

# **Suggestions to the Draft Scheduled Tribes and other Forest Dweller's (Recognition of Forest Rights) Rules, 2006**

## ***Introduction***

Winrock International India (WII) is a non-profit organization working in the areas of natural resources management, clean energy and climate change. WII works out of its headquarters in New Delhi and its regional centres in Bangalore and Hyderabad and project offices in Bhadohi (Uttar Pradesh) and Kawardha (Chhattisgarh). Our mission is to "develop and implement solutions that balance the need for food, income and environmental quality."

The Natural Resource Management (NRM) Unit of WII is working to promote innovative management systems that will help in the efficient utilization and conservation of India's natural resources, especially forest and water resources. The expertise of WII's qualified staff, developed over years of working with various stakeholders — rural communities, local and national NGOs, and the Government — is utilized for technical assistance, capacity building at various levels, and sector strategy and policy reviews in issues related to water and forest management in India. The NRM group works with policy-makers, foresters, scientists, research institutions, non-governmental organizations, and rural communities in several states. In the area of forestry, the group has been carrying out research and policy advocacy in the area of community based forest management.

WII has been actively participating and contributing to the debate on forest rights. Earlier, a panel discussion on JPC recommendations to the Bill was organized by Winrock International India (WII) in New Delhi in 2006. Panelists had voiced concerns on issues of ecological security, inter and intra village and tribe equity, institutional design and legalization of encroachments. Recently, WII organised an internal meeting of forestry professionals, to elicit feedback on the rules as requested by the Ministry of Tribal Affairs (MoTA). Described below are some of the feedback which have been compiled for consideration by the Ministry of Tribal Affairs while finalising the Tribal Rules.

## **Overall Recommendations:**

- The Rules for the Act should contain clear provisions on nesting the existing JFM programme within the domain of the Act. Though collaboration with existing JFM institutions are mentioned in Chapter IV, Section 24. 2 (c) changes in forest governance regime under the Act would require that modes of collaboration between Gram Sabhas and JFM groups are clearly articulated. It is also suggested that provisions be added that promote collaborative decision making between JFM groups and Gram Sabhas, especially in JFM areas. Such measures will add incentives to Community Forest Management initiatives. Moreover, many JFM/CFM groups have undergone capacity building on institutional and management issues through State and NGO support. They follow well developed rules and norms for forest protection and sustainable use. The Gram Sabha will benefit from such collaboration as it will substantially reduce its work load. Apart from JFM/CFM groups, Rules should also provide clear guidelines on coordination between the Gram Sabha and various existing village level institutions dependent on the same resource base for livelihoods.
- Functions attributed to Sub- Divisional, District Committees and State Level Monitoring Committees, need to be revisited. Powers given to the District Level Committee to “consider and finally approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee” {Ch 2, Sec 8 (a) & (b)} offers a window to override community decisions. This goes against the basic tenet of the Act. Also, composition of the State Level Monitoring Committee is top heavy and may burden the overall implementation of the Act. It is suggested that civil society involvement be made mandatory in both District Level Committee and State level Monitoring Committee in order to broad base participation and ensure transparent decision making.
- Rights of ownership, access to collect, use and dispose of minor forest produce as mentioned in Sec 1, Chapter III, 3 (c) in the Act needs further clarification. Though Chapter III, 13 (1-7) in the Rules makes an attempt to do so by defining “sustainable use”, there is absence of guidelines/norms on harvesting/use based on ecological principles. It’s suggested that provisions for certain basic guidelines (area specific) be included in the draft Rules.
- The Rules also need to clarify the status of encroached land which is to be regularized beyond the provisioned 4 hectares. There is no clear guideline on distribution/status of encroached land over and above 4 hectares. For example, if the encroached land is of 10 hectares and 4 hectares get regularized, there is no clarity on what should happen to the rest of the encroached 6 hectares.
- The draft Rules needs to address larger issues of ecological security and promote the development of local level mechanisms which deter adoption of detrimental land use practices (e.g mining). This needs to be clearly indicated through additional provisions.
- Keeping in mind the possibility of filing of false claims, appropriate deterrents & disincentives should be provided in the rules to minimize work load & transaction costs of verification.

| <b>Recommendations to Specific Provisions of Draft The Scheduled Tribes and other Forest Dweller's (Recognition of Forest Rights) Rules, 2006</b> |                          |  |  |  |   |
|---|--------------------------|--|--|--|---|
| <b>Sr. No</b>   | <b>Provision</b>         | <b>Sections to which comment pertains</b>          | <b>Comments and Recommendation (relating to the Rules )</b>  | <b>Proposed Change</b>   | <b>Issue</b>  |
| 1   | Definitions              | 2 (2)  | The word "sustenance" as used in this section needs to be further defined.   | Develop a definition for the word "sustenance"   | Acknowledging the possible involvement of external vested interest groups, a definition of the word "sustenance" becomes critical as otherwise it may provide a window for large scale commercial enterprises (which needs to be disallowed)  |
|   | "                        | 2 (6) of the Rules & specifically 2 (o) of the Act | There is contradiction in definition of Other Traditional Forest Dwellers (OTFD) with respect to Ch 1 sec 2 (o) & Ch 3 sec 4 (f) 3. The definition in Ch 1 should have universal application to all sections where OTFDs are mentioned | Streamline the definition of "Other Traditional Forest Dwellers"   | While Ch 1 defines OTFDs in terms of "any member or community who has for the last three generations prior to the 13 <sup>th</sup> day of December primarily resided in and who depend on the forest and forest lands for bona fide livelihood needs" Ch 3 states that vesting of Forest Rights to Forest Dwelling ST's and OTFD's will be subject to the condition that STs/OTFDs had occupied forest land before the 13 <sup>th</sup> of December 2005. The requirement to prove occupation of forest land for 3 generations has been removed. Duality in definitions needs to be corrected |
|   | Committees under the Act | 6  | There is currently no feedback mechanism between the Sub Divisional Level Committee and the Gram Sabha   | Functions of the Sub Divisional Level Committee should include providing a feedback to the Gram Sabha  | Will strengthen dialogue and sharing between GS and SDLC  |
|   |                          | 6  | Internal decision making process is unclear. In case of difference in opinion between members on specific technical/legal issues, there is no mechanism to build consensus or highlight individual/group concerns                      | As regards differing technical/legal opinions between SDLC members, individual/group concerns or differing viewpoints should not be "outvoted" and ignored but brought to the notice of the District Level Committee | Will ensure that differing viewpoints get heard/recorded at a higher level, so that genuine concerns get recognised in case there are attempts by vested interest groups/lobbies to negate it   |
|   | "                        | 8 1 (a) & (b)                                      | District Level Committee provided with   | Justification of rejection of  | Possibility of non transparent and hierarchical decision  |

|  |                        |                     |  |  |   |
|--|------------------------|---------------------|--|--|---|
|  |                        |                     | powers to examine claims and consider and approve claims and forest rights as prepared by SDLC. However, there is no mechanism by which claimants can be informed of reasons behind rejection  | claim needs to be provided to claimant and within a specified timeline                               | making. By stating the reasons for rejection in public domain, a greater degree of transparency will be ensured   |
|  | "                      | 8 (3), a & b        | Publishing the record of forest rights and providing certified copies of the same to the Gram Sabha needs to be in local languages   | Add "in local language(s)" to 3 (a) & (b)  | Easy transfer of information to right holders is essential  |
|  |                        | 13 (1)              | Provides complete rights on all minor forest produce regardless of whether they are nationalized or previously restricted and brings them out of the regulatory domain of State Acts and Rules   | Existing Wildlife Protection Act provisions on Scheduled Plants needs to be maintained.              | Bypassing existing wildlife protection act provision of scheduled plants may lead to extinction of rare medicinal and other plants due to over harvesting               |
|  | Forest Rights          | 19 & 24             | The rules provide the Gram Sabha the right to protect and scientifically manage forests.   | The viewpoint of the Forest Department needs to be acknowledged                                      | The Forest Department has acquired vast expertise on scientific forest management and acknowledgement of its viewpoint will be crucial to the implementation of the Act |
|  | Verification of Claims | 27 (4), 28 (5) & 31 | No fixed timeline has been provided for 27 (4): the claimant to produce evidence before determination of his claims to the Gram Sabha<br>28 (5): provision of all relevant documents to the Forest Rights Committee/Gram Sabha on a written request by an officer authorised for the purpose | Need to provide practical timelines which will help speed up the rights claim and settlement process | Absence of timelines will lead to unnecessary delays and committees cannot be held accountable for such   |
|  |                        | 28 (6)              | Forest Rights Committee is provided with powers to prepare and authenticate a map delineating the area of each recommended claim. However, the rule doesn't specify the use of modern and digital mapping techniques   | GIS technology, wherever digital data is available, should also be used for authenticating claims    | Use of both traditional and digital methods of mapping will add scientific validity and precision to the authentication exercise  |

