Frequently Asked Questions – Community Rights

What are the different rights available to forest dependent communities in India?

Law protects both individual and community rights in and around forest areas. Community rights are important because there are rights available en masse to a large population. Laws, historically and more recently, have sought to vest powers with community led institutions for forest, water and land management. Realisation of community rights has the natural advantage of scalability that a focus on individual rights cannot obtain.

1. **The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (**FRA**) grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by the forest laws. It gives recognition to thirteen sets of rights, which recognize and vest forest rights, accord tenurial security to individuals and communities, and attempt decentralization of power by empowering the village council (Gram Sabha) with the primary authority to recognize such rights. The Act ensures the protection of ecosystems by creating responsibility and authority for sustainable use and conservation through diversity of use, access, and traditional knowledge these communities have used for centuries for sustainable living.

2. **Panchayat (Extension to Scheduled Areas) Act 1996**

The Panchayat (Extension to Scheduled Areas) Act 1996 (**PESA**) recognised traditional rights of tribals to community resources (land, water and forests) and decentralised existing approaches to forest governance by bringing the Gram Sabha at the centre stage for managing Minor Forest

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Produce (**MFP**) and social forestry. Some of its key provisions spell out the extent to which the Gram Sabha can exercise control over community resources and MFPs. Most states have yet to formulate rules to implement the PESA. As a result, its implementation is rather limited and Gram Sabhas have not been able to exercise adequate control over the forest resources as per its provisions

3. **Indian Forest Act, 1927**

The Indian Forest Act 1927 (**IFA**), a colonial act, consolidates the law related to forests and the transit of forest produce and duty to be imposed timber and forest produce. It also provides for the process of settlement of rights when a reserved forest is declared. A Forest Officer is appointed as the Forest Settlement Officer (FSO) who considers the claims of the local inhabitants and inquires into and determines the existence, nature and extent of any rights in favour of any person in or over any land comprised within such limits or in or over any forest produce.

4. **Wildlife (Protection) Act 1972**

Section 36C of the Wildlife (Protection) Act (**WLPA**) provides the opportunity to communities to declare any private or community land not comprised within a National Park, sanctuary or a conservation reserve, as a community reserve for the conservation of wild life and its habitat and for the cultural conservation of values and practices of the community.

What are the provisions for Community Forest Rights/Resources under the Forest Rights Act 2006?

Section 3 (1) of the FRA provides for both individual and community forest rights of (in short Forest Rights Act) forest dwelling scheduled tribes and other traditional forest dwellers on all forest land. The relevant provisions for community forest rights are given below:

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i. **Section 3 (1) (b)** provides for "community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes". Nistar rights secure such traditional access and entitlements over local forest resources of local communities which were recognized by different regimes or exercised as customary rights. Nistari claims need to be understood as traditional rights of access and usufruct rights over forest produce such as timber, firewood, grazing, minor forest produce or other specific resource uses mentioned in the claim.

ii. **Section 3 (1) (c)** provides for the "right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries". Further Rule 2 (d) provides that "disposal of minor forest produce" under clause (c) of sub-section (1) of section 3 of the Act shall include local level processing, value addition, transportation in forest area through head-loads, bicycle and handcarts for use of such produce or sale by the gatherer or the community for livelihood. As defined in the Act under Section 2 (i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.

iii. **Section 3 (1) (d)** provides for "other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant)and traditional seasonal resource access of nomadic or pastoralist communities". Rights which may be claimed under this provision may include i) use of water bodies for household and agriculture purposes, for cattle, for fish, and any other traditional uses, ii) grazing of animals in forest, iii) traditional seasonal resource access of nomadic or pastoralist communities.

iv. **Section 3 (1) (e)** provides for "rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities". As defined in section 2 (h) "habitat" "includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and

other forest dwelling Scheduled Tribes". Habitats are geographical landscapes inhabited by particular Primitive Tribal Groups (**PTGs**) or other forest dwelling Scheduled Tribes which share a distinct lifestyle and culture. Orissa has 13 PTGs having their distinct community habitats which are cultural and spatial domains used and inhabited by them. The titles for habitats should include a map showing the boundary of the habitat indicating recognizable landmarks and the customary rights of the concerned PTG which are recognized within that area.

v. **Section 3(1) (i)** of the FRA provides for the "right to protect, regenerate or conserve or manage any community forest resource which they (communities) have been traditionally protecting and conserving for sustainable use". As defined in Section 2(a) of the FRA '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 pastoralist communities, including reserve forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access".

vi. **Section 3 (1) (k)** provides for "right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity". Community rights over traditional knowledge related to biodiversity and cultural diversity may include, seeds, medicinal plants and their uses, agriculture and agricultural biodiversity (including cultivated and uncultivated food and non-food crops), knowledge of flora and fauna and indigenous conservation systems and practices, Cultural aspects of the community such as art forms and other practices relating to biodiversity.

vii. **Section 3 (1) (l)** provides for recognizing "any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal". This will include the rights and traditional resource uses which are not covered under the provisions for community rights. Some of the examples are pre-agricultural practices, collection of soil from the forest area

for smearing of house, places of worship and sacred areas / groves in forests like Sarna, Jahira, Marang Buru, Liling Buru and the like, right of way / passage etc.

What is the process of determination of Community Forest Rights (CFR) where there are substantial overlaps or the area is used by more than one Gram Sabha under the FRA?

In case of overlaps, conflicting claims, forest area used by more than one Gram Sabha, along with the process of CFR determination as mentioned in Q No. (2), the following additional steps are to be followed –

a) Intimation to Adjoining Gram Sabhas and Sub Divisional Level Committee (**SDLC**): As per Rule 11(1) (b), in case of overlaps, prior to the initiation of the process of determination of community forest resource, the concerned Gram Sabha shall intimate the adjoining Gram Sabhas and the SDLC.

b) Joint meeting of the Gram Sabhas for consideration of the claims, resolution of conflicts: As per rule 12(3), if there are conflicting claims in respect of the traditional or customary boundaries of another village or if a forest area is used by more than one Gram Sabha, the Forest Rights Committees of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims and submit the findings to the respective Gram Sabhas in writing.

c) In case the Gram Sabhas are not able to resolve the conflicting claims: In such cases, the concerned Gram Sabhas shall refer the claims to the SDLC for its resolution as per Rule 12(3).

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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. 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." 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. 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 'inviolate 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)).

What is the documentary evidence required for establishing eligibility by Other Traditional Forest Dwellers (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 FRA. 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 FRA, 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.

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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.

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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. 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.

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What is the role of Sub Divisional Level Committee (SDLC) and District Level Committee (DLC) in recognition of community forest rights under the FRA?

As per Rule 6, The SDLC has to i) raise awareness on the community rights, ii) provide necessary support in the form of documents, records, evidences and technical persons to support determination, filing and verification of claims by Gram Sabha, iii) resolve issues of conflicting claims or overlapping uses if preferred by the Gram Sabhas.

As per Rule 8, The DLC has to ensure that i) communities are made aware of the community rights, ii) necessary support is provided to the Gram Sabha and FRCs for determination and filing of community claim, iii) community claims, especially claims of the PTGs, Nomadic and pastoralist communities after ensuring the presence of their representatives, are duly considered by the authorities as per the objectives of the Act.

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.

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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.

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 oflack 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.

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.

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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. 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 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 29th April 2013 (F.No.19020/02/2012-FRA) and 5th March 2015 (F.No.19020/02/2012-FRA(Vol. II)) where the confusion, if any, has been laid to rest.

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