

# **National Consultation on the Draft Forest Rights Bill**

---

Secretariat: C-3/441-C, Janakpuri, New Delhi-110058, India  
Phone: +91-11-25620583, 25503624; Fax: +91-11-25620583  
Email: suhaschakma@gmail.com

## **Declaration of the National Consultation on the Draft Forest Rights Bill, 2005**

**India International Centre, Lodi Estate  
7-8 August 2005**

### **Call for introducing the Draft Forest Rights Bill in the current session of the parliament:**

We, the participants of the National Consultation, unanimously call upon the government of India to introduce the Draft Forest Rights Bill in the current session of the parliament and adopt the following Declaration and Recommendations:

### **Initiative against historic injustices:**

The National Consultation on the Draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005 (hereinafter referred as National Consultation) welcomes the Draft Bill as a step in the right direction to address historical injustices against the tribals. The Forest Conservation Act of 1980 made hundreds of thousands of forest dwellers, mainly tribals, who have been living in the forest areas for generations as encroachers on their ancestral lands at midnight of 24 October 1980.

For two and half decades, the state governments failed to record and recognize even those the ancestral rights of tribal communities permitted by the Forest Conservation Act and the subsequent 1990 Guidelines issued by the Ministry of Environment and Forest.

After the Supreme Court stayed the regularisation of forest rights of the tribals on 23 November 2001 in the case of *Godavarman Thirumalpad vs Union of India*, the rights of all tribals living in the forest have effectively been extinguished.

The National Consultation regrets that in both the processes – drafting of the Forest Conservation Act or filing of the public interest litigation – the tribal peoples and other forest dwellers were not heard.

### **Justice delayed is justice denied:**

The National Consultation expresses serious concern about the delay for adoption of the Draft Forest Rights Bill and demonisation of the “Draft Forest Rights Bill”. The Bill offers nothing new, as the cut off date for recognising the rights is still 25 October 1980. The only new elements in the Bill are the role of the tribals or local communities in the

management, conservation and sustainable development of all types of forest and biological diversity which reflect the National Forest Policy of 1988 and international standards on conservation of forest and environment like the Agenda 21 of the Rio Declaration of the United Nations Conference on Environment and Development (UNCED) and subsequent decisions taken by United Nations Convention on Biological Diversity (CBD) and United Nations Forum on Forest.

The National Consultation condemns mis-information campaign against the Bill especially with regard to the vesting of 2.5 hectares of land to each nuclear tribal family when the Bill unequivocally states that it will benefit only *“those forest dwelling Scheduled Tribes who are living in the areas in which they are scheduled and in occupation of land since before October 25, 1980”*.

The National Consultation reminded that had the government was responsive to its citizens, and was serious about implementation of the Forest Conservation Act of 1980, all these tribal people who may get rights under the Forest Rights Bill would have already been allotted the lands by now.

### **The Tribals are not responsible for dwindling forest cover:**

The National Consultation reminds the nation that over 60% of the country's forest cover is found in 187 tribal districts where less than 8% of national population lives, reflecting the continuing culture of conservation of the tribal people.

The National Consultation notes that forests are being destroyed by logging contractors, local businessmen etc with the connivance of some of the forest officials.

The National Consultation noted that the major cause of destruction of forest is the officially sanctioned conversion of forest for non-forest activities by the Ministry of Environment and Forest. Between 1980 and 2004, 9.81 lakh hectares of forestland involving 11,282 industrial and developmental projects, which is equivalent of 73% of the total alleged encroached area, were diverted for non-forest activities. Compensatory afforestation programmes are no substitute for rich natural forests. Even this was done only for about 7.3% of what is legally required for the same period.<sup>1</sup>

The National Consultation expresses concerns about the silence of some environmental groups and activists against the diversion of more land for non-forest activities such as for various development projects like power, irrigation, construction of roads, railway lines, drinking water supply, mining, nuclear mining, militarisation, etc by the government.

---

<sup>1</sup>. *Forests and Wildlife Statistics 2004*, MoEF, September 2004

The National Consultation also expresses concerns while the Supreme Court stayed regularisation of tribal villages, it continues to approve many development projects which will destroy the forest and biological diversity.

### **The Tribals are not responsible for reduction of endangered species like tigers**

The National Consultation recalls that Article 8 (j) and other related provisions of the Convention on the Biological Diversity make it legally binding for the States that “the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations”.

The National Consultation welcomes the conclusion of the Tigers Task Force that “conservation must share benefits with local communities if tiger has to be safeguarded, as some parks have shown” which is also consistent with the decision (Decision VII/28) taken by 7<sup>th</sup> Conference of Parties of the Convention on Biological Diversity on Protected Areas at its conference held at Kuala Lumpur from 9 to 20 February 2004 “to ensure full and effective participation by 2008, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new protected areas”.

The National Consultation notes that poaching and smuggling of highly endangered species is the main reason for reduction of endangered species. The nexus between the law enforcement personnel and poachers, inability of the law enforcement personnel and judiciary to enforce the Wildlife Protection Act of 1972 and the lack of bilateral agreements for increasing cross border cooperation to undertake the intensive investigatory and prosecutorial work necessary to have a significant impact on traffickers both in countries of origin as well as destination, have failed the efforts to combat trafficking of wildlife products.

The National Consultation regrets that out of the 22, 671 cases of violations of the Wild Life Protection Act between 1996 and 1999, only 5297 cases filed in the courts out of which only 1049 cases were determined by the court. The government failed to indicate as to how many cases resulted in conviction.<sup>2</sup>

The maximum number of cases were detected in Maharashtra (19,986) followed by Uttar Pradesh (1977), Punjab (664), Haryana (657), Madhya Pradesh (556), Tamilnadu (175), Orissa (171), Gujarat (117) and Delhi (92). Out of the 3740 cases filed before the courts in Maharashtra, only 38 cases were concluded. Karnataka failed to file any complaint

---

<sup>2</sup> . LOK SABHA UNSTARRED QUESTION NO 1702 TO BE ANSWERED ON 06.03.2000

before the courts.<sup>3</sup> For the last ten years, the government of Delhi failed to appoint public prosecutor for the Wild Life Protection Act.

The National Consultation recommends that that the thrust of conservationists' efforts needs to be on pressuring governments to take administrative, legalistative and judicial measures for enforcement of the Wild Life Protection Act, not denying the rights of the tribals. It concluded that if there is no enforcement of the Wild Life Protection Act, 1971, which is the case now, the tribals can be forcibly evicted but poachers will continue to poach.

### **The Tribals must not be collectively penalised and criminalised for the failure of the State:**

The National Consultation affirms that the Forest Rights Bill is not a charity but recognition of the rights of the tribals. The National Consultation urged not to criminalise and penalise all the tribals for the failure of the State to address historical injustices to record and recognize the ancestral rights of tribal communities and effectively enforce the Wild Life Protection Act, 1972.

The National Consultation called upon the government of India to introduce and adopt the Draft Forest Rights Bill in this current session of parliament for two reasons.

First, the rights of the forest dwellers, which have been extinguished after the Supreme Court stayed the regularisation of villages without hearing the voices of the tribal peoples must be restored.

Second, the government must bring an end to harassment of the tribals by forest officials under the Forest Conservation Act must be addressed. On 11 October 2004, the State government of Orissa directed the Forest Department to withdraw all 11,424 minor cases involving forest produce of less than Rs 100. In a country infamous of judicial delay and Forester Raj, the implications of filing thousands of cases against the tribals are unimaginable.

The National Consultation affirms that the fine balance between rights and responsibility as envisaged in the Draft Forest Rights Bill, 2005 could further be strengthened and made the following recommendations:

- In Clause (g) of Section of the Draft Forest Rights Bill, the following new proviso shall be inserted after village level, "on in instances where they co-exist, the traditional institution known in tribal or local languages".
- Under Clause (1) of Section 4, insert "or any judgement, order or decree of a court" after the words "any other law";

---

<sup>3</sup> . Ibid.

- Section 4.5 should only apply to rights recognized under Section 3(a); and
- The following new sub-section should be introduced under Section 7:

“In case of any forest which falls under dispute, be inter-state boundary dispute or otherwise transferred from one state to another State for administrative convenience, this Act shall not be applicable until such time, the Central Government considers the claims and counter-claims of ownership by the States under dispute and examines the historical records prepared at the time of declaring the area in the dispute as Scheduled Area or Reserved Forest and until such time, the Central government taking into consideration the evidence, customary or otherwise, pass an appropriate order in the matter”.

The participants of the National Consultation were:

**Special Guest:**

Sarbananda Sonowal, Member of Parliament, Lok Sabha

**Participants:**

1. Mongal Debbarma, Indigenous Tribal Peoples Development Centre, Tripura
2. Artax Shimray, Convenor, North East Peoples Initiative, Nagaland/Assam
3. N Krome, General Secretary, Naga Ho Ho, Nagaland
4. Tado Karlo, NEFA Human Rights Organisation, Arunachal Pradesh
5. NSN Lotha, General Secretary, North East Students Organisation
6. H Ngurdingliana, Centre for Peace and Development, Mizoram
7. Subimal Bikash Chakma, Committee for Citizenship Rights of the Chakma of Arunachal Pradesh
8. Dino D. G. Dympep, Meghalaya Peoples Human Rights Council, Meghalaya
9. Gam A. Shimray, All India Coordination Forum of the Adivasi/Indigenous Peoples
10. Ratnakar Bhengra, Jharkhandi Organisation for Human Rights, Jharkhand
11. M.S Selvaraj, Vivasyigal Thozhilalazhagal Munnetrata Sangam, Tamilnadu
12. C R Bijoy, Campaign for Survival and Dignity, Tamilnadu
13. Bijaya Panda, Adivasi Mukti Sanghatan, Madhya Pradesh
14. Madhu Sarin, Environmentalist, Punjab
15. Pradeep Prabhu, Convenor of Campaign for Survival and Dignity
16. Bhanwar Singh, Jal Jameen Jungle Andolan, Rajashtan
17. Rajesh Rawat, Asian Centre for Human Rights, Delhi
18. Shankaran Gopal Krishnan, Kastakar Sangatna, Maharashtra
19. Swaswati Swetlena, Society for Rural Urban Tribal Initiative
20. Vikas Jha, Indian Social Institute, Delhi
21. Dr Ashok Kumar Ray, National Foundation of India, Delhi

- 
22. K K Singh, Bharatiya Association for Rural Development,
  23. Shubra De, Action Aid
  24. Sukendu Debbarma, Asian Indigenous Peoples Pact
  25. Suhas Chakma, Asian Centre for Human Rights, Delhi
  26. Pragya Vats, The Other Media
  27. Priya Sreenivasa, Kastakar Sangatna
  28. Amal Chakma, Asian Indigenous and Tribal Peoples Network
  29. Gladys D'Souza, Society for Education and Reality
  30. Priti Darooka, Programmes for Women's Economic, Social and Cultural Rights
  31. Avilash Roul, Bank Information Centre
  32. Dr Jimmy Dabhi, Indian Social Institute
  33. Ranjana, Samarthan, Rajasthan
  34. Paritosh Chakma, Asian Indigenous and Tribal peoples Network