

Frequently Asked Questions

On

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

(Training materials)

The enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) is an important watershed in the history of tribal empowerment in India especially relating to tenure security on forests and forest land. The Act became operational through notification of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules on January 1, 2008 which marked a historic journey to recognize and vest Forest Rights to the marginalized and vulnerable who are dependent on forests for their sustenance and their existence. Over a period of last four years of implementation of the Act, some problems impeding the implementation of the Act in its letter and spirit had come to the notice of the Ministry of Tribal Affairs. Some of the major concerns regarding implementation of this Act related to high rate of rejection of claims, little progress in the recognition of community rights and habitat rights of PTGs, convening of Gram Sabha meetings at the Panchayat level, insistence of particular form of evidence, claimants not being informed about rejection of claims and inadequate awareness about the provisions of the Act and the Rules, etc. Based on this experience, the Ministry of Tribal Affairs issued detailed **Guidelines** to the States in July 2012 and notified **amendment to the FRA Rules** in September 2012 in order to develop further clarity on the interpretation of the Act and to streamline its implementation. The Ministry in collaboration with UNDP organized **Five Regional Consultations** covering 22 states across India to share the recent amendments to the Rules, understand the operational challenges and to collectively identify the way forward on effective implementation of the Act including preparation of Action Plans for time-bound implementation of the Act. The Regional Consultations provided a platform where Tribal Welfare, Panchayati Raj, Forest and Revenue Departments shared their views and sought clarifications on wide range of issues. This Booklet seeks to address some of the questions raised during

the Regional Consultations related to the process of recognition of rights, evidence requirements, ownership over minor forest produce, rights over community forest resource, protection against eviction, definition of OTFDs, convening of Gram Sabha at hamlet/habitation level, recognition of habitat rights of PTGs etc. It is an attempt to consolidate the responses given in the workshop by the Ministry of Tribal Affairs. This Booklet can be used as a reference document for consultations, workshops, and effective implementation of FRA.

Question: 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 Tendu/Kendu, Bamboo which are nationalised forest produce under the State forest laws be conferred under FRA?

Answer:

- Yes. The recognition and vesting of ownership rights over all minor forest produces (MFP) including bamboo and tendu/ kendu are to be conferred to forest dwelling STs and Other Traditional Forest Dwellers as and when the claim for such rights is made.
- Section 2(i) of FRA clearly defines the term “minor forest produce” which include bamboo and tendu/kendu.

Question: Whether the shift of ownership of MFPs from the State in case of certain nationalised MFPs, like, tendu patta, would not lead to exploitation of MFP gatherers by the private traders?

Answer:

- The shift of ownership to right holders does not necessitate withdrawal of the State agencies from MFP trade. It is advised that the State agencies should continue to extend their support system to the MFP gatherers by way of purchasing the produces to provide minimum support price and safeguard against any potential exploitative cartel of buyers. A parallel may be drawn in the manner with process followed for rice and wheat.

- MFP gatherers may be organized through formation of cooperatives/federations or producer companies to enhance bargaining power vis-à-vis MFP buyers.
- Abolition of monopoly of State Agencies in the trade of nationalized MFPs will in fact strengthen institutions engaged in trade of MFPs and making them more competitive and this will reduce exploitation of the rights holders under the watchful eye of the State.

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

Answer:

- Yes, the Gram Sabha has the authority to regulate transit permit for MFPs where rights have been recognized under FRA.
- The Forest Rights Amendment Rules, 2012, notified on 6.9.2012 provide that the transit permit 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 authorized by the Gram Sabha. These Rules further provide that the Gram Sabha shall approve all decisions of this Committee pertaining to issue of transit permit.
- The State/ UT Governments, therefore, should modify their existing transit permit regimes in relation to transportation of minor forest produce with respect to right holders under FRA and align it with the provisions of FRA.

Question: Will issuance of transit permits by the Gram Sabha lead to over exploitation of the MFPs?

Answer:

- No, the issue of transit permit by the Gram Sabha has no correlation with over exploitation of MFP. There are enough safeguards in the law to ensure that over exploitation of MFPs is avoided.
- For example, as per Rule 4(1)(e) of FR Rules, 2008, the responsibility for carrying out the provisions of Section 5 of the Act has been given to a Committee to be constituted by the Gram Sabha.

- The Forest Rights Amendment Rules, 2012 notified on 6.9.2012 now require the said Committee to prepare a conservation and management plan for community forest resources in order to sustainably and equitably manage such community forest resources for the benefit of FDSTs and OTFDs and integrate such conservation and management plan 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. The monitoring and control of the said Committee vests with the Gram Sabha. The Gram Sabha, therefore, has to ensure that the transit permits are issued by such Committee with proper assessment and in conformity with the conservation and management plan and that such transit permits do not lead to over exploitation of the minor forest produce.
- The Gram Sabha can further modify the conservation and management plans and impose restrictions if it considers that the existing regime of collection, use and disposal of minor forest produce is leading to over exploitation of minor forest produce.
- The Gram Sabha as well as the right holder has also been empowered under the Act to stop any activity that adversely affects forest, wildlife, biodiversity among other things.

Question: According to PESA, ownership of Minor Forest Produce has already been vested with the Gram Sabha, then what is the need and legality of the various provisions of FRA that give SDLC/ DLC the power to regulate and recognise the ownership of MFPs?

Answer:

- The application of PESA is limited to Scheduled Areas only, therefore it gives the ownership of the MFPs to Gram Sabhas only in the Scheduled Areas. Large tribal populations also live outside the Scheduled Areas which are covered only under FRA. Moreover, PESA does not require administration to give a written title to each right holder, which FRA does.

- SDLC/DLC are only part of the process of recognition of rights. The regulation of MFP vests with the Gram Sabha.

Question: Can the habitat rights of the PTGs under FRA also include revenue lands?

Answer:

- Ordinarily No, unless there are recorded forests or there are forests that come within the definition of forest land under the Act on such revenue lands (land under the administrative control of the revenue department) and they overlap with the habitat of the PTGs (Particularly Vulnerable Tribal Groups).
- Further, if the habitat area (or its part) of a PTG does not come within the definition of forest land then such habitat rights cannot be recognized under FRA. However, it may be recognized under the respective revenue laws of the concerned State, if the State so desires in order to protect the habitat rights of the PTGs.

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

Answer:

- The definition of habitat under Section 2(h) and the right to such habitat has been clearly laid down in the law under section 3(1)(e) of the Act. Rule 12(1)(d) further directs Forest rights Committee to ensure that the claims from PTGs are verified when such communities or their representatives are present.
- Further, the right to community tenures of habitat and habitation may be recognized over customary territories used by the PTG for habitation, livelihoods, social, economic, spiritual, cultural and other purposes. In some cases the habitats of PTGs may overlap with forest and other rights of other people / communities.

- Rule 8 also envisages the role of the District Level Committee (DLC) to ensure that such rights of the PTGs and other vulnerable communities are addressed keeping in mind the objectives of the Act.
- Further, it has now been provided in the Amendment Rules, 2012 notified by the Ministry on 6.9.2012 that, in view of the differential vulnerability of Particularly Vulnerable Tribal Groups (PTGs), the DLC shall ensure that all Particularly Vulnerable Tribal Groups receive habitat rights, in consultation with the concerned traditional institutions of Particularly Vulnerable Tribal Groups and that their claims for habitat rights are filed before the concerned Gram Sabhas wherever necessary by recognizing floating nature of their Gram Sabhas.
- In view of the above provisions in the Act and the Forest Rights Rules, the DLCs should play a proactive role by initiating the process of recognition of rights of the PTGs in consultation with their traditional institutions and ensure that their claims for habitat rights are filed before the concerned Gram Sabhas.
- Where the claims of PTGs 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 recognized.

Question: Whether OTFDs who do not fulfil the condition of occupation of forest land for three generations (75 years) prior to 13th December 2005 would be eligible for recognition of forest rights under FRA?

Answer:

- The Act does not envisage the occupation of forest land for three generations (seventy five years) prior to December 13, 2005 for qualifying as OTFD under the Act. The occupation of forest land should be prior to December 13, 2005 as per Section 4 (3) of the Act which stipulates the condition of occupation of forest land for recognition and vesting of forest rights. This condition does not differentiate between forest dwelling STs and OTFDs.

- To qualify as OTFD and be eligible for recognition of rights under FRA, three conditions need to be fulfilled- 1) Primarily resided in forest or forests land for three generations (75 years) prior to 13-12-2005 2) depend on the forest or forests land for bonafide livelihood needs 3) occupied forest land prior to 13-12-2005.
- Primarily resided in does not mean occupation. Proof of residence in the village for 75 years where claim has been filed and dependence on forest land will suffice for being considered as OTFD. As clarified in an earlier letter No.17014/02/2007-PC&V(Vol.VII) dated 17.06.2008, regarding the phrase "primarily resided in", "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 definitions of forest dwelling scheduled tribes and other traditional forest dwellers given in Section 2(c) and 2 (o) of the Act.

Question: What would be the legal status of the titles given under FRA?

Answer:

- The title given under the FRA is a legal title and is a formal recognition of forests right which is recognized and vested in the right holders in 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 in case only one head is alive as the case may be. It has the force of law and are non transferable, inalienable but heritable as per Section 4(4) of the Act.

Question: Can the Gram Sabha meetings be held at the habitation/hamlet level even in areas not coming under PESA?

Answer:

- Yes, the Gram Sabha may be held at the hamlet level in areas not coming under PESA.
- 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 settlement, forest village, old habitation or settlement and unsurveyed village may also be treated as village among others. Such entity, even if not notified or recorded as village, are recognized as village for the purpose of this Act.

Question: Whether the community rights of the non-Scheduled Tribes who are traditionally using the community resources in the Schedule V areas where PESA is applicable would be affected if they are not eligible for recognition of these rights in those areas under FRA?

Answer:

- No, the community rights of non-Scheduled Tribes or ineligible OTFDs will not be affected in Schedule V areas where PESA is applicable.
- Section 13 of the FRA clearly supports such an arrangement as the FRA is in addition to and not in derogation of any other law for the time being in force.

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

Answer:

- Yes, the title holders have right over trees on the forest land for which rights have been recognized under FRA.
- Section 3(1)(a) of the FRA recognizes the right of the FDSTs and OTFDs to hold and live in the forest land for habitation or for self-cultivation

for livelihood by a member of a forest dwelling Scheduled Tribe or other traditional forest dwellers. In view of the above, the titleholders have the right over the trees standing on the said forest land but for felling and disposal of the trees, the same shall be treated in the same manner as trees on private land are treated under the relevant State laws and shall be subject to conditions, requirements for permission etc. as specified in those laws.

- For further clarity, the number of trees on the land with species and size should be mentioned in the title. There would be no restriction on collecting and using the minor forest produce from such trees.

Question: The number of claims settled under Community Rights is very small as there is lack of adequate documentary evidence to corroborate those claims. What are the documentary evidences required in case of community rights?

Answer:

- Rule 12A(11) introduced through the recent amendment specifies that the SDLC / DLC cannot insist on a particular evidence in support of the claim. Physical and oral evidence is also admissible under Rule 13. Official documents such as working plans, gazetteers, forest settlement reports, and other types of evidence mentioned in Rule 13 may be considered. Further the evidence for rights over community forest resource and evidence for other forest rights in including community are distinguished in Rule 13 (1) and (2). In fact more evidences such as Government records or earlier classification of current reserve forest as protected forest or as gochar or other village common lands, nistari forests as well as earlier or current practice of traditional agriculture have been added as evidence for “community forest resource”.

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

Answer:

- The amendment rules now provide for post claim support to the forest rights holders and require the State Government departments especially tribal and social welfare, environment and forest, revenue, rural development, Panchayatraj and other departments to provide support for land improvement, land productivity, basic amenities and other livelihood measures under existing government schemes to such claimants and communities whose rights have been recognized and vested under the Act.

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

Answer:

- Article 275(1) provides window to each state to demand for grants for implementation of FRA. Grants under Special Central Assistance (SCA) to Tribal Sub Plans (TSP) can also be demanded for the development of land over which rights have been recognized.

Question: A lot of social capital has been invested by states in the capacity building of JFM Committees in the last 15-20 years for the protection, conservation and management of the forests. Shouldn't these JFMCs be converted into committees under 4(1) (e).

Answer:

- It is the prerogative of the Gram Sabha to decide whether to nominate the members of the JFMCs 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 a member of the Committee under Rule 4(1)(e). Automatic conversion of JFMCs 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 Committee under Rule 4 (1) (e).

Question: Should JFM Areas be directly converted to Community Forest Resource Titles?

Answer:

- As per the provisions of Act and Rules, automatic conversion for JFM areas into CFR areas is neither mandated nor desirable as the objectives, structure and mandate of JFM is different from that of rights under community forest resource. However, wherever JFM areas are co-terminus with CFR boundaries, Gram Sabha may apply and get the title to such community forest resource, subject to the final approval by DLC.

Question: Does Development right under section 3(2) which involve land use changes need to be referred under the Forest Conservation Act 1980?

Answer:

- No permission is needed under FCA, since the Forest Rights Act frees the rights of all encumbrances and procedural requirement of the Forest Conservation Act through Section 4(7). However such conditions must fulfill the conditions under Section 3(2) of the Act namely diversion of less than one hectare, 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 Act. Procedure for diversion of forest land under Section 3(2) of FRA has been laid down by the Ministry of Tribal Affairs vide Annexure to letter No-23011/15/2008-SG.II, dated- May 18, 2009.

Question: Is FRA applicable in National Parks and Sanctuaries? Would it not further threaten the last existing healthy forest with wildlife?

Answer:

- Yes, FRA is applicable in National Parks and Sanctuaries. FRA only recognizes pre existing rights which are already being exercised by the eligible persons in the National Parks and Sanctuaries. Therefore there is nothing new that is being done to bring fear to the future of National Parks and Sanctuaries except securing their tenure on such lands. Further, where such rights may potentially cause irreversible damage to wildlife, FRA provides for creation of inviolate areas for wildlife protection (called Critical Wildlife Habitats) through a democratic and transparent process after recognition of rights under the FRA is complete.

-XOX-