Conservation) Act, 1980. The Ministry of Environment and Forests have further issued a circular on 5.2.04 to all the State Governments/UT Administrations to recognize the traditional rights of the tribal population on forest lands under the Forest (Conservation) Act 1980 and to send the proposals to the Central Government for diversion of forest land continuously occupied by any forest dweller for conferring unfettered, heritable but inalienable rights over the forest land in respect of those tribal dwellers who are in continuous occupation of such forest land at least since 31.12.1993. The Hon'ble Supreme Court has, however, stayed the operation of this order.

1.6 Whatever be the cut off date, another important issue which needs to be addressed relates to the process of accepting the claims of STs as the inhabitant of the areas prior to the cut-off date. In order to recognize occupation of forest land by the FDSTs, the Forest Department has generally been insisting on land record or documentary evidence for determination of occupation, such as, the first offence report or the encroachment removal proceedings initiated against the claimant prior to the cut-off date. The onus of proving possession through acceptable documentary proof of possession prior to the cut-off date lies with the STs. It is a well-known fact that most of the STs being inhabitant of these areas for ages never got an occasion to get their rights recorded as the revenue authorities never accepted the right of the individuals inside the forest areas. The most crucial hindrance in recognition of these rights was due to the fact that the onus of proof remained on STs in respect of proving possession of land prior to cut off date. As is well known, certain communities have been scheduled for particular State/area after meticulously taking various considerations into account, including long duration of their habitation in the concerned area. There are strong documentary evidences available from records prepared at the time of scheduling

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the Scheduled Areas and then scheduling the Tribes and also under various documents, such as, the working plans of the Forest Department and documentation of traditional rights, such as NISTAR, record prepared during the process of declaration of the forests, various research work, gazetteers, etc. Therefore, the presumption should be that the members of tribal communities mostly scheduled in 1950's for the particular area in question are natural inhabitant of that areas unless proved otherwise. Meaning thereby that the requirement of just two-three types of documentary proofs as insisted by the Forest Department for determining possession prior to the cut-off date should not be the sole criterion at least from the members of those communities of STs who are scheduled for that particular area. In respect of these communities, the other documentary and corroborative circumstantial evidence also needs to be simultaneously considered to prove that they have not encroached after the cut-off date. In order to undo this historical injustice, the rights of the STs over land possessed by them for habitation and their subsistence agriculture along with their other forest rights need to be recognized.

Start of the question

~~1.7~~ It is in this background that corrective action needs to be taken on the following provisions of the National Common Minimum Programme of the United Progressive Alliance (UPA) Government, which emphasises the urgent need to redress the problems of the tribal communities dependent on forests and to undo the historical injustice done to them:

“The UPA administration will take all measures to reconcile the objectives of economic growth and environmental conservation particularly as far as tribal communities dependent on forests are concerned”.

“Eviction of tribal communities and other forest dwelling communities from forest areas will be discontinued. Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation. The rights of

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tribal communities over mineral resources, water resources etc. as laid down by law will be fully safeguarded.”

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

2.1 In order to fulfill this long felt need it was decided to legislate on the subject. Accordingly a Technical Support Group (TSG), comprising the representatives of the Ministries of Environment & Forests, Panchayati Raj, Rural Development, Department of Legal Affairs and Planning Commission and six reputed experts having rich experience and deep association with the cause of environmental protection and welfare of tribal people, was constituted, under the Chairpersonship of Secretary (Tribal Affairs) to formulate the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill. The Bill has accordingly been drafted a copy of which is at Annexure A.

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

The main features of the proposed Bill are as follows:

2.3 Objective:

The objective of the Bill is to undo the historical injustice by recognizing and vesting the forest rights and occupation of forest land to forest dwelling Scheduled Tribes 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. Statement of objects and reasons has been added to explain the concept

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2.4 Rights of Forest Dwelling Tribes:

The Bill seeks to recognize and vest Forest Rights to forest dwelling Scheduled Tribes where they are scheduled, in respect of forest land and their habitat and further provides that no forest dwelling Scheduled Tribes shall be evicted or removed from forest land under their occupation till the recognition and verification procedure is complete. Such forest rights are, however, to be exercised for bonafide livelihood needs and not for exclusive commercial purposes; not to exceed 2.5 ha per nuclear family of the forest dwelling Scheduled Tribe; to include the responsibility of protection, conservation and regeneration of forests to be heritable but not alienable or transferable and in respect of land where a title is vested or recognized to be registered jointly in the name of the husband and wife.

No
EVICTION
but
no
Procedural
safeguard

2.5 Duties of Forest Right holders have been defined in Section 3(7) of the proposed Bill which include responsibility of not carrying out any activity that adversely affects the wild life, forests and biodiversity.

2.6 The Authorities, including their functions, have been defined in chapter 4 of the proposed Bill.

2.7 Offences under the Act

Detailed provisions for penalty for contravention of the provision of the Act and also the offences by Government authorities under this Act have been provided in chapter V of the proposed Bill. A simple imprisonment up to 30 days with or without a fine of Rs.3000/- has been considered appropriate as the proposed Bill also, in addition, provides for de-recognition the forest rights in case the offence is committed more than once. The penalties provided under other legislation including Indian Forest Act, 1927, the Forest Conservation Act, 1980 are in any case not barred by this Act.

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2.8 Chapter VI provides the miscellaneous provisions, including the following:

- a. **Nodal Agency:** The Ministry of Tribal Affairs shall be the Nodal Agency and shall be responsible for implementation of the Act.
- b. **Central Government to provide directions:** The Bill provides that in the performance of duties and exercise of powers by or under the Act, the Competent Authority shall be subject to such general or special directions; as the Central Government may, from time to time, give.
- c. **Operation of other laws not barred:** The operation of other laws to the extent they do not contravene the provisions of this Act would not be barred.

2.9 **Checks and balances:**

A number of checks and balances have been provided in different sections of the proposed Bill to take care of any possible misuse of the provisions. The specific provisions include –

- a. All rights would be heritable but inalienable or non-transferable;
- b. The use of the forest rights has been restricted to the subsistence and livelihood needs alone;
- c. The commercial use of any kind has been specifically excluded;
- d. It has been provided in Section 3(7)(a) of the Bill that the forest right holder shall not include in any activity that adversely affects the wild life, forest and the biodiversity in the local area including clearing of forest land.
- e. Penalties have been provided in Chapter V of Bill including de-recognition of the vested right if any offence has been committed more than once;
- f. Gram Sabha has been made the competent authority to initiate the process of recognition of rights of individuals/community and preparation of the records in favour of forest right holder.

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Government of India
Ministry of Tribal Affairs

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;

g. The duties of the forest right holders have been provided in Section 3(7) of the Bill and specific provision has also been added as proviso to Section 3(4) of the Bill that the rights so recognized would include the responsibility of protection, conservation and regeneration of forests. It has also been specifically included in Chapter V of the Bill that engagement in any unsustainable use or destruction of wild life, forests, or any other biodiversity or felling of trees would constitute an offence under this Act which shall not only be punishable but if any offence is committed by any forest right holder more than once his forest right would be de-recognized after following a due process.

3. **Approval of the Cabinet is solicited to the Draft 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, at Annexure 'A'.**

4. The Minister of Tribal Affairs has seen and approved the proposals contained in this note.

(Rajeev Kumar)

Joint Secretary to the Govt. of India

Ministry of Tribal Affairs

Place: New Delhi.

Date: _____

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Ministry of Tribal Affairs

Statement of Implementation Schedule

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

Gist of decisions requiring approval	Project benefits/results	Time schedule for implementation/ reporting to Cabinet Secretariat
to the Draft 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, at Annexure 'A'.	The enactment of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 would undo the historical injustice by recognizing and vesting the forest rights and occupation in forest land to forest dwelling Scheduled Tribes who have been residing there for generations and who are integral to the very survival and sustainability of the forest eco-systems, including wildlife, but whose rights could not be recorded. This would also strengthen the conservation regime by recognizing permanent stake of the Forest Dwelling Scheduled Tribes.	It is proposed to introduce the Bill in the current Budget Session of the Parliament and the same would come into force after enactment and immediately on being notified by the Central Government.

(Rajeev Kumar)

Joint Secretary to the Govt. of India

Ministry of Tribal Affairs

SOMA GANDHI

CHAIRPERSON
NATIONAL ADVISORY COUNCIL



N6762/KP/ANKY 05

2, MOTI LAL NEHRU PLACE
NEW DELHI - 110 011
PHONES: 011-2301 8669
011-2301 8654
FAX: 011-2301 8646

There is something else
on second page but
3rd & 4th pages are of
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(26)

May 20, 2005

Dear Prime Minister,

You are aware of the concerns raised by environmentalists and wild-life specialists regarding the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill, 2005.

I have been informed that major changes have been made in the Bill in the formulation stage to ensure greater protection to forests and wild-life. This includes restricting the benefits of the Bill only to forest-dwelling Scheduled Tribes, incorporating a cut-off date of 1980, making all rights heritable, inalienable and non-transferable, imposing a specific responsibility on forest dwellers for the protection, conservation and regeneration of forests and protection of wild-life, and so on.

However, I strongly feel that in order to fully ensure protection of all forest areas, National Parks, Tiger Reserves and Sanctuaries should be kept out of the purview of the Bill. I had suggested this in a letter to the Minister of Tribal Affairs dated 21st February, 2005.

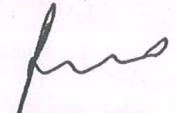
the emphasis was more on commercial

Furthermore, although the other provisions of the Bill cannot be faulted, everything ultimately depends on its proper implementation. The big question is whether land titles would be given out to wrong people who represent commercial interests and power-lobbies. All possible steps, therefore, would need to be taken to maintain extreme vigil and closely monitor the implementation of the provisions of this law. Steps would also need to be simultaneously taken to strengthen and revamp

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4. As desired, brief for the PM on Tribal Rights Bill is also enclosed.


[R. Gopalakrishnan]
26.9.2005

AS(P)
Principal Secretary to PM
Prime Minister

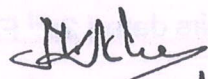
5. The brief has been made slightly more elaborate.

6. It is suggested that instead of making the meeting too large, the persons mentioned in para 1 (a) and 1 (b) along with Shri Pradip Prabhu could be invited to the meeting. The Secretaries of the Ministries of Tribal Affairs and Environment and Forests could also be present.

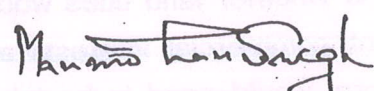

27/9/05
(Pulok Chatterji)
27.9.2005

Submitted for approval.

Principal Secretary

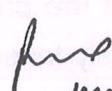

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Prime Minister


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the administrative mechanism for the protection of forests and wild-life. In this regard, I would like to suggest the following steps :-

- (a) Ensure that there is full involvement of the Gram Sabhas in the identification of genuine pre-1980 tribal forests settlers, as laid down in the provisions of the Bill. In order to truly empower the Gram Sabhas to do this, a major sensitization programme would need to be launched in all Gram Sabhas in the forest area.
- (b) A separate Department of Forests could be created within the Ministry of Environment and Forests. Under the Department of Forests, a separate National Park Service could be set up as an All India Service comprising of specially trained personnel for the management of National Parks, Tiger Reserves and Sanctuaries in the country. The lower cadres of this Service could be recruited from amongst the tribal forest dwellers.
- (c) The relevant existing laws could be amended to provide for a statutory external annual audit of National Parks, etc. by outside experts and these audited reports could be tabled in both the Houses of Parliament.
- (d) Death of all tigers in National Parks and Tiger Reserves could be subjected to mandatory post-mortem and inquiry.
- (e) A Bureau of Prevention of Wild-life Crimes could be speedily set up.
- (f) A scheme for encouraging and funding independent research on wild-life could be introduced.

I am informed that you have already discussed many of these suggestions in the recent meeting of the Indian Board for Wild Life. You have also set up a Task Force on Tiger Reserves subsequent to this meeting. The above suggestions could be referred to this Task Force which could be asked to submit its considered

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SONA GANDHI

CHAIRPERSON

NATIONAL ADVISORY COUNCIL



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NEW DELHI - 110 011

PHONES: 011-2301 8669

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FAX: 011-2301 8646

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recommendations within a month or so. The Central Government could then chalk out a road-map with time-frames for the implementation of the recommendations.

While we are committed under the National Common Minimum Programme to help secure the rights of tribals over their traditional land and non-timber forest produce, it may be better to proceed with the Scheduled Tribes and Forest Dwellers (Recognition of Forests Rights) Bill, 2005 after the implementation of the above suggestions have been put in place. It would, perhaps, also be a good idea to have the Bill placed on the Website of the Ministry in the meantime, to generate a wider debate.

These views are being forwarded for your kind consideration.

With regards,

Yours sincerely,

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

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

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Copy No.
New Delhi, November 10, 2006

**NOTE FOR THE 2nd MEETING OF THE GROUP OF MINISTERS ON
THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS)
BILL, 2005**

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

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. The Bill was, however, 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, 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".

1.2 A Group of Ministers had also been set up by the Cabinet to (a) harmonise the issues brought up during discussions in the Cabinet in its meeting held on 1.12.2005 and (b) consider official amendments to the Bill.

**2. DISCUSSIONS HELD IN THE 1ST MEETING OF THE GoM ON
SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS)
BILL ON 20.7.2006**

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Government of India
Ministry of Tribal Affairs


...
Shastri Bhavan, New Delhi-110001
Dated, the 10 November 2006

MEETING NOTICE

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

In continuation of this Ministry's Meeting Notice of even number dated 9.11.2006, the undersigned is directed to enclose a Note for the Group of Ministers (GOM), which will be discussed in the meeting of the Group of Ministers to be held on **Monday, 13th November, 2006 at 11.00 A.M. in the Committee Room No. 162, South Block, New Delhi** . . .

2. The undersigned is directed to request all the members of the Group of Ministers to kindly make it convenient to attend the meeting.


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

To

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

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consolidating and verifying them and forwarding the same to the Sub Divisional Level Committee.

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

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

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

2.5 Some discussions have been held in the meanwhile by the Chairman of the GOM with different political parties and MPs. Minister, Tribal Affairs and MOS to PM also met different members of the JPC and some tribal MPs and held further discussions.

3. SOME MINOR AND CONSEQUENTIAL CHANGES MADE BY THE JOINT COMMITTEE IN THE BILL AND THE STAND OF THE MINISTRY OF TRIBAL AFFAIRS THEREON

In addition to the issues mentioned in para 2.1 above, there are some minor and consequential changes made by the Joint Committee in the Bill introduced in the Lok Sabha on 13.12.2005, which were not considered acceptable to the Ministry of Tribal Affairs or were acceptable with some modifications. (Annexure-A - Items III & IV).

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ANNEXURE-A

Position in respect of major changes made by the Joint Committee of Parliament in respect of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

- I. Important issues which are AGREEABLE – Annexure-I:**
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. Amplifying the definition of Gram Sabha [Section 2(g)]
 4. Extension of right to MFP to further include collection and transport of MFP [Section 3(1)(c)]
 5. Amplification of community rights to include entitlements of fish and other water bodies [Section 3(d)]
 6. 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)]
 7. Addition of new clause 'right of access to bio-diversity and community right to intellectual property' [Section 3(k)]
 8. Inclusion of new right in-situ rehabilitation [Section 3(m)]
 9. Government providing for diversion of forest land for the purposes of schools, hospitals, etc. [Section 3(4)]
 10. Conferring right in critical wildlife habitats of national parks and sanctuaries on regular basis [Section 4(2)]
 11. 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)]

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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. [Section 2 (c)]
2. Revision of the definition of "forest land" to mean land of any description recorded or notified as forest including unclassified forest. [Section 2 (d)]
3. Revision of the definition of the term "minor forest produce" to include 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 *fish* and *fuel wood*. [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 *timber* and *minerals* in the forest rights. [Section 3 (1) (i)]
8. 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)]
9. Enlargement of the forest rights to guarantee general things, such as, food, fibre, education, health, communication and the like. [Section 3(3)]
10. Provision relating to vesting of equal rights in the female members of the Scheduled Tribes and other traditional forest dwellers [Section 3 (5)]
11. Giving full decision making powers to communities that partially or fully practice shifting cultivation over land use or any land that

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Ministry of Tribal Affairs

22. 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]

IV. Issues, which are AGREEABLE WITH MINOR CHANGES

1. Revision of the clause relating to rights of settlement of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages. This is acceptable with addition of words "and conversion" after the words "right of settlement" [Section 3 (1) (h)]
2. Addition of the right to *in situ* rehabilitation including alternative land in the even 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 displacement prior to the cut off date as proposed in the Bill as introduced i.e. 25.10.1980. [Section 3 (1) (m)]
3. 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)]
4. Conferment of rights in critical wildlife habitats of National Parks and Sanctuaries. This is acceptable subject to certain deletions and additions. [Section 4(2)]
5. Eviction or removal from forest land of forest dwelling Scheduled Tribes or other traditional forest dwellers till the recognition and verification procedure is completed. This is acceptable subject to deletion of the words "or other traditional forest dweller". [Section 4(5)]
6. Right to land in the event of displacement from their dwelling and cultivation without land compensation due to State development interventions. This is acceptable with respect of STs. [Section 4 (10)]

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URGENT

PRIME MINISTER'S OFFICE

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

Prime Minister will take a meeting on 12th July, 2006 at 10.30 a.m. at 7-RCR on the above subject.

2. The addressees of the note are requested to kindly make it convenient to attend it.

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10/7

Attended.
10/7

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(Kalpana Awasthi)
Director

PS to Minister of Tribal Affairs
PS to Minister of Environment & Forests
PS to Law Minister

With the request to kindly inform the Minister to attend the meeting.

PMO UO NO. 560/51/C/3/2005-ES-II Dated 10.7.2006

Copy alongwith the background brief to:

- i) PS(S) to PM
- ii) PS to MOS(PMO)
- iii) Sr.PPS to Principal Secretary to PM
- ✓ iv) PS to AS(P)
- v) PS to JS(M)

PPS - 1 - 1/11

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

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

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

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	the Lok Sabha).	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.	<p>Conferred new right to communities and individuals to return to the original habitation if unsatisfied with the rehabilitation.</p>	<p>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</p>
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It may further be mentioned that, as per the recent amendment to the Government of India (Allocation of Business) Rules, 1961 dated 17.3.2006, the Ministry of Tribal Affairs is concerned only with "All matters, including legislation relating to the rights of forest dwelling scheduled tribes on forest lands".

Hence, it would be appropriate and desirable to adhere by the Ministry of Tribal Affairs comments.

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Government of India
Ministry of Tribal Affairs

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New Delhi, January 20, 2006

**NOTE FOR THE GROUP OF MINISTERS ON THE SCHEDULED
TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

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

**1. BACKGROUND: HOW HISTORICAL INJUSTICE DONE TO
THE FOREST DWELLING SCHEDULED TRIBES**

**1.1 Non-recognition of rights of forest dwelling scheduled tribes during
the process of consolidation of forests, despite their being integral to
very survival and sustainability of forests**

It is well known that there exists a spatial relationship between the forest dwelling scheduled tribes and the biological resources in India. The notion of conservation of ecological resources by forest dwelling tribal communities has been referred to in most ancient manuscripts and scriptures that modern humanity knows. Colonial rule somehow ignored this reality for reasons, which might have been prevalent at that time. Post independence, in our enthusiasm to protect natural resources we continued with colonial legislations and adopted more internationally accepted notions of conservation rather than learning from our rich traditions where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas

ESSENTIAL POINTS TO BE KEPT IN VIEW BY
THE MINISTRY/DEPARTMENT WHILE SERVICING
THE MEETINGS OF GROUP OF MINISTERS
(GOM).

- 1) The GOM should be chaired by the first named Minister in terms of the constitution of the GOM and the meetings of the GOM may be convened after ascertaining his convenience. The minutes may also be got approved by him before issue. The minutes should, inter alia, indicate the list of participants, date, time and venue of the meeting.
- 2) Notes constituting the agenda for the meeting may be prepared in accordance with the existing instructions governing the preparation of notes for the Cabinet and its Committees, spelt out in the Cabinet Sectt. d.o. letter No. 1/16/1/2000-Cab., dated 15.4.2002 (also available in Cabinet Secretariat website "<http://cabsec.nic.in>").
- 3) Only senior officers shall be in attendance in the meetings of the GOM. In case any other Minister or a special invitee including officers of PSU or autonomous organisations are to be invited to the meetings of the GOM, prior permission of the Minister chairing the GOM may be obtained.
- 4) Invitation for the meetings of the GOM may be extended to Cabinet Secretary who may attend these meetings or depute his representative to be present in the meetings. A copy of the minutes of the meeting shall also be endorsed to Cabinet Secretary for his information.

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Ministry of Tribal Affairs

excluded the bona fide interests of the tribal communities in the regions primarily inhabited by them. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources, which they had traditionally used and depended upon.

1.2 Permanent threat of eviction from their own land

It is only recently that forest management regimes have in their policy processes realized that integration of tribal communities who depend primarily on forest resources cannot but be included in to their management processes. It is now accepted that forests have the best chance to survive if communities participate in their conservation and regeneration measures. The forest dwelling scheduled tribes, however, face a unique problem of having been alienated from their traditional land holdings in the forests. The forest rights of these forest dwelling scheduled tribes on their ancestral habitat were not adequately recognized and recorded in the consolidation of state forests during the colonial period as well as in independent India, despite the tribes having resided there for generations, resulting in historical injustice to them. Due to non-recognition of forest rights of scheduled tribes, they have come to be erroneously looked upon as encroachers of forest lands, resulting in a sense of insecurity of tenure and fear of eviction from these lands in their psyche. The threat of eviction constantly looms large over them.

1.3 Denial of fruits of development schemes

The conditions of the scheduled tribe communities are becoming increasingly more precarious and vulnerable due on the one hand, to

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Ministry of Tribal Affairs

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

1.4 **Non-Conferment of ownership rights over MFP in terms of Provisions of PESA, 1996**

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

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contractors. This is a major irritant for the STs, and often viewed as exploitative.

1.5 Insecurity of tenure and fear of eviction

Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations and non-conferment of traditional rights including ownership over minor forest produce are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. As a result, social unrest in one form or the other has also been surfacing in most of the scheduled areas of the country where more than 50% of the ST population lives. This feeling is further fuelled by various activist groups who function in the forest areas of Central India.

2. EXISTING LEGISLATIVE/POLICY FRAME OF THE MINISTRY OF ENVIRONMENT & FORESTS:

2.1 The Government has been taking a consistent view on the central theme of integrating FDSTs living in and around forests in to every aspect of managing forests. All policy statements, including the Forest Policy, 1988, circulars, guidelines, Government Orders issued by the Ministry of Environment and Forests have been espousing the cause of tribal communities and emphasising the need for putting these communities at the centre of any conservation measures. Relevant excerpts of some of the important policies of the Ministry of Environment & Forests are as under:

- (a) **The Forest Policy, 1988** stresses that forests are a first charge to the tribal communities and their domestic and livelihood needs are paramount and superior to any other commercial needs.

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(b) **The National Forest Policy of 1988**, while recognizing the symbiotic relationship between tribal people and forests, also safeguards the customary rights and interests of the tribal people and forest dwellers on forest lands.

(c) **This policy provided** for the association of tribal people closely in the protection regeneration and development of forest with a view to provide gainful employment to the people living in and around the forest, with special attention to:

- i. replacement of contractors by tribal cooperatives,
- ii. protection, regeneration and optimum collection of MFP along with institutional arrangements for the marketing of such produce,
- iii. development of forest villages on par with revenue villages, family oriented schemes for improving the status of the tribal beneficiaries, and
- iv. undertaking integrated area development programmes to meet the needs of the tribal economy, but the fact remains that most of the high value minor Forest produce are monopolized by the State Forest Corporations and the tribals are just employed as daily wagers.

(d) In order to fulfill the commitments as enshrined in the National Forest Policy, 1988, the Central Government in the Ministry of Environment & Forests had issued 6 circulars on 18.9.1990 for settlement of disputed claims. As per these Circulars, the pre-1980 encroachments

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on forest lands were considered eligible for regularization provided the State Governments had evolved certain eligibility criteria in accordance with the local needs and conditions and had taken a decision to regularize such encroachments but could not implement their decision either wholly or partly due to enactment of the Forest (Conservation) Act 1980. These circulars provided for:

- i. appointment of joint teams of Revenue, Forest and Tribal Welfare Deptt.;
- ii. involvement of Gram Sabhas;
- iii. banning agricultural practices only on certain slopes ;
- iv. restoration of titles to the claimants once the bonafides of the claims are established through proper inquiry;
- v. demarcation of land to be restored to the claimant – no ceiling on the size of holding.
- vi. proposals for de-notification of forest lands along with the proposal for compensatory afforestation;
- vii. elimination of intermediaries and replacement of contractors by institutions such as tribal cooperatives, etc;
- viii. protection of tribals and non-engagement of outside labour in forestry activities;
- ix. conversion of forest villages which were set up in remote and inaccessible forest areas with a view to provide uninterrupted manpower for forestry operations into revenue villages.

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- x. accepted that it would not be appropriate to deny the inhabitants of forest village's legitimate rights over such lands which were allotted to them decades ago for settlement and have been continuously under their occupation since then.
- xi. restricting admissible evidences mainly to First Offence Report and thus in practical terms denying recognition. (There are large number of other documentary evidences such as in Gazetteers, records created at the time of scheduling the Area and also a tribe, various revenue surveys, records of tribal research institutes, etc which were not taken into account and due to this provision the forest dwelling scheduled tribes, in the absence of First Offence Reports prior to cut off date, were simply termed as encroachers in their own homeland.)

(e) Even the Draft National Environment Policy-2004 states that "give legal recognition to the traditional rights of forest dwelling tribes. This would remedy a serious historical injustice, secure their livelihoods, reduce possibilities of conflict with the Forest Departments, and provide long-term incentives to the tribal to conserve the forests".

2.2 Subsequently, on 5.2.04, the Ministry of Environment and Forests issued another circular to all State Governments/UT Administrations to recognize the traditional rights of the tribal population on forest lands under the Forest (Conservation) Act 1980 where those tribal dwellers have been in

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continuous occupation of such forest land at least since 31.12.1993. The Hon'ble Supreme Court has, however, stayed the operation of this order.

2.3 All the aforesaid novel objectives could not be achieved even after 15 years of the issue of 1990 and subsequent guidelines, mainly because the Forest Department has generally been insisting on land records or documentary evidence, such as, a first offence report, or encroachment removal proceedings initiated against the claimant prior to the cut-off date of 25.10.1980, for recognizing the occupation of forest land by the forest dwelling scheduled tribes. This has been the biggest hindrance in recognition of these rights under the guidelines of the Ministry of Environment & Forests although other documentary and corroborative circumstantial evidence, such as records prepared at the time of scheduling an area, or scheduling the tribe, the working plans of the forest departments and documentation of traditional rights, like *nistar*, etc. during the process of declaration of the forests, various research work, Gazetteers, etc. was available and could be simultaneously considered to ascertain whether or not the STs were original dwellers or had encroached into the area after the cut-off date.

3. **PROVISIONS IN THE NATIONAL COMMON MINIMUM PROGRAMME OF THE UNITED PROGRESSIVE ALLIANCE (UPA) GOVERNMENT**

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

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“The UPA administration will take all measures to reconcile the objectives of economic growth and environmental conservation particularly as far as tribal communities dependent on forests are concerned”.

“Eviction of tribal communities and other forest dwelling communities from forest areas will be discontinued. Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation. The rights of tribal communities over land resources, water resources etc. as laid down by law will be fully safeguarded.”

4. THE “SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005” AND VIEWS OF OTHER MINISTRIES/DEPARTMENTS THEREON

4.1 In order to meet the above commitments in the NCMP, it was considered necessary to introduce appropriate legislation on the subject and Ministry of Tribal Affairs was mandated to formulate a comprehensive Central legislation for redressing the historical injustice done to tribal communities and for clear assertion of their legal rights on land. A Technical Support Group (TSG), comprising representatives of the Ministries of Environment & Forests, Panchayati Raj, Rural Development, Department of Legal Affairs and Planning Commission and six reputed experts with rich experience of, and deep association with, the cause of environmental protection and welfare of tribal people, was constituted, under the Chairpersonship of Secretary (Tribal Affairs) on 28.1.2005 to formulate the Scheduled Tribes and Forest Dwellers

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(Recognition of Forest Rights) Bill. The Ministry prepared a draft "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" and circulated the same, along with a draft Note for the Cabinet, amongst all the Ministries concerned, for their comments. The draft Bill was accepted with suggestions in some cases by all the concerned Ministries, except the Ministry of Environment & Forests.

4.2 The Ministry of Panchayati Raj broadly supported the objectives and the format of the draft Bill but desired inclusion of two members of the Intermediate Panchayats in the Sub Divisional level Committee and for appointment of a Tribal Member of the Panchayat as Chairperson or Deputy Chairperson of the District level Committee, proposed in the draft Bill for recognition and vesting of forest rights to forest dwelling Scheduled Tribes.

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

4.4 The Ministry of Environment & Forests were not agreeable to the introduction of the proposed Bill mainly on the grounds that the Bill would (i) require de-notification of vast tracts of forest lands, elimination of all legal protection for the forest cover leading to irreparable ecological damage of immense proportion, (ii) cause more damage without necessarily being of significant benefit to tribals in the long run, (iii) result in allocation of disproportionate large areas of natural resource of the country to only 8.2% of the population, (iv) lead to loss of large chunk of forest cover by distribution of 2.5 hectare of forest land to each tribal nuclear family, which would be

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against the goal of National Forest Policy, 1988, (v) not be in the interest of forest and wildlife conservation as its provisions bar the operation of Indian Forest Act, 1927, Forest Conservation Act, 1980 and the Wildlife (Protection) Act, 1972., (vi) put a question mark on the very existence of national parks and sanctuaries, (vii) encourage fresh encroachment and destruction of forests. The Ministry of Environment & Forests consider that the subject "Forests" is the business allocated to that Ministry as per the Government of India (Allocation of Business) Rules, 1961 and hence the settlement of rights over forest lands is also their mandate and of no other Ministry. That Ministry was of the view that the provisions of the Forest (Conservation) Act, 1980 and the guidelines of 1990 had sufficient provisions to address the problem and there was no need to bring a separate legislation. They felt that, the solution lay in modification of various orders of the Supreme Court on the various issues and the existing laid down procedure for implementation of the 1990 guidelines.

4.5 The Ministry considered the comments of the Ministry of Environment & Forests and observed that the proposed Bill (i) only strengthened the stand taken by Ministry of Environment & Forests in their own policy statement as recent as December, 2004 on the issue of undoing historical injustice to the forest dwelling Scheduled Tribes whose ethos and culture of conservation is a central theme but who have been affected most by western notions of management of forest through emphasis on production forestry; (ii) sought to provide legislative frame to the stated policy of the Ministry of Environment and Forest of regularizing all eligible cases and existing prior to the cut off date of 25.10.80; (iii) did not envisage de-notification of vast tracts of forest

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lands and elimination of legal protection for the forest cover and, in fact, proposes to secure their tenurial rights; (iv) encouraged the participation of forest dwelling Scheduled Tribes in the conservation and regeneration measures for sustainability of the forest eco-system, including wildlife, in line with the initiatives of the Ministry of Environment & Forests relating to eco-development, Community Forest Management, Joint Forest Management, etc.; (v) did not envisage fresh allocation of land to tribal community but only recognizes the pre-existing rights over forest and forest land which they were deprived of during the forest reservation process, in keeping with the new forest policy which enunciates that the tribal communities need to be at the center of any conservation strategy; (vi) emphasized use of forest rights only for subsistence and livelihood needs and not for commercial use of any kind and prohibits the forest rights holders from indulging in any activity harmful to wildlife, forest and bio-diversity in the area, and at the same time makes them responsible for protection, conservation and regeneration of forests on the land where their title is to be vested or recognized; (vii) did not preclude the operation of the Forest (Conservation) Act, 1980 and the guidelines issued by the Ministry of Environment & Forests in 1990 for settlement of rights of forest dwellers over forest land; (viii) did not interfere with the prohibitive clauses of Indian Forest Act, 1927, Forest (Conservation) Act, 1980 or the Wildlife (Protection) Act, 1972; (ix) supplemented the efforts of the Ministry of Environment & Forests in regard to regularization of pre-1980 eligible encroachments and conversion of forest villages into revenue villages under the Forest (Conservation) Act, 1980 by providing a legislative frame to the

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existing date; (x) provided penal provisions against holders of the forest right, including de-recognition of their forest right; and (xi) facilitated flowing of developmental benefits to the communities living in the forest both in terms of creation of infrastructure and also beneficiary oriented schemes and programmes of different line agencies, which were not available to them due to an extreme prohibitive regime of forestry laws. The draft Bill also did not put any national park or sanctuary to a risk as there was a detailed procedure of settlement of rights in both national parks and sanctuaries. The Bill also did not preclude the Ministry of Environment & Forests from taking action against the ineligible encroachers of forest land. It, in fact, provided a legislative frame work to various guidelines/policies/circulars issued by the Ministry of Environment & Forests under which historical injustice to the STs could not be undone.

4.6 The point-wise comments of this Ministry to the issues raised by different Ministries are given in Annexure – A.

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

4.8 On receipt of the vetted Bill from the Ministry of Law & Justice on 25.4.2005, the Ministry sent a Note for the Cabinet, along with the draft Bill as vetted, to the Cabinet Secretariat on 28.4.2005 for placing the matter before

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the Cabinet. The Committee of Secretaries had also discussed the draft Bill in a meeting held on 28.4.2005.

5. POSTING OF THE DRAFT VERSION OF THE BILL ON THE INTERNET

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

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

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

6. **MODEL BILL – STATE/UT MINOR FOREST PRODUCE (OWNERSHIP RIGHTS OF FOREST DEPENDENT COMMUNITY) ACT, 2005 PREPARED BY THE MINISTRY OF ENVIRONMENT & FORESTS**

In the meanwhile, the Ministry of Environment & Forests also prepared a “Model Bill – State/UT Minor Forest Produce (Ownership Rights of Forest Dependent Community) Act, 2005” for conferring ownership rights in respect of minor forest produce, including *Tendu patta*, on all those people from the weaker sections who work in forests. As the provisions of this Model Bill overlapped with the provisions of the draft “Scheduled Tribes (Recognition of Forest Rights) Bill, 2005” formulated by this Ministry, the Committee of Secretaries discussed if there was need for enacting two Bills in a meeting held on 12.8.2005.

7. **“ONE DAY CONSULTATION WORKSHOP” ORGANISED ON 28.10.2005**

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

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

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

8. **MODIFICATIONS CARRIED OUT IN THE BILL AFTER THE
"ONE DAY CONSULTATION WORKSHOP"**

The Ministry of Tribal Affairs examined the suggestions received from various experts and from the Ministry of Environment & Forests, held two separate discussions with the Ministry of Environment & Forests, and decided to -

- (a) accept the cut off date of 25.10.1980 for recognition and vesting of forest rights to forest dwelling Scheduled Tribes in respect of forest land under their occupation and to remove the flexibility in the cut off date, provided in the draft Bill. The provision in the earlier draft Bill "or such other date as the Central Government may, by notification in the Official Gazette, specify" in Section 4(2) was accordingly deleted;

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- (b) accept the recognition and vesting of the forest rights in the core areas of the National Parks and Sanctuaries as determined by the Ministry of Environment & Forests on a provisional basis for a period of 5 years, which shall become permanent if the holders of such rights are not relocated within this period with due compensation, and to incorporate the definition of "core areas" in the Bill. In Section 2 (b) of the Bill, a provision that *"core areas" means such areas of National parks and Sanctuaries required to be kept as inviolate for the purposes of wildlife conservation as may be determined by notification, by the Ministry of the Central Government dealing with Environment and Forests* was accordingly added;
- (c) clarify that occupation of land by any individual or family or community on the date of commencement of the Act shall be restricted to the area under actual occupation and shall in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe to allay apprehensions that every family will get 2.5 hectares irrespective of actual possession. Section 4 (5)(i) of the Bill was accordingly revised by adding the words *"and shall be restricted to the area under actual occupation and shall"* before the words *"in no case exceed an area of two and one half hectare per nuclear family of a forest dwelling Scheduled Tribe"*;
- (d) revise the role of the Gram Sabha and to entrust them the authority of only initiating the process for determining the nature and extent of the individual and/or community forest rights. The word *"decision"* in

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the earlier provision in Section 6(2) of the Bill was deleted and the Gram Sabhas were made the initiating authority for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes by receiving claims, consolidating and verifying the claims, and preparing a map delineating the area of each recommended claim for exercise of such rights;

- (e) specify the involvement of officers of Departments of Revenue, Forests and Tribal Affairs in the Sub Divisional, District Level and the State Level Monitoring Committees in the process of settlement of forest rights under the Bill to avoid any dilution later on. Section 6(8) was accordingly incorporated to read that *"the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the Departments of Revenue, Forests and Tribal Affairs of the State Government at the appropriate level as may be prescribed"*;
- (f) agree to the registration of the title to the forest land jointly in the name of both the spouses where married, and in the case of single person headed households, in the name of the single head. Section 4 (5) (ii) of the Bill was revised to provide that *"the title to the extent given shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of single member household"*;

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(g) provide that the penalties under the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. This clause was added in Section 7 of the Bill. This provision now casts a penalty in addition to whatever is provided under other relevant Acts.

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

9. **REASONS FOR NOT INCLUDING NON-TRIBALS AND OTHER FOREST DWELLERS WITHIN THE PURVIEW OF THE BILL**

The suggestion that non-tribals and other forest dwellers should also be brought under the purview of the proposed Bill could not, however, be accepted by the Ministry for the following reasons:

(a) STs constitute major portion of forest dwellers (approx. 70%).

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- (b) STs have constitutional status and special protection.
- (c) STs are original forest dwellers and others came subsequently.
- (d) The Scheduled Tribes are living in Forests for generations and are integral to very survival and sustainability of Forests. It is well known that the forest dwelling scheduled tribes are residing on their ancestral lands and their habitat for generations and from times immemorial and there exists a spatial relationship between the forest dwelling scheduled tribes and the biological resources in India. They are integral to the very survival and sustainability of the forest eco systems, including wildlife. In fact, the tribal people are inseparable with the ecosystem, including wildlife, and cannot survive in isolation. The traditional rights of FDSTs on forest lands were, however, not adequately recognized and recorded in the consolidation of state forests during the colonial period as well as in Independent India though Indian Forest Act 1927 had provided for the determination of rights. They still do not even have a homestead and as such address of their own, which even makes them liable for eviction. This kind of relationship with forests is non-existent in case of non-STs who are not on the same footing. There exists a reasonable and justifiable distinction.
- (e) In any case operation of the 1990 guidelines issued by M/o Environment & Forests for regularization of encroachment is

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not barred by the proposed Bill and the same would continue to apply to others.

In view of above, certain modifications were made in the draft Bill. The modified Bill was again discussed in a meeting held on 17th November, 2005 attended by the Secretaries, Ministry of Tribal Affairs and the Ministry of Environment & Forests. Based on the decisions taken in the said meeting, the Ministry revised the draft Scheduled Tribes (Recognition of Forest Rights) Bill, which was again vetted by the Ministry of Law & Justice for the third time on 21.11.2005.

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

The main features of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 are as follows:

10.1 Objective:

The objective of the Bill is to undo the historical injustice by recognizing and vesting the forest rights and occupation of forest land to forest dwelling Scheduled Tribes who have been residing there for generations and who are integral to the very survival and sustainability of the forest ecosystem, including wildlife, but whose rights could not be recorded.

10.2 Rights of Forest Dwelling Tribes:

The Bill seeks to recognize and vest forest rights as defined in Section 3 of the proposed Bill in the forest dwelling Scheduled Tribes where they are scheduled, in respect of forest land and their habitat and provides that the forest rights determined for vesting in the core areas of the National Parks and

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Sanctuaries shall be granted on provisional basis for a period of five years. The Bill further provides that the recognition and vesting of forest rights to forest dwelling Scheduled Tribes in respect of forest land and their habitat shall be subject to the condition that such tribes or tribal communities had occupied forest land before 25.10.1980. The Bill further provides that no forest dwelling Scheduled Tribes shall be evicted or removed from forest land under their occupation till the recognition and verification procedure is complete. Such forest rights shall be restricted to the area under actual occupation and shall in no case exceed an area of 2.5 ha per nuclear family of the forest dwelling Scheduled Tribe; shall be exercised only to the extent vested; and includes the responsibility of protection, conservation and regeneration of forests; to be heritable but not alienable or transferable and in respect of land where a title is vested or recognized to be registered jointly in the name of both the spouses in case of married persons, and in the name of the single head in case of single member household.

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

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

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11. CHECKS AND BALANCES

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

- a. Recognition of Forest Rights of only the FDSTs, where they are Scheduled. There is no distribution of land involved at all and Bill will not cover the entire 8.2 % ST population. Only tribes scheduled for the area living in the forests will benefit. A tribal from an outside area/State will not benefit. The Bill in actual terms will only benefit the tribal population on an "AS IS WHERE IS" basis. Only occupation of land prior to 25.10.80 is being given legal recognition.
- b. Recognition of the actual occupation of land subject to a maximum of 2.5. ha land only is proposed, which in fact restricts land grabbing even within tribal communities.
- c. All rights would be heritable but NOT alienable or transferable;
- d. The cut-off date of 25.10.1980 has been provided in the body of the Bill. It is only a one time exercise to recognise the age old occupation of land by forest dwelling STs, as per the ground situation, and is intended to put an end to the issue of so-called encroachment forever. There is no question of abetment of fresh encroachment.
- e. It has been provided in Section 5(a) in Chapter III of the Bill that the forest right holder shall not indulge in any activity that adversely affects wild animals, forests and biodiversity in the local area

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- j. The Ministry of Environment & Forests will have a role in the process of scrutiny and recognition of rights at all levels, which will be clearly spelt out in the rules. In fact, the role of the Ministry of Tribal Affairs will be extinguished once the land rights are conferred.
- k. There is no move to convert forest land into agricultural holdings – the vesting of rights will be done on “AS IS WHERE IS” basis and definitely no clearing of forests or felling of trees would be permitted.

The Bill prepared by the Ministry is thus only a logical culmination of the process commenced by the Ministry of Environment and Forests for settlement of the bona fide claims of forest dwelling communities in the 1990s. The Bill only provides for a legal frame work and sanctity to the ongoing administrative efforts of Ministry of Environment & Forests in this direction. The Bill uses the very language of the laws and policies of Ministry of Environment & Forests.

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

As indicated above, the revised Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, prepared by the Ministry was vetted by the Ministry of Law and Justice for the third time on 21.11.2005. After vetting of the draft Bill by the Ministry of Law & Justice, this Ministry had sent a Note for the Cabinet to the Cabinet Secretariat on 22.11.2005 for placing the matter before the Cabinet. The Cabinet in its meeting held on 1.12.2005 approved the draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, formulated by the Ministry. The Cabinet also decided that a Group of Ministers be constituted to

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SECRET/MOST IMMEDIATE

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To: Secy, Cabinet
21/2/06

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Memo/Dy. No. ...FCAY/2006
23/2/06

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

New Delhi, the 13th February, 2006
24 Magha, 1927 (S)

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

Reference Cabinet Secretariat Memorandum of even number dated 23.12.2005.

2. It has been decided, with the approval of the Prime Minister, to revise the composition of the Group of Ministers constituted *vide* the above referred Memorandum to (a) harmonise the issues brought up during discussions in the Cabinet; and (b) consider official amendments to the Bill.

3. The revised composition of the Group of Ministers (GoM) will be as under:-

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

4. The Group of Ministers will continue to be serviced by the Ministry of Tribal Affairs

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

Dy. No. ...
23-2-06

Dy. No. 1276
22.2.06

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

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SECRET

- 2 -

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


Copy forwarded for information to :-

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


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

Copy also forwarded, for information to :-

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


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

* SKB *
36 Copies.

पी.आर. किन्दिया
P.R. KYNDIAH



मंत्री
जनजातीय कार्य एवं
पूर्वोत्तर क्षेत्र विकास
भारत सरकार

शास्त्री भवन, नई दिल्ली - 110001
MINISTER FOR TRIBAL AFFAIRS &
DEVELOPMENT OF NORTH EASTERN REGION
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110001

D.O.No.16104/4/2005-S&M/PC&V(Pt.)
Dated, the 5th May 2006

Dear Shri Pranabji,

Kindly refer to the Note dated 2nd May, 2006, received from your office scheduling the first meeting of the Group of Ministers on Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 on 15th May, 2006 at 1830 hours.

As you are aware, the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced by this Ministry in the Lok Sabha on 13th December, 2005 has also been referred to a Joint Parliamentary Committee under the Chairmanship of Shri V. Kishore Chandra S.Deo, MP, for examination and report to the Parliament. In order to have wider consultations, the Joint Committee, at their sitting held on 16th January, 2006, had decided to invite memoranda/suggestions on the Bill from the public in general and experts / organizations / associations and NGOs interested in the subject matter of Bill. The Joint Committee has since completed the oral evidence of the experts / individuals and representatives of organizations / NGOs in its last sitting held on 19th April, 2006. Based on the suggestions / comments received, the Joint Committee would now be taking up clause-by-clause consideration of the Bill on 8th May, 2006, and consideration and adoption of the draft report on 16th May, 2006. In this connection, a copy of the notice No.1/3(6)/2005/C.II dated 26th April, 2006 received from the Lok Sabha Secretariat is enclosed. The Joint Committee is expected to submit their report to the Parliament by 23rd May, 2006.

In view of above, it is felt that it would be more relevant to hold the meeting of the GOM constituted to consider the issues relating to the Bill after the draft report is finalized by the Joint Committee. You may, perhaps consider postponing the meeting of the GOM for the time being.

With personal regards,
Yours sincerely,

(P.R.KYNDIAH)

Shri Pranab Mukherjee
Minister of Defence
South Block
New Delhi.

*With encl.
Issued,
(10/5/06)*

Ministry of Panchayati Raj
Government of India

At the request of Ministry of Tribal Affairs (MOTA), a meeting was convened in my office on November 24, 2006. Secretary, Ministry of Tribal Affairs said that her office would draft the Minutes. The Minutes have been received from MOTA today, i.e. November 30, 2006 at 11.15 am.

These Minutes have been examined in Ministry of Panchayati Raj (MoPR) and the detailed comments of MoPR are being forwarded to Secretary, Ministry of Tribal Affairs at 1 pm.

(Signature)
(Meenakshi Datta Ghosh)
Secretary

it appears that MoPR is not aware of the issues to some of the issues which they had agreed to in their meeting. Hence we need to issue a circular indicating our response.

Ms. Meena Gupta, Secretary, Ministry of Tribal Affairs

MoPR UQ No. Del/SPR/2006 dt. 30.11.2006

(Signature)
30/11

JS (PR)
(Signature)
30/11/06

30726
30/11/06

MINISTRY OF PANCHAYATI RAJ

Date: 30th November 2006

Received the Draft minutes at 11.15 AM on 30th November 2006. Our comments are as follows:

1. Ministry of Panchayati Raj does not require expansion of the definition of the term Forest Dwelling Scheduled Tribes (FDST). Ministry of Panchayati Raj requires that the term in and around ~~to~~ be included as was approved by the GOM to ^{include} ~~enable~~ those FDSTs who are deriving their livelihoods from the forests even though residing nearby.
2. The first sentence is redundant as the positions of the Ministry of Tribal Affairs(MOTA) vis-à-vis JPG recommendations are not in agreement. Thus the Ministry of Panchayati Raj feels that the first sentence should be deleted. The formulation could be as under:
"It was agreed that the fact of occupation of the forest lands by the families of FDSTs leased to them by the Forest Department and taken away subsequently by the forest Department or other agencies would be considered as evidence for acceptance of the claims of FDSTs while framing the Rules for implementation of the Act."
3. Ministry of Panchayati Raj is in agreement with the views of vesting equal rights in female members of STs vis-à-vis land allotted to them.
4. No comments.
5. It is submitted that MOTA may include the words and others after the word development. Thus, the reading would be "development and other interventions." This would include forcible displacement and diversions due to development activities such as industrial promotion, industrial housing, etc.
6. No comments.
7. No Comments.
8. Ministry of Panchayati Raj feels that traditional cultivation practices and powers such as shifting cultivations customarily enjoyed over thousand years by the FDSTs cannot be tampered with and banned, as ^{this} ~~it~~ would be a direct contravention of the provision of PESA.
9. Ministry of Panchayati Raj is not in agreement with the position taken on this point and requests that the provisions of fair minimum support price, if not enshrined in the Act, certainly be included in the Rules and Guidelines thereof.
10. The Bill is not incorporating the provisions which are in nature of promises ~~under~~ Section 4-K of PESA, which enjoins that

572

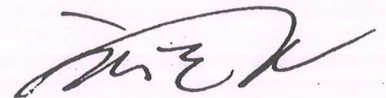
" The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be mandatory for grant of concession for the exploitation of minor minerals by auction. "

While the Ministry of Panchayati Raj is not particular that the Bill has a provision for ensuring these benefits to FDSTS, Ministry of Panchayati Raj strongly feels that the mandatory recommendation of the PESA cannot be ignored ^{or be referred} and simply be termed by MOTAs as "promises."

11. Section 11 is in direct reference to PESA and speaks of mandatory prior consultation of the Gram Sabha before acquisition or diversion of forestlands. Acquisition of lands, diversion, sale, transfer and alienate are all words that imply land that has been removed from the possession of FDSTs. PESA does not recognize categories of land -revenue, forest, Panchayat land, etc. GOM agreed that the position of MOPR must be incorporated through suitable amendments.

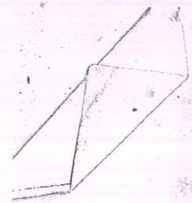
12. Section 12 has already been accepted by the MOTAs under Section 3-k.

Submitted



30/4/11

12.20 pm



only be imparted by the GOI. A higher authority to arbitrate does not necessarily mean better quality of decision. What is required is a clear law which protects the environmental cause to be implemented at the local level with accountability to the local body and the State Government for implementing the regulation.

Issue - 4

Intersectoral Institutional Mechanism on Issues of Environment and Development

PMO suggested a Cabinet Committee on Environment and Development to have judicious decision making on issues that intersect between Environment and Development. A detailed note on this was prepared by PMO and sent to Cabinet Secretary. The Cabinet Secretariat's Office proved the point of the necessity of such a forum by marking this for opinion only to the Ministry of Environment and Forests which has opposed the need for such a forum.

The argument in the PMO note is that the current problem is fundamentally institutional. There are several issues that fall in an intersecting space of Environment and Development on which a rational decision can be made only after assessing costs and benefits which will factor in environmental, economic, social, political and ethical concerns. Just as it would be unfair to evaluate all other concerns from the vantage point of purely an economic one, so would it be equally unfair to evaluate them only from the vantage point only of environment. Today what happens is an exercise of veto power by the Ministry of Environment and Forests. What we are asking for is a dialoguing space through a Cabinet Committee on Environment and Development. The argument made in the PMO note referred to the Cabinet Secretariat and the reply given by the Ministry of Environment and Forests and our comments on that are in the Annexure. This is an issue on which a decision has to be taken not by the Ministry of Environment and Forests alone but by the affected Ministries together with the Ministry of Environment and Forests. The Prime Minister may like to discuss this separately with the Ministry of Finance, Ministry of Tribal Affairs, Ministry of Rural Development, Dy. Chairman Planning Commission etc. to decide.

Exemption from payment of NPV for diversion of forest lands for development purposes

This is an issue where the courts have ordered that the NPV of the forest under submergence must be paid by Government in case of diversion of forest lands. This hikes the cost of all infrastructure projects - both economic and social. The Ministry has suggested that they would bring a note to the Cabinet exempting specific social infrastructure. This should not be limited to social infrastructure and the Ministry should be asked to prepare a comprehensive response including vital social and economic infrastructure.

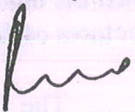
SOLUTIONS/DECISIONS REQUESTED TODAY

- 1) Interim solution by way of issue of revised guidelines etc. may be issued. This is only a band-aid to the problem. The real solution to both the issue of settling occupation prior to 1980 and conversion of forest villages is to formulate a comprehensive legislation to give due recognition to the forest rights of tribal communities and forest dwellers in the form of a "Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights), Act." The Prime Minister may direct Ministry of Tribal Affairs to formulate such an Act taking guidance of Standing Committee on intersectoral issues related to tribal development and welfare, M/o Environment and Forests, Rural Development, Panchayati Raj, Home and Law. Alternatively the anchor role could be played by the Ministry of Environment and Forests also. This Bill should be brought to the Parliament in the Budget Session. This will completely clear the legal quagmire into which the most helpless people in this country have been dragged into without sight of solution.
- 2) On the NPV issue, Cabinet Secretary may be directed to prepare a Cabinet précis to be moved by the Ministry of Environment and Forests in consultation with the Ministries of Finance, Power, Rural Development, Urban Development, Communications, Human Resource Development, Health, Water Resources.
- 3) The need to create a Cabinet Committee on Environment and Development is more than justified by the examples that have come up before the Prime Minister in the last six months. For example the unilateral Legislations in the Coastal Regulation Zone, the handling of

the NPV issue only from the environment perspective, environment decisions have affected livelihood security like the brick kiln workers case raised by several affected parties etc. all testify to the need of comprehensively overhauling the current system of decision making and creating a Cabinet Committee on Environment on Environment and Development as an institutional forum for sound decision making. It would be a rational response in public policy to have intersectoral forums decide intersectoral issues. The types of issues and the nature of projects that would need to be referred to such a Cabinet Committee can of course be decided as say, cases involving over 100 crore investment or livelihood issues affecting more than 10,00 people etc.

- 4) The issue of Coastal Regulation would then automatically self referred to such a forum and such cases not get repeated.
- 5) What may be considered a minor issue but with significant ramifications needs to be mentioned. These are about the "word traps" created by the Ministry of Environment and Forests (perhaps consciously woven into deny the genuine demands of tribal communities). To give an example, while the PMO refers to the first issue as regularization of occupation of pre-1980 settlements, the communication from the Ministry of Environment and Forests (including the reply to the Prime Minister by the Minister) refers to this as regularizing encroachments. The battle is lost even before it begins in neutral spaces like courts. It is this kind to wrong use of language that has brought the Government into this protracted legal wrangle.

Similarly, communications addressed by the Ministry of Environment and Forests on intersectoral issues need to be addressed to the Chief Secretaries of State Governments and not only to the Secretary of the Department of Environment and Forests thereby losing a lot of time in giving clarity to issues. A notification is enclosed to prove the point.


[R. Gopalakrishnan]
January 19, 2005

Over the last few years, there has been widespread unrest in the country over the eviction of tribal forest dwellers in pursuance of various Supreme Court orders. In order to address this problem, the NCMP, *inter alia*, makes the following commitment with regard to tribal forest dwellers:

"The UPA will urge the states to make legislation for conferring ownership rights in respect of minor forest produce, including tendu patia, on all those people from the weaker sections who work in the forests".

2. The Chairperson, NAC has also written to PM suggesting measures, including legislative steps, for the protection of the rights of the tribal forest dwellers.
3. This is one of the items that have been followed up by PMO while monitoring the NCMP commitments. In a recent presentation made to PM by the MoEF, it was decided that the M/o Tribal Affairs will prepare a draft Bill for the fulfillment of this commitment. Consequently, the Ministry has set up a Technical Support Group. On the basis of the suggestions of the Group, the Ministry has prepared a first draft of The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill, 2005 and sent it to PMO on our request. A copy of the draft Bill is at F/A.
4. As it now stands, the basic features of the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill, 2005 are as follows:-
 - Forest rights and rights over minor forest produce will be vested by law with the tribal forest dwellers. These rights include occupation of forest lands for habitation and for livelihood purposes.
 - Those tribal forest dwellers whose claims are recognized, will be given permanent ownership and hereditary rights over the forest lands.
5. At the same time, there have been strong protests from Shri Valmik Thapar, Ms Malvika Singh and others against such a law. The concerns of wildlife and forests, as voiced by people like Ms Malvika Singh, need to be taken into account.
6. The Bill should protect as many features of the Forest Conservation Act (FCA) of 1980 as possible. The Bill should provide adequately to conserve the integrity of forests. The FCA, 1980 is a regulatory and not a prohibitory law. It has, in fact, helped augment tribal livelihoods at many places by preventing the reckless diversion of forests. The real issue is its rational implementation.
7. The land mafias had continued to degrade the prime forests of the country until the enactment of the FCA, 1980. Between 1950 and 1980, almost 4.8 million hectares of forest land was diverted for non-forestry purposes.
8. The following provisions have been kept in the Bill that are in consonance with the Forests (Conservation) Act and the laws for the protection of wild life :
 - Rights of Scheduled Tribes forests dwellers are only restricted to non-timber forest produce. No rights are being extended to forest timber in order to prevent indiscriminate felling of trees, etc.

* F/B

- Rights of the Scheduled Tribes forest dwellers are not being extended to hunting.
- Rights to Scheduled Tribes forest dwellers are being limited to those related to bonafide livelihood supporting activities and do not include activities for commercial purposes.

9. However, the Bill clearly supercedes and is in contravention of the following provisions of the Forests (Conservation) Act, 1980 :-

- Section 2 of the Forests (Conservation) Act provides that no forest lands or any portion thereof can be used for any non-forestry purpose except with the prior approval of the Central Government. This will no longer be applicable once the Bill is passed.
- Section 2 of the Forests (Conservation) Act also provides that no forest lands can be assigned by way of lease, etc. to any private person, etc. except with the prior approval of the Central Government. This provision too, will no longer be applicable once the Bill is passed.

10. In this regard, the following Comments on the Scheduled Tribes and Forests Dwellers (Recognition of Forests Rights) Bill, 2005 are submitted for consideration:

- I. The Bill is applicable to Scheduled Tribes and Forests Dwellers. Forests dwellers are defined as those "who primarily reside in and around forests". This would include rural poor and other non-tribal communities who may have encroached upon and occupied forests lands. It would also include persons with commercial interests who may have set up bases in forests areas for commercial purposes, like land mafias, contractors, etc. The objective of the Act is purely to provide protection to people of Scheduled Tribes who have been traditionally living in forests. Therefore, the Act should be strictly applicable only to Forest Dwelling Scheduled Tribes .
- II. The Bill is not applicable to Jammu & Kashmir and the Andaman & Nicobar Islands. It is not clear why these territories have been excluded. There are a large number of forest dwelling tribes in the Andaman & Nicobar Islands, for instance.
- III. The definition of 'forests land' includes protected forests, reserved forests, National Parks and Wild Life Sanctuaries. It is necessary to exclude at least National Parks and Wild Life Sanctuaries or else their very existence may be threatened.
- IV. There is no cut-off date for regularization of encroachments or settlements. (Under Section 3(2), the cut-off date for only those Scheduled Tribes who have migrated and occupied forests lands has been kept as 31.12.1993.) The lack of any cut-off date for tribal settlers on forests lands is likely to encourage continuous encroachment of forests lands in the years to come till all such lands have been converted into non-forestry use. Hence, the date of enactment of the Forests Conservation Act (which is 1980) should

the Supreme Court's orders in the matter. THIS IS ALSO IN LINE WITH

- V. Under Section 3(3), forests rights include rights of Scheduled Tribes to 'shifting cultivation' and 'rotational cultivation'. This can create extensive damage to forests lands. For years now, there has been thinking within the Government regarding ways and means to discourage 'shifting cultivation'. This provision could actually encourage the destructive practice of shifting cultivation. Rights to 'shifting cultivation' and 'rotational cultivation', therefore, should not be included in the Bill.
- VI. The provisos under Section 3(3) include the responsibilities of tribal people for protection, conservation and regeneration of forests. In the interests of these eco-sensitive areas, these responsibilities should be spelt out more specifically and in greater detail. Further more, the responsibilities should also specifically include the protection of wild life.
- VII. The Bill should provide that no State Government or other authority or individual or community shall clear any forests lands or trees which have grown naturally on that land for any non-forestry purposes including re-forestation, except with the prior approval of the Central Government.
- VIII. The Bill should provide that the total area found eligible for regularization should not exceed the actual area under non-forestry use. (The extent of total area under encroachment/settlement on the ground should tally with the satellite images of such areas.)
- IX. The Bill should provide that, to the extent possible, the roughly 3000 forest villages should be shifted in clusters to the edges of the forests and near the roadsides where infrastructure and other facilities are available. This process should be completed within 18 months of the coming into force of the law.
- X. The Bill should have a clear provision to discourage use of any forest area for agriculture if it was not already under agricultural use before the enactment of the Forests (Conservation) Act.
- XI. The Bill should have a specific provision to provide adequate checks and counter-checks to keep away vested interests from forests lands.
- XII. Under Section 4 (2) (d) of Chapter IV of the Bill, the sub-Divisional level Committee should include two respected civil society members from the sub-Division/Block/Taluk, at least one of them being a woman, recognized for their understanding of forests rights tenurial issues, appointed by the District Collector, *preferably from among the forests dwelling Scheduled Tribes of the sub-Division or District*.
- XIII. Under Section 4(3), the Chairman of the Zilla Parishad should be the Chairman of the District-level Committee.
- XIV. Under Section 4 (3) (e), the District-level Committee should include either :

tribal forests issues, elected by the civil society members of the sub-Divisional level Committees;

or

ii. a Scheduled Tribe Member of Parliament / MLA of the District.

XV. Under Section 4 (4) (e), the State-level Monitoring Committee should include three (not two) recognized non-governmental persons known for their understanding of tribal forests issues.

XVI. The Bill does not spell out the role and powers of the Gram Sabha, sub-Divisional-level Committee, District-level Committee and State-level Committee. This has to be clearly spelt out.

XVII. The Bill does not spell out the procedure for identification of encroachers/settlers for regularization. This needs to be spelt out in detail.

XVIII. The penalty for contravention of the provisions of the law is limited to a simple imprisonment of up to 30 days. However, for contraventions like hunting, trekking, poaching or causing harm to wild life, the penalties should be the same as those provided in the relevant laws for protection of wild life.

11. ~ PM's approval is sought for urgently forwarding the comments in para 10 to the Ministry of Tribal Affairs for serious consideration.

17/2/05
(Pulok Chatterji)
17.2.2005

JS(G)

he may await the final shape of the Bill which will be received after 18/2/05 meet.

Principal Secretary

17/2/05

Prime Minister

Post Script

B(P) spoke to me today regarding the urgency to forward the comment. We may forward these comments except the 10(x) on forest villages. Forest villages that remain to be converted are a residual

596/PSV/6/05

JS (G) to PM
Dy. No 835-6
Date.....17/2/05

21/557/CF/05

category. they already practice
 agriculture, as these were settled by
 the British to survive on agriculture
 and resist in forestry operations. To
 relocate them is not practical nor
 desirable. It would mean
 moving them out of their homelands
 for over a century or more.

Except 10(1x), other suggestions
 could be forwarded after approval by
 Principal Secretary. I have discussed
 implications of 10(1x) with JS (A)
 and he also agrees

hms
18/4/51

Principal Secretary to Gov.

We may forward these
 suggestions for examination/
 consideration of the Committee -

JS (A)

Atli
18/2