

A GUIDE TO THE FOREST RIGHTS ACT

CAMPAIGN FOR SURVIVAL AND DIGNITY

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INTRODUCTION

With every passing day, violence and repression in the forests increases. Every day we hear of yet another place where the military, police, mafias, or the Forest Department have attacked us, jailed us, evicted us or – more and more – simply killed our people.

Why is this happening? Because, in this country, government is now openly dedicated to supporting the seizure, grabbing or theft of natural resources by big capital. Forests are the site of very valuable resources, including timber, minerals and medicinal plants, as well as the land itself. Taking control of these resources through force makes for immediate profits for large corporations. They need only seize the land or resources, plunder and sell them and then leave.

But this cannot happen without crushing us – who live in the forest and rely on it for our livelihoods and survival as peoples. Therefore the government, which provides these companies with full support, wants to destroy our ability to resist. Our legal rights are taken away; our rights as citizens are trampled upon; and when we fight on, we are branded as “terrorists” and crushed by the police or the army.

That does not mean that we cannot fight back. The Forest Rights Act, which we won in December 2006, is one of the first steps towards fighting this assault. This booklet describes the Act and how it can be used. But first, let us see what is happening in the forests in more detail.

The Government's Tactics

Here are some of the major methods by which the government is attacking us:

1. *Seizing resources through law:* Laws such as the Land Acquisition Act are used against our communities, taking our resources while throwing us on to the streets. Lands are forcibly taken from us and handed over to private corporations for their benefit. In Orissa, more than 40 memoranda of understanding have been signed with various big mining companies. This will result in huge displacement of people, all in the name of “public interest.”
2. *Privatising the community's lands and resources:* Where land or resources is officially owned by the government, it is now being handed over to private companies directly – even where it actually belongs to our people. Moves are afoot to hand over forests and other community lands, declared government land by fiat, to private companies in the name of “afforestation” – resulting in destruction of the actual forest and denial of our people's rights in those lands. In many States, promotion of “biodiesel” plants like jatropha has involved handing over lakhs of hectares of such 'government' land, which people are cultivating or using for pasture, to companies for biodiesel plantations.
3. *Special Economic Zones:* A new form of super-land grab has also begun recently – the creation of what are called Special Economic Zones, which are basically areas of company raj where private companies will take over not only the land but all functions of government (including public services and even, indirectly, criminal law). In many areas these are coming up on adivasi, community and forest lands, denying us our basic rights as Indian citizens.
4. *Denial of Constitutional protections for Adivasi rights:* After a series of Adivasi rebellions, the British had provided some protection for Adivasi lands, customary laws and traditions. These protections were included in the Fifth and Sixth Schedules to Article 244 of the Constitution. All Adivasi areas in the mainland of India were to be scheduled under the Fifth Schedule and governed as per its provisions. But nearly half of Adivasi areas were never Scheduled and the Fifth Schedule has been completely ignored by the government, which treats Scheduled Areas like colonies for exploitation of resources.
5. *Ignoring community control as granted through the Panchayats (Extension to Scheduled Areas) Act,*

1996: PESA is one of the most powerful laws in the country – essentially an extension of the Constitution - for Adivasis, guaranteeing that in Schedule V areas the gram sabha will have power to manage community resources and must be consulted on land acquisition, resettlement, etc. This law has been violated by all the States.

6. *Using military and police force to crush people's resistance and forcibly throw them out:* Where all other measures fail, the government has been using police and the military – often simply illegally – to destroy our organisations and evict us by force. In Chhattisgarh, the government has organised armed militias in the name of the *salwa judum* campaign, who burn villages, kill people, rape women and engage in extreme brutality in the name of fighting the Maoists. People are being driven from their homes and lands to make it easier to hand them over to mining corporations. More than 1,00,000 people have been displaced in the last two years because of this inhuman violence, thousands of women have been raped, and hundreds of people killed ruthlessly.

It is in this context that our fight for the Forest Rights Act becomes all the more important, even as we fight these other methods of destroying our livelihoods and denying us our rights.

What is this Act about?

The fire in India's forest areas is not a recent phenomenon. Forest laws passed and instituted by the British have been used to seize the lands, homes and resources of adivasis and other forest dwellers, first for British timber needs, then for “national industry” and government revenue, and now in the name of conservation.

How did this happen? In the nineteenth century, the British wanted to undertake unhindered exploitation of timber, which required that the government assert its ownership over forests and suppress the traditional systems of community forest management that existed in most of the country. This had nothing to do with conservation; it was an effort to take control over trees, timber and vast areas of community land that was not and never had been forest. “Scientific forest management” introduced by the British was designed for ‘sustained yield of timber’ and little else. The result was the Indian Forest Acts, a series of which were passed from 1876 through 1927. The 1927 Act remains India's central forest legislation. These Acts empowered the government to declare its intention to notify any area as a reserved or protected forest, following which a “Forest Settlement Officer” supposedly would enquire into claims of rights (to land, forest produce, pasture, etc.) and decide whether to record people's rights or not.

Since the primary intention of these laws was precisely to take over lands and deny the rights of communities, this “settlement” process was in a sense destined to fail – which is exactly what happened. Surveys were often incomplete or not done 82.9% of Madhya Pradesh's forest blocks have not been surveyed till date¹, while in Orissa more than 40% of the reserve forests are “deemed” reserved forests where no surveys or settlement of rights took place. No forest settlement has yet been done for 20% of Andhra Pradesh's government forest areas. Where the claims process did occur, the rights of socially weaker communities – particularly adivasis – were rarely recorded. The problem became worse after Independence, when the unsurveyed community lands under the Princely States, zamindars and private owners were transferred to the Forest Department through blanket notifications declaring them 'deemed' reserved or protected forests.

In short, what government records call “forests” often include large areas that are not and never were forest at all. Moreover, those areas that are in fact forest include the traditional homelands of communities. We who live in these lands, whether they are forest or not, were declared “encroachers” in our own homes, despite the Constitution providing special protection for tribal homelands under Schedules V and VI. The forest guard thus becomes the local agent of the country's biggest zamindar today, extracting bribes, engaging

¹ Survey Department of the Madhya Pradesh Forest Department, 2.12.2003.

in physical and sexual assaults, and otherwise harassing all forest dwellers, since he enjoys absolute power over us.

Over time, this structure became more and more entrenched. A lot of people benefit from the fantasy promoted by the forest authorities, whereby India's forests are uninhabited "wildernesses", managed by the scientific wisdom of forest officers for the "national good." With most people's livelihood activities declared 'illegal', local forest officials gain through extortion and extracting free labour. Higher officials gain through corruption, since no one can question their absolute control over forest lands and our lives. Mining companies, paper mills, tea, rubber and coffee estates and other large business interests benefit with ease from the forest land that can be seized. And all these interests also benefited from the enormous impoverishment and destitution that affected us, the adivasis and forest dwellers, who became everyone's cheap migrant labour. When required, we could be easily displaced or expelled, since we had no legal protection. This same mentality continues to the present day, reinforced and made worse by the government policies that support the big corporations.

It was against this tyranny that, for more than a century, we have fought. Our fundamental demand is for *a new democracy in the forests*.

What happened with the Forest Rights Act?

The Forest Rights Act is a key part of this struggle. The movements and groups who fought this battle had tried to bring about an Act that would give legal recognition and recording of the rights of forest dwellers and adivasis, as the first step in bringing control over the forests back to the people. But, as we shall see, the Act that was finally passed was not the Act that had been fought for. The government is now trying further to damage it by including changes in the Rules to the Act that will undermine it more.

What is this booklet about?

This booklet is a brief guide to the forest rights Act as passed and to the Rules framed under it by the Ministry of Tribal Affairs. It lays out the basic frame of the Act and how we can use it as a tool of struggle.

WHO IS ELIGIBLE FOR RIGHTS UNDER THIS ACT?

To prove that a person is “forest dwelling” and therefore eligible for forest rights, ***their claim must prove the following:***

They “primarily reside in forests”

[section 2(c) / 2(o)]

What does this mean?

The easiest way to prove this requirement is if one has a *jhopdi* / other residence on one's plot inside the forest land (or one resides in a forest village). In other cases, it should be remembered that “reside” also means to occupy a place, where the occupation not only includes residence but also other forms of occupation for livelihood such as land for cultivation, grazing, collection of MFP etc. Moreover, in the Rajya Sabha, the Minister for Tribal Affairs gave an assurance that people who live outside forests will be able to claim rights inside them.

They are “dependent on forest land or forests for bona fide livelihood needs”

[section 2(c) / 2(o)]

What does this mean?

The second requirement is that the person should be “dependent” on forest land for their “bona fide” livelihood needs. Bona fide livelihood needs would mean not mainly for commercial profit or for making money, but for survival. The Rules say that livelihood needs include sale of the crops cultivated on the land, sale of minor forest produce collected in the forest and income from water bodies and grazing.

If the claimant is an ST, they should be “in the area where they are scheduled”

[sections 2(c) and 4(1)]

What does this mean?

The list of Scheduled Tribes includes the area in which each community was living at the time when they were scheduled. This area is sometimes an entire State and sometimes part of a State. For instance, the Bhils are scheduled in parts of Madhya Pradesh, Maharashtra, Andhra Pradesh, Gujarat, Karnataka, Rajasthan and Tripura. In those parts of these States where they are scheduled, a Bhil can claim rights. Outside these States or outside the parts of these States where they are scheduled, Bhils cannot claim rights under this Act as STs, but can do so as ‘other traditional forest dwellers’ (see below).

If the claimant is not an ST in the area where they are scheduled, they must have “resided in” forest land or forests for 75 years, whereupon they will be considered “other traditional forest dwellers”

Non-ST's are also eligible, as long as they satisfy this requirement.

[section 2(o)]

What does this mean?

The section states that the person must have resided in forests or forest land for three generations before 2005, where “generation” is defined as twenty five years. This means a total period of seventy five years – i.e., since 1930. There is no requirement in the law that the person must have resided on the *same* piece of forest land since 1930, only that they must have resided in forest land from that time. Similarly, a person can still claim eligibility if their community resided in the forest from 1930.

Since any claim for a right has to be accompanied by two types of evidence (see SECTION III below), such evidence should include proof of three generations of residence.

If the claimant is an ST, they need to attach an ST certificate to claim rights as an ST
[section 2(c) and Form in Rules]

What does this mean?

In order to claim rights as a forest dwelling Scheduled Tribe, the claimant needs to attach their ST certificate.

THE FIRST STEP

Declaring Our Own Gram Sabhas and Forming Forest Rights Committees

The Forest Rights Rules require the Gram Panchayat to convene meetings of gram sabhas without specifying what kind of gram sabha should be called, even though the Act provides for four different types of gram sabha. This will most likely lead to the panchayats calling a meeting of the Gram Sabha of the entire Panchayat. These are not the real *gaon sabhas* of our communities but a fiction created by the administration. In most States they are very large, containing multiple revenue villages and thousands of people. The government's effort is to make it impossible for us to get our rights or to gain control over our resources by forcing us to work through these gram sabhas, which will be unmanageable.

Hence the very first thing we must do is to declare to the government that we will claim our rights and use the real gram sabhas in our own villages. In Scheduled Areas, we already have a legal right to do this under the Panchayats (Extension to Scheduled Areas) Act, 1996; this right is also recognised by section 2(p) and section 13 of the Forest Rights Act. In other areas, including forest villages and unrecorded villages, we will demand this as part of our rights as citizens and as forest dwellers.

To do this, the people of the hamlet, or of a group of hamlets that decides to have a gram sabha together, must meet and pass a resolution (a draft resolution is attached as Appendix A). This resolution should then be signed by all male and female residents of the hamlet and sent to the SDO / SDM, with a copy to the gram panchayat.

In the case of forest villages and unrecorded settlements, the settlement itself should constitute its own gram sabha, whether part of a gram panchayat or not, and inform the SDO / SDM and the gram panchayat (if any).

In States that have no panchayats, such as some of the Northeastern States, the traditional village institution itself is the gram sabha for the purpose of this Act (section 2(p)(iv)).

Constituting the Forest Rights Committee

At its first meeting, the gram sabha is to elect a smaller body of between ten and fifteen people and pass a resolution listing their names. This body is called the Forest Rights Committee. The members of this Committee should be ST's and non-ST's in proportion with their populations, with at least one third ST members, except where there are no ST's, and one third women members.

At the first meeting of the Committee, it should choose a chairperson and a secretary (who will record the proceedings and decisions of the committee) and send this information to the SDM.

The duties of this Committee are detailed under "The Fourth Step" below.

For any meeting of the gram sabha, at least 2/3rds of the members must be present for the resolution that is passed to be valid.

THE SECOND STEP
Taking Control of Our Traditional Forests and Homelands

One of the most important rights in the Act is the right to protect traditional forests [section 3(i) and section 5]. Under this right, whatever the Forest Department might say, the community can “protect, regenerate, or conserve or manage” [3(i)] any “community forest resource” and is also empowered to protect trees, biodiversity, wildlife, water sources etc. in any forest [section 5].

As soon as the Act came into force on Jan 1st, 2008, this right became a power of communities under section 5 of the Act.

For the purpose of official recognition, though, the community should also demarcate its boundaries and file a claim for this right (see below). Even if this is rejected, however, the community has the power to protect its forests.

This is the most powerful right under this Act.

The community has the following rights over community forest resources [sections 3(i) and 5]:

- To *protect* and/or *conserve* them;
- To *manage* them;
- To *regenerate* them (e.g. through planting of native trees/shrubs/grasses or through natural regeneration);
- To *sustainably use* these resources.

In particular, the gram sabha (or any other village institution, or even individual forest rights holders) can:

- Protect wildlife, forest and biodiversity [section 5(a)];
- Protect adjoining water sources and “catchment areas” [section 5(b)];
- Protect the habitat and “cultural and natural heritage” (e.g. sacred groves, religious sites, mountains, water bodies etc) of their community from destruction [section 5(c)];

Finally, the gram sabha can make rules for regulating access and protecting wild life, forests or biodiversity of community forest resources, and it (or any forest rights holder) has the power to ensure that these decisions are followed [section 5(d)].

Some examples:

1. If the Forest Department wants to plant non-native or commercial trees on grazing land or other common lands, the community can stop it by saying that this is their community forest resource and it has the power to protect and conserve its natural biodiversity.
2. If illegal felling is occurring, forest rights holders have the legal right to stop it.
3. If a forest is being diverted for mining or other such activities (such as in Niyamgiri in Lanjigarh, Orissa), the community can claim that – since these forests are a community forest resource and are part of their habitat and cultural and natural heritage – they have the right and power to prevent its destruction.

This means that, for the first time, whatever the Forest Department or government or forest mafia may decide, a community can enforce its decisions and protect its forests.

How should this right be used?

The first step is to mark out the boundaries of the area that is our traditional forest homeland. This should be done as per our hamlet or village's traditional boundaries, in consultation with the neighboring villages. Where the same forest area is shared by two or more villages, the concerned villages can jointly mark the boundaries of their common community forest. After this, a map should be made of these boundaries, marking out what resources lie within it – trees, water sources, common areas (like burial or cremation grounds), religious sites, etc.

Once this is done, a resolution should be passed by the gram sabha stating that this is the customary forest area of the community, and that the community intends to protect the forests, wildlife, social and natural heritage and water sources within that area. This resolution should be sent to the panchayat, the SDM, the Sub-Divisional Level Committee, the DFO and other government officials.

The resolution should also be sent to the Sub-Divisional Level Committee as a recommended claim for *the right to protect, manage, control and sustainably use a community forest resource* under section 3(1)(i) of the Act.

THE THIRD STEP ***Claiming Our Rights***

After we have formed our own gram sabhas, the gram sabhas should invite claims for rights, keeping in mind the time when seasonal users can also participate. Once the gram sabha passes a resolution inviting claims for rights, applications for these rights have to be filed within three months of the resolution (however, the gram sabha can extend this time through another resolution, but only if it records reasons for doing so). Each of these rights has to be claimed through an application (many rights can be claimed through one application) to the Forest Rights Committee.

Each application has to be accompanied with two types of evidence (Rules 11(a) and 13). Under each right below, the types of evidence that can be used to accompany the claim are listed.

In addition, every claim should include:

1. ST certificate, if claimant is an ST living in the area where he/she is scheduled;
2. If the claimant is not an ST living in the area where he/she is scheduled, some proof of 75 years residence in forest areas, which can include:
 - a. Documents / list (a genealogy) showing ancestry from a person listed in the land records or other records in the area from that time;
 - b. Any other records referring to family ancestors or the community living in forest areas / that village from 75 years before;
 - c. Statements of elders in the village – preferably as an affidavit – regarding 75 years of residence.

WHAT RIGHTS DO WE HAVE AND HOW CAN WE CLAIM THEM?

What are the rights we have under the Act? There are thirteen listed there, but they basically come down to these:

To Land Being Occupied or Cultivated or Under Customary Use

Rights to forest land which can be claimed under this Act come under the following categories and sections. There are different ways in which the land that is being occupied can be claimed under this Act. It should be noted that the word “occupied” here need not be limited to cultivation alone – we can fight to claim that it also includes private land used for grazing or parts of the plot that are left fallow to be used in the next agricultural cycle.

1. Directly as Land Under Occupation [section 3(a)]

If the claimant, either individually or in common with others, has been occupying the land prior to 13th December 2005 and continuously since then, they can claim it, up to a maximum of 4 hectares (10 acres). *The upper limit of 4 hectares applies only to this right.* Communities can also claim common title to land for cultivation or occupation. People who successfully prove their claim (see below) will receive an individual or common *patta* to this land.

Lands under this section can only be claimed for “self-cultivation” - by the claimant – or for residence.

2. *Conversion of Titles / Leases / Grants* [section 3(g)]

If the claimant already has a patta or lease or grant issued by any local authority or state government to the land which the Forest Department does not recognise, then they have the right to get the existing document converted into an undisputed legal title. The area over which rights under this section are claimed shall be based on the area for which the existing *patta* or lease or grant is held, with no upper or lower limit. Some types of lands that could be claimed under this section include:

- pattas or titles that were given for lands that both the Revenue and Forest departments claim;
- pattas granted in the “orange areas” of Madhya Pradesh and Chattisgarh;
- ek sali* and *dali* leases in Maharashtra;
- leases given for agro-forestry, agro-silviculture, or fireline plots;
- government leases that were granted and have since expired but the person is still in occupation of the land;
- pattas where the patta was cancelled earlier without a “due process of law” (meaning without issuing notice, allowing the person a chance to appeal the decision, etc.), such as in the case of the Private Forests Act of Maharashtra;
- other pattas, titles and leases given by zamindars or princely States.

3. As “*Disputed Lands*” [section 3(f)]

Under the Indian Forest Act, 1927, whenever any land is to be declared as a reserved or protected forest, it has first to undergo a “settlement process”. This requires that a settlement officer has to issue notices to all the people who live in, or are dependent on that land; these people have to be given a period of time to file objections or claim their rights, and these claims have to be enquired into by the settlement officer. If this does not occur, the forest settlement is faulty, resulting in disputed claims over the land between people and the Forest Department. In such cases a person can claim his/her customary rights over such disputed land.

This also includes:

- lands that come under so-called “deemed” reserved or protected forests in Orissa, Madhya Pradesh, Chhattisgarh and elsewhere;
- forest lands where the final notification declaring the area as a reserved forest was never issued. Under the Indian Forest Act, two notifications have to be given before an area can be notified as a reserved forest: one under section 4, which is the announcement of the government's intention; and one under section 20, which states that the settlement of rights is complete and the reserved forest is actually being finally notified. If the second notification was never issued, the settlement is faulty.

Any land claimed by an individual or a community under any part of this Act should have been under their occupation since before December 13th, 2005 (section 4(3)), and should still be in their possession at the time of making the claim.

Any pattas received under this Act cannot be sold or transferred to any other person, but the owner's children or heir can inherit these lands.

How to make a claim to land:

The main points to be proven regarding a claim to land are 1) that the claimant is in direct possession of

the land (not through someone else) and that the claimant is cultivating / using the land themselves; and 2) that the land has been under occupation preceding December 13, 2005. Here are some ways that these can be done:

- a. Statements by elders of the village, reduced to writing and signed by them, preferably in the form of an affidavit.
- b. Photographs and a map of the land being claimed, showing physical structures like bunds, burial stones, wells, check dams, etc.
- c. Any previous documents referring to the land or to structures on it, like pattas, leases, grants, house tax receipts etc., or published documents like Gazetteers.

The Forest Rights Committee is then supposed to visit the site to physically verify that the person is in occupation of the land (see below).

Minor Forest Produce [sections 3(b)/ 3(c)]

Forest dwellers can claim rights over minor forest produce under the Act. Minor forest produce includes “bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers” and so on [section 2(i)]. The right to minor forest produce includes those minor forest produce that have been “traditionally collected” from within or outside village boundaries [section 3(1)(c)]. Fish and other produce of water bodies are covered under a separate right [3(1)(d)].

These rights should normally be claimed by the community as a whole or by a sub-group within the community. In case the community as a whole is claiming, Rule 11(4) requires that the Forest Rights Committee itself make the application for the right, which is then passed by a resolution to the gram sabha. The Committee should draw up this application during a meeting of the gram sabha. The resolution should list the types of MFP collected and the areas from which they are collected.

The right to minor forest produce includes the following [section 3(1)(c)]:

- a. Ownership of minor forest produce
- b. Collect minor forest produce;
- c. Use minor forest produce;
- d. “Dispose” (i.e. barter or sell) minor forest produce (with some restrictions on transport, see below).

Finally, minor forest produce can be collected from any forest area from where it has been traditionally collected falling both within and outside village boundaries [section 3(1)(c)].

Where collection of minor forest produce was a part of traditional *nistari* rights, the community can also claim that traditional right and have it recorded (section 3(1)(b)). This includes rights that were once recorded under Princely States or zamindars, but in many areas have been treated as ‘extinguished’ or ‘vested’ in the state since Government take-over.

What about transporting the minor forest produce?

The Rules say that minor forest produce can be transported in forest areas by headloads, handcarts or bicycles. Motorised transport is not allowed in forest areas.

Evidence for a claim to MFP:

Some possible evidences for such a claim would include:

1. statements by elders, reduced to writing;
2. Any previous record of MFP collection, like *nistar patras*, records from forest settlements, forest working plans, Gazeteers etc.
3. Transit permits, collection permits, registration cards etc. issued by the Forest Department or other government bodies.
4. Collection organised by registered MFP cooperatives and government agencies like LAMPS, TRIFED, Girijan Cooperative Corporation etc.

These should be included along with the resolution of the gram sabha when claiming this right.

Grazing, Water and Other Community Rights (section 3(1)(d))

Forest dwellers and forest dwelling tribals have a right to graze livestock [section 3(1)(d)]. *Pastoralist communities (both settled and nomadic) have a right to access forest land on a seasonal basis [section 3(1)(d)] for similar uses.* Claims can be filed for this right by individuals or by the traditional institution of the concerned communities, and should be verified by the gram sabha at a time when representatives of that community are present.

In the case of the right to access forest land on a seasonal basis, this right will be a right of the community and its members. Where the village itself is making the claim, the Forest Rights Committee should prepare the application, preferably making the application before a meeting of the gram sabha; where pastoralist / nomadic communities, or sections of a village, are making the claim, the application should be signed by all their members or by a representative body.

Evidence for a claim to grazing / water resources / other community rights:

Some possible evidences for such a claim would include:

1. statements by elders, reduced to writing;
2. Any previous record, like *nistar patras*, revenue records, forest settlements, etc.
3. Transit permits, collection permits, registration cards etc. issued by the Forest Department or other government bodies.

These should be included along with the resolution of the gram sabha when proposing this right.

“Habitat” (section 3(1)(e))

(applies only to pre-agricultural and primitive tribal groups)

Under the Act, “primitive tribal groups” (such as the Juangs, the Chenchus, the Baigas etc.) and “pre-agricultural communities” (such as shifting cultivators and hunter/gatherers) have the right to “habitat and habitation.” [section 3(1)(e)].

This is a community right, so the application for it should either be prepared by the Forest Rights Committee (in case the village itself is claiming the right) or by a representative body of the PTG / pre-

agricultural community concerned. The application would include a map of the area being claimed as the habitat of the community.

What does this mean?

“Habitat” here is defined to mean the traditional area in which these communities have lived, even if that should be inside reserved / protected forests [section 2(h)].

A right, including community tenure, to a habitat and habitation, though not defined in the Act or the Rules, means:

- The community right to reside inside these forest areas in accordance with their traditions and customs;
- The right to prevent these forests from being destroyed (since that would deprive these communities of their habitat);
- The right to continue socio-cultural, religious and livelihood social activities in these forest areas that made them into a “habitat.”

This is a right that can only be exercised if we fight for what it means to us.

Evidence for a claim to habitat:

There are likely to be records establishing the habitat of such communities. Some possible sources include:

1. In the case of ST's, records from the time of Scheduling of the tribe;
2. Studies / government reports on the community;
3. Oral evidence recorded from elders of the community and reduced to writing.

Conversion of Unrecorded Settlements and Forest Villages to Revenue Villages (section 3(1)(h))

Any unrecorded settlements or forest village on forest land has the right to be converted into a revenue village [section 3(1)(h)]. This is a community right, so the Forest Rights Committee should prepare the application for this right, preferably during a meeting of the gram sabha; the gram sabha of the village must pass a resolution stating that this village must be converted into a revenue village.

Evidence for a claim to conversion of a village / unrecorded settlement:

Some forest villages set up by the Forest Department are recorded in the Department's records, working plans, etc. Any such documents are evidence.

In all cases, a full map of the village, including housing areas, community facilities, cultivated and common lands, etc. should be submitted with the claim. Otherwise the Forest Department will attempt to limit the land to the area under private cultivation and not provide any other land.

This is a right of the whole village. Even if some of its members are non-eligible under the Act, the village as a whole still has a right to conversion. Further, since there is no clarity on the procedure for conversion into a revenue village, the village must be careful that the lands for schools, houses, etc. are also converted into revenue land. The state Revenue Department norms for creating a revenue village

should be used.

Right to Rehabilitation in case of Illegal Eviction or Forcible Displacement (sections 3(1)(m) and 4(8))

The Forest Rights Act also provides for rights to in situ rehabilitation and alternative land in case of illegal eviction or forced displacement (sections 3(1)(m) and 4(8) respectively).

If you have been evicted:

- First, the claim should show that you have been 'illegally' evicted. If you have not been served notice prior to eviction, or if the forest settlement in your area is not complete, or if the settlement is faulty, the eviction is illegal.
- Second the claim must show that you were not provided any compensation or rehabilitation. This can be stated in the claim, and then it is the responsibility of the Forest Department to prove that you have been provided compensation.

If you have been displaced:

- You have a right to land for rehabilitation, but only if the land that was taken from you was not used for its purpose within five years of being acquired, and if you were not provided any land at the time of being displaced.

*As the Forest Rights Rules do not provide any method by which this rehabilitation / compensation should be provided, the kind of rehabilitation that will be provided is very unclear. **At the very least however these rights should be taken to mean that** once you have been evicted / displaced once and occupied forest land for livelihood after that, you cannot be evicted from the land you have occupied, as you have a right to on site rehabilitation under section 3(1)(m) and to land compensation under section 4(8).*

It is important to file claims under these rights anyway, even though there is no clarity on how rehabilitation will be provided. If the claim is accepted, then we can fight for rehabilitation as the next step.

Evidence for such a claim:

1. The primary evidence necessary is to establish that you were evicted or displaced. This can be done through statements of elders, a gram sabha resolution and any documents establishing previous possession of the land.
2. Evidence that the eviction was illegal. A faulty forest settlement process in the area, the lack of a final notification of the forest area, etc. are sufficient proof. *Note however that the burden of proof here is on the Forest Department to provide proof that your eviction was legal – if you do not have evidence that your eviction was illegal, do not be concerned, for it is the FD's job to prove that it was legal.*
3. Evidence that you were not provided any compensation. Once again, the burden of proof here is on the government, so if you do not have any proof do not be concerned.

“Any Other Traditional Right” (section 3(1)(l))

Section 3(1)(l) of the Act provides that “any other traditional right” of forest dwelling communities can be claimed as a right under the Act, excluding hunting. This section can be used to claim rights such as:

- shifting cultivation, both individual and collective;
- customary individual or community claims over territory;

- right to use religious sites / burial sites;
- right to collect timber for housing or types of produce not covered under minor forest produce, etc.
-

How to make such a claim:

Every claim to a traditional right should be as specific and detailed as possible. For instance, if claiming the right to shifting cultivation, the community should specify the boundaries of the area within which shifting cultivation takes place, the time period of the cycle etc.

Evidence for such a claim could include:

- Government reports or studies that refer to the traditional practice being claimed as a right;
- Records of religious traditions or community properties;
- Statements of elders in the village or neighboring villages,

THE FOURTH STEP
Forest Rights Committee Verifies Claims

Each gram sabha is to elect a ten to fifteen member Forest Rights Committee. The Committee's duties include:

- 1.Receiving claims from people. The Committee has to give a written acknowledgement for any claims it receives.
- 2.The Committee should also on its own consider the claims of the community as a whole over its community resources – such as minor forest produce, access to grazing land, community forest resources etc. For these the Forest Rights Committee is responsible for making out the application, which has to be passed by the gram sabha as a resolution after modification if necessary.
- 3.Along with each claim, the person claiming the right attaches the evidence they are submitting. There is a wide variety of evidence that can be given, as described above
- 4.The Forest Rights Committee will visit the site of the claim (for instance, the plot of land being claimed). Before visiting, the Committee has to inform both the claimant and the Forest Department.
- 5.The Committee can receive additional evidence from the claimant or other witnesses.
- 6.The Forest Rights Committee can also ask for additional help / assistance from government officials, who are required to provide that help. On any written request from the Committee, the government must provide documents and explain them to the committee members. Also, whether the Committee asks for it or not, the Sub-Divisional Level Committee has to provide forest and revenue maps as well as voter lists of the area.
- 7.The Committee can then decide whether the claim is correct or not. The committee should not and cannot accept any claim as correct if it violates any of the conditions given in the previous section (for instance, if a person is claiming land that was encroached after December 13, 2005, or if the claiming person does not cultivate / use the land himself / herself).
- 8.For each claim that it decides is correct, the Forest Rights Committee will have to make a map with landmarks.
- 9.The Forest Rights Committee should decide on rights in the presence of representatives of seasonal and pastoralist communities who would be affected by those rights.
- 10.The Committee will make a list of people who have submitted claims before it and state what its conclusion is on each of those claims.
- 11.Finally, this list and the maps will be presented before the full gram sabha. If the gram sabha agrees, it will pass a resolution endorsing the list and the maps made by the Forest Rights Committee. If it does not agree, it can make changes it feels appropriate and pass a resolution recommending the modified list and maps.

During these proceedings, the secretary of the panchayat serves as the secretary of the gram sabha. In case of smaller gram sabhas, the secretary should be summoned to the meetings of these gram sabhas (Rule 11(6)).

This procedure can be done repeatedly – there is no need for the Committee to hear all the claims before reaching a decision on some.

If rights are being claimed that lie inside another village's boundaries or that lie in an area shared between multiple villages, the Forest Rights Committees of all the villages concerned should meet and together decide on what is to be done. This agreement is placed before both the concerned gram sabhas for their approval. If no agreement can be reached, the matter should be referred to the Sub-Divisional Level

Committee.

If any claimant is not satisfied with the gram sabha's decision, he/she can appeal to the Sub-Divisional Level Committee. [Section 6(2)] See below.

THE FIFTH STEP
Appeals and Higher Committees

Sub-Divisional Level Committee

The next step is a Committee that will consist of the following people (section 6(8), Rule 5):

1. Sub-Divisional Officer, who is the Chairperson
2. Forest Officer in charge of a sub-division
3. Tribal Welfare Official at the sub-divisional level, or the official who looks after that subject
4. Representative of Block/Taluka Panchayat nominated by the Zilla Parishad
5. Representative of Block/Taluka Panchayat nominated by the Zilla Parishad
6. Representative of Block/Taluka Panchayat nominated by the Zilla Parishad

Of the last three, two should be Scheduled Tribes (or, where there are no ST's, other traditional forest dwellers) and at least one should be a woman.

This Committee is supposed to:

- Put together the resolutions of the different gram sabhas in its jurisdiction and 'reconcile' them with government records.
- Hear appeals made to it against gram sabha decisions. The Forest Department and other government agencies can also appeal to the Committee if they oppose the gram sabha's position.
- "Examine" the resolutions of the gram sabha and also hear any appeals by people aggrieved by the gram sabha's decision. The Act says only this, but the Rules add on a provision by which the Sub-Divisional Level Committee is also required to check the "veracity" or genuineness of claims. This means that the Sub-divisional Level Committee can and will reexamine and reject decisions of the gram sabha on its own – this means that this Committee will have to be watched very closely. We should demand that copies of the record of right as prepared by the Sub-Divisional Level Committee should be made available in each village, along with the reasons for any change.
- Settle disputes between two gram sabhas. In case there is such a dispute, either gram sabha can pass a resolution applying to the Sub-Divisional Level Committee to settle the dispute, or the Committee can act on its own. In this case, the Committee should call a joint meeting of both gram sabhas to try to resolve the dispute. If such a resolution is not reached, the Committee should resolve the matter.
- Where a claim concerns an area outside of the Sub-Division, the Committee should approach the Sub-Divisional Level Committee of the concerned Sub-Division for settling the matter.

After this work is complete, the Committee "prepares" the record of forest rights for each block / taluk and passes that on to the District Level Committee (see below) (section 6(3)).

If a claimant is not satisfied with the Sub-Divisional Level Committee's decision on their appeal, he/she can appeal to the District Level Committee. However, he/she cannot appeal directly to the District Level Committee after the gram sabha's decision – they must appeal to the Sub-Divisional Level Committee first.

The Committee is also responsible for providing publicity and logistics, including providing copies of forms and information to gram sabhas.

District Level Committee

The final step is a committee that consists of the following people (section 6(8)):

1. District Collector or Deputy Commissioner, who is the Chairperson
2. Divisional Forest Officer or Deputy Conservator of Forests
3. Official in charge of tribal welfare at the district level
4. Representative chosen by Zilla Parishad
5. Representative chosen by Zilla Parishad
6. Representative chosen by Zilla Parishad

Of the last three, two should be ST's and at least one should be a woman.

This Committee takes the decisions made by the Sub-Divisional Level Committees and:

1. "Considers and finally approves" them (Section 6(6)). This Committee may change decisions of the gram sabhas (or the Sub-Divisional Level Committees) on its own. This too is dangerous and needs to be watched.
2. Hear appeals against orders of the Sub-Divisional Level Committee.
3. Settle disputes between Sub-Divisional Level Committees in the same manner that disputes between gram sabhas are settled (see above).
4. Contacts other districts in case claims are across district boundaries.

Once this is complete, the District Level Committee issues directions to the government officials to make the necessary changes in the revenue and forest records. The Committee does not need to wait until all appeals or claims are decided before making these changes in the records for any right that is undisputed.

The District Level Committee then has to publicise the record of rights and provide certified copies of accepted rights to the gram sabha and to the person concerned. *It is very important to check the final results of the Committee's work.*

The District Level Committee is also responsible for providing documents to gram sabhas, making sure that publicity takes place, and ensuring that gram sabhas take place without coercion and with free participation of women (Rule 8).

SANCTUARIES AND NATIONAL PARKS: SPECIAL RIGHTS AGAINST BEING MOVED OUT BY FORCE

The Act contains some special provisions for protected areas. Until now, it was the practice of the Forest Department to resettle people out of national parks and sanctuaries – especially from tiger reserves – by claiming that they were hurting wildlife. Even where the actual resettlement did not take place, the Forest Department would use it to threaten people and to prevent the construction of roads, schools etc. inside these villages. This is what happened in places like Sariska Tiger Reserve.

With the Act this has now changed. The Act provides protection against forcible relocation of people living in protected areas. ***Notwithstanding the claims by the government and the press***, forest dwellers cannot be forced to move out of even tiger reserves in the name of wildlife conservation except with the free, informed consent of the gram sabha (section 4(2)(e)). These are the other conditions that apply:

a. No one can be shifted until the process of recognizing forest rights in that area is complete (section 4(2)(a)). For that reason, it is important to keep the government from declaring the process complete until all persons have had their rights recognized. (section 4(2)(a))

c. The areas from which people are to be moved out have to be notified as “critical wildlife habitats.” The Central government has to do this through the Ministry of Environment and Forests. However, the Ministry also cannot take this step on its own – it has to convene an Expert Committee, which should include local experts, and hold public consultations about whether or not the area should be called a critical wildlife habitat. (section 2(b)) The State government then has to prove (through this Committee or otherwise) that unless people are moved out, there will be ***irreversible*** damage to wildlife, and there is no other way that this problem can be addressed. This has to be proven for each protected area through scientific and objective investigations. The Forest Department cannot make that decision on its own any more. (section 4(2)(b))

d. The government (it is not clear whether the Central or State government will be responsible) has to prepare a package for rehabilitation of the people who agree to out. This package has to “provide a ***secure livelihood***” acceptable to them and conform with the National Rehabilitation Policy, the policy of that State and any other applicable laws and policies (section 4(2)(d)). The National Policy by the way requires that land should be offered “if available.”

Note that, since a secure livelihood has to be provided, ***cash compensation is not enough***. They have to provide land, other resources or at least employment. We must reject any move by the government to simply pay people cash compensation for moving.

e. After this package is ready, the gram sabhas of the area have to give their consent in writing, after they have been informed of all of its provisions. If the government lies to the gram sabhas, or tries to pressure them, that makes the resettlement illegal as per the Act.

f. Finally, nobody should be moved until the land and other facilities at the place they are to be moved to is fully ready.

We also know at this point that the government intends to try and get around these protections in the Act. They are trying to say that as quickly as possible they want to notify as many areas as they can as critical wildlife habitats, offer cash to people and make them leave. We must fight this. At every stage we have

to ask the government whether it has fulfilled the process as required in the Act, and in particular:

1. What is the scientific basis for reaching the conclusion that coexistence between people and wildlife is not possible, and that relocation is necessary?
2. Is the government providing people with a secure *livelihood*? Cash is not enough and only offering cash is illegal.
3. Has the government asked the gram sabhas of the area? Have they consented freely? Were they informed of everything in the rehabilitation package and the reasons for why the area is being declared as a critical wildlife habitat?

If we do not fight this, it will become one more excuse for the Forest Department to hang threats over our lives, constantly saying that we can be moved at any time.

DANGERS AHEAD

Dangers in the Rights Recognition Process and in Exercising Rights That Are Recognised

This Act will only function if we are able to fight for recognition and defending our rights. This law will be meaningless if we don't do so. There are some reasons built into the law itself and the Rules that will be used against us, including:

Imposing panchayat gram sabhas: The government may try to impose panchayat gram sabhas on us, even if we declare our own gram sabhas (see “The First Step” above). These will make it much more difficult for claims to be accepted and for gram sabhas to be organised, as well as make it easier to manipulate the process.

If the government does not accept our gram sabhas, we can pass our own resolutions and fight for them to be accepted by the larger panchayat gram sabhas.

Vague and exclusive eligibility criteria: Many rights will probably be rejected because the Forest Department will claim that the claimants do not “reside in forests”, have been in forests for less than 75 years, etc.

Manipulating the Panchayat secretary: By making the Panchayat secretary the secretary of the Gram Sabha for initiating the recognition of rights, the government is likely to try restricting the recognition of rights to the bare minimum through top down orders.

Time frames: The Rules to the Act contain no time limits on when the Sub-Divisional and District Level Committees should finish their work by. Most likely, these Committees will receive claims and sit on them.

In addition, there will be efforts to manipulate the Forest Rights Committee, to give only some groups representation, and so on. We will have to ensure that the gram sabhas make valid recommendations to this Committee.

Overlapping Legal Interpretations

Even if one's right is accepted and recorded, the forest and wildlife authorities will try to prevent us from exercising them through using existing forest and wildlife laws. The Act contains legal loopholes that would make it easier for them to try to do this.

Our rights will not be recognised unless we fight for them on the ground. The law is but a tool, not a solution in itself.

THE STRUGGLE AHEAD

Forest rights are not about getting pattas or rights alone. The struggle was and is – as said at the beginning – about the much more fundamental question of who controls our forests, and how that control is exercised.

Yet if we want to fight for this, the law is but one tool. Even if it works and we receive pattas, our struggle will be far from over. The Act is like a bargain – the government will give a few of us pattas, and in exchange the forest will remain de facto under government control. If we accept this bargain, if we do not fight it, eventually even our pattas will be taken away from us.

This is not just an agenda driven by the familiar desire of the Forest Department to retain its control over forests. It is part of a larger plan that we can see in many other things being done by the government, as described in the introduction. Thus, at the same time as this Act was being opposed on the grounds that it would lead to forest destruction, the government changed the environmental laws to make forest destruction easier. Meanwhile, the drive to get land for Special Economic Zones and for big private companies has been greatly speeded up. The rate of grant of mining leases to private companies has increased enormously, mostly in forest areas. In areas where people are fighting, the government attacks them by labeling them as Naxalites.

The agenda of globalization is one of depriving people of resources and making them into cheap labour, while simultaneously making it possible for companies to steal those resources for their private profits. We can see how the government is doing this in some of the struggles currently going on across the country. Here are some examples:

Example 1: The Struggle Against POSCO in Jagatsinghpur, Orissa

In Orissa, the South Korean steel company Pohang Steel Corporation is setting up a huge steel plant, iron ore mines and a private port. It will displace tens of thousands of people and will contribute nothing to Orissa or India – even its taxes have been reduced.

For the people at the steel plant site, many of whom are cultivating forest land, this project has become a threat to their livelihoods and their survival. They have fought it from its very inception in 2005. The POSCO Pratirodh Sangram Samiti and other organisations have blockaded the proposed steel plant site, preventing the police and the company from entering the area and taking their lands. But the company has responded with violence. On November 29th, 2007, the latest in a series of attacks by company goondas left eight people seriously injured. As on the date of writing – January 19th, 2008 – there are 18 platoons of armed police deployed around the villages, waiting to seize the lands of the people. The struggle is continuing.

Example 2: The Struggle Against Vedanta in Niyamgiri, Orissa

Niyamgiri Dongar is a sacred mountain of the Dongaria Kondhs near Lanjigarh, Orissa. The international mining corporation Vedanta Resources wants to destroy this mountain for the purpose of extracting bauxite – used to make aluminium. The Dongaria Kondhs have opposed the corporation and sought to protect their mountain, but the government is intent on crushing them. Their leaders have been beaten and several have gone missing.

In the Supreme Court, lawyers trying to represent the Dongaria Kondhs were not even allowed to speak. Though the Court eventually said that Vedanta could not proceed with the project, it passed orders inviting Sterlite – Vedanta's sister company – to go ahead with the project. The Dongaria Kondh's rights were ignored by the Court and the government; the only requirement that the court imposed was that a

certain amount of money should be paid by the company for “tribal development.” The tribals will lose all their lands, their water, their minor forest produce and their holy Niyam Raja if the project is not stopped.

Example 3: Salwa Judum

As we mentioned in the Introduction, in Chhattisgarh, the government has created a private army which it is using to fight the Naxalites. The reason is the interest of industrial houses in the land and minerals of the area. All people in the area are forced to shift into 'camps' built by the government which are lacking in food and water. Villages that refuse to join the private army are burned, their residents killed. Mass rapes of women are reported to be taking place. There is no estimate of the number of people who have been killed. More than 1,00,000 people have fled the area.

What all these examples demonstrate is that merely having legal rights under the Forest Rights Act is not going to be enough to protect us. A patta is just a piece of paper, and the government will be happy to take it away whenever it wishes.

If we do not fight for control of the jungle itself, we will lose all of our gains. The government is promising us pattas, at the cost of our forests. It is trying to create competition and problems between us by enticing us into fighting for whatever gains we can get from bureaucrats, who will manipulate the law and the situation to retain their powers.

Our struggle must be to make sure that this does not happen. We are fighting against this whole agenda, this whole plan to sell our lives and our resources for the benefit of international capital. Step by step, we will fight for the power to govern the forests and our homelands. Our struggle is not for one patta or one plot alone – it is for democracy, freedom and justice for India's forests and forest people.