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# Frequently Asked Questions on the Forest Rights Act





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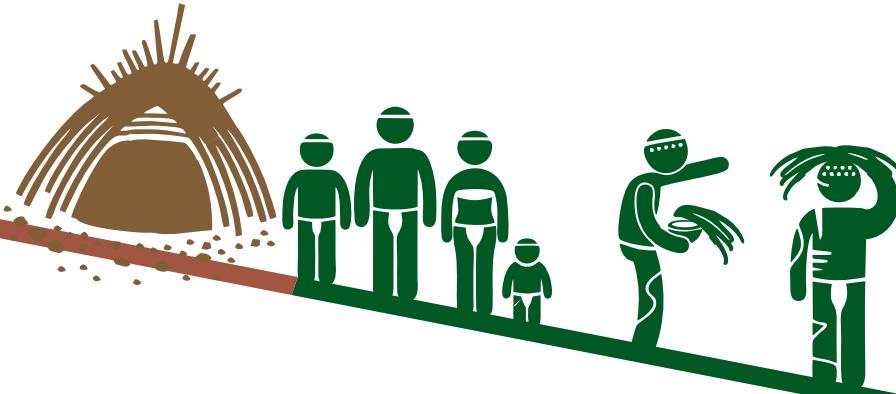


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## PREFACE

Schedule Tribes are among the most disadvantaged socio-economic groups in India. With focus on 'faster, sustainable and more inclusive growth', the concerns of Scheduled Tribes and other marginalised groups must be addressed for growth to be inclusive.

The enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) is an important legislation passed by the Parliament of India in the history of tribal empowerment especially relating to tenure security on forests and forest land. It is a legislation with the intent to recognize, vest and record forest rights of the forest dwellers who have been residing in such forests for generations and whose rights could not be recorded and thus to undo a serious historical injustice.

The benefits of the Act will reach the vulnerable forest dwellers only when the implementation is robust and according to letter and spirit of the Act. Implementation of FRA has received utmost importance from the Hon'ble Prime Minister of India and Ministry of Tribal Affairs has asked the States to take up the implementation on a Campaign Mode.

I am happy to share that, considerable progress has been made in implementation of FRA in many States especially towards the recognition of Individual rights. However more efforts have to be made towards recognition of Community Rights and systems need to be established for sustainable management of CFR to ensure ecological security and thereby ensuring sustainable livelihood for the forest dwellers.

Ministry of Tribal Affairs has partnered with UNDP is bringing out the second version of the Frequently Asked Question (FAQ) for Government Functionaries and other stakeholders involved in implementation of the Forest Rights Act, under the MoTA-UNDP project. I hope that this Booklet will seek to addresses various questions which are raised by the States from time to time for effective implementation in the field. I hope this will clarify specific issues related to implementation and bring about conceptual clarity on definitions to help implementation on the ground. This can also be used as a reference document for consultations, workshops, and training programmes.

I take this opportunity to thank UNDP for bringing out this publication and especially Ms Shomona Khanna for putting it together.

  
Ashok Pai



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### FOREWORD

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or the Forest Rights Act as it is commonly known, is a historic milestone that ensures the rights and livelihoods of forest dwelling communities. State Governments across the country are entrusted with the crucial task of implementing the Forest Rights Act and reaching out to protect the rights of forest dwelling communities.

It is important that state government officials and local governance institutions, on the frontlines of this effort, are equipped with knowledge of the Act and how to translate its provisions at the grassroots, with forest communities that are often at the margins of society. Communities also need to understand the processes involved in filing claims and securing the rights that they are entitled to.

This publication of frequently asked questions developed through a partnership between the Ministry of Tribal Affairs and the United Nations Development Programme (UNDP) attempts to address this challenge. It brings together responses to questions frequently posed by state governments and local community institutions such as *gram sabhas* in implementing this important legislation.

We commend the Ministry of Tribal Affairs and the resource team for this comprehensive tool. We hope it will empower state governments and forest communities, in their common quest to secure and protect and rights of forest dwellers, so that the vision of the Forest Rights Act may be realized.

Jaco Cilliers  
Country Director

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# Implementation Procedure of FRA

Is there any deadline for submitting applications for recognition of forest rights under the Forest Rights Act?

There is no time limit for receiving applications. Processing of applications by Gram Sabhas have to be done as per FR Rules especially Proviso to Rule 11(1)(a), which provides that the Gram Sabha shall call for the claims and authorise the Forest Rights Committee to accept the claims. Since the Gram Sabha is the “authority to initiate the process for determining the nature and extent of individual or community forest rights or both”, the commencement of the process must be made by the Gram Sabha, and not the Forest Rights Committee.

Such claims are to be made within a period of three months from the date of such calling for the claims. The Gram Sabha may, if considered necessary, extend such period after recording the reasons it is doing so.

Why are there no cut-off dates with respect to the implementation of the Forest Rights Act and closing the processing of claims?

The FRA is intended to recognise the rights of the country's poorest and most marginalised people. Such communities frequently will not even become aware of the existence of this legislation for long periods. Imposing a cut-off date would amount to penalising them for the failure of the state machinery to inform them of their rights.

There are a number of States/UTs which are still at an early stage of implementation, and there is still a long way to go. As such, since the magnitude of work to be done for implementation of FRA has to be assessed by the Gram Sabha, it is the Gram Sabha which is in the best position to decide its own cut-off date.

Also, it is important to understand that cut-off dates are relevant in the case of schemes for regularising fresh encroachments. Since FRA is not a law relating to regularisation of encroachments, but rather a law for recognition and vesting of forest rights in genuine claimants existing on the 13 December 2005, a cut-off date, as such, is not required. Any fresh encroachment that comes to the notice of the State forest departments would be treated under the applicable provisions of the Indian Forest Act, 1927 and other State-level laws.

Can the District Collector delegate his power to sign the title deeds to the Revenue Divisional Officer?

As per Annexure II & III of the FR Rules, the titles for forest land and community forest rights are to be signed by the District Collector/Deputy Commissioner. This power is in exercise of the functions of the District Level Committee under Rule 8(h) of the FR Rules, and therefore it cannot be delegated to the Revenue Divisional Officer or any other official.

Can a committee other than the Forest Rights Committee and/or comprising persons other than the members of the Gram Sabha be formed for assisting the Gram Sabha in discharge of its functions relating to recognition and vesting of forest rights under FRA?

The FRA and FR Rules do not permit formation of any committee other than the Forest Rights Committee and the Committee under Rule 4(1)(e). Nor do they permit constitution of a committee comprising persons other than the members of the Gram Sabha, for assisting the Gram Sabha in discharge of its functions relating to recognition and vesting of forest rights under the FRA. In fact, any decision/action taken by such a committee would be void and have no legal basis.

How are the members of the Sub Divisional Level Committee to be appointed in case of municipal areas?

Insofar as rural areas are concerned, the SDLC should be composed strictly in accordance with the provisions of Rule 5 of the FR Rules. However, while applying the Forest Rights Act in municipal areas, guidelines issued by the Ministry of Tribal Affairs vide its circular dt. 5.3.2015 bearing F. No. 19020/02/2012-FRA (Vol. II) should be followed. In particular, clause 3.5 states as under:

*"3.5 The SDLC and DLC, composition in municipal areas, shall be as follows:*

*a. In municipal areas not covered under the Sixth Schedule to the Constitution, the three representatives of Panchayati Raj Institutions in the SDLC, as specified in Rule 5(c) of the FR Rules, shall be replaced with representatives nominated by the municipality/municipalities in the Sub division; of whom at least two shall be Scheduled Tribes (STs) preferably those who are forest dwellers, or who belong to the particularly vulnerable tribal groups, and where there are no STs, two members who are preferably other traditional forest dwellers, and one shall be a woman member;*

*Provided that where there are more than one municipality in the Sub-Division, the members shall be nominated from different municipalities in decreasing order of tribal population residing therein."*

Can the decision of the Gram Sabha to reject or allow a claim be revisited/re-opened?

The decisions of the Gram Sabha and the Sub-Divisional Level Committee are subject to appeal and therefore can be re-considered at that stage. Where the SDLC or the DLC finds that the decision of the Gram Sabha is incomplete, or prima facie requires additional examination, it should remand the claim back to the Gram Sabha for reconsideration instead of modifying or rejecting it (see Rule 12A(6)). Where the SDLC or DLC reject or modify the decision of the Gram Sabha, they must provide detailed reasons for doing so (see Rule 12A(10)). Additionally, the FR Rules provide that claims should not be rejected merely on technical or procedural grounds (see proviso to Rule 12A(10)).

Other than that, the decisions of not only the Gram Sabha, but also the SDLC and the DLC can be revisited where the claims have been rejected on the ground of insufficient evidence. Taking into account reports that in many parts of the country, claims were being rejected on the ground of lack of evidence or incomplete evidence, the Ministry of Tribal Affairs issued a Circular dt. 27.7.2015 (bearing F. No. 23011/18/2015-FRA) where it relied upon Rule 6(b) of the FR Rules to urge the SDLCs to assist the Gram Sabha by providing forest, revenue and geo-referenced maps. On this basis, it has been stated that claims rejected on the grounds of insufficient evidence or where prima facie additional evidence is required should be re-examined.

Can an appeal be filed against the order of the DLC?

Section 6(6) of FRA clearly states that the decision of the DLC is final and binding. Therefore, the statutory process of appeal ends with the DLC.

However, it is also necessary that reasons be supplied to the claimant/s for rejection of application, so that they can take any other legal recourse, such as, activating the writ jurisdiction of the constitutional courts, or any other avenue available in law.

If the decision of the DLC is in contravention of any provision of the FRA or Rules, proceedings under Section 8 can be initiated by the Gram Sabha with due notice to the State Level Monitoring Committee.

**Which is the competent authority for implementation of the Forest Rights Act, 2006 in specially administered areas, such as the Gorkhaland Territorial Administration area?**

The FRA and FR Rules clearly prescribe the membership of the SDLC and the DLC in areas governed by Panchayati Raj legislations and in Sixth Schedule areas. However, there are some areas which are governed by neither, and therefore a question has arisen regarding the constitution of the Gram Sabha, the SDLC and DLC in such areas.

In the context of the Gorkhaland Territorial Administration (GTA) Area, which is governed by the Gorkhaland Territorial Administration Act 2011 (hereafter '2011 Act') and the West Bengal Panchayat Act, 1973 (hereafter "1973 Act"), the Ministry issued a clarification on 8.10.2015 bearing F. No. 23011/11/2013-FRA. The Ministry pointed out that the definition of 'mouza' under Section 2(13) of the 1973 Act, where the same is described as "an area defined, surveyed and recorded as such in the revenue record of a district.....as **the lowest unit of area for the purpose of the public notification for specifying a village**", closely mirrors the definition of "Gram Sabha" under Section 2 (g) of the FRA. The same definition can be adopted to constitute Gram Sabha which in turn will initiate the process of recognition and vesting of forest rights under Section 6 of the FRA, and constitute the Forest Rights Committee from amongst its members for this purpose.

In many such areas, which are in a transitional stage of governance, there are no elected Panchayat bodies for a variety of reasons. In such a situation, for the purpose of constitution of SDLCs and DLCs under Rule 5(c) and Rule 7(c) of the FR Rules, the three members of Block/Tehsil level Panchayat and three members of District Panchayat may be substituted by the elected representatives of the GTA or similar body. The first meeting of the Gram Sabha for the constitution of Forest Rights Committee (FRC) under Rule 3(1) of the FR Rules can also be called by the GTA or similar body.

Thereafter the process as laid down under Forest Rights Act, 2006, the FR Rules and the various guidelines issued by this Ministry from time to time may be followed for the recognition and vesting of forest rights.

## The Gram Sabha and its Meetings

**Is there a different requirement for constituting Gram Sabhas and holding their meetings in Scheduled Areas and non-Scheduled Areas?**

The terms "Gram Sabha" and "village" for purposes of FRA are already defined in Sections 2(g) and 2(p) of the Act, where any forest village, old habitation or settlement and unsurveyed village may also be treated as village. Such entities, even if not notified or recorded as village, are recognised as village for the purpose of this Act.

The FR Rules (as amended on 6.9.2012) clearly mention that even in case of villages not falling within Fifth Schedule areas where PESA is applicable, Gram Sabhas should be held at the village/hamlet level.

This means that whether in Scheduled Areas or non-Scheduled Areas, the Gram Sabha should be held at the hamlet level or the village level.

In certain parts of the country, the population density is so low that there are only a handful of persons in a village. How are Forest Rights Committees to be constituted in such villages?

Under Section 2(p)(i) of the FRA, the definition of 'village' provided under PESA can be adopted for the purpose of implementation of the FRA. This provision, which is available in both Scheduled and non-Scheduled Areas, permits the formation of Gram Sabha for a "habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs " (See Section 4(b) of PESA). Therefore, in case of villages with very low population density, such as in the Upper Himalayan regions of Himachal Pradesh, Uttarakhand and other such States, a combined Gram Sabha of a cluster of villages can meet and constitute a Forest Rights Committee for the purpose of implementation of the FRA.

Can Gram Sabhas be constituted and their meetings called at the Gram Panchayat level for the purpose of FRA?

Gram Sabha should not be called at the Gram Panchayat level for the purpose of FRA. A Gram Panchayat normally consists of more than one revenue villages. As per the provisions of the FRA, Gram Sabhas are to be held at the village/habitation level. Since the Gram Sabha plays a key role in the FRA, it is important that it should be called at levels that correspond to actual settlements and villages, where people know one another. The terms "Gram Sabha" and "village" for purposes of FRA are defined in Sections 2(g) and 2(p) of the Act.

Who will preside over the meetings of the Gram Sabha after its first meeting is convened by the Panchayat? Do Panchayat Secretaries need to attend all Gram Sabha meetings under FRA?

Under the Forest Rights Rules, the Panchayat is required to convene the first meeting of the Gram Sabha, for the purpose of constitution of the Forest Rights Committee and other preliminary decisions. One important decision at this stage is the identification of Chairperson and Secretary of the FRC (see Rule 3(2) of FR Rules).

At this meeting the presence of the Panchayat Secretary is necessary. Thereafter, the Forest Rights Committee and the Gram Sabha can be left to continue their work, and the presence of the Panchayat Secretary at each and every meeting of the Gram Sabha is neither necessary nor required under the law.

The Secretary of the FRC can maintain minutes of their meetings and pass resolutions without the presence of the Panchayat Secretary.

Why has the clause on presence of 50 percent of the claimants of forest rights (Rule 4 (2)) been included? Will it not be difficult to meet such quorum, especially in States with low population density?

In 2008, when the FR Rules were first notified, the requirement of quorum was two-thirds of all members of the Gram Sabha. Based upon the experience that such quorum was often difficult to meet, Rule 4(2) was amended by Parliament in 2012 to reduce the quorum to 50%.

The requirement of 50% quorum for Gram Sabha meetings is necessary to ensure greater transparency and participation in decision-making. Rule 4(2) of the FR Rules also requires that of those present, at least one-third are women and at least 50% should be claimants/rights holders under FRA.

In many States, the experience of not being able to meet the minimum quorum requirement<sup>1</sup> under the 1994 Act, even though it is much lower, is because Gram Sabha meetings are held at the Panchayat level. Members have to often travel long distance on foot through difficult terrain in order to attend these meetings. However, Gram Sabha meetings under the FRA are held in the revenue village or hamlet itself, which is easily accessible to all members, and there ought not to be any difficulty in meeting the 50% quorum requirement under the FR Rules. Also, all adult members of the village participate in these meetings, and not only a single representative from each family.

## Applicability of FRA

What are the areas to which FRA applies? Is it mandatory to extend the application of FRA to the entire State or can the same can be restricted to specified areas?

It is clearly stated in Section 1(2) of the FRA that it extends to the whole of India except the State of Jammu and Kashmir. Section 3(1) describes the various forest rights which are recognised and vested under the FRA “on all forest lands”.

It has been held by the Supreme Court in a landmark judgment in the Godavarman case that *“(t)he term “forest land” occurring in Section 2 (of the Forest Conservation Act, 1980) will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.”*<sup>2</sup> Since then, it is settled law that the term ‘forest land’ is to be widely understood for the purpose of implementation of protective legislations on conservation and protection of forests and forest resources.

The FRA under Section 2(d) defines the term ‘forest land’ as land of **any** description falling within **any** forest area, and **including** unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks. This definition is in strict compliance with the Supreme Court judgment as stated above.

This definition of forest lands, accordingly, includes such lands as have been included within the purview of the Indian Forest Act, 1927 by reason of being wastelands (see notification dt. 25.2.1952 bearing No. Ft. 29-241-BB/49), or under the provisions of the HP Village Common Lands Vesting and Utilisation Act, 1974 and Rules framed thereunder (see Section 8(1)(a) and Rule 6(1)(6)).

Is FRA applicable in National Parks, Wildlife Sanctuaries and Tiger Reserves?

Yes, FRA is applicable in National Parks, Wildlife Sanctuaries, and Tiger Reserves, as is apparent from the definition of ‘forest land’ under Section 2 (d) which describes forest land as *“land of any description falling within any forest area and includes..... Sanctuaries and National Parks”*.

FRA only recognises pre-existing rights which are already being exercised by the eligible persons in the National Parks and Sanctuaries. Other than securing the tenure of the existing forest dwellers on the land, no new rights are being created which might potentially impact the ecological balance inside the protected areas.

<sup>1</sup> Under Section 5(3) of the **HP Panchayati Raj Act, 1994**, the quorum requirement for a Gram Sabha meeting is *“one-third of the total number of families represented by one or more members of the Gram Sabha”*.

<sup>2</sup> *TN Godavarman Thirumalpad vs. Union of India & Ors.* (1997) 2 SCC 267 @ para 4.

Further, where exercise of such forest rights may potentially cause irreversible damage to wildlife, FRA provides for creation of Critical Wildlife Habitats, and the creation of 'inviolable areas for wildlife protection' within such CWH, through a democratic and transparent process after recognition of rights under the FRA is complete (see Section 4(2)).

In many National Parks, final notifications have been passed after settling all rights that people enjoy on the land. Do those rights need to be settled again under FRA?

As is stated in the Preamble to the FRA, its fundamental premise is that forest rights under pre-existing forest and wildlife laws were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India. The animating purpose of the FRA, therefore, is to correct this historical injustice by addressing long standing insecurity of tenurial and access rights of forest dwelling communities. The FRA therefore acknowledges the reality that in many parts of the country, 'settlement' of rights under the colonial legislations took place through deeming clauses, legal fictions and assumptions, while in many areas it was not done at all. The fact that a 'final notification' has been issued in a particular national park or other forest area, therefore, cannot preclude the re-examination of forest rights in such forest lands.

Further, as stated in the Preamble, the FRA is based on the premise that forest dwelling communities are "integral to the very survival and sustainability of the forest ecosystems" and therefore invests such communities with "responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance". Therefore, while the pre-existing forest and wildlife laws have sought to 'settle' rights by compensating and extinguishing the same, the FRA seeks to recognise and vest forest rights in such a manner that these continue to subsist in order to ensure livelihood and food security of the forest dwelling communities. National parks are, by definition, also included within this framework.

Is FRA applicable in Municipal areas?

A plain reading of Section 1(2) of the FRA demonstrates that it extends to the whole of India, and other than the State of Jammu and Kashmir, no part of the country is exempted from its application.

Section 2(d) of the FRA defines the term 'forest land' widely to mean "land of any description falling within any forest areas..." This definition of forest land reflects that law adopted by the Supreme Court of India in its judgment dated 12.12.1996<sup>3</sup> in the Godavarman case. Clearly, the FRA is applicable to claimants in respect of forest lands wherever they may be located; no exception is made for municipal areas.

The Ministry of Tribal Affairs has also issued clarifications in this regard vide letter dated 29<sup>th</sup> April 2013 (F.No.19020/02/2012-FRA) and 5<sup>th</sup> March 2015 (F.No.19020/02/2012-FRA(Vol. II)) where the confusion, if any, has been laid to rest.

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<sup>3</sup> Ibid.



# Eligibility Criteria for FDSTs and OTFDs

What is the criteria and evidence required for a Forest Dwelling Scheduled Tribe (FDST) to claim rights under FRA?

According to Section 2(c) of FRA, to qualify as FDST and be eligible for recognition of rights under FRA, three conditions must be satisfied by the applicant/s, who could be “members or community”:

1. Must be a Scheduled Tribe in the area where the right is claimed; and
2. Primarily resided in forest or forests land prior to 13-12-2005; and
3. Depend on the forest or forests land for bonafide livelihood needs.

Can persons belonging to Scheduled Tribes who have moved to non-Scheduled Areas in the State claim forest rights as forest dwelling Scheduled Tribes?

To claim forest rights as a FDST, the FRA requires that the claimant should be a Scheduled Tribe in the relevant area. In some States, a person’s Scheduled Tribe status is restricted to a particular area or District within the State. However, in other States, as per the Constitution (Scheduled Tribes) Order, 1950, the Scheduled Tribes are recognised as such for the entire State, and not just to the area of their domicile or the Scheduled Area or any other geographical location.

For example, in the State of Himachal Pradesh, members of the Scheduled Tribes from Lahul and Spiti (which is a Scheduled Area) who may have moved to Manali (which is a non-Scheduled Area) of District Kullu, continue nevertheless to remain Scheduled Tribes under the 1950 Presidential Order (supra) and are not divested of such status merely due to a change in their domicile within the State.

What is the criteria and evidence required for an Other Traditional Forest Dweller (OTFD) to claim rights under FRA?

To qualify as OTFD and be eligible for recognition of rights under FRA, two conditions need to be fulfilled:

1. Primarily resided in forest or forests land for three generations (75 years) prior to 13-12-2005, and
2. Depend on the forest or forests land for bonafide livelihood needs.

Note also that Section 2(o) refers to “any member or community” for this purpose, and hence if an OTFD village establishes its eligibility under the Act, there is no need for every individual to do so separately.

What is the documentary evidence required for establishing eligibility by OTFDs under FRA?

Claims of OTFDs are being rejected by the States on the ground of lack of evidence of occupation of land for three generations, which is not in accordance with the law. It is incorrect to say that the FRA that requires the occupation of forest land for three generations (seventy five years) prior to December 13, 2005 for qualifying as OTFD under the Act.

The requirement under Section 2(o) is that the “member or community” should have “primarily resided in” forest land for at least three generations prior to December 13, 2005, and depend on the forest for their bonafide livelihood needs.

Once this eligibility criteria is satisfied, the vesting provision of the Act, namely Section 4, does not differentiate between forest dwelling STs and OTFDs.

Any two evidences specified in Rule 13 can be provided while making a claim. Insistence of any particular form of documentary evidence for consideration of a claim has been held to be illegal by the Gujarat High Court in *Arch Vahini vs. State of Gujarat & Ors.*<sup>4</sup>

**What is the meaning of the phrase “primarily resided in forests or forest land” with regard to eligibility of OTFDs for recognition and vesting of forest rights under FRA?**

The phrase “primarily resided in forest or forest land” does not mean occupation. Proof of residence in the forests for 75 years where claim has been filed and current dependence on forest land will suffice for being considered as OTFD. It was clarified by the Ministry of Tribal Affairs in Circular dated 9.06.2008 No.17014/02/2007-PC&V(Vol.VII), that the phrase “primarily resided in” means:

*“such Scheduled tribes and other traditional forest dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs would be covered under the definition of ‘forest dwelling Scheduled Tribes’ and ‘other traditional forest dweller’ as given in Sections 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.”*

It is important to state that it is not necessary that exercise of forest rights for 75 years without interruption be proved. This would be an extremely onerous burden of proof on a claimant, and is not the intention of the law.

**A number of forests in the country have been notified in the 1950s. How can the OTFDs establish that they have been primarily residing in these forests since three generations (75 years) when the forests themselves are only 50 or 60 years old?**

It is important to state that the date of notification, if any, of the forest is not a relevant criteria for determining eligibility of OTFDs under FRA. On the contrary, it is irrelevant, for the reason that the application of the FRA extends not only to notified and classified forests, but also to all manner of forests within the dictionary meaning, as defined by the Supreme Court. Admittedly, forests have been in existence in the country for centuries, and well before any legal regime for the protection of forests came into being.

For the purpose of establishing their eligibility, OTFDs can rely upon and produce two or more of any of the evidences listed in Rule 13 (including oral testimony and physical evidence), and are not restricted only to Census of India data.

**When calculating “75 years”, if the claimants (and their ancestors) have resided in one village for the first 50 years, and then another village for 25 years, would both periods be included for filing a claim?**

Section 2(o) of FRA does not require that the claimants and their ancestors have to prove they lived in the same village for 75 years. The requirement is that they should be forest dwellers for 75 years. It is also important to clarify that it is a particular forest dwelling community which has to establish this fact, and it is not necessary that every individual claimant has to prove it.

<sup>4</sup> *Action Research in Community Health & Development vs. State of Gujarat & Ors.* Judgment dated 3.5.2013 in PIL No. 100 of 2010, Gujarat High Court.



What is the meaning of “depend on the forest or forest lands for bonafide livelihood needs” in Section 2(c) and (o) of FRA?

The term “bonafide livelihood needs” has been explained clearly in Rule 2(1)(b) of the FR Rules as follows:

*“b) “bona fide livelihood needs” means fulfillment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the Act and includes sale of surplus produce arising out of exercise of such rights.”*

This definition clearly displaces the misconception that bonafide livelihood needs mean mere survival. In fact, the entire FRA and FR Rules clearly recognise that forest dwelling communities are not restricted to mere subsistence, but rather are entitled to a healthy standard of living. In fact, a plain reading of Sections 2(c) and (o) show that the word “primarily” qualifies “resided”, but there is no such qualification on the requirement “depend on forest and forest lands”.

Simply because a large proportion of the land in a State is classified as “forest land” and a large percentage of the population is dependent on the forests for bonafide livelihood needs, does not disqualify the applicants in any way.

Can a State Government provide that persons holding any permanent or Government job shall not be eligible as Other Traditional Forest Dwellers?

There is no provision in the law that forest dwellers should be **solely** or even **primarily** dependent on the forests for their livelihood, or for disqualifying persons whose family income is derived from a basket of sources. There is every likelihood that a family may be depending for its livelihood needs both on the forest rights, as well as supplement their family income through a Government job or salaried income. In fact, there are many families where one or more adult member has a salaried job requiring him to live in an urban area, while the other family members reside in the village and are sustained through intricate and sustainable relationships with the forests and forest produce.

Where one spouse works as a Government servant, while the rest of the family resides in the village, is such family eligible for making a claim under FRA?

Many situations may arise where one spouse works as a Government servant or in a salaried job, while the other spouse along with other members of the family resides in the village. It would be contrary to the letter and spirit of FRA to deny forest rights to such families, merely because one of the spouses has seized such opportunity. It is for this reason that the FRA contains no statutory bar on recognition of forest rights of such claimants, if they are able to satisfy the other eligibility criteria.

Nor does the FRA restrict the recognition of forest rights to ‘family’. A claimant can be an individual, a family, a community, or a Gram Sabha. Just because one member of the family is disqualified as a forest dweller, does not mean other members who meet the eligibility criteria cannot claim their rights.

What is the status under FRA of grazing rights of pastoralist/nomadic communities, when such communities are residing in revenue lands, and not “primarily residing” in forests?

Merely residing in revenue lands is not a disqualification from eligibility under the FRA, as long as the lands on which grazing rights are sought are forest lands. Forest land has been widely defined under Section 2(d) of the FRA.

That apart, there is a specific provision for protection of the rights of pastoralist/nomadic communities under Section 3(1)(d) which describes the following forest right:

*“(d) other community rights of uses or entitlements such as... grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities”.*

Most pastoralist communities in the Himalayan region are semi-nomadic, which means that they have permanently settled villages in revenue lands, where they may even engage in agricultural activities, and engage in seasonal nomadic pastoral activities which are traditional in nature. The FRA categorically contemplates the inclusion of such communities and their traditional customary pastoral practices.

#### Which Gram Sabha/s are such pastoralist communities required to file their claims?

Claims can be filed before their own Gram Sabhas. If the rights are exercised in forests traversing number of villages, they should also file before all the Gram Sabhas through which they traditionally have rights of passage and temporary grazing. This can be done as a community through traditional community institutions, or through individual members. Correspondingly, according to Rule 12(1)(c) of the FR Rules, the Forest Rights Committee has to ensure that the claims from pastoralists and nomadic tribes for determination of their rights are verified when such individuals, communities or their representatives are present, and no decision on these rights should be taken in their absence.

It is possible that claims of nomadic pastoralists may be filed later by those who are residents of a particular village. This is because such nomadic communities are compelled to move from one place to the next and therefore may not be aware of the need to file such claims within a time-frame. The Forest Rights Committee should not refuse to entertain such claims merely on the ground that they are delayed.

## Particularly Vulnerable Tribal Groups

#### What is the meaning of ‘habitat’ in the context of forest rights of Particularly Vulnerable Tribal Groups (PVTGs)?

The FRA clearly lays down the definition of ‘habitat’ under Section 2(h), and further describes the forest right to such habitat under Section 3(1)(e). However, the Hindi translation of the FRA, when translating the word ‘habitat’, used the word ‘aawas’ which is commonly understood to mean house or habitation. This created a lot of confusion since many States wrongly equated the term ‘habitat’ to mean providing housing facilities under schemes such as the Indira Awas Yojana.

To dispel the confusion, the Ministry of Tribal Affairs issued a clarification on 23.4.2015 bearing No. 23011/16/2015-FRA where it stated that such interpretation is incorrect. The right to community tenures of habitat and habitation over customary territories used by PVTGs include not only habitation, but also social, economic, spiritual, sacred, religious and other purposes.

### Can the habitat rights of the PVTGs under FRA also include revenue lands?

FRA envisages recognition of forest rights of forest dwelling STs and OTFDs on 'forest land' as defined under Section 2(d) of the Act. It is noteworthy that the definition of "forest land" adopted by the FRA is, in accordance with the judgment<sup>5</sup> of the Supreme Court in the *Godavarman case*, in the widest possible sense. Therefore, unclassified forests, undemarcated forests, existing or deemed forests, which are often on revenue lands, are also forest land under FRA.

As a result, it is possible that forest land which comprises the habitat of PVTGs is spread over both notified forests (that is, in Government records) and also forests in the dictionary meaning (which could be on revenue lands or other categories of land). Habitat rights of PVTGs are therefore applicable over both recorded forests and also forests that come within the definition of forest land under the FRA on such revenue lands (land under the administrative control of the revenue department).

If the habitat area (or its part) of a PVTG does not come within the definition of forest land (within its expanded meaning) then such habitat rights cannot be recognised under FRA. However, it may be recognised under the respective revenue laws of the concerned State Government or under the relevant provisions of PESA.

### How will the claims on rights of PVTG groups and habitat rights be facilitated particularly in view of the habitat involving more than one Gram Sabha?

The FRA clearly lays down the definition of 'habitat' under Section 2(h), and further describes the forest right to such habitat under Section 3(1)(e). Rule 12(1)(d) of the FR Rules further requires Forest Rights Committee to ensure that the claims from PVTGs are verified when such communities or their representatives are present.

Further, the right to community tenures of habitat and habitation may be recognised over customary territories used by the PVTG for habitation, livelihoods, social, economic, spiritual, cultural and other purposes. In some cases the habitats of PVTGs may overlap with forests and other rights of other people/communities.

The FR Rules (as amended on 6.9.2012) under Rule 8 envisage the role of the District Level Committee (DLC) to ensure that such rights of the PVTGs and other vulnerable communities are addressed keeping in mind the objectives of the FRA.

It has further been provided that, in view of their differential vulnerability of PVTGs, the DLCs should play a proactive role by initiating the process of recognition of rights of the PVTGs in consultation with their traditional institutions and ensure that their claims for habitat rights are filed before the concerned Gram Sabhas. For this purpose, wherever necessary, the floating nature of their Gram Sabhas should be kept in mind. This has also been reiterated by the Ministry of Tribal Affairs vide Circular dt. 23.4.2015 bearing No. 23011/16/2015-FRA.

Where the claims of PVTGs have already been filed, the DLCs should take steps to ensure recognition of their rights along with mapping of the area of each claim over which their rights have been recognised.

<sup>5</sup> Supra note 1.

## Minor Forest Produce

In certain States/areas, rights to MFP are already provided under the Forest Settlements under the Indian Forest Act. Are community rights to MFP under FRA relevant in such States/areas?

In some States, the Forest Settlements were made in the early 20<sup>th</sup> century. More than hundred years have passed since then, and there has been a sea-change in the nature of access as well as the persons who access these MFPs. Land use has also changed, as have priorities and pressures on the land. Moreover, while these rights are recording in Government records and settlement records, the documents regarding title are often not available with the people exercising these rights. In other States/areas, the forest settlements are incomplete. This leads to uncertainty and insecurity.

The FRA provides for recognition of pre-existing forest rights under Section 3(1) (b)(c)(d)(g). In particular, Section 3(1)(j) and (l) provide for the recognition of forest rights recognised under any State law and traditional rights customarily enjoyed. Finally, under Section 3(1)(i) the Gram Sabhas are vested with the right to protect, regenerate, conserve and manage their CFRs.

Once these rights are recognised in accordance with the procedure under the FRA and FR Rules, a number of cascading rights and obligations result, including the establishment of Committees under Rule 4(1)(e) for the purpose of protection and conservation of the forests, wildlife, water resources and other natural resources in the CFR. Forest Settlements under the IFA, on the other hand, while they specifically articulate the nature and extent of the rights to MFP, do not necessarily also vest in the forest dwellers these other concomitant rights, responsibilities and powers as provided under the FRA.

This same position of law applies in other States as well where there are pre-existing rights under any State laws, or under any traditional or customary law recognised in a State. For instance, the Chotanagpur Tenancy Act, 1908 and Santhal Parganas Tenancy Act, 1949 in Jharkhand recognise many of the rights also delineated under FRA. States which have areas under the Sixth Schedule of the Constitution have special laws enacted by the Autonomous District Councils which recognise community rights in forest land. These rights are included in the definition of forest rights under FRA.

Section 3(1)(c) of FRA confers ownership rights over minor forest produces (MFP) to forest dwelling STs and Other Traditional Forest Dwellers. Can ownership rights over bamboo, and other nationalised forest produce under the State forest laws be conferred under FRA?

Yes. The recognition and vesting of ownership rights over all minor forest produces (MFP) including bamboo and other nationalised forest produce are to be conferred to forest dwelling STs and OTFDs as and when the claim for such rights is made.

Section 2(i) of FRA clearly defines the term “minor forest produce” which include all non-timber forest produce of plant origin, including bamboo, tendu or kendu leaves etc. Accordingly the right of ownership, access to collect, use, and dispose of all the MFPs as defined in the Act has to be recognised and vested with the forest dwelling Scheduled Tribes (FDSTs) and other traditional forest dwellers (OTFDs) under the Act (See Section 3(1)(c) of the Act).

Can MFP rights be conferred on individuals or groups of individuals, or only on Gram Sabha?

There is a common misconception that forest rights under Section 3(1)(a) can only be vested in individuals, and the remaining rights under Section 3(1) (b) to (m) can only be vested in the Gram Sabha.

This is a misconception. Section 3(1) of FRA clearly states that all the forest rights listed “secure individual or community tenure or both”. Thus there is no obstruction in the law for vesting any of the rights under Section 3(1), including forest rights to MFP, in an individual, a group of individuals, a user group, or a Gram Sabha, unless such vesting militates against the nature of the right itself (such as the right under Section 3(1)(i) FRA).

#### Can the Gram Sabhas issue MFP transit permits and what will happen to the existing transit rules?

Yes, the Gram Sabha has the authority to regulate transit permits for MFPs where rights have been recognised under FRA.

The FR Rules (as amended on 6.9.2012) provide that the transit permits for transportation of minor forest produce shall be issued by the Committee constituted by the Gram Sabha under Rule 4(1)(e) or the person authorised by the Gram Sabha. The Rules further provide that all decisions of this Committee pertaining to issue of transit permits shall be placed before the Gram Sabha for approval.

The existing transit permit rules at the State level can be accordingly modified in relation to transportation of minor forest produce with respect to right holders under FRA and align it with the provisions of FRA.

#### Both PESA and FRA have provisions regarding ownership of MFP. Is there any contradiction between the two?

PESA and FRA are kindred statutes, and are to be harmoniously construed. Both FRA and PESA are to be interpreted side by side and since under Section 3(1)(c) of the FRA ownership of MFP is already vested with the community of forest dwellers, there is no contradiction.

What appears to be, on the surface, a contradiction between PESA and FRA, is the result of a conflict between the State level legislations, which may not necessarily conform to the parent statute. According to PESA, ownership of MFPs is vested with Gram Sabha and Panchayats at the appropriate level (presumably, where the resource extends to more than one Gram Sabha). However, in some States ownership has been vested with the Gram Panchayat ignoring the Gram Sabha, which is against the spirit of PESA and needs correction. If such aberrations are removed, then the connect with FRA will become more clear.

The application of PESA is limited to Fifth Schedule Areas, therefore it gives the ownership of the MFPs to Gram Sabhas only in the Scheduled Areas. Large forest dwelling populations also live outside the Scheduled Areas which previously may not have had such benefit. However, now all forest dwelling populations, whether within Scheduled Areas or outside them, are covered under FRA. Moreover, PESA does not require the State administration to give a written title to right holders, which FRA does.

#### How can ownership of MFP vest in the Gram Sabha under PESA, and also in the forest rights holder under FRA?

The FRA adopts a notion of nesting of rights in an individual, or a group of individuals or as a family where the Gram Sabha has the overall responsibility. Individual rights are nested within the right of the Gram Sabha. The right to ownership of MFP under the FRA is also, therefore, not comparable to the right to private property, and as a result the constraints upon its disposal are, in fact, a part of the notion of forest ecosystem and sustainability articulated in the Preamble. This notion of property and ownership is mirrored in PESA.

The decisions and plans under Section 5 of FRA and Rule 4(1) of the FR Rules must emerge from a process of discussion, cogitation, and negotiation at the Gram Sabha level, and while this might appear

to be a long drawn out process, it is the only way in which these decisions will be owned by the forest dwelling communities, increasing exponentially their chances of long term success.

**Between the Gram Sabha and the Committee under Rule 4(1)(e), where does the decision-making power lie?**

The power of decision-making with respect to MFPs clearly lies with the Gram Sabha, and the Committee formed under Rule 4(1)(e) of the FR Rules is its delegate or executive arm. The actions of the Committee are subject to approval, modification or repeal by the Gram Sabha.

**Who can auction and/or dispose of the MFP–forest rights holder or the Committee under Rule 4(1)(e)?**

All MFPs are not to be auctioned. The right to dispose of MFP covers the entire gamut of activities as described under Rule 2(1)(d), subject to the powers of the Gram Sabha under Section 5 of FRA.

Where the MFP right vests in an individual, groups of individuals, or family, again the disposal of such MFP covers the entire gamut of activities as described under Rule 2(1)(d), but would be subject to the powers of the Gram Sabha under Section 5 of the Act.

Where the Gram Sabha is the sole owner, that is, of MFPs which are not collected/used by any individuals or family in the community, the auction and disposal of the MFP falls within the power and domain of the Gram Sabha. The Gram Sabha can either carry out this process itself, or authorise the Committee under Rule 4(1)(e) to carry out this function, but in the event that it does so, the Committee performs this function as a delegate of the Gram Sabha and not in its own right. All its decisions, in addition, are subject to the approval of the Gram Sabha.

An important underlying principle of FRA is that of sustainable use while ensuring livelihood and food security of the forest dwelling communities. This prevents the conversion of MFPs for commercial use at the cost of local needs, and also ensures that the rights of local artisans, who use the MFPs as raw materials, are protected.

**In case the right to dispose of MFP is with the forest right holders, can they dispose of MFP to anybody, or are they constrained to sell it to the Gram Sabha or the agency fixed by Gram Sabha only?**

There cannot be any restriction upon the MFP right to the effect that it be sold only to the Gram Sabha or its agent (see Section 3(1)(c) and Rule 2(1)(d)). Such an interpretation of the right to MFP would be quite incorrect, and would lead to particular hardship for forest dwellers who depend on low value MFPs for their livelihood and use, in particular those where value addition is a result of the labour invested in the collection and extraction, often in dangerous conditions.

As stated earlier, where the owner of the MFP is an individual, group of individuals, or family, they are expected to adhere to the decision of the Gram Sabha under Section 5 and the Committee under Rule 4(1)(e) to the extent that the disposal and sale of the MFP impacts the sustainability of the resource. Save such restriction, the right to disposal cannot be curtailed.

**In a situation where claimants do not qualify as OTFD or FDST, and therefore are ineligible to claim right to MFP under FRA, will it be necessary to draw up two sets of Rules—one for the ineligible persons and another for those whose rights to MFP (including bamboo) are recognised?**

The notion of 'ownership' under the FRA does not fall within the framework of the extant understanding of the right to private property, where ownership means absolute power to use and dispose of the subject property. Instead, forest rights under FRA fall within a framework of collaboration and democratic decision-making which is holistic and integrated with the larger forest ecosystem.



The right to ownership of MFP under the FRA is also, therefore, not comparable to the right to private property, and as a result the perceived constraints upon its disposal are, in fact, a part of the notion of forest ecosystem and sustainability articulated in the Preamble. This notion of property and ownership is mirrored in PESA.

In this context, it must be pointed out that there could be scenarios where the forest rights holder of a specific MFP right is an individual, or a group of individuals, or a family. Such rights are nested within the overall rights, powers and responsibilities of the Gram Sabha.

Some illustrative examples could include:

- The right to harvest flowers, fruits or leaves from a particular tree or trees, which vests in a particular individual or family;
- The segregation of collection, sale and transit rights of certain MFPs by subgroups in certain areas;
- Where value addition to the MFP results only by reason of the individual labour expended during extraction, failing which the produce would degrade (this is true of both high value as well as low value MFPs);
- Where the collectors of a MFP vary from season to season, or where different MFPs are collected only by particular communities; and so on.

In such scenarios, the FRA as well as the FR Rules clearly recognise that the rights of the individual/group of individuals/family to receive a fair reward for their labour and value addition, is harmonised with the powers, responsibilities and rights of the Gram Sabha. Therefore, the power of the Gram Sabha under Section 5 of the FRA to conserve, manage and preserve the forest resource for sustainable use, co-exists with the right of ownership of the individual/group of individuals/family. The Gram Sabha has the power to regulate collection rights and responsibilities as per norms laid down by it for sustainable use, and the individual rights are nested within such 'ownership' of the Gram Sabha.

Accordingly, there will be only one set of 'rules' for the purpose of exercise of the right of ownership over MFP, which rules are framed by the Gram Sabha in exercise of its powers under Section 5 and Rule 4(1)(e)).

## Conversion of Forest Villages and Unsurveyed Villages

How are old habitations, unrecorded or unsurveyed settlements and other villages on the forest land which are not part of any Revenue or Forest record to be converted into revenue villages?

As provided under Rule 2-A of the FR Rules (as amended on 6.9.2012), in order to ensure that the FRA is implemented in letter and spirit, it is necessary that the District administration under the leadership of the Collector, and in collaboration with the Panchayati Raj institutions, take pro-active steps to ensure that all forest villages and other such villages are identified, as a preliminary to conversion to revenue village.

The process for identification of hamlets or habitations, unrecorded or unsurveyed settlements or forest villages or taungya villages, and their inclusion as villages for the purposes of the FRA is laid down in

Rule 2A of the FR Rules. Rule 2A(c) further provides that on finalisation of the lists of hamlets and habitations “the process of recognition and vesting of rights in these hamlets and habitations is undertaken without disturbing any rights already recognised.”

The forest villages referred to under the FRA includes not only the forest villages recorded as such in the Forest Department records, but also any other old habitations, unsurveyed villages, and other villages in forests whether recorded, notified or not. Therefore, inclusion in Government records is not a necessary precondition for the recognition of this important forest right under Section 3(1)(h).

### What happens when conversion of forest villages and other such villages is required in lands which are not classified as forest lands?

The Supreme Court in a landmark judgment dated 12.12.1997<sup>6</sup> in the **Godavarman case**, held as under:

*“The term “forest land” occurring in Section 2 (of the Forest Conservation Act, 1980) will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.”*

Since then the term ‘forest land’ is to be understood in its wider definition, that is, including not only forest land classified as such, but also all other forests, which would include revenue forests, private forests, community forests, and any other kind of forest lands.

The FRA, in conformity with the law laid down by the Hon’ble Supreme Court, also adopts a wider definition of forest lands. Since the rights conferred under the FRA apply to all forest lands, if there are villages inside any forest which is not necessarily classified as forest land, these villages are also required to be converted into revenue villages under the FRA.

### Is there any conflict between the provisions of the Forest Rights Act, the provisions of Forest (Conservation) Act, 1980 and the order dated 13.11.2000 passed by the Hon’ble Supreme Court?

An interim order dated 13.11.2000<sup>7</sup> was passed by the Hon’ble Supreme Court in a pending public interest litigation, as follows:

*“Pending further orders, no dereservation of forests/sanctuaries/national parks shall be effected.”*

This order was passed in the context of the widespread violation of the provisions of the Forest (Conservation) Act, 1980. As a result of this order, special permission of the Supreme Court was required in the event there was a need to change the classification of any forest land to non-forest land.

Section 4(1) of FRA, which recognises and vests forest rights in the forest dwelling STs and OTFDs, begins with a non-obstante clause. It states that such forest rights are recognised and vested “notwithstanding anything contained in any other law for the time being in force”, meaning thereby that the forest rights are recognised and vested regardless of whether such forest rights might be contrary to other laws. After FRA came into force on 31.12.2007, the interim order dated 13.11.2000 of the Hon’ble Supreme Court would be guided by the provisions of the FRA.

Section 4(7) of FRA provides that the Act confers forest rights free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the ‘net present value’ and ‘compensatory afforestation’ for diversion of forest land.

<sup>6</sup> Supra note 1.

<sup>7</sup> Order dated 13.11.2000 in I.A. No. 2 in Writ Petition (C) no. 337 of 1995, Supreme Court of India. *Centre for Environmental Law, WWF-I vs. Union of India*, 2000 SCALE (PIL) 325.



Even otherwise, recognition of forest rights under the FRA does not require “de-reservation of forest” or change in the classification of the forest land as non-forest land.

Therefore, recognition and vesting of all forest rights, including the settlement and conversion of forest villages and other such villages into revenue villages under Section 3(1)(h), are not in violation of or contradictory to the Supreme Court’s order of 13.11.2000.

**Is the approval under Section 2 of the Forest (Conservation) Act, 1980 required for conversion of forest villages and other such villages into revenue villages?**

In view of Section 4(7) of FRA and the legal position described above, approval under Section 2 of the Forest Conservation Act, 1980 is not required for conversion of forest villages, old habitations, unsurveyed villages and other villages in forests, whether recorded, notified or not, into revenue villages.

As per the provisions of the FRA, the District Level Committee is the final authority for approving the record of forest rights specified in Section 3(1) of the Act, including the right relating to conversion of forest villages and other such villages into revenue villages under Section 3(1)(h) of the Act.

**What impact would the conversion of forest villages have on the other communities apart from the Scheduled Tribes residing in the same villages?**

The conversion of the forest villages into revenue villages shall in no way affect any of the communities residing in the village, even though they may not be belonging to Scheduled Tribe or qualifying as OTFD. The FRA does not abrogate rights or privileges recognised under any other Act, Rule or Government Order. In fact, the conversion of forest villages into revenue villages would enable the Government to extend all the development facilities to these villages and the residents of this village would be entitled to get the benefits of the development programmes and schemes of the Government.

Conversion of forest villages into revenue villages needs to take place as per the guidelines dated 8.11.2013 (MoTA No/23011/33/2010 – FRA) issued by the Ministry of Tribal Affairs, Government of India.

**In the case of forest villages and other such villages which are primarily inhabited by OTFDs, is it necessary for the OTFDs to establish that they had been primarily residing in the said village for 75 years prior to the 13.12.2005?**

Section 4(1)(b) read with Section 2(o) of the FRA requires that, for purposes of recognition of forest rights under the Act, a “*member or community*” of OTFDs must establish that it has for at least three generations (being 75 years) prior to the 13.12.2005 “*primarily resided in or depended on the forest or forest land for bona fide livelihood needs*”. This question has been squarely addressed by the Ministry of Tribal Affairs in its Circular dated 9.6.2006 bearing F. No.17014/02/2007-PC&V(Vol.VII).

There is no requirement under the FRA that, for purposes of recognition and vesting of forest rights, a person or community of other traditional forest dwellers must have been specifically located in a particular and identifiable location in the forest for 75 years. As long as they are able to establish that they have been primarily residing in and dependent on forests or forest land for bona fide livelihood needs for 75 years prior to 13.12.2005, they are to be considered eligible for recognition and vesting of forest rights under the Act. This applies equally to all forest rights, including the forest right to conversion of forest villages and other such villages into revenue villages. Indeed, residence in a forest village may itself be evidence of OTFD status.

Does FRA require that forest villages and other such villages located inside Wildlife Sanctuaries and National Parks are also converted into revenue villages under Section 3(1)(h)?

The FRA envisages recognition and vesting of the forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers on *all forest lands*, including Wildlife Sanctuaries and National Parks.

The forest villages and other such villages located inside Wildlife Sanctuaries and National Parks are also, therefore, required to be converted into revenue villages under Section 3(1)(h) of the Act.

Can the process of recognition and vesting of forest rights in the FDSTs and OTFDs be taken up/continued, pending conversion of forest villages and other such villages into revenue villages?

Under the FRA, conversion of forest villages and other such villages into revenue villages under Section 3(1)(h) of the Act is not a pre-condition for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers who comprise such villages.

Therefore, the process of recognition and vesting of forest rights in the FDSTs and OTFDs can be taken up/continued without waiting for conversion of forest villages and other such villages into revenue villages.

## Title and Record of Rights

What is the category of title given under FRA?

The title given under the FRA is a legal title and is a formal recognition of the forest right which is recognised and vested in the right holders in the form of a signed document by the competent authority under the Act. It shall be registered jointly in the name of both the spouses, or a single head of the household in case only one head is alive, as the case may be. It has the force of law and is non-transferable, inalienable but heritable as per Section 4(4) of FRA.

Therefore, the final title document which is given to the forest rights holder should have a clear description of the forest right conferred, the demarcation of boundaries, and other relevant information. For individual forest rights, the document should also specify the survey number/Khata number of the land.

In a recent Circular dt. 10.4.2015 bearing No. 23011/12/2015-FRA, the Ministry of Tribal Affairs reiterated that the FRA process will only be completed when the RoR (record of rights) has been created. The purpose of rights recognition is realised only when permanent record of rights are entered into Government books of records.

Where are the records of rights going to be maintained? Whether in the revenue records or forest records?

As regards maintenance of records of rights, Rule 12 A of the FR Rules (as amended on 6.9.2012) provides that on completion of the process of recognition of rights and issue of titles, the Revenue and the Forest Departments are required to prepare a final map of forest land so vested and the concerned authorities are required to incorporate the forest rights so vested in the revenue and the forest records within the specified period of record updation under the relevant State laws or within a period of three months, whichever is earlier. This position has been reiterated in the Ministry of Tribal Affairs Circular dt. 3.3.2014 bearing F. No. 23011/06/2014-FRA.

It is suggested that if the forest land is under the administrative control of the Revenue Department, the Revenue Department shall maintain record of rights. If the forest land is under the administrative control of the Forest Department, the forest department should maintain the records and the records of the titles for individual land rights and conversion of villages, also need to be recorded in the Revenue records. States may take appropriate steps to enter the record of rights in the relevant State records. For example, State of Uttar Pradesh has amended its record of rights (termed as Category (6) under the State Revenue law) to add a new column for maintenance of forest rights.

It may be noted that the Record of Rights issued under the FRA must also mention the caste/tribe to which the right holder belongs, to facilitate future processes, if any.

## Community Forest Resource Rights

### How are CFR rights different from community rights?

The community forest rights are the various rights under Section 3(1) which are vested and recognised in a village community, and exercised together as a community. This would include *nistari* rights [Section 3(1)(b)], the right to MFP [Section 3(1)(c)], fishing and grazing rights [Section 3(1)(d)], right to conversion of forest villages into revenue villages [Section 3(1)(h)], right to access biodiversity and intellectual property rights [Section 3(1)(k)] and so on.

The Community Forest Resource (CFR), however, is defined under Section 2(a) as under:

*“(a) “community forest resource” means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access”.*

The CFR is therefore the customary common forest which harks back to the traditional or customary boundaries of the village, and includes seasonal use of pastoralists. For the removal of doubts, if any, the definition makes it clear that even where such traditional or customary forests have been declared as protected areas, they are still included within the definition of CFR. Therefore, the CFR right under the FRA would not be restricted by any pre-determined statutory right or access.

This forest right finds articulation in Section 3(1)(i) as follows:

*“(i) rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protect in and conserving for sustainable use”.*

These provisions are further buttressed by Section 5 of FRA where it is stated that the Gram Sabha shall have the power to:

- “(a) protect the wildlife, forest and biodiversity;*
- (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;*
- (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;*
- (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.”*

The CFR right, therefore, is much wider than the various community rights delineated under Section 3(1) in that it extends over a geographical area where the community traditionally and customarily had access, and also vests important responsibilities and powers in the Gram Sabha to ensure the CFR area, and the wildlife, water sources, forests, and biodiversity it comprises, is protected from harm.

**In case of community forest resource, who will be the claimant to file the community claim? In whose name(s) will the community rights be vested?**

Rule 11(1)(a) and (4) read with Form-C of the FR Rules (as amended on 6.9.2012) lays down the procedure for filing, determination and verification of community forest resource (CFR) claims by the Gram Sabha.

As is clear from the content of Form-C itself, while a list of the members of the Gram Sabha is necessary to be attached, along with the status of ST/OTFD against each member, signatures of all the members of the Gram Sabha is not required. Requiring all the signatures of all Gram Sabha members will make the process effectively impossible to complete in many villages. What is necessary is a resolution of the Gram Sabha in support of the said claim for CFR.

The title is issued in the name of the Gram Sabha which has registered the claim, which is also clear from Annexure IV, the format for title to CFRs.

**What are the documentary evidences required in case of CFR rights?**

CFR rights are related to *usufruct* right of the community and there are a number of forest documents like working plans, gazetteers, forest settlement reports and other documents that show that the forest is right burdened and is being used by people of those habitats. These documents are sufficient proof of usage of forests by the forest dwellers, in addition to oral evidence. Moreover, other practices such as Joint Forest Management, traditional use, community protection, etc. are also admissible as evidence.

Physical and oral evidence, among a host of other categories, is also admissible under Rule 13 of the FR Rules (as amended on 6.9.2012). In fact, Rule 13(2) lists certain additional types of evidence which can be relied upon for determination of CFR rights, such as previous classification of current reserve forest as protected forest or as *gochar* or other village common lands, *nistari* forests, as well as previous or current practice of traditional agriculture. Rule 12A(11) specifies that the SDLC/DLC cannot insist on a particular evidence in support of the claim, and this position of law has received the approval of the Gujarat High Court also in a recent judgment.<sup>8</sup>

It has been clarified by the Ministry of Tribal Affairs, Government of India vide Circular dt. 28.4.2015 (bearing F. No. 23011/18/2015-FRA) that State Governments should prepare a geo-referenced database of maps, and make such maps available to forest dwellers claiming CFR rights, so that genuine claimants are not left out. Further detailed suggestions on the use of GIS based technology, particularly with regard to CFR rights, have been made vide Circular dt. 27.7.2015 (bearing No. 23011/18/2015-FRA).

**Even in PESA areas, there are non-STs who are traditionally using such community resources, but they may not be eligible for recognition of forest rights under FRA. What happens to their rights over these community resources?**

The community rights of non-STs or ineligible OTFDs will not be affected in Fifth Schedule areas where PESA is applicable.

<sup>8</sup> *Action Research in Community Health & Development (ARCH) vs. State of Gujarat & Ors.*, Judgment dated 3.5.2013 in Writ Petition (PIL) No. 100/2011, Gujarat High Court.

Section 13 of the FRA clearly provides that –

*“Save as otherwise provided in this Act and the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”*

This means that the FRA clearly supports an arrangement where pre-existing community rights of non-STs or ineligible OTFDs in Fifth Schedule areas governed by PESA, shall continue.

Therefore, there would be no effect on the community rights of the non-STs who may traditionally be using the community resources in the Fifth Schedule areas where PESA is applicable, even though they may not be eligible for recognition of these rights in those areas under FRA.

This, however, depends upon whether these community rights are lawful in the first place, and do not violate any protective legislations, such as laws relating to prevention of alienation of tribal lands.

#### Who will prepare the conservation and management plan for community forest resources?

As per the FR Rules (as amended on 6.9.2012) the Committee constituted by the Gram Sabha under Rule 4 (1)(e) for carrying out the provisions of Section 5 of the Act is required to prepare the conservation and management plan for CFRs in order to sustainably and equitably manage such CFRs for the benefit of FDSTs and OTFDs. Such conservation and management plans are to be integrated with the micro plans or working plans or management plans of the Forest Department with such modification as may be considered necessary by the Committee.

This plan and the functioning of the Committee is monitored and controlled by the Gram Sabha. The Gram Sabha can further modify the conservation and management plan and impose restrictions if it considers that these are necessary for the conservation and management of the community forest resources. As clarified in the Circular dt. 23.4.2015 (bearing F. No. 23011/16/2015-FRA) issued by the Ministry of Tribal Affairs, Government of India, each Gram Sabha is free to develop its own simple format for conservation and management plan of the CFR. Such plan should be easily understandable by the members, and may also comprise of the rules and regulations governing forest access, use and conservation.

Any other committee mentioned in any other law cannot qualify to usurp this power which is vested with the Committee under Rule 4 (1) (e), nor can Gram Sabha through any resolution decide to absolve itself of its responsibilities.

#### Do the title holders also have rights over the trees standing on the forest land for which their rights have been recognised and vested under FRA?

Yes, the title holders have right over trees on the forest land for which forest rights have been recognised under FRA under Section 3(1)(a)).

Section 3(1)(a) of the FRA recognises the right of the FDSTs and OTFDs to hold and live in the forest land for habitation or for self-cultivation for livelihood. In view of the above, the titleholders have the right over the trees standing on the said forest land. However, felling and disposal of the trees shall be treated in the same manner as trees on private land under the relevant State laws. As such, the felling and disposal of such trees shall be subject to conditions, requirements for permission from the competent authority, etc. as specified in those laws, if any.

There would be no restriction on collecting and using the minor forest produce from such trees. Also, where timber rights are already vested as 'nistar' or any other statutory or traditional/customary right, it is a different matter and there is no impediment under FRA to the continuation of such right.

## Status of JFM Committees

Does the FRA permit conversion of the pre-existing JFM Committees, which have been in existence for last 15-20 years in some States, into Committees under Rule 4(1) (e) of the FR Rules?

First, it needs to be understood that JFM Committees are not statutory bodies, but rather have been constituted under a Government of India resolution of June 1990<sup>9</sup>. In most States, these Committees are functioning under a JFM Scheme, with the purpose of involving people in the management of forests.

On the other hand, where the conferment of a CFR right is concerned, it is a substantive statutory right under a Central legislation, the FRA.

It is the prerogative of the Gram Sabha to decide whether to nominate the members of the JFM Committees in the new Committee under Rule 4(1)(e) or constitute it with new members.

It is further clarified that only the members of the Gram Sabha are eligible to become members of the Committee under Rule 4(1)(e). Since many JFM Committees have been established at the Gram Panchayat level, there would be a technical difficulty in converting these into a Committee under Rule 4(1)(e) since they would have members from several Gram Sabhas. Moreover, in most States the Forest Guard is the ex-officio Member Secretary of the JFM Committee; such Forest Guard naturally cannot be a member of the 4(1)(e) Committee under FRA except in a village that he himself belongs to.

It is also important to remember that the areas managed by JFMCs and the CFRs are not co-terminus – while the CFR recognises traditional boundaries and customary practices, areas managed by JFM Committees are based on Forest Department working plan priorities.

Automatic conversion of JFM Committees into Committee under Rule 4(1)(e) is neither mandated nor desirable under the FRA as the objectives, structure and mandate of JFM is different from that of the Committee under Rule 4(1)(e). The practice of equating JFM Committees with community rights under FRA has been deprecated in clear terms (see D.O. No.MTA&PR/VIP/18/88/2013 dated 4.4.2013).

**Should JFM areas be directly converted to Community Forest Resource Titles?**

As per the provisions of FRA and FR Rules, automatic conversion of JFM areas into CFR areas is neither mandated nor desirable as the objectives, structure and mandate of JFM is different from that of the forest right under community forest resource under FRA.

**What about the Committees under the Biological Diversity Act, 2002?**

It has been found that in some States the Committees under the Biological Diversity Act, 2002 are being given the powers to manage and control CFR areas. This is not permissible under the FRA, and Committees under the Biological Diversity Act, 2002 cannot automatically qualify to be the Committee under Rule 4(1)(e). Due process under FRA and FR Rules has to be followed for setting up the Committee by the Gram Sabha, as described above.

<sup>9</sup> Letter No.6.21/89-PP dated 1st June, 1990, of the Ministry of Environment and Forests, Government of India.



## Development and FRA

After recognition of rights under FRA, can the forest rights holders get any support for development of the forest land and community forest resources?

The FR Rules (as amended on 6.9.2012) provide for post claim support to the forest rights holders, and require the State Government to ensure that all Government schemes, including those for land improvement, land productivity, basic amenities and other livelihood measures, are provided to forest dwellers and communities whose rights have been recognised and vested under FRA (see Rule 16). Specifically, the FR Rules require that this will be the responsibility of the State departments of tribal and social welfare, environment and forest, revenue, rural development, Panchayat raj and other departments.

It is important to note that even prior or during the process of recognition and vesting of rights, developmental rights under Section 3(2) of FRA can be exercised by the forest dwelling communities.

Can the States get separate budget allocations for the demarcation of CFR areas and smooth implementation of FRA?

Article 275(1) of the Constitution of India provides an opportunity to each State Government to apply for grants for implementation of FRA. Grants under Special Central Assistance (SCA) to Tribal Sub Plans (TSP) can also be allocated for the development of land over which rights have been recognised.

Does diversion of forest land for development facilities under Section 3(2) require a forest clearance under the Forest (Conservation) Act, 1980?

No permission is needed under the Forest (Conservation) Act, 1980, since the FRA frees the forest rights of all encumbrances and procedural requirement of the 1980 Act in terms of Section 4(7).

However such development facilities must fulfill the conditions under Section 3(2) of the FRA, namely:

- The facilities are managed by a Government body;
- Diversion of less than one hectare of forest land is involved;
- Cutting of not more than seventy five trees;
- Recommendation of the Gram Sabha; and
- Limited to the thirteen items listed under Section 3(2) of the FRA.

What are the minimum requirements necessary to demonstrate compliance with the FRA prior to diversion of forest land under the Forest (Conservation) Act, 1980 or any other development activity in forest areas?

At a minimum, compliance with the FRA requires that:

- The concerned Gram Sabha certifies that the rights recognition process under the FRA is complete in the area being proposed for diversion, and
- The decision of Gram Sabha in support of diversion of forest land for the stated non-forest purposes, by way of a resolution. This should be at a meeting convened for the purpose, and having a quorum of 50%.

Under which provision of the FRA is the decision of the Gram Sabha required to be obtained prior to diverting forest land under the Forest (Conservation) Act, 1980?

The Preamble to the FRA points to the statutory intention to vest in the forest dwelling STs and OTFDs the **responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance**. It further recognises that failure to recognise the forest rights of such forest dwelling communities resulted in a **historical injustice** (which the FRA seeks to correct) because such forest dwellers **are integral to the very survival and sustainability of the forest ecosystems**.

Section 5 empowers the holders of forest rights, the Gram Sabha, and the village level institutions to protect forests, water catchment areas, biodiversity, wildlife and the 'cultural and natural heritage of forest dwellers. In particular, Section 5(d) empowers the Gram Sabha to regulate and stop activities which adversely affect the forest, wildlife, and biodiversity. This power is inherent in every Gram Sabha in an area with forest dwellers.

Additionally, Sections 3(1)(i) includes in the definition of 'forest rights' the 'right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use'. Rule 12-B(3) makes it the duty of the DLC to ensure that the forest rights under Section 3(1)(i) of all villages with forest dwellers under its geographical jurisdiction are recognised.

Taking note of all these provisions, the Supreme Court in the **Orissa Mining Corporation case**<sup>10</sup> held that the decision of affected Gram Sabhas is necessary before diversion of forest land for non-forest purposes or for any development project, big or small. Failure to obtain such decision of the Gram Sabha prior to diversion of forest land would effectively nullify Section 5 of the Act.

This reading of the FRA is also substantiated by the fact that under Section 3(2) of FRA, the Gram Sabha recommendation is required prior to diversion of forest land for 13 categories of development initiatives, subject to the condition that such initiative is limited to 1 hectare of forest land, and does not require felling of more than 75 trees. It would be absurd if the recommendation of the Gram Sabha is required for a small initiative diverting 1 hectare of forest land, but not be required for a large project where the potential for environmental damage is greater.

Can exemptions be granted from the process of recognition of rights under the FRA requirements for certain kinds of projects?

No. Compliance with FRA is a mandatory requirement before forest land can be diverted. The Act does not provide any exemption to any category of projects. Forest land is widely defined under Section 2(d) of the FRA in accordance with the Supreme Court judgment<sup>11</sup> in the **Godavarman case**.

The provisions of FRA need to be strictly construed keeping in view the legislative intent of the said Act and primacy of the Gram Sabha in democratic governance.

The central role of the Gram Sabha in developmental initiatives is not unique to the FRA. It also finds mention in PESA, which has been incorporated into the Panchayati Raj legislations as applicable to Scheduled Areas of various States. The centrality of the Gram Sabha's role has also received affirmation from the Supreme Court in a recent decision in **Orissa Mining Corporation case**<sup>12</sup>, wherein the Supreme Court has fore-grounded the central role of Gram Sabha (known as **Palli Sabha** in Odisha) in determining

<sup>10</sup> *Orissa Mining Corporation vs. Ministry of Environment and Forests and Others*, 2013 (6) SCC 476.

<sup>11</sup> *Supra* note 1.

<sup>12</sup> *Supra* note 9.



community or individual forest rights claim, and decision-making regarding development activities in their forest areas.

### Is there any kind of 'FRA clearance' or 'NOC' under FRA required for diversion of forest land?

Clearances of different kinds and under different statutory laws are required for development projects, such as "forest clearance" under the Forest Conservation Act, 1980, environmental clearance under the Environment (Protection) Act, 1985 and its various Rules and guidelines, and other clearances. These laws are, accordingly, regulatory in nature.

The FRA, however, recognises and vests substantive rights, and therefore stands on a completely different footing. Just like any other vested and substantive right, the forest rights under FRA also cannot be altered to the detriment of the rights holders without due process of law. This is made doubly clear by Section 4(5) which requires that all recognition and verification processes under FRA must be completed before forest dwelling STs and OTFDs can be removed.

The Gram Sabha is vested with the power and responsibility to protect, preserve, conserve and manage its forests and CFRs. Therefore, before forests in its area can be diverted for any other development purpose, the Gram Sabha has to consider this at a specially convened meeting, and after carefully considering all factors, take a decision on the proposed diversion, after certifying that the rights recognition process is complete. This is the law of the land subsequent to the three judges decision of the Supreme Court of India in the *Orissa Mining Corporation case*<sup>13</sup>.

This process is not comparable with the grant of a forest clearance or a 'No Objection Certificate' (NOC) by an administrative or regulatory authority. Instead, this process requires thoughtful and informed application of mind by the Gram Sabha so that it takes a careful and considered decision on the matter.

### What is the competent authority which can certify that a development project has the go-ahead of the concerned Gram Sabha?

The Gram Sabha is the statutory authority which has to initiate the process of determination and verification of claims under Section 6 of FRA. It is also the statutory authority in which the forest right under Section 3(1)(i) is vested, as well as the power and responsibility under Section 5 to protect, preserve, manage and conserve the community forest resources. In addition, the FRA and FR Rules vest a plethora of responsibilities, functions and powers in the Gram Sabha. Therefore, it is the Gram Sabha which is the competent authority to certify that any particular development project has the go-ahead of the village community, through a resolution of a properly convened meeting of the Gram Sabha, with a minimum quorum of 50% (as required in the FR Rules).

It is only logical that the certification of the Gram Sabha must apply to all eligible forest dwelling STs and OTFDs, whether they have filed claims or these claims are under process or even where the claims have not been filed.

### What is the competent authority for certifying that the rights recognition process under FRA is complete?

For the same reasons stated above, the competent authority for certifying that the rights recognition process under FRA is complete in a particular forest area is the concerned Gram Sabha. Further, no other authority can either invite claims or extend the date for filing them, and hence no other authority can make this determination.

<sup>13</sup> *Orissa Mining Corporation vs. Ministry of Environment and Forests & Ors.* (2013) 6 SCC 476

Where settlements are already complete under the Indian Forest Act, 1927 and the Wild Life (Protection) Act, 1972, is it necessary to re-settle rights under the FRA?

A glance at the Preamble of the FRA demonstrates that it is aimed not only at correcting the historical injustice of failure to recognise rights of forest dwelling communities, but also that it vests the forest dwelling communities with “responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance...thereby strengthening the conservation regime of the forests...” The FRA is based upon the premise that forest dwelling communities are “integral to the very survival and sustainability of the forest ecosystems”.

Therefore, the FRA focuses on the recognition and vesting of forest rights, which are substantive in nature, and is not concerned with the “settlement” of rights, which involves their compensation and extinguishment. It is important to note that the requirement of ensuring compliance with the FRA, far from being a hurdle in the implementation of development projects, will in fact ensure that forest dwelling communities fully participate in decision-making regarding such development projects, thus advancing the constitutional and statutory imperative of democratic decision-making.

## Miscellaneous

Can the State Government frame Rules and Guidelines for the implementation of the FRA in a uniform manner across the State?

Only the Central Government is permitted to enact and notify legislative Rules (under Section 14 of FRA) and issue general or special directions (under Section 12 of FRA).

However, there is no bar against the State Government issuing executive instructions for the purpose of implementation of FRA, as long as such instructions are intra vires the FRA, FR Rules, and directions under Section 12. In addition, Governor of the State can issue Regulations under paragraph 5 of the Fifth Schedule of the Constitution of India for the Scheduled Areas.

Tribals in some settlements are demanding that land under cultivation should be assigned in their common name. Is this permissible under FRA?

Section 3(1)(a) of the FRA permits the recognition and vesting of the right over the forest land under common occupation for cultivation in the name of a community of tribals. However, in view of the provisions of Section 4(6) of the Act, such forest land under the occupation of the community of tribals shall be restricted to the area under actual occupation. (see below)

How are titles for forest rights under FRA to be conferred, and in whose name?

Section 4(4) of the FRA, among other things, provides that a forest right conferred under the Act shall be heritable but not alienable or transferable, and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person. In the absence of a direct heir, the heritable right shall pass on to the next-of-kin. There is no bar in the Act to the registration of the forest right conferred under the Act jointly in the name of both the spouses who are married inter-caste, provided the applicant is either an FDST or fulfils the criteria for an OTFD.

Can claims under Section 3(1)(a) be rejected on the ground that land under actual cultivation is less than the area under occupation of the claimant.

Rule 12(A)(8) of the FR Rules states that the land rights for self-cultivation recognised (under Section 3(1)(a)) shall be, within the specified limit of 4 hectares, include the forest lands used for allied activities ancillary to cultivation, such as, for keeping cattle, for winnowing and other post-harvest activities, rotational fallows, tree crops and storage of produce. Therefore it is incorrect to reject a claim on the ground that the entire area claimed is not under cultivation, when such land is under occupation.

How does FRA affect legally recognised pre-existing rights?

Section 3(1)(j) of FRA specifically provides for the following forest right:

*“rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribal under any traditional or customary law of the concerned tribes of any State”.*

Accordingly, the Act provides for recognition of all pre-existing rights under any State laws, or under any traditional or customary law recognised in a State. A number of States have State laws recognising rights in forest land, such as the Chotanagpur Tenancy Act, 1908 and Santhal Parganas Tenancy Act, 1949 in Jharkhand. States which have areas under the Sixth Schedule of the Constitution have special laws enacted by the Autonomous District Councils which recognise community rights in forest land. These rights are included in the definition of forest rights under FRA.

Many of the forest rights recognised under the FRA have been treated as illegal activities under previous legislations, such as collection of MFPs in protected areas. In some cases these are also criminal offences punishable with fine and/or imprisonment. How is this contradiction to be resolved?

The substantive rights vesting provision in the FRA is Section 4(1), under which the forest rights defined under Section 3(1) are recognised and vested in forest dwelling STs and OTFDs. This provision, which is at the heart of the statute, begins with a non-obstante clause- ***“notwithstanding anything contained in any other law for the time being in force”.***

This means that the forest rights recognised and vested under the FRA override previous legislations, rules, guidelines, and even judicial orders to the contrary, and will have effect in supersession of these other laws.

For example, under the Indian Forest Act, 1927 if a person is found in possession of a Minor Forest Produce in a reserve forest or protected forest, there is a legal presumption that such MFP is Government property. Since extraction of MFP is itself a forest offence, such a situation would invite severe penal consequences, including arrest, search and seizure, prosecution and, if convicted, a possible prison term. If such person is transporting the MFP, further penalties under a variety of State MFP transit legislations are also attracted.

However, the FRA grants ownership rights over MFP to forest dwelling STs and OTFDs, and also invests the Gram Sabha with the power to manage the extraction, collection and transportation of MFP. This is the exact opposite of a crime.

Since the right to ownership of MFP is a substantive right vested under Section 4(1) of FRA, the provisions of the central as well as state laws which make extraction of MFP from reserve forests a criminal offence are overridden and rendered meaningless with respect to forest dwelling STs and OTFDs. Such laws would, however, continue to operate against persons who are not right holders under FRA, in addition to the provisions of FRA which permit the Gram Sabha itself to take necessary action against such persons.

The implementation of FRA is sometimes seen as being contrary to court orders and therefore possible contempt of court. How are such situations to be addressed?

It is a well accepted principle of statutory interpretation that an Act of Parliament overrides preceding judgments and orders of the Hon'ble Courts, and this is also specifically articulated in Section 4(1) of the FRA which begins with an unambiguous non-obstante clause, as follows:

*“(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in-  
xxx”*

Where orders have been passed by a court which are *per incuriam*, or have not taken the provisions of the FRA into consideration, the same should be brought to the attention of the Hon'ble Court by the concerned executive authorities by following due process of law.

Why has no provision been kept for the transfer of recognised land under the FRA?

Assessments have shown that the tribals have been losing land at a fast pace due to various reasons, despite constitutional and statutory safeguards. Under FRA, land has been kept inalienable to ensure that the land is not lost and also to ensure that only eligible claimants stake a claim.

What are the activities included within the meaning of “self-cultivation for livelihood” in Section 3(1)(a) of FRA?

The term “self cultivation” is described in Rules 12A (8) of the FR Rules as follows:

*“12 A. xxx (8) The land rights for self-cultivation recognised under clause (a) of sub-section (1) of section 3 shall be, within the specified limit, including the forest lands used for allied activities ancillary to cultivation, such as, for keeping cattle, for winnowing and other post-harvest activities, rotational fallows, tree crops and storage of produce.”*

Thus, the FRA and FR Rules acknowledge the fact that agriculture includes not just cultivation, but also a host of other allied and ancillary activities. Note also that under Rule 2(1)(b), the term ‘bonafide livelihood needs’ has been defined to mean fulfilment of livelihood needs of self and family, including the sale of surplus produce arising out of exercise of such rights.

Can the person in whom the forest rights are vested, or the person who has inherited such rights, be permitted to change the land use of such land?

Under Section 3(1)(a) of FRA, the forest right includes the right to hold and live for habitation and self-cultivation. As stated under Rule 12A(8) of the FR Rules, self-cultivation includes a plethora of activities allied or ancillary to cultivation, such as for keeping cattle, for winnowing and other post-harvest activities, rotational fallows, tree crops and storage of produce. A person may utilise the land for any of such usages. However, it would not be lawful to use the land for any other purpose, since the forest right is vested for a specific purpose.

Can any occupant of forest land be evicted under FRA on the ground of encroachment without completion of rights recognition process?

The state cannot evict any forest dweller if a claim on the concerned forest land under FRA is under process. If the claim gets rejected by the DLC, and assuming that the claimant has not exercised any other remedies available under the law, then the claimant can be evicted after following the due process as provided under the Indian Forest Act, 1927 and the relevant State law. The FRA does not contain any

provision or procedure for removal of encroachments, either automatically on rejection of a claim or otherwise, since this is not the subject matter of the FRA.

Once the process of recognition and vesting of rights, including CFR rights, is completed, what are the remedies available if after a few years it is observed that the forests are getting degraded?

Section 5 of the FRA, while giving the authority and power, also places a responsibility on the Gram Sabha of forest dwellers to ensure that the ecological resources are protected and principles of sustainable development are adopted while managing the CFR. In the event the Gram Sabha is found to be engaging in practices which are harmful to the forests, biodiversity, wildlife or other natural resources within its CFR, there are a plethora of environmental protection laws which can be activated in order to remedy the situation.



# Abbreviations and Acronyms

BPL	Below Poverty Line
CFR	Community Forest Resource
DLC	District Level Committee
FDST	Forest Dwelling Scheduled Tribe
FRA	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
FR Rules	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 (as amended in 2012)
FRC	Forest Rights Committee
1994 Act	Himachal Pradesh Panchayati Raj Act, 1994
IAY	Indira Awas Yojana
JFM	Joint Forest Management
MFP	Minor Forest produce
MGNREGA	Mahatma Gandhi National Rural Employment Gurantee Act
MoEF&CC	Ministry of Environment, Forests & Climate Change
OTFD	Other Traditional Forest Dweller
PESA	Panchayati Raj Extension to Scheduled Areas
PVTG	Particularly Vulnerable Tribal Groups
SCA	Special Central Assistance
SDLC	Sub-Divisional Level Committee
ST	Scheduled Tribe
TSP	Tribal Sub Plans



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