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D.O. No. 8348 /SSD

Dated 20.2.10


Dear

**Sub: Frequently Asked Questions on determination and recognition of Community Forest Rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules made thereunder.**

During the video conferences, it has been observed that despite the instruction of Chief Secretary vide Letter No. 6061 Dated 04.02.2009 (para – 1) and this Department Letter No. 45659 Dated 26.12.2009 (para – 4), and even after repeated clarifications on ensuring the recognition of Community Forest Rights under “the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006”, very little progress has been made in different districts so far (Annexure-1). I would particularly like to draw your attention to the fact that most of the reporting of the recognition of Community Forest Rights so far has actually been for the diversion of forest land for development facilities provided for under Section 3 (2) of the Act. The process for diversion of forest land for development facilities under Section 3 (2) of the Act is totally different from the recognition of Community Forest Rights as envisaged in Section 3 (1) of the Act.

2. I would like to draw your kind attention through a set of Frequently Asked Questions and their replies (Annexure-2) on the process of determination and recognition of Community Forest Rights to be conferred under “the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006” and Rules made thereunder for expediting the process of recognition of Community Forest Rights at your end. The set of questions and replies may please be used for providing necessary clarifications to the claimants, members of Forest Rights Committees / Gram Sabhas, Officials & Non-Officials of (SDLC / DLCs) concerned for the implementation of the above mentioned Act.

Your Sincerely

  
(Ashok K. Tripathy)

All Collectors & RDCs (by name)

## Frequently Asked Questions

### 1. What are the provisions for Community Forest Rights/Resources under the Act?

Section 3 (1) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides for both individual and community forest rights of (inshort Forest Rights Act) forest dwelling scheduled tribes and other traditional forest dwellers on all forest land. The relevant provisions for community forest rights are given below:

- i. **Section 3 (1) (b)** provides for “*community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes*”. Nistar rights secure such traditional access and entitlements over local forest resources of local communities which were recognized by different regimes or exercised as customary rights. Nistari claims need to be understood as traditional rights of access and usufruct rights over forest produce such as timber, firewood, grazing, minor forest produce or other specific resource uses mentioned in the claim.
- ii. **Section 3 (1) (c)** provides for the “*right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries*”. Further Rule 2 (d) provides that “disposal of minor forest produce” under clause (c) of sub-section (1) of section 3 of the Act shall include local level processing, value addition, transportation in forest area through head-loads, bicycle and handcarts for use of such produce or sale by the gatherer or the community for livelihood. As defined in the Act under Section 2 (i) “*minor forest produce*” includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.
- iii. **Section 3 (1) (d)** provides for “*other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities*”. Rights which may be claimed under this provision may include i) use of water bodies for household and agriculture purposes, for cattle, for fish, and any other traditional uses, ii) grazing of animals in forest, iii) traditional seasonal resource access of nomadic or pastoralist communities.

- iv. **Section 3 (1) (e)** provides for “*rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities*”. As defined in section 2 (h) “*“habitat” includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes*”. Habitats are geographical landscapes inhabited by particular Primitive Tribal Groups or other forest dwelling Scheduled Tribes which share a distinct lifestyle and culture. Orissa has 13 PTGs having their distinct community habitats which are cultural and spatial domains used and inhabited by them. The titles for habitats should include a map showing the boundary of the habitat indicating recognizable landmarks and the customary rights of the concerned PTG which are recognized within that area.
- v. **Section 3(1) (i)** of the Act provides for the “*right to protect, regenerate or conserve or manage any community forest resource which they (communities) have been traditionally protecting and conserving for sustainable use*”. As defined in Section 2(a) of the Act ‘*Community Forest Resource*’ means ***customary common forest land*** within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoralist communities, including reserve forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access”.
- vi. **Section 3 (1) (k)** provides for “*right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity*”. Community rights over traditional knowledge related to biodiversity and cultural diversity may include, seeds, medicinal plants and their uses, agriculture and agricultural biodiversity (including cultivated and uncultivated food and non-food crops), knowledge of flora and fauna and indigenous conservation systems and practices, Cultural aspects of the community such as art forms and other practices relating to biodiversity.
- vii. **Section 3 (1) (l)** provides for recognizing “*any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal*”. This will include the rights and traditional resource uses which are not covered under the provisions for

community rights. Some of the examples are pre-agricultural practices, collection of soil from the forest area for smearing of house, places of worship and sacred areas / groves in forests like *Sarna, Jahira, Marang Buru, Liling Buru* and the like, right of way / passage etc.

## **2. What is the procedure for filing, determination and verification of claims of Community Forest Rights? (Section 6, Rule 11, 12)**

Section of 6 of the Forest Rights Act authorizes the Gram Sabha to initiate the process of determining the nature and extent of Community Forest Rights. As per the Rule 11 (4), the Forest Rights Committee shall prepare the claims on behalf of Gram Sabha for community forest rights in Claim Form B. The following steps have to be followed:

- a. Determination of Community forest rights:** As per the rule 11(b), the Forest Rights Committee would fix a date for initiating the process of determination of the community forest resource. The Forest Rights Committee shall assist the Gram Sabha in mapping of their community forest resources and identifying recognizable landmarks to delineate the area. Adequate representation of members of Primitive Tribal Groups, pre agricultural communities and women shall be ensured during this process as mandated under Rule 4(2).
- b. Process of verification:** As per Rule 12, the Forest Rights Committee, after due intimation to the Forest Department shall visit the site on a prefixed date and physically verify the nature and extent of the claim and evidence on the site. The FRC shall prepare the map delineating the area of each claim indicating recognizable landmarks on the basis of claims submitted by the community.
- c. Preparation of verification report:** After verification the concerned FRC shall prepare the verification report along with maps and evidences
- d. Call for Gram Sabha for final approval:** As per Rule 11 (2) (v), the FRC shall present it's findings on the nature and extent of claims before the Gram Sabha for its consideration. Further as per rule 11(5) the Gram Sabha shall meet with prior notice to consider the findings of the FRC, pass appropriate resolution and forward it to the SDLC.

However, as per rule 4 (c), the Gram Sabha shall forward the claims to the SDLC after giving reasonable opportunity to interested persons and authorities concerned

### **3. What is the process of determination of community forest rights where there are substantial overlaps or the area is used by more than one Gram Sabha?**

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

- a) **Intimation to Adjoining Gram Sabhas and SDLC:** As per Rule 11(1) (b), in case of overlaps, prior to the initiation of the process of determination of community forest resource, the concerned Gram Sabha shall intimate the adjoining Gram Sabhas and the SDLC
- b) **Joint meeting of the Gram Sabhas for consideration of the claims, resolution of conflicts:** As per rule 12(3), *if there are conflicting claims in respect of the traditional or customary boundaries of another village or if a forest area is used by more than one Gram Sabha, the Forest Rights Committees of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims and submit the findings to the respective Gram Sabhas in writing:*
- c) **In case the Gram Sabhas are not able to resolve the conflicting claims:** In such cases, the concerned Gram Sabhas shall refer the claims to the SDLC for its resolution as per Rule 12 (3).

### **4. What is the role of SDLC and DLC in recognition of community forest rights?**

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

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

It has been further clarified during the video conferences to involve local Non Governmental organizations, civil societies, local youths etc to sensitize and conduct training and orientation

programmes on the process of determination of community forest rights. The money released under Article 275 (1) may be used for the said purpose.

**5. Is there any limitation on the area claimed under community rights?**

No. There is no limitation of the area to be considered under the community claims as the provision of land ceiling for upto a maximum of four hectares under section 4 (6) applies only to rights claimed under section 3 (1)(a) and not to any other rights.

**6. What evidences are required for claiming community forest rights and who would supply the same?**

As per Rule 13 (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;
- (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;

As per Rule 13 (2), evidence for Community Forest Rights shall, 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;

### **7. Who shall provide the information, records or documents?**

As per Rule 12 (4), on a written request from the Gram Sabha or the Forest Rights Committee for information, records or documents, the concerned authorities shall provide authenticated copies of the same to the Gram Sabha or Forest Rights Committee, as the case may be, and facilitate their clarification, if required, through an authorized officer .

Further as communicated earlier in this department letter no 45659 dated 26.12.09 under para 4, it has been mentioned that *the working plan for the reserve forest of your district available with DFOs contains individual and community rights. Reserve forest notification also contains individual/community rights.* This should be shared with Gram Sabhas, SDLCs and DLCs

### **8. Can community forest rights be recognized in Reserve Forests, Proposed Reserve Forests, Protected Areas including Sanctuaries and National parks?**

Yes. As per Section 2(a) of the Act '*Community Forest Resource*' means ***customary common forest land*** within the traditional or customary boundaries of village or seasonal use of landscape in the case of pastoralist communities, including reserve forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access".

### **9. What is the difference between community rights and developmental facilities?**

Section 3 (1) provides for various community rights of access and use of forest resources whereas section 3 (2) provides for diversion of forest land for developmental facilities like schools, hospitals, anganwadi, irrigation, roads etc. A separate guideline has been issued by the Ministry of Tribal Affairs on 18<sup>th</sup> May 2009 on the procedure for diversion of forest land for developmental facilities provided under section 3 (2). (Copy enclosed)