

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

New Delhi
Dated 03.06.2005

Subject: Inviting views/suggestions on the draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

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.

2. The rights of forest dwelling Scheduled Tribes who are inhabiting the forests for generations and are in occupation of forest land have, however, not been adequately recognized so far resulting in historical injustice to these forest dwelling Scheduled Tribes.

3. The Ministry of Tribal Affairs was mandated to formulate a comprehensive legislation to redress this historical injustice done to tribal community and for clear assertion of their legal rights on land. A Technical Support Group (TSG), comprising the representatives of the Ministries concerned and some reputed experts having rich experience and deep association with the cause of environmental protection and welfare of tribal people, was accordingly constituted, under the Chairpersonship of Secretary (Tribal Affairs) to formulate the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill. Director General (Forests), Ministry of Environment & Forests was also one of the members of the Group. After a series of meetings of the TSG, the Ministry of Tribal Affairs has formulated a draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

4. It has been decided to invite the views/comments/suggestions from the members of the public, the social activists, academicians, anthropologists, the experts working for the cause of environmental protection and welfare of tribal people and other stake holders on the proposed legislation before action to finalise and enact the Bill is taken as per the established procedure. A note containing the background of the case, the existing legislative / policy frame of the Ministry of Environment and Forests on the subject, the main features of the proposed Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, the checks and balances provided in the proposed Bill as also a copy of the proposed Bill is **Annexed**.

5. The views and suggestions on the provisions of the proposed legislation may be conveyed at the following address, either through E-mail or by Post, by **10th July, 2005** positively:

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**NOTE ON THE "SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS)
BILL, 2005"**

Background

The rights of forest dwelling Scheduled Tribes who are inhabiting the forests for generations and are in occupation of forest land have not been adequately recognized so far resulting in historical injustice to these forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystem.

1. 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.

2. Non recognition of their rights during the process of consolidation of Forests:

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. However, the reservation processes for creating

forest areas coupled with historical factors prevalent at that time in respect of excluded and partially excluded areas and emphasis on production forestry somehow left the bona fide interests of the tribal community unrecognized and recorded. The problems of these communities were further compounded after passing of the Forest (Conservation) Act, 1980 when even the development activities in their habitations were termed as non-forestry activities. They still do not even have a homestead and as such address of their own. They are people without identities.

3. Permanent threat of eviction from their own land:

The non-recognition of the rights of the FDSTs over land who have been living in forests since time immemorial has been attracting public attention since pre-independent India. Due to non-recognition of forest rights of FDSTs, who have been very deeply rooted in the forest areas for ages, have come to be erroneously looked upon as encroachers of forest lands and the threat of eviction consistently looms large in their psyche. 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. All these factors have resulted in historical injustice to them.

4. Non-Conferment of ownership rights over MFP in terms of Provisions of PESA, 1996

Inadequate implementation of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, by non-transfer of control/ownership over the natural resources, including the Minor Forest Products to the local communities and by non extension of PESA Act to the entire scheduled areas, including forest areas, have further compounded their miseries. Although the Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) gives the rights of ownership of MFP to the respective local communities, the collection and trade of most of the high value MFP is largely monopolized by the Corporations of the Forest Department of the States and poor FDSTs are just employed by the contractors only as wage earners.

5. Even fruits of Developments Schemes Denied:

The condition of the FDSTs traditionally living in their habitat in symbiotic relationship with the ecosystem is 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 FDSTs on the other, which is mainly due to non-availability of clear cut title of land in their favour. The poor FDSTs living in forest lands for ages cannot take benefits even under various schemes of the Government such as "Indira Awas Yojana".

6.Existing Legislative/Policy Frame of the Ministry of Environment & Forests:

The Government has been taking a consistent view on this 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 MOEF are as under:

- **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.
- **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.
- **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.

- 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 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 :
 - appointment of joint teams of Revenue, Forest and Tribal Welfare Deptt.;
 - involvement of Gram Sabhas;
 - banning agricultural practices only on certain slopes ;
 - restoration of titles to the claimants once the bonafides of the claims are established through proper inquiry;
 - demarcation of land to be restored to the claimant – no ceiling on the size of holding.
 - proposals for de-notification of forest lands along with the proposal for compensatory afforestation;
 - elimination of intermediaries and replacement of contractors by institutions such as tribal cooperatives, etc;
 - protection of tribals and non-engagement of outside labour in forestry activities;
 - 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.
 - 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.
 - 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 FDSTs, in the absence of First Offence Report prior to cut off date, were simply termed as encroachers in their own homeland.)

The latest guidelines of MOEF issued on 5.2.2004 extended the cut off date to December, 1993 and the client group of the MOEF guidelines was much larger and encompassed all categories of forest dwellers. The operation of these guidelines has however been stayed by the Hon'ble Supreme Court.

- **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".**

7. Formulation of The Scheduled Tribes (Recognition of Forest) Rights Bill, 2005

- It is in this background that the historical rights of the FDSTs had not been recognized despite all the legislative/policy framework of the Ministry of Environment & Forests, a decision was taken that the Ministry of Tribal Affairs would take steps to formulate a comprehensive Central Legislation to redress the historical injustice done to tribal community and for clear assertion of their legal rights on land.
- Accordingly a Technical Support Group (TSG), comprising the representatives of the Ministries concerned and some 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.
- Director General (Forests), Ministry of Environment & Forests was also one of the members of the Group.
- After a series of meetings of the TSG, a draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was formulated by the Ministry of Tribal Affairs and circulated amongst the Ministries concerned for their comments.

- The draft Bill has by and large been accepted with suggestions by concerned Central Ministries, except by the Ministry of Environment & Forests.

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

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.

8.1 Rights of Forest Dwelling Tribes: The Bill in Section 4 seeks to recognize and vest Forest Rights to forest dwelling Scheduled Tribes where they are scheduled. Such forest rights, as defined in Section 3, are in respect of recognition of occupation of FDST on forest land and their habitat, where they have been living for generations and include:

- to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;
- rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;
- right of access to, use or dispose of minor forest produce;
- other rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities,;
- right of habitat and habitation for primitive tribal groups and pre- agricultural communities;
- 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 be heritable but not alienable or transferable:
- to include the responsibility of protection, conservation and regeneration of forests:

- to be registered jointly in the name of the husband and wife when it is in respect of land where a title is vested or recognized.
- To include traditional and customary rights

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.

8.2 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 life, forests and biodiversity.

8.3 The Authorities, including their functions, have been defined in Chapter IV of the proposed Bill which include Gram Sabhas. Sub-Divisional Level Committees, District Level Committees having forest, Tribal welfare and revenue officials as members

8.4 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.5000/- 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.

8.5 Nodal Agency: The Ministry of Tribal Affairs or any other officer or authority authorized by the Central Government in this behalf shall be the Nodal Agency and shall be responsible for implementation of the Act.

9. Checks and Balances:

The proposed **Bill provides for far more checks and balances than the existing Legislative / policy frame of the Ministry of Environment and Forests. The specific provisions include –**

- 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 “as is where is basis”.** Only occupations as per the ground

- situation existing for generations are being given legal recognition so as to avoid day to day harassment by the officials.
- Recognition of the occupations existing prior to cut off date and maximum upto 2.5. ha land only is proposed ,which in fact restricts land grabbing by elites even within tribal communities. **MOEF guidelines provide no such ceiling.**
 - All rights would be heritable but inalienable or non-transferable;
 - 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;
 - **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 occupations as per the ground situation intended to put an end to so-called issue of encroachment forever. There is no question of abetment of fresh encroachment.
 - It has been provided that the forest right holder shall not indulge in any activity that adversely affects the wild life, forest and the biodiversity in the local area.
 - Penalties have been provided 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 and preparation of the records but it is not the final authority.
 - Involvement of the democratic institution is in tune with the provisions of PESA Act, 1996 and aims at empowering the local communities in management of their natural resources;
 - The duties of the forest right holders have been provided.
 - Specific provision has also been made that the rights so recognized would include the responsibility of protection, conservation and regeneration of forests.
 - It has also been specifically included 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.
 - The Ministry of Environment and 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 Ministry of Tribal Affairs will be extinguished once land rights are conferred.
 - **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.

2. The proposed Bill -

- (i) **only strengthens 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) seeks 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) does not **envisage elimination of legal protection for the forest cover** and, in fact, proposes to secure tenurial rights of FDSTs by recognizing and vesting rights on occupation of forest lands where they are scheduled;
- (iv) **encourages 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) does **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) emphasizes 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) does **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) does not interfere with the prohibitive clauses of Indian Forest Act, 1927, Forest (Conservation Act), 1980 or the Wildlife (Protection) Act, 1972;
- (ix) supplements 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 existing date;
- (x) **provides penal provisions** against holders of the forest right, including de-recognition of their forest right;

- (xi) **facilitates 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;
- (xii) does not preclude the Ministry of Environment & Forests from taking action against the ineligible encroachers of forest land. It, in fact, provides 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.

3. **The proposed Bill is thus only the logical culmination of the process commenced by the Ministry of Environment and Forests for settlement of the bonafide 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 and **uses the very language of the laws and policies of Ministry of Environment & Forests.** The proposed Bill is equally conservationist and more conservative in approach compared to the 1990 and post guidelines and officially recognizes October 1980 as the cut off date for the settlement of claims.

4. The proposed Bill has been drafted so as to strike a balance and to achieve the twin objective of environmental conservation and justice to the STs by being in tune with and providing for far more stringent checks and balances than the existing Legislative / Policy frame.

5. It may be mentioned that after enactment of the Bill, the Ministry of Tribal Affairs proposes to notify the Scheduled Tribes (Recognition of Forest Rights) Rules for carrying out the provisions of the proposed Act. Section 6 of the proposed Bill provides that the Gram Sabha shall be the competent authority to initiate the process of the recognition of and vesting of forest rights in the forest dwelling Scheduled Tribes and a Sub-Divisional Level Committee shall examine the decision of the Gram Sabha. A District Level Committee will consider the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval. Further, Section 7 of the proposed Bill also provides for constitution of a State Level Monitoring Committee for examining the record of recognition and vested rights of

forest dwelling Scheduled Tribes submitted by the District Level Committee and for conducting periodic inquiry into the process of recognition and vesting through random selection of sites. The Rules to be notified after enactment of the Bill will lay down 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. It is proposed to provide in the Rules that the authorities would consist of officials from the department of Revenue, Forests, Tribal Welfare and reputed members of civil society so as to provide a well defined procedure of involving Gram Sabha i.e. the democratic institution, officials of concerned departments and reputed members of the civil society.

25-04-2005(Tentative)

No. ____ of 2005

THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

A

BILL

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; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Scheduled Tribes (Recognition of Forest Rights) Act, 2005.

Short title,
extent and
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—
(a) “bonafide livelihood needs”, in relation to forest dwelling Scheduled Tribes, means the use of forests and forest based products for subsistence of such Tribes or for their own consumption and includes barter and sale of such forest based products for their

household needs;

(b) “commercial purpose” includes a forest based activity where such activity is used for profit or for large scale trade or mercantile purposes;

(c) “forest dwelling Scheduled Tribes” means the members or community of Scheduled Tribes who primarily reside in and around forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bonafide livelihood needs;

(d) “forest land” means land of any description falling within any forest area and includes unclassified forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks;

(e) “forest rights” means the forest rights referred to in section 3;

(f) “forest villages” means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements by whatever name called for such villages and includes lands for cultivation and other uses, permitted the Government;

(g) “Gram Sabha” means a village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level and in case of State having no Panchayats, the traditional village institutions;

(h) “minor forest produce” includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

(i) “prescribed” means prescribed by rules made under this Act;

(j) “Scheduled Area” means any Schedule Area as referred to in clause (I) of article 244 of the Constitution;

(k) “village” means—

40 of 1996.

(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996;

(ii) any area referred to as a village in any State law relating to Panchayats, other than a Schedule Area;

(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

CHAPTER II

FOREST RIGHTS

3. For the purposes of this Act, the following rights shall be the forest rights of forest dwelling Scheduled Tribes, namely:-

Forest rights of forest dwelling Scheduled Tribes defined.

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;

(b) rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;

(c) right of access to, use or dispose of minor forest produce;

(d) other rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities,;

(e) right of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of conversion of forest villages into revenue villages;

(i) rights of settlement of old habitations and unsurveyed villages, whether notified or not;

(j) right to access to bio-diversity and community right to intellectual property and traditional knowledge related to forest bio-diversity and cultural diversity;

(k) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving;

(l) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;

(m) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) but excluding the right of hunting.

CHAPTER III

RIGHTS OF FOREST DWELLING SCHEDULED TRIBES

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in the forest dwelling Scheduled Tribes, where they are scheduled, in respect of forest land and their habitat including right to collect, utilize or transfer minor forest produce in such manner as may be prescribed.

Recognition of and vesting of forest rights in forest dwelling Scheduled Tribes.

(2) The recognition and vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union territory 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 the 25th day of October, 1980 or such other date as the Central Government may, by notification in the Official Gazette, specify.

(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable.

(4) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed.

(5) Where the forest rights recognized and vested under sub-section (1) are in respect of land, -

(i) such land in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;

(ii) the title to the extent given shall be registered jointly in the name of the male member and his spouse;

(6) The forest rights recognized and vested under sub-section (1) in the forest dwelling Scheduled Tribe shall –

(i) be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes;

(ii) include the responsibility of protection, conservation and regeneration of forests.

(7) In case any forest right recognized and vested under sub-section (1) is disputed by any State Government or local authority, the Competent Authority appointed by the Central Government shall consider the records prepared at the time of declaring the area as a Scheduled Area, and while notifying any tribe to be or deemed to be a Scheduled Tribe under article 342 of the Constitution, along with evidence and then pass an appropriate order in the matter:

Provided that no order denying or refusing to grant any forest right shall be passed unless the aggrieved member or members of the community are

given an opportunity of being heard.

Duties of holders of forest rights.

5. The holder of any forest right under this Act shall ensure that, –

(a) save as those activities that are permitted under such rights, no activity shall be carried out that adversely affects the wild life, forest and the biodiversity in the area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reforestation;

(b) catchment areas, water sources and other ecologically sensitive areas are adequately protected;

(c) the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) any activity that adversely affects the wild life, forest and the biodiversity is intimated to the Gram Sabha and to the forest authorities;

(e) appropriate measures taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. (1) The Gram Sabha shall be the authority to initiate any action for determining the extent of forest rights that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act.

Authorities to vest forest rights in forest dwelling Scheduled Tribes and the procedure thereof.

(2) Every action under sub-section (1) shall be initiated in such manner and subject to such procedure as may be prescribed.

(3) A Sub-Divisional Level Committee shall examine the decision taken by the Gram Sabha.

(4) The composition and functions of the Sub-Divisional Level Committee and the procedure to be followed by it in the discharge of its functions shall be such as may be prescribed.

(5) Any person aggrieved by the decision of the Gram Sabha may prefer an appeal to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(6) Every appeal under sub-section (5) shall be preferred within sixty days from the date of decision of the Gram Sabha.

(7) There shall be constituted a District Level Committee with such

composition and functions as may be prescribed to consider the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval.

(8) Any person aggrieved by the decision of the Sub-Divisional Committee may prefer an appeal to the District Level Committee in such manner as may be prescribed and the District Level Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(9) In discharging the functions under this Act, the District Level Committee shall follow such procedure as may be prescribed.

(10) Every appeal under sub-section (8) shall be preferred within sixty days from the date of decision of the Sub-Divisional Level Committee.

(11) The decision of the District Level Committee shall be final and binding and the Gram Sabha shall maintain the records accordingly.

7. (1) The State Government shall constitute a State Level Monitoring Committee with such composition and functions as may be prescribed.

State Level
Monitoring
Committee.

(2) The State Level Monitoring Committee shall examine the record of recognised and vested rights of forest dwelling Scheduled Tribes submitted by the District Level Committee and conduct periodic inquiry into the process of recognition and vesting through random selection of sites.

(3) The State Level Monitoring Committee shall submit to the nodal agency such periodic returns and reports as may be called for by that agency along with the recommendations of the Committee for appropriate action.

CHAPTER V

OFFENCE AND PENALTIES

Penalties.

8. If any holder of any forest right conferred by or under this Act or any other person –

(i) contravenes or abets the contravention any of the provisions of this Act, or

(ii) commits a breach of any of the conditions of the forest right vested or recognised under this Act; or

(iii) engages in unsustainable use of forest or forest produce; or

(iv) destroys wildlife, forests or any other aspect of biodiversity; or

(v) fells trees for any commercial purpose,

he shall be guilty of an offence against this Act and be punished with a fine which may extend to one thousand rupees and in case of the offence is committed more than once, the forest right of the person who has committed the offence shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha may decide.

Offences by members or officers of authorities under this Act.

9. Where any authority or officers or member of such authority contravenes any provisions of this Act or any rule made thereunder shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with imprisonment which may extend to thirty days or with fine which may extend to five thousand rupees, or with both:

Provided that nothing contained in this sub-section shall render any member of the authority or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Cognisance of offences.

10. No court shall take cognizance of any offence under section 9 of this Act unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Monitoring Committee and the State Monitoring Committee has not proceeded against such authority.

CHAPTER VI

MISCELLANEOUS

Members to be public servants.

11. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code

45 of 1860.

12. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against the Authority as referred to in Chapter IV including its Chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

13. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

Nodal agency.

14. In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

Power of Central Government to issue directions.

15. Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

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

Power to make rules.

(2) In particular, and without prejudice to the generality of the powers, such rules may provide for all or any of the following matters, namely:-

(a) the procedure and for manner of recognition and verification of forest rights under sub-section (4) of section 4;

(b) the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings under sub-section (2) of section 6;

(c) the composition and functions of the Sub-Divisional Committee and the procedure to be followed by it in the discharge of its functions under sub-section (4) of section 6;

(d) the manner of preferring an appeal to the Sub-Divisional Committee under sub-section (5) of section 6;

(e) the composition and functions of the District Level Committee under sub-section (7) of section 6;

(f) the manner in which an appeal may be preferred to the District Level Committee under sub-section (8) of section 6;

(g) the procedure to be followed by the District Level Committee under sub-section (9) of section 6;

(h) the composition and functions of the State Level Committee under sub-section (1) of section 7;

(i) the periodic reports and returns to be submitted to the nodal agency by the State Level Committee under sub-section (3) of section 7;

(j) any other matter is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the country's 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 ignored the bona fide interests of the tribal community from legislative frame work in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belong and depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have in their policy processes realised that integration of tribal communities who depend primarily on the forest resource 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 from becoming abode of undesirable elements.

2. It is, therefore, proposal to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Tribes. The recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations and which includes both bona fide needs of forest land for sustenance and usufructs from forest based resources are the fundamental basis on which the proposed legislation stands.

3. The Bill, *inter alia*, provides for the following matters, namely:—

(i) it reinforces and utilises the rich conservation ethos that tribal communities have traditionally shown and cautions against any form of unsustainable or destructive practices;

(ii) it lays down a simple procedure for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes so that rights, which stand vested in forest dwelling tribal communities, become legally enforceable through corrective measures in the formal recording system of the executive machinery;

(iii) it provides for adequate safeguards to avoid any further encroachment of forests and seeks to involve the democratic institutions at the grassroots level in the process of recognition and vesting of forest rights;

(iv) it addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

P.R.KYNDIAH.

The April, 2005.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters in respect of which rules may be made under the said clause. These matters, *inter alia*, relate to the procedure and for manner of recognition and verification of forest rights, the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings, the composition and functions of the Sub-Divisional Committee and the procedure to be followed by it in the discharge of its functions, the manner of preferring an appeal to the Sub-Divisional Committee, the composition and functions of the District Level Committee, the manner in which an appeal may be preferred to the District Level Committee, the procedure to be followed by the District Level Committee, the composition and functions of the State Level Committee and the periodic reports and returns to be submitted to the nodal agency by the State Level Committee. Sub-clause (3) of the said clause provides that the rules are required to be laid before Parliament.

2. The aforesaid matters relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.