

WILDLIFE FIRST!

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8th July, 2005

Shri Rajeev Kumar,
Joint Secretary, Ministry of Tribal Affairs
Room No.722, A-Wing, Shastri Bhavan,
New Delhi – 110 001.

Sir,

Sub: Views and Suggestions on the Scheduled Tribes (Recognition of Forest Rights) Bill
Ref: Your circular No.17014/4/2005-S&M(Pt.) dated 03.06.2005

The recently proposed Scheduled Tribes (Recognition of Forest Rights) Bill will, in our opinion, have devastating and irreversible consequences for India's remaining wildlife and natural heritage, without really empowering forest dwelling people to move forward in life. If implemented in its present form it will undo the decades of protection given to forests and pave the way for the further destruction of our biodiversity and crucial water catchments.

While it is undeniable that the life, livelihood and welfare of forest dwelling scheduled tribes, must be protected, we believe that be taken care of fully in several ways, without destroying the very resources that India needs for its long-term sustainability.

Site-specific solutions, such as those demonstrated in the **Rajiv Gandhi National Park** (Nagarahole) and the **Bhadra Tiger Reserve** in Karnataka, hold the key to a permanent and satisfactory resolution to this issue since it not only de-fragments wildlife reserves but also offers socio-economic justice to people marooned inside. In terms of the legal aspects, the key objectives of the Bill are:

- i) To provide for recognition and verification of forest rights and;
- ii) Use of MFP for bona fide use of people residing in and around PAs

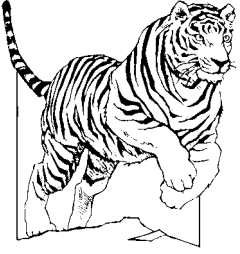
The amended Wildlife Protection Act, 2002 (WLP Act) unambiguously allows implementation of both these objectives. In fact, no area can be notified under the Act without going through the provisions of Chapter IV of the WLP Act. Furthermore, the said Act also provides for continuation of Rights within a Wildlife Sanctuary and declaration of Community Reserves wherever the Community volunteers to conserve wildlife and its habitat. However, what it does not allow is the commercial exploitation of National Parks and Wildlife Sanctuaries by miners, timber loggers and stops developmental projects from destroying Wildlife Habitat.

Since the WLP Act itself allows accomplishment of the major stated objectives of the Bill, we strongly oppose the enactment of the Bill in its present form which will facilitate large scale fragmentation of National Parks and Wildlife Sanctuaries by vested interests using poor tribal people as human shields. The Bill in its present form does not have any checks and balances to protect forests and wildlife and legally undermines the WLP Act and the FC Act thereby giving a free run to forces of forest destruction that include mining, timber logging, dams, commercial forest product collection for markets etc.

We therefore urge the Ministry of Tribal Affairs to carefully consider the views and suggestions made in the enclosed representation and Video CD, as they provide strong evidence that, good schemes, when implemented sincerely, can result in a win-win solution for both people and forests.

Sincerely
For Wildlife First!

K.M. Chinnappa / Praveen Bhargav
Trustees



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Views and Suggestions on the Scheduled Tribes (Recognition of Forest Rights) Bill

Ecological Facts

For a long time after the first prehistoric humans from Africa set foot in India (about 60,000 years ago), ecological conditions that are assumed as a fundamental premise of the Bill prevailed at least broadly. This premise has not held true for many centuries now. Since the advent of agriculture more than 10,000 years ago, the subcontinent has seen successive waves of agricultural expansion. Fire, axe and plough have replaced jungles with farms. Fragmentation and its deleterious consequences have followed, leaving us today with about 10% land area under somewhat natural looking forests (by no means all intact), about 3.5% of it under designated wildlife reserves with perhaps less than 1% of the land still possessing a reasonable complement of plants and animals that once thrived over much of the sub-continent.

Fragmentation occurs when landscape continuity is broken – forests shrink into smaller patches to become honeycombed with settlements, and connectivity gets eroded. There is clear scientific consensus that the effects of habitat fragmentation are largely deleterious to biodiversity conservation at all three critical scales: single populations of rare species, entire community of such species and diversity at the landscape level it self.

The central issue is simple: in the specific ecological context of India, if forest fragmentation has to be reduced - or at least arrested, the present interspersion of human settlements, agriculture, livestock-raising as well as the intensity of forest product collection must be reduced. We must now begin to de-fragment forests, not increase their fragmentation further.

Moreover, these ecological arguments pointing out the adverse impacts of the Bill, in no way negate the need for addressing the core issue of redressing injustices and current aspirations of tribal forest dwellers. They have been brutalized by both the insensitive forest department and by the even more inept revenue and tribal welfare departments who largely serve the interests of more dominant caste groups. Let us not forget that, under India's revenue land grant rules, after independence an even greater wooded area than proposed under this Bill was actually parcelled out in exactly similar 'inalienable' land grants to millions of tribal families. It is matter of record that most of this 'inalienable' land was promptly grabbed by higher caste farmers, miners, loggers, eco-tourism operators and other powerful social forces.

The above consequences of fragmentation are not idle speculations: they can be objectively and quantitatively monitored from space using satellite imagery and ground- based ecological surveys that track wildlife declines and increased threats that drive them. The proponents of the Bill in the Ministry of Tribal Affairs (MOTA) must not indulge in a dangerous fantasy when they argue that none of these predictions will come true. They will, and the truth of this can be demonstrated by objective data.



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Pragmatic Solutions

Our experience of working with forest dwelling communities has shown that many of them aspire to move out of forests if they can get proper assistance to restart their life in lands outside Protected Areas. They now clearly realize that this is the only way by which their children can have better prospects instead of being condemned to a marginalized, forgotten existence.

Two case studies in Karnataka show the way forward for providing true social justice to forest dwelling communities, while safeguarding India's ecological integrity.

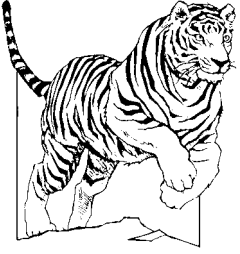
1550 impoverished tribal families used to live in the Rajiv Gandhi National Park (Nagarahole) in Karnataka. In 1997 some tribal families petitioned the government and voluntarily demanded resettlement outside the Park. The government offered them an equitable resettlement package consisting of cultivable land outside the reserve, housing, tube wells and other assistance. Till date, 250 tribal families have availed of the offer. The scheme was implemented sincerely by the government, in partnership with conservation and tribal welfare NGO's which instilled confidence in many of the remaining 1300 families to actively petitioned the government to give them the same opportunity to resettle outside the forest. Using the land and resources allotted to them, the 250 resettled families are working enthusiastically to improve their quality of life.

A similar scheme in the Bhadra Tiger Reserve, also in Karnataka, has been equally successful. With people having relocated **voluntarily** from the reserve to lands outside, the forest is slowly returning to a pristine state. The people themselves are enjoying greater crop yields, free from wild animal depredation. They are also able to enjoy the fruits of modern society, such as roads and transport, schools for their children, markets for their agricultural produce, and hospitals for their health and well being.

These two projects have proved that, with proper planning and sincere implementation, we can ensure a win-win solution for people and forests. We strongly believe that these successes can be replicated in other parts of the country, and that such approaches must first be sincerely tried out before trying to bring in new legislations like the Scheduled Tribes (Recognition of Forest Rights) Bill. The key factor in these two cases was the motivational and watchdog role played by wildlife conservation NGOs which ensured proper implementation.

Problems with the proposed bill

There are other serious problems with the proposed bill. Even its basic premise is flawed. Its assertion that 'They (the tribals) are integral to the very survival and sustainability of forest ecosystems, including wildlife' has no scientific basis whatsoever. In fact, the opposite is true. Forest ecosystems truly thrive in those areas of the world where there is little or no human intrusion. There has **never** been a symbiotic relationship between humans and forests. It has always been one sided. While it is true that humans cannot survive without forests, it is crucial to understand that forests and wildlife do not need humans for their survival. The more they are left alone, the better they thrive.



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In historic times, forest dwelling people inhabited very large tracts of forest in very low densities. They exploited the resources of the forest purely for their own subsistence, and the forests could withstand this limited exploitation. The situation today is drastically different. There are now large numbers of people living in relatively small, and rapidly shrinking, forest areas. What is more, present day forest dwellers, by and large, no longer collect forest produce for just their own subsistence, but also to earn cash incomes by supplying various commercial non-timber forest products (NTFPs) to vast and bottomless national and international markets and industries. This is neither sustainable nor in the interests of the nation.

Present day scenario

The majority of forest dwellers in India today are not bark-cloth wearing, grub and tuber eating, primitive cave dwelling peoples as in the Amazon or the heartland of Borneo. Most of them, whether they are the Kaanis of Tamilnadu, the Kadars of the Kerala forests or the Jenu Kurubas of Nagarahole are already straddling two worlds – the forests which they exploit, and the towns and cities where they sell their produce. They are well aware of life in the outside world and have all the same aspirations as the rest of us in modern human society. Therefore they must be provided true choices and opportunities.

People and wildlife – the reality

There is a strong tendency to romanticize the life of indigenous people living in the forests of India, and to perpetuate the myth of tribal people living contented lives in peaceful and harmonious coexistence with nature. This naïve assumption has done immense damage to the cause of tribal welfare, leading to the present proposed bill.

The truth of the matter is that our indigenous forest dwellers live a tough, hand to mouth existence. Most are today forced to indiscriminately and unsustainably collect forest produce for rapacious middlemen, who pay them a pittance.

They live in flimsy and leaky shelters with little or no access to roads, electricity, schools or hospitals.

Their attempts at cultivating crops or raising livestock inside forest areas inhabited by elephants, tigers and other animals usually fail because of depredation by the wildlife. In fact, rather than the 'harmonious coexistence' that is often painted by ignorant or self-serving social activists, there is constant conflict between humans and wildlife when both try to share the same habitat.

The quick-fix solutions that are usually proposed as a solution to these problems include regularization of forest landholdings, the provision of electric fencing, crop protection guns, roads, schools, hospitals and employment opportunities in the middle of fragile forest areas. This is very much akin to putting band-aids on a festering, potentially gangrenous wound. It doesn't do the patient any good. And it will certainly not do India's forests – our common 'green capital' – any good.



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Legal Implications of the Bill

In terms of the legal implications, the key objectives of the Bill are:

- i) To provide for recognition and verification of forest rights and;
- ii) Use of MFP for bona fide use of people residing in and around National Parks and Wildlife Sanctuaries.

The amended Wildlife Protection Act, 2002 (WLP Act) unambiguously allows implementation of both these objectives. In fact, no area can be notified under the Act without going through a detailed settlement process prescribed in Chapter IV of the WLP Act. Furthermore, the said Act also provides for continuation of various Rights within a Wildlife Sanctuary and declaration of Community Reserves wherever the Community volunteers to conserve wildlife and its habitat.

However, what it does not allow is the commercial exploitation of National Parks and Wildlife Sanctuaries by miners, timber loggers and stops developmental projects from destroying Wildlife Habitat and this is what the Bill proposes to facilitate. The Bill in its present form will facilitate large scale fragmentation of National Parks and Wildlife Sanctuaries by vested interests using disenfranchised tribal people as human shields.

Therefore, when the WLP Act itself allows for accomplishment of the major stated objectives of the Bill, where is the necessity for the enactment of this new law and that too negating the WLP Act, the Forest Conservation Act (FC Act) and the Indian Forest Act (IFA)?

In order to ensure protection from summary eviction to even landless tribal people with no recorded rights who are presently residing inside National Parks and Wildlife Sanctuaries, necessary guidelines may be issued to ensure alternate land, housing and resettlement facilities to such people. In fact Karnataka has already set a precedent in Bhadra and Nagarhole and awarded land, housing etc to landless encroachers which can be adopted.

The Bill has several contradictions and major flaws which will cause serious damage to forests, wildlife and natural resources of the nation. The following are the specific sections of the Bill which are contradictory, flawed and poorly drafted without due application of mind. This raises serious questions about the true intent of this Bill – whether to merely correct historical social injustices or to surreptitiously render the WLP Act, FC Act and Indian Forest Act defunct to allow unfettered access to wildlife and its habitat for vested interests under the garb of delivering social justice. This Bill is not based on Precautionary Principles and therefore many of these provisions need to be scrapped.

Chapter I (Definitions)

Section 2 (d): “forest land” meaning - The words reserved forests, sanctuaries and national parks must be deleted.

2 (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;” All these products are extensively collected commercially for thriving markets.



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Chapter II (Forest Rights)

Section 3 (a): Allows only "habitation or self cultivation for livelihood". This contradicts Section 5 (a) which imposes restrictions on clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reforestation

Section 3 (c): Accords Rights to "dispose" minor forest produce without any conditions. The dictionary meaning of "dispose" includes "distribute", "to sell". This contradicts Section 2 (a) which imposes conditions such as "for subsistence or own consumption" and includes barter and sale of forest based products for "household" needs.

Section 3 (j): Rights to access to "biodiversity". There is no definition of "biodiversity" in Chapter 1. Further since "biodiversity" is an encompassing term which includes plants, animals etc, and this section is legalizing and according rights over wildlife species listed in the Schedules of the WLP Act.

Chapter III (Rights of forest dwelling forest tribes)

Section 4(1): Contains a Non-absolute clause that negates and overrides the protective clauses in the WLP Act and FC Act. This contradicts Section 15 of the Bill which states that "provisions are in addition to and not in derogation of provisions of any other law..."

4 (6) (l): Right to collect, utilize or transfer minor forest products be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes. This contradicts Section 3 (c) which accords Rights to "dispose" minor forest produce without any conditions

Chapter 5 (Offences and Penalties)

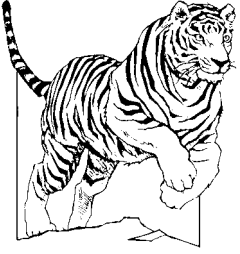
Section 8: Prescribes penalties of Rs 1000 if any holder of any forest right conferred by or under this Act or any other person –

8 (iii) Engaging in unsustainable use of forest or forest produce is an offence. No definition of what constitutes "unsustainable use".

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

8 (v) fells trees for any commercial purpose

In summary, the Bill completely dilutes the criminal penalties prescribed in the WLP Act and yet, states that the provisions of the Bill are in addition & not derogation of other laws. The Bill assigns responsibilities to the Grama Sabha to deal with all types of forest offences and prescribes penalties of Rs 1000. This is a shocking dilution of the WLP Act and a serious loop hole which will be fully exploited by poaching, smuggling mafias and forest encroachers and other vested interests.



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The Bill on the one hand allows minor forest product collection for bona fide livelihood needs but will surely open up our best forest areas to large scale commercial exploitation of MFP commercially for thriving markets.

After making provisions for all kinds of commercial activities – cultivation, collection of commercial MFP, cattle grazing etc the Bill then tries to clamp down on activities that adversely affect wildlife as if the other activities allowed have no impact on wildlife.

Forests ensure food and water security for the nation

The bottom line is that India's forest cover is already inadequate and highly fragmented. Any more destruction will pave the way for an irreversible ecological crisis. Most of the rivers in this country originate from the forests, or are augmented by the water harvested by them. The survival of our agrarian society is inextricably linked to the survival of our forests.

Moreover, our National Parks, Wildlife Sanctuaries and larger blocks of Reserve Forests are priceless treasure troves of unexplored genetic materials - of food crops, enzymes, fibres, designs and chemicals. We have not even begun to understand their potential and yet, we are rushing ahead to destroy them.

Only forests can ensure the water and food security of India for all time. Any hasty actions motivated by ideological or political compulsions of the day will have serious consequences that cannot be remedied. The proposed Bill has tremendous ramifications for the survival of every Indian citizen - urban or rural, rich or poor - and not just for the Forest Dwelling Scheduled Tribes. Forests and wildlife continue to be destroyed because they do not have a voice or a vote. But in destroying them we are slaying the proverbial goose that lays the golden eggs for all of us.

Conclusion

There is a very real danger that the proposed bill will almost certainly result in one of the biggest land scams that this country has ever witnessed. Huge tracts of forests will be taken over and destroyed by powerful land grabbers and mining mafias in the name of the tribals. The so-called safeguards in the proposed bill will remain merely on paper, as is usually the case, while the forests are plundered. There are innumerable instances of resources allocated to tribals being blatantly usurped and ruthlessly exploited by others. The Janmam lands in Tamil Nadu, the Malik Makbuja timber scam in Bastar and the saw mills operating in the North East, are just three striking examples.

Real justice to present day forest dwellers will only have been delivered when they are empowered enough to **choose** whether they want their children to toil in the forest collecting honey, bark, fruits and nuts, or receive the education and training that will enable them to join the mainstream of society and work as software engineers, doctors, lawyers or government employees. Merely regularizing their land holdings within forest areas and giving them unsustainable rights to forest produce, as is now proposed, will only condemn them and their children to continue eking out a



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meagre and uncertain existence, with no prospect of improvement in their lives. It is utterly unjust to stipulate that tens of thousands of tribal people must survive in the 21st Century only by collecting forest products and acting as jungle tour-guides, while other empowered communities take advantage of all the good agricultural land and employment opportunities outside.

As we have shown, there are innovative and proven ways by which real social justice can be delivered to forest dwelling communities without jeopardizing our dwindling forest resources. We therefore appeal for recasting the Scheduled Tribes (Recognition of Forest Rights) Bill which will ensure that our natural biodiversity heritage that remains in National parks, Wildlife Sanctuaries and large blocks of forests is fully protected and site specific incentive driven resettlement schemes of land, housing... are offered to people marooned inside Protected Areas.
