

Suggested Amendments to Forest Rights Rules and Policy Recommendations

Summary Table

Issue	Rule Requiring Change	Summary of Suggested Change
<p>Gram sabhas constituted at the gram panchayat level.</p> <p>These make it difficult to recognise community rights (which are usually exercised at the level of actual villages) and are too large for effective or democratic functioning</p>	<p>Insertion of new Rules 2A and 2B on this issue, change in Rule 3(1)</p>	<ul style="list-style-type: none"> • Hamlet level gram sabhas (as required in Scheduled Areas and optional in other areas) must be constituted in all areas • For this a procedure is suggested (<i>para 1.1</i>) <ul style="list-style-type: none"> ◦ Self-declarations by concerned hamlets as villages should be accepted (already required under PESA Rules in some States) ◦ List of hamlets should be prepared by gram panchayats and officials, to cover those which do not self-declare ◦ Implementation should proceed on the basis of these lists • Procedures for selection of chair, secretary of hamlet level gram sabha and holding of meeting (based on model PESA Rules) (<i>para 1.2</i>), quorum of meeting changed to 50% (<i>para 1.3</i>) • 1/3 ST reservations in Forest Rights Committee increased to 2/3 (<i>para 1.4</i>)
<p>Participatory process of recognition of rights under section 6 is not being followed in most areas, and therefore:</p> <ul style="list-style-type: none"> • Claims being modified and rejected for incorrect reasons and without informing claimant • Rights often not being correctly recorded or land being maintained as revenue land 	<p>Changes in Rules 8, 12, 14 and 15</p>	<ul style="list-style-type: none"> • Role of forest officials requires clarification; their consent is not required to accept a claim (<i>para 2.1</i>) • Officials should record objections if any before the gram sabha (<i>para 2.1</i>) • Records should be made public and communicated to claimant (<i>para 2.2</i>) • Modification or rejection of a claim should not be done <i>suo motu</i> by higher committees; they should only do so where an appeal is filed and claimants are heard; in case Forest Department files an appeal, their appeal should be heard in the absence of their representative (<i>para 2.2, 2.3</i>) • Where there is insufficient evidence or doubts about a claim which has not been appealed, the claim can be remanded to the gram sabha (<i>para 2.2, 2.3</i>) • District Level Committee should not overturn claims approved by

		<p>both gram sabha, SDLC except in case of grave violation of law (<i>para 2.3</i>)</p> <ul style="list-style-type: none"> • District Level Committee should ensure recording of rights in appropriate records and conversion to revenue lands (<i>para 2.4</i>)
<p>Authorities (esp Forest Department) are insisting on unnecessary evidence, such as fine receipts, primary offence reports, or encroacher lists. Most claimants do not possess such evidence leading to large-scale rejections. Most recently claims verification has been made dependent on satellite imagery in some States, which leads to both operational problems and rejection of legitimate claims.</p>	<p>Changes in Rule 11, 13 on evidence</p>	<ul style="list-style-type: none"> • Claims accompanied by one piece of admissible evidence, as stated in the Rules, should be accepted (current Rules require two evidences) (<i>para 3.1</i>) • Prior government records of “encroachment”, surveys, settlements, etc should not be used to reject claims. If this is permitted the entire purpose of the FRA, which is to revise earlier settlements, will be defeated (<i>para 3.1</i>) • Other traditional forest dwellers should be presumed to be forest dwelling for 75 years where they are able to show residence from grandparents' time, hold a pre-independence lease, reside in a forest village created by the Forest Department (<i>para 3.1</i>)
<p>The Act has several key provisions related to community forest management and protection so that people can protect and manage their own forests. This will improve livelihood security, accountability and conservation. But these provisions have hardly been implemented; the right is not even included in the claim form and the rights and powers have not been respected anywhere.</p>	<p>New Rules 4A, 11A required; changes in Rule 2, 13, new forms and form-associated Rules; policy recommendations</p>	<ul style="list-style-type: none"> • Confusing marginal note to section 5 should be changed (<i>para 4.1</i>) • All villages should be presumed to have community forest resources and should have rights to this effect; failure to recognise this in case of any village should be explained (<i>para 4.3</i>) • Gram sabha's statutory powers, including powers to protect forests, should be respected by Forest Department and other government agencies; no programs, including afforestation, should be undertaken except under their control (<i>para 4.4</i>) • Existing practices should serve as evidence (<i>para 4.5</i>) • New forms should be included in Rules (<i>paras 4.6 – 4.12</i>) • Joint Forest Management should be replaced with community forest management under the FRA; funds for forestry should be channeled through NREGA (<i>para 4.13</i>) • Long term frame for democratic forest management required (<i>para 4.13</i>)
<p>Minor forest produce rights not being recognised in most areas. Earlier systems of</p>	<p>Changes in Rule 2, new Rule 15B, and policy</p>	<ul style="list-style-type: none"> • Restrictive definitions in the existing Rules (which are also not in consonance with the Act) of “bona fide livelihood needs” and the

<p>regulation, which are no longer legally valid, are continuing; including government monopoly on MFP purchase, restrictions on transport of MFP, levy of royalties (based on state ownership), etc.</p>	<p>recommendations</p>	<p>right to “dispose” of MFP should be clarified (<i>para 5.1, 5.2</i>)</p> <ul style="list-style-type: none"> • A Rule should be introduced giving producers the freedom to sell and transport, subject to regulation by the gram sabha (<i>para 5.3</i>) • The state procurement agencies should not be shut down; they should be mandated to provide a minimum support price, and leasing to industries should be halted (<i>para 5.4</i>)
<p>Other community rights, including grazing, use of water bodies, habitat of “primitive” tribes, etc. are either not being recognised or being subject to unnecessary restrictions</p>	<p>Several new Rules will be required</p>	<ul style="list-style-type: none"> • Recorded rights to <i>nistari</i> jungles (community forests from pre-independence) should be automatically recognised (<i>para 6.1</i>) • Recognised timber rights that were unilaterally revoked should be reinstated (<i>para 6.1</i>) • Physical occupation of land should not be insisted upon where it is not relevant, i.e. in case of habitat rights, shifting cultivation, or people evicted from disputed areas (<i>para 6.1</i>) • Pastoralist claims should be facilitated by District Cmte (<i>para 6.1</i>) • Habitat rights should be facilitated by District Cmte, onus should be on Committee to ensure recognition (<i>para 6.1</i>) • Conversion of forest villages to revenue villages should cover the entire land use of the village (not just cultivation) (<i>para 6.1</i>)
<p>Widespread lack of information among both officials and people regarding rights, procedures under Act</p>	<p>New Rule 10A needed on preparation of materials, along with changes in Rules 6 and 8 re Sub Divisional and District Level Committees</p>	<ul style="list-style-type: none"> • Preparation of publicity materials by a central expert group for use in all States (<i>para 7.1</i>) • SDLC, DLC should be required to hold trainings in all forest areas and to prepare plans for the same (<i>para 7.2, 7.3</i>) • The Rule should specify that such trainings are required in all sub-divisions with forest areas as per the definition in the Act (<i>para 7.2</i>)
<p>No detailed monitoring of procedure, community rights under the Act taking place; no system of public hearings / social audits; no grievance redressal procedure.</p>	<p>Rule 10 on responsibilities of SLMC; Rule 14 for holding of public hearings; new Rules re grievance redressal</p>	<ul style="list-style-type: none"> • SLMC's points of reporting need to include both qualitative and quantitative reporting, increased to monthly reports (<i>para 8.1</i>) • Regular public hearings should be held by Sub Divisional Level Committee and made part of monitoring (<i>para 8.2</i>) • Grievance redressal officers should be appointed at sub divisional, district and State levels and mandated to inquire into complaints; (<i>para 8.3</i>)

		<ul style="list-style-type: none"> • Service penalties should be imposed on authorities violating the Act; procedure should be provided for notice, prosecution (<i>para 8.4, 8.5, 8.6</i>)
Many areas – non-Scheduled Areas, non-forest villages in some States, etc. - have been left out of implementation	Rule 2 (definitions) and new Rule 10B re creation of a list of settlements	<ul style="list-style-type: none"> • The clarification on the meaning of the phrase “primarily reside in forests” (a requirement on eligibility) issued by the Ministry in June 2008 should be incorporated in the Rules (<i>para 9.1</i>) • Municipal areas should be included (<i>para 9.2, 9.3</i>) • The Collector should prepare a list of settlements which are likely to include rights holders as per the Act's definition within which mandatory publicity and training is required (this is required to cover exclusion of large areas) (<i>para 9.4</i>) • Claims from all villages should be received, and the process implemented both in the villages listed above and in any other village where claims are sought to be made (<i>para 9.4, 9.5</i>)
Relocation of people from protected areas (tiger reserves at the moment) without respecting rights and provisions of the FRA, provisions of Wild Life Act	Incorporation as a new Rule 15C	<ul style="list-style-type: none"> • A specific procedure for implementing the safeguards in the two Acts should be in the Rules, providing for scientific proof, consultation and informed consent of communities (<i>para 10.1</i>)
Ministry of Tribal Affairs lacks capacity to handle range and diversity of issues; financing mechanisms are very weak	Policy recommendations	<ul style="list-style-type: none"> • A National Council on Forest Rights is suggested to ensure policy coordination and assist Ministry in monitoring (<i>para 11.1</i>) • Ministry requires a dedicated division for the FRA, similar should be suggested at State and district level (<i>para 11.2</i>) • Grants under Article 275(1) to States should include a specific FRA component and should provide for all expenses; grants should be conditional on completion of process indicators (<i>para 11.3</i>)
Sections of the Act relating to rehabilitation for illegal eviction / displacement have not been implemented at all; no Rules exist for them	New Rules 15D, 15E suggested	<ul style="list-style-type: none"> • Burden of proof should be on the state to show that any eviction was legal and rehabilitation provided (<i>para 12.1</i>) • District Level Committee should be responsible for provision of land, rehabilitation as required in the Act as per rehab policy with certain minimum provisions (land for instance is required by Act); return of original land also possible if land not disturbed(<i>para 12.2</i>)

Instructions and Clarifications to Correct Ongoing Problems

Issue	Suggested Instruction / Clarification
Due to lack of awareness, many have not yet filed claims; in the interim State governments have set deadlines, though there is no provision for deadlines in the Act; as a result many have not been able to claim rights; claims for provision of development facilities are being subjected to lengthy and incorrect procedure	<p><i>See Para 1</i></p> <ul style="list-style-type: none"> • Deadlines imposed by State governments to be lifted; gram sabha can extend deadlines for individual claims, there is no deadline for community claims • Decisions relating to earlier rejections can be reopened, and should be reopened where law / procedures not followed correctly • Claims on municipal lands, “private forests” etc. should be accepted • Procedure for provision of development facilities needs to follow standard Act procedure and not include extraneous requirements such as compensatory afforestation (which is specifically excluded by the Act)
Process under the Act has not been correctly implemented in most areas; people not aware of status of their claims, and where rejected, reason is almost never stated	<p><i>See Para 2</i></p> <ul style="list-style-type: none"> • Gram sabhas and claimants need to be informed of the status of claims and reasons for rejections / modifications • Complaints should be received in case of incorrect rejections / modifications • Process should be reopened to correct such rejections / modifications
Rejections / modifications often taken place without informing claimant or giving them chance to respond to eviden	<p><i>See Para 3</i></p> <ul style="list-style-type: none"> • Stipulations in proposed amendments in <i>para 2</i> of amendments to Rules should also be incorporated as a clarification
Evictions of forest dwellers are continuing in spite of the law; diversion of forest land for projects is continuing without acknowledging rights, notwithstanding order of MoEF (which has been implemented only in case of Vedanta so far)	<p><i>See Para 4</i></p> <ul style="list-style-type: none"> • Should be clarified that removal from forest land prior to recognition of rights, or in violation of rights, is a criminal offence under sections 4(5), 7 of the Act • All diversions of forest land should be reviewed and prosecution initiated for violations • Clearances given since January 1, 2008 in violation of FRA should be revoked; those illegally evicted should be compensated • Compliance by MoEF and Forest Advisory Committee should be mandated in future • FRA compliance should be included in Forest Conservation Rules

Other traditional forest dwellers being largely excluded from rights due to authorities' insistence on documentary evidence	<p><i>See Para 5</i></p> <ul style="list-style-type: none">• Clarification required on fact that oral and other forms of evidence also admissible• Onus of proof should be on the state in case such evidence is provided• Only residence, not occupation of concerned land, is required• Community level proof should be accepted• In case of disputes between STs and non-STs over any land, the onus should lie on the latter to prove the claim
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