

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

Recommendations for Rules

(as discussed at the Future of Conservation network meetings on 10th and 17th March, 2007, and endorsed by the individuals and organizations listed at the bottom)

Submitted to the Rules Committee, 20 April. 2007

1. Overall recommendations

1. The Rules for the Act need to be drafted and finalized through an open and participatory process. These Rules should clarify a number of provisions that are subject to varying interpretations, including the precise relationship with previous forest/wildlife laws.
2. It should be ensured that no fresh movement/relocation/evictions take place till the Act comes into force, or without making the relevant provisions of the Act applicable to such an ongoing process.
3. It is crucial to build/strengthen the capacity of communities, officials, conservationists, and others to deal with the complex issues that the Act will throw up in implementation, and this needs specific/concrete measures to be worked out by government, NGOs, community organizations, and others.
4. In principle, no further large-scale diversion of forests should be permitted, since it would be inconsistent to not allow agriculture on forest lands but continue to allow mining, dams, industries, and so on. This would require an amendment in the Forest Conservation Act.

2. Recommendations for Specific Provisions

| Element | Provision | Section(s) to which comment pertains | Comments and Recommendations (relating to Rules or guidelines under existing provisions) |
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| Jurisdiction | All forest lands including unclassified/undemarcated forests, existing/deemed forests, protected/reserved | Section 2(d) | The term ‘forest area’ (Section 2(d)) needs clarity; if the Act pertains only to “forest land of any description falling within any forest area”, does this include aquatic/marine areas, grasslands, etc, that are within PAs or declared as PFs/RFs but do not actually have “forest area” as ecologically defined? |

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| | forests, sanctuaries, national parks | | |
| Eligibility of claimants | Scheduled tribes, and other forest-dwellers (of at least 3 generations), with <i>bona fide</i> dependence | Section 2(c) | <p>1. The term “bona fide livelihood needs”:</p> <ul style="list-style-type: none"> i. 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 (excepting when undertaken as a collective enterprise by coops or federations of right holders). ii. 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); this should use simple indicators for unsustainability and threats, including indicators used by communities and/or ecologists in collaboration with local communities (decline of populations over time, size/nature of individual specimens, extent of regeneration, impact on water sources, competition with wildlife). It should be clarified that no agency or individual shall have the arbitrary authority to determine sustainability, and the criteria used for the purpose must be evolved in consultation with local communities. iii. Other criteria that could be used: such activities are only those based on individual/family labour (including extended family) and traditional means, not including people hired from outside. This does not rule out cooperative/collective enterprises within the community, for obtaining better returns. iv. It is important to determine the process of determining “bona fide” from the above perspective; this should include negotiations with/by local communities, bringing in all available traditional knowledge and modern ecological science. <p>2. The term “primarily reside in and who depend on the forests or forest lands” needs to be clarified</p> <ul style="list-style-type: none"> i. Either of these conditions (“residing in” as also “dependent on”) should be adequate to be eligible ii. “Residing in” should not necessarily mean, surrounded by forest, it could also mean having forests adjacent to one’s village. iii. However to avoid misuse by people who may be adjacent but have no |

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| | | | <p>traditional link with the forest, it should be important to demonstrate a traditional link with the forest as also a dependence on it for survival and basic livelihood, to be eligible.</p> <p>iv. Those traditionally dependent on forests but from whom the forest has receded in recent times, should also be eligible.</p> <p>3. Clarity is needed on the unit of eligibility: the adult individual (male and female?), or the family (defined as the joint or the nuclear family)?</p> |
| Process of determining claims | Initial enquiry and process by gram sabha, final decision by district committee | Sections 6 and 14(2) | <p>1. Please see below recommendation on process of 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, well in time for the appeals process to be meaningful.</p> <p>2. Decision making by the gram sabha (Section 6(1)) should be at level of hamlet or group of hamlets (with provisions of inter-hamlet coordination in the assessment of claims); this is especially important for non-Scheduled areas, for which such a provision is already available in PESA.</p> <p>3. Gram sabhas should have access to experts and all relevant technologies / information; investments in capacity building of GS.</p> <p>4. The process of determining eligibility (Sections 6 and 14(2)) needs to include all available knowledge including satellite imagery, existing forest/revenue records, gram sabha information, oral information, and others. It is important to use (and make available to gram sabhas), both ground based and fine-resolution satellite imagery to ensure that (1) No legitimate beneficiary is denied his/her right (2) No illegal diversion of forest land subsequent to December 2005 is palmed off as land under cultivation or recent encroachments are shown as land under cultivation for decades.</p> <p>5. There should be checks against false claims and misuse of the Act at Gram</p> |

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| | | | Sabha, sub-divisional, and district levels |
| Cut-off date | Dec. 2005 for ST; unclear for “other 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. | Sections 2(o) and 4(3) | Clarify whether the interpretation of ‘other forest-dwellers’ in Section 2(o) holds, or that available in Section 4(3). |
| Kind of rights extended | To individual and community land occupied before 2005; to forest resources; to conserve ‘community’ forests; to protect traditional knowledge; to development facilities with a limit of 1 ha of maximum and only 75 trees to be felled per project (in case of which, Forest Conservation | Sections 3(1) and 3(2) | <p>1. For gaining rights to land (Section 3(1)(a)), the meaning of “occupation” is not absolutely clear...”self-cultivation” should not include management or manipulation of non-timber forest produce regenerating naturally, since communities engage in such activities over extensive forest areas (such activities should of course be considered under provisions regarding rights to forest produce).</p> <p>2. Diversion of forest land for developmental activities (Section 3(2)) should be proportional to the size of the settlement, and upto a maximum of 13 hectares (i.e. 1 ha. maximum for each kind of project). Where-ever possible, revenue lands should first be accessed for such activities, and only where these are not available should forest land be used.</p> |

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| | Act will not apply) | | |
| 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 | Sections 2(b) and 4(2) | <p>1. The process of selecting critical wildlife habitats (CWHs) (Section 2(b) and 4(2)) should not be left to any single institution or only to government agencies, but should be open and transparent. Proposals for CWH could come from any body, including from gram sabhas or equivalent community institutions; where the proposals is made by or through the state govt, it should be available to gram sabhas in local languages, and site specific expert committees should include local community representatives and/or experts nominated by local communities.</p> <p>2. The identification of CWHs should give priority to:</p> <ul style="list-style-type: none"> i. Existing or already proposed core areas of protected areas, biosphere reserves, tiger reserves, and other conservation categories (other than where existing core areas are known through studies not to be critical for wildlife) ii. Other areas outside core areas, already identified in scientific or wildlife literature/studies (e.g. areas identified by WII as tiger breeding habitats) as being important for conservation of representative ecosystems, representative wildlife populations, or threatened/endemic species (including but not limited to spp. scheduled in the WL Act), including niche habitats essential for particular species. iii. Critical wildlife habitats should not only be small patches, but also landscapes that are critical for the persistence of populations of large-ranging animals. <p>3. Additionally, the list of criteria from a meeting held at IISc (on 9th March 2007) could be used, but in a site-specific manner to ensure that their usage is not so general as to cover vast areas of India.</p> <p>4. It should be clarified that CWHs are not to be only those that are to be kept inviolate (as seems to be the intent of the definition in Sec. 2(b)), but would include both those that need to be inviolate as also others that need restrictions/limitations on human uses (as seems to be intent of Sec. 4(2c) in which “co-existence” is also considered a possibility for CWHs). The restrictions/limitations would need to be worked out between the gram sabhas and</p> |

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| | | | <p>the PA authorities; guidelines are needed for this process, which should be developed as part of the Rules-making or implementation phase.</p> <p>5. A clear institutional process for negotiation of rights and relocation needs to be specified.</p> <p>6. The term “irreversible damage” (Section 4(2)(b)):</p> <ul style="list-style-type: none"> i. Should be defined as damage (including habitat fragmentation) that could cause permanent or irreversible changes in or loss of biodiversity (including sustained significant declines in populations affecting ecologically functional/viable populations, caused by human activity), damage that could further threaten a threatened or endemic species, or damage that could further threaten a threatened or unique ecosystem. Irreversibility includes local extinctions (regardless of possibility of reintroduction). ii. 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. iii. 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. iv. 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>7. The term “co-existence” (Section 2(c)):</p> <ul style="list-style-type: none"> i. should be defined as the cohabitation or simultaneous use of an area by both humans and wildlife (both wild flora and fauna; 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 |
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| | | | <p>their livelihoods and lives (this needs to be linked to the sustainability provision).</p> <p>ii. It should be clear that there are no universal 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>iii. Also to be factored is the dynamism of ecological processes, and therefore the need for constant assessments, and adaptive behaviour/management practices.</p> <p>iv. Indicators and methodologies for determining co-existence are needed with a focus on simple indicators, rapid methods; the process of determining this is also important, involving local people and ecologists.</p> <p>v. Should cover not only areas within CWHs but the rest of the areas within PAs also.</p> <p>vi. The institutional mechanisms for determining all of above cannot be only the Forest Department, but must include other relevant departments, PRI representatives, and relevant conservation and social action NGOs. Co-existence strategies have to begin with collaborative conceptualization and planning, including all relevant rights-holders and stakeholders.</p> <p>8. For relocation (Sections 4(2)(d,e,f):</p> <p>i. It should be reiterated that relocation is considered only where there is no possibility of co-existence.</p> <p>ii. 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 ideally by 100% of the adults proposed to be relocated, but if not possible then by at least 51% (including at least 51% women’s representation) 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>iii. There should be a clear provision for independent monitoring of relocation.</p> <p>iv. 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> |
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| | | | <p>v. Where relocation from PAs with the consent of local people is already ongoing, it should be allowed to proceed as per schedule with the consent of the community, with mandatory provision for additional compensation and/or alternatives based on the process of determination of rights as per the Act.</p> <p>vi. There should be a mechanism of redressal if the promised R&R is not implemented.</p> <p>vii. Given the unsatisfactory nature of the National R&R Policy of 2004, provisions for R&R from PAs should go well beyond what is contained in that policy; reportedly a draft R&R Bill is being proposed by the Ministry of Rural Development, which will need to be examined from the point of view of suitability for PAs.</p> <p>9. 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> |
| Limit to land claims | 4 hectares | Section 4(6) | Widespread publicity needs to be given to the fact that the Act allows only for claims over the extent of land occupied as of the cut-off date, upto 4 ha, and not 4 ha. uniformly (as misunderstanding about this is causing considerable confusion and could be misused to encroach further and claim more land than currently occupied). |
| Responsibilities for conservation and sustainability | Gram sabha “empowered” to conserve forests and wildlife, and community habitat. | Section 5 (read with Section 3(1) (h)) | <p>1. Regarding empowerment:</p> <p>i. reiterate that the term “empowered” implies both authority and responsibility (citing the preamble of the Act), and provide for clear powers and conservation responsibilities for all rights-holders and for communities (gram sabhas or other relevant institutions);</p> <p>ii. stress the need for rights to be sustainable (with clear definition of sustainability based on the Biological Diversity Act);</p> <p>iii. 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;</p> |

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| | | | <p>iv. provide also for appropriate conditions to rights where this may cause serious forest fragmentation;</p> <p>v. 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. Concrete steps towards this need to be identified; this could include the setting up of appropriate decision-making institutions (e.g. community forestry institutions, joint PA committees, etc).</p> <p>2. Clarity is needed on relationship of existing committees at village level (e.g. FPCs, VSSs) with the gram sabha under this Act, especially on jurisdiction over forests. Existing committees should come under the jurisdiction of the gram sabha rather than be parallel institutions.</p> |
| Composition of sub-divisional, district, and state committees | Representatives of government departments and panchayat raj institutions | Section 6 | <p>1. Invite inputs from conservation and social action NGOs , nominated by gram sabhas and by relevant government agencies, to all the committees; provide for all committees to become forums for collaboration amongst government, communities, NGOs, and individual experts.</p> <p>2. There should be an open public process for determining claims at sub-divisional and district levels, so that all concerned/aggrieved persons can be heard.</p> |
| Use of critical wildlife habitats | Prohibition on diversion of such area for any other purpose | Section 4(2) | This provision should apply to CWHs from where people have not been relocated also (i.e. co-existence areas). |

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| Diversion of forest lands for non-forest purposes | General provision on gram sabhas being empowered to safeguard their habitats | Section 5 | The provision for ‘empowerment’ should include the need for free, prior informed community consent for any diversion of forest land for development purpose. |
| Right to conserve forests | Community has right to conserve any forest it has traditionally conserved | Section 3(1)(h) | <p>1. To operationalise this provision, the following are necessary:</p> <ul style="list-style-type: none"> i. 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. ii. 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. <p>2. This provision should enable communities to seek and achieve protection of forests outside critical wildlife habitats also, including community conserved areas and community wildlife reserves, and should mandate relevant government agencies including the Forest Department and the Police to support them through the provisions of Wildlife Protection Act, 1972.</p> |
| Right to protect traditional knowledge | Community has right to protect traditional knowledge | Section 3(1)(k) | <p>1. To operationalise this provision, the following are necessary:</p> <ul style="list-style-type: none"> i. the right to freely use and exchange genetic resources and their associated knowledge as has been done by communities traditionally. ii. 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. iii. 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. iv. the right to charge appropriate fees or demand other appropriate benefits in exchange for access to such knowledge. <p>2. Decisions on this need to be taken at the gram sabha level with full transparency</p> |

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| | | | and participation of all villagers. |
| 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 | Section 13 | <p>1. Further clarity in relationship with other laws is needed; the Rules committee should systematically look at each provision of this Act and other relevant laws including wildlife, forest, and biodiversity laws, and suggest clarifications based on the accepted principles of new acts vis-à-vis old ones, specific acts vis-à-vis general ones, and central acts vis-à-vis state ones, and based also on the principle of ‘harmonious construction’.</p> <p>2. Mechanisms for dispute resolution are also needed, for situations on the ground where two or more legislations may create conflicting situations.</p> <p>3. The imperative of achieving ecosystem and wildlife 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.</p> |
| Monitoring | By State level committee. | Section 6(7) | <p>1. State committees need to be empowered, and national committee created, to monitor the impact of extension of rights, to frame guidelines on independent monitoring of 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.</p> <p>2. State committees must ensure stringent action against misuse of Act, such as encouragement to encroachment in the promise that they will be regularized as “pre-December 2005” under the Act. .</p> <p>3. For this reason, such committees should be enabled to call upon ecological/wildlife experts and social scientists (apart from government department officials and representatives of local forest-dwelling communities as already provided for).</p> |

Endorsed by¹:

Ajith Kumar, Wildlife Conservation Society, Bangalore

Archana Godbole, Applied Environment Research Foundation, Pune

Ashish Kothari, Neeraj Vagholikar, Manju Menon, Prabhakar Rao, Erica Taraporewala, Mashqura Fareedi, Kalpavriksh, Pune and Delhi

Arpan Sharma/Asmita Kabra, Samrakshan Trust, Delhi

BMS Rathore, Bhopal, Madhya Pradesh

Dilip Gode, Vidharbha Nature conservation Society, Nagpur

E. Theophilus, Himal Prakriti, Uttarakhand

Gautam Narayan/Nandita Hazarika, Ecosystems India, Guwahati

Jagdeesh Rao/Subrat Singh/Yash Sethia, Foundation for Ecological Security, Anand

Jyotsna Sitling, Forest Department, Uttarakhand

Kartik Shanker, Centre for Ecological Sciences, IISc, Bangalore

Kaustubh Pandharipande, Samvedana

Kundan Kumar, Orissa

Ravi Chellam/Sushmita Mandal/Sreetama Guptabhaya/Nitin Rai/Sidharth Krishnan/Aarthi Sridhar/C. Made Gowda/Harini Nagendra, ATREE,
Bangalore

Rucha Ghate/Kim Beazley, Shodh, Nagpur

Salam Rajesh, Manipur Nature Society, Imphal

Sanjeeva Pandey, Winrock India, Delhi

Seema Bhatt, Delhi

Sajeev T.K., Bombay Natural History Society, Delhi

Sejal Worah/Vishaish Uppal/Rupesh Bhomia, WWF – India

Shankar Gopalakrishnan, Campaign for Survival and Dignity, Dahanu

Y Giri Rao, Vasundhara, Orissa

Contacts:

Ravi Chellam, ATREE, ravi.chellam@atree.org, 080-23533942

Ashish Kothari, Kalpavriksh, ashishkothari@vsnl.com, 020-25675450

Vishaish Uppal, WWF, vuppal@wwfindia.net, 011-41504775

¹ Each signatory is endorsing this document without prejudice to its own future action.