

**THE SCHEDULED TRIBES AND OTHER FOREST-DWELLERS
(RECOGNITION OF FOREST RIGHTS) ACT 2006:**

CRITICAL AMENDMENTS, CLEAR RULES, AND ASSESSMENT PERIOD NEEDED

Kalpavriksh Position and Recommendations

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Kalpavriksh would like to stress that the prime functions of forests as a habitat for wildlife, as providers of ecological security, and as a source of basic survival and livelihood for millions of people, need to be protected. It also recognizes the need for ensuring social justice and welfare of forest-dependent communities, and their central role in forest governance.

Adequate legislation to secure the rights of traditional forest-dwellers in India has long been overdue. We believe that appropriately defined rights, along with clear responsibilities and roles in the management of forests, are a pre-requisite to the long-term conservation and sustainable use of forests, including the conservation of wildlife within and outside protected areas.

The Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act 2006, is a mixed bag. While a number of provisions will lead to better conservation and enhanced livelihood security in certain situations, other provisions have a strong potential for damage to forests, wildlife & protected areas and increased livelihood insecurity. These would require appropriate amendments.

Key examples of the positive elements of the Act are:

- Greater role and empowerment of Gram Sabha in determining claims, managing forests it has traditionally conserved, checking processes destructive of forest-dwellers' habitats, and protecting traditional knowledge.
- Site-specific and knowledge-based determination of critical wildlife habitats, and prohibition on their diversion for any other purpose.
- Greater livelihood security for traditional forest-dwellers who have been unjustly denied tenure.
- Displacement and relocation only by consent.

Key issues of concern which need either amendments in the Act or clarification through the Rules are:

- Cut-off date for eligibility of land claims as December 2005 instead of 1980.
- Exclusion of certain development projects and activities (eg. construction of roads) from the purview of forest clearances.
- Unclear relationship with existing forest/wildlife laws and institutional arrangements for enforcement.

- No assignment of conservation responsibilities of right-holders and gram sabhas, and lack of monitoring bodies/institutions to ensure that rights are not damaging to forests.
- Regressive cut-off date for non-ST forest-dwellers, to a period even prior to what the Forest Conservation Act allowed for.

Overall Recommendations

Though the Act has been preceded by considerable public debate, we also view with concern the process by which it was pushed through Parliament without a proper debate and time for MPs to even assess the changes made by the government. **We strongly urge that the process of implementation of and changes in the Act, including the drafting of Rules under it, be fully open to public inputs.**

In particular, we feel it is critical that there be a 6-month preparation period, during which the following be undertaken through the aegis of an empowered committee (set up by the relevant ministries and including publicly known conservationists, social scientists, and representatives of forest-dwelling communities), through an open and transparent process of public consultation and perusal of all available documentation and evidence:

- Consolidate all available mapping of ‘encroachments’, consolidate the available information ‘encroachments’ into a single database.
- Draft through an open and participatory process, Rules/Guidelines to operationalise the Act as appropriately amended, and to clarify a number of provisions that are subject to varying interpretations, including the precise relationship with previous forest/wildlife laws.

On no account should this preparatory period exceed 6 months, as both social justice and conservation requires implementation of the Act, appropriately modified. This should also be a period in which to discuss and bring in the necessary amendments to the Act to enable it to be ecologically more sensitive and fairer to non-ST forest-dwellers, and especially amendments related to the cut-off period and the impact assessment of development facilities.

We also strongly feel that in principle, no further large-scale diversion of forests should be permitted for any development project. This would require an amendment in the Forest Conservation Act also.

Given below is our assessment of the implications of various clauses of the Act, along with recommendations on what needs to be done to strengthen the Act’s positive aspects and undo the negative aspects.

While we believe that the amendments indicated are crucial, we will also engage with the process of implementation as soon as it starts, to put our points across, raise alerts if the Act is having negative impacts, and help in taking the positive provisions forward.

Recommendations for Specific Provisions

Element	Provision	Kalpavriksh Comments and Recommendations <i>(Note: some of these recommendations would require an amendment of the Act, and these are given in italics; others are possible to integrate into Rules or guidelines under the Act)</i>
1. Eligibility of claimants	Scheduled tribes, and other forest-dwellers (of at least 3 generations), with <i>bona fide</i> dependence	<p><i>(i) Definition of ‘other forest dwellers’ is unfair; eligibility should be, as per the Forest Conservation Act, for ‘encroachments’ upto 1980, provided such recognition is not in contradiction to any tribal land alienation related legislation/provisions in the specific area (this is to avoid the alienation of adivasi/tribal lands to non-advasis/tribals where the latter have encroached on them).</i></p> <p>(ii) The term “bona fide livelihood needs” needs to be defined such that it includes resources essential for survival, and resources essential for basic economic livelihood (including individual or family level sale), but not large-scale commercial enterprises. A key element of the dividing line between these two kinds of livelihood activities must be sustainability (the term “sustainable” as defined in Section 2(n), referring to the Biological Diversity Act).</p> <p>(iii) The term “primarily reside in and who depend on the forests or forest lands” needs to be clarified. Are both these conditions (“residing in” as also “dependent on”) to be satisfied to be eligible, or could either be adequate? Secondly, what does “residing in” mean, does it mean surrounded by forest, or could it also mean having forests adjacent to one’s village/fields? This needs careful thought, as there are merits and demerits of both: a very broad definition could bring in various people who really have no strong traditional links with forests, but a very narrow one could leave out many traditionally dependent people who may not today be surrounded by forest but continue to be dependent on it. In all cases, a traditional link with the forest as also a heavy dependence on it for survival and basic livelihood, should be part of determining who should get priority in eligibility.</p>
2. Process of determining claims	Initial enquiry and process by gram sabha, final decision by district committee	(i) This is acceptable, except see below recommendation on composition of sub-divisional and district committees; it should also be mandatory for sub-divisional and district committees to provide transparent and prompt feedback with adequate justification, to gram sabhas, on the decisions taken regarding their claims.
3. Cut-off date	Dec. 2005 for ST; unclear for “other	<i>(i) Given the serious implications of the 2005 cut-off date for forests, especially in that it might become an easy cover for continued encroachments, 1980 should be reverted to as the cut-off date for</i>

	<p>forest-dwellers”, since there is a possible contradiction between Sections 2(o) which specifies that they have to be at least 75 years in occupation, and 4(3) which specifies Dec. 2005 as the date for both STs and other forest-dwellers.</p>	<p><i>regularization of land, in consonance with Forest Conservation Act. This should be the cut-off date for both ST and other traditional forest-dwellers.</i></p> <p><i>(ii) For post-1980 ‘encroachers’ who have been displaced by projects without rehabilitation till 2001, or have for other reasons of sheer necessity had to encroach, provide in situ afforestation or ecological restoration based livelihoods (as recommended by MoEF in its 1990 circulars on ‘encroachment’) or option to move to revenue land elsewhere for which the projects responsible for their displacement should be made to pay. The relocation option should be exercised for such encroachers inside protected areas or other critical wildlife habitats that are identified through a transparent participatory process.</i></p> <p><i>(iii) For post-2001 ‘encroachers’ who have been displaced by projects without rehabilitation, relocate and provide adequate rehabilitation with full costs being borne by the relevant projects.</i></p> <p><i>(Note: the 2001 cut-off date for the second category is to ensure that the Act does not encourage fresh encroachments; with 2005, this is possible since even encroachers after Dec. 2005 would find it easy to claim having occupied land before this date.)</i></p> <p><i>(iv) In principle, prohibit any further large-scale diversion of forests for any kind of projects or processes (an amendment is needed in the Forest Conservation Act for this), since it would be inconsistent to not allow agriculture on forest lands but continue to allow mining, dams, industries, and so on.</i></p>
<p>4. Kind of rights extended</p>	<p>To individual and community land occupied before 1980; to forest resources; to conserve ‘community’ forests; to protect traditional knowledge; to development</p>	<p><i>(i) Given the serious possibility of misuse of this provision in the absence of any impact assessment requirements, developmental facilities should continue to require clearances as per existing forest and environment laws; however, further decentralization of the clearance process should be considered to reduce delays in responding to claims.</i></p>

	facilities with a limit of 1 ha of maximum 75 trees density per project (in case of which, Forest Conservation Act will not apply)	
5. Rights in important wildlife habitats	Relocation with consent, from critical wildlife habitats (to be defined by independent scientists and others), where harmonious co-existence is not possible	<p>(i) Urgently set up an independent group of credible scientists (natural and social, with modern and traditional knowledge) to identify critical wildlife habitats (within and outside current PAs). In identifying such habitats, the list should be based and build on:</p> <ul style="list-style-type: none"> a. Existing or already proposed core areas of protected areas, biosphere reserves, tiger reserves, and other conservation categories b. Other areas outside core areas, already identified in scientific or wildlife literature as being important for conservation of representative ecosystems, representative wildlife populations, or threatened/endemic species <p>(ii) The term “irreversible damage” should be defined as damage that could cause permanent or irreversible changes in or loss of biodiversity, damage that could further threaten a threatened or endemic species, or damage that could further threaten a threatened or unique ecosystem. Additionally, it should include not only ongoing or existing damage, but also, using the precautionary principle, “potential” damage, where this is based on sufficient evidence to believe that given existing trends, irreversible damage can occur soon. The establishment of whether “irreversible damage” is taking place or could take place, should be made possible through rapid assessment techniques, and not have to wait for exhaustive long-term studies. Finally, the determination of “irreversible damage” should be done by committee set up by the state government with representation of reputed ecologists/wildlife scientists, traditional knowledge experts from local communities, and other relevant persons, and should use the best available modern and traditional knowledge on the subject.</p> <p>(iii) The term “co-existence” should be defined as the cohabitation or simultaneous use of an area by both humans and wildlife (in general or in terms of a defined species), in which wildlife conservation (including the continuation of viable wildlife populations) continues to be achieved even as humans are able to sustain their livelihoods and lives as they want. It should be clear that there are no universal</p>

		<p>formulae for co-existence, with several site-specific factors (ecosystem type and fragility, species composition and sensitivity, resource use intensity and type, management and cultural practices, etc) being important to consider while assessing its possibility.</p> <p>(iv) In the context of relocation, the term “free informed consent” should be defined as including the provision of adequate information in local languages sufficiently in advance (at least 6 months), a decision by at least 51% of the gram sabha or whatever other local process of decision-making that the gram sabha decides, and the absence of any form of coercion or misleading/false promises.</p> <p>(v) An option of relocation with consent for forest dwellers in areas other than “critical wildlife habitats”, with verifiable rehabilitation package satisfactory to the dwellers, should also be provided for.</p> <p>(vi) Where relocation from PAs with the consent of local people is already ongoing or scheduled, it should be allowed to proceed as per schedule, with provision for additional compensation and/or alternatives based on the process of determination of rights as per the Act.</p> <p>(vii) In zones within protected areas that are outside of “critical wildlife habitats”, there needs to be a provision for regulation of activities linked to forest rights in order to secure the conservation objectives of each protected area; such regulation could be carried out by the relevant rights-holders and gram sabhas in association with the PA authorities.</p>
6. Limit to land claims	4 hectares	(i) This is acceptable.
7. Responsibilities for conservation and sustainability	Gram sabha “empowered” to conserve forests and wildlife, and community habitat.	(i) Define the term “empowered” to include “responsible for”, and provide for clear conservation responsibilities for all rights-holders and for communities (gram sabhas or other relevant institutions); re-instate need for rights to be sustainable (with clear definition of sustainability based on the Biological Diversity Act); provide for a function of relevant government agencies and NGOs to build the capacity of communities, local officials, and others, to assess and monitor this; provide also for restriction on extending rights where this may cause serious forest fragmentation, and/or provide conditional rights (finalised through a consultative process between the Gram Sabha and forest and revenue officials) to ensure sustainable land use from an ecological perspective; finally, provide for some kind of redressal in cases where the gram sabha fails to fulfil its responsibility, provided

		<p>reasonable opportunity is given to it to explain any circumstances beyond its control that forced upon it such a failure.</p> <p>(ii) The legal means of “empowerment” needs to be clarified. An appropriate sharing of powers between the gram sabha and the relevant government department, under each of the relevant laws (Forest Act, Forest Conservation Act, Wild Life Act, and Biological Diversity Act) needs to be worked out. The gram sabha should have powers to proceed against its own members, and the relevant department against those from outside the village, in case of violation of (a) to (d); with a mandated forum for regularly reporting to each other, and being able to get redressal if either has failed to take action on a violation. Such a sharing of powers and mutual reporting mechanism should help build collaboration between communities and government officials, to strengthen conservation and sustainability.</p>
8. Composition of sub-divisional, district, and state committees	Representatives of government departments and panchayat raj institutions	(i) Include conservation and social action NGOs on all committees; explicitly provide for all committees to become forums for collaboration amongst government, communities, NGOs, and individual experts.
9. Use of critical wildlife habitats	Prohibition on diversion of such area for any other purpose	(i) This provision needs strong support, as it is the only legal measure so far that does not <i>at all</i> allow governments to give clearance to diversions of wildlife habitats.
10. Diversion of forest lands for non-forest purposes	General provision on gram sabhas being empowered to safeguard their habitats	<p>(i) The provision in the JPC report, for the “free, prior informed consent” of gram sabhas before diversion of forest land for development or other non-forest projects, should be re-inserted.</p> <p>(ii) Additionally, the provision for ‘empowerment’ should include the need for community consent for any diversion of forest land for development purpose</p> <p>(iii) These provisions will be an additional check against destructive ‘development’ projects, while not over-riding the power of other authorities to also stop/regulate such projects.</p>
11. Right to	Community has right	(i) This provision needs strong support, in case of forests that communities have shown the ability or

conserve forests	to conserve any forest it has traditionally conserved	potential to conserve. Rules should specify how to operationalise this. This should include the right to be consulted by any person/agency outside the community, that wants to take up any activity in the relevant community forest, as also the right to refuse such a proposal if the community feels it is detrimental to conservation or to its own livelihood security. It should also include the right to consultation and refusal relating to any new programme/policy/scheme of the government that could undermine the ability of the community to continue conserving and managing the forest.
12. Right to protect traditional knowledge	Community has right to protect traditional knowledge	(i) This provision needs strong support; rules should provide clear operational guidelines on how communities will use it. This should include the right to freely use and exchange genetic resources and their associated knowledge as has been done by communities traditionally, but also the right to use measures to protect traditional or community knowledge as they feel appropriate, and to expect the government to give full support in such measures. This right should include the right to withhold sensitive information if the community feels that its disclosure could constitute a public threat or a threat to the community's own livelihood security.
13. Relationship with existing laws	Is not in derogation of any other law except where they may contradict provisions of this Act; in the case of developmental facilities for villages, over-rides the Forest Conservation Act	(i) Further clarity in relationship with other laws is needed; the committee we propose be set up to map encroachments and draft Rules/Guidelines, should systematically look at each provision of this Act and other relevant laws including wildlife, forest, and biodiversity laws, and suggest clarifications. (ii) The spirit of conservation as embodied in these laws, must prevail in all situations of forest/wildlife/biodiversity damage caused by the establishment and enjoyment of rights granted under the Forest Rights Act. In the case of protected areas, it should be specified that the Wild Life Act will apply in all situations of wildlife/habitat related violations.
14. Monitoring	By State level committee.	(i) State committees need to be empowered, and national committee created, to monitor the impact of extension of rights, to frame guidelines on monitoring ecological and social impacts, to regularly update maps and databases on status of encroachments, and to help prevent all further encroachment including through the use of GIS and on ground tools. For this reason, such committees must have representation from ecological/wildlife experts and social scientists (apart from government department officials and representatives of local forest-dwelling communities as already provided for).

