

**Statement on the  
'SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF  
FOREST RIGHTS) RULES 2007',  
issued by Ministry of Tribal Affairs, January 2008**

**Future of Conservation Network<sup>1</sup>**

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**February 4, 2008**

**Summary: Forest Rights Rules Do Little for Forest-Dwellers or Forests!**

The 'Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2007' are disappointing. While we welcome the operationalisation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, **the rules are inadequate to deal with its ecological, socio-economic, and political implications**. The government has missed a major opportunity to use the Act to enhance conservation of biodiversity through more scientific and democratic means, and ensure livelihoods security for forest-dwelling communities.

In particular, the Rules:

1. **do not adequately enhance the Act's potential to achieve conservation**. They go a partial distance in defining '*bona fide* livelihood needs' and 'disposal of minor forest produce' in such a way as to reduce the entry of major industrial and commercial interests instance. But on the other hand, they:

(i) do not provide clear conservation responsibilities of the rights claimants and their Gram Sabhas along with relevant powers and authority, and do not specify any conservation functions for the district and state level committees;

(ii) do not help operationalise the Act's provisions for communities to protect and manage forests that have been customarily managed by them;

(iii) do not mandate clear institutional relationships between gram sabhas, rights-holders and the Forest Department, and thus miss out an opportunity to move forest and wildlife

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<sup>1</sup> The Future of Conservation in India (FoC) is a network of ecological and social organizations and individuals committed to effective and equitable conservation of biodiversity. FoC's objective is to foster dialogue and engagement in complex conservation issues, and help tackle the increasing threats that both biodiversity and people's livelihoods face. This includes joint action on areas of agreement, and attempts at evolving common understanding on issues.

FoC is not an organization, but a forum where organizations and individuals can meet, dialogue, and take joint actions.

conservation into much more effective government-citizen partnerships that go beyond the unequal existing ones such as JFM and EDCs, into genuine power-sharing ones.

**2. present a number of hurdles in the effective implementation of the social and economic benefits that the Act envisages.** For instance, while on the one hand they contain provisions for ensuring that Gram Sabha decisions are taken through appropriate quorum and that the voices of disprivileged sections including women and primitive tribes are heard, on the other hand they:

(i) take control away from the forest-dwelling settlement's gram sabha into the panchayat, which is usually a much larger, more politicized and conflict-ridden entity.

(ii) do not specify any time limits within which the committees at sub-divisional and district level have to process and make decisions on claims received, thereby opening up to the possibility of unending delays in implementation.

(iii) are biased against 'Other Traditional Forest Dwellers', by making their representatives part of various official committees under the Act, only when Scheduled Tribes are not present in the area.

**3. rules must enable effective implementation of the Wild Life Protection Act 1972,** especially in cases of wildlife-related crimes, including poaching. This should be dealt with in consultation with the Gram Sabha within whose jurisdiction the incident has occurred.

**We strongly urge that the government should modify the Rules and notify additional Rules to:**

1. clarify the conservation responsibilities, powers, and mechanisms of accountability of Gram Sabhas and right-holders.

2. provide full powers for assessing and forwarding claims, to the Gram Sabha (defined as the assembly of villagers in each settlement including hamlet of village), and not to Panchayats.

3. specify clear time-lines for the sub-divisional and district committees to fulfill their functions.

4. provide representation to Other Traditional Forest-Dwellers, where such communities exist, in all relevant committees.

5. clarify the institutional relationships (powers, roles and responsibilities), between relevant government agencies (especially the Forest Department) and Gram Sabhas representing their right-holders, specifying equitable power-sharing and decision-making processes that go beyond current arrangements such as in Joint Forest Management and Ecodevelopment committees.

These points are elaborated below. In doing so, we reiterate also that we continue to have serious concerns about some provisions of the Act (in particular those related to the 2005 cut-off date and to the exemption of development projects from the purview of the Forest Conservation Act) which we feel need amendment. We also welcome the advise given by the Prime Minister, in his letter to Chief Ministers of all States<sup>2</sup> to ensure that wildlife conservation goes hand in hand with the process of granting rights, and urge the central government to set up a mechanism to help states in achieving this balance.

<b>1. No Conservation Responsibilities and Authority for Forest Rights-Holders and Gram Sabhas, and no Conservation Functions for District and State Committees</b>
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Some of the possible detrimental impact of the Act in terms of large-scale exploitation of forests, is reduced by the definitions provided of 'bonafide livelihood needs' and 'disposal of

<sup>2</sup> January 11, 2007 - <http://pib.nic.in/release/release.asp?relid=34561>

minor forest produce' [2(b) and (d)]. The Rules also require Gram Sabhas to set up committees for protection of forests and wildlife. However, other than these, the Rules are disappointingly silent on a number of crucial conservation aspects.

For instance, the Draft Rules put out in mid-2007 included the responsibility to ensure that in exercising one's forest rights, no irreversible damage was caused to biodiversity. In addition, rights-holders were also encouraged to protect, regenerate and conserve forest resources. This provision has been omitted from the final Rules altogether. In its place, there is a requirement for Gram Sabhas to set up committees for "the protection of wildlife, forest and biodiversity" [4(1e)], and for the Sub-divisional Committee to "provide information to each Gram Sabha" regarding such protection [6(a)]. Without clear responsibilities and mechanisms for accountability, *and* clear powers or authority to carry out such responsibilities, however, these provisions are weak.

Secondly, the District Level Sub-Committees and the State Level Monitoring Committees have not been given any function regarding conservation.

*Recommendation:* Mandatory conservation duties or responsibilities, with clear powers and authority to carry these out, and decentralized mechanisms of accountability in situations where such responsibilities are not met with, need to be added to fully operationalise Section 5 of the Act. Also important are specific functions relating to ensuring and monitoring conservation objectives, need to be mandated for the District and State level committees. Such provisions will help ensure that the ecosystems and resource base of the areas where the Act will be operational, are conserved and enhanced rather than degraded.

## **2. Gram Panchayat Presides over Gram Sabha**

Rule [3(1)] state that the Gram Sabha as defined under the STOTFDA is to be convened by the Gram Panchayat, which will also select the Forest Rights Committee (FRC). Given that Gram Panchayats are composed of representatives of numerous villages, and that often STs or OTFDs would be in a minority or in other ways unable to make their voice heard, this provision puts a significant hurdle in the meaningful implementation of STOTFDA. Also, it is unclear how the Sub-Divisional Level Committee (SDLC) will undertake its duties of monitoring Gram Sabha functions if these are to be presided over the Gram Panchayat.

*Recommendation:* As envisaged in the Act, the unit of decision-making for all relevant sections of the Act should be the Gram Sabha at the settlement or hamlet level. This needs to be clarified in an amended set of Rules.

## **3. Ambiguous Relationship of Gram Sabha with the Forest Department**

The Rules do not clarify the relationship of the Gram Sabha with the Forest Department or other relevant government agencies, in the exercise of management and protection functions. In the absence of clear delineation of roles, responsibilities and powers, there is likely to be considerable confusion and possible conflict on the ground when the Gram Sabha tries to carry out its functions and fulfill its duties vis-à-vis the forest it claims to be within its customary boundary.

*Recommendation:* Additional Rules need to specify the institutional arrangements between the relevant government agencies (especially the Forest Department) and Gram Sabhas. In

particular, the functions, responsibilities and powers of protection, management, imposing penalties, monitoring, and so on, need to be clearly demarcated. The Rules should move the implementation of the Act towards community-based and collaborative arrangements that synergise the strengths of communities and government officials while also providing checks and balances against misuse of power.

#### **4. No Time Limits for Claims Procedure, No Mechanisms for Regular Feedback**

No time limits have been specified for the completion of tasks assigned to the Forest Rights Committee (FRC) of the Gram Sabha/Panchayat, Sub-divisional Level Committee (SDLC), District Level Committee (DLC) and State Level Monitoring Committee (SLMC). As a result, any of the various steps mandated in the Act could get indefinitely delayed without an adequate redressal clause. Additionally, there is no requirement for SDLCs and DLCs to regularly report back to the Gram Sabha on the discussions they are having, and the reasoning behind the decisions they are taking.

*Recommendation:* Specific deadlines must be set for each of the steps of the claims process to ensure that unnecessary delays do not disenfranchise claimants or otherwise result in non-implementation of the Act. Secondly, there should be a mechanism by which relevant committees at the Sub-divisional and District levels are regularly informing Gram Sabhas about their applications, and the reasoning behind decisions taken on these applications.

#### **5. Exclusion of Other Traditional Forest Dwellers (OTFD)**

Numerous committees assigned to recognize and vest forest rights exclude Other Traditional Forest Dwellers (OTFD). There is no automatic provision for OTFD in (a) Forest Rights Committee (b) various committees to protect biodiversity (c) cases where there is a heterogeneous population of STs and non-ST tribes in a village (in this case, only STs, primitive tribal groups and pre-agricultural communities are included) (d) SDLC and (e) DLC. Representation from OTFD needs to be beyond cases where there no STs.

*Recommendation:* Wherever OTFD communities are present, they should be represented in each of the relevant committees being set up under the Act.

#### **6. No Process to Establish Community Forest Resources**

One of the Act's key provisions that could help in community based conservation and livelihood enhancement, provides the right to communities to conserve and manage forests they have been customarily managing. However, though the Gram Sabha is mandated to initiate the process of determination of community forest resource, the Rules do not specify a procedure for operationalising this, and the appended claim forms do not specify anything on this provision. Additionally, the evidence needed to claim rights do not include Gram Sabha records, oral testimonies and evidence of this nature that are often the only evidence available of a community conserving and managing the forest.

*Recommendation:* The Rules need to specify a procedure for communities to claim the boundaries and conservation responsibilities for such forest areas, including evidence such as Gram Sabha records and oral testimonies. They also need to delineate the institutional arrangements with existing government agencies or others currently managing such areas. Both

these steps are with the intention of enhancing forest conservation and ensuring long-term ecosystem benefits and livelihood security for communities dependent on them.

The Rules exclude many legitimate forest-dependent and forest-dwelling communities by introducing ambiguously defining eligibility as “reside in forests” and “bona fide livelihoods needs”. Those excluded include small-scale contractors and traders who may reside adjacent to forests but not within forest-boundaries.

## **7. Exclusion of Independent Experts in SDLC, DLC and SLMC**

There is no provision for independent experts and for the involvement of citizens in the functions of the SDLC, DLC and SLMC. Given the massive scale and complications of the tasks envisaged for these committees, the lack of such involvement will only hamper their work.

*Recommendation:* All these committees should contain independent experts on ecological and social aspects to assist the official members, and to ensure their transparent functioning. There should also be clear processes to enable the involvement of citizens in the functioning of these committees.

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