

Jan Sangarsh Morcha (M.P. – CG)

Convenors: Shramik Adivasi Sangathan, Kothi Bazar, near Bohra Masjid, Betul, (MP)

Narmada Bachao Andolan, Jail Road, Mandleshwar 451221 (MP)

Emails sasbetul@yahoo.com nobigdam@sancharnet.in madhuri93@rediffmail.com

Jan Sangarsh Morcha, a network of 17 mass based organizations of Madhya Pradesh and Chhatisgarh strongly protests the lack of transparency and adequate consultation in the formulation of the Scheduled Tribes (Recognition of Forest Rights) Bill by the UPA government.

After careful consideration of the Bill drafted by the MoTA, we have concluded that though the realization that a new Act is needed to rectify the "historical injustice" to adivasis is a welcome step, we cannot accept the Bill in its current form since we feel that it will be a case of "one step forward two steps back" for adivasis and other forest dwellers.

We have now learnt that there are plans to even further dilute the Bill and that that Prime Minister has called a closed door meeting in this regard on the 30th of September. We urge that since there has not been adequate consultation and debate on the Bill, processes for this be initiated before any steps are taken to finalise the provisions of the Bill.

Adivasis have been fighting for the past two centuries for what is promised in the 'Statement' of the Bill : freedom from unjust colonial laws, and the recognition that their historical rights must be built into any conservation regime. We do urgently require a Bill that will restore the rights that were snatched away by the British. The CMP also binds the UPA govt. to address the question of tribal rights. However the Bill in its current form (as drafted by MoTA) is inadequate and may in fact exacerbate the "historical injustice" that adivasis have suffered. Instead of rectifying these problems and strengthening the Bill, the UPA govt seems inclined, under pressure from the so called "environmentalist" lobby, to further dilute the recognition of forest dwellers rights in the Bill.

We also strongly condemn the hypocrisy of the so-called "Tiger lobby" and armchair "conservationists" whose shrill protests against recognition of legitimate tribal rights is aimed at obscuring conclusive evidence that it is not tribals but industrial-commercial interests and mega projects that are primarily responsible for the destruction of our forests. We therefore feel that the terms of the current debate – "conservation vs tribal rights" -- creates a false opposition between these two imperatives and only serves to obscure real issues.

As mass tribal organizations of MP and Chhatisgarh, we would like to emphatically and categorically state that of all social groups in our country, it is tribals who have had the best Conservation record, and today it is only in tribal areas that there are any forests left at all. No conservation of wildlife and forests is possible without the involvement of tribal people, and that is only possible with

the clear and unequivocal recognition of tribal rights. It is non-tribal groups (especially the urban rich) who have gained from forest destruction, while tribals are being made to carry the burden of conservation regimes. The question is : who gains and who pays the cost?

The Bill, in its 'Statement of Aims and Objectives', as well as the recent Tiger Task Force Report both echo the increasingly influential view that the policy of excluding tribals from forests is an unsuitable conservation strategy and that conservation must be "integrationist" rather than "exclusionist". It is also by now quite clear (and as also stated in the TTF Report) that there is no real basis or evidence for the stubborn belief that tribal forest use is destructive. Unfortunately, however, the Bill remains within the framework of the old anti-tribal biases. If the Bill is going to be "a one-time exercise" as repeatedly stated, then the failure to rectify this problem will be a major setback for the two century old struggle for forest rights.

Our main objections to the Bill in its current form are as follows

1. The exclusion of non-scheduled forest dwellers, who often live cheek by jowl with scheduled tribes and are culturally and socio-economically very similar to them.
2. The Bill only gives rights to those adivasis who can prove that they were in occupation before 1980. This irrational 'cut-off date' of a quarter of a century ago is not only completely impractical, but will remove most adivasis from the purview of the Bill, and there is a very real apprehension that the eviction of these adivasis will be accelerated once there is some token settlement of rights under the proposed Act
3. Rather than a token concession to Conservation concerns through the 1980 cut-off, we need stringent laws to prevent destruction of forest resources by mines, coup felling and big dams. Moreover, we cannot accept the doublespeak that piously invokes conservation concerns every time the issue of forest-dwellers' rights are raised, while destructive projects and unsustainable coup extraction continue with impunity.
4. The Bill allows the continuation of repressive clauses in earlier legislation even though in its Statement it concedes that "historical injustice" had been perpetrated by such "colonial legislation".
5. Many of the positive aspects of the Bill like the rights of gram sabhas are much too tenuous, can much too easily be nullified by administrative fiat. Too many vital issues, like the precise jurisdiction of the gram sabhas, are left to Rules and unless these issues are clarified in the Bill, we fear that they will be nullified in the Rules.

[PLEASE SEE ATTACHMENT FOR A DETAILED CRITIQUE AND SUGGESTED CHANGES]

We strongly urge the UPA govt. to open up the Bill for widespread public consultation and debate. We also wish to reiterate that any Bill which does not address the above concerns will not be acceptable to tribals and other forest dwellers

Anurag Modi (Shramik Adivasi Sangathan) Madhuri (Jagrit Adivasi Dalit Sangathan) Alok Agrawal (Narmada Bachao Andolan) Sunil (Kisan Adivasi Sangathan) Shamim (Samajwadi Jan Parishad) Janaklal Thakur (Chattisgarh Mukti Morcha)

Critique of Tribal Rights Bill :Jan Sangarsh Morcha (MP- CG)

The Bill in its Statement of Objects and Reasons describes forest dwelling tribal people and forests as "inseparable" from each other, current legislation as continuance of colonial laws, speaks of "historical injustice" to tribal people and the alienation that has resulted from insecurity of tenure and fear of eviction., says that integration rather than exclusion should govern conservation. The Bill does not however, live up to this promise.

The Bill has some positive points , but there are some very serious problems with it that must be rectified failing which the Bill will not only not serve the purpose for which it is intended, but will, in fact , prove to be a retrograde step. This bill is being described as a 'one time exercise' (MoTA Note) that will once and for all settle the question of forest rights. *If these problems are not rectified we will face continuation and, in fact, exacerbation of "historical injustice"*

Objections :

1. *The Bill excludes non Scheduled communities:* In many areas, (like large section of Chhatisgarh, forest tracts of Uttranchal/UP etc) there are several forest based non- ST communities, some of whom live closely intermingled with scheduled tribes. Many tribes have not been notified -eg Mankar/Naiks of western MP.
2. *Sec 15 can nullify the entire Act :* This section states that the Act shall be "in addition to and not in derogation of provisions of any other act for the time being in force" There is some doublespeak here. While the Statement of Objects and Reasons and the Note circulated by the MoTA speak of "historic injustice" due to "colonial legislation", this section can effectively nullify the positive provisions of the Act through the very 'colonial legislation' that the Act is supposed to rectify.
3. *The right of the gram sabhas are too vague and tenuous:* The right of the gram sabhas to 'determine the extent of forest rights' is a welcome step, but there are several problems with this : The gram sabhas have rights only within "the local limits of their jurisdiction", so what about forest rights outside village boundaries. (for instance, nistar rights, which are often exercised beyond village limits) ? What happens in cases of conflict between two or more gram sabhas? What about conflicts between two communities in a gram sabha (In the definitions, though "village" is defined according to PESA, "gram sabha" is not defined according to PESA) . Too much has been left to the 'Rules'
4. The procedure for verification is too complicated and allows the administrative machinery, and a several hierarchical tiers of officials to veto gram sabha decisions at their discretion
5. *Section 4 (7) ,* which allows state govts or any local authority to dispute rights recognised and vested under Section 4(1) , can be used by them to stall and obstruct 4(1). There are inadequate safeguards to prevent this.
6. **The most important problem with the forest bill is section 4 (2) which restricts all rights to those who had occupied forest land before 25.10.1980, or any such date as the Central govt may, by notification in the official gazette, specify.**

This single clause is enough to nullify most of the positive provisions in the bill.

The Forest Conservation Act of 25. 10. 1980 does not specify that pattas cannot be given on forest land. It only states that the permission of the central govt is necessary. What is specifically targeted as non-forest use are plantations . It is the 1990 guidelines that actually make 1980 a cut-off date. As such there is no reason for the Bill to use this date at all. In any case, as a new Act, there is no need for the current Bill to be bound by the 1980 Act.

We have, since 1980, had a situation in which dams, mines, timber extraction and such activities have been sanctioned with central or state govt. permission, and have destroyed huge swathes of forests, but the legitimate rights of adivasis to secure livelihood have been denied and they have been subject to brutal violence by pious invocations of the 1980 Act.

What are the problems with the 1980 cut off date?

- a) *What will happen to farm land that is disqualified from regularisation due to the 1980 cut-off? This is land that has been under cultivation for upto 25 years. It will be virtually impossible to regenerate forests on this land. The Forest Deptt.'s record on plantation activity is famously dismal.*
- Given the bias of our govts towards Big Business, and repeated pronouncements regarding handing over "degraded forest lands" to business houses for commercial afforestation, the probability is that land will be snatched from poor farmers and given to big business. We must also bear in mind that *there is already a strong US-led lobby that wants to open up Third World forests for commercial use.*
- b) The whole problem of 'encroachments' has arisen because of repeated displacement of adivasis or because of the lack of any viable livelihood options. Thousands of families displaced *without rehabilitation* by mines and dams have settled on forest land. Much of this displacement has been after 1980. For instance the Bargi dam, in 1990, submerged 162 villages instead of the 101 villages which were officially warned of submergence, and of course, even these 101 villages were not properly rehabilitated. The ongoing displacement by all the other dams in the Narmada Valley follows the same pattern. About 25 million adivasis have so far been displaced by development projects and over 40% of all people displaced by 'development projects' are adivasis. In the absence of proper rehabilitation, most of these have been left with no option but to cultivate forest land. *Can the govt ensure that such displacement will not take place in the future? Can it conclusively state that it has adequately rehabilitated all those displaced by mega projects after 1980, so that they have not had to fend for themselves by occupying forest land?*
- c) Besides, development policies have not so far been able to provide adivasis and small/marginal farmers any security of land or livelihood. The adivasis of Doobjhirna in Hoshangabad, who were brutally and violently evicted this year, had settled here 15 years ago after their land in Chhindwara became uninhabitable. This community, like many others had traditionally been shifting cultivators. They were forced to become settled cultivators on land that was not suitable for this purpose. When this land could no longer support them, they were forced to migrate. They had settled on land that was notified as forest land, but had no tree cover. No options had been made available to these people either for revival of their original land, or for alternatives to it. They were in Dobjhirna for as many as 15 years before they were suddenly uprooted, again without any alternatives. This is a common story.
- d) It is ghastly mockery of adivasis and other forest-dependant communities that the very Forest Conservation Act of 1980 that has been cited as the reason for the illegitimacy of their farms, has not prevented coup- felling, dams, mines and other "development projects" from destroying huge forest tracts (over 42,000 ha in Narmada Sagar alone!). The main dam alone in the recently sanctioned Ken-Betwa Riverlink will, according to official estimates, submerge 6400 ha of forest land (3/4 of total submergence) *including*

a section of the Panna Tiger Reserve, and about 2171 ha of 'cultivable' land. According to these estimates over 50% of those who will be displaced are adivasis and dalits. There is a huge silence from the "Conservationist" lobby, that opposes the settlement of adivasi rights, about such projects.

e) *Not regularising post 1980 (or those who cannot prove that they are pre1980) tribals will not save the forests. What we need are stringent laws that will stop destructive mega projects and commercial extraction.* The Bill provides for 'penalties' for unsustainable forest use to be imposed on adivasis (to the extent of de-recognition of rights) *but there are no provisions either in the Bill or in any other law to strictly prevent destruction of forest resources by urban, commercial or industrial interests.*

f) **The 1980 clause will only mean that the settlement process will once again be riddled with manipulation and corruption and like all other previous settlements, will create more problems than it will solve :**

(i) A quarter of a century has passed since 1980. Since then, an entire generation has been born, come of age and borne children. What will be the status of these descendants of original occupants?

(ii) Many adivasis from nearby areas have moved, in the natural and normal course of things (since it is absurd to expect that there will have been no changes in ownership of any land, forest or revenue, over a quarter of a century) into plots earlier cultivated by other adivasis. There has been considerable movement both to and from these plots.

(iii) Many adivasis continued to occupy new lands simply because no one bothered to inform them that after the passage of the FC Act, the govt had decided that these lands would not be regularized. In fact, forest deptt officials continued to take money from adivasis and settle them on newly cleared lands. Politicians continued to publicly promise regularization of all holdings, of whatever date.

(iv) In MP, since surveys for regularization for pre1980 holdings were conducted 15 years later in 1994-5, and since by then, due to the passage of time, the situation on the ground had grown extremely unclear and confused, surveys were arbitrary and corruption ridden. There have been ridiculous situations like only 2 or 4 persons in entire villages that have been in existence since British times, being found to be pre-1980! How much more confusion will now prevail when people are asked to produce proof that they were on these lands 25 years ago!

(v) The standard proof demanded by the forest department are PORs. However i) due to Forest Department corruption, very often PORs were not issued, with officials simply pocketing money; ii) Most POR receipts have simply got lost or destroyed. The Forest Deptt claims that it can verify pre1980 PORs from its records. This is however impossible. Records are not only in very bad condition, but they are maintained on a yearly (not village-wise) basis. Unless an adivasi can definitely state in which year a POR was issued to him/her, it is not possible to trace any record of it.

(vi) The Note circulated by MoTA recognises that the PORs (FORs) are not adequate and that as a result many adivasis "were simply termed as encroachers in their own homeland". Presumably, the solution to this problem envisaged in the Bill, is the right of

the gram sabhas to undertake verification. However, the evidence to be considered by the gram sabhas are not spelt out, and in any case the administrative machinery has the right to veto the gram sabhas.

The MoTA Note claims that rights will be settled on an "*as is where is basis*". But due to the 1980 cut-off, this will obviously not be done.

g) "Primitive Tribes" like the Baigas or *podu* cultivators in AP who have until recently been shifting cultivators and therefore have not yet fully adjusted to settled cultivation and do not yet have adequate land holdings, have not been taken into account in the scheme envisaged by the Bill. Pardhis, bavarias and other traditionally hunting - gathering communities, who have not been given any other livelihood option, and who according to TTF Report and other surveys should be settled on land, have also not been taken into account in the Bill.

Moreover, since all govts have repeatedly reiterated a policy of eviction of 'uneligible encroachers' after the 'settlement of rights' of 'eligible encroachers', the probability is of large scale evictions once the govt is able to do some marginal settlement of rights.

- A 'cut-off date' is possible only after these problems are addressed, and in any case the only possible cut-off date is the date of the passage of the Bill, not an unrealistic and arbitrary date of a quarter of a century ago.
- The problem of 'encroachments' cannot be solved unless the problems of displacement and forced migration due to degraded holdings are not solved.
- Stringent measures are required to stop forest destruction by mega projects and industrial-commercial interests.