

TOWARDS CREATING
A MODEL FOREST AND
SCHEDULED AREA
GOVERNANCE
IN JHARKHAND

A MANUAL ON FOREST RIGHTS ACT AND PESA

PREPARED BY THE ENVIRONMENT LAW AND DEVELOPMENT FOUNDATION
(ELDF) FOR GOI-UNDP PROJECT ON ACCESS TO JUSTICE
FOR MARGINALIZED PEOPLE



Message

Recognising that access to justice is a precondition for a peaceful and progressive society, the Department of Justice is implementing a project on Access to Justice for Marginalized People with UNDP support. The project supports key justice service providers to enable them to effectively serve the marginalized groups. It also seeks to empower the communities by supporting strategies and initiatives that aim to address the barriers they face in accessing justice.

A key barrier faced by the most vulnerable and poor people in accessing justice is lack of awareness of their rights, and the processes to access these. It is in this context that the project supports activities like creating legal awareness materials; running law school based legal clinics, creating paralegal workers and using ICT, games, skits and community radio to generate awareness. This Manual has been prepared with the objective to create awareness, and is the result of a two-year study at the field level, of implementation of two key legislations on forest and scheduled area governance - Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) and Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA).

Traditionally, people living in or near the forests were dependent on forests for their sustenance. Yet their traditional rights over the land and its produce were not recognised and conferred for reasons of forest conservation. As a result, when cultivating the land, they have at times, faced eviction for being in unauthorised possession. In 2006, the FRA sought to undo this historic injustice by restoring to the Scheduled Tribes and other forest dwellers, not only the right to reside and cultivate forest land, but also the responsibility and authority to ensure conservation and sustainable use of forest resources. PESA seeks to further empower the local community through the Gram Sabha by bestowing on it powers to approve development plan and projects in the village, identify and select beneficiaries of

poverty alleviation and other schemes, and granting certificates of utilization of funds for plans and programmes implemented by the Panchayat in the Scheduled Areas. Together, these two laws strengthen the individual and community rights in a way that the Scheduled Tribes and other forest dwellers can safeguard and preserve their customs, community resources and customary mode of dispute resolution.

Supported by the Access to Justice Project, the Environment Law and Development Foundation (ELDF) has worked in five districts in the three States of Chhattisgarh, Jharkhand and Madhya Pradesh with the objective of activating the Gram Sabhas, creating local skill pool of lawyers who could assist communities in asserting their individual and community rights, and creating legal awareness on FRA and PESA. The Manual is an attempt to provide simplified information on the rights, duties, administrative processes and remedies under the two laws. By presenting the information in a question and answer format, the Manual has been made user-friendly, and can be conveniently used by NGOs, community based organisations and other agencies working on the rights of the tribal and forest dwelling populations. Lawyers, members of Panchayati Raj Institutions, and other State functionaries may also find it useful in performing their functions, and discharging their duties.

I am certain that the Manual will encourage the communities, Gram Sabhas, panchayats, state functionaries and other agencies to not only understand their rights and duties, but also their importance. The Government of India recognises the symbiotic relationship between these communities and the forest and is thus committed to ensuring the right to a dignified life along with the right of sustenance and livelihood for them, while at the same time ensuring forest conservation with their participation. The Manual advocates a harmonious implementation of FRA and PESA so that the forest dwelling population benefits from the existing governance structures. If



implemented in the right spirit, PESA and FRA can go a long way in assuaging the feelings of the Scheduled Tribes and forest dwellers, who have, in the past, faced harassment and, at times, displacement from the forests.

I complement ELDF for their wonderful effort in preparing this Manual, as also the officers of the Department of Justice, the Access to Justice Project Team and UNDP for their support to ELDF in their effort.



D. K. Sikri
Secretary,
Department of Justice, Government of India



Foreword

This manual has been prepared under the auspices of the Government of India and UNDP project on "Access to Justice for Marginalized People." The simplified user manual aims to raise awareness of two crucial legislative acts which together expand the legal rights of some of India's most marginalized tribal communities.

The manual includes sections on the 1996 Panchayat Extension to the Scheduled Areas Act, known as PESA, which sets the conditions for tribal populations to become part of the formal system of local governance while retaining features of their customary law and social practices. The manual also contains sections on the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. Known as FRA, this landmark legislation provides the basis for the restitution of individual rights to cultivated areas in forestlands as well as community rights over common resources.

As a global institution that provides technical assistance programmes in 100 countries aimed at increasing access to justice and strengthening the capacity of justice delivery institutions, UNDP recognizes that special initiatives are required to reach marginalized and persistently excluded communities. UNDP is proud to support the efforts of the Department of Justice to ensure that tribal communities are able to access justice better based on their awareness of the provisions under PESA and FRA.



Lise Grande
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Acknowledgement

This Manual on Forest and Scheduled Area Governance is prepared under the Government of India (GoI)-United Nations Development Program (UNDP) Project on Access to Justice for Marginalised People. Therefore, we extend our gratitude to the Department of Justice, GoI and UNDP for giving us this opportunity and for supporting our efforts.

We would also like to thank our local partners in Jharkhand: Sanjay Bosu Mullick, Suryamani Bhagat, Chandradev Bhagat, Promila, Jatru Oraon, Radha Krishna Munda and from ICFG, Advocate Chaitali Sinha and Advocate Soumitro Baroi and paralegal Ashutosh Behera.

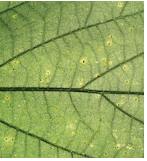
Finally we also thank the support staff of Environment Law and Development Foundation (ELD Foundation), for helping us with the translation and publication of the manual.

While the work is largely the effort of the entire ELD Foundation team, we take the blame for every mistake that we might have been overlooked in Manual and welcome suggestions and comments to improve upon our effort.



Hony. Managing Trustee
(Sanjay Upadhyay)





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Abbreviations

DLC	District Level Committee
ELDF	Environment Law and Development Foundation
FCA	Forest Conservation Act, 1980
FDST	Forest Dwelling Scheduled Tribes
FRA	Forest Rights Act, 2006
FRR	Forest Rights Rules, 2008
FRC	Forest Rights Committee
GoI	Government of India
MFP	Minor Forest Produce
MoTA	Ministry of Tribal Affairs
JPRA	Jharkhand Panchayati Raj Adhiniyam
NP	National Park
OTFD	Other Traditional Forest Dwellers
PAL	Panchayat at Appropriate Level
PESA	Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996
PTGs	Primitive Tribal Groups
SDLC	Sub Divisional Level Committee
ST	Scheduled Tribe
SLMC	State Level Monitoring Committee
TSP	Tribal Sub Plan
UNDP	United Nations Development Program
WLS	Wildlife Sanctuaries





Our Thoughts

Perhaps the most significant aspect of natural resource governance in India is the connect between the forest governance and the scheduled area governance framework. This connect and its knowledge becomes even more crucial with the passage of two crucial legal instruments within the last two decades, namely the Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). While states continue to implement these two important statutes, there is enough evidence to suggest that the operational arrangements under these two laws are still not well understood. The Ministry of Tribal Affairs has made several attempts to clarify implementation concerns of FRA through guidelines, clarifications and amendment of rules, most recently in September 2012. Similarly, the Ministry of Panchayati Raj and more importantly, the State Governments have come out with several operational arrangements to implement PESA. Without getting into the merits of such efforts, it is important to understand the intent of these efforts both in letter and spirit. Often, legal language itself and its interpretation becomes a barrier in its implementation. The field experience on these two crucial laws, especially in tribal dominated areas where their relevance is most significant suggests that the knowledge about the intent and operational aspects of the above two statutes is inadequate. It is important therefore to understand them and more importantly understand the crucial connect between forest governance and scheduled area governance as many believe that they could serve as the most important tool to overcome social unrest in tribal dominated areas in India.

Keeping in mind this aspect, ELD Foundation with the support of Department of Justice, GoI and United Nations Development Programme, India (UNDP) has developed this user manual on Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of

Forest Rights) Act, 2006 (FRA) and Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA). In our view, both Forest Rights Act and PESA are positive steps for achieving an ideal forest and Scheduled Area governance as the aim of both these landmark laws is ensuring conservation of forests as well as securing livelihood for the millions of marginalized people dependent on the forest for sustenance.

The present Manual is our humble attempt to impart a simplified yet in-depth understanding on the issues of forest and scheduled area governance, rights and duties of the beneficiaries, administrative processes, legal remedies available and how to use them to access justice, and build capacities of primarily the NGOs, community based organizations, civil society organizations and other bodies who are closely working with the communities to get access to justice through such instruments among others. The information in this manual will also be equally beneficial for other stakeholders such as State functionaries, lawyers, paralegals, law and order agencies and judicial officers associated with the governance of scheduled areas.

Structure of the Manual

The content is organized into three parts. Part A deals with the Forest Rights Act, which explains the different kinds of individual and community rights granted, process of recognition of those rights, powers and functions of the bodies involved in the process of recognition, empowered duties of the right holders among others and its applicability in the unique context of Jharkhand.

Part B demystifies PESA and elaborates on the concept of self-governance, essentials of self-governance, structure, functions and allocation of powers for self-governance in Scheduled Areas, how the provisions of the Act have been adapted and implemented by the State Government in Jharkhand. This section also presents a comparison between the mandate of the Central PESA and the



provisions of the Panchayat Raj Act of Jharkhand and other laws relevant to the fourteen subject matters covered under the Central PESA to critically analyse how the Jharkhand State Government has adopted and implemented the same in the State.

The concluding section of the booklet, Part C, advocates the need to view PESA and FRA as complementary to each other and the need to strengthen and preserve - the customs and traditional ways of life of the forest dwelling marginalized communities.

**Environment Law & Development
Foundation**



Forest and Scheduled Areas Governance

Tribal societies have been predominantly dependent on the forests for sustenance for centuries. Every indigenous community has rich wisdom and tradition of conserving natural resources and managing them for sustainable use. This uniqueness of the tribal cultures was recognized and preserved in the Constitution by declaring those areas which are largely inhabited by the tribal communities, as "Scheduled Areas" making special provisions for their governance. Thus, Scheduled Areas were demarcated in the states of Andhra Pradesh, Himachal Pradesh, Orissa, Jharkhand, Gujarat, Rajasthan, Maharashtra, Madhya Pradesh and Jharkhand, by the order of the President and were accorded a special status for administration.

A Tribes Advisory Council has been created in all states where there is a sizeable population of tribals to advice on matters pertaining to the welfare and advancement of Scheduled Tribes and more importantly, for the administration of these regions. The Governor has been given special powers for making regulations for the peace and good governance especially on matters related to land transfer by or among members of Scheduled Tribe, regulating allotment of land to members of Scheduled Tribes and regulating money lending with the objective of safeguarding the marginalized from exploitation. Besides, Governor has also been empowered to regulate the operation of any Act of the Parliament in the Scheduled Areas and to allow/disallow it

with modifications to suit the context of Scheduled Areas.

PESA and the FRA carry forward the special status given to Scheduled Areas by vesting powers with the local communities, through Panchayat Bodies, to manage their natural resources in accordance with their traditional customary practices. PESA acknowledges the importance of customary laws, social and religious practices of the tribals in efficient management of community resources and also empowers the Gram Sabha to control and manage the resources of the village. Forest Rights Act, on the other hand is a watershed legislation on forest tribal interface which aims to secure the traditional rights of the tribal communities as well as bonafide "other traditional forest dwellers". It recognizes those rights which have not been recorded during the reservation process by securing tenure and it aims at strengthening the conservation regime. The FRA provides in detail a framework of rights and responsibilities, authority and duties to protect, regenerate, conserve and manage community forest resources.

It is our conviction that both Forest Rights Act and PESA are two unique legislations that have the potential of adequately addressing the objectives of conservation and livelihood of the forest dependent communities through support from subject matter State legislation and if understood and implemented properly can become the pillars of an ideal forest and scheduled Area Governance framework in India.







PART- A
SECURING RIGHTS OF THE FOREST DWELLING
COMMUNITIES THROUGH SCHEDULED TRIBES
AND OTHER TRADITIONAL FOREST DWELLERS
(RECOGNITION OF FOREST RIGHTS) ACT, 2006



Introduction

The enactment of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as "FRA") has heralded a new chapter in the manner our forests are managed and governed under a secure tenure of the tribal communities and those who are dependent on forest resources for their livelihoods. The Act aims at securing traditional rights of the forest dependent communities and vesting and recognizing thirteen sets of forest rights that are being traditionally exercised by them but were ignored, restricted or prohibited during the process of reservation. The present user guide aims at simplifying the provisions of the FRA in order that those who are impacted and those who are implementing it get maximum benefits of this significant legislation.



FOREST RIGHTS ACT-The law that secures our rights in Forest and Forest Land

1. What is Forest Rights Act?

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 also known as Forest Rights Act (hereinafter referred to as FRA) is an Act to recognize and vest 'forest rights' and 'occupation' in forest land of 'forest dwelling scheduled tribes' and 'other traditional forest dwellers'.

2. Why was FRA enacted?

FRA was enacted

- To secure the tenure and traditional rights of the 'forest dwelling scheduled tribes' and 'other traditional forest dwellers on forest lands.
- To recognize and vest 'forest rights' and 'occupation' in forest land with the 'forest dwelling scheduled tribes' where they are scheduled and 'other traditional forest dwellers' who have been residing in such forests for generations but whose forest rights have not been recorded.
- To address long standing insecurity of tenurial and access rights of 'forest dwelling scheduled tribes' and 'other traditional forest dwellers'.

3. Who are entitled to get 'forest rights' under FRA?

Two categories of persons/community are beneficiaries under FRA.

1. Forest Dwelling Scheduled Tribe (FDST)
2. Other Traditional Forest Dweller (OTFD)

4. Who are Scheduled Tribes (ST)?

Scheduled tribes are the tribes that are notified by way of a Presidential Order as per the Constitution of India¹. It is area specific and it is not necessary that a scheduled tribe in one area would be a scheduled tribe in another area.

5. Who are included in 'forest dwelling scheduled tribes' (FDST)?

Forest dwelling scheduled tribes are persons or community of Scheduled Tribe who primarily reside in and who depend on the forests or forest lands for bonafide livelihood needs and includes the Scheduled Tribe pastoralist communities².

6. Who all are included in the category of 'other traditional forest dwellers' (OTFD)?

Any person or community who has been residing and depending on the forest or forest land for bonafide livelihood needs for a period of 75 years prior to 13.12.2005 . It is not necessary for the person to belong to any tribe or caste to be eligible for the category of 'other traditional forest dwellers'.

7. What does 'bonafide livelihood needs'³ mean in the context of FRA?

It means fulfillment of livelihood needs of self and family through the exercise of forest rights especially on self-cultivation. Further, it includes the sale of surplus produce arising out of exercise of the above right⁴. *See box 1 below for the rights vested with FDST and OTFD.*

¹ Order passed under Article 342(1) called "The Constitution (Scheduled Tribe) Order 1950"

² Section 2 (c) of the FRA

³ Rule 2(b) Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Rules, 2008

⁴ See Rule 2(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules of 2012



Box 1

FOREST RIGHTS VESTED WITH FDST AND OTFD UNDER THE FRA (SECTION 3 (1) FRA)

1. Right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a FDST or OTFD;
2. Community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
3. Right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
4. 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;
5. Rights, including community tenures of habitat and habitation for primitive tribal groups and pre- agricultural communities;
6. Rights in or over disputed lands under any nomenclature in any State where claims are disputed;
7. Rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
8. Rights of settlement and conversion of all forest villages, old habitation unsurveyed villages and other villages in forest, whether recorded, notified, or not, into revenue villages;
9. Right to protect, regenerate, or conserve or manage any community forest resource, which they have been traditionally protecting and conserving for sustainable use;
10. 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 tribals under any traditional or customary law of concerned tribes of any State;
11. Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
12. Any other traditional right customarily enjoyed by the FDST or OTFD, 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;
13. Right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and OTFD have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement or rehabilitation prior to the 13.12.2005.
14. Right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition. (This is not part of section 3 but forms part of section 4(8))



8. What is 'forest land'?

Forest land is land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forest, protected forest, reserved forest, sanctuary and national park. Different levels of individual and community forest rights are granted in all these lands to local communities. *See Box 2 below for different classifications of forest land.*

9. What is 'forest'?

The definition of forest is not given in FRA or any Central Act. There are

some definitions of forest under State Acts. An attempt has been made by Supreme Court to assign a meaning to the term 'forest' in the ongoing case of T.N Godavarman vs. Union of India also known as the 'forest case'. As per Supreme Court's order dated December 12 1996 it was stated, "The word 'forest' must be understood according to its dictionary meaning." This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act (FCA).

Box 2

FOREST LAND: CLASSIFICATION UNDER DIFFERENT STATUTES

- Unclassified forests are not defined under FRA or any other statute. These are forest lands which are at the disposal of the state government and where survey settlement processes have not yet been carried out.
- Undemarcated forests are also not defined under FRA and technically are protected forest where demarcation process has not been carried out. The J&K Forest Act defines undemarcated forests⁵.
- Protected Forests⁶ are in fact right burdened⁷ areas and are a legal category under the Indian Forest Act as well. In common parlance protected forests are those forest lands where everything is permitted except what is specifically prohibited.
- Reserved Forest⁸ is the most prohibited category under the Indian Forest Act as well as in other State Forest Acts (Note that forest is a concurrent subject whereby both the Central Government and the State Governments are competent to legislate) wherein most uses by local people are prohibited unless specifically allowed by a forest officer in the course of "settlement."
- Sanctuary⁹ is a legal category under the Wildlife Protection Act where the rights of any individual may continue with the permission of the Collector in consultation with the Chief Wildlife Warden of the concerned State,
- National Parks are constituted under the Wildlife Protection Act wherein all rights of local people are extinguished in the settlement process.

⁵ Section 2 (m) of the J &K Forest Act 1930: "undemarcated forest" means and includes all forest land (other than demarcated forest) which is the property of the Government and is not appropriated for any specific purpose.

⁶ Section 29 of the Indian Forest Act, 1927

⁷ In common parlance right burdened means areas where there are so many rights of communities and other stake holders that it is almost impossible to extinguish and compensate such rights. The Indian Forest Act therefore provides a process whereby the rights are not settled but the nature and extent of the rights of the government and of private persons on such lands are inquired into and recorded at a survey or settlement. Every such record is presumed to be correct until the contrary is proved. It is also important to understand that in case such an inquiry or recording is pending the law ensures that any existing rights of individuals or communities are not affected (Section 29 of the Indian Forest Act, 1927)

⁸ Section 20 of the Indian Forest Act, 1927

⁹ Section 18 Wildlife Protection Act, 1972



10. What are 'forest rights'?

Under the FRA there are two categories of rights

- Individual Forest Rights
- Community Forest Rights: The Amendment Rules of 2012 have

categorically specified what would be community rights. They include rights listed in Clauses (b), (c), (d), (e), (h), (i), (j), (k) and (l) of subsection (1) of Sec 3. *A more detailed explanation is given below in Box 3.*

Box 3

INDIVIDUAL AND COMMUNITY RIGHTS (AS PER AMENDMENT RULES 2012)

INDIVIDUAL RIGHTS

Right to hold and live in the forest land under the individual or under common occupation for habitation or for self-cultivation for livelihood for the members of FDST or OTFD. (3(1)(a))

Right in or over disputed lands under any nomenclature in any state where claims are disputed. (3(1)(f))

Rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles. (3(1)(g))

Right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005. (3(1)(m))

COMMUNITY RIGHTS

Community rights such as Nistar including those used in erstwhile princely states, zamindari or such intermediary regimes. (3(1)(b))

Right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries. (3(1)(c))

Community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or trans humant) and traditional seasonal resource access of nomadic or pastoralist communities. (3(1)(d))

Rights including community tenures of habitat and habitation for Primitive Tribal Groups and Pre-Agricultural Communities. (3(1)(e))

Rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forests, whether recorded, notified or not into revenue villages. (3(1)(h))

Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. (3(1)(i))



Rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State. (3(1)(j))

Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity. (3(1)(k))

Any other traditional right customarily enjoyed by the FDST or OTSD, 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. (3(1)(l))



A. Individual Rights

i. What do we understand by the right to dwell in a forest land and to cultivate forest land?

This is a right to hold forest land under individual or common occupation either for self-cultivation or for habitation or both. The Amendment Rules provide for another pragmatic aspect regarding the extent of land that shall be recognized for self-cultivation. It has explained that the "land rights for self-cultivation recognised under clause (a) of subsection (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"¹⁰. The above makes it clear that there is now recognition that the land for cultivation is not limited to the actual area under cultivation but also the lands which are used for ancillary purposes such as those mentioned above.

ii. What does the Rights of ownership over Minor Forest Produce Signify?

Minor forest produce is the life blood of a tribal society and is used to meet every household need such as for food, fodder, fuel wood, medicines, festivals, building material etc. Minor Forest Produce is defined in the Forest Rights Act to include all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane,

¹⁰ See Rule 12A (8) of the Amendment Rules of 2012

tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like. This definition given in FRA is an inclusive definition, which means that these are not the only varieties of minor forest produce, but more varieties of plant origin can be added to it depending on their usage by the community. A list of minor forest produce in their local names should be prepared in consultation with the forest department for finality and a formal title towards that must be obtained.

Forest Rights Act, grants a right of ownership over minor forest produce which was traditionally collected within or outside the village boundaries which includes the right to enter the forest to collect it, the right to use or sell it for livelihood¹¹ needs. This also includes individual or collective processing, value addition, transportation within and outside forest areas through appropriate means of transport for use of such produce or sale by gatherers or their cooperatives or associations or federations for livelihood.¹²

The Amendment Rules of 2012 has further explained that the transit permit regime in relation to transportation of minor forest produce shall be modified and given by the Committee constituted under clause (e) of sub-rule (1) of rule 4 or the person authorized by the Gram Sabha. Further, it clarifies that this procedural

requirement of transit permit in no way shall restrict or abridge the right to disposal of minor forest produce and most importantly the collection of minor forest produce shall be free of all royalties or fees or any other charges'.

iii. Right over Disputed Land

Rights can also be claimed over a land which is disputed. In other words, in case of a dispute over the custody of a particular land between forest department, revenue department or any other state department or between two states, claims of rights can be made over such land.

iv. Conversion of Leases or Pattas over Forest Land into Permanent Titles

By virtue of this right, the pattas or leases or grants on forest lands which were issued prior to the enactment of the FRA can be converted into permanent titles.

v. Right to Rehabilitation when Displaced or Evicted from Forest Land

A right holder can also claim in-situ rehabilitation and in cases where they have been illegally evicted or displaced or have not received their legal entitlement prior to December 13, 2005, they can also claim alternative land for the same. The Amendment Rules of 2012 further emphasizes that the State Level Monitoring Committee (SLMC) would specifically monitor the progress of such claims¹³.



¹¹ It is important to understand that the word sustenance has now been replaced by livelihood which suggests a more forward looking approach to tribal societies and their lives.

¹² Amendment Rules of 2012

¹³ See Rule 10 (f)

B. Community Forest Rights

i. What are Nistar Rights?

Nistar are Community rights, by whatever name called, including those used in erstwhile Princely States, Zamindari or any intermediary regimes. In the State of Jharkhand, these rights have been historically recorded through Khatian Part II. *See box 4 for details.*

ii. Community Rights and Entitlements

Community has certain usufruct rights such as fishing, grazing, (both settled or transhumant) and other entitlements granted to the community. It includes other

traditional seasonal use of resource by the nomadic or pastoralist communities. The Amendment Rules of 2012 have re-emphasized that the District Level Committee shall facilitate the filing of claims by pastoralists, transhumant and nomadic communities as described in clause (d) of sub-section (i) of section 3 before the concerned Gram Sabhas.

iii. Right of Habitat for Primitive Tribal Groups and Pre-Agricultural Communities

If Primitive Tribal Groups such as Juang, Chenchu, Baiga, pre-agricultural communities such as

Box 4

RECORD OF RIGHTS IN JHARKHAND

1. Khatiyani Part II:

Khatiyani Part II is a system of recording rights adopted during the revisional settlements of 1912-1920. The record of rights under Khatiyani Part II in relation to jungles, trees and wasteland was recorded in the names of each village with the Sub Divisional Officer (SDO) being the custodian on behalf of the Deputy Commissioner of the District. It compiled a record of community and collective ownership in relation to jungles, trees and wasteland in the names of each village. The rights exercised by the resident cultivators as well as the non-agriculturist residents' rights were recorded with general remarks in other columns of the Khatiyani Part II.

2. Village Note:

Besides Khatiyani Part II, Village notes are maintained to separately record traditional forests rights of every village.

Below are examples of certain nistar rights that were recorded in Khatiyani Part II and were enjoyed by communities in the past and can now be claimed under Forest Rights Act.

Ownership over Trees in Rakhat Jungle

- Trees growing in the rakhat jungle or wasteland belong jointly to the Government and the village concerned, unless they have been planted by a resident cultivator, in which case they belong to him. Whereas, trees, which are self-grown in a cultivator's land, and have been tended or reared by him, belong to him. This right is known as hathrope.
- When a resident cultivator reclaims wasteland and brings it under cultivation, he frequently allows scattered trees to stand on the land. These trees remain the property of the Government if shown as such in the gairmazrui malik khatian, (records of rights of landlord) and the right of ownership over them does not pass by custom to the resident cultivator.
- The fruits of the trees growing in a cultivator's lands are generally enjoyed by the whole community, except the fruits of Kathal (Jackfruit), Karanj and Imli (Tamarind) which are the exclusive property of the owner of the trees.



Jhumias or other traditional forest dwellers who have been cohabiting in a forest land, they can claim the right to their habitat, even if it falls inside a reserved forest or a protected forest. The Amendment Rules recognizing the lack of such claims being filed, has re-emphasized that the District Level Committee shall, in view of the differential vulnerability of Particularly Vulnerable Tribal Groups as described in clause (e) of sub-section (i) of section 3 amongst the forest dwellers, ensure that all Particularly Vulnerable Tribal Groups receive habitat rights, in consultation with the concerned traditional

institutions of Particularly Vulnerable Tribal Groups and their claims for habitat rights are filed before the concerned Gram Sabhas, wherever necessary by recognizing floating nature of their Gram Sabhas.

iv. Right of Conversion of Forest Villages into Revenue Village

Those settlements, forest villages, old habitations, unsurveyed villages or any other village in forest if not recorded in revenue records of the government can now be converted into revenue villages under the Forest Rights Act. This conversion has certain advantages. *See box 5* for details on forest villages and

Box 5

FOREST VILLAGES

Forest villages were created by the forest department to obtain a sufficient and continuous supply of labor for forestry operations such as forest protection and other works of improvement. An agreement was entered into between the residents of the village and the forest department which would define the roles and responsibilities of the members of the village and in lieu of their services; several rights that were granted to the residents to meet their livelihood needs. These rights could be land for cultivation which were to be held as service jagir and could not be transferred by sale, lease or mortgage. However, the residents did not have a title over the land and it could be taken back at the discretion of the forest department. No rent was charged on such lands. Besides, free grazing was allowed in the forest area for reasonable number of cattle as determined by the forest department. The residents were also allowed to collect forest produce such as timber, fruits, flowers, grass, and bamboo for household and agricultural needs.

A separate register was maintained by the forest department giving a description of the village, its boundaries, number of cultivators admitted, and objective of the establishment of the village among others. A sketch map of the village was also prepared.

Benefits of Conversion of Forest Villages into Revenue Villages:

Although forest village is recognised by the forest department the revenue benefits such as developmental schemes such as for education, irrigation, sanitation initiated by the government from time to time cannot accrue to such villages as they are not technically under the revenue department. This has caused numerous conflicts at the field level. Hence there is an urgent need to bring such forest villages under a legal definition either under the Indian Forest Act or recognised as revenue villages depending on the circumstances. However, such conversion should not lead to honey-combing of forests.

Note: To claim rights under Forest Rights Act, the register maintained by forest department and the various maps can be used as an evidence to show traditional access and thus to validate the claims.

the advantages of conversion of forest villages or any other unsurveyed villages into revenue villages.

In Jharkhand there are 14 forest villages and for such conversion of forest villages to revenue villages a notification was issued around 1982 for such conversion. However, this has not yet been converted legally.

The Amendment Rules of 2012 have further added that the conversion of forest villages, unrecorded settlement under clause (h) of section 3 shall include the actual land-use of the village in its entirety, including lands required for current or future community uses, like, schools, health facilities and public spaces."¹⁴ This has been done with the pragmatic concern that if forest villages are converted into revenue villages, then the revenue benefits shall flow to such villages and the future needs of such villages also needs to be taken care of.

v. Right over Community Intellectual Property

As mentioned earlier tribal communities possess rich culture, long standing customs, practices, traditional wisdom referred to as their traditional knowledge. In many cases, this traditional knowledge has been orally passed for generations from person to person often through stories, legends, folklore, rituals, songs, and even laws. For instance, traditional knowledge may include knowledge about the medicinal properties of particular species of plant or a unique farming practice which increases the crop yield and which is exclusively possessed by the members of a particular tribal community as part of their culture. Often this time-honored wisdom of the local communities are accessed without permission by private

companies, individuals who unfairly exploit the knowledge to earn huge profits without sharing benefits with the local communities who have originally held that knowledge.

However, the Forest Rights Act provides a mechanism to secure control of the community over their traditional knowledge by claiming it as a Community Intellectual property under the Act. Once this is done no one can access and use the knowledge without the permission of the community.

vi. Right to Protect, Regenerate, Conserve and Manage Community Forest Resources

Community forest resource (CFR) is the customary common forest land where the communities had traditional access, or which could be construed to be customary boundaries of a village. This would therefore mean that they are only those areas where communities can demonstrate their traditional access overlapped with legal categories like reserved forests, protected forests and protected areas such as Sanctuaries and National Parks under various legislations that would qualify to be community forest resource.

It is a right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use. Thus far the Rules were silent on how to secure this right in the form of a title. The amendment Rules of 2012 now adds another form under which such claim to CFR may not only be claimed but a title is also given to such community. A process has also been delineated in this regard. Further the amendment Rules also now corrects a



¹⁴ Inserted by Rule 11 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

long standing typographical error where evidence of such community forest resource was wrongly written as evidence for community forest rights. This also means that to delineate community forest resource, a set of

evidences can now be used for a legitimate claim on community forest resource which the community has been traditionally protecting. *See Box 6 for details.*

Box 6

COMMUNITY FOREST RESOURCE

Community Forest Resource means customary common forest land within the traditional or customary boundaries of a village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests such as sanctuaries and national parks to which the community had traditional access. (Section 2(a) FRA).

In plain language community forest resource is a customary common forest land within a village where communities had traditional access such as a worship place, sacred pond, fishing grounds, sacred grove, and burial or cremation grounds among others. Even if these areas fall within a forest land which includes unclassified forest, undemarcated forest, existing or deemed forest, protected forest, reserved forest, sanctuaries or national parks (see Box 2 for the meaning of the various categories of forests), communities have the right to conserve and manage them.

Traditional Rights of Pastoralist and Nomadic Communities:

The definition of community forest resource also includes seasonal land use by pastoralist communities. Although this is often ignored it is extremely crucial. This seasonality of land use has never yet been taken into account by any forest legislation. Numerous pastoralist communities around the country have for centuries used forest lands as well as other common lands in their traditional migratory routes; so far this has been only resulting in conflict or resolved through mutual negotiation. For the first time the FRA addresses this complexity. Many pastoralist communities are nomadic and practice transhumant (seasonal movement of people with their livestock over relatively short distances, typically to higher pastures in summer and to lower valleys in winter.) In such cases, the law is unclear on the process of demarcation of the community lands for them. Similarly migratory/pastoral communities have been using forest land for various purposes including grazing, NTFPs collection, temporary habitation etc. during particular seasons. It is therefore, essential to unravel this complexity and carry out a more rigorous study on the types of community resources used, exact forest areas (location) from where resources are used in order to help the community to get their rights recognized. It is also true that the same resources are also used by the local settlers in the same forest area. Who will have precedence or preference needs to be further clarified in the Rules including the process of such recognition between local settlers and migratory community. This needs further enquiry and debate, both from the legal standpoint and from the resource management perspective.

The Amendment Rules of 2012 in fact have now put a special provision where the District Level Committee has been specifically mandated to ensure that such claims of particularly vulnerable tribal groups as well as pastoralists and trans-human are filed before the concerned Gram Sabhas and their legitimate rights are vested.



Given below is the evidence for Community Forest Resources.

Box 7

EVIDENCE FOR COMMUNITY FOREST RESOURCE (AS PER AMENDMENT RULE 2012)

- Community rights such as Nistar, by whatever name called
- Traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection, territories of herbal practitioners
- Remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;
- Government records or earlier classification of current reserve forest as protected forest or as gochar or other village common lands, nistari forests
- Earlier or current practice of traditional agriculture.

Rights itself is crucial to the existence of community forest resource. Thus, it is clear that the community and individual rights need to be exercised in such a way that they do not harm the community forest resource. It is the prime responsibility of the Gram Sabha to ensure this. Therefore Forest Rights Acts bestows on forest rights holders, Gram Sabha and Village Level Institutions the following duties to protect, conserve and manage Community Forest Resource: (Section 5 of the Act)

- Protect wild life, forest and biodiversity
- Ensure adequate protection of adjoining catchments area, water sources and other ecological sensitive areas
- Ensure and preserve the habitat of FDST & OTFD from any kind of destructive practices which affects their cultural and natural heritage
- Ensure compliance of Gram Sabha decisions to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity.

viii. Other Community Rights Recognized by the State or Autonomous Councils

This includes rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State. This primarily deals with those rights which have been recognized and also where the community has de facto control over such community resources particularly in the North Eastern States of Indian and more specifically in the special states such as Nagaland, Arunachal Pradesh and Sixth Schedule Areas.

ix. Any other traditional right not

vii. What is meant by the 'right to conserve'?

The concept of Community Forest Resource is primarily linked to the right to protect, regenerate, conserve or manage any Community Forest Resource which the FDST or the OTFD have been traditionally protecting and conserving for sustainable use. It is further linked to duties of the right holders, the Gram Sabha or the village institutions where they have been empowered to regulate access to the Community Forest Resource and prohibit any activity that adversely affects the wild animals, forests and biodiversity. It is obvious that the existence of Community



mentioned

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 above. However, in the exercise of these traditional rights Forest Rights Act does not allow hunting or trapping or extracting a part of the body of any species of wild animal. Such a clause is always added where the legislature ordinarily cannot envisage the entire gamut of rights and thus adds such a clause called as a "residuary clause". This has been very creatively used for example in some states to ensure the community forest resource title in the absence of such a provision prior to the amendment Rules of 2012.

11. What is 'critical wildlife habitat'?¹⁵ How are 'critical wildlife habitat' created? Can 'forest right holder' tribe be resettled from 'critical wildlife habitat' areas?

"Critical wildlife habitats" are such areas within National Park or Sanctuaries which have to be declared by Central Government for protection of wild plants and animals. These areas are supposed to be kept inviolate and eventually create a sanctum sanctorum which cannot be diverted for any other use other than forest and wildlife conservation. In fact a six step procedure has been laid down in the FRA to declare such critical wildlife habitats as inviolate. Note that declaration of a critical wildlife habitat and making them inviolate are two separate processes.

The above mentioned individual and community rights can also be claimed in national parks and sanctuaries which can

then be converted into critical wildlife habitat. In that event the rights granted under the FRA may be modified.

a) These rights may be modified if:

- It is established through scientific evidence that the exercise of these rights in these areas will harm the forest and wildlife.
- If it is established with scientific evidence that coexistence of right holders with the wildlife is not possible.

b) Right to Resettlement and Rehabilitation in case claims in Critical Wildlife Habitats are modified and the areas have to be kept inviolate:

- In case the right of FDST and OTFD in Critical Wildlife Habitats is modified because of the above mentioned conditions, they may have to be relocated from there. Before the relocation is carried out the government shall prepare a rehabilitation and resettlement package.
- The resettlement and rehabilitation package must ensure livelihood security to the displaced tribal and other traditional forest dwellers and is approved by the Gram Sabha in writing.
- Also the people shall not be relocated from their present dwelling unless settlement proceedings have been completed and land has been allocated as per the approved settlement package.

Note: After an area is made inviolate within a national park or a sanctuary and rehabilitation proceedings have been completed the State Government cannot divert the said critical wildlife habitat for any other purpose whatsoever.



¹⁵ Rule 2(b) Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Rules, 2008

A 'right holder' can be resettled or his 'forest right' can be modified after seven steps are followed:

Box 8

SEVEN STEPS TO CREATING A 'CRITICAL WILDLIFE HABITAT'

1. MoEF may notify Critical Wildlife Habitats after a process of consultation by an expert committee, which includes experts from the locality including a representative from MoTA.
2. Completion of process of recognition and vesting of forest rights in the areas under consideration.
3. Certification by agencies under WLPA that activities or impact of right holders upon wild animals is sufficient to cause 'irreversible damage' and threaten the species and their habitat.
4. Conclusion by state government that 'reasonable option' of 'co-existence' is not available.
5. Preparation of resettlement or alternatives package that secures a 'livelihood'.
6. Gram Sabha has given its 'free informed consent' in writing to the proposed resettlement.
7. Resettlement only after facilities and land is available at the resettlement location as per the package.

12. What is the "Right to Development and Basic Amenities"?

Apart from the above mentioned Rights, the Forest Rights Act also explicitly provides for the right to development. It directs the Central Government to allow diversion of forest lands for facilities / purposes which are essential for a community living, such as:

- schools;
- dispensary or hospital;
- Anganwadis;
- fair price shops;

- electric and telecommunication lines;
- tanks and other minor water bodies;
- drinking water supply and water pipelines;
- water or rain water harvesting structures;
- minor irrigation canals;
- non-conventional source of energy;
- skill upgradation or vocational training centers;
- roads; and
- community centers

This right is significant because it safeguards the community against the provision mentioned in Section 2 of the Forest Conservation Act, 1980 which prohibits the diversion of forest land for any non-forest purpose such as construction of roads, bridges, buildings etc. The following points need to be remembered for the exercise of such rights. *See box 9.*

Box 9

POINTS TO REMEMBER UNDER FOREST CONSERVATION ACT 1980:

- If such diversion requires felling of trees then it should not be more than seventy-five trees per hectare.
- For the purposes mentioned above, maximum land allowed for each purpose is one hectare.
- Recommendation of Gram Sabha for each of the above developmental projects is mandatory.

The procedure for claiming the development rights is different from the process prescribed in Forest Rights Act for claiming other rights. Following is the procedure:

i. Procedure for Diversion of Forest Land for any of the above Facilities

For the purpose of ensuring land for the developmental activities, the Ministry of Tribal Affairs, Government of India issued

directions¹⁶ detailing the procedure for seeking prior approval for diversion of forest land for non-forest purposes for facilities managed by the Government. The procedure requires that:

- Any user agency wanting to use the forest land for any developmental project should make a proposal in the required form and should place before the Gram Sabha. (The appropriate Form appended, i.e. Form 'A', is attached as Annexure E.)
- While taking decision on the proposal at least 50% members of the Gram Sabha should be present.
- Once the Gram Sabha passes the resolution, the User Agency, will submit the proposal along with the Gram Sabha resolution to the concerned Range Forest Officer of the area.
- The Range Forest Officer will then make a site inspection. Within three weeks from the date of proposal received from user agency the Range Forest Officer has to submit his opinion (prescribed form B - Annexure E) with the proposal and site inspection report to Divisional Forest Officer.
- The Divisional Forest Officer concerned will within four weeks decide on the proposal. If he accepts the proposal, he will forward the same to the Range Forest Officer and Chairperson, District Level Committee. If he rejects the proposal then it will be forwarded to the District Level Committee for final decision.
- The District Level Committee will take final decision and if the proposal is accepted, the Divisional Forest Officer is informed of this for implementation and correction of records and maps. While deciding on the proposal there should be at least

1/3 quorum in District Level Committee.

- Once approval for diversion of the forest land is made by Divisional Forest Officer or District Level Committee the following steps will be taken:
 - Range Forest Officer will demarcate the area of the forest land approved for diversion and hand over the same to the User Agency under the supervision of the Gram Sabha.
 - The condition of land diverted is that it has to be used for the purpose for which it was demanded and no other.
 - The user agency has to start the proposed activity within one year from the date of handing over otherwise the land will be taken back by forest department.

ii. Steps towards monitoring and reporting on diversion of forest land

- DFO will submit quarterly report to the Conservator of Forests who is the nodal officer of state.
- The nodal officer of state will submit report to the Secretary, Tribal Welfare Department
- A consolidated state report will then be sent to the Ministries of Tribal Affairs and Environment & Forests.
- The Nodal Officer will also monitor the progress.

13. How are Forest Rights Recognized and vested under FRA?

Forest rights are recognized and vested through a process of recognition given in Forest Rights Act. Various institutions are created at different levels for successfully steering this process. Let us understand their constitution, powers and functions and the process of recognition of rights.



¹⁶ Through annexure to letter No 23011/15/2008-SG.II dated May 18, 2009

A. Gram Sabha

i. Role of the Gram Sabha

Forest Rights Act recognizes Gram Sabha or the village assembly as a crucial body in the process of recognition and vesting of forest right. Gram Panchayat convenes the first Gram Sabha. For the first time, Gram Sabha has been recognized as a statutory authority. *See box 10 below for quorum of the Gram Sabha.*

Box 10

QUORUM OF GRAM SABHA

- The quorum of the Gram Sabha meeting shall not be less than one half of all members of such Gram Sabha;
- At least one-third of the members present shall be women in such meetings;
- Where any resolutions in respect of claims to forest rights are to be passed, at least fifty per cent of the claimants to forest rights or their representatives shall be present;
- All the resolutions shall be passed by a simple majority of those present and voting. (Amendment Rules of 2012- Rule 4 (2))

Note: State government authorities are supposed to provide necessary assistance the Gram Sabha.

ii. What is the function of the Gram Sabha in the process of recognition and vesting of Rights?

1. Constitution of a Forest Rights Committee

- a. Gram Sabha in its first meeting shall constitute a Forest Rights

Committee (FRC) from among its members.

- b. It must ensure that the Forest Rights Committee should not have less than ten and not more than fifteen members. Out of which at least two-third members¹⁷ should be forest dwelling scheduled tribes and one third should be women belonging to either forest dwelling scheduled tribes or other traditional forest dwellers. If there are no Scheduled Tribes as members of Gram Sabha then one-third members of the FRC should be women.
- c. After constitution of the Committee it shall choose a Chairman and Secretary from amongst its members and intimidate the Subdivision Level Committee about its constitution, particulars of members and officers.

2. Verifying Forest Rights Claims

Gram Sabha initiates the process for determining nature and extent of individual or community forest rights by:

- a. Preparing a list of claimants and maintaining a register containing such details as required by government
- b. Once the process is complete passes a resolution accepting or rejecting the claims, after hearing the interested persons and authorities concerned
- c. Forward a copy of its resolution to the Subdivision Level Committee.

¹⁷ Earlier it was only one third members. But now this has been increased by the Amendment Rules of 2012

3. Considering Resettlement Packages

For resettlement of people displaced due to modification of their right for creating critical wildlife habitats, the state government prepares resettlement packages which promise just and fair compensation to the affected communities. Gram Sabha has the authority to consider these packages and make recommendations to the government.

4. Conservation of Community Forest Resource

Gram Sabha may constitute Committees from amongst its members for the protection of wildlife, forest and biodiversity and community forest resources.

iii. Some new significant functions of Gram Sabha added: Committee and Conservation and Development Plan

The Committee such constituted shall 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 forest dwelling Scheduled Tribes and other Traditional Forest Dwellers. Such conservation and management plans must also be integrated with the micro plans or working plans or management plans of the forest department with such modifications as may be considered necessary by the committee. The monitoring of this committee is vested with the Gram Sabha. Further, the approval of the Gram Sabha has to be taken before implementing all decisions of the committee pertaining

to issue of transit permits, use of income from sale of produce, or modification of management plans.¹⁸

B. Forest Rights Committee

i. What is Forest Rights Committee (FRC)?

The Forest Rights Committee (FRC) is a committee elected by the members of the Gram Sabha to perform the functions of the Gram Sabha under FRA.

ii. What is the composition of FRC?

FRC consists of minimum of 10 members and maximum of 15 members elected by Gram Sabha. One third of the members of FRC have to be Scheduled Tribes and one third of the members have to be women. It is the members of FRC that have the power to decide on a chairperson and secretary. *See box 11 below for details.*

Box 11

WHO ARE THE MEMBERS OF FOREST RIGHTS COMMITTEE?

- Members: minimum ten and maximum fifteen
- Two third members from Scheduled Tribes
- One third members be women
- If no Scheduled Tribes available, then one third of such members should be women
- Forest Rights Committee will decide a Chairperson and Secretary and intimate the Subdivision Level Committee

Note: when claims of a Forest Rights Committee member are being verified then he should not participate.



¹⁸ Inserted by Rule 5(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012)

14. What are the different authorities under the FRA? What is there composition and functions?

In a nut shell:

Table 1

Authority under FRA	Composition of the Authority	Functions of the Authority
Gram Sabha (Forest rights Committee (FRC))	<ul style="list-style-type: none"> ■ Gram Sabha to be convened by the Gram Panchayat (Rule 3(1)) ■ Elect from amongst its members, a committee of <i>not less than ten</i> but <i>not exceeding fifteen persons</i> as members of the Forest Rights Committee, ■ Two-third members shall be the <i>Scheduled Tribes</i> ■ Not less than one-third of such members shall be <i>women</i>, ■ Where there are no Scheduled Tribes, at least one third of such members shall be women ■ Forest Rights Committee to decide on a Chairperson and a Secretary and intimate SDLC (Rule 3(2)) 	<ul style="list-style-type: none"> ■ Gram Sabha to initiate the process for determining the nature and extent of individual or community forest rights or both within the local limits of its jurisdiction under this Act by <i>receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim. (Section 6(1) and Rule 4)</i> ■ prepare a list of claimants of forests rights and maintain a register containing such details of claimants and their claims as the Central Government may by order determine; ■ pass a resolution on claims on forest rights after giving reasonable opportunity to interested persons and authorities concerned and forward the same to the Sub-Divisional Level Committee; <i>(Section 6(1) and rule 4)</i> ■ consider resettlement packages under clause (e) of sub section (2) of section 4 of the Act and pass appropriate resolutions; ■ Constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act.
Sub-Divisional Level Committee (SDLC)	<p>SG to constitute SDLC as follows:</p> <ul style="list-style-type: none"> (a) Sub-Divisional Officer or equivalent officer - Chairperson; (b) Forest Officer in charge of a Sub-division or equivalent officer - member; (c) three members of the Block or Tehsil level Panchayats to be nominated by the District Panchayat of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to the primitive tribal groups and where there are no Scheduled Tribes, two members who are preferably 	<ol style="list-style-type: none"> 1. Examine the resolutions passed by the Gram Sabha 2. Prepare the records of forest rights 3. Forward it to the District Level Committee for a final decision. 4. provide information to each Gram Sabha about their duties and duties of holder of forest rights and others towards protection of wildlife, forest and biodiversity with reference to critical flora and fauna which need to be conserved and protected ; 5. provide forest and revenue maps and electoral rolls to the Gram Sabha or the Forest Rights Committee; 6. collate all the resolutions of the concerned Gram Sabhas;

Authority under FRA	Composition of the Authority	Functions of the Authority
	<p>other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council or other appropriate zonal level, of whom at least one shall be a woman member; and</p> <p>(d) An officer of the Tribal Welfare Department in-charge of the Sub-division or where such officer is not available the officer in-charge of the tribal affairs. (Rule 5) (Total members:6)</p>	<ol style="list-style-type: none"> 7. consolidate maps and details provided by the Gram Sabhas; 8. examine the resolutions and the maps of the Gram Sabhas to ascertain the veracity of the claims; 9. hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights; 10. hear petitions from persons, including State agencies, aggrieved by the resolutions of the Gram Sabhas; (petition to be filed within 60 days and opportunity of being heard would be provided) (Section 6(2) proviso) 11. co-ordinate with other Sub-Divisional Level Committees for inter sub divisional claims ; 12. prepare block or Tehsil-wise draft record of proposed forest rights after 13. reconciliation of government records; 14. raise awareness among forest dwellers about the objectives and procedures laid down under the Act and in the rules ; 15. ensure easy and free availability of proforma of claims to the claimants as provided in (See Annexure B of Annexure-I for Forms A & B) of these rules (and also Annexure II for title on Forest Land under occupation and Annexure - III & IV for CFR title) 16. Ensure that the Gram Sabha meetings are conducted in free, open and fair manner with requisite quorum. (rule 6)
District Level Committee (DLC)	<p>SG to constitute DLC with the following members:</p> <p>(a) District Collector or Deputy Commissioner - Chairperson;</p> <p>(b) concerned Divisional Forest Officer or concerned Deputy Conservator of Forest - member;</p> <p>(c) three members of the district panchayat to be nominated by the district panchayat, of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to members of the primitive tribal groups, and</p>	<ol style="list-style-type: none"> 1. ensure that the requisite information under clause (b) of rule 6 has been provided to Gram Sabha or Forest Rights Committee; 2. examine whether all claims, especially those of primitive tribal groups, pastoralists and nomadic tribes, have been addressed keeping in mind the objectives of the Act; 3. consider and finally approve the claims and record of forest rights prepared by the SDLC; 4. hear petitions from persons aggrieved by the orders of the SDLC



Authority under FRA	Composition of the Authority	Functions of the Authority
	<p>where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council of whom at least one shall be a woman member;</p> <p>(d) An officer of the Tribal Welfare Department in-charge of the district or where such officer is not available, the officer in charge of the tribal affairs. (Total members:6)</p>	<ol style="list-style-type: none"> co-ordinate with other districts regarding inter-district claims; issue directions for incorporation of the forest rights in the relevant government records including record of rights; ensure publication of the record of forest rights as may be finalized; ensure that a certified copy of the record of forest rights and title under the Act, as specified in Annexures II & III & IV of the FRA is provided to the concerned claimant and the Gram Sabha respectively
State Level Monitoring Committee (SLMC)	<p>SG to constitute a SLMC with the following members, namely:-</p> <ol style="list-style-type: none"> Chief Secretary - Chairperson; Secretary, Revenue Department - member; Secretary, Tribal or Social Welfare Department - member; Secretary, Forest Department - member; Secretary, Panchayati Raj - member; Principal Chief Conservator of Forests - member; three Scheduled Tribes member of the Tribes Advisory Council, to be nominated by the Chairperson of the Tribes Advisory Council and where there is no Tribes Advisory Council, three Scheduled Tribes members to be nominated by the State Government; Commissioner, Tribal Welfare or equivalent who shall be the Member- Secretary. 	<ol style="list-style-type: none"> devise criteria and indicators for monitoring the process of recognition and vesting of forest rights; monitor the process of recognition, verification and vesting of forest rights in the State; meet at least once in three months to monitor the process of recognition, verification and vesting of forest rights, consider and address the field level problems, and furnish a quarterly report in the format appended as Annexure V to these rules, to the Central Government on their assessment regarding the status of claims, the compliance with the steps required under the Act, details of claims approved, reasons for rejection, if any and the status of pending claims; on receipt of a notice as mentioned in section 8 of the Act, (cognizance of offences: prior notice to be given to SLMC before initiating any action under the act) take appropriate actions against the concerned authorities under the Act; monitor resettlement under sub-section (2) of section 4 of the Act.
Ministry of Tribal Affairs (MoTA)		Nodal agency for administration of FRA. Issue general or special directions, to every authority referred to in FRA (Section 12)

15. How does the Forest Rights Committee assist the Gram Sabha

The main role of the Forest Rights Committee is to assist the Gram Sabha in consolidating and verifying claims. Following are its main functions:

- a. Receives claim forms along with evidences supporting the claims
- b. Visit the site and physically verify the nature and extent of the claim and evidences submitted.
- c. Ensure that the claim received from pastoralists, nomadic tribes primitive tribal groups and pre-agricultural communities for determination of their rights are verified at a time when these individual, communities are present.
- d. Prepares a map specifying the area for each claim
- e. Record its findings on the claim and present them to the Gram Sabha for consideration. See box 12 for the role of the Forest Rights Committee

Box 12

DELINEATION OF COMMUNITY FOREST RESOURCE AND ROLE OF FOREST RIGHTS COMMITTEE

The Forest Rights Committee, after due intimation to the concerned claimant and the Forest Department delineate the customary boundaries of the community forest resource with other members of the Gram Sabha including elders who are well versed with such boundaries and customary access.

They then prepare a community forest resource map with recognizable land marks and through substantial evidence as enumerated in sub-rule (2) of rule 13

Thereafter, such community forest resource claims are to be approved by a resolution of the Gram Sabha passed by a simple majority¹⁹.

Note: State government authorities are supposed to provide necessary assistance the Gram Sabha.

16. What are the Powers and Functions of Subdivision Level Committee?

The main function of Subdivision Level Committee is to collate the claims, resolutions, maps submitted to it by the various Gram Sabhas of the Block or Tehsil and forward them to the District Level Committee with recommendations on the veracity of claims. However, the recommendations of the Subdivision Level Committee are not binding on the District Level Committee which means that the District Level Committee can reject the recommendations of Subdivision Level Committee and take its decision on the claims. It is important to note that Subdivision Level Committee does not have the power to take decisions on the claims. This power is with the Gram Sabha, Forest Rights Committee and finally District Level Committee whose decision shall be final.

- a. Provide information to each Gram Sabha about their duties and duties of holders of forest rights and others towards protection of wildlife, forest and biodiversity with reference to critical flora and fauna which need to be conserved and protected.
- b. Provide Gram Sabha and Forest Rights Committee with forest and revenue maps and electoral rolls to help them perform their functions of recording and verifying claims.
- c. Ensure Gram Sabha meetings are held with required quorum and in a free, open and fair manner.
- d. Collate all the resolution, maps and other details provided by the concerned Gram Sabha regarding claims received and decided by it.
- e. Examine resolutions and maps submitted by the Gram Sabha to ascertain the veracity of claims
- f. Ensure easy and free availability of forms for filing claims given in Annexure I of the FRA Rules. See Annexure I Form A
- g. In case two or more Gram Sabhas have



¹⁹ Added by the amendment Rules of 2012

a dispute on the nature and extent of any forest rights, they can submit their dispute to the Subdivision Level Committee for adjudication. Subdivision Level Committee also hears petition from persons, state agencies aggrieved by the resolutions of the Gram Sabha. While there may be pending cases of claims at Subdivision Level Committee. The Subdivision Level Committee should not wait and while it hears the petitioners whose claims are at dispute, Subdivision Level Committee should forward the list of record of rights to the District Level Committee through the sub-divisional officer

- h. Prepare block or tehsil-wise draft record of proposed forest rights after referring to government records.
- i. Forward the claims with the draft record of proposed forest rights through the Sub Divisional Officer to the District Level Committee for final decision.
- j. Coordinate with other sub divisional committees for inter sub divisional claims.

17. Who are the members of the District Level Committee? (see Box 13)

18. What are the Powers & Functions of the District Level Committee?

- a. Ensure that Gram Sabha and Forest Rights Committee are provided with forest and revenue maps and electoral rolls of Panchayat
- b. Examine all claims, with special emphasis on the claims of Primitive tribal groups, Pastoralists and nomadic tribes
- c. Consider and finally approve the record of forest rights prepared by Subdivision Level Committee. The decision on the record of forest rights shall be final and binding.
- c. Issue directions to the government department for incorporating the newly granted forest rights in the relevant records including record of rights.

Box 13

MEMBERS OF DISTRICT LEVEL COMMITTEE

- a) District Collector or Deputy Commissioner - Chairperson;
- b) Concerned Divisional Forest Officer or concerned Deputy Conservator of Forest - member;
- c) three members of the district Panchayat to be nominated by the district Panchayat, of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to members of the primitive tribal groups, and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council of whom at least one shall be a woman member; and
- d) An officer of the Tribal Welfare Department in-charge of the district or where such officer is not available, the officer in charge of the tribal affairs.

- e. Ensure publication of the records of forest rights as they are finalized.
- f. Ensure that a certified copy of the record of forest rights and the title under Forest Rights Act (*as given in Annexure C*) is provided to the claimants and the concerned Gram Sabha.
- g. Hear complaints against orders of Subdivision Level Committee
- h. Coordinate with other districts in cases of claims which are inter districts
- i. Ensure that a certified copy of the record of the right to community forest resource and title under the Act, as specified in Annexure IV to the rules, is provided to the concerned Gram Sabha or the community whose rights over community forest resource have been recognized under clause (i) of sub-section(1) of Section 3. This was an important addition to the amendment Rules of 2010 to ensure that the title to Community Forest Resource is not only recognized but ensured.



19. Who are the members of the State Level Monitoring Committee?

Box 14

MEMBERS OF STATE LEVEL MONITORING COMMITTEE

- a) Chief Secretary - Chairperson;
- b) Secretary, Revenue Department - member;
- c) Secretary, Tribal or Social Welfare Department - member;
- d) Secretary, Forest Department - member;
- e) Secretary, Panchayati Raj - member;
- f) Principal Chief Conservator of Forests - member;
- g) three Scheduled Tribes member of the Tribes Advisory Council, to be nominated by the Chairperson of the Tribes Advisory Council and where there is no Tribes Advisory Council, three Scheduled Tribes members to be nominated by the State Government;
- h) Commissioner, Tribal Welfare or equivalent who shall be the Member-Secretary.

level problems, and furnish a quarterly report in the format appended as Annexure V to these rules, to the Central Government on their assessment regarding the status of claims, the compliance with the steps required under the Act, details of claims approved, reasons for rejection, if any and the status of pending claims.²¹

[This addition becomes necessary to strengthen the state level monitoring systems and the amendment Rules now provides a specific format for reporting which is not just quantitative but also qualitative.]

- c. Monitors resettlement in cases of forest rights in critical wildlife areas when being modified or resettled.
- d. Takes appropriate action on complaints / notice by Forest Dwelling Scheduled Tribes concerning resolution of Gram Sabha and on any complaint made by Gram Sabha through a resolution against any higher authority, meaning against Sub Division Level Committee or District Level Committee.

20. What are the State Level Monitoring Committee's Functions and Powers?

- a. Devises criteria and indicators for monitoring and monitors the process of recognition and vesting of forest rights.
- b. Meet at least once in three months to monitor the process of recognition, verification and vesting of forest rights, consider and address the field

Note: if SDLC does not act within 60 days of notice then the aggrieved person or Gram Sabha can take up the matter to court.

The SLMC has been specifically asked to lay emphasis on the in situ rehabilitation, cases where FDSTs and OTFDs have been illegally evicted and further to also examine those cases where land has been acquired but not used for that purpose for more than five years²².

²⁰ Inserted by Rule 7(iii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012).

²¹ Substituted by Rule 8 (i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012

²² See Amendment Rules 2012- Rule 10(f)



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21. What is the process for determination and verification of claims- 12 Steps to Forest Rights?

Step 1: The Gram Sabha calls for the claims and authorizes the FRC to accept the claim in Form A or B or C. Claims are to be preferred within 3 months from the date of such calling by the Gram Sabha. Form A or B or C to be accompanied by atleast two evidences.

Step 2: In case of delineation of community forest resource intimation of the same to the adjoining Gram Sabha if it overlaps their jurisdiction and SDLC.

Step 3: Every claim to be duly acknowledged in writing by FRC.

Step 4: Prepare the record of claims and evidence including maps

Step 5: Verify claims by making a site visit to enquire as to the extent of the claim and evidence. The representatives of the pastoralist community should be present at the time of making the site inspection.

Step 6: FRC to prepare a map delineating the area of each claim indicating recognizable landmarks

Step 7: FRC to present their findings on the verification process to Gram Sabha for its consideration

Step 8: Gram Sabha to pass a resolution after considering the findings of FRC and forward the resolution and claims to SDLC.

Step 9: The SDLC collates all the resolutions of the Gram Sabhas, examines the resolutions and the maps of the Gram Sabha to ascertain the veracity of claims.

Step 10: SDLC prepares a block or tehsil wise draft record of proposed forest rights after reconciliation of government records.

Step 11: SDLC then forwards the claims with the draft record of proposed forest rights to District Level Committee (DLC) for final decision.

Step 12: DLC to consider and finally approve the claims and record of forest rights prepared by SDLC. The decision of DLC is final.²³

22. How are claims to forest rights recognized?

i. Constitution of a Forest Rights Committee

Gram Sabha is convened by the Gram Panchayat where the members of the Gram Sabha are informed about the individual and community forest rights granted by FRA, process of gaining those rights, duties for conservation of the forest resources among others. Community is asked to file claims. A Forest Rights Committee is also constituted from among the members of the Gram Sabha to receive claims.

Box 15

OCCUPATION SINCE DEC 13, 2005: A MUST!

It is to be noted that the recognition and vesting of forest rights in any Forest Dwelling Scheduled Tribe or Other Traditional Forest Dweller depends on the condition that he has occupied the forest land before December 13, 2005

ii. Filing of Claims

Form A²⁴ is for filing individual rights claims and Form B is for filing community rights claims (See Annexure I for a copy of the Claim form). Form C is for CFR claims (See Annexure I for claim form and Annexure II, III & IV for title). These claims are to be submitted to the Forest Rights Committee within 3 months from the date of calling of such claims by the Gram Sabha. Both the forms are to be accompanied by any two evidences mentioned above to support the claim.

iii. Role of Revenue and Forest Officials

The new Rules have provided some more clarity on the role of the cutting edge officials and their obligations.

²³ Section 6 (4) FRA

²⁴ Some states have also printed such forms in different colors. Thus, for example, Form A is yellow and Form B is pink.

Thus, for example, it is provided that on receipt of intimation from the Forest Rights Committee, the officials of the Forest and Revenue departments shall remain present during the verification of the claims and the verification of evidences on the site and shall sign the proceedings with their designation, date and comments, if any.

Further, if any objections are made by the Forest or Revenue departments at a later date to a claim approved by the Gram Sabha, for the reason that their representatives were absent during field verification, the claim shall be remanded to the Gram Sabha for re-verification by the committee where objection has been raised and if the representatives again fail to attend the verification process the Gram Sabha's decision on the field verification shall be final.

iv. Land Rights for Self Cultivation further Explained: Includes lands for allied activities

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.

v. Receipt and recording of claims

Forest Rights Committee shall receive the claims and acknowledge each one of them in writing. It shall prepare the record of claims and evidence including maps along with a list of claimants.

vi. Verification of Claims by the Forest Rights Committee

- Forest Rights Committee shall visit

the site and physically verify the nature and extent of the claim and evidence on the site

- Receive further evidence from the claimants or witnesses to verify the claims.
- For verification of the claims of the pastoralists and nomadic tribes, primitive tribal groups and pre-agricultural communities, presence of communities is compulsory.
- Forest Rights Committee prepares a map delineating the area of each claim indicating recognizable landmarks

vii. Special Emphasis on Community Rights

The Forest Rights Committee shall also prepare the claims on behalf of Gram Sabha for "community forest rights in Form B and the right over community forest resource under clause (i) of sub-section (1) of Section 3 in Form C.²⁵

viii. Process of Recognition of Community Rights:- Special Role of DLC

The amendment Rules have re-emphasised that the District Level Committee shall, in view of the differential vulnerability of Particularly Vulnerable Tribal Groups it shall ensure that all Particularly Vulnerable Tribal Groups receive habitat rights, in consultation with the concerned traditional institutions of Particularly Vulnerable Tribal Groups and their claims for habitat rights are filed before the concerned Gram Sabhas, wherever necessary by recognizing floating nature of their Gram Sabhas.

Further the District Level Committee shall facilitate the filing of claims by pastoralists, transhumant and nomadic communities, another group for special emphasis.

²⁵ The word "community forest rights in Form B" substituted by Rule 9 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

It has been provided that the District Level Committee shall ensure that the right to community forest resource relating to protection, regeneration or conservation or management of forest, which forest dwellers might have traditionally been protecting and conserving for sustainable use, is recognized in all villages with forest dwellers and the titles are issued.

Further, in case where no community forest resource rights are recognized in a village, the reasons for the same shall be recorded by the Secretary of the District Level Committee.

ix. Conversion of Forest Village and Revenue Village further Explained: Current and future use

The conversion of forest villages, unrecorded settlement under the Act shall include the actual land-use of the village in its entirety, including lands required for current or future community uses, like, schools, health facilities and public spaces²⁶.

x. Presentations of findings to the Gram Sabha

Forest Rights Committee will present its findings on the verification process to the Gram Sabha for its approval.

xi. Approval of the Gram Sabha

Gram Sabha will pass a resolution after considering the findings of Forest Rights Committee and forward the resolution and claims to Subdivision Level Committee. In case 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 Committee of the respective Gram Sabhas will jointly consider the nature of enjoyment of such claims and submit the findings to their respective Gram Sabhas in writ-

ing. In case the Gram Sabhas are not able to resolve the issues it shall be forwarded to the Subdivision Level Committee for resolution.

xii. Forwarding the resolution, claims, maps to the Subdivision Level Committee

The Subdivision Level Committee will collate all the resolutions of the Gram Sabhas in the block/tehsil, examine the resolutions and the maps of the gram sabha to ascertain the veracity of claims.

xiii. Preparation of Record of Forest Rights by Subdivision Level Committee

Subdivision Level Committee will prepare a block or tehsil wise draft record of proposed forest rights after reconciliation of government records. (See Annexure I for Format for Preparing Record)

xiv. Forwarding the Record to the District Level Committee

Subdivision Level Committee will then forward the claims with the draft record of proposed forest rights to District Level Committee for final decision.

xv. Final Decision on Forest Rights Claims

District Level Committee will consider the record of rights prepared by the Subdivision Level Committee and take a final decision on the claims.

xvi. Entry in the Record of Rights: Now Time Bound

The District Level Committees are required to send the record of rights of claimant(s) to the District Collector for entry in the revenue and other relevant records of the State. To secure the rights received and to avoid confusion the recipients must ensure record-



²⁶ Inserted by Rule 11 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

ing of such rights in the revenue records and other records of the forest departments also.

It has been further provided in the amendment Rules that on completion of the process of settlement of rights and issue of titles as specified in Annexure II, III and IV of these rules, the Revenue and the Forest departments shall prepare a final map of the forest land so vested and the concerned authorities shall incorporate the forest rights so vested in the revenue and forest records, as the case may be, within the specified period of

record updation under the relevant State laws or within a period of three months, whichever is earlier.

23. What are the evidences required for proving entitlement to forest right?

As mentioned above, the Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers can lay claim to any of the thirteen sets of rights mentioned in the Act. However, in order to prove the authenticity of their claims they have to support it with evidence. Forest Rights Act provides an exhaustive list of evidences that the claimant can give to prove his claim (*See Box 16*). Among the list of

Box 16 LIST OF EVIDENCES

For determination of individual forest rights any two of the below mentioned evidences would be enough. Further they are not in order so any two will be sufficient to support one's claim.

Public documents including

- government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery,
- working plans, management plans, micro-plans, forest enquiry reports, other forest records,
- record of rights by whatever name called, pattas or leases,
- reports of committees and commissions constituted by the Government,
- Government orders, notifications, circulars, resolutions;

Government authorized documents such as

- voter identity card,
- ration card,
- passport,
- house tax receipts,
- domicile certificates;
- quasi-judicial and judicial records including court orders and judgments;
- any record including maps,
- record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;
- research studies,
- documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed

institutions, such as Anthropological Survey of India

- physical attributes such as house, huts and permanent improvements made to land including leveling, bunds, check dams and the like;
- traditional structures establishing antiquity such as wells, burial grounds, sacred places
- genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;
- Statement of elders other than claimants, reduced in writing.

The new amendment Rules have further clarified the evidence for "Community Forest Resource"²⁷ which inter alia, include -

- community rights such as nistar by whatever name called;
- traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;
- remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;
- Government records or earlier classification of current reserve forest as protected forest or as gochar or other village common lands, nistari forests
- Earlier or current practice of traditional agriculture²⁸



²⁷ Substituted by Rule 12(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

This was earlier titled as "community forest rights" which was a typographical error

²⁸ Inserted by Rule 12 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

evidences a minimum two evidences should be given. These evidences have to be considered at all levels of the recognition process, by all the committees, be it at the Gram Sabha, the Sub division level committee or the District Level Committee.

It has been further provided by the amendment Rules, 2012 that the Sub-Divisional Level Committee or the District Level Committee shall consider the evidence specified in rule 13 while deciding the claims and shall not insist upon any particular form of documentary evidence for consideration of a claim.

Explanation: 1. Fine receipts, encroacher lists, primary offence reports, forest settlement reports, and similar documentation by whatever name called, arisen during prior official exercise, or the lack thereof, shall not be the sole basis for rejection of any claim.

More importantly the satellite imagery and other uses of technology may supplement other form of evidence and shall not be treated as a replacement²⁹.

24. Which is the nodal agency for the implementation of FRA?

The Ministry of Tribal Affairs is the nodal agency for the implementation of FRA. Ministry of Tribal Affairs has issued various circulars from time to time for effective implementation of the act.

25. What is the appellate mechanism under FRA?

Any person who is aggrieved by the resolution of the Gram Sabha can file a petition to SDLC.

- The petition has to be filed within a period of 60 days from the date of resolution.
- SDLC to fix a date for hearing and inform the date to the petitioner and

Gram Sabha atleast 15 days prior to the date of the hearing. The notice has to be in writing and as well as through a notice at a convenient public place in the village.

- SDLC can either allow the petition or reject or refer the petition to Gram Sabha for reconsideration.
- In case of a reference to Gram Sabha, by SDLC a Gram Sabha meeting is to be held within a period of 30 days from the receipt of reference. The Gram Sabha has to pass a resolution on that reference and send it back to SDLC.
- SDLC will consider the resolution and pass appropriate orders.
- In case of a dispute between two or more Gram Sabhas a joint meeting is called for by SDLC to mutually settle the matter. In case there is no mutual settlement of dispute then within a period of 30 days SDLC would decide the dispute after hearing the concerned parties.

Any person aggrieved by the decision of SDLC can file a petition before DLC.

- The petition to be filed within a period of 60 days from the date of decision of SDLC.
- DLC to fix a date for hearing and inform the date to the petitioner and SDLC at least 15 days prior to the date of the hearing. The notice has to be in writing and as well as through a notice at a convenient public place in the village.
- DLC can either allow the petition or reject or refer the petition to SDLC for reconsideration.
- In case of a reference to SDLC, the SDLC shall hear the petitioner and Gram Sabha and take a decision and inform the DLC.
- DLC will consider the petition and pass appropriate orders.
- " In case of a discrepancy between the

²⁹ Inserted by Rule 11 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

orders of two or more SDLCs, the DLC can suo moto call for a meeting of the concerned SDLCs with a view to reconcile the differences mutually. In case a mutual decision is not possible then DLC would pass orders after hearing the SDLCs.

26. Who has to ensure that claim forms are given to claimants?

SDLC has to ensure easy and free availability of the claim forms to the claimants.

27. What happens in case of non-compliance of the provisions of FRA?

In case of contravention of the provisions of FRA, any authority, committee, officers, or member of authority or committee can be held liable for an offence that is punishable with a fine that may extend to Rs 1000.

28. When can the court take cognizance of offences under FRA?

The Court will take cognizance of any offence only after, a notice of 60 days or more is given by any FDST against the resolution of Gram Sabha or by the Gram Sabha against a higher authority to the State Level Monitoring Committee and the Committee has not taken any action.

29. What is the Procedure for Individual or Community aggrieved by the Resolution of the Gram Sabha Petitions to Sub-Divisional Level Committee

i. Any person who is not satisfied by the resolution of the Gram Sabha can complain to the Sub division Level Committee.

- The complaint has to be filled within 60 days from the date of the resolution.

ii. Once Sub division Level Committee receives the complaint petition; Sub division Level Committee will:

- Fix a date to hear the complain and also fix a convenient public place in the village for meeting
- Sub Division Level Committee will send notice in writing to the

complainant and Gram Sabha

- Notice has to be sent fifteen days prior to such meeting

iii. After hearing the aggrieved person, Sub division Level Committee will:

- Either allow or reject the complaint or ask the Gram Sabha to reconsider.

iv. If Sub Division Level Committee has referred to the Gram Sabha for reconsideration

- Gram Sabha should meet within a thirty days to hear the complainant and
- Pass a resolution concerning the matter and forward its decision to Sub Division Level Committee.

v. Sub Division Level Committee will consider the second resolution and will either accept or reject the same.

30. What is the Procedure for Resolution of disputes between Two or More Gram Sabhas?

- If an application is filled by any Gram Sabha
- Then Sub division Level Committee can call for a joint meeting of all concerned Gram Sabhas to resolve the dispute
- Sub division Level Committee will give the Gram Sabhas a time of 30 days to resolve their dispute mutually, if they fail to resolve by themselves
- Sub division Level Committee would then pass its orders after hearing both the Gram Sabhas.

31. What is the Procedure for redressal from Sub division Level Committee's Decision Petition to District Level Committee within Sixty Days from the Decision of Sub Division Level Committee?

- Only petitions preferred and considered by Sub division Level Committee can be preferred by District Level Committee
- District Level Committee shall consider and dispose of only those



petitions considered by Sub division Level Committee and no fresh petition can be presented to District Level Committee for hearing.

- Provide reasonable opportunity to aggrieved person to present his case
- Fix a date to hear the complain and also fix a convenient public place in the village for meeting
- District Level Committee will send notices in writing to the complainant and Sub division Level Committee
- Notices have to be sent fifteen days prior to such meeting
- After hearing the aggrieved person, District Level Committee will either allow or reject or ask the District Level Committee to reconsider.
- If District Level Committee has referred to the Subdivision Level Committee for reconsideration, Subdivision Level Committee should hear the complainant and Gram Sabha and pass an order concerning the matter and forward its decision to District Level Committee.
- District Level Committee will consider the second resolution and will pass an order either accepting or rejecting the complaint.

32. What is the Procedure for Resolving Divided Opinions of two or more Subdivision Level Committees?

- In cases the opinions of two or more Subdivision Level Committees are divided or conflicting
- District Level Committee will call for a joint meeting of all concerned Subdivision Level Committee
- If no mutual decisions are reached between Subdivision Level Committees then District Level Committee would hear the parties and decide and pass orders

33. Appeal to Claim: Some more clarification by Amendment Rules, 2012

If any person is aggrieved or who objects to a claim as passed by the Gram Sabha or as recommended by the SDLC then he or she may appeal within a period of sixty

days and it is further provided that it shall be extendable to a period of thirty days at the discretion of the above said committees.

Further, if any other state agency desires to object to a decision of the Gram Sabha or the Sub-Divisional Level Committee, it shall file an appeal before the Sub-Divisional Level Committee or the District Level Committee, as the case may be, which shall be decided by the Committee (in the absence of the representative of the concerned agency, if any) after hearing the claimant.

Further, all decisions of the Sub-Divisional Level Committee and District Level Committee that involve modification or rejection of a Gram Sabha resolution or recommendation of the Sub Divisional Level Committee shall give detailed reasons for such modification or rejection, as the case may be:

It is also provided that no recommendation or rejection of claims shall be merely on any technical or procedural grounds:

It is further provided that no committee (except the Gram Sabha or the Forest Rights Committee) at the Block or Panchayat or forest beat or range level, or any individual officer of any rank shall be empowered to receive claims or reject, modify, or decide any claim on forest rights.

■ **Reasons to be communicated in Person**

In the event of modification or rejection of a claim by the Gram Sabha or a recommendation for modification or rejection of a claim forwarded by the Sub-Divisional Level Committee to the District Level Committee, such decision or recommendation on the claim shall be communicated in person. Such a provision is necessary to the claimant as it would enable him/her to prefer a petition to the Sub-Divisional Level Committee or District Level Committee as the case may be.

Some principals of natural justice have also been added by the amendment Rules, 2012 where it has been provided that no petition of the aggrieved person shall be disposed of, unless he has been given a reasonable opportunity to present anything in support of his claim. Further, the Sub-Divisional Level Committee or the District Level Committee shall remand the claim to the Gram Sabha for re-consideration instead of modifying or rejecting the same, in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.

In cases where the resolution passed by the Gram Sabha, recommending a claim, with supporting documents and evidence, is upheld by the Sub-Divisional Level Committee with or without modifications, but the same is not approved by the District Level Committee, the District Level Committee shall record detailed reasons for not accepting the recommendations of the Gram Sabha or the Sub-Divisional Level Committee as the case may be, in writing, and a copy of the order of the District Level Committee along with the reasons shall be made available to the claimant or the Gram Sabha or the Community as the case may be.

34. What are the Offences and Penalties under the FRA?

i. Offences by members or officers of authorities and Committees under this Act

If any members or officers of authority and committee contravene any provision of the Act or Rules, such person would be deemed to be guilty of an offence.

- Proceedings can be initiated against such persons and

- They can be fined upto one thousand rupees

However such persons will not be punished if he proves that the offence committed was without his knowledge or he had exercised all due diligence to prevent the commission of such offence.

35. What is the Cognizance of offences?

Cases which the Courts have power to consider under Forest Rights Act are:

- From Forest Dwelling Scheduled Tribes concerning disputes related to Gram Sabha resolution or
- From Gram Sabha against any higher authority.

Gram Sabha's complaint can only be considered by the Court after the Gram Sabha has filed a complaint before the State Level Monitoring Committee and which has not taken any action within 60 days.

36. What is the Post Claim support and handholding to holders of forest rights?

One of the most significant amendments to the Rules is the provision for post claim support and handholding to the holders of forest rights. It has been provided that the State Government shall ensure through its departments especially tribal and social welfare, environment and forest, revenue, rural development, panchayati raj and other departments relevant to upliftment of forest dwelling scheduled tribes and other traditional forest dwellers, that all government schemes including those relating to land improvement, land productivity, basic amenities and other livelihood measures are provided to such claimants and communities whose rights have been recognized and vested under the Act.³⁰

37. What is the extent of land that can be granted for self-cultivation or habitation



³⁰ Inserted by Rule 13 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

as a 'forest right' to FDST and OTFD?

A 'forest right' relating to land for habitation or self-cultivation is restricted to the area under actual occupation and in no case exceed an area of four hectares.³¹

38. Is 'forest right' transferable or alienable?

Forest right granted under this Act is heritable but not alienable or transferable. It passes on to the next kin- for example from father to son and so on.

Some Common Myths about FRA and their clarifications

1. Does every family get four hectares of land under FRA for self cultivation?

Ans. No. Only such lands that are under actual cultivation and those that are used for ancillary purpose up to a maximum of four hectares may be recognized.

2. Do you have to pay any money for securing the forms under FRA?

Ans. No. it is absolutely free. It is the duty of the

3. Do you have to pay any money for getting the title?

Ans. No payment is to be made to anyone to get the title.

4. Do you have to pay any money for getting your land measured?

Ans. No. It's the state duty to provide patwari, former patwaris, amins or by whatever name they are called to measure your land under occupation.

5. Can the Forest Department plant sapling on the same land that has been recognized?

Ans. No. It is under the title of the right holder and he/she can use for the purpose of cultivation as before.

6. Can you ask the Collector/DLC about the reasons for rejecting your claim? Or information about the status of your claim?

Ans. Yes. And they are bound to reply with reasons in a time bound manner.

7. For Other traditional forest dwellers, do you have to occupy the forest land under cultivation for seventy five years?

Ans. No. It is only residence that has to be proved through evidence not the occupation of forest land. She/he should occupy such forest land under cultivation only prior to December 13, 2005.

8. Can you claim forest rights over revenue land?

Ans. No

9. Can you claim forest rights over forest land under the control of the revenue department?

Ans. Yes.

10. Can you get loan on the title granted under the FRA?

Ans. Yes. The title under FRA can be pledged but not alienated for securing loans.

11. Is the title valid if the name of the spouse is not there?

Ans. No. The title must bear the name of the spouse if alive.

12. Can only a few people claim community forest resource claim? Is there a minimum number?

Ans. Yes they can. No there is no minimum number of claimants for claiming community forest claim.

13. Should all eligible claimants be evicted from forests?

Ans. No. It is not necessary that all ineligible claimants are illegal. They may be dealt with in accordance with prior circulars and also under their other constitutional and legal rights.

14. Does the limit of four hectares apply to community forest rights claim too?

Ans. No it does not.



³¹ Section 4 (6) FRA

15. Is forest rights claim only for the landless? So if you have a piece of land can you still apply for forest rights?

Ans. No. You can claim forest rights even if you have a piece of land. However, if you have land less than four hectares, then you can claim only upto a maximum limit of four hectares?

16. If you have not filled a colored form, would your claim be rejected?

Ans. No. As long it is a correct form, it cannot be only rejected on that ground. In fact no form can be rejected only on technical or procedural ground

17. Is it true that only after the individual rights claim process is complete, then the community forest rights claim are entertained?

Ans. No both claims may be presented simultaneously.

18. Can the block level officers accept or reject your claim?

Ans. No. They can neither accept nor reject a claim.

19. Can the Gram Sabha constitute a Committee under FRA when there is already a JFM committee?

Ans. Yes, they can. And in fact integrate the existing JFMC in their fold.

20. Can areas under JFM be automatically converted into a community forest resource claim?

Ans. No. It should satisfy the parameters of what is legally defined as community forest resource, which is ordinarily an area which the community had traditional access and over which they have had customary rights.

21. Can forest rights be claimed in existing national parks, sanctuaries, tiger reserves?

Ans. Yes.



ANNEXURE A

[29th December, 2006]

An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions. BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:

CHAPTER I - PRELIMINARY

1. Short title and commencement. -
 - (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
 - (2) It extends to the whole of India except the State of Jammu and Kashmir.
 - (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. Definitions.- In this Act, unless the context otherwise requires,-
 - (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;
 - (b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in



the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;

- (c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;
- (d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;
- (e) "forest rights" means the forest rights referred to in section 3;
- (f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;
- (g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;
- (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;
- (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;
- (j) "nodal agency" means the nodal agency specified in section 11;
- (k) "notification" means a notification published in the Official Gazette;
- (l) "prescribed" means prescribed by rules made under this Act;
- (m) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;
- (n) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;
- (o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

Explanation.-For the purpose of this clause, "generation" means a period comprising of twenty-five years;

- (p) "village" means-
 - (i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; or
 - (ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or
 - (iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
 - (iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;
- (q) "wild animal" means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 and found wild in nature.

CHAPTER II - FOREST RIGHTS

3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.-
 - (1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-
 - (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
 - (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
 - (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
 - (d) 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;
 - (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
 - (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;
 - (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
 - (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
 - (i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
 - (j) 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 tribals under any traditional or customary law of the concerned tribes of any State;
 - (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
 - (l) 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;
 - (m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.
 - (2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-
 - (a) schools;
 - (b) dispensary or hospital;
 - (c) anganwadis;
 - (d) fair price shops;
 - (e) electric and telecommunication lines;
 - (f) tanks and other minor water bodies;
 - (g) drinking water supply and water pipelines;



- (h) water or rain water harvesting structures;
- (j) minor irrigation canals;
- (k) non-conventional source of energy;
- (l) skill upgradation or vocational training centres;
- (m) roads; and
- (n) community centres:

Provided that such diversion of forest land shall be allowed only if,-

- (i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

CHAPTER III - RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

4. Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers. -

(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-

- (a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;
- (b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:-

- (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
- (c) the State Government has concluded that other reasonable options, such as, co-existence are not available;
- (d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
- (e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
- (f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package;

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

- (3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.
 - (4) A right conferred by sub-section (1) 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 and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.
 - (5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.
 - (6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.
 - (7) The forest rights shall be conferred 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, except those specified in this Act.
 - (8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.
5. Duties of holders of forest rights.- The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to-
- (a) protect the wild life, 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.



CHAPTER IV - AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof. -

- (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.
- (2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section
- (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:

Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

- (3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.
- (4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

- (5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.
- (6) The decision of the District Level Committee on the record of forest rights shall be final and binding.
- (7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.
- (8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.
- (9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

CHAPTER V - OFFENCES AND PENALTIES

7. Offences by members or officers of authorities and Committees under this Act.- Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with was committed without his knowledge or that he had exercised all due diligence to prevent the fine which may extend to one thousand rupees:

Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence commission of such offence.

8. Cognizance of offences.- No court shall take cognizance of any offence under section 7 unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

CHAPTER VI - MISCELLANEOUS

9. Members of authorities, etc., to be public servants.- Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.
10. Protection of action taken in good faith. -
- (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.
- (2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.
- (3) No suit or other legal proceeding shall lie against any authority as referred to in Chapter IV including its Chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.
11. Nodal agency.- The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.
12. Power of Central Government to issue directions.- In the performance of its duties and exercise of its powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.
13. Act not in derogation of any other law.- 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.



14. Power to make rules. -

- (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-
 - (a) procedural details for implementation of the procedure specified in section 6;
 - (b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;
 - (d) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;
 - (d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;
 - (e) any other matter which is required to be, or may be, prescribed.
- (3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

ANNEXURE B

SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) RULES, 2007

(TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)
OF DATED 1st JANUARY, 2008)

GOVERNMENT OF INDIA
MINISTRY OF TRIBAL AFFAIRS

New Delhi, the 1st January, 2008

NOTIFICATION³³

G.S.R. No. 1(E) WHEREAS the draft of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 were published, as required by sub-section (1) of section 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) under the notification of the Government of India in the Ministry of Tribal Affairs number G.S.R. 437 (E), dated the 19th June 2007 in the Gazette of India, Part II, Section 3, sub-section (i) of the same date, inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of the period of thirty days from the date on which the copies of the Gazette containing the said notification are made available to the public;

AND WHEREAS the copies of the said Gazette were made available to the public as on 25.06.2007.

AND WHEREAS the objections and suggestions received from the public in respect of the said draft rules have been duly considered by the Central Government;

NOW, THEREFORE, in exercise of the powers conferred by sub-sections (1) and (2) of section 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the Central Government hereby makes the following rules for recognizing and vesting the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers residing in such forests, namely:- :-

1. Short title, extent and commencement.-
 - (1) These rules may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007³³.
 - (2) They shall extend to the whole of India except the State of Jammu and Kashmir.
 - (3) They shall come into force on the date of their publication in the Official Gazette.

³² Note: The symbol "#" represents the original formulation of Rules issued in 2007 and notified on January 1, 2008; and has also been reproduced for easy reference.

³³ Note that these Rules have been substantially amended by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012)

2. Definitions:-

(1) In these rules, unless the context otherwise requires,-

"Act" means the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);

a) "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;³⁴

b) "claimant" means an individual, group of individuals, family or community making a claim for recognition and vesting of rights listed in the Act;

'(ca) "community rights" means the rights listed in clauses (b), (c), (d), (e), (h), (i), (j), (k) and (l) of sub-section (1) of section 3³⁵

c) disposal of minor forest produce" under clause (c) of sub-section (1) of section 3 shall include right to sell as well as individual or collective processing, storage, value addition, transportation within and outside forest area through appropriate means of transport for use of such produce or sale by gatherers or their cooperatives or associations or federations for livelihood;

Explanation:

(1) The transit permit regime in relation to transportation of minor forest produce shall be modified and given by the Committee constituted under clause (e) of sub-rule (1) of rule 4 or the person authorized by the Gram Sabha,

(2) This procedural requirement of transit permit in no way shall restrict or abridge the right to disposal of minor forest produce,

(3) The collection of minor forest produce shall be free of all royalties or fees or any other charges³⁶

d) "Forest Rights Committee" means a committee constituted by the Gram Sabha under rule 3;

e) "section" means the section of the Act

(2) The words and expressions used and not defined in these rules but defined in the Act, shall have the meanings respectively assigned to them in the Act.

2A. Identification of hamlets or settlements and process of their consolidation - The State Government shall ensure that, -

(a) every panchayat, within its boundaries, prepares a list of group of hamlets or habitations, unrecorded or unsurveyed settlements or forest villages or taungya villages, formally not part of any Revenue or Forest village record and have this list passed by convening Gram Sabha of each such habitation, hamlets or habitations included as villages for the purpose of the Act through a resolution in the Panchayat and submit such list to Sub Division Level Committee.

³⁴ Substituted by Rule 2(1) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012)

Rule 2(1) (b) "bonafide livelihood needs" means fulfillment of sustenance needs of self and family through production or sale of produce resulting from self-cultivation of forest land as provided under clauses (a), (c) and (d) of sub-section (1) of section 3 of the Act;

³⁵ Inserted by Rule 2 (ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012)

³⁶ Substituted by Rule 2(iii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012)

Rule 2(1)(d) "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;

- (b) the Sub-Divisional Officers of the Sub Division Level Committee consolidate the lists of hamlets and habitations which at present are not part of any village but have been included as villages within the Panchayat through a resolution, and are formalised as a village either by adding to the existing village or otherwise after following the process as provided in the relevant State laws and that the lists are finalised by the District Level Committee after considering public comments, if any.
- (c) 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 recognized.³⁷

3. Gram Sabha.-

- (1) The Gram Sabhas shall be convened by the Gram Panchayat and in its first meeting it shall elect from amongst its members, a committee of not less than ten but not exceeding fifteen persons as members of the Forest Rights Committee, wherein at least two-third members shall be the Scheduled Tribes.³⁸
Provided that not less than one-third of such members shall be women:
Provided further that where there are no Scheduled Tribes, at least one-third of such members shall be women.
- (2) The Forest Rights Committee shall decide on a chairperson and a secretary and intimate it to the Sub-Divisional Level Committee.
- (3) When a member of the Forest Rights Committee is also a claimant of individual forest right, he shall inform the Committee and shall not participate in the verification proceedings when his claim is considered.
- (4) The Forest Rights Committee shall not reopen the forest rights recognized or the process of verification of the claims already initiated before the date of coming into force of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendments Rules, 2012.³⁹

4. Functions of the Gram Sabha.-

- (1) The Gram Sabha shall -
 - (a) initiate the process of determining the nature and extent of forest rights, receive and hear the claims relating thereto;
 - (b) prepare a list of claimants of forests rights and maintain a register containing such details of claimants and their claims as the Central Government may by order determine;
 - (c) pass a resolution on claims on forest rights after giving reasonable opportunity to interested persons and authorities concerned and forward the same to the Sub-Divisional Level Committee;
 - (d) consider resettlement packages under clause (e) of sub section (2) of section 4 of the Act and pass appropriate resolutions; and
 - (e) Constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act.

³⁷ Inserted by Rule 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012

³⁸ Substituted by the words of Rule 4(a) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012

Rule 3 (1) ".....wherein at least one-third members shall be the Scheduled Tribes"

³⁹ Inserted by Rule 4 (b) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)



- (f) monitor and control the committee constituted under clause (e) which shall 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 forest dwelling Scheduled Tribes and other Traditional Forest Dwellers and integrate such conservation and management plan with the micro plans or working plans or management plans of the forest department with such modifications as may be considered necessary by the committee
 - (g) Approve all decisions of the committee pertaining to issue of transit permits, use of income from sale of produce, or modification of management plans.⁴⁰
 - (2) The quorum of the Gram Sabha meeting shall not be less than one-half of all members of such Gram Sabha:
Provided that at least one-third of the members present shall be women:
Provided further that where any resolutions in respect of claims to forest rights are to be passed, at least fifty per cent of the claimants to forest rights or their representatives shall be present:
Provided also that such resolutions shall be passed by a simple majority of those present and voting".⁴¹
 - (3) The Gram Sabha shall be provided with the necessary assistance by the authorities in the State.
5. Sub-Divisional Level Committee: - The State Government shall constitute Sub-Divisional Level Committee with the following members, namely:-
- (a) Sub-Divisional Officer or equivalent officer - Chairperson;
 - (b) Forest Officer in charge of a Sub-division or equivalent officer - member;
 - (c) three members of the Block or Tehsil level Panchayats to be nominated by the District Panchayat of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to the primitive tribal groups and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council or other appropriate zonal level, of whom at least one shall be a woman member; and
 - (d) an officer of the Tribal Welfare Department in-charge of the Sub-division or where such officer is not available the officer in-charge of the tribal affairs.
6. Functions of the Sub-Divisional Level Committee.- The Sub-Divisional Level Committee (SDLC) shall -
- (a) provide information to each Gram Sabha about their duties and duties of holder of forest rights and others towards protection of wildlife, forest and biodiversity with reference to critical flora and fauna which need to be conserved and protected ;
 - (b) provide forest and revenue maps and electoral rolls to the Gram Sabha or the Forest Rights Committee;

⁴⁰ Inserted by Rule 5(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012)

⁴¹ Substituted by Rule 5(ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012

Rule 4 (2) The quorum of the Gram Sabha meeting shall be not less than two thirds of all members of such Gram Sabha: Provided that where there is a heterogeneous population of Scheduled Tribes and non Scheduled Tribes in any village, the members of the Scheduled Tribe, primitive tribal groups (PTGs) and pre-agricultural communities shall be adequately represented.

- (c) collate all the resolutions of the concerned Gram Sabhas;
- (d) consolidate maps and details provided by the Gram Sabhas;
- (e) examine the resolutions and the maps of the Gram Sabhas to ascertain the veracity of the claims;
- (f) hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights;
- (g) hear petitions from persons, including State agencies, aggrieved by the resolutions of the Gram Sabhas;
- (h) co-ordinate with other Sub-Divisional Level Committees for inter sub-divisional claims ;
- (i) prepare block or tehsil-wise draft record of proposed forest rights after reconciliation of government records;
- (j) forward the claims with the draft record of proposed forest rights through the Sub-Divisional Officer to the District Level Committee for final decision;
- (k) raise awareness among forest dwellers about the objectives and procedures laid down under the Act and in the rules ;
- (l) ensure easy and free availability of proforma of claims to the claimants as provided in Annexure-I (Forms A, B and C) of these rules."⁴²
- (m) ensure that the Gram Sabha meetings are conducted in free, open and fair manner with requisite quorum.

7. District Level Committee.- The State Government shall constitute District Level Committee (DLC) with the following members, namely:-
 - (a) District Collector or Deputy Commissioner - Chairperson;
 - (b) concerned Divisional Forest Officer or concerned Deputy Conservator of Forest - member;
 - (c) three members of the district panchayat to be nominated by the district panchayat, of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to members of the primitive tribal groups, and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council of whom at least one shall be a woman member; and
 - (d) an officer of the Tribal Welfare Department in-charge of the district or where such officer is not available, the officer in charge of the tribal affairs.
8. Functions of District Level Committee.- The District Level Committee shall
 - (a) ensure that the requisite information under clause (b) of rule 6 has been provided to Gram Sabha or Forest Rights Committee;
 - (b) examine whether all claims, especially those of primitive tribal groups, pastoralists and nomadic tribes, have been addressed keeping in mind the objectives of the Act;
 - (c) consider and finally approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee;
 - (d) hear petitions from persons aggrieved by the orders of the Sub-Divisional Level Committee;
 - (e) co-ordinate with other districts regarding inter-district claims;
 - (f) issue directions for incorporation of the forest rights in the relevant government records including record of rights;

⁴² Substituted by Rule 6 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E), dated 6th September, 2012

Rule 6 (l) "ensure easy and free availability of proforma of claims to the claimants as provided in Annexure-I (Forms A & B) of these rules".

- (g) ensure publication of the record of forest rights as may be finalized (**)⁴³
 - (h) ensure that a certified copy of the record of forest rights and title under the Act, as specified in Annexures II & III to these rules, is provided to the concerned claimant and the Gram Sabha respectively and⁴⁴
 - (i) ensure that a certified copy of the record of the right to community forest resource and title under the Act, as specified in Annexure IV to these rules, is provided to the concerned Gram Sabha or the community whose rights over community forest resource have been recognized under clause (i) of sub-section(1) of Section 3.⁴⁵
9. State Level Monitoring Committee. - The State Government shall constitute a State Level Monitoring Committee with the following members, namely:-
- (a) Chief Secretary - Chairperson;
 - (b) Secretary, Revenue Department - member;
 - (c) Secretary, Tribal or Social Welfare Department - member;
 - (d) Secretary, Forest Department - member;
 - (e) Secretary, Panchayati Raj - member;
 - (f) Principal Chief Conservator of Forests - member;
 - (g) three Scheduled Tribes member of the Tribes Advisory Council, to be nominated by the Chairperson of the Tribes Advisory Council and where there is no Tribes Advisory Council, three Scheduled Tribes members to be nominated by the State Government;
 - (h) Commissioner, Tribal Welfare or equivalent who shall be the Member-Secretary.
10. Functions of the State Level Monitoring Committee.- The State Level Monitoring Committee shall -
- (a) devise criteria and indicators for monitoring the process of recognition and vesting of forest rights;
 - (b) monitor the process of recognition, verification and vesting of forest rights in the State;
 - (c) meet at least once in three months to monitor the process of recognition, verification and vesting of forest rights, consider and address the field level problems, and furnish a quarterly report in the format appended as Annexure V to these rules, to the Central Government on their assessment regarding the status of claims, the compliance with the steps required under the Act, details of claims approved, reasons for rejection, if any and the status of pending claims.⁴⁶
 - (d) on receipt of a notice as mentioned in section 8 of the Act, take appropriate actions against the concerned authorities under the Act;
 - (e) monitor resettlement under sub-section (2) of section 4 of the Act.
 - (f) Specifically monitor compliance of the provisions contained in clause (m) of sub-section (1) of section 3 and sub-section (8) of section 4.⁴⁷

⁴³ The word "and" omitted by Rule 7(1) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012

⁴⁴ The word "and" inserted by Rule 7 (ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012

⁴⁵ Inserted by Rule 7(iii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012).

⁴⁶ Substituted by Rule 8 (i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012

Rule 10 (c). "furnish a six monthly report on the process of recognition, verification and vesting of forest rights and submit to the nodal agency such returns and reports as may be called for by the nodal agency".

⁴⁷ Inserted by Rule 8(ii) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)



11. Procedure for filing, determination and verification of claims by the Gram Sabha.-
 - (1) The Gram Sabhas shall :-
 - (a) call for claims and authorize the Forest Rights Committee to accept the claims in the Form as provided in Annexure-I of these rules and such claims shall be made within a period of three months from the date of such calling of claims along with at least two of the evidences mentioned in rule 13, shall be made within a period of three months: Provided that the Gram Sabha may, if consider necessary, extend such period of three months after recording the reasons thereof in writing.
 - (b) fix a date for initiating the process of determination of its community forest resource and intimate the same to the adjoining Gram Sabhas where there are substantial overlaps, and the Sub-Divisional Level Committee.
 - (2) The Forest Rights Committee shall assist the Gram Sabha in its functions to
 - (i) receive, acknowledge and retain the claims in the specified form and evidence in support of such claims;
 - (ii) prepare the record of claims and evidence including maps;
 - (iii) prepare a list of claimants on forest rights;
 - (iv) verify claims as provided in these rules;
 - (v) present their findings on the nature and extent of the claim before the Gram Sabha for its consideration.
 - (3) Every claim received shall be duly acknowledged in writing by the Forest Rights Committee.
 - (4) The Forest Rights Committee shall also prepare the claims on behalf of Gram Sabha for "community forest rights in Form B and the right over community forest resource under clause (i) of sub-section (1) of Section 3 in Form C.⁴⁸
 - (5) The Gram Sabha shall on receipt of the findings under clause (v) of sub-rule (2), meet with prior notice, to consider the findings of the Forest Rights Committee, pass appropriate resolutions, and shall forward the same to the Sub-Divisional Level Committee.
 - (6) The Secretary of Gram Panchayat will also act as Secretary to the Gram Sabhas in discharge of its functions.
12. Process of verifying claims by Forest Rights Committee:
 - (1) The Forest Rights Committee shall, after due intimation to the concerned claimant and the Forest Department:-
 - (a) visit the site and physically verify the nature and extent of the claim and evidence on the site;
 - (b) receive any further evidence or record from the claimant and witnesses;
 - (c) ensure that the claim from pastoralists and nomadic tribes for determination of their rights, which may either be through individual members, the community or traditional community institution, are verified at a time when such individuals, communities or their representatives are present;
 - (d) ensure that the claim from member of a primitive tribal group or pre-agricultural community for determination of their rights to habitat, which may either be through their community or traditional community institution, are verified when such communities or their representatives are present; and
 - (e) prepare a map delineating the area of each claim indicating recognizable landmarks.

⁴⁸ The word "community forest rights in Form B" substituted by Rule 9 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E), dated 6th September, 2012)
Rule 11(4) "community forest rights in Form B"

(f) delineate the customary boundaries of the community forest resource with other members of the Gram Sabha including elders who are well versed with such boundaries and customary access

(g) prepare a community forest resource map with recognizable land marks and through substantial evidence as enumerated in sub-rule (2) of rule 13 and thereafter, such community forest resource claim shall be approved by a resolution of the Gram Sabha passed by a simple majority.

Explanation: The delineation of community forest resource may include existing legal boundaries such as reserve forest, protected forest, National Parks and Sanctuaries and such delineation shall formalize and recognize the powers of the community in access, conservation and sustainable use of such community forest resources."⁴⁹

(2) The Forest Rights Committee' shall then record its findings on the claim and present the same to the Gram Sabha for its consideration.

(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; Provided that if the Gram Sabhas are not able to resolve the conflicting claims, it shall be referred by the Gram Sabha to the Sub-Divisional Level Committee for its resolution.

(4) On a written request of the Gram Sabha or the Forest Rights Committee for information, records or documents, the concerned authorities shall provide an authenticated copy of the same to the Gram Sabha or Forest Rights Committee, as the case may be, and facilitate its clarification, if required, through an authorized officer.

12A. Process of recognition of rights.-

(1) On receipt of intimation from the Forest Rights Committee, the officials of the Forest and Revenue departments shall remain present during the verification of the claims and the verification of evidences on the site and shall sign the proceedings with their designation, date and comments, if any.

(2) If any objections are made by the Forest or Revenue departments at a later date to a claim approved by the Gram Sabha, for the reason that their representatives were absent during field verification, the claim shall be remanded to the Gram Sabha for re-verification by the committee where objection has been raised and if the representatives again fail to attend the verification process the Gram Sabha's decision on the field verification shall be final.

(3) In the event of modification or rejection of a claim by the Gram Sabha or a recommendation for modification or rejection of a claim forwarded by the Sub-Divisional Level Committee to the District Level Committee, such decision or recommendation on the claim shall be communicated in person to the claimant to enable him to prefer a petition to the Sub-Divisional Level Committee or District Level Committee as the case may be, within a period of sixty days which shall be extendable to a period of thirty days at the discretion of the above said committees.

(4) If any other state agency desires to object to a decision of the Gram Sabha or the Sub-Divisional Level Committee, it shall file an appeal before the Sub-Divisional Level Committee or the District Level Committee, as the case may be, which shall be decided by the Committee (in the absence of the representative of the concerned agency, if any) after hearing the claimant.

⁴⁹ Inserted by Rule 10 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)



- (5) No petition of the aggrieved person shall be disposed of, unless he has been given a reasonable opportunity to present anything in support of his claim.
- (6) The Sub-Divisional Level Committee or the District Level Committee shall remand the claim to the Gram Sabha for re-consideration instead of modifying or rejecting the same, in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.
- (7) In cases where the resolution passed by the Gram Sabha, recommending a claim, with supporting documents and evidence, is upheld by the Sub-Divisional Level Committee with or without modifications, but the same is not approved by the District Level Committee, the District Level Committee shall record detailed reasons for not accepting the recommendations of the Gram Sabha or the Sub-Divisional Level Committee as the case may be, in writing, and a copy of the order of the District Level Committee along with the reasons shall be made available to the claimant or the Gram Sabha or the Community as the case may be.
- (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.
- (9) On completion of the process of settlement of rights and issue of titles as specified in Annexure II, III and IV of these rules, the Revenue and the Forest departments shall prepare a final map of the forest land so vested and the concerned authorities shall incorporate the forest rights so vested in the revenue and forest records, as the case may be, within the specified period of record updation under the relevant State laws or within a period of three months, whichever is earlier.
- (10) All decisions of the Sub-Divisional Level Committee and District Level Committee that involve modification or rejection of a Gram Sabha resolution or recommendation of the Sub Divisional Level Committee shall give detailed reasons for such modification or rejection, as the case may be:
Provided that no recommendation or rejection of claims shall be merely on any technical or procedural grounds:
Provided further that no committee (except the Gram Sabha or the Forest Rights Committee) at the Block or Panchayat or forest beat or range level, or any individual officer of any rank shall be empowered to receive claims or reject, modify, or decide any claim on forest rights.
- (11) The Sub-Divisional Level Committee or the District Level Committee shall consider the evidence specified in rule 13 while deciding the claims and shall not insist upon any particular form of documentary evidence for consideration of a claim.
Explanation:
1. Fine receipts, encroacher lists, primary offence reports, forest settlement reports, and similar documentation by whatever name called, arisen during prior official exercise, or the lack thereof, shall not be the sole basis for rejection of any claim.
2. The satellite imagery and other uses of technology may supplement other form of evidence and shall not be treated as a replacement.⁵⁰

12B. Process of Recognition of Community Rights:-

- (1) The District Level Committee shall, in view of the differential vulnerability of Particularly Vulnerable Tribal Groups as described in clause (e) of sub-section (i) of section 3 amongst the forest dwellers, ensure that all Particularly Vulnerable Tribal Groups receive habitat

⁵⁰ Inserted by Rule 11 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

rights, in consultation with the concerned traditional institutions of Particularly Vulnerable Tribal Groups and their claims for habitat rights are filed before the concerned Gram Sabhas, wherever necessary by recognizing floating nature of their Gram Sabhas.

- (2) The District Level Committee shall facilitate the filing of claims by pastoralists, transhumant and nomadic communities as described in clause (d) of sub-section (i) of section 3 before the concerned Gram Sabhas.
- (3) The District Level Committee shall ensure that the forest rights under clause (i) of sub-section (1) of section 3 relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages with forest dwellers and the titles are issued.
- (4) In case where no community forest resource rights are recognized in a village, the reasons for the same shall be recorded by the Secretary of the District Level Committee.
- (5) The conversion of forest villages, unrecorded settlement under clause (h) of section 3 shall include the actual land-use of the village in its entirety, including lands required for current or future community uses, like, schools, health facilities and public spaces."⁵¹

13. Evidence for determination of forest rights.-

- (1) The evidence for recognition and vesting of forest rights shall, inter alia, include -
 - (a) public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, pattas or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;
 - (b) Government authorised documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;
 - (c) physical attributes such as house, huts and permanent improvements made to land including leveling, bunds, check dams and the like;
 - (d) quasi-judicial and judicial records including court orders and judgments;
 - (e) research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;
 - (f) any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;
 - (g) traditional structures establishing antiquity such as wells, burial grounds, sacred places;
 - (h) genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;
 - (i) Statement of elders other than claimants, reduced in writing.
- (2) An evidence for "Community Forest Resource"⁵² inter alia, include -
 - (a) community rights such as nistar by whatever name called;
 - (b) traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;
 - (c) remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;

⁵¹ Inserted by Rule 11 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012)

⁵² Substituted by Rule 12(i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September,2012)

Rule 13 "community forest rights"

- (d) Government records or earlier classification of current reserve forest as protected forest or as gochar or other village common lands, nistari forests
- (e) Earlier or current practice of traditional agriculture."⁵³
- (3) The Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee shall consider more than one of the above-mentioned evidences in determining the forest rights.

14. Petitions to Sub-Divisional Level Committee:-

- (1) Any person aggrieved by the resolution of the Gram Sabha may within a period of sixty days from the date of the resolution file a petition to the Sub-Divisional Level Committee.
- (2) The Sub-Divisional Level Committee shall fix a date for the hearing and intimate the petitioner and the concerned Gram Sabha in writing as well as through a notice at a convenient public place in the village of the petitioner at least fifteen days prior to the date fixed for the hearing.
- (3) The Sub-Divisional Level Committee may either allow or reject or refer the petition to concerned Gram Sabha for its reconsideration.
- (4) After receipt of such reference, the Gram Sabha shall meet within a period of thirty days, hear the petitioner, pass a resolution on that reference and forward the same to the Sub-Divisional Level Committee.
- (5) The Sub-Divisional Level Committee shall consider the resolution of the Gram Sabha and pass appropriate orders, either accepting or rejecting the petition.
- (6) Without prejudice to the pending petitions, Sub-Divisional Level Committee shall examine and collate the records of forest rights of the other claimants and submit the same through the concerned Sub-Divisional Officer to the District Level Committee.
- (7) In case of a dispute between two or more Gram Sabhas and on an application of any of the Gram Sabhas or the Sub-Divisional Level Committee on its own, shall call for a joint meeting of the concerned Gram Sabhas with a view to resolving the dispute and if no mutually agreed solution can be reached within a period of thirty days, the Sub-Divisional Level Committee shall decide the dispute after hearing the concerned Gram Sabhas and pass appropriate orders.

15. Petitions to District Level Committee:-

- (1) Any person aggrieved by the decision of the Sub-Divisional Level Committee may within a period of sixty days from the date of the decision of the Sub-Divisional Level Committee file a petition to the District Level Committee.
- (2) The District Level Committee shall fix a date for the hearing and intimate the petitioner and the concerned Sub-Divisional Level Committee in writing as well as through a notice at a convenient public place in the village of the petitioner at least fifteen days prior to the date fixed for the hearing.
- (3) The District Level Committee may either allow or reject or refer the petition to concerned Sub-Divisional Level Committee for its reconsideration.
- (4) After receipt of such reference, the Sub-Divisional Level Committee shall hear the petitioner and the Gram Sabha and take a decision on that reference and intimate the same to the District Level Committee.
- (5) The District Level Committee shall then consider the petition and pass appropriate orders, either accepting or rejecting the petition.

⁵³ Inserted by Rule 12 (2) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

- (6) The District Level Committee shall send the record of forest rights of the claimant or claimants to the District Collector or District Commissioner for necessary correction in the records of the Government.
- (7) In case there is a discrepancy between orders of two or more Sub-Divisional Level Committees, the District Level Committee on its own, shall call for a joint meeting of the concerned Sub-Divisional Level Committees with a view to reconcile the differences and if no mutually agreed solution can be reached, the District Level Committee shall adjudicate the dispute after hearing the concerned Sub-Divisional Level Committees and pass appropriate orders
16. Post Claim support and handholding to holders of forest rights:
The State Government shall ensure through its departments especially tribal and social welfare, environment and forest, revenue, rural development, panchayati raj and other departments relevant to upliftment of forest dwelling scheduled tribes and other traditional forest dwellers, that all government schemes including those relating to land improvement, land productivity, basic amenities and other livelihood measures are provided to such claimants and communities whose rights have been recognized and vested under the Act.⁵⁴

Dr. Bachittar Singh, Joint Secretary
[F. No.17014/ 02/ 2007-PC&V (Vol.VII)]
The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Rules, 2007
Government of India
Ministry of Tribal Affairs

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.....
[F.No. 23011/32/2010-(Vol. II)]
Dr. Sadhana Rout, Joint Secretary
The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Amendment Rules, 2012

⁵⁵ Inserted by Rule 13 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

ANNEXURE I

[See rule 6(l)]

FORM - A Claim Form For Rights To Forest Land

[See rule 11(1)(a)]

1. Name of the claimant (s):
2. Name of the spouse
3. Name of father/ mother
4. Address:
5. Village:
6. Gram Panchayat:
7. Tehsil/ Taluka:
8. District:
9. (a) Scheduled Tribe : Yes/ No (Attach authenticated copy of Certificate)
(b) Other Traditional Forest Dweller: Yes/ No
(If a spouse is a Scheduled Tribe (attach authenticated copy of certificate)
10. Name of other members in the family with age:
(including children and adult dependents)

Nature of claim on land:

1. Extent of forest land occupied
 - a. for habitation
 - b. for self-cultivation, if any:
(See Section 3 (1) (a) of the Act)
 1. disputed lands if any:
(See Section 3(1)(f) of the Act)
 2. Pattas/ leases/ grants, if any:
(See Section 3(1)(g) of the Act)
 3. Land for in situ rehabilitation or alternative land, if any:
(See Section 3(1)(m) of the Act)
 4. Land from where displaced without land compensation:
(See Section 4(8) of the Act)
 5. Extent of land in forest villages, if any:
(See Section 3(1)(h) of the Act)
 6. Any other traditional right, if any:
(See Section 3(1)(l) of the Act)
 7. Evidence in support:
(See Rule 13)
 8. Any other information:

Signature/ Thumb Impression of the Claimant(s):

The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Rules, 2007
Government of India
Ministry of Tribal Affairs

FORM - B
Claim Form For Community Rights
[See rule 11(1)(a) and (4)]

1. Name of the claimant(s):
 - a. FDST community: Yes/ No
 - b. OTFD community: Yes/ No
2. Village:
3. Gram Panchayat:
4. Tehsil/ Taluka:
5. District:

Nature of community rights enjoyed:

1. Community rights such as nistar, if any:
(See Section 3(1)(b) of the Act)
2. Rights over minor forest produce, if any:
(See Section 3(1)(c) of the Act)
3. Community rights
 - a. Uses or entitlements (fish, water bodies), if any:
 - b. Grazing, if any
 - c. traditional resource access for nomadic and pastoralist, if any:
(See Section 3(1)(g) of the Act)
4. Community tenures of habitat and habitation for PTGs and pre-agricultural communities, if any:
(See Section 3 (1)(e) of the Act)
5. Right to access biodiversity, intellectual property and traditional knowledge, if any:
(See Section 3 (1)(k) of the Act)
6. Other traditional right, if any:
(See Section 3(1)(l) of the Act)
7. Evidence in support:
(See Rule 13)
8. Any other information

Signature / Thumb Impression of the Claimant (s):

The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Rules, 2007
Government of India
Ministry of Tribal Affairs

FORM - C⁵⁵

CLAIM FORM FOR RIGHTS TO COMMUNITY FOREST RESOURCE

[See section 3(1)(i) of the Act and rule 11(1) and 4(a)]

1. Village/Gram Sabha:
2. Gram Panchayat:
3. Tehsil/ Taluka:
4. District:
5. Name(s) of members of the gram sabha [Attach as separate sheet, with status of Scheduled Tribes/Other Traditional Forest Dwellers indicated next to each member].

Presence of few Scheduled Tribes/ Other Traditional forest Dwellers is sufficient to make the claim.

We, the undersigned residents of this Gram Sabha hereby resolve that the area detailed below and in the attached map comprises our Community Forest Resource over which we are claiming recognition of our forest rights under section 3(1)(i).

[Attach a map of the community forest resource, showing location, landmarks within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities to which the community had traditional access and which they have been traditionally protecting, regenerating, conserving and managing for sustainable use. Please note that this need not correspond to existing legal boundaries.)

6. Khasra / Compartment No.(s), if any and if known:
7. Bordering Villages:
 - (i)
 - (ii)
 - (iii)

(This may also include information regarding sharing of resources and responsibilities with any other villages.)

8. List of Evidence in Support (Please see Rule 13)

Signature / Thumb impression of the Claimant(s):

The Scheduled Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Amendment Rules, 2012
Government of India
Ministry of Tribal Affairs

⁵⁵ Inserted by Rule 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

ANNEXURE - II

[See rule 8(h)]

Title For Forest Land Under Occupation

1. Name(s) of holder (s) of forest rights (including spouse):
2. Name of the father/ mother:
3. Name of dependents:
4. Address:
5. Village/gram sabha:
6. Gram Panchayat:
7. Tehsil/ Taluka:
8. District:
9. Whether Scheduled Tribe or Other Traditional Forest Dweller
10. Area:
11. Description of boundaries by prominent landmarks including khasra/ compartment No: This title is heritable, but not alienable or transferable under sub section (4) of section 4 of the Act.

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We, the undersigned, hereby, for and on behalf of the Government of (Name of the State).....affix our signatures to confirm the above forest right.

Divisional Forest Officer/
Deputy Conservator of Forests

District Tribal Welfare Officer

District Collector/ Deputy Commissioner

ANNEXURE - III

[See rule 8(h)]

TITLE TO COMMUNITY FOREST RIGHTS

1. Name(s) of the holder (s) of community forest right:
2. Village/ Gram Sabha:
3. Gram Panchayat:
4. Tehsil/ Taluka:
5. District:
6. Scheduled Tribe/ Other Traditional Forest Dweller:
7. Nature of community rights:
8. Conditions if any:
9. Description of boundaries including customary boundary and/or by prominent landmarks including khasra/ compartment No:

Name(s) of the holder (s) of community forest right:

- 1.....
- 2.....
- 3.....

We, the undersigned, hereby, for and on behalf of the Government of (Name of the State).....affix our signatures to confirm the forest right as mentioned in the Title to the above mentioned holders of community forest rights.

Divisional Forest Officer/
Deputy Conservator of Forests

District Tribal Welfare Officer

District Collector/ Deputy Commissioner



ANNEXURE - IV⁵⁶

TITLE TO COMMUNITY FOREST RESOURCES

[See rule 8(i)]

1. Village/Gram Sabha:
2. Gram Panchayat:
3. Tehsil/ Taluka:
4. District:
5. Scheduled Tribe / Other Traditional Forest Dweller: Scheduled Tribes community / Other Traditional Forest Dwellers community / Both
6. Description of boundaries including customary boundary, by prominent landmarks, and by khasra / compartment No:

Within the said area, this community has the right to protect, regenerate or conserve or manage, and this (to be named) community forest resources which they have been traditionally protecting and conserving for sustainable used as per section 3(1)(i) of the Act. No conditions are being imposed on this right other than those in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act and the Rules framed thereunder.

We, the undersigned, hereby, for and on behalf of the Government affix our signatures to confirm the community forest resource (to be named and specified in extent, quantum, area, whichever is applicable) as mentioned in the Title to the above mentioned gram sabha/community(ies).

(Divisional Forest Officer/
Deputy Conservator of Forests)

(District Tribal Welfare Officer)

(District Collector/ Deputy Commissioner)"

⁵⁶ Inserted by Rule 15 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

ANNEXURE - V⁵⁷

FORMAT FOR FURNISHING QUARTERLY REPORT

[See Rule 10 (c)]

1.	Name of State	
2.	Status of Claims	
a)	Individual Rights	
	■ Filed	
	■ Accepted	
	■ Rejected	
	■ Pending	
	■ Reasons for rejection with examples	
	■ Corrective measures suggested	
	■ Any other observations	
	■ Extent of forest land covered (in Ha.)	
	■ Status of updation of forest and revenue records under section 3(1)(a) of the Act (in Ha.)	
b)	Community Forest Rights	
	■ Filed	
	■ Accepted	
	■ Rejected	
	■ Pending	
	■ Extent of forest land covered	
	■ Status of updation of forest and revenue record under Section 3(1) (b) to 3(1)(l) of the Act (in Ha.)	
	■ Reasons for rejections with example	
	■ Corrective measures suggested	
	■ Any other observations	
c)	Details of Community Forest Resource being managed and by whom	
d)	Good Practices (if any)	
e)	Area diverted under section 3(2) of the Act (in Ha.)	
f)	Any other Remarks	

(Chairman)
State Level Monitoring Committee

(Member Secretary)
State Level Monitoring Committee

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1(E), dated the 1st January, 2008.

[F.No. 23011/32/2010-(Vol. II)]
Dr. Sadhana Rout, Joint Secretary

⁵⁷ Inserted by Rule 15 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 (vide Notification No G.S.R. No. 669 (E).dated 6th September, 2012)

ANNEXURE C

GUIDELINES FOR IMPLEMENTATION OF FRA (12TH JULY 2012)

IMMEDIATE

No. 23011/32/2010-FRA [Vol.II (Pt.)]

Government of India

Ministry of Tribal Affairs

Shastri Bhawan, New Delhi

Dated : 12th July, 2012

To

1. The Chief Secretaries of all State Governments
(except Jammu & Kashmir, Punjab, Haryana and Delhi)
2. The Administrators of all Union Territories
(except Lakshadweep)

Subject: Guidelines Regarding Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Sir,

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As you are aware, the historic legislation "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act" had been enacted in 2006 with the objective of remedying the historical injustice to the forestdwelling Scheduled Tribes and other traditional forest dwellers of the country. However, even after lapse of more than four years of its implementation, the Ministry has observed that the flow of intended benefits of this welfare legislation to the eligible forest dwellers remains constrained.

2. The Ministry has noticed several problems which are impeding the implementation of the Act in its letter and spirit, such as, convening of Gram Sabha meetings at the panchayat level in some cases, resulting in exclusion of smaller habitations not formally part of any village; non-recognition of un-hindered absolute rights over the minor forest produce (MFP) to forest dwellers; imposition of several restrictions, like, transit permit for transportation of MFPs, levy of fees, charges, royalties on sale of MFPs; exclusion of certain types of MFPs, in contravention of the definition of MFP given in the Act; continuance of monopoly in the trade of MFP, especially in the case of high value MFP, such as, tendu patta by the Forest Corporations in many States; non-recognition of other community rights, such as, nistar rights, conversion of all forest villages, old habitations, un-surveyed villages and other villages in forests, whether recorded, notified or not into revenue villages; non-recognition of community forest resource

Rights Relating To Protection, Regeneration Or Conservation, Or Management Of Any Community Forest Resources Under Section 3(1)(I) Of The Act; Etc.

3. In many areas, the tribal people and other forest dwellers are reportedly facing harassment and threats of eviction from forest lands and forced relocation or displacement from the areas proposed

for development projects without settlement of their rights or due compliance with safeguards in violation of the provisions of the Act. The claims are being rejected in some States as the officials are insisting on certain types of evidences and the new technology, such as, satellite imagery, is being used as the only form of evidence for consideration of a claim, instead of using the same to supplement the evidences submitted by the claimants in support of their claims. Inadequate public awareness about the provisions of the Act, particularly the provisions relating to the filing of petitions by the persons aggrieved by the decisions of the authorities prescribed under the Act, inadequate training of the implementing officials etc. are also some of the reasons for non-implementation of the Act in its letter and spirit.

4. In order to address the above concerns and to ensure effective implementation of the Act, the Ministry has undertaken an exercise to arrive at certain provisions/ steps which will facilitate robust implementation of the Act. Certain guidelines as indicated in the Annexure to this letter are accordingly being issued for compliance by all the State Governments/ UT Administrations. It is requested that the enclosed guidelines may be brought to the notice of all the implementing agencies in your State/UT for strict compliance. This Ministry may also kindly be apprised of the action taken for operationalising these guidelines at an early date.

5. This issues with the approval of competent authority.

Yours faithfully,

(Sadhana Rout)

Joint Secretary to the Government of India

Tele: 23383622

Copy also forwarded to State Principal Secretaries/Secretaries in-charge of Tribal Welfare/Development Departments for urgent necessary action.



ANNEXURE D

GUIDELINES ON THE IMPLEMENTATION OF THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT 2006

Government of India

Ministry of Tribal Affairs

Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 seeks to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. The Act was notified for operation with effect from 31.12.2007 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 for implementing the provisions of the Act were notified on 1.1.2008.

The Scheduled

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 have come to the notice of the Ministry of Tribal Affairs, such as, convening of Gram Sabha meetings at the Panchayat level resulting in exclusion of smaller habitations not formally part of any village; non-recognition of un-hindered rights over the minor forest produce (MFP) to forest dwellers; non-recognition of other community rights; harassment and eviction of forest dwellers without settlement of their forest rights; rejection of claims by insisting on certain types of evidences, inadequate awareness about the provisions of the Act and the Rules etc.

In order to address the above concerns and with a view to ensure effective implementation of the Act, the following guidelines are issued on various aspects of implementation of the Act for compliance by all the State Governments/UT Administrations:

i. Process of Recognition of Rights:

- (a) The State Governments should ensure that on receipt of intimation from the Forest Rights Committee, the officials of the Forest and Revenue Departments remain present during the verification of the claims and the evidence on the site.
- (b) In the event of modification or rejection of a claim by the Gram Sabha or by the Sub-Divisional Level Committee or the District Level Committee, the decision on the claim should be communicated to the claimant to enable the aggrieved person to prefer a petition to the Sub-Divisional Level Committee or the District Level Committee, as the case may be, within the sixty days period prescribed under the Act and no such petition should be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.
- (c) The Sub-Divisional Level Committee or the District Level Committee should, if deemed necessary, remand the claim to the Gram Sabha for reconsideration instead of rejecting or modifying the same, in case the resolution or the recommendation of the Gram Sabha is found to be incomplete or prima-facie requires additional examination.

- (d) In cases where the resolution passed by the Gram Sabha, recommending a claim, is upheld by Sub-Divisional Level Committee, but the same is not approved by the District Level Committee, the District Level Committee should record the reasons for not accepting the recommendations of the Gram Sabha and the Sub-Divisional Level Committee, in writing, and a copy of the order should be supplied to the claimant.
- (e) On completion of the process of settlement of rights and issue of titles as specified in Annexures II, III & IV of the Rules, the Revenue / Forest Departments shall prepare a final map of the forest land so vested and the concerned authorities shall incorporate the forest rights so vested in the revenue and forest records, as the case may be, within the prescribed cycle of record updation.
- (f) All decisions of the Sub-Divisional Level Committee and District Level Committee that involve modification or rejection of a Gram Sabha resolution/ recommendation should be in the form of speaking orders.
- (g) The Sub-Divisional Level Committee or the District Level Committee should not reject any claim accompanied by any two forms of evidences, specified in Rule 13, and recommended by the Gram Sabha, without giving reasons in writing and should not insist upon any particular form of evidence for consideration of a claim. Fine receipts, encroacher lists, primary offence reports, forest settlement reports, and similar documentation rooted in prior official exercises, or the lack thereof, would not be the sole basis for rejection of any claim.
- (h) Use of any technology, such as, satellite imagery, should be used to supplement evidences tendered by a claimant for consideration of the claim and not to replace other evidences submitted by him in support of his claim as the only form of evidence.
- (i) The status of all the claims, namely, the total number of claims filed, the number of claims approved by the District Level Committee for title, the number of titles actually distributed, the number of claims rejected, etc. should be made available at the village and panchayat levels through appropriate forms of communications, including conventional methods, such as, display of notices, beat of drum etc.
- (j) A question has been raised whether the four hectare limit specified in Section 4(6) of the Act, which provides for recognition of forest rights in respect of the land mentioned in clause (a) of sub-section (1) of section 3 of the Act, applies to other forest rights mentioned in Section 3(1) of the Act. It is clarified that the four hectare limit specified in Section 4(6) applies to rights under section 3(1)(a) of the Act only and not to any other right under section 3(1), such as conversion of pattas or leases, conversion of forest villages into revenue villages etc.

ii. Minor Forest Produce:

- (a) The State Government should ensure that the forest rights relating to MFPs under Section 3(1)(c) of the Act are recognized in respect of all MFPs, as defined under Section 2(i) of the Act, in all forest areas, and state policies are brought in alignment with the provisions of the Act. Section 2(i) of the Act defines the term "minor forest produce" to include "all non-timber 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".
- (b) The monopoly of the Forest Corporations in the trade of MFP in many States, especially



in case of high value MFP, such as, tendu patta, is against the spirit of the Act and should henceforth be done away with.

- (c) The forest right holders or their cooperatives/ federations should be allowed full freedom to sell such MFPs to anyone or to undertake individual or collective processing, value addition, marketing, for livelihood within and outside forest area by using locally appropriate means of transport.
- (d) The State Governments should exempt movement of all MFPs from the purview of the transit rules of the State Government and, for this purpose, the transit rules be amended suitably. Even a transit permit from Gram Sabha should not be required. Imposition of any fee/charges/royalties on the processing, value addition, marketing of MFP collected individually or collectively by the cooperatives/ federations of the rights holders would also be ultra vires of the Act.
- (e) The State Governments need to play the facilitating role in not only transferring unhindered absolute rights over MFP to forest dwelling Scheduled Tribes and other traditional forest dwellers but also in getting them remunerative prices for the MFP, collected and processed by them.

iii. Community Rights:

- (a) The District Level Committee should ensure that the records of prior recorded nistari or other traditional community rights (such as Khatian part II in Jharkhand, and traditional forest produce rights in Himachal and Uttarakhand) are provided to Gram Sabhas, and if claims are filed for recognition of such age-old usufructory rights, such claims are not rejected except for valid reasons, to be recorded in writing, for denial of such recorded rights;
- (b) The District Level Committee should also facilitate the filing of claims by pastoralists before the concerned Gram Sabha (s) since they would be a floating population for the Gram Sabha(s) of the area used traditionally.
- (c) In view of the differential vulnerability of Particularly Vulnerable Tribal Groups (PTGs) amongst the forest dwellers, District Level Committee should play a pro-active role in ensuring that all PTGs receive habitat rights in consultation with the concerned PTGs' traditional institutions and their claims for habitat rights are filed before the concerned Gram Sabhas.
- (d) The forest villages are very old entities, at times of preindependent era, duly existing in the forest records. The establishment of these villages was in fact encouraged by the forest authorities in the preindependent era for availability of labour within the forest areas. The well defined record of each forest village, including the area, number of inhabitants, etc. exists with the State Forest Departments. There are also unrecorded settlements and old habitations that are not in any Government record. Section 3(1)(h) of the Act recognizes the right of forest dwelling Scheduled Tribes and other traditional forest dwellers relating to settlement and conversion on forest villages, old habitation, un-surveyed villages and other villages and forests, whether recorded, notified or not into revenue villages. The conversion of all forest villages into revenue villages and recognition of the forest rights of the inhabitants thereof should actually have been completed immediately on enactment of the Act. The State Governments may, therefore, convert all such erstwhile forest villages, unrecorded settlements and old habitations into revenue villages with a sense of urgency in a time bound manner. The conversion would include the actual land-use of the village

in its entirety, including lands required for current or future community uses, like, schools, health facilities, public spaces etc. Records of the forest villages maintained by the Forest Department may thereafter be suitably updated on recognition of this right.

iv. Community Forest Resource Rights:

- (a) The State Government should ensure that the forest rights under Section 3(1)(i) of the Act relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages and the titles are issued as soon as the prescribed Forms for claiming Rights to Community Forest Resource and the Form of Title for Community Forest Resources are incorporated in the Rules. Any restriction, such as, time limit, on use of community forest resources other than what is traditionally imposed would be against the spirit of the Act.
- (b) In case no community forest resource rights are recognized in a village, the reasons for the same should be recorded. Reference can be made to existing records of community and joint forest management, van panchayats, etc. for this purpose.
- (c) The Gram Sabha would initially demarcate the boundaries of the community forest resource as defined in Section 2(a) of the Act for the purposes of filing claims for recognition of forest right under Section 3(1)(i) of the Act.
- (d) The Committees constituted under Rule 4(e) of the Forest Rights Rules, 2008 would work under the control of Gram Sabha. The State Agencies should facilitate this process.
- (e) Consequent upon the recognition of forest right in Section 3(i) of the Act to protect, regenerate or conserve or manage any community forest resource, the powers of the Gram Sabha would be in consonance with the duties as defined in Section 5(d), wherein the Gram Sabha is empowered to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the bio-diversity. Any activity that prejudicially affects the wild-life, forest and bio-diversity in forest area would be dealt with under the provisions of the relevant Acts.

v. Protection Against Eviction, Diversion of Forest Lands and Forced Relocation :

- (a) Section 4(5) of the Act is very specific and provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete. This clause is of an absolute nature and excludes all possibilities of eviction of forest dwelling Scheduled Tribes or other traditional forest dwellers without settlement of their forest rights as this Section opens with the words "Save as otherwise provided". The rationale behind this protective clause against eviction is to ensure that in no case a forest dweller should be evicted without recognition of his rights as the same entitles him to a due compensation in case of eventuality of displacement in cases, where even after recognition of rights, a forest area is to be declared as inviolate for wildlife conservation or diverted for any other purpose. In any case, Section 4(1) has the effect of recognizing and vesting forest rights in eligible forest dwellers. Therefore, no eviction should take place till the process of recognition and vesting of forest rights under the Act is complete.
- (b) The Ministry of Environment & Forests, vide their letter No.11- 9/1998-FC(pt.) dated 30.07.2009, as modified by their subsequent letter of the same number dated 3.08.2009,



has issued directions, requiring the State/ UT Governments to enclose certain evidences relating to completion of the process of settlement of rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, while formulating unconditional proposals for diversion of forest land for nonforest purposes under the Forest (Conservation) Act, 1980. The State Government should ensure that all diversions of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 take place in compliance with the instructions contained in the Ministry of Environment & Forest's letter dated 30.07.2009, as modified on 03.08.2009.

- (c) There may be some cases of major diversions of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 after the enactment of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 but before the issue of Ministry of Environment & Forests' letter dated 30.07.2009, referred to above. In case, any evictions of forest dwelling Scheduled Tribes and other traditional forest dwellers have taken place without settlement of their rights due to such major diversions of forest land under the Forest (Conservation) Act, 1980, the District Level Committees may be advised to bring such cases of evictions, if any, to the notice of the State Level Monitoring Committee for appropriate action against violation of the provisions contained in Section 4(5) of the Act.
- (d) The Act envisages the recognition and vesting of forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers over all forest lands, including National Parks and Sanctuaries. Under Section 2(b) of the Act, the Ministry of Environment Forests is responsible for determination and notification of critical wildlife habitats in the National Parks and Sanctuaries for the purpose of creating inviolate areas for wildlife conservation, as per the procedure laid down. In fact, the rights of the forest dwellers residing in the National Parks and Sanctuaries are required to be recognized without waiting of notification of critical wildlife habitats in these areas. Further, Section 4(2) of the Act provides for certain safeguards for protection of the forest rights of the forest rights holders recognized under the Act in the critical wildlife habitats of National Parks and Sanctuaries, when their rights are either to be modified or resettled for the purposes of creating inviolate areas for wildlife conservation. No exercise for modification of the rights of the forest dwellers or their resettlement from the National Parks and Sanctuaries can be undertaken, unless their rights have been recognized and vested under the Act. In view of the provisions of Section 4(5) of the Act, no eviction and resettlement is permissible from the National Parks and Sanctuaries till all the formalities relating to recognition and verification of their claims are completed. The State/ UT Governments may, therefore, ensure that the rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers, residing in National Parks and Sanctuaries are recognized first before any exercise for modification of their rights or their resettlement, if necessary, is undertaken and no member of the forest dwelling Scheduled Tribe or other traditional forest dweller is evicted from such areas without the settlement of their rights and completion of all other actions required under section 4 (2) of the Act.
- (e) The State Level Monitoring Committee should monitor compliance of the provisions of Section 3(1)(m) of the Act, which recognizes the right to in situ rehabilitation including alternative land in cases where the forest dwelling Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation, and also of the provisions of Section 4(8) of the Act, which recognizes their right to land when they are displaced from their dwelling and cultivation without land compensation due to State development interventions.

vi. **Awareness-Raising, Monitoring and Grievance Redressal :**

- (a) Each State should prepare suitable communication and training material in local language for effective implementation of the Act.
- (b) The State Nodal Agency should ensure that the Sub Divisional Level Committee and the District Level Committee make district-wise plans for trainings of revenue, forest and tribal welfare departments' field staff, officials, Forest Rights Committees and Panchayat representatives. Public meetings for awareness generation in those villages where process of recognition is not complete need to be held.
- (c) In order to generate awareness about the various provisions of the Act and the Rules, especially the process of filing petitions, the State Government should organize public hearings on local bazaar days or at other appropriate locations on a quarterly basis till the process of recognition is complete. It will be helpful if some members of Sub Divisional Level Committee are present in the public hearings. The Gram Sabhas also need to be actively involved in the task of awareness raising.
- (d) If any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or Gram Sabha through a resolution against any higher authority or Committee or officer or member of such authority or Committee gives a notice as per Section 8 of the Act regarding contravention of any provision of the Act or any rule made thereunder concerning recognition of forest rights to the State Level Monitoring Committees, the State Level Monitoring Committee should hold an inquiry on the basis of the said notice within sixty days from the receipt of the notice and take action, if any, that is required. The complainant and the Gram Sabha should be informed about the outcome of the inquiry.



ANNEXURE E

PROCEDURE FOR SEEKING PRIOR APPROVAL FOR DIVERSION OF FOREST LAND FOR NON-FOREST PURPOSES FOR FACILITIES MANAGED BY THE GOVERNMENT UNDER SECTION 3(2) OF THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

Annexure to letter No 23011/15/2008-SG.II

Dated May 18, 2009

Government of India
Ministry of Tribal Affairs

Sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides that notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for certain facilities managed by the Government, as specified in that Section, which involve felling of trees not exceeding seventy-five trees per hectare, provided that such diversion of forest land shall be allowed only if, -

- (i) the forest land to be diverted for the purposes mentioned in the said sub-section is less than one hectare in each case; and
 - (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.
2. For implementation of the provisions of sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Central Government hereby lays down the following procedure:-
- 2.1 Definitions.- In the procedure, unless the context otherwise requires:-
- (a) "Act" means the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
 - (b) "District Level Committee" shall mean the Committee constituted under Rule 7 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Rules, 2008;
 - (c) "Forest Land" shall have the same meaning as defined in Section 2(d) of the Act;
 - (d) "Gram Sabha" shall have the same meaning as defined in Section 2(g) of the Act;
 - (e) "Nodal Officer" means any officer not below the rank of Conservator of Forests, authorized by the State Government to deal with matters relating to diversion of forest land under the Act;
 - (f) "Section" means a section of the Act;
 - (g) "User Agency" means a Department of the Central or State Government or a District Panchayat making a request for diversion of forest land for developmental projects managed by the Government as specified in sub-section (2) of Section 3 of the Act;
 - (h) "Village" shall have the same meaning as defined in Section 2(p) of the Act.



- 2.2 Submission of the proposals seeking approval for diversion of the forest land under subsection (2) of Section 3 of the Act.-
- (i) Every User Agency, that wants to use any forest land for any developmental project, specified in Section 3(2) of the Act, shall make a proposal in the appropriate Form appended, i.e. Form 'A', and place it before the general assembly of the concerned Gram Sabha for adopting a resolution to that effect.
 - (ii) A quorum of atleast half the members of the Gram Sabha should be present for adopting a resolution recommending the diversion of forest land.
 - (iii) On receipt of a recommendation of the proposal by the Gram Sabha, the User Agency will submit the proposal to the concerned Range Forest Officer (RFO) of the area, along with the resolution adopted by the Gram Sabha.
 - (iv) The Range Forest Officer (RFO) concerned will carry out site inspection of the proposed area to opine on the acceptance of the proposal.
 - (v) The Range Forest Officer (RFO) concerned will submit the proposal and his recommendation to the concerned Divisional Forest Officer (DFO) in Form 'B' appended, along with his site inspection report and his opinion within three weeks from the date of receipt of complete proposal from the User Agency.
 - (vi) The Divisional Forest Officer (DFO) concerned will consider the proposal, and if he agrees, he will accord his approval and communicate his decision to the Range Forest Officer (RFO) concerned with a copy to the Chairperson of the District Level Committee, within four weeks from the date of receipt of the proposal from the RFO.
 - (vii) After receipt of the approval from the concerned DFO, the RFO will demarcate the area of the forest land approved for diversion and hand over the same to the User Agency under the supervision of the Gram Sabha.
 - (viii) If the Divisional Forest Officer (DFO) concerned does not approve the proposal submitted by the User Agency through the Range Forest Officer (RFO), he shall forward the proposal to the District Level Committee for a final decision.
 - (ix) The District Level Committee will meet and take a final decision, with at least 1/3 quorum, and convey the decision to the DFO for implementation and correction of records and map if the proposal is accepted.
 - (x) The approval for diversion of the forest land by the Divisional Forest Officer (DFO) or by the District Level Committee, as the case may be, shall be accorded subject to the condition that the land diverted for a specific purpose shall not be allowed to be used for any other purpose and the diverted land would be appropriated by the Forest Department if the activity for which the land was diverted is not started within one year of handing over the land to the User Agency.
 - (xi) The DFO concerned will submit a quarterly report of the approvals accorded for diversion of forest land under Section 3(2) of the Act to the Nodal Officer of the State who, in turn, will furnish the consolidated information quarterly to the Secretary, Tribal Welfare Department who will, in turn send the consolidated report to the Ministries of Tribal Affairs and Environment & Forests.
 - (xii) The Nodal Officer will also monitor the progress.

APPENDIX

Form for seeking prior approval for diversion of forest land for non-forest purposes for the facilities managed by the Government under sub-section (2) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

FORM-A

[See para 2.2(i)]

(To be filled up by the User Agency)

1. Project details:
 - (i) Short narrative of the proposed project / scheme for which the forest land is required.
 - (ii) Details of the forest land required (two options to be indicated)
 - a. Location - Survey No./ Compartment No.
 - b. Extent of the area (in hectare)
 - c. Forest Division
 - d. Map showing the required forest land, boundary of adjoining forest on a 1:50,000 scale map.
 - (iii) Justification for locating the project in proposed forest land(s)
 - (iv) Number of trees to be felled (per hectare) and number that will be kept standing
2. Detailed, purpose-wise break-up of the total forest land required with proposed building/activity area map.
3. Confirmation that User Agency will plant at least twice the number of trees to be felled, in the project or adjacent area and the amount to be provided annually for protection and maintenance of these plants for at least five years (Details to be enclosed).
4. Recommendation of the Gram Sabha - Accepted/Rejected [Please tick (5), as the case may be]. [Copy of the Gram Sabha resolution to be attached.]

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Signature of the authorized person for the User

Agency

(Name in Block letters)

Address _____

Date: _____

Place: _____

Serial No. of proposal _____

(To be filled up by the Range Forest Officer with date of receipt)

FORM-B

[See para 2.2(iv)]

(To be filled by the concerned Range Forest Officer)

Serial No. of proposal _____

1. Location of the project / Scheme:

(i) State / Union Territory

(ii) District.

(iii) Forest Division

(iv) Proposed forest land(s) (two options to be indicated)

i. Location - Survey No./ Compartment No.

ii. Extent of the area (in hectare)

(v) Whether part of biosphere reserve, tiger reserve, elephant corridor, etc.

2. Site inspection report (to be attached), containing the date of visit, and justified opinion on the acceptability of the proposal (separately for the two options).

3. Specific recommendation of the Range Forest Officer for acceptance or otherwise of the proposal and the better option.

Signature of the RFO

Name _____

Official Seal _____

Date: _____

Place: _____

Accepted / Not accepted with reasons to be recorded

Signature of the DFO

Name _____

Official Seal _____

Date: _____

Place: _____





PART- B

SELF RULE LAW IN SCHEDULED AREAS OF JHARKHAND



Introduction

Tribal life, culture, and governance is largely based on the premise that such areas where tribal population live is remote, inaccessible, where communities live in accordance with their own traditions and customs and ordinarily laws of the state should not be made automatically applicable. The Constitution of India recognizes these unique areas and makes them special areas of administration. However, prior to 1996 these areas were primarily treated as special areas with special schemes and not necessarily as special areas of governance. When the Forty Second Amendment to the Constitution of India was enacted, and the Panchayati Raj system was introduced in 1992, it was made clear that the system of Panchayats would not be automatically applicable to the Scheduled Areas⁵⁸. The Government therefore constituted a Committee under Shri Dilip Singh Bhuria in 1994 that made its recommendations for extending the provisions of the 73rd amendment to the Scheduled Areas. The Committee was of the belief that, "certain unique characteristics of tribal societies and tribal areas should be kept in view since many tribal societies have their own customary laws, traditional practices, community ethos, political and administrative systems, among others." The Committee recognized that the Gram Sabhas and village councils have been vibrant institutions in the field of administration, religion, politics, economics, justice, and therefore there is a need for a mix of traditional and modern institutions in the Panchayati Raj framework. Significantly, the Committee recommended that the Gram Sabhas should be allowed to exercise their customary role unhindered. Further, a Gram Sabha may have a traditional village council, which performs its varied functions. The Gram Sabha may nominate its executive council, which may be a traditional body and may

delegate to it, the execution of development works. Following the Bhuria Committee recommendations, the Parliament extended the 73rd Amendment Act to the Scheduled Areas in eight states by legislating the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996. It is important to note that the state of Jharkhand was then part of Bihar where in scheduled areas, the laws on PESA was applicable. Many believe that, like Forest Rights Act, PESA is the first significant instrument that will trigger the much needed scheduled area governance effective in India which has the potential; of tackling a number of social issues that currently impact the tribal, dominated areas in India. It is therefore important to understand the components of PESA, the aim and intent of PESA and more importantly how it can be used to strengthen the Gram Sabha in scheduled areas of India in generally and more particularly in Jharkhand. It would also be important to understand the unique context of Jharkhand and its tenancy laws which already has a strong tenure and self governance model especially for natural resource management as well its social aspects. In the light of above, the relevance of PESA shall be examined in more detail with respect to Jharkhand.

The set of questions below elaborates the concept of self governance, essentials of self governance, structure, functions and allocation of powers for self - governance in Scheduled Areas how the provisions of the Act have been adapted and implemented by the State of Jharkhand. The manual also presents a comparison between the mandate of the Central PESA and the provisions of the Panchayat Raj Act of Jharkhand and other laws relevant to the subject matters covered under the Central PESA to critically analyse how the Jharkhand State Government has adopted and implemented the same in the State.



⁵⁸ See Article 243M of the Constitution of India

I. The Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA)

1. What is PESA?

The Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996, commonly called PESA, ushered in the concept of tribal self-rule in Scheduled Areas. It was passed on the 24th of December 1996. It also resonates with the mandate of Article 40 of the Constitution which specifically aimed at organising village Panchayats and endow them with such powers and authority to enable them to function as units of self-government. The subtle distinction between the above mandate of the Constitution and the spirit of PESA is that while the concept of self-government under the Constitution is attributed to the Gram Panchayat, the PESA aims at strengthening the Gram Sabha first along with the Panchayats. PESA can also be seen as a converging legislation at the intersection of Scheduled Areas administration and Local Self Government. It attempts to vest legislative powers in Gram Sabha specifically in areas relating to development planning, management of natural resources and adjudication of disputes in accordance with prevalent traditions and customs.

The Central PESA (*See Annexure A for Central PESA*) gave a time of one year to the State Governments of Scheduled States to adopt PESA within their Panchayati Raj framework. (*See Annexure B for Legal Interpretation Aids to PESA*)

2. What are Scheduled Areas?

Scheduled Areas are those areas which are enumerated in the Fifth Schedule and the Sixth Schedule of the Constitution of India⁵⁹. It is important to note that Scheduled Areas were primarily areas that were to be excluded or partially excluded

from the normal operation of laws. This was done with the assumption and understanding that such areas which are tribal population dominated, which are remote and backward and more importantly, where, communities live in accordance with their customs and traditions and such areas need to be given special status under the Indian Constitution. Further, the legislation such as PESA was enacted in order to preserve such social customs and to safeguard the traditional vocations of the tribal's living in those areas. Such areas were declared by the President of India and are known as

Box 1

WHAT ARE SCHEDULED AREAS

Scheduled areas are called so because they have been listed under the fifth schedule of Article 244 (1) of the Constitution. Historically these scheduled and tribal areas were excluded from the normal operation of ordinary law to preserve the social customs & to safeguard the traditional vocations of the tribals living in those areas. Scheduled areas may be the entire district, or blocks within a district or Panchayats or villages within blocks.

Scheduled Areas. *See Box 1*

It is important to understand that Scheduled areas may be the entire district, or blocks within a district or Panchayats or villages within blocks.

3. Is Central PESA a Constitutional Amendment?⁶⁰

The Constitution of India clearly specifies that the extension of the provisions of Panchayats to Scheduled Areas shall not be considered to be an amendment to the



⁵⁹ See Article 244 of the Constitution of India

⁶⁰ Article 243 M (4) (b) Constitution of India quite expressly says so.

⁶¹ See Section 243 M (4) (b)

Constitution of India⁶¹.

4. Where is PESA applicable?

It is important to understand that after the 73rd Amendment to the Constitution which brought in the framework of Panchayati Raj as Part IX to the Constitution; this was not made applicable to the Scheduled Areas. Thus, to extend the Panchayat system to the Scheduled Areas, a framework law was created which is essentially a set of exceptions and modifications that needs to be adhered to while implementing the Panchayati Raj in Scheduled Areas. Thus, PESA is applicable only to Scheduled Areas and through such Panchayat laws which have conformed to PESA.

5. What is the applicability of Central PESA once the state makes its own Panchayat law for Scheduled Areas?

Central PESA as a legal instrument becomes redundant after the coming of the respective Panchayat Acts which has been made PESA compliant. It is only to the extent the State laws are inconsistent or repugnant, PESA may still be applicable. However this must be legally proved and perhaps challenged in court of law. Till then it's the state law, however inconsistent they may be, that is applicable as a framework of Central PESA implementation. This becomes more complicated where no action has been taken on behalf of the state especially for subject matter laws. In other words the state Panchayat law including the subject matter law is silent on that aspect. In such cases, even courts have expressed inabilities in asking the state to amend their subject matter laws or to frame Rules.

6. Who has the power to frame rules under PESA?

The power to make Rules or issue any directions in furtherance of the Act does not vest with the Centre or the State in the design of the PESA as there are no specific provisions to the same. However some states have made their allocation of powers subject to Rules and prescriptions. This may be drawing the strength from the respective Panchayat law or state legislations.

7. What is the Significance of PESA?

As stated earlier, PESA provides a framework of certain exceptions and modifications that needs to be adhered to while implementing Panchayati Raj in Scheduled Areas. The above mentioned exceptions and modifications essentially provides some of the cardinal principles on which Panchayat framework is implemented and also allocates different subject matters to strengthen the Gram Sabha and the Panchayat at Appropriate Level, which has a direct bearing on the lives of the tribal communities. In other words, it provides a self-governance framework while empowering the village community for planning village development, managing natural resources and resolving conflict in accordance with traditional customs and practices.

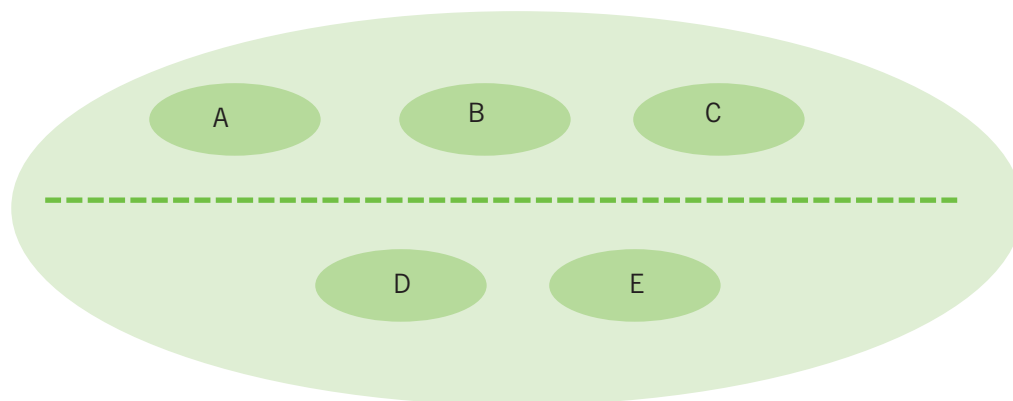
8. How does PESA define a village? And why?

First of all it is important to understand what a village as per common understanding is ordinarily a group of people living in a commune defined by a boundary and with a history of existence in that area is considered to be a village. The state however, has a formal definition of a village which is called a "Revenue Village" which is often based on population say 1000 or 1500 people depending upon the state and notified by the Governor. PESA, however, recognizes and defines a village to mean a hamlet or a group of hamlets, (by whatever name called such as tolas, padas, pallis etc) where tribal community has been living in accordance with their traditions and customs. See Fig. 2 (overleaf) for an illustration of a village under PESA.

It is clear that PESA recognizes a unit of self-governance where a hamlet or a group of hamlets is a cohesive unit which cohabits based on their social relationships and their traditional values, customs and therefore, a more robust social unit. This is also because of the customary modes of dispute resolution that they practice and therefore the community based decision making which they rely on for their social and cultural existence.



FIG. 1:
DEFINING OUR VILLAGE



A, B, C, D and E were five tolas in a Scheduled Area, all belonging to the same tribe. Though they were separated by a road, and had different wells and handpumps, forest and grazing lands, these Tolas decided to form one village.

These tolas believe that they have all descended from the same ancestors. They worship the same Devi, they follow the same customs, and they have traditionally lived as one village. They always celebrated their festivals together and have a common Mela. Residents from these tolas participate in the ceremonies associated with birth, marriage, and death in whichever tola. Customs, and have traditionally lived as one. Even their disputes are resolved through the same mechanism! Hence, they formed one village.



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9. What are the guiding principles of PESA?

PESA stands on 3 cardinal principles. First, that the Gram Sabha is competent to manage its own affairs in accordance with their traditions and customs. Second, the unit of administration is a hamlet, or a group of hamlets based on social and customary norms rather than population and the above mentioned Gram Sabha is of that unit of administration. Third, any state Panchayati Raj Act that is enacted in conformity with PESA shall be subject to the customary law and practices of that village. Let us understand this in some detail along with the distribution of powers to the Gram Sabha and the various tiers of the Panchayats.

- i. **Central role of customary laws, social and religious practices and traditional management practices of community**
PESA recognizes the Gram Sabha as the custodian of customary laws, social and religious practices and traditional management practices of community as

the founding principle of Scheduled Area governance. This principle is also reflected in the definition of village. A village for a Scheduled Area is defined as consisting of 'a habitation (group of habitations), hamlet (group of hamlets) comprising a community and managing its affairs in accordance with traditions and customs.' This does not depend on the population as is in the case of a revenue village, but on the traditions of the community. Further, every such village constituted according to the traditions and customs of the community shall have a Gram Sabha. Therefore, there will be Gram Sabhas at a tola or a group of tola level.

Further, the PESA directly mandates the competence of Gram Sabha in safeguarding and preserving traditions and customs of the people, their cultural identity, community resources, and customary mode of dispute resolution.

Accordingly, all state legislation on Panchayats must be in accordance with the customary laws, social and religious practices and traditional practices for management of community resources.

ii. By according some powers exclusively to the Gram Sabha

PESA accords certain powers of village level decision making and monitoring to the Gram Sabha. These powers include:

- The power of granting approval to the developmental plans, programmes and projects for social and economic development;
- The power of identifying and selecting beneficiaries for poverty alleviation and other programmes and
- The power for granting of certificate of utilization of funds or plans programmes and projects that are implemented by the Gram Panchayat.

iii. Power of the Gram Sabha or the PAL in matters related to land acquisition and minor minerals

PESA requires:

- Mandatory consultation with the Gram Sabha or the PAL before acquisition of land for development projects and before resettling or rehabilitating persons affected by such projects, and
- Prior recommendation for granting prospecting license or mining leases for minor minerals as well as for grant of concessions for the exploitation of minor minerals by auction.

iv. By empowering the Gram Sabha and the PAL to control and manage certain subject matters which are most important aspects of the life of a tribal in a scheduled area

The following provisions make the Gram Sabha a necessary unit for

Box 2

DISTRIBUTION OF POWERS IN PESA

The founding principles of self - governance in Scheduled Areas

- (i) The Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources, and customary mode of dispute resolution
- (ii) Village is a hamlet or a group of hamlets established under traditional customs.
- (iii) Customary laws, social and religious practices and traditional management practices of community resources need to be given precedence in the enactment of respective Panchayat laws.

Powers exclusive to the Gram Sabha

- (i) The power of approval of the developmental plans, programs and projects for social and economic development,
- (ii) The power of identifying and selecting beneficiaries for poverty alleviation and other programs and
- (iii) The power for granting of certificate of utilization of funds or plans programs and projects that are implemented by the Panchayat.

Power exclusive to the PAL

- (i) Power for planning and management of minor water bodies

Powers to Gram Sabha or PAL

- (i) Consultation before land acquisition for development projects and before resettling or rehabilitating persons affected by such projects
- (ii) Prior recommendation in granting prospecting license or mining leases for minor minerals as well as for grant of concessions for the exploitation of minor minerals by auction.

Powers to Gram Sabha and PAL

- (i) Enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants
- (ii) Ownership of minor forest produce
- (iii) Prevention of alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of Scheduled Tribe
- (iv) Control over institutions and functionaries in all social sectors
- (v) Management of village markets
- (vi) Control over money lending
- (vii) Control over local plans and resources for such plans including tribal sub-plans



decision making along with any other levels of Panchayat.

- i) Enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants;
- ii) Ownership of minor forest produce;
- iii) Prevention of alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of Scheduled Tribe;
- iv) Control over institutions and functionaries in all social sectors;
- v) Management of village market;
- vi) Control over money lending
- vii) Control over local plans and resources for such plans including tribal sub-plans

v. By necessitating proportional representation and reservations for Scheduled Tribe members

Proportional representation means that if the scheduled tribe population in a village is 80% of the total population, then in the Gram Panchayat, 80% of the members must be from the Scheduled Tribes. Moreover, for facilitating local leadership from the tribal community, the posts of Sarpanch and Up-sarpanch in the Scheduled Areas are reserved for members of the Scheduled Tribes.

10. How are the powers distributed between the Gram Sabha and within different tiers of Panchayat under PESA?

PESA distributes powers to regulate fourteen subject matters, among the four bodies-the Gram Sabha, Gram Panchayat, Panchayat Samiti and the Zilla Parishad. The PESA envisages a specific scheme of distribution of powers between the Gram Sabha and the three levels of panchayat.

- Powers exclusive to the Gram Sabha
- Powers exclusive to Panchayat at Appropriate Level
- Powers either to Gram Sabha or Panchayat at Appropriate Level
- Powers to Gram Sabha and Panchayat at Appropriate Level

11. What is a Gram Sabha?

Since the entire thrust of PESA is strengthening the Gram Sabha, it is important to understand exactly the legal concept of Gram Sabha.

Gram Sabha consists of all adult members of the village who are on electoral rolls. Gram Sabha provide a local platform for people to meet and discuss local development problems and analyze the development and administrative actions of elected representatives, thereby ensuring transparency and accountability. Most importantly, Gram Sabha provides an opportunity for the participation of all sections of the village - women, dalits, tribals and other marginalised groups - in planning and implementation process for the development of the village. In the context of PESA, it is most important to understand that such a Gram Sabha is of the hamlet or group of hamlets and not of the conventional revenue village.

12. How does the Gram Sabha Function?

i. When does the Gram Sabha Hold Meetings?

Gram Sabha is people's assembly and should meet regularly to discuss issues on village welfare. Besides this, additional Gram Sabhas may be convened, if required by the village adults on a written requisition and the Collector may appoint any suitable government officer or employee to make arrangements and ensure due conduction of the Meeting.

ii. What is the Quorum of the Gram Sabha?

Quorum is minimum number of people required to constitute a valid meeting and is the key to making decisions. The Meeting of the Gram Sabha shall be presided over by the member of the Gram Sabha belonging to the Scheduled Tribe who shall be elected by the majority members of the Gram Sabha.



II. Self Rule Governance Laws in Jharkhand

Having seen how the PESA allocates power with the different tiers of the Panchayat, let us now look at how the Jharkhand state Panchayat Act vests powers and duties with the Gram Sabha and Panchayat bodies. The section below elucidates on the adaptation of PESA provisions in Jharkhand and comments on their implementation. The purpose is to know whether PESA is being operationalised in its true letter and spirit, if not then what are issues and challenges that have emerged and what advocacy measures can be taken.

1. What is the Panchayat System in Jharkhand; How did it originate?

Jharkhand was carved out of the state of Bihar as the 28th state of India. The demand for a separate tribal state existed since the time of British rule and finally on 15th November 2000 a separate state in the name of Jharkhand, meaning Forest Territory was formed. Jharkhand being one of the nine Scheduled States is rich in natural resources and is primarily inhabited by Scheduled Tribes. Out of its twenty four districts, fourteen states (Dumka, Godda, Deogarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East & West), Gumla, Simdega, Lohardaga, Palamu, Garwa, barring a few blocks are completely Scheduled V Area districts. (*See Annexure C for a list of Schedule V areas of the state*).

Within six months of the formation of the State a new Panchayat law Jharkhand Panchayat Raj Adhiniyam, 2001 (hereinafter referred to as JPRA) was introduced. (*See Annexure D*)

2. What is the Panchayat Law for Scheduled Areas in Jharkhand?

For Scheduled Areas specifically, the state of Jharkhand has not passed a separate legislation. Instead, it has added an additional Chapter for Scheduled Areas.

3. How does the Jharkhand Panchayat Act define a village?

As mentioned earlier, PESA provides for a new definition of Village for Scheduled Areas which is different from what is known as revenue villages. In line with PESA, Jharkhand Panchayati Raj Act clarifies that ordinarily village includes a revenue village; but in scheduled areas, a village means any such village in the Scheduled Area in which there will ordinarily be a residence or a group of residences, or a tola or a group of tolas, comprising such community which manages its activities according to its customs and usages⁶².

To make the Gram Sabha small, effective and more participatory Jharkhand Panchayat Raj Act provides that there can be more than one gram sabhas in a village if the members so desire and makes 1/3rd participation of members mandatory for a valid gram sabha. The 1/3rd participation of members should also include mandatory 1/3rd participation of women. The Act also provides that there should be mandatory regular meetings of Gram Sabha and between any two meetings there should not be a gap of more than three months⁶³.

4. How is a Gram Sabha created under JPRA?

For Scheduled Areas, the JPRA provides that "Ordinarily there shall be one Gram Sabha for a village but if members of a Gram Sabha in a scheduled area so desired more than one Gram Sabha may be constituted in the manner to be prescribed, and in the area of each such Gram Sabha there shall be a residence or a group of residences or group of small villages or villages/tolas comprising communities which shall manage their activities according to customs and usages"⁶⁴. (*See Box 3*)

It is important to emphasize that the process of creating such Gram Sabhas needed to be further prescribed by the state



⁶² Section 2 (ii) of the JPRA

⁶³ See Chapter 2 of the JPRA

which was done in 2003 by the Jharkhand Gram Sabha Niamawali.

5. What is the procedure for creating a Gram Sabha?

Box 3

WHAT ARE SCHEDULED AREAS

Note: The provision of more than one gram Sabha may create confusion at some places, for example, sec 75 (B) of the JPRA vests the gram Sabha with the power to exercise control over gram Panchayats. If there are more than one gram Sabhas, which one of them shall exercise control over the village panchayat is not clear.

The procedure for Constitution of Gram Sabha has been prescribed in Rule 4 of Jharkhand Gram Sabha Niamawali, 2003 as follows:

A notification shall be issued in district gazette inviting applications from the residents of villages in the district for constitution of separate Gram Sabhas at hamlet or group of hamlet level. The applications shall be presented within one month of the publishing of Gazette notification. The District magistrate will then issue a public notification describing the names, population of the Gram Sabha for which applications are revived and invite objections. After all objections have been received the District magistrate shall take a decision on the applications. Thereafter, a public notification will be issued declaring the constitution of the new Gram Sabha, describing the villages within its jurisdictions, its customs and traditions among others.

It is important to find out whether such Gram Sabhas have been constituted or not. This is most important as the entire legislation and the tribal empowerment is based on the strengthening of such Gram Sabhas.

6. What are the powers vested exclusively

with the Gram Sabha under JPRA?

Jharkhand Panchayat Raj Act especially empowers the Gram Sabha in Scheduled Areas to preserve its customs and traditions, cultural identity and community means such as Sarna, Masna, Gohar-Sthna and their customary way of settling disputes provided these practices and modes do not violate the Constitution of India and other relevant laws.

PESA gives certain powers exclusively to the Gram Sabha, they are:

- Approving developmental plans, programmes and projects concerning social and economic development of the village / Panchayat
- Identification and selection of beneficiary for poverty alleviation and other programmes
- Granting of certificate of utilization of funds or plans programmes and projects that are implemented by the Panchayat

These powers give the Gram Sabha the responsibility for the development of the village by deciding on suitable plans, programmes and projects that are required for the benefit of the village. Secondly it requires the Gram Sabha to identify those people in the village who truly deserve of the benefit of the government schemes such as old age pension.

Thirdly Gram Sabha can also keep a check on its representative body, the Panchayat by ensuring proper utilization of funds by the Panchayat and issuing a certificate to that effect. (See Annexure E for a Model of Utilization Certificate)

i. Additional Powers to the Gram Sabha under Jharkhand Panchayat Raj Act

Besides the above powers Jharkhand Panchayat Raj Act also bestows certain general powers on the Gram Sabha. These powers are to be exercised by Gram Sabhas in both Scheduled and non-Scheduled Areas and they are over



⁶⁴ See Section 3 (iii) of JPRA

and above the special powers given to the Gram Sabha in Scheduled Areas

- Identification of economic development schemes for the village and formulation of criteria for fixing their priority
- Approval of schemes for social and economic development, including annual schemes of Gram Panchayat before the implementation of programmes and projects
- Discussing the budgets and making recommendations for the utilization of the same.
- Deliberating on the audit report and annual accounts of Gram Panchayat.
- Identification and selection of persons as beneficiary under poverty alleviation and other programmes.
- Assuring distribution of funds and resources among beneficiaries and their proper use.

Besides this, in Scheduled Areas of Jharkhand the Gram Panchayat has been made subservient to the Gram Sabha. Gram Sabha can freely consider any matter related to the powers of the Panchayat and make recommendations. Gram Panchayat has to necessarily implement the suggestions of the Gram Sabha. Also Gram Panchayat has been placed with corresponding duty to place before the Gram Sabha the following and implement its recommendations:

- Annual return of accounts and administrative report of previous year;
- Previous year's audit report and all replies related to that;
- Proposed programmes for next financial year concerning development and other works;
- Proposed Annual budget of the Gram Panchayat and annual scheme for the next financial year;
- Report of vigilance committee, should be shared with the Gram

Sabha.

7. Who presides the meetings of the Gram Sabha in the Scheduled Areas of Jharkhand?

The meeting of Gram Sabha in Scheduled Areas should be presided over by a respected person according to the custom usage traditionally prevalent in the area such as Gram Pradhan, Manjee, Munda, Pahan, Mahto or one known by any other name or by a person proposed by them or unanimously nominated / supported by the members present in the meeting and not by the Mukhiya, Up-Mukhiya or members of the Panchayat⁶⁵.

8. How are the powers over different subjects distributed within various Panchayat tiers Powers?

As mentioned above, the Central PESA vests powers over 14 subjects with the Panchayat bodies. Let us see how the JPRA has distributed powers on the same subjects.

i. Powers vested either with the Gram Sabha or Panchayat at appropriate level: Land Acquisition and Resettlement and rehabilitation and Minor Minerals

a) How does JPRA vest control over Land Acquisition and Resettlement and Rehabilitation

As stated earlier, PESA leaves it to the discretion of the state government to decide the management and control of certain subject matters. State Government can vest their management and control in either the Gram Sabha or any of the three tiers of Panchayat. These powers are:

- Prior consultation before acquisition of land for development projects
- Prior consultation before resettling or rehabilitating the persons affected by land acquisition

⁶⁵ See Section 8 (iii), Jharkhand Panchayat Raj Act - Presiding Officer

In the Jharkhand Panchayat Raj Act the above mandate of PESA is not addressed. No provision exists in the Act which allocates the above mentioned powers either to the Panchayat at any of the three levels or the Gram Sabha. However, the JPRA empowers Panchayats (in both scheduled and non-scheduled areas) to acquire land for carrying out their functions, in this case too, it does not provide for a prior consultation with the Gram Sabha.

In the absence of any operational mechanism it may be appropriate to follow the spirit of Central PESA where the consultation of the Gram Sabha has been made mandatory prior to any land acquisition in scheduled areas.

b) What is consultation?

Also it is important to delve in to what constitutes "consultation". Here again, in the absence of any legal definition, precedence from other laws such as Environment Protection Act, 1986 (EPA) or case law may be adhered to. One such description is provided in the Environment Impact Assessment Notification of 2006 which is issued under the EPA. It provides that for any consultation to be considered as valid, there are at least two basic criteria that needs to be followed. First there should be full and prior information of the project or industry for which land is being acquired. Second there should be a public hearing for eliciting the views of those who are likely to be affected by such a project or industry. Therefore in the absence of any operational definition the above process may be followed which is clearly based on a legal precedence.

c) How does the JPRA vest consultation over Minor Minerals?

The Scheduled Areas of Jharkhand are rich in minerals. With regard to Minor Minerals, the Central PESA mandates consultation of Gram Sabha or Panchayat at appropriate level prior to grant of license/lease/concession.. However,

the JPRA is silent on minor minerals. Jharkhand minor mineral concession Rules 2004 though provide for prior recommendation of Gram Sabha or Panchayat at appropriate level before granting mining leases only, but not in case of prospecting licenses or for concession for exploitation of minor minerals by auction in Scheduled Areas. To this extent the Rules are inconsistent with PESA and needs to be amended. Also the Rules also do not provide for the procedure for carrying out prior recommendation.

Here again it needs to be made clear whether it is the Gram Sabha or the Panchayat which needs to grant recommendation. In the overall spirit of PESA it is perhaps more important that the Gram Sabha grants such prior recommendation.

ii. Power exclusively to Panchayat at appropriate level: Minor Water Bodies

a) How does the JPRA vest control over Minor Water Bodies?

Whereas PESA deals with just planning and management of Minor Water Bodies, the Jharkhand Panchayat Raj Act on the other hand, vests the ownership of minor reservoirs in the Panchayat Samiti and the Zila Parishad according to their size.

Jharkhand Panchayat Raj Act also mentions the role of Gram Sabha and Gram Panchayat in the management of water bodies. Several other laws in the state relating to irrigation, fisheries, water management also give control over water bodies in other state departments such as Irrigation department, Department of Animal Husbandry, user associations.

Table 1 below gives a description of Distribution of Power to Control and Manage Water Bodies in Jharkhand



Table 1

Powers and Functions Gram and Three Tiers of Panchayat	Powers and Functions of Irrigation Department	Powers and Functions of the Animal Husbandry Department
<p>1. Gram Sabha has powers and functions to manage the natural resources, including water within the village area. Further Gram Sabha also has the power to advise the Gram Panchayat as to regularization and utilization of small reservoirs.</p> <p>2. All public drains, water distributaries, springs, ponds, Ghats, reservoirs, tanks, wells within the local limits of the jurisdiction of Gram Panchayat are its property and should be under its direction, management and control.</p> <p>3. Gram Panchayat has been entrusted with the function of implementing minor irrigation, water management and water coverage development plans. Implement schemes for the development of fisheries in the village. Management of water sources for the purposes of drinking water facilities</p> <p>4. The powers to ownership, planning and management of minor water bodies in Scheduled Areas have been given both to the Panchayat Samiti and the Zila Parishad according to the size of the minor water body.</p> <p>5. Panchayat Samiti is entrusted with the function of developing minor irrigation, water management and water shed as well as drainage of slanting water. They are also entrusted for integrated management of water sources for the purposes of drinking water facilities.</p>	<p>1. Bihar Irrigation Act, 1997 expressly vests all rights in water of any river, natural stream or natural drainage channel, natural lake or other natural collection of water in the State Government.</p> <p>2. The Act gives significant powers over the management and planning of water bodies to the government officials such as, Canal officers, Div. Canal Officer of the Irrigation department and the Collector.</p> <p>3. Water User Associations: The Act also provides for the acquisition of ownership of any existing village channel by any person including Water Users Associations. Further the Government may also transfer any distributory, minor or watercourse to the Water Users Associations. Such Water Users Associations could function as parallel bodies to the formal Panchayats and could create conflicts on the ground as the Panchayats have also been entrusted with similar or overlapping functions.</p>	<p>1. Bihar Fish Jalkar Management Act, 2006, vests in the Department of Animal Husbandry and Fisheries, the powers to make Long Term Settlement of Jalkars of water area up to four hectares. There is no mention of any role of Gram Sabha or the Panchayat except that the Mukhiya of the concerned Panchayat should be informed through registered post.</p> <p>Note: Jalkar means "Tank, Pokhar, Ahar, River, Water course channel, 'Chaur', 'Dhav', reservoir, Lake, Ox-bow lake etc. under Department of Animal husbandry and Fisheries, Bihar, in which Makhana, Singhara & Fish are reared.</p>



As seen from the table above various functions associated with the power to own, control and manage a water body including a minor water body has been simultaneously allocated to different state functionaries along with the Gram Sabha and Panchayat. This has created huge ambiguity and is clearly inconsistent with PESA.

In order to take corrective action and ensure effective exercise of this power the state needs to amend *Bihar Irrigation Act, 1997*, *Bihar Fish Jalkar Management Act, 2006* and other relevant laws to give way to the provisions of PESA. Secondly within the Gram Sabha and Panchayat, the power must be clearly allocated to one of the tiers of Panchayat as mandated by PESA or to more than one tier on the basis of the size of a minor water body. *Jharkhand Panchayat Raj Act* needs to be amended accordingly.

iii. Powers to Gram Sabha AND Panchayat at appropriate level :
Gram Sabha and Panchayat at appropriate level are empowered to control the following:

- **Intoxicants:** Power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.
- **Minor Forest Produce:** Ownership of minor forest produce.
- **Land Alienation:** Power to prevent alienation of land in Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.
- **Village Market:** Power to manage village markets by whatever name called.
- **Money Lending:** Power to exercise control over money lending to the Scheduled Tribes.
- **Institutions and Functionaries in all Social Sectors:** Power to exercise control over institutions and functionaries in all social sectors.
- **Local plans, tribal sub-plans:** Power to exercise control over local plans and resources for such plans including tribal sub plans.

a) **What is the role of Gram Sabha and the Panchayat Bodies in Control over Intoxicants?**

The power to enforce prohibition, restriction and regulation on the sale and consumption of intoxicants has been allocated to both Gram Sabha and any of the three levels of Panchayat (to be decided by the State Government). However, Jharkhand Panchayat Raj Act is silent on the issue of intoxicant and no such power as given in PESA has been given to the Gram Sabha and Panchayat.

Instead, two legislations Bihar & Orissa Excise Act, 1915 and The Bihar & Orissa Opium Smoking Act, 1928 grants the following powers to regulate intoxicants to the State Government:

- Opium Act provides that a person who is above 25 years of age and who is in a habit of smoking opium has to get himself registered. Only a registered person can manufacture, possess or smoke opium. State Government has to maintain a register for the registration of opium smokers.
- The Excise Act imposes a condition that for manufacturing, possession and sale of an intoxicant a license is compulsory. Further, the Act confers all the powers in respect of granting licenses for manufacture, possession and sale of any intoxicants on the District Collector.
- Further it is also the duty of the state government to regulate import, export and transport of the intoxicants in the State. Thus, we see that the State officials enjoy the overall control over the sale and consumption of intoxicants.
- Besides this, the Excise Act also casts a duty on the Panchayats to give information about the unlicensed manufacture of any intoxicant, but the action against such erring persons shall be taken by the State officials.



- The Excise Act imposes a complete ban on manufacture, cultivation, distillery or brewing, bottling or even possession of manufacturing materials, still, utensils, implement or apparatus for manufacturing intoxicants. Even Tari cannot be tapped for manufacturing intoxicants. The above processes are subject to license to be given by the District Collector.

As an exception to the above law, the state government has powers to exempt any intoxicant, from the provisions of the Excise Act which means that intoxicant can be possessed, manufactured, consumed without any license.

Note: Manufacturing and possession of Pachwai by Scheduled Tribes is permitted for their bonafide private consumption on social functions and festivals. Mahua flower, which is one of the ingredient of a country liquor, its collection and possession upto an upper limit of five kilograms, is allowed, beyond which license is required.

With the coming of PESA the State Government needs to amend the Jharkhand Panchayat Act to vest the complete powers to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant in the Gram Sabha along with any of the three levels of Panchayat. Secondly, the provisions of the Opium Act and the Excise Act also need to be amended to recognize the control of Gram Sabha and Panchayat in regulating intoxicants.

- b) **How has the ownership rights over Minor Forest Produce been vested with the Gram Sabha and the Panchayat Bodies in Jharkhand?**

As mentioned above, PESA gives the ownership of Minor Forest Produce to the Gram Sabha and any of the three tiers of Panchayat. Jharkhand Panchayat Raj Act on the other hand, in total contravention of PESA does not give the 'ownership' rights, instead vests, all the three

tiers of Panchayat with the power to manage, collect, store, market Minor Forest Produce. Exercise of this power is also not absolute as it is made subject to conditions prescribed by the state and the funds available with Panchayats.

Further the *Bihar Forest Produce (Regulation of Trade) Act, 1984* creates monopoly of the State in the trade of certain forest produce. By virtue of the Act, the State Government may appoint agents to carry out purchase and trade of forest produce on its behalf. It is pertinent to mention here that the State may also appoint the Gram Panchayat as its agent apart from tribal cooperatives like *LAMPS (Large Scale Multipurpose Society), Vyapar Mandal etc.*

Further note that no person other than the Government or its agent shall purchase or transport or import or export the specified forest produce. Thus all the primary collectors who collect the forest produce have to sell it to the Agent of the State, at the depots established by the State that too at the price determined by the State. The Jharkhand State Trading Organization, which is the wing of the Forest Department harvests and markets the major forest produce of the State.

These provisions are in clear conflict with Jharkhand Panchayat Raj Act which vests the Panchayat with the right over marketing and management of MFPs, whereas the 1984, Bihar Forest Produce Act provided for state monopoly and control.

Further the larger question of 'ownership' as conceived by PESA remains. Having realised the incongruity, the State of Jharkhand



has initiated a process of issuing an Ordinance titled "*Jharkhand Laghu Van Upaj (Gram Sabha ko Swamitva ka Sandan) Vidheyak, 2000*". Although a careful reading of the draft Ordinance clearly makes the Forest Department as the ultimate controller and not a facilitator. The said draft needs to be re-examined and redrafted to make it inconformity to PESA. With the coming of the Forest Rights Act which gives various rights to forest dwelling Scheduled Tribes and other traditional forest dwellers primarily residing in forests for generations. The Act confers ownership, access to collect; use and dispose of minor forest produce collected traditionally within or outside village boundaries on all forest lands. The grant of forest rights extends to all forest lands whether, recorded, notified under any forest law or unrecorded. The process of recognition of the right of minor forest produce is to be initiated by the Gram Sabha. For more details on MFP provisions under FRA see PART A of this Manual.

- c) **What is the role of Gram Sabha and the Panchayat Bodies in Preventing Land Alienation and restoring unlawfully alienated land?** PESA gives powers to Gram Sabha and Panchayat at appropriate level to prevent alienation of land in Scheduled Areas and take appropriate action for restoration of any land of Scheduled Tribes which was unlawfully alienated. The Panchayat Act requires Zila Parishad to assist Adivasis in the restoration of unlawfully alienated land. The word 'assistance' does not connote empowered to take action, but only means providing support or help.

Thus on the issue of land alienation the Panchayat Act does not give the power to the Gram Sabha and the Panchayat to take proactive measures. Further, the Act also does not talk about prevention of alienation of land in Scheduled Areas. That means the Zila Parishad will get involved only once the land has been unlawfully alienated.

It is to be noted that the Chota Nagpur Tenancy Act, 1908⁶⁶ gives power to the Deputy Commissioner to restore the possession of land of a Scheduled Tribe which has been unlawfully transferred. There is a need to correct this anomaly and vest the power to prevent alienation and restore unlawfully alienated land to the Scheduled Tribe in the Gram Sabha and the Panchayat through an amendment in Jharkhand Panchayat Raj Act and the Chota Nagpur Tenancy Act. Similar provisions are provided in the Santhal Paragana Tenancy Act, 1949 for the Santhal region⁶⁷.

d) **Control over Village Markets**

In tribal societies one institution which gives a glimpse of socio-cultural locale and traditional commercial practices of the tribals is a Village Market or a Haat. PESA gives the power to manage village market (by whatever name called) to both the Gram Sabha and the Panchayat at appropriate level.

In Jharkhand the Gram Sabha is empowered to manage the bazaars and fairs, including cattle fairs of the village through the Gram Panchayat. Further the Zila Parishad also aids in managing fairs (cattle fairs included), markets and haats in the Panchayat area. In addition, in case the State Government declares any market or fair to be public

⁶⁶ As amended by the Bihar Scheduled Areas Regulation, 1969

⁶⁷ See Section 20 of the Santhal Paragana Tenancy Act

market or public fair, management of such public market and public fair would be vested in the Panchayat Samiti.

As seen from above, the power to manage village markets is vested in the Gram Sabha and simultaneously with all the three tiers of Panchayat. Therefore, there is a need to clearly define the functions and responsibilities of each tier of Panchayat in management of village haats.

e) What is the role of Gram Sabha and the Panchayat Bodies in Control over Money Lending?

PESA empowers Gram Sabha and Panchayat at Appropriate Level to exercise control over money lending in Scheduled Areas.

Jharkhand Panchayat Raj Act on the other hand is limited in its scope. The power has been kept away from the Gram Sabha and has been given to the highest tier of the Panchayat- the Zila Parishad. Only mention of money lending within the Act is a passing reference, requiring Zila Parishad the function to keep vigilance over usury. This means that Zila Parishad has the function of keeping vigil over money lending on high / illegal rate of interest. How they will keep vigil on something which happens at village level and what will they do after keeping vigil, are questions, which have not been answered in the Panchayat Act.

f) What is the role of Gram Sabha and the Panchayat Bodies in Control over institutions and functionaries in all social sectors?

Functionaries in social sector mean those people who are engaged in providing social services to the community such as school teachers, health staff, NGO workers, staff of anganwadis who are working in the village.

PESA empowers the Gram Sabha

and Panchayat at appropriate level to exercise control over all functionaries of social sector working in the village.

JPRA gives powers to Panchayat Samiti and Zila Parishad to have control over the organizations and work transferred to them in all social fields. Besides, it also vests the administrative and functional control over all the state government institutions, projects, schemes and officers located within the Gram Panchayat to the Gram Panchayat. If such institution, projects, schemes or offices are beyond the area of more than one Gram Panchayat or one Panchayat Samiti, the same power is vested with the Panchayat Samiti and Zila Parishad respectively. However this control is subject to any general or special order of State Government.

It is clear that Gram Sabha has not been given any powers of control as per PESA. Jharkhand Panchayati Raj Act needs to be amended to give adequate powers to the Gram Sabha also.

g) What is the role of Gram Sabha and the Panchayat Bodies in Control over local plans and resources for such plans including Tribal sub-plans?

The Central PESA gives Gram Sabha and Panchayat at Appropriate Level the power to exercise control over local plans and resources for such plans including tribal sub plans.

Jharkhand Panchayat Raj Act provides the Gram Sabha and all the three tiers of Panchayat with similar powers. This not only creates confusion but will subvert the whole spirit of PESA. Hence, Jharkhand Panchayat Raj Act needs to be amended to clearly define what constitutes the power to control local plans, tribal sub plans and how will they be exercised.



III. How to Exercise Powers Vested Under PESA?

1. In the absence of a framework for implementation of the powers mentioned in PESA how can we exercise them?

PESA gave us a framework for Scheduled Area governance but does not provide for a clear road map for operationalisation of this framework. This task was left to the State Governments. The Jharkhand PESA allocates powers and functions to the Gram Sabha, the Gram Panchayat, the Janpad Panchayat and the Zila Panchayat as seen in the previous section, however, it silent on how to exercise these powers. Several anomalies have led to ineffective implementation of PESA in the State which mars the very spirit of tribal self-rule. Clearly, there is an urgent need to correct these anomalies. However, meanwhile process of implementing PESA can be started at the village level too.

2. Steps that can be taken to exercise its powers by the Gram Sabha

i. To manage natural resources including land, water and forests within the area of the village in accordance with its tradition and in harmony with the provisions of the constitution and with due regard to the spirit of other relevant laws.

- Through documenting traditional management practices
- By forming committees of members of the village
- By framing rules or norms for the functioning of village forest protection committees, punishment to the members of the village for destruction of the resource, demarcating the area to be protected.
- The rules framed must not be in violation of the basic principles of the Constitution and other relevant laws such as FRA.

ii. Approval of Plans programs and projects of socio economic development

- Pass a resolution in the Gram Sabha stating the needs of the village and plans that can be implemented in the village as per PESA powers and send it to the District Collector through the Gram Panchayat.

iii. Identification and selection of beneficiaries for poverty alleviation programs

The Government has been implementing poverty alleviation programs in the villages. The selection of beneficiaries for such programs by the officer authorised by the State has been on the discretion of the state and this position has sought to be changed by PESA that it is the locals who know who is most appropriate to receive benefits of government programs and therefore they need to select the beneficiaries.

Note that the identification and selection of beneficiaries from poverty alleviation programmes is not restricted to formal Below Poverty Line (BPL) Surveys alone.

How should beneficiaries be selected?

In selecting the beneficiaries, the following points should be kept in mind:

- The extent of land that is owned by a beneficiary. Clearly the landless must be given a priority.
- The economic condition of the proposed beneficiary on the basis of his/her source of income, income of the family members or the individual, total number of members in the family including the earning members and the dependants.
- The social factors affecting the proposed beneficiaries and the alternative opportunities available to them. For

instance, a widow with no source of income or an orphan child with no relatives may require more help than a person who is getting insufficient daily wages.

- An attempt may be made to ensure that different families benefit from the different poverty alleviation programs, and only few families are not at an advantage.
- The extent to which the individual is capable of utilizing the proposed benefit may also be a deciding factor.

In any case, the parameters should be well in place before the identification of the beneficiaries. Further it should necessarily be developed by the Gram Sabha alone.

iv. Issuing Utilization Certificate

- The power to ascertain and certify the proper utilisation of Funds by the Gram Panchayat for plans, programmes and projects.
- In addition to approving the plans and projects undertaken by the Gram Panchayat, before implementation, the Gram Sabha

has the power of ascertaining whether the funds allocated to these projects and programmes have been properly utilized by the Gram Panchayat.

v. How to ensure that funds are properly utilized?

While making an assessment for proper utilization of Funds by the Gram Panchayat, the following factors should be kept in mind:

- The amount of money which has been spent on the project;
- Whether such amount is within the amount sanctioned or exceeds it;
- Whether such amount was used properly (*Also see Annexure E for Model for Utilization Certificate*)

SAMPLE CRITERIA FOR SELECTION OF BENEFICIARIES

Anyone who is poor should be the beneficiary and BPL should not be the only criteria.

1. Issuance of BPL card: the actual persons are not the recipient of the BPL card and the consequent benefit.
2. No of earning member in the family.
3. Not able to work due to physical and mental handicap.
4. The capacity of the family to support itself.
5. Number of family members.

Illustrative Criteria for selection of beneficiary under Widow Pension

1. Whether the widow has any means to support herself?
2. What are the different means of livelihood support with the widow?
3. Whether she owns any land in the village?
4. Whether she is recipient of any pension from any job?
5. How many earning members in the family?
6. How many dependent members in the family?

A SAMPLE AGENDA FOR SOCIAL DEVELOPMENT

1. Irrigation Facilities
2. Drinking Water
3. Health Facilities
4. Construction of Minor Water Bodies
5. Planting a fruit orchard
6. Anganwadi Bhavan
7. Sports Ground
8. Issue of BPL cards
9. Widow pension for all widows
10. Construction of community hall
11. Construction of a dam

- Whether necessary and sufficient material or labor was used or it exceeded the reasonable standards.
- Whether the project has been completed within the time-period and if not, then the reasons for the same;
- The activities for which such expenditure has been incurred;

vi. How to exercise control over institutions and functionaries in the social sector?

- In Jharkhand, the Panchayat Samiti and the Zilla Parishad have been empowered to exercise control over institutions and functionaries in all



social sectors. Firstly it is not clear which of these two will exercise this power, *Panchayat or the Zilla Parishad*. Also no power has been vested in this regard with the Gram Sabha. This is not in accordance with PESA and hence need correction

vii. How can local plans and resources for such plans including tribal sub-plans be controlled?

The power to control local plans and resources for such plans including tribal

In identifying the principles for identification of schemes and their priority, as well as in granting approval, the following factors⁶⁸ have to be kept in mind:

- In identifying the principles for identification of schemes and their priority, as well as in granting approval, the following factors have to be kept in mind:
- The desirability of the project in terms of whether the proposed outputs are relevant for the village.
- The viability of the project must also be determined. This assessment may be carried out on the basis of the objectives, the time-period for achievement of these objectives and the costs involved.
- The benefits that result from the project are critical in granting approval. Both, the short - term or immediate gains and the long-term benefits should be taken into account. In addition to the absolute benefits, the approval must also take into account the distribution of benefits among the Gram Sabha so that the village as a whole can develop.
- Approval should be granted only when all the above factors are satisfied⁶⁹.

sub plans has been allocated to Gram Sabha along with the Panchayat at appropriate level.

In order to use this power, we need to understand two things clearly: first the role of Tribal Developmental Agencies in the village and secondly, the relationship of these Agencies with the Panchayati Raj Institutions and the Gram Sabha in particular.

viii. What should be done to manage the village markets?

As per the state PESA this power should be given to both Gram Sabha and all the three Panchayat tiers.

In order to exercise following provisions should be made by the Gram Sabha through a resolution:

- Regular inspections to ensure that only those persons holding a valid license are selling their goods in such area;
- The categories of agricultural and non-agricultural produce which are to be sold in such market area should be made
- Regular inspections to ensure that the various produce are being sold at the prices so fixed;
- The kind and description of the scales, weights and measures which alone may be used in transactions in agricultural produce in the market area;
- Inspection, verification, correction and confiscation of scales, weights and measures in use in such area;
- Regular inspections to ensure that adulterated products are not sold;
- Rent for the shops need to be fixed;
- Period of lease may also be decided.

⁶⁸ These are desirable but not statutory criteria.

⁶⁹ Ibid.

IV. PESA: With Powers comes Responsibility!

- PESA gives powers for self-governance and at the same time bestows a responsibility on the village community to exercise the powers judiciously and for the betterment of the village.
- After knowing the rights, powers and duties, the Gram Sabha must come forward collectively to enforce their powers. It is their duty to protect their rights; to ensure the responsiveness of the Gram Panchayat, and the Janpad or Zila Panchayat to their needs. In addition, the Gram Sabha must put pressure on those who make laws and policies to devolve effective powers upon their community.
- For the realization of their rights, the members of the Gram Sabha must attend the Gram Sabha meeting held once a month. The law mandates that not less than one fifth of the total number of members or one thousand members, of which at least one third are women, must be present for the quorum to be complete. However, the meeting is the forum for discussing and planning the village development and therefore, ALL residents must make it a point to attend. During these meetings issues affecting daily lives and the development of village must be deliberated upon. Everyone must participate in the proceedings.
- The Right to Information flows from the Constitution. It has been further affirmed by the Right to Information Act, 2005.
- All citizens' can demand all the information relevant to their village. To know about the relevant changes in the laws affecting them, as well as the developmental schemes made for them, everyone must interact with the Sarpanch on a regular basis and make periodic visits to the offices of the Panchayati Raj Department at the Block, district and the State level.
- To increase their knowledge about the rights available with them, the members of the Gram Sabha should also interact with local NGOs and the relevant line departments. The Gram Sabha meetings may also serve as a forum for sharing such information which is of interest to the village.



ANNEXURE A

THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996 Act No.40 OF 1996

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas. Be it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

Short title

1. This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996

Definition

2. In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution.

Extension of part IX of The Constitution

3. The provision of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section.

Exceptions and modifications to part IX of The Constitution

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:-
 - (a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
 - (b) a village shall ordinarily consist of 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;
 - (c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;
 - (d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;
 - (e) every Gram Sabha shall-
 - i. approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;
 - ii. be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;
 - (f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilization of funds by that Panchayat for the plans, programmes and projects referred to in clause(e);
 - (g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;
Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;
Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;

- (h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level;
Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;
- (i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;
- (j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- (k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;
- (l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;
- (m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-
 - i. the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
 - ii. the ownership of minor forest produce;
 - iii. the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
 - iv. the power to manage village markets by whatever name called;
 - v. the power to exercise control over money lending to the Scheduled Tribes;
 - vi. the power to exercise control over institutions and functionaries in all social sectors;
 - vii. the power to control over local plans and resources for such plans including tribal sub-plans;
- (n) the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha;
- (o) the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.

Continuance of existing laws on panchayats:

5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which this Act receives the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President;
Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council, by each House of the Legislature of that State.



ANNEXURE B

Legal Interpretation Aids for PESA

To appreciate the spirit of PESA it is important to develop an understanding of the meaning of key terms used in law. Below is a glossary of key terms used in PESA

As may be prescribed	The particular subject matter has not been explained in detail and that it would be set down extensively in future by the state.
Certificate for utilization for funds	Utilization certificate which may be given by Gram Sabha to the Panchayat as a means of auditing the expenses incurred by the Panchayat.
Consultation	Deliberation of persons on some subject without a binding effect
Control	To exercise restraining or directing influence over the something.
Custom	A code of conduct (may be written or unwritten) which in a given place and among given groups of persons has been followed for a considerable time.
Customary Law	Law originating from the age-old customs and is recognized as such by the people and the judiciary.
Customary Modes of Dispute Resolution	Resolving disputes between people belonging to a particular community or village by the traditional leaders or heads of such community or village as per their traditions and customs.
Customary practice	Habitual practice or course of action, that prevails within a geographical or sociological area and is characteristically repeated in like circumstances.
Gram Sabha	Gram Sabha consists of persons whose names are included in the electoral rolls for the Panchayat at village level
Gram Sabha only	Powers conferred to Gram Sabha or the Village assembly exclusively like safeguarding and preserving people's customs, granting utilization certificate to Panchayats etc.
Gram Sabha or Panchayat at appropriate level:	Powers, which are to be exercised either by the Gram Sabha or the Panchayat.

Intoxicants	Anything that ordinarily produces complete or partial intoxication. The term includes Indian liquor, afeem, ganja, charas, bhang, gud, mahua, tadi, salfi etc.
Land Acquisition	Procuring or acquiring ownership of land in the Scheduled Areas for development projects of the Government.
Land Alienation	Transfer of property or possession of lands from a Scheduled tribe to any other person.
Management:	To look after the day-to-day working and handling of the property.
Minor Forest Produce	This is not defined in the Central or Jharkhand PESA but may include all kinds of forest produce other than timber and fuel wood, and as such is inclusive of several forest produce where the state does not have a monopoly.
Minor Water Bodies	This is not defined in the Central or Jharkhand PESA but may include small structures, small tanks, and wells etc. used for day-to-day purposes for drinking, cattle and agriculture.
Money Lender	A person who carries on the business of the money lending in the State. It can be an individual or a group of individuals, such as a Hindu undivided family, a company or an institution. The term also includes persons who supply goods to people on credit other than agricultural goods and charge interest for the same at the rate prescribed by the Government. It does not include Banking Companies.
Ownership	The exclusive right of possession, enjoyment, and disposal, involving as an essential attribute the right to control, handle and dispose.
Panchayat at Appropriate Level	The three tiers of the Panchayati Raj Institutions including Gram Panchayat at the Village level, Panchayat Samiti at the Block level and the Zilla Parishad at the District level.
Panchayat at appropriate level only	Powers conferred exclusively to any of the three tiers of Panchayat Raj Institutions (local self government units) like management of water bodies.
Poverty Alleviation Programmes	Programmes undertaken by the Government to alleviate poverty for instance introducing schemes like Jawahar Rozgar Yojna.
Recommendation	A favourable statement about something given as an advice not having any binding effect.

Social & Economic Development Project	Projects undertaken for economic upliftment and social welfare of the people at village level. For example, establishment of a hospital or a school in the village.
Social Beneficiaries	Village people who are benefited under any development programme aimed at their social & economic welfare
Social Functionaries	State officials working in the social sector, who have been conferred certain duties and powers in respect of development and welfare of the village. For example officials working in the government hospitals, schools, banks and other government departments.
Subject to laws in force	The law in question should be in consonance with other laws prevailing in the country.
Village	Village ordinarily consists of habitation(s) or a hamlet(s) comprising a community and managing its affair in accordance with its traditions and customs. However the Jharkhand PESA leaves it to the governor to decide the boundaries of a village, by notifying in the official Gazette.
Village Market	Small markets in local Villages (local <i>haats</i>)

ANNEXURE C

List of Scheduled Areas in Jharkhand
MINISTRY OF LAW AND JUSTICE
(Legislative Department)
NOTIFICATION

New Delhi, the 11th April, 2007

G.S.R. 285 (E)-The following Order made by the President is published for general information:-
"C.O.229"

The Scheduled Areas (State of Jharkhand) Order, 2007

In exercise at the powers conferred by sub-paragraph (2) of paragraph 6 of the Fifth Schedule to the Constitution of India, the President hereby rescinds the Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order, 2003 in so far as it relates to the areas now comprised in the State of Jharkhand and in consultation with the Governor of that State, is pleased to make the following Order, namely:-

1. (1) Thus Order may be called the Scheduled Areas (State of Jharkhand) Order, 2007.
(2) It shall come into force at once.
2. The areas specified below are hereby redefined to be the Scheduled Areas within the State of Jharkhand:-

JHARKHAND

- 1) Ranchi District
 - 2) Lohardagga District
 - 3) Gumla District
 - 4) Simdega District
 - 5) Latehar District
 - 6) East-Singhbhum District
 - 7) West-Singhbhum District
 - 8) Saraikela-Kharsawan District
 - 9) Sahebganj District
 - 10) Dumka District
 - 11) Pakur District
 - 12) Jamtara District
 - 13) Palamu District-Rabda and Bakoriya Panchayats of Satbarwa Block
 - 14) Godda District-Sunderpahari and Boarijor Blocks. Explanation-For the removal of doubts, it is hereby declared that the said areas are the same, by whatever name called, as were notified as Scheduled Areas as part of the erstwhile State of Bihar vide C.O.109 [the Scheduled Area (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977.
3. Any reference in the preceding paragraph to the territorial division by whatever name indicated shall be construed as a reference to the territorial division of that name as existing at the commencement of this Order.

A.P.J.ABDUL KALAM,
President

[F.No 19(8)/2006-1]

K.N.CHATURVEDI, Secy.

(Published on National Portal of India <http://www.india.gov.in>)

ANNEXURE D

Jharkhand Panchayat Raj Act, 2001 (SELECTIVE PORTIONS) [Jharkhand Act - 06 of 2001]

An Act to provide for constitution of Panchayat Raj in the state of Jharkhand. Be it enacted by the Legislature of the State of Jharkhand in the fifty second year of the Republic of India as follows :-

Chapter - I

Short Title and Definitions

Section 1

Short title, extent and commencement:-

- (i) This Act may be called The Jharkhand Panchayat Raj Act, 2001.
- (ii) It extends to the whole of the state of Jharkhand excepting the areas to which provisions of the Patna Municipal Corporation Act, 1951 (Bihar Act XIII of 1952); Bihar & Orissa Municipal Act, 1922 (Bihar Act VII of 1922) or Cantonment Act, 1924 (Act II of 1924) apply.
- (iii) It shall come into force on such date as the Jharkhand Government may, by notification in the official gazette, appoint and different dates may be appointed for different areas and for different provisions.

Section 2

Definitions : In this Act unless there is anything repugnant in the context :

- (i) "Population" means the population as ascertained at the last preceding census of which the relevant figures have been published;
- (ii) "Village" means a village specified by the State Government, by notification in the official gazette to be a village for the purposes of this Act, and includes a village or a group of villages/ Tolas so specified. The word "village" includes a revenue village; but in the scheduled area, a 'village' means any such village in The scheduled area in which there will ordinarily be a residence or a group of residences, or a tola or a group of tolas, comprising such community as manages its activities according to its customs and usages;
- (iii) "Gram Sabha" means a body consisting of persons registered in the electrol rolls relating to a village comprised within the area of the Gram Panchayat and constituted under section 3;
- (iv) "Gram Panchayat" means a Gram Panchayat constituted under section 12;
- (v) "Panchayat Area" means territorial area of a Panchayat constituted under this act;
- (vi) "Member" means an elected/nominated member of any territorial/local constituency of a Gram Panchayat, Panchayat Samiti or Zila Parishad;
- (vii) "Mukhia" means a Mukhia of a Gram Panchayat elected under the provisions of this Act;
- (viii) "Up-Mukhia" means an Up-Mukhia of a Gram Panchayat elected under this Act;
- (ix) "Panchayat Samiti" means a Panchayat Samiti constituted under section 32 of this Act;
- (x) "Block" means such local area in a district as the State Government may constitute to be a Block;
- (xi) "Pramukh" means a Pramukh of Panchayat Samiti elected under this act;
- (xii) "Up-Pramukh" means an Up-Pramukh of Panchayat Samiti elected under this Act;
- (xiii) "District" means a district as notified by the State Government to be a district;
- (xvi) "Zila Parishad" means a Zila Parishad of a district constituted under section 47 of this Act;
- (xv) "Adhyaksha" means an Adhyaksha of Zila Parishad elected under the provisions of this Act;
- (xvi) "Upadhyaksha" means an Upadhyaksha of Zila Parishad elected under the provisions of this Act;

- (xvii) "Election" means an election to fill up a seat or seats in a Panchayat;
- (xviii) "Election Proceedings" means proceedings starting with issuance of notification for election and ending with declaration of result thereof;
- (xix) "State Election Commission" means a State Election Commission constituted by the Governor under section 66 of this Act in the light of Article 243 K (1) of the constitution;
- (xx) "Secretary" means Secretary appointed in prescribed manner by the prescribed authority for Gram Panchayat, Panchayat Samiti and Zila Parishad under this Act;
- (xxi) "Assistant Secretary" means an officer especially appointed by the State Government through the Panchayat Raj Directorate to carry on function to be prescribed;
- (xxii) "Block Development Officer" means an officer appointed as such by the State Government;
- (xxiii) "Sub Divisional Officer" means the Magistrate-in-Charge of a sub division in which a Gram Panchayat has been established and includes any other Magistrate who may be specially appointed by the Government to discharge all or any of the functions of (The Sub Divisional) Magistrate under this Act;
- (xxiv) "Executive Officer" means an Executive Officer of a Panchayat Samiti, appointed under the provisions of this Act;
- (xxv) "District Panchayat Raj Officer" means an officer appointed as such by the State Government;
- (xxvi) "Chief Planning Officer" means a District Planning Officer appointed as such by the State Government;
- (xxvii) "Chief Executive Officer" means a Chief Executive Officer of a Zila Parishad appointed by the State Government under the provisions of this Act;
- (xxviii) "District Magistrate" means a District Magistrate or a Deputy Commissioner of a District so appointed by the State Government and includes any other officer, who may be especially appointed by the State Government to discharge all or any of the functions of the District Magistrate under this Act;
- (xxix) "Commissioner" means the Divisional Commissioner or such other officer as may be especially appointed by the State Government to exercise the powers of a Commissioner under this Act;
- (xxx) "Director" means a Director employed as such by the State Government;
- (xxxi) "Government" means the State Government of Jharkhand;
- (xxxii) "Prescribed" means prescribed under this Act or Rules made hereunder;
- (xxxiii) "Prescribed Authority" means an officer of a particular rank and designation appointed by the State Government under this Act or Rules made thereunder;
- (xxxiv) "Notification" means a notification published in the state or District Gazette;
- (xxxv) "Scheduled Area" means a scheduled area referred to in Clause (1) of Article 244 of the Constitution of India;
- (xxxvi) "Other backward Classes" means all such classes as have been specified by the State Government;
- (xxxvii) "Public Servant" means a public servant as defined in section 21 of the Indian Penal Code (I.P.C. 45 of 1860);
- (xxxviii) "Public Market" or "Public Fair" means a market or a fair, as the case may be, notified under section 83 of this Act;
- (xxxix) "Public Property" or "Public Land" means such public building, garden, orchard or other place where people for the time being, either on making any payment or otherwise, make use of it or have permission of access;
- (xxxx) "Public Road" means such a road, footpath, street, lane, flank or passage over which people have the right of way;
- (xxxxi) "Cooperative Society" means a society mentioned by the State Government in the Act relating thereto;
- (xxxxii) "Standing Committee" means a standing committee constituted under this Act;

Chapter - II GRAM SABHA

Section 3

- (i) For the purposes of this Act, a District Magistrate on direction of the State Government may, by notification in the District Gazette, specify a village or a group of villages as gram but, where a Gram Sabha is constituted for a group of villages, name of the village having the largest population shall be specified (prefixed to) as that Gram Sabha;
- (ii) GRAM SABHA means a body consisting of persons registered in the electoral rolls relating to a revenue village comprised within a Gram Panchayat area;
- (iii) GRAM SABHA in a scheduled area:- Ordinarily there shall be one GRAM SABHA for a village but if members of a Gram Sabha in a scheduled area so desired more than one Gram Sabha may be constituted in the manner to be prescribed, and in the area of each such Gram Sabha there shall be a residence or a group of residences or group of small villages or villages/tolas comprising communities which shall manage their activities according to customs and usages.

Section 4

- (a) **Electoral Roll (Voters List)-**
There shall be a voter's list for each village specified under section 3, which shall be prepared according to the provisions of this Act and Rules made thereunder.

- (b) **Registration of Voters -**

- (i) Every such person, who is eligible to be registered in the electoral Roll of the legislative Assembly relating to that village or whose name is entered therein and who is an usual resident of that village, shall be entitled to be registered in the voters' list of that village;
- (ii) Provided that, no person shall be entitled to be registered in more than one village's voters list.
- (iii) Provided that no person shall be entitled to be registered in the voters list if he is registered in the Electoral Roll relating to any other spatial authority.

- (c) **Voters of a Panchayat** - All the persons whose names are entered as voter in that much part of the then in force voters' list or lists of the state Legislative Assembly constituency, as is related to the territorial constituency of a Gram Panchayat, shall be voters in the Panchayat election concerned.

Section 5

- Meetings of Gram Sabha -**
The Gram Sabha shall meet time to time, but not more than three months shall intervene in between any two meetings; provided on a demand in writing being made by one-third members of the Gram Sabha, if it be required by the Panchayat Samiti; Zila Parishad or Deputy Commissioner/District Magistrate, an extraordinary meeting may be called within 30 days of such a requirement.

Section 6

Convening of Meetings -

- (i) A notice of the meeting shall be pasted on the notice-board of the Gram Panchayat Office and the same shall adequately be brought to the notice of the public by means of publicity (such as Dugdugi, drum and amplifiers);
- (ii) It shall be the responsibility of the Mukhia to convene and conduct the meetings of the Gram Sabha. If (he) fails to convene the meeting as specified under this Act, the Executive Officer of the Panchayat Samiti and the Prescribed Officer of the Panchayat authorised by him shall convene such meeting;
Provided that in case he fails to call meetings at intervals prescribed under this Act, he shall be deprived of holding the post of Mukhia;

Provided also that no order shall be passed by the officer prescribed under this sub-section against the Mukhia unless he is given reasonable opportunity of hearing.

Section 7

Quorum -

- (i) The quorum for a meeting shall be 1/10th of the total members of the Gram Sabha, out of which at least 1/3rd should be women;
Provided that in a scheduled area, the quorum for a meeting shall be 1/3rd of the total members of the Gram Sabha, out of which at least 1/3rd should be women.
- (ii) If at the time appointed for the meeting, members in requisite numbers for the quorum are not present, the person presiding the meeting shall adjourn the meeting to such a future date and time as he may appoint and a fresh notice shall be given in the prescribed manner and quorum shall not be required for holding such an adjourned meeting;
Provided that no new subject shall be taken into consideration in such a meeting.

Section 8

Presiding Officer -

- (i) Every meeting of the Gram Sabha shall be presided over by the Mukhia of the concerned gram Panchayat and in his absence by the up-Mukhia;
- (ii) In case of absence of both the Mukhia and the Up-Mukhia in the meeting, the meeting of the Gram Sabha shall be presided over by such member of the Gram Sabha who would be elected for the purpose by a majority of votes of the member present;
- (iii) Presiding over of meetings of Gram Sabhas in scheduled area -
Meeting of Gram Sabha in scheduled did area shall be presided over by such, a member of the scheduled tribes who is not the Mukhia, Up- Mukhia or member of the Panchyat, and such meeting shall be presided over by a respected person according to the custom usage traditionally prevalent in that area such as Gram Pradhan, Manjhee, Munda, Pahan, Mahto or one Khown by any other name, or by a person proposed by them or unanimously by nominated/ supported by the members present in the meeting.

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Section 9

In case of dispute concerning right of a person to be present in a meeting of the Gram Sabha, the person presiding over the meeting shall decide the dispute in light the of the entry in the voter's list of that particular Gram Sabha area and the said decision of his shall be final.

Section 10

Powers and functions of Gram Sabha and its annual meeting -

1. Under Rules to be made by The State Government in this regard and subject to such general or specific orders as may time-to-time be issued by the State Government, the Gram Sabha shall perform the following functions, namely -
 - (a) (i) Identification of economic developmental schemes for the village and formulation of criteria for fixing their priorities.
 - (ii) Approval of schemes for social and economic development including all the annual schemes pertaining to the Gram Panchayat, before implementation of programmes and projects;
 - (iii) Discussions on annual budget of the Gram Panchayat and making recommendations thereto;
 - (iv) Deliberations on audit report and annual accounts of the Gram Panchyat;
 - (v) Determination and confirmation of appropriate utilization of funds for the schemes, programmes and projects specified under section 10(1) (a) (2) by the Gram Panchayat;
 - (vi) Identification and selection of persons as beneficiaries under poverty alleviation and other programmes;

- (vii) Assuring distribution of funds or resources among beneficiaries and their proper use;
- (viii) Activating people towards community welfare programmes and receiving contributions in cash or kind or in both and participation of voluntary worker;
- (ix) Enhancing general conscience unity and amity among people in general;
- (x) Keeping control through Gram Panchayat over such organizations and such functionaries in social sectors, as have been transferred to the Gram Panchayat or appointed by the Gram Panchayat;
- (xi) Managing natural sources such as land, water, forest falling within the limits of the village area according to the constitution and other relevant laws then in force;
- (xii) Giving advice of the Gram Panchayat as to regularization and utilization of small reservoirs;
- (xiii) Keeping watch over local schemes and over sources and expenditure of the said schemes;
- (xiv) Sanitation and conservancy as well as prevention and solution of nuisance;
- (xv) Construction, repairs and maintenance of public wells and ponds as well as making available drinking water for domestic use;
- (xvi) Making available and maintaining water sources for bathing, washing and for drinking purposes of domestic animals;
- (xvii) Construction and maintenance of rural roads, culverts, bridges, embankments and other works and buildings of public utility.
- (xviii) Construction, maintenance and conservancy of public roads, cesspits, drains and other public places;
- (xix) Filling up of wells not in use Insanitary ponds, ditches and holes;
- (xx) Providing light on village paths and other public places;
- (xxi) Removal of hindrances and projections to public streets and places as well as the spaces which are not private properties or which are open for public use whither such places are vested in the Panchayat or belong to the State Government;
- (xxii) Regulating and controlling recreations, games-shows, shops, eating houses and vendors of beverage, sweets, fruits, milk and similar other articles;
- (xxiii) Regulating construction of houses, cess-pits urinals, drains and flush latrines;
- (xxiv) Management of public land and management, extension and development of village site;
- (xxv) Disposal of corpses, carcasses (including those unclaimed) and other obnoxious articles in such a way that the same may not be injurious to health;
- (xxvi) Providing places separately for dumping rubbish;
- (xxvii) Responsibility for sale and Test of meat;
- (xxviii) Taking care of the Gram Sabha-properties;
- (xxix) Establishment and management of pounds and maintenance of records regarding cattle;
- (xxx) Taking care of ancient and historical monuments excepting those which have been declared to be of national importance and maintaining grazing grounds and other lands lying within control of the Gram Sabha;
- (xxxi) Maintaining records of births, deaths and marriages;
- (xxxii) Assisting in census or other surveys done by centre, state or other organizations constituted lawfully;
- (xxxiii) Giving assistance in control of contagious disease, vaccination etc. work;
- (xxxiv) Helping the disabled and destitutes (including women and children);
- (xxxv) Expansion of youth welfare, family welfare and sports;
- (xxxvi) Afforestation and conservation of village forestry;
- (xxxvii) Abolition of dowry like social evils;
- (xxxviii) Implementation of orders of the State Government or other competent officers to

- improve the condition of scheduled castes, scheduled tribes, backward classes and to prevent untouchability;
- (xxxix) Preparing schemes for basic amenities and making arrangements therefor;
 - (xL) Helping disabled women/children;
 - (xLi) Execution of work assigned by Panchyat Samiti, Zila Parishad;
 - (xLii) Execution and supervision of construction work as per specified schemes within the Gram Sabha area;
 - (xLiii) Exercise and discharge of powers and functions assigned by the State Government under this Act or any other law in force in the State for the time being.
- (b) For discharging these functions and duties the Gram Sabha may constitute the following standing committees, namely :-
- (i) Village Development committee,
 - (ii) Government estate committee,
 - (iii) Agriculture committee,
 - (iv) Health Committee,
 - (v) Village Defense Committee,
 - (vi) Infrastructure committee,
 - (vii) Education committee and social justice committee,
 - (viii) Vigilance committee.
- (c) Reservation of seats, term of office, resignation, procedure for removal, conduct of business, members, eligibility for member-ship, meeting, manner of filling vacancy, selection of Secretary and procedure of Standing Committees shall be as may be prescribed by the prescribed officer;
- (d) Village Development committee shall prepare a scheme for all-round development of the village and shall put up the same before the Gram Sabha for its approval;
- (e) Every Gram Sabha may set up a fund which, consisting of the following four parts, shall be known as Gram Kosh (Vilage Fund) :-
- (i) Grain Kosh,
 - (ii) Labour Kosh ,
 - (iii) Commodity Kosh ,
 - (iv) Cash Kosh,
- In which the following shall be deposited :-
- (a) Donations,
 - (b) Incentive amounts,
 - (c) Other income.
 - (f) Gram Kosh shall be kept in such a manner and maintained in such a way and form as the prescribed.
- 2. Annual Meeting of Gram Sabha : -**
- Gram Panchayat shall put up before the annual meeting of the Gram Sabha, which shall be held at least there months before the start of the next financial year, the following matters :-
- (i) Annual Return of account, administrative report of the preceding financial year, last audit report and reply given relating thereto, if any;
 - (ii) Programme relating to development and other works proposed for the next financial years;
 - (iii) Annual budget of the Gram Panchayat and annual scheme for the next financial year;
 - (iv) Report of the vigilance committee;
 - (v) Explanation called for from Mukhia and members of the Gram Panchayat in respect of any particular activities, scheme, income and expenditure;
- 3. Gram Panchayat Shall also place before the Gram Sabha the matters which may be required by the Panchayat Samiti, Zila Parishad, Deputy Commissioner/District Magistrate or any other**

- officer authorized in this behalf, to be placed before such a meeting;
4. Gram Panchayat shall under this section implement the recommendation made by the Gram Sabha in respect of the matters before it, if any, in the light of the rules of the State Government in force for the time being.
 5. Extra powers and functional of Gram Sabha in scheduled area -
 - (i) It shall protect and preserve the traditions and customs of persons their cultural identity and community means (Sarna, Masna, Gohar-Sthan etc.) and their customary manners of disposal of disputes, which are not inconsistent with constitutional view-point, and when needed may for the sake of extending co-operation in this regard, duly bring proposals before the Gram Panchayat, Panchayat Samiti and Zila Parishad as well as the State Government;
 - (ii) It may manage the natural sources including land, water and forest within the village areas according to its tradition but in tandom with the provision of the constitution and duly keeping in view the spirit of other relevant laws in force for the time being;
 - (iii) It may provide for local schemes including tribal sub-schemes and sources and costs for such schemes;
 - (iv) It shall exercise such other powers and discharge such functions as the State Government may assign or delegate to it under any law in force for the time being;
 - (v) Gram Sabha, through the Gram Panchayat, Shall manage Bazaars of the villages, and fairs including cattle fair, irrespective of their name.
 6. In addition to functions specified under section 10 (1) (a) and extra powers and functions of Gam Sabha in scheduled area mentioned under section 10(5), the State Government may time to time ascertain other extra powers and functions for Gram Sabha in scheduled area.
 7. Gram Sabha shall be free to consider any subject related with the functions of the Gram Panchyat and the Gram Panchayat shall implement its recommendations in the light of then prevalent rules.
 8. Functions of the Gram Sabha mentioned in Section 10(1) (a) and section 10 (5) shall not effect the Acts/Rules of the Government then Prevalent and it jurisdiction.
 9. The State Government may, by general or special order increase the functions and duties delegated to the Gram Sabha or may withdraw the same.

ANNEXURE E

A Model for the Utilization Certificate

Project Director,
District Rural Development Department,
Ranchi

Sub: For certifying the utilization of money sanctioned in first and second installment by the Rural Development to....., Gram Panchayat for repairing a public well in thevillage.

Dear Sir

Details of the work

1. Name of the work: Public well in village
2. Village:, Gram Panchayat:
3. Sanctioned amount:

First Installment	Amount	Date
Second Installment		
Total		

4. Depth of the well:
Before the said work Meters,
After: Meters
5. Length and breadth of the well Meters
6. Present status of the work- Incomplete/Completed
7. Water made available after completion of the work: meters
8. No. of beneficiaries:

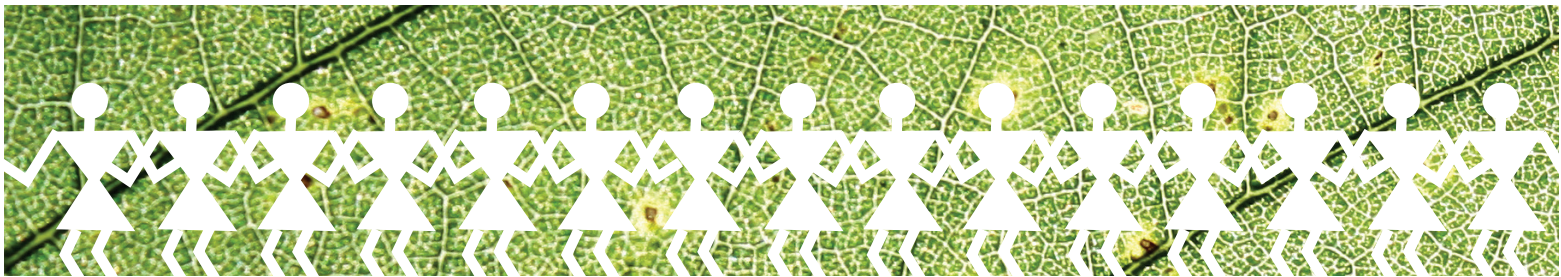
Details of the expenditure:

Out of the total amount allocated in the first and second installment the following has been spent under the following heads:

Labor:	
Material	
Total (a)+(b)	

We the members of the Gram Sabha, hereby certify that the abovementioned work has been completed satisfactorily and the particulars of the work and expenditure given above accurate and true to our knowledge.

Signature of the
Date



PART- C

INTEGRATING PESA AND FOREST RIGHTS ACT FOR A MODEL FOREST AND SCHEDULED AREA GOVERNANCE

Integrating PESA and Forest Rights Act for a Model Forest and Scheduled Area Governance

For achieving a robust system of Forest and Scheduled Areas Governance, there is a need to converge the two important goals of conservation of natural resources and livelihood security of the forest dwellers and forest dependent communities.

PESA and Forest Rights Act aim at addressing these two crucial aspects of governance. Both statutes complement each other by advocating proactive community involvement in preservation and management of the natural resources (read forest resources) while meeting bonafide livelihood needs of the community at the same time.

PESA attempts institutional reforms at the local self-government level and specifically allocates powers to control and manage natural resources and social aspects to the traditional village assembly- the Gram Sabha. The Forest Rights Act too, aims at reforming the rights framework around natural resources and recognizes and vests individual and community rights to the forest dwelling communities ensuring food and livelihood security. At the same time Forest Rights Act also vests in the Gram Sabha and the rights holders the responsibility and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthens the conservation regime.

PESA and Forest Rights Act also aim, among others, at gradually ushering the vulnerable tribal population into the main stream of development while preserving their social and cultural identity and their time honored institutions. PESA grants the Gram Sabha the right to approve plans, programs and projects for social and economic development of the village, exercise control over functionaries in all social sector and select beneficiaries for the poverty alleviation and other schemes of the government. Forest Right Act too makes provisions for divergence of forest land for building necessary facilities at the recommendation of the Gram Sabha for the development of the village such as schools, dispensaries, hospitals, anganwadis, electric and telecommunication lines, drinking water supply, minor irrigation canals.

Besides this, both legislations define village as a habitation or a group of habitation or a hamlet or a group of hamlets (tola, pada, palli by whatever name called) comprising a community which has been managing its affairs according to its traditions and customs. The common aim is to mandate community participation in decision making process.

Many examples of such uniformity could be traced in PESA and Forest Rights Act. Hence there is a need to consider these legislations together.

However, a cursory look at the state adoption of PESA reveals a sense of reluctance on the part of the state governments to devolve powers to the Gram Sabha. Besides, as discussed above, there are several anomalies in the government's understanding of the letter and spirit of PESA. There have been several instances pointed out above of incorrect devolution of power on the gram Sabha and Panchayats in the Scheduled Areas of the State often treating them at par with the PRIs in the Non-Scheduled Areas.

As regards Forest Rights Act, it is now clear that as the process of recognition of forest rights is under way, the focus seems to be shifting only towards land rights which are one amongst the thirteen sets of rights granted under the Act. There is little attention to community rights which now has been put to refocus after the passing of the Amendment Rules to the FRA in 2012.

Further, as outlined above, that since both PESA and Forest Rights Act share the same objective, they need to be looked at together. However, presently this is not so, reason being that the

responsibility of administration of Scheduled Areas is mainly under two different nodal line ministries - The Ministry of Tribal Affairs and The Ministry of Panchayat Raj, (the latter due to the enactment of PESA). This is of course in addition to the obvious overlaps of Ministry of Rural Development, the Ministry of Environment and Forests especially after the passing of FRA, the Revenue department and other Social Welfare Departments. Each of these line departments formulate schemes and programs ranging from state plans, special central assistance to tribal sub plan, sectoral programs of various ministries and other such tribal development plans as discussed above. These programs and mandates often conflict and overlap with each other giving rise to conflicts. In order to address these issues, there is a need to converge the roles and responsibilities of these line ministries and integrate the mandate of both PESA and FRA in the planning and management of Scheduled Areas.

Further, as mentioned above, both PESA and Forest Rights Act promote community participation in the conservation of forests, water bodies, catchment areas, biodiversity of the village. Other participatory initiatives such as Joint Forest Management or Community Forest Management also encourage involvement of the community in the conservation and management of the forest resources. Therefore, to avoid conflicts between the Forest Protection Committee formed under Forest Rights Act, the Gram Sabha and the Joint Forest Management Committee (under Joint Forest Management Program) and smooth functioning of these bodies, such participatory initiatives also need to be knitted in the larger mandate of PESA and Forest Rights Act. Here again the new Rules to FRA makes an attempt.

With this backdrop, there is a need to remove all the roadblocks in the operation of Forest Rights Act and PESA. We suggest the following measures:

1. Organizing a state wide campaign to impart correct legal understanding of Forest Rights Act and PESA through awareness workshops, capacity building programs, street plays, newspapers, free distribution of booklets in the local language to the communities, state functionaries involved in the implementing process such as forest department officials, Panchayat officials among others, grass root level NGOs, Civil Society Organizations, lawyers.
2. Free distribution of Claim forms in the Scheduled Areas as well as forest areas.
3. Steering the process of formation of various Committees under the Forest Rights Act
4. Making the conservation and management plan.
5. Recognition to villages as per the PESA and Forest Rights Act.
6. Amending the Panchayat Raj Act of the state and other subject matter laws to make them consistent with PESA.
7. Encouraging the communities to claim Community Forest Rights under Forest Rights Act.
8. Converging the role of Gram Sabha, Forest Protection Committee and Committees/bodies under Participatory Forest Management programs.