

Statement of the Dialogue on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

(Delhi, 23 - 24 September 2005)

A Dialogue on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was held at the Department of Sociology, Delhi School of Economics on 23-24 September 2005. This Dialogue was convened by the Centre for the Study of Developing Societies (CSDS) and the Department of Sociology, Delhi School of Economics.

In addition to members of the academic community and retired civil servants (like Mr. S.R. Sankaran and Dr. B.D. Sharma), there were over a hundred participants from organisations on all sides of the debate – see list below.

After two days of discussion and debate on various aspects of the Forest Rights Bill, the concluding statement below was drafted in the last session of the Dialogue. Not all the issues discussed at the Dialogue may find reflection in the statement but it reflects an effort, of all those who were present in this last session, to identify areas of broad agreement on basic principles and outstanding concerns pertaining to the Bill. We are releasing this statement in the interests of having a timely impact on the finalisation of the bill before it is tabled.

Basic Principles

We support the Bill's objective of correcting the historical injustice done to forest dwelling communities through the seizure of their lands and forests and, thereby, addressing the livelihood insecurity that plagues the daily lives of forest dwellers. We believe that the recognition of the rights of forest dwelling communities is urgently required. The ongoing brutal evictions of these communities are unjust, unconstitutional and damaging to the broader agenda of conservation.

Moreover, we believe that the present structure of forest management is not conducive to either conservation or to respect for communities' rights. A view was also expressed that recent judicial interventions have, rather than addressing the problem, exacerbated the situation and made it difficult to recognize rights. Together these have formed one part of the larger frame of industrialization and commercialization of natural resources that has taken place since Independence, a trend that has adversely affected both forests and forest communities. Challenging these processes is an imperative.

In this context, the recognition and strengthening of forest dwellers' rights is crucial to secure effective conservation. Communities need to be involved and empowered in and through conservation efforts. This should also be seen in the light of the fact that misplaced and sometimes alarmist claims on matters where the scientific data is not clear, rather than

addressing the genuine issues of conservation, result in further alienation of communities. Conservation efforts, particularly struggles against environmentally destructive development and industrial projects, provide a space for building more alliances between conservationists and people's movements.

Finally, in connection with the Bill itself, we believe that the gram sabha must be authorized and strengthened to be the primary authority in the process of determination of rights, so as to ensure that the process is democratic, open and not subject to the vested interests of the forest authorities.

Areas of Concern

In addition to these overall areas of agreed principles, the meeting also decided to take special note of several areas of concern with the current draft of the Bill. These areas of concern have been identified by the broad agreement of the participants.

The first issue that arises is that much greater clarity is required about the institutional structures and mechanisms through which rights will be recognized as well as exercised. The role of other institutions, particularly state agencies, needs to be clearly defined. Section 15 of the Act, which provides that this law is only "in addition to other laws", is confusing in this regard and needs to be revised. If the Indian Forest Act is left untouched, without incorporating provisions of the bill, this will be tantamount to making the bill useless. Further, in terms of institutional structures, one other highly problematic provision is section 4(7), which provides for an appeal by State agencies directly to the Central government. This is liable to abuse. Finally, the Bill should ensure that the burden of proof in case of any challenge to a right is on the challenging person or authority, not on the right-holder.

Secondly, the exclusion of some communities from the purview of the Bill is highly problematic. Many non-ST forest dwelling communities suffer from the same injustice and livelihood insecurities as forest dwelling Scheduled Tribes. The current Bill also provides no recourse for recognizing the rights of both ST and non-ST communities who have been forcibly evicted by the Forest Department or displaced without rehabilitation. It will also be socially divisive.

Thirdly, there is a question about whether a cutoff date (currently 25-10-1980) should be included in the body of the statute at all. The linking of rights recognition to an arbitrary cutoff date is an area of concern and debate, and the question of the rights of those who are deemed ineligible remains highly problematic.

Fourth, the Bill is currently unclear about the jurisdiction of a village community, which should be clearly defined as the village's customary boundaries (not the revenue boundaries, which may exclude reserved and other government forests). As well, traditional

access and control over forest resources outside these village boundaries should be recognized.

Fifth, the authority of the gram sabha to regulate and manage common resources, including penalizing violators of community decisions on conservation, needs to be strengthened. The current Bill imposes an arbitrary limit of Rs. 1000/- on penalties and does not empower the gram sabha to have any role in penalizing offenders; these provisions need to be revised.

Sixth, in connection both with penalties and with wider conservation initiatives, the accountability, responsibility and limits of the powers of state institutions and agencies need to be defined more clearly. This should include requiring the state to create institutional mechanisms for enabling and empowering communities to exercise their rights and powers, particularly on questions of sustainability and conservation. Such mechanisms should also help ensure that there is equitable sharing of costs and benefits between local communities, the state and other actors benefiting from conservation.

Seventh, there are concerns that the current Bill's conservation provisions are necessary but may not be sufficient. Do the current provisions of the Bill compromise the interests of wildlife? There are areas of scientific ambiguity around concepts and terms such as sustainability, biodiversity, "impacts on wildlife" etc., which the current Bill needs to be cognizant of. Ignoring such ambiguities opens possibilities of abuse, both by state agencies seeking to restrict community rights and by other actors seeking to exploit loopholes for purposes of environmental destruction.

Eighth, the Bill should also be clearer about restricting or halting projects that require mass environmental destruction.

Ninth, in connection with this, the penal provisions of the Bill (section 8) are far too sweeping and vague and require clarification and restriction. Once such clarification has occurred (along with revisions of the penalties to make them more stringent, etc.), the Bill must also ensure that the principle of avoiding double jeopardy – namely that a person should not be tried twice for the same offence – is followed and that penalties under this Act will not be followed by penalties under other Acts as well.

Tenth, other ambiguous terms such as "bona fide livelihood needs", "subsistence" and "commercial purpose" are also used in the definitions contained in the Act. These terms are too vague and require either redefinition or clarification so as to ensure that the purpose of these restrictions is clear.

Eleventh, the provisions of section 10 (requiring a sixty day notice period before prosecuting officials in violation of the Act) should be suitably amended so as to ensure that the provisions of section 9 do not become ineffective.

Twelfth, the treatment of indigenous knowledge in the Bill needs to be revised, so as to avoid the potential of privatizing indigenous knowledge through creating "community patents". The relationship between this clause and existing IPR laws should be clarified.

Members of the following organizations and institutions participated: All India Coordinating Forum of the Adivasi/Indigenous Peoples (AICFAIP); Ashoka Trust for Research in Ecology and the Environment (ATREE); Action Aid; Bharat Jan Andolan; Campaign for Survival and Dignity; Enviro-Legal Defense Firm (ELDF); Environment Justice Initiative, Human Rights Law Network (EJI, HRLN); Ford Foundation; GRAIN International; Indian National Trust for Art and Cultural Heritage (INTACH); Indira Gandhi National Centre for the Arts (IGCNA); Jagrit Adivasi Dalit Sangathan (JADS); Kalpavriksh; National Campaign for the People's Right to Information (NCPRI); National Foundation for India (NFI); Nature Conservation Foundation (NCF); People's Union for Civil Liberties (PUCL); People's Union for Democratic Rights (PUDR); Society for Promotion of Wastelands Development (SPWD); Society for Rural Urban and Tribal Initiative (SRUTI); TARU Leading Edge; The Energy and Resources Institute (TERI); Vasundhara; Wildlife Trust of India (WTI); Winrock International India; and World Wildlife Fund (WWF).

Academic institutions: Centre for the Study of Developing Societies (CSDS); Centre for the Study of Law and Governance, JNU; Department of Sociology, Delhi School of Economics; Institute of Economic Growth (IEG); Institute for Human Development (IHD); National Institute of Rural Development (NIRD); and the Nehru Memorial Museum and Library (NMML).