

## **Recommendations for better implementation of the provisions for Community Forest Rights under Forest Rights Act**

Consolidated recommendations of:

- National Advisory Council Report on Forest Rights
- Manthan: Report of the Joint MoTA-MoEF Committee
- Report of National Workshop on Community Forest Rights, March 2011

Table No.	Recommendations for	Page
1.	Institutional changes relevant to CFRs	2
2.	Pre-claims processes for CFRs	3
3.	Processing and recognition of claims for CFRs	4
4.	Post-claims processes for CFRs	7
5.	CFRs for special groups (nomadic pastoralists/ PTGs/shifting cultivators)	9
6.	CFRs in Protected Areas, including Critical Wildlife Habitats and Critical Tiger Habitats	11

### ***Abbreviations used in tables***

CFRW- Community Forest Rights Workshop

JCR- Joint MoEF-MoTA Committee Report

JCRS- Joint MoEF-MoTA Committee Report Summary

NAC- National Advisory Council Report

NACS- National Advisory Council Report Summary

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**Table 1: Institutional and legal changes relevant to CFRs**

<i>Issue</i>	<i>Recommendation</i>	<i>Report and Para number</i>
Legal issues	CFR should be given a separate legal status as a category of forest, preferably under the FRA.	CFRW3.2.5
	A review needs to be carried out of all relevant laws (including the Indian Forest Act, Forest Conservation Act, Wild Life Act, Biological Diversity Act and Panchayat Acts) as well as environment related programmes, to bring them in harmony with FRA.	CFRW3.2.8
	Schemes with centralised decision-making like JFM and Ecodevelopment should be replaced by programmes based on decentralised democratic governance based on FRA and PESA through gram sabhas	CFRW3.2.4
Forest land use and diversion of forest land	The July 2009 circular of MoEF, on making FRA implementation and gram sabha consent compulsory before granting clearance for diversion of forest land, should be expanded to include other forest land uses such as plantations, and be made legally binding through rules under FRA or FCA. Prior informed consent of gram sabha should be a must before granting permission to a developmental project in a forest area. While such a legal change is under process, MOTAs should issue a circular on this and should ensure that the compliance is monitored through state governments and reported from time to time to the MOTAs.	CFRW3.2.1, NACS9, CFRW3.2.2
Minor forest produce	NTFP/MFP laws in all states need to be reviewed and modified or repealed in light of FRA; NTFPs/MFPs should be possible to sell in the open market, but the state should also provide a support price; MoEF should issue a letter similar to its letter on bamboo issued on 21st March 2011, asking all states to facilitate transit of NTFPs/MFPs by the gram sabhas; Rule 2(b) should be amended to clarify the term "sustenance" for Minor forest produce to include fulfilment of livelihood needs of self and family, including the sale of any produce; Rule 2(d) should be amended to allow a wider definition of transportation than just headloads, bicycles and hand carts; The state agencies need to widen and expand the procurement net to cover all MFP; The MoEF needs to review practice of leasing minor forest produce such as bamboo to industries, which is not in	CFRW3.2.7, NACS6, NACS 10

	consonance with law.	
	Section 8 of the FRA should be amended to empower OTFDs also with the right of giving notice.	JCR2.4.C10
	Amendment to rule 4(2) to increase mandatory tribal membership to 2/3rd from 1/3rd	NACS5
	Amendment to rule 3(1) to reduce required quorum from 2/3rd to 1/2	NACS5

**Table 2: Pre-claims processes for CFRs**

<i>Issue</i>	<i>Recommendation</i>	<i>Report and Para number</i>
Initiation of following actions	Creating awareness about CFRts amongst communities, officials and civil society groups	JCR4.6.2(i), JCR2.4.C2
	MoTA should prepare a simple "how-to" guide for CFRts and issue in large numbers to communities and relevant officials.	JCR4.6.2(ii)
	Strengthening of relevant nodal agencies and departments at state level (Tribal/Social Welfare), through more human power and training .Orientation and training sessions for relevant officials to sensitise them to CFRts	JCR2.4.C1, JCR4.6.2(iii)
	Orientation for gram sabha level members especially FRCs	JCR4.6.2(iv)
	Particular attention is needed to CFRe and habitat rights, and to the needs of special disprivileged groups such as PTGs, nomads, shifting cultivators, and women.	JCR4.6.2(v)
	It should be clear to gram sabhas that recognition of CFRs brings in higher responsibility for conservation and sustainable use, for which gram sabhas will need to build capacity and make plans.	CFRW3.2.9
Procedural clarifications	MoTA should issue a clarification, and a focus should be given in the above actions, to the possibilities of non-PTG forest-dwelling communities also claiming 'habitat' rights	JCR4.6.2(vi)
	MoTA should also issue a clarification that CFRt can be claimed in municipal areas where nomadic or other users are still accessing these areas	JCR4.6.2(vii)
	There should be constitution or reconstitution of GS at hamlet/revenue village level	JCR2.4.A1, NACS7
	Immediate constitution of FRCs where not yet formed and	JCR2.4.A2,

	reconstitution through open elections where wrongly formed. Reconstitution of SDLCs and DLCs should also be done where there is wrong composition or process of constitution. However satisfactorily achieved processing of claims should not be undone with the pretext of wrong constitution of FRCs.	JCR2.4.A3, JCR2.4B1
	Clear instructions about officials not usurping powers and functions of FRC and GS.	JCR 2.4.A4
	Appointment of officials dedicated full-time to FRA implementation, at subdivisional and district levels	JCR2.4.B4
	State governments should formulate list of villages inside or adjacent to forests and pro-actively facilitating their CFRt claims	JCR2.4C6, NACS7
	Activation of the process in areas like Andaman and Nicobar Islands, where special facilitation would be needed for (i) the PTGs (ii) the Nicobarese as STs (in particular involving their customary institutions and resource tenure systems through village and clan/tuhet elders); and (iii) for the Karens and Ranchis as potential OTFDs.	JCR2.4C8
	Activation of the process in north-eastern states that have so far hesitated due to confusion regarding the FRA's applicability.	JCR2.4C7

**Table 3: Processing and recognition of CFR claims**

<i>Issue</i>	<i>Recommendation</i>	<i>Report and Para number</i>
Claim review responsibility	Administration must ensure that CFRts are recognized in all villages with scheduled tribes and other traditional forest dwellers and should help gram sabhas file CFRt claims.	NAC 3.1a, CFRW 1.2.2
	Reasons must be recorded where no CFRts are recognized for a village	NAC 3.1b
	CFR processes need to start at the same time as individual claims or even prior to that.	CFRW1.2.1
	There should be resubmitting of claims rejected by DLCs without adequate reasons and appealing against rejection by SDLCs (itself an FRA violation).	CFRW1.2.1
	The DLC should have the power to review cases if there are appeals presenting new evidence or showing improper application of the FRA. The Rules appear to provide for this in mandating the DLCs to see if all claims, especially claims from	JCR2.4B17, JCR2.4B6

	PTGs/Nomadic, pastoralists, are examined as per objectives of the law; however MoTA should issue a circular clarifying the scope of this provision to include all situations of improper application, new evidence, etc.	
	DLCs should provide information to all claimants regarding status of claims, and rejections, giving another opportunity for appeals.	JCR2.4B7
Claim provision/facilitation responsibility	Preparation and distribution of a Form C for claiming right to protect, regenerate or conserve or manage any forest resource. Minor changes in rule 6(1) and 11.	NAC 3.2, CFRW1.2.3
	All relevant departments and officials (especially at DLC and SDLC level) must be instructed to pro-actively provide documents /evidence (such as forest settlement records, Wazibul-arz, working plans, etc) to FRCs and GSs, and actively facilitate them to make CFRt claims, in all villages inside/adjacent to forests.	JCR 4.6.3(i), CFRW1.2.8
	SDLCs and DLCs have mandatory responsibility to pro-actively provide information regarding the forest rights and procedure of making claims, evidence/documents/information to GS/FRC	JCR2.4B2
	Creation of technical advisory teams, with civil society members, to help SDLC and DLC in their tasks.	JCR2.4B16
Determination of community forest resources	Gram sabha would demarcate boundaries of rights to community forest resources as a first step towards claiming CFR rights; MoTA should issue a circular to states requiring full facilitation of this step.	NAC3.1c
	State governments should constitute <b>technical support groups</b> for clusters of villages consisting of CSOs and officials to enable communities to carry out boundary demarcation and mapping of CFRt.	JCR4.6.3(ii)
	GPS could be used for demarcating the boundary, with full information to and involvement of the gram sabha and forest rights committee	JCR4.6.3(ii)
Procedural clarifications	Issue instructions that CFRt claims (and titles) must be as per customary and community boundaries as determined by gram sabhas and records (oral or documented), and not artificially made conditional to JFM or other official programmes, other than FRA itself.	JCR4.6.3 (iii), CFRW1.2.4, CFRW1.2.6
	Widespread campaign to inform GS that claims, once passed through GS, must come straight to SDLC and creating a	JCR2.4.B5

	mechanism to ensure this.	
	CFR title should clearly mention name of all rights claimed, concerned gram sabha, total area of CFR with map having clear boundaries.	CFRW1.2.4
	Clarity of procedure required to resolve conflicting and overlapping CFR claims taking into account local context. This would include joint meetings of FRCs which is provided in the Rules and needs to be clarified through a MoTA circular.	CFRW1.2.5
	No rejections by DLCs on the basis of spatial technologies or existing records, without actual ground verification and opportunity to claimant to show occupation/dependence, and using gram sabha resolutions as a basis.	JCR2.4.B10
	Instructions clarifying that rejections cannot happen at the SDLC level, its role is only to examine the claims and make necessary recommendation on the draft record of forest rights to the DLC.	JCR2.4.B9
	Ensuring that titles are issued only after providing information on claims to the claimants and providing reasonable opportunity to appeal.	JCR2.4.B8
	SDLCs (or technical support groups authorized by them) need to help the neediest and most forest-dependent people (including women, pastoralists, nomads, PTGs, and shifting cultivators), to be a central part of the claims process. Identify and facilitate nomadic communities in getting rights in the area which is claimed by a gram sabha as CFR.	JCR4.6.3 (iv), CFRW1.2.7
	CFRt titles should be in the name of the gram sabha, while respecting specific rights to specific families or user groups of forest-dwellers (but not FRCs or VSS).	JCR4.6.3(v), CFRW 1.2.4
Transparency building mechanisms	Incorporation of recognized rights in relevant government records and sharing copies of the same with the claimants and gram sabhas as required under the Rules.	CR2.4B12J
	MoTA needs to work out a process by which it assesses compliance with its recent circulars on CFRt and MFP, perhaps by linking with a central FRA council. The National Forest Rights Council can be an independent monitoring and advisory body comprised of official and non official members for better implementation of FRA.	JCR4.6.3 (vi), JCR11.7
	There should be commissioning of independent studies and monitoring of the implementation status at SDLC and DLC level.	JCR2.4.B15

	Regular public consultations and hearings, at various locations accessible to maximum number of forest-dwelling communities, both to communicate status of implementation and to hear grievances	JCR2.4B11
	There must be action on errant, improper or illegal behaviour by officials, and against corruption. This will involve creation of a mechanism to respond, suo moto or based on petitions filed under Sections 7/8.	JCR2.4.B13, JCR2.4C5
	Translation and circulation of a compendium of issued guidelines, circulars and clarifications regarding PESA, WLPA and FRA to local communities	CFRW 1.2.10
	Public display of FRC composition, status of claims, and GS resolution on claims	JCR2.4.A5
	Minutes of meetings of SDLCs and DLCs and regular updates on status of implementation, to be put into public domain (web, and hard copies at SDO/tehsildar/forest offices)	JCR2.4.B14
	State Tribal Advisory Councils to set up mechanism for regular oversight of implementation process, and to provide inputs to SLMC/DLC, ensuring that OTFDs too are brought under the purview of this mechanism	JCR2.4.C9
	Data collection at disaggregated level, ongoing analysis of results, dissemination of these results in public forums including in a periodic report	JCR2.4.C4
	Regular meetings, fortnightly or monthly videoconference monitoring, establishment of committees/panels for ground level assessments and public hearings/consultations	JCR2.4.C4

**Table 4: Post-claims processes for CFRs**

<i>Issue</i>	<i>Recommendation</i>	<i>Report and Para number</i>
Facilitation to GS/ institutions set by GS for CFR management	Facilitate Gram Sabhas in setting up institutions to manage and protect forests under Section 3(1)I and Section 5. The institution, however must not be externally imposed, but be decided upon by the Gram Sabha.	JCR4.6.4(i), CFRW 2.1
	Facilitate GSs to form advisory federations or associations with other GS committees/institutions, to give advice on	JCR4.6.4(iii), CFRW2.2.7

	inter-village governance and Management. All relevant government departments, and the district administration, should be associated with such federations in achieving their livelihood, governance and conservation objectives.	
	facilitate GS institutions to carry out participatory monitoring for ecological, social, and economic outcomes of their activities.	JCR4.6.4(v)
	There should be appropriate FRA rules or FRA amendment to provide clear cut powers and authority to institutions to carry out the role described in Section 3(1)I and Section 5.	JCR4.6.4(ii)
Management by gram sabha	Detailed local level rules and plans should be formulated by Gram Sabha to carry out their roles. However formal rules may not be required in cases where communities have been conserving and managing resources through informal, oral customs and rules Processes of conservation, sustainable extraction, economic uses, research, development and monitoring should all be carried out or decided at the level of the gram sabha. Gram Sabhas will decide roles and extent of support required from outside agencies.	CFRW2.2.3, CFRW2.2.4, CFRW2.2.5 CFRW2.2.8
	GS institution should have a say in all activities related to such forests, including the preparation and implementation of working plans or management plans. It can stop activities in contravention with GS regulations under Section 5 for forest protection.	JCR4.6.4(iv), NAC3.1d, NAC3.1e, NAC 3.1f
	Gram sabhas should become the authority to give the TPs. Existing TP books with the Forest Department should be given to the gram sabha without cost as stop gap arrangement till a procedure is set for TP to be issued by gram sabha itself.	CFRW2.2.6
	In the post-rights scenario forest related offences should be dealt with in public hearing at the gram sabha level. The relative roles and powers of the gram sabha and the forest department relating to offences need to be delineated.	CFRW2.2.11
	Forestry funds under various scheme and resources to be disbursed by existing line agencies should come through gram sabha control and use of such funds by GS should be under social audit.	NAC3.1g, CFRW2.2.10
	District and state level forest councils should be set up when needed for technical guidance and to monitor the compliance of responsibilities of conservation and equity by both gram sabhas and the FD.	CFRW3.2.6



	Planning for natural resource management should be at the landscape level but with inclusion of all gram sabhas.	CFRW3.2.6, CFRW2.2.7
Convergence and livelihoods	Convergence of developmental, conservation and employment programmes is required for sustainability and a higher “happiness index” for forest dependent communities (see Chapter 10, JCR for detailed description). Gram Sabha should be decision making body for activities under FRA, BDA and programmes like MNREGP, PDS. Existing line agencies should converge resources and disburse through gram sabhas. Additionally government attempts at culturally and ecologically sensitive education, vocational training of villagers and establishing ventures like ‘urja vans’ can contribute to such a convergence.	CFRW2.2.1, CFRW2.2.9, JCR10.6.4

**Table 5: CFRs for special groups (nomadic pastoralists/PTGs/shifting cultivators)**

<i>Issue</i>	<i>Recommendation</i>	<i>Report and Para number</i>
Pre-claims	Conversion of Forest Villages to Revenue Villages should be a priority to enable residents to get all benefits that any citizen of India is entitled to. A circular from MoTA on this asking urgent action by state governments, would be useful.	CFRW4.2.7
	identify and list, state-wise, the various tribes and communities of nomadic pastoralists. The rights of nomads need to be recognized as community rights.	JCRS30.1, JCRS30.2
	Clarity is needed on what ‘habitat’ rights for PTGs and others mean. MoTA should elaborate the definition of ‘habitat’ and ‘habitation’ especially on the kind and extent of the area it should extend and what precisely the right means.	CFRW4.2.1, JCRS27(h)
	The FRA also needs to be amended to explicitly mandate the traditional governance institutions of PTGs to carry out all the procedures of FRA that are given to Gram Sabhas, even in states where panchayat raj institutions exist; additionally, PESA should be implemented to strengthen local self-governance and traditional governance institutions of the PTGs.	JCRS27(h), CFRW4.2.4
Claims	Ensuring representation and participation of resource dependent and vulnerable groups such as PTGs, nomadic/pastoralist communities, shifting cultivators, MFP gatherers, and women, in the GS and FRCs.	JCR2.4A4

	The onus is on the government to carry out a process of identification of such habitats based on anthropological records, any other research papers, fresh research and community consultations.	CFRW4.2.2, JCRS 27 (i)
	Filing of habitat claims requires a certain preparation on ground and readiness of the community which should be facilitated by government agencies and civil society organization.	CFRW4.2.2
	Once the habitats are identified, they should be given protection under FRA	CFRW4.2.3
	For nomadic communities, constitution of FRCs should be allowed from amongst the community or the same should be properly represented in resident village FRCs where nomads have customary grazing access.	JCRS30.3
	There should be training and capacity building programmes for government officials and others involved in the process to understand the special needs of these groups as well as the concept of habitat.	CFRW 4.2.5, JCRS 27 (i)
	Establishing and identification of habitats will need to go beyond administrative and political boundaries.	CFRW4.2.6
	The practitioners of shifting cultivation be enabled to claim CFR rights and practice this customary agricultural practice. MoTA needs to issue a clarification that currently fallow lands which are part of the shifting cultivation cycle will be included in the community cultivation rights under 3(1)(a) and permitted to be brought under cultivation in the future as part of the shifting cultivation cycle.	JCRS31
	Special measures are needed to facilitate the claims of pastoralists (e.g. helping to map the full migratory range and obtain CFR or habitat rights to it, recording it in each relevant gram sabha) and of shifting cultivators (treating their full customary area under cultivation cycles as a CFR or habitat right).	CFRW 4.2.8
Post-claims	Once the PTG obtains the right to 'habitat', 'habitation', and other CFRt and IFR, it will have a particularly challenging task ahead. This is especially so where the PTG habitat is now inhabited by or used by several other communities, government agencies, and private actors, and where the PTG itself has entered into wider market, political, and social relations. Learning and building capacity, at a pace suited to tribal way of life, and leading to clear articulation of what it means to be a PTG in the current context will be essential.	JCRS27(j)

**Table 6: CFRs in Protected Areas (PAs), including Critical Wildlife Habitats (CWH) and Critical Tiger Habitats (CTH)**

<i>Issue</i>	<i>Recommendation</i>	<i>Report and Para number</i>
Applicability	MoTA and MoEF/NTCA should issue clarifications that FRA would be applicable for all national parks or sanctuaries. Tiger Reserves are also not exempt from the processes of the FRA.	JRC7.4.2(i)
	The fact that rights may have been earlier settled in a PA under the WLPA, does not exempt that PA from going through the FRA process if there are eligible FDSTs and OTFDs.	JRC7.4.2(ii)
	Even if relocation programmes in a particular PA have been going on prior to the FRA being promulgated, this does not exempt the PA from having to go through the FRA process for families and villages that remain inside the PA; the letters mentioned above should be reiterated for such situations.	JRC7.4.2(iii)
	An amendment of the FRA should be considered, or the scope of Section 5 widened through appropriate Rules, to empower willing Gram Sabhas (especially for community forest resource areas) to be able to apply the concept of CWH, to areas within or outside PAs also, with provisions of democratic governance.	JRC7.4.3
	All notifications or steps relating to Tiger Reserves, Critical Tiger Habitats, and Critical Wildlife Habitats that have been undertaken in violation of the FRA (and in some cases even in violation of the WLPA) subsequent to 1.1.2008 need to be reviewed, and fresh process started that follows the due procedures under FRA, WLPA, and MoEF's guidelines relating to CWH (modified as per recommendation below). Such a process must be followed for all proposed CWHs.	JRC7.4.4
Recognizing FRA rights before relocation and resettlement	MoTA instructions in this regard dated 21 June 2010 and 3 September 2010 need to be immediately followed up by states by issuing direction to DLCs and SDLCs and other departmental officers. The guidelines should bar eviction/ relocation before having completed the procedure of recognition of rights under FRA. All relocations which have taken place after FRA, and the ongoing relocations in PAs/Tiger reserves, need to be reviewed to ensure compliance of FRA and WLPA.	JRC7.4.1, NACS9
	A protocol is needed to ensure that the FRA processes are fully followed in any proposal for relocation of claimants and rights-holders. Relocation should be done in a similar landscape, with the option of claiming CFR rights at resettlement site.	CFRW3.2.3

Declaring CWH/CTH approach	New guidelines for CWH should be formulated through a completely participatory process (it should be noted that detailed comments on draft guidelines have been given by civil society groups including the Future of Conservation Network, to MoEF, earlier this year)	CFRW5.2.2,
	Studies which need to be carried out before the declaration of CWH should have expertise of all stakeholders including villagers, with a combination of modern and traditional knowledge.	CFRW5.2.3
Redefining the concept of inviolate areas	The term 'inviolate' areas should be defined, in the context of CWHs, as not necessarily human-free, but rather free of activities that are in violation of conservation objectives of the area; this follows recommendations of national workshops on CWH organised by Future of Conservation Network.	CFRW5.2.1, JRC7.4.2 (iv)
	Inviolate areas should be identified with gram sabha and independent wildlife scientists and be decided through public consultation processes.	CFRW5.2.1
Management	Wherever available, gram sabha can provide evidence (such as sacred sites, oral history, traditional knowledge and practices etc. ) of coexistence to the expert committee while declaring a CWH/ CTH.)	CFRW5.2.4
	Co-existence must always be considered as an option in CWHs, rather than assuming that relocation is always necessary. Along with relocation option, the option of staying on in a protected area with mutually agreed modification of rights should also be made available.	CFRW5.2.5
	Appropriate changes need to be brought in the WLPA so that governance and management of protected area is done jointly by the FD and gram sabhas that have obtained CFR or other rights.	CFRW5.2.6. , JRC7.4.8
	Urgent action needs to be taken in cases where it is established, through a transparent process involving the relevant Gram Sabhas and SDLCs, that fresh (post December 2005) encroachment has taken place in a PA.	JRC7.4.5
	In situations where the provision of development facilities under Section 3(2) may cause serious ecological damage, as shown by an ecological assessment, special steps would be necessary to avoid or mitigate such damage or provide alternative ways of providing the necessary facilities.	JRC 7.4.6