

## COMMENTS ON THE JOINT COMMITTEE REPORT ON 'THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL 2005'

Kalpavriksh, Pune/Delhi

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The Joint Committee has done a commendable job in taking the views of a wide cross-section of citizens relating to 'The Scheduled Tribes (Recognition Of Forest Rights) Bill 2005', and coming out with a comprehensive set of revisions to the Bill.

However, we are concerned that the revised Bill does not move the country towards what is most urgently required: an appropriate integration of the need to conserve what remains of our forests and wildlife, with the need to secure the livelihoods of forest-dwellers. *While several provisions of the Bill will strengthen the establishment of rights of traditional forest-dwellers and result in stronger conservation, a combination of several other provisions is likely to cause significant damage to forests and wildlife.* The Bill in its current version should *not* be sent to Parliament.

### 1. Revisions that will result in stronger livelihood security and conservation

1. We are in full agreement with the extension of the Bill to traditional forest dwellers (other than STs), to those in close proximity of forests (in addition to those living within), and to special categories such as shifting cultivators. We do, however, have concerns that the definition of "traditional forest dwellers" (Section 2(o)) is not sufficiently sharp to exclude a number of situations where vested interests have encroached, or where forest dwellers have themselves recently enlarged their encroachments beyond their original occupations. (More on this concern, in Part 2 below).
2. The revisions have also justifiably taken on board the plight of tens of thousands of forest-dwellers who have been displaced by development projects or other causes, without adequate rehabilitation. (e.g. Section 3(1)m)
3. The right to be given land has justifiably been granted to those displaced by land acquisition without being given land compensation, and where the acquired land has not been used for its stated purpose for over 5 years (Section 4(10)).
4. Communities have finally been given the authority to conserve and manage forests that they have been traditionally conserving (Sections 3(1)(i) combined with Section 2(a)); as we have repeatedly shown in our work, there are thousands of sites where communities have demonstrated the ability and willingness to protect forests and wildlife, but do not have the legal authority to withstand threats to such areas.
5. The issue of safeguarding critical wildlife habitats has been more appropriately addressed, stressing the need for adequate knowledge and a due process of determining such sites and the necessity of relocation or other actions for ensuring that wildlife and habitats in such areas are indeed conserved. The site-specific approach recommended in the revisions, as opposed to the rather arbitrary and uniform approach suggested in the original Bill, is welcome. Also welcome is the requirement that once a critical wildlife habitat has been freed of rights, governments cannot divert it for any other purpose. There is however some concern about one sub-clause of this Section, regarding the right of people to return (More on this concern, in Part 2 below).
6. The government has justifiably been given the responsibility of ensuring that outsiders do not misuse provisions of the Bill at the cost of traditional forest-dwellers

(Section 5(3)), though we are not sure that this will be adequate to safeguard against potential misuse due to the lack of sharpness in defining the potential rights-holders (More on this concern, in Part 2).

7. An extremely important provision has been added, on not allowing diversion of forest land (for non-forest purposes), without the consent of the relevant gram sabha (Section 5(5)). This has been a long-standing demand from environmental and human rights groups, as it provides a community-based check against the widespread diversion of forest lands for destructive ‘development’ projects, in addition to existing government-based checks provided for in environment, forest, and wildlife laws.

8. The right to community intellectual property and traditional knowledge has been commendably upheld, though the words “right of access to biodiversity” are somewhat vague, and there needs to be an indication (in the Bill or in subsidiary Rules or guidelines) of the process and mechanisms by which communities can enjoy this right in the face of the currently rampant biopiracy in India.

9. A greater say in determining the validity or otherwise of claims has been given to gram sabhas (Section 6(1)), which is in consonance with the policy towards decentralization. The Joint Committee’s explanation regarding this is also understandable, especially the points about greater potential for transparency and accountability in the decisions. However, it is also to be noted that the final decision still rests with the District Level Committee (Section 6(6&7)). The requirement of District and Sub-divisional Committees to help build the capacity of gram sabhas to carry out their tasks (Sections 6(10)a&b), is also welcome. There remain concerns regarding the composition of the District and Sub-divisional Level Committees (More on that later, in Part 2 below).

10. The additional section regarding dispute resolution amongst two or more gram sabhas on shared forest lands and resources (Section 6(11)), is very welcome.

11. The revisions have made the Bill much more sensitive to the need to empower women in various respects, which is urgently needed.

12. On humanitarian grounds, the revisions have justifiably provided for afforestation based in situ rehabilitation of needy encroachers who would not be otherwise eligible for land claims under the Bill (Section 8); this is in line with the Ministry of Environment and Forests’ 1990 circulars on encroachment.

13. The Joint Committee has also made additional recommendations which are not in the text of the revised Bill, which are important. In particular, we would stress the recommendations regarding displacement from ‘development’ projects, which in the past have too often caused land loss, displacement, and ecological damage in the name of an undefined “public interest” or “national interest”. The recommendations to minimize displacement, to independently assess the impacts and necessity of proposed projects, to provide adequate rehabilitation where displacement is still carried out, and other related points, need to be accepted and urgently acted upon by government.

## **2. Revisions that are of concern from a conservation (and related livelihoods) perspective**

1. The original Bill has Sections (4(7) and 7) specifying the responsibilities and duties of rights-holders to conserve nature and natural resources. The Committee’s version has removed these sections, and in their place put the onus on the gram sabha to ensure conservation (Section 5(1)). While a collective responsibility for conservation is always welcome, and stronger than only an individual responsibility, we feel that the individual responsibility (and penalties for not carrying out these responsibilities) should also have

been retained. The Committee's version does not even place a *responsibility* on the gram sabha, but only gives it the powers to achieve conservation. It also does not specify any recourse if the gram sabha fails to discharge these powers, a situation that leaves open the possibility of grave ecological damage in situations where the gram sabha may not be capable of stopping powerful inside or outside elements that benefit from such damage. In such situations, perhaps the agencies of the government that are mandated under relevant laws, could intervene, but this would not be possible if the gram sabha has granted unsustainable activities as rights (since in this situation, under Section 15, this Bill prevails over other Acts). Finally, it does not specify a process by which the specifics of conservation can be determined, e.g. how would the gram sabha judge whether an activity by its members is causing (or has the potential to cause) irreversible damage to wildlife or forests? There is also no mandate for any agency to help gram sabhas to build such capacity.

***Recommendation:***

- (i) Re-insert the responsibilities of rights-holders, and add to the responsibilities of gram sabhas, the necessity of ensuring that in the exercise of rights, conservation of forests and wildlife is taking place at the level of the village as a whole.**
- (ii) Insert a responsibility for the Sub-divisional Committees to help build gram sabha capacity to ensure this, where existing capacity may be weak and the gram sabha or its members seek such help.**

2. The original Bill also required that rights to use of forest resources must be sustainable, a requirement that has been omitted in the Committee's version. In other words, there seems to be nothing in the Committee's Bill to ensure that the various rights to be granted under it, including to the use of forest produce, shifting cultivation, and the like, are not over-exploitative of the forest. Even the gram sabha's responsibilities do not include a provision that they ensure sustainability of the uses of forest by their rights-holding members. Nor is there a provision for mandating any other agency to help gram sabhas build the capacity to judge the sustainability of resource uses that it confirms as rights under the Bill.

***Recommendation:***

- (i) Insert in the responsibilities of gram sabhas, the necessity of ensuring that the exercise of rights is ecologically sustainable.**
- (ii) Insert a responsibility for the Sub-divisional Committees to help build gram sabha capacity to work out and enforce indicators of sustainability.**

3. The extension of the cut-off date to 2005 (Section 4(3)), the removal of the 2.5 hectare limit to land claims (Section 4(6)), combined with a much wider definition of "traditional forest dwellers", creates a situation fraught with dangers of ecological abuse. The changes in cut-off date and removal of land limit, have been justified by the Committee from the perspective of those who have been displaced or dispossessed by 'development' projects, natural disasters, or the failure of the state to provide for them. From a humanitarian and rights perspective, this sounds reasonable. It is also true that a 2.5 ha. limit for lands that communities are using collectively may not be justified, e.g. for shifting cultivation (where at any given time the amount of cultivated area may be a small part of the overall landscape that is subjected to this practice). But these revisions will make it even more difficult than it already is, to stop state governments, land mafia, and local elites from exploiting the situation. Very many non-traditional forest dwellers

could come under the definition of communities that have occupied forest land due to “government policy or failure thereof” (Section 2(o)(ii)); it is not clear how these will be excluded as rightful applicants to land rights. And while justice must be given to those forced into settling on forest lands, forests too cannot be made to continuously pay for the failure of governments and project proponents to rehabilitate those who are displaced (as they cannot be made to pay for our ‘developmental’ needs). Extending the cut-off date to the present would only send a signal to governments and project proponents that rehabilitation can be taken casually, since forest land would always then be considered the ‘soft’ path to resettlement. 1980, on the other hand, seems to be a reasonable cut-off date in terms of the fact that the occupants would have been there for at least one generation.

The much more open definition could also create, or exacerbate, serious local conflicts. There are many situations, for instance in the north-eastern and central India states, in which individuals and communities from outside a region (at times displaced from there, at times migrated on their own) have occupied forest land recently, at the expense of the local tribal or other traditional forest-dwelling communities. There are also many situations in which the land mafia or powerful individuals have used traditional forest-dwellers as a front for grabbing land. We are worried that the revisions in the Bill mentioned above, *when read together*, could legitimize such encroachments, and make it difficult for both conservation and for the livelihoods and tenures of original dwellers to be secured.

***Recommendation:***

- (i) Re-insert 1980 as the cut-off date for land occupations;**
- (ii) Re-insert the land claims limit of 2.5 ha. for individual land-holdings;**
- (iii) For those after 1980 who have been forced to settle on forest lands due to displacement without rehabilitation, and those who have been settled in forest lands by the government, provide for the option of either in situ afforestation based rehabilitation (as provided for those found ineligible, under Section 8), or revenue agricultural land elsewhere, with the costs being borne by the agency that displaced them and defaulted on rehabilitation;**
- (iv) Build in a responsibility for the *gram sabha*, aided by higher level Committees, to assess the possibility of inter-community conflicts and ecological fragmentation before deciding on land claims.**

4. The addition of rights to development facilities (listed in Section 3(4)), is again justified from a humanitarian and rights perspective. There is no reason to deny basic health, education, and developmental inputs to all villages in India, regardless of where they are. However, while providing for these, there need to be explicit safeguards against (a) misuse caused by vagueness in terminology and (b) fragmentation of deep forests and important wildlife habitats. An instance of the vagueness of terminology would be “roads”; we have many instances such as at Melghat Tiger Reserve where in the name of providing road access to adivasi villages, the state government spent an enormous amount of money on wide tarred roads which actually hardly helped the adivasis, but opened up the forests to illegal exploitation. Simple access paths to villages is one thing, massive multiple lane roads quite another. Secondly, even basic facilities deep inside important wildlife habitats can be a serious source of disturbance; in such situations, the Bill should have required a holistic impact assessment of the provision of all rights (including land, forest resources, and developmental facilities) before deciding on the course of action.

Finally, it should be noted that the Bill is based on an assumption that communities have and can continue to live in harmony with their natural surrounds due to their traditional practices; the implication of this is that even developmental inputs must build on these traditions, rather than be based on the kinds of ecologically damaging facilities that urban people are used to. An absence of such a requirement could well lead to unsustainable developmental activities being pursued inside forest areas.

***Recommendation:***

- (i) Insert a clause by which impact assessments are made mandatory for the provision of developmental inputs, and where the assessments suggest serious fragmentation or other irreversible ecological impacts, then alternatives are explored.**
- (ii) Build into subsidiary rules or guidelines, the necessity to build on traditional practices and systems of education, health, etc, while also introducing ecologically sensitive modern ones where necessary.**
- (iii) Build in safeguards and checks against massive destructive urban facilities coming up inside forest areas.**

5. Added to the above points, is Section 15 that provides for this Bill to supercede all existing Acts, in matters where those Acts may contradict provisions of this Bill. We believe that many of the existing laws relating to forests and wildlife need to be amended to make them more sensitive to issues of traditional rights as also to enable the central involvement of communities in forest management and conservation. But in the absence of a requirement for gram sabhas and rights-holders to ensure conservation and sustainability, there could be confusion on which law will prevail in which kind of situation. There could also be confusion on the respective jurisdictions of government agencies and the gram sabha. For instance, if the gram sabha provides rights to collect forest produce inside a protected area, in which the wildlife officials have imposed certain restrictions necessary for conservation, it seems that this Bill will prevail, but then what happens to the responsibility of the officials to ensure conservation under the Wild Life Act? Or if the gram sabha imposes its own penalties for destructive use of an ecosystem, or over-harvesting of a plant species, would the forest department also be able to use its powers to impose penalties? What system will there be to reconcile differences of opinion, information, and action between the gram sabha and the relevant government department? Before wood thieves, poachers, and others make full use of the confusing ground situation, these matters should be clarified in the Bill or in subsidiary Rules. Ideally, the Bill should specify institutional arrangements in which gram sabhas and government agencies are coordinating their activities, to ensure that conservation is indeed taking place while ensuring rights.

***Recommendation:***

- (i) Insert into the Bill the provision that, in case of such and such activity that is destructive to forests/wildlife, the provisions of other Acts will apply.**
- (ii) Clarify, in the Bill or subsidiary rules, the on-ground institutional arrangements between the gram sabha and relevant government institutions.**

6. The various bodies to be set up under the Bill (the Sub-Divisional, District, and State level ones), do not include any independent NGOs. Such an inclusion was sought by a number of people who made submissions to the Joint Committee, especially pointing out

that this would help to take more informed decisions, as also often to mediate between community representatives and government officials.

***Recommendation: Include in the composition of the Committees, relevant social action and conservation NGOs and individuals active in the area.***

7. The Bill needs an overall monitoring mechanism, and a clear mandate for that mechanism to assess the social justice and ecological aspects of the Bill.

***Recommendation: Empower the State level monitoring bodies being set up under the Bill, and create a coordinating national level monitoring body, to carry out the following functions:***

- Examining the situation in each state as the process of rights settlement goes on to ensure that false regularizations are not done, and that conservation requirements are being met;
- Helping to develop guidelines for assessing the impacts of existing and proposed rights, ensuring ecological sustainability while providing developmental inputs, and working towards culturally and ecologically appropriate development processes inside forest areas;
- Mapping of the areas where the process is ongoing, with the help of remote sensing agencies;
- Monitoring protected areas and other critical wildlife habitats through satellite imagery and ground truthing to protect against new encroachments;
- Maintaining a central and publicly accessible databank on regularisation of encroachments and granting of forest rights;
- Making recommendations for changes, if any are needed, in the law or in subsidiary rules and guidelines.

### **3. Conclusion**

Two final points need to be considered in conjunction with those above: first, the fact that there is increasing penetration of national/international markets and urban lifestyles into even the remotest of areas, putting great pressure on communities to get into unsustainable commercial extraction of resources; and second, the need to look at this in a long-term perspective where needs could grow to become unsustainable even if not so now. All this makes it critical for the Bill to have strong and clear safeguards, responsibilities and jurisdictions, checks, and monitoring provisions. It also needs to mandate a process of dialogue in which local communities, NGOs, govt. agencies, etc. can arrive at site-specific solutions keeping all these factors in mind.

**Overall, our biggest concern is that the revised Bill misses the opportunity to move our country towards an integrated vision of conservation and livelihood security. It could have done this by strengthening the conservation provisions even while making the provisions regarding rights stronger, by explicitly mandating collaborative arrangements between communities and government agencies with help from NGOs and individual experts, and by putting into place an integrated system of checks and balances, rights and responsibilities, powers and duties, that would safeguard against misuse by either the community or the government. In the**

**long run, if forest ecosystems suffer, so will those whose livelihood security depends on them.**

**We would urge the PMO, and parliament, to take note of these concerns, and even while accepting the strong positive points of the Committee's draft, modify the clauses of concern as recommended above.**

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