

# **FRA FACILITATOR GUIDE**

*For Organisations Engaged with Pastoral  
Communities*



Centre for  
Pastoralism



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Pastoralism

## **FRA FACILITATOR GUIDE**

*For Pastoral Communities*

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## Preface

**The purpose of this document is to act as a guide and reference for those involved in the facilitation of FRA claim making for pastoral communities.** The document provides a list of key definitions and rights under the FRA that may be frequently referenced during the process of filing claims. It also provides the composition and key functions of all the main authorities involved in the verification and resolution process. It would be useful to reference these important sections and functions to maintain accountability with authorities involved in the FRA claim process (GS/SDLC/DLC). This document also explains the types of evidence and maps required for filing claims. Lastly, through case studies from Gujarat and Himachal Pradesh, this document provides a real-life context to facilitators of the complications involved in receiving titles under the FRA.

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## 1. What is FRA?

India's forests are home to millions of people, including many pastoralist communities who are dependent on access to forests for their livelihoods. Throughout history, these communities have had an integral and close-knit relationship with forests. These communities implicitly realised how crucial forests were to their existence and they governed forest resources by a sense of common ownership, community norms and spiritual practices. The British commercial interest in timber led to restricted access to forests which stripped traditional communities of ownership and customary rights. This, over time, led to marginalisation and loss of livelihoods of many.

The Forest Rights Act (FRA), 2006 is a pathbreaking legislation that recognises the rights of forest dwelling tribal communities and other traditional forest dwellers to forest resources, on which these communities were dependent for a variety of needs, including livelihood, habitation and other socio-cultural needs. Till the enactment of the FRA, forest management policies in both colonial and post-colonial India did not recognise the symbiotic relationship within forest dependent communities and their traditional wisdom regarding forest conservation.

The Act encompasses both individual and community forest rights. Individual Rights include rights of self-cultivation and habitation. The scope of Community forest rights includes all activities that communities have traditionally used to build a sustainable relationship with forests, including seasonal grazing access by pastoral communities.

The FRA recognises the rights of both Scheduled Tribes (ST) and Other Traditional Forest Dwellers (OTFD). Hence, **both ST and non-ST pastoralists can access rights under the FRA.** It also provides rights for the diversion of forest land to fulfil basic infrastructural needs of the community. FRA protects the STs and OTFDs from eviction and dispossession from forest land.

## 2. Pastoralism and the FRA

Some estimate the number of pastoralists in India to be 10-12 million, others as high as 35 million, spread across 200 communities who manage a livestock population of over 50 million animals.<sup>1</sup> As with tribals and other forest dwellers, pastoralists' access to land and

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<sup>1</sup>Nomadic pastoralism is prevalent in the Drylands of western India, the Deccan Plateau, and the mountainous reaches of the Himalayas. They include communities such as the cattle-herding Golan and Kurumas (sheep) of Andhra Pradesh, the Mona (yak) of Arunachal Pradesh, Maldharis, Rabari (cattle, sheep and goats) and Bharwad (sheep and goats) of Gujarat, the Kurba and Dhangar (sheep) of Karnataka, Raika/Rabari (camel, sheep and goats) and Gujjar (buffalo and sheep) of Rajasthan, Gaddi (goat and sheep) and Gujjar (Buffaloes) of Himachal and Bakarwals (sheep and goats) and Gujjar (Buffaloes) of Jammu and Kashmir.

forests has been affected primarily by the consolidation of state forests into reserve forests and other categories of forests. Notification of state forests has led to pastoralists losing traditional access to and control over grazing lands as in the case of the Banni grassland in Kachchh (notified as a protected forest), and the Bara Bangahal area in Himachal's Kangra District (demarcated as a Wildlife Sanctuary).

Pastoralist mobility adds a layer of tenurial complexity that has resulted in comparatively few claims being filed by pastoralist communities under the Forest Rights Act. This mobility lets pastoralist communities seasonally use a number of habitats and share village commons with multiple communities for a different part of the year. In the former, pastoralist need for access to grazing resources is contested by the forest department, which sees pastoralism as a threat to biodiversity, wildlife, and other ecosystem services. In the latter instance, settled communities competing for village commons pose the greatest challenge to pastoralist access to grazing areas.

Insecurity due to seasonal movement characterises pastoralist rights over both situations, with two facets of their struggles making them distinct from other communities seeking to secure their resource rights. First, pastoralists tend to be perennial visitors to regions as they move from one area to another and are generally absent from common spaces or up to 6 months of the year, sometimes longer. Second, in densely settled areas, pastoralists often claim grazing rights alongside those of agricultural communities who might use village commons for a variety of purposes. In both these cases, pastoralists are portrayed as outsiders and have little political influence over decision making as compared to settled communities.

Under the FRA, the process of filing a claim is initiated at the GS level. The **Gram Sabha (GS)**, with representation and participation of pastoral communities, will constitute a **Forest Rights Committee (FRC)** and call for the submission of forest rights claims. The FRC upon receiving the claim and evidence will acknowledge the same in writing, verify the same in the presence of pastoral community members and prepare a map of the area of the claim. The Gram Sabha after passing a resolution of the findings of the claim will forward the claim to the **Sub-Divisional Level Committee (SDLC)**. The SDLC can make recommendations on the claims and will then forward them to the **District Level Committee (DLC)** for consideration. The DLC will then prepare a record of rights and issue the titles to the claimants. In case there is rejection or modification of the claims at any of these levels (GS/SDLC/DLC), information of the same has to be communicated in writing to the claimants.

## **Key Definitions**

Given below are the key definitions relevant to pastoral communities under the FRA.

1. **'FOREST LAND'** as per Section 2(d) of FRA, denotes land of any description falling within any forest area and includes unclassified forests, un-demarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and National Parks. It must be noted that all forest land, including forests that are recorded by the forest department and even unrecorded forest, is part of the FRA<sup>2</sup>.
2. **Community forest resource** means 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.
3. **ST/OTFD** category meaning:
  - 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 genuine livelihood needs and includes the Scheduled Tribe pastoralist communities;
  - OTFD: **"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** for genuine livelihood needs.

## **Forest Rights Act & rights of pastoral communities**

Given below are some of the important rights and sub sections under the FRA that would be frequently referenced during the claim filing process.

**Community Forest Rights (CFR):** These rights include:

1. Grazing
2. Fishing and access to Water bodies in forests
3. **Traditional Seasonal Resource access of Nomadic and Pastoral communities:** Pastoral and Nomadic communities have access to the grazing grounds that fall in their seasonal migration routes.

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<sup>2</sup> Forest land is defined according to the Supreme Court judgement in the T.N Godavarman Thirumulkpad v. Union of India case, 1996. According to the judgement, forest land may be defined in terms of both the dictionary definition of forest as well as any forest land that is recorded by the government.

4. Access to biodiversity
5. Community right to intellectual property and traditional knowledge
6. Recognition of traditional customary rights
7. Right to protect, regenerate or conserve or manage any community forest resource for sustainable use

Important rights for Pastoral communities under Section 3 of the Act:

1. Section 3 (1) (b): Community rights or *Nistar* Rights including those used in the erstwhile Princely States, Zamindari or such intermediary regimes.
2. Section 3 (1) (c): Rights of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries.
3. **Section 3 (1) (d): 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;**
4. Section 3 (1) (i): Rights to protect, regenerate, conserve, manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.
5. Section 3 (1) (k): Includes community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.

## **Authorities and Functions**

### **C. Role of Authorities set up under FRA in Claims Filing and Recognition**

The process of claiming rights starts with drawing rough maps of forests which are developed by the villagers with the Gram Sabha playing a crucial role. These are then verified on the ground and submitted to higher authorities. *It is important to note that Gram Sabha is treated as a public authority under the FRA, and if the higher authorities reject its claims, substantive reasons have to be provided for doing so.*

### **Gram Sabha (GS)**

The GS is the authority to initiate the process for determining the nature and extent of Individual Forest Rights (IFR) or Community Forest Rights (CFR) or both that may be given to the community.

#### **1. Organising Gram Sabha**

The following options are suggested for organising GSs depending on the mobility and access needs of the pastoral community concerned. Some of these approaches have already been used successfully in cases pursued.

- (a) Many pastoral communities are residents of settled villages and migrate seasonally for grazing. In such situations, the GSs and FRC can be constituted in the villages of their residence, where they can file forest rights claims. It must be noted that the pastoral communities may live with other communities in the resident villages and hence it is necessary for the GS to be formed with adequate representation of the pastoral communities.
- (b) Nomadic and semi-nomadic pastoral communities that spend considerable time outside the place of residence can participate in the GS of local communities in the villages/hamlets where they are accessing forests.

## **2. Functions of Gram Sabha**

The GS leads the process of claiming rights under the FRA. The process is initiated by determining the extent and nature of forest rights and setting up the FRC, followed by reviewing the decisions made by the FRC. Since pastoral groups are often missing from commons for a large part of the year, the GS and the FRC are mandated to take steps to ensure the participation of pastoral communities (their representatives or their traditional institutions) in the FRA claim process.

The functions of the GS are as follows:

1. Determine the nature and extent of forest rights of the forest dwellers of the specific GS.
2. Solicit and hear the claims relating thereto;
3. Prepare a list of claimants of forest rights and maintain a register containing such details of claimants and their claims ;
4. 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;
5. 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.
6. Monitor the FRC 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.
7. GS would also integrate the above conservation and management plans with the micro, working or management plans of the forest department with such modifications as may be considered necessary by the committee.
8. Approve all decisions of the committee pertaining to the issue of transit permits, use of income from the sale of produce, or modification of management plans.

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## **Forest Rights Committee (FRC)**

### **1. How is it constituted?**

(a) The GS 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 FRC. At least two-thirds of the members shall be of the Scheduled Tribes provided that:

1. Not less than one-third of such members shall be women;
2. Where there are no Scheduled Tribes, at least one-third of such members shall be women.

It is important to note that in regions where there is no ST population as in the case of many of the pastoral communities, FRC can be constituted with OTFD members as well. Hence, in regions where there is no ST population, FRC can be constituted with pastoral communities who belong to the OTFD category as well.

(b) The FRC shall decide on a chairperson and a secretary and will provide these details to the Sub-Divisional Level Committee. When a member of the FRC is also a claimant of an Individual Forest Right, s/he shall inform the Committee and shall not participate in the verification proceedings when his/her claim is considered.

### **2. Functions of the FRC**

(a) Under Rule 11 (2) of the FRA, the FRC shall assist the GS in its functions to:

1. receive, acknowledge and retain the claims and the evidence in support of such claims in the specified form;
2. prepare the record of claims and evidence including maps;
3. prepare a list of claimants on forest rights;
4. verify claims as provided in these rules;
5. present their findings on the nature and extent of the claim before the GS for its consideration.

(b) Every claim received shall be acknowledged in writing by the FRC. The FRC shall also prepare the claims on behalf of GS 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 as provided in Annexure I of these Rules.

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## **Sub-Divisional Level Committee (SDLC)**

**The SDLC and the DLC are part of the processing of the claim to prepare titles and records of rights. The SDLC is required to receive and examine the recommendation on claims submitted by the GS. The SDLC prepares a draft record of rights for submission to the DLC for approval.**

### **1. Composition of the SDLC**

The SDLC is constituted by the State government with the following members:

- (a) Sub-Divisional Officer or equivalent officer - **Chairperson**;
- (b) **Forest Officer** in charge of a Sub-division or equivalent officer;
- (c) **Three members of the Block or Tehsil level Panchayats** to be nominated by the District Panchayat. (1) At Least two of these members should belong to the ST category and should preferably be forest dwellers or PVTGs. (2) In regions where there are no STs, two members should belong to the OTFD category and one of them should be a woman. (3) In areas that are covered under the 6th Schedule of the constitution, the three members should be nominated by the autonomous district council or the Regional council and at least 1 of these members should be a woman. An officer of the Tribal Welfare Department in charge of the Sub-division or where such an officer is not available the officer in charge of the tribal affairs.

### **2. Functions of SDLC**

- (a) Raise awareness among forest dwellers about the objectives and procedures laid down under the Act and in the rules;
- (b) Provide information and records asked by the GS or the FRC and facilitate clarification of the same through an authorised officer, if required.
- (c) Provide forest and revenue maps and electoral rolls to the GS or the FRC;
- (d) Ensure that the GS meetings are conducted in a free, open and fair manner.
- (e) Ensure easy and free availability of format of claims to the claimants as provided in Annexure I (Forms A, B & C) of these rules;
- (f) Gather all the resolutions of the concerned GSs;
- (g) Consolidate maps and details provided by the GS;
- (h) Examine the resolutions and the maps of the GSs to determine the authenticity of the claims;
- (i) Hear and judge disputes between GSs on the nature and extent of any forest rights;
- (j) Coordinate with other SDLC for inter sub-divisional claims;
- (k) Prepare block or tehsil-wise draft record of proposed forest rights after reconciliation of government records;
- (l) Forward the claims with the draft record of proposed forest rights through the Sub-Divisional Officer to the District Level Committee for final decision.

**The DLC is the apex authority to approve the claim. The DLC receives and examines the draft record of rights submitted by the SDLC. After approving the claim, the DLC will make the final record of rights and distribute titles of the claims to the claimant community.**

### **1. Composition of DLC**

The DLC is constituted by the State Government with the following members:

- (a) District Collector or Deputy Commissioner - **Chairperson**;
- (b) **Concerned Divisional Forest Officer** or concerned Deputy Conservator of Forest;
- (c) **Three members of the district panchayat to be nominated by the district panchayat.** (1) At least two of these members should belong to the ST category and should preferably be forest dwellers or PVTGs. (2) In regions where there are no STs, two members should belong to the OTFD category and one of them should be a woman. (3) In areas that are covered under the 6th Schedule of the constitution, the three members should be nominated by the autonomous district council or the Regional council and at least of these members should be a woman. **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.

### **2. Function of DLC**

- (a) Ensure that the requisite information under clause (b) of rule 6 has been provided to GS or FRC;
  - (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 SDLC;
  - (d) Coordinate with other districts regarding inter-district claims;
  - (e) Issue directions for incorporation of the forest rights in the relevant government records including a record of rights; Ensure publication of the record of forest rights;
  - (f) Ensure that a certified copy of the record of forest rights and title under the Act, as specified in Annexures II and III to these rules, is provided to the concerned claimant and the GS respectively ;
  - (g) 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 GS or the community whose rights over community forest resource have been recognised under clause (i) of sub-section (1) of section 3.
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## **State Level Monitoring Committee (SLMC)**

The state-level monitoring committee is the state level authority for monitoring the implementation of FRA in the state. The SLMC is chaired by the chief secretary, has the secretaries of the tribal welfare, revenue, forest, panchayati raj as members, and the members of the tribes advisory council.

### **Composition of SLMC**

- (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.

### **Functions of SLMC**

- (a) Make 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,
  - (d) Consider and address the field level verification and vesting of forest rights, consider and address the field level problems,
  - (e) 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. SLMC is also required to submit compliance with the steps required under the Act and the details of claims approved. If any claims have been rejected then the reasons for the same have to be submitted. Also, the status of all pending claims is also required to be submitted.
  - (f) On receipt of notice as mentioned in section 8 of the Act, take appropriate actions against the concerned authorities under the Act;
  - (g) Monitor resettlement under sub-section (2) of section 4 of the Act;
  - (h) Specifically, monitor compliance of the provisions contained in clause (m) of sub-section (1) of section 3 and sub-section (8) of section 4.
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## **Process of filing claims**

**Step 1:** GS will constitute the FRC and call for the submission of forest rights claims. Here, the GS should ensure the representation and participation of pastoral communities.

**Step 2:** The FRC will receive, acknowledge and retain the claims as well as the evidence in support of such claims. The filing of these claims should consider the migratory routes of pastoral communities.

**Step 3:** The FRC will verify the claims along with representatives of the forest and revenue department. Here, the FRC should ensure that the claims are verified in the presence of pastoral community members. A map delineating the area needs to be prepared as part of the claim.

**Step 4:** The GS will consider the findings submitted by the FRC on the nature and extent of the claim. The GS will then pass a resolution on all the claims that are to be forwarded to the SDLC.

**Step 5:** The SDLC will examine the claims and prepare a draft record of forest rights. This draft record will then be forwarded to the DLC.

**Step 6:** The DLC will examine the SDLC's recommendations and make the final record of forest rights. The DLC will then issue the titles to the claimants. The SDLC and the DLC are expected to take a proactive role in supporting pastoral communities in filing their claims.

**Step 7:** In case the claim has been rejected or modified at any stage of the process (GS/SDLC/DLC), then information of the same has to be provided to claimants in writing. A hearing of appeal petitions should take place in case of any grievance.

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## **Where should claims be filed in case for pastoral communities' claiming rights over their traditional migratory routes which might spread over administrative and territorial boundaries?**

The filing of claims of pastoral communities will depend on their migratory pattern to some extent and thus on the formation of their GS. Although not exhaustive, the following three scenarios are often encountered in the filing of claims by pastoral communities.

Pastoral communities having claims within district boundaries will often move between two or more gram panchayats in accessing forage. In such a scenario, pastoralists can file their claims in the GSs of their resident villages. The DLC shall facilitate the filing of claims with each of the other GSs through whose jurisdiction the concerned pastoralists graze their animals. the (Rule 12B (2)). This can be done by holding consultations with the pastoral communities and with the concerned GSs. With regard to cases falling within sub-divisional boundaries, the SDLCs are required to coordinate the claim process (Rule 6 (h)).

Pastoral communities with claims on grazing and seasonal access across multiple districts within a state can file their claims in the GSs of their resident villages. In such cases, the DLC of the concerned district shall facilitate the filing of claims before the relevant GSs (Rule 12B (2) and shall coordinate with other DLCs regarding the inter-district claims (Rule 8 (e)). This can be done by holding a joint meeting of the relevant DLCs to examine and process the claims. In such cases the DLC under whose jurisdiction the GSs fall should convene the meeting with other DLCs.

Pastoral communities with claims on grazing and seasonal access across multiple states can file their claims in the GSs of their resident villages. In such cases, the DLC of the concerned resident/origin district shall facilitate the filing of claims before the concerned GSs (Rule 12B (2)) and shall coordinate with other DLCs regarding the inter-district claims (Rule 8 (e)). This can be done by holding a joint meeting of the relevant DLCs to examine and process the claims. Since such claims fall in multiple states the DLC should ask for support from the SLMC. The SLMC should coordinate with other State Government and SLMCs for recognising inter-state claims.

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## **Evidence**

Section 13 of the Rules clearly lists out the types of evidence which should be accepted during claim filing. Few of the major types of evidence mentioned, which can be of special significance with respect to pastoralists, could be:

- (a) Government records (gazetteers and working plans), records available with the pastoral communities (for instance as per FRA, 13 (2)(a) grazing permits, *nistar* - etc), reports of reputed research institutes, maps, census having any information on the traditional access and use of pastoral communities of forest land.
- (b) Statements of community elders (13(1) (i)).
- (c) Physical evidence, for instance, as stated in 13 (2)(b)- ‘traditional grazing grounds.... sources of water for human or livestock use, etc’
- (d) Genealogy tracing ancestry to individuals mentioned in earlier land records or recognised as having been legitimate residents of the village at an earlier period of time; (13( h))

A sample of evidence has been given below:

- Working plans
  - Grazing tax receipts
  - Letters from Princes
  - BCPs
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## **Mapping**

The FRC is required to prepare a map delineating the area of claim. This can be a simple sketch map or a digitised map of the community forest resources showing recognisable landmarks.

Examples of some maps are presented below:

- Sketch map (hand-drawn map)
  - Digitised map
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## **Grievance and Appeal**

1. Any modification or rejection related to claims needs to be communicated to the claimant/ GS with detailed reasons for such modification or rejection (within 60 days which can be extended to 90 days).
2. Except mandatory authorities (GS, SDLC or DLC) no other committee or any individual officer of any rank shall empower to reject, modify or decide any claim on forest rights.
3. 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
4. Claims shall not be modified or rejected merely on any technical or procedural grounds. Examples of such grounds may be:
  - Claims don't have complete information.
  - Claims don't have documentary evidence.
  - Claims don't have maps.
  - Verification of claims is not completed and others.
5. In case the recommendation is found to be incomplete or requires some additional examination, the SDLC or the DLC shall direct the claim to the GS for reconsideration instead of modifying or rejecting the same.
6. In case SDLC upholds the resolution passed by the GSs, but the same is not approved by the DLC, then a copy of the order along with the reasons shall be made available to the claimant or the GS or the community.
7. The SDLC & DLC shall not insist upon any particular form of documentary evidence.
8. Claimants have the right to appeal to mandated authorities against any decision taken on the claim within 60 days from the date of the decision taken. [12A (3) & Sec. 6 (2)]

- & (4)]
9. Appeal petition cannot be disposed of without giving a reasonable opportunity to the aggrieved person. [Sec. 6(2) & 6(4) of the Act]
  10. The hearing of an appeal shall be held at a convenient public place in the village (GS) of the Petitioner at least 15 days prior to the date fixed for the hearing. [Rules 14(2) & 15(2)]
  11. No claimant/community can directly appeal a petition to DLC against the GS resolution unless the same has been preferred before and considered by the SDLC. [Sec. 6(4)of the Act]
  12. Claimants have the right to appeal to mandated authorities against any decision taken on the claim within 60 days from the date of the decision taken. [12A (3) & Sec. 6 (2) & (4)]
  13. Appeal petition cannot be disposed of without giving a reasonable opportunity to the aggrieved person. [Sec. 6(2) & 6(4) of the Act]
  14. The hearing of an appeal shall be held at a convenient public place in the village (GS) of the Petitioner at least 15 days prior to the date fixed for the hearing. [Rules 14(2) & 15(2)]
  15. No claimant/community can directly refer an appeal petition to DLC against the GS resolution unless the same has been preferred before and considered by the SDLC. [Sec. 6(4)of the Act]

### **Key functions of authorities in the appeal process:**

#### **GS Level**

Before presenting its findings to the GS, the Forest Rights Committee shall communicate the claimant about the cause of rejection or modification of his/her claim. Once the claimant gets information on rejection, he/she may prefer to file an appeal against the findings of the FRC before the GS.

The GS may either approve his/her claim or reject the petition;

If the petition is rejected, then the GS shall communicate to the claimant about the cause of rejection and also intimate the claimant about his/her right to file a petition against the decision of the GS before the SDLC within 60 days from the date of intimation.

#### **SDLC Level**

Rules 14 mentions the process and manner of hearing the petition of the aggrieved person or claimant against the decision of the GS. The Process and manner of hearing can be done in two ways: through direct hearing from the SDLC or by referring the petition back to the GS for reconsideration.

If the hearing is done directly by the SDLC, then the SDLC shall fix a date for the hearing of the petition. Following this, the SDLC shall intimate the Petitioner and GS through a Public

Notice prior to 15 days of the hearing date. The hearing shall then take place at a convenient public in the village of the petitioner. The SDLC shall hear the viewpoints of both parties (FRC on behalf of the GS & Petitioner). After listening from both parties, the SDLC shall pass appropriate orders, either accepting or rejecting the petition. The SDLC shall communicate the order in writing to both parties. The SDLC shall also communicate both the parties about their right to file an appeal against their decision to the DLC within 60 days from the date of passing the order.

If the petition is referred back to the GS for reconsideration then information regarding this has to be provided to the petitioner. After receipt of the reconsideration letter from SDLC, the GS shall meet within a period of 30 days to hear the Petitioner. The FRC shall communicate with the claimant about the date and venue of the GS Meeting for hearing. It is the responsibility of the SDLC to ensure that the GS meeting is conducted in a free, open and fair manner with the requisite quorum. The quorum of the GS meeting shall be not less than one-half (50%) of all members of such GS. At least 1/3<sup>rd</sup> of the members shall be women. The GS shall hear the view of the petitioner and pass a resolution on that reference and forward it to SDLC. The SDLC shall consider the resolution of the GS and pass appropriate orders, either accepting or rejecting the petition. The SDLC shall then communicate the order in writing to both parties. The SDLC shall communicate both the parties about their right to file an appeal against their decision to the DLC within 60 days from the date of passing the order.

### **DLC Level**

Rules 15 mentions the process and manner of hearing the petition of the aggrieved person or claimant against the decision of the SDLC. The Process and manner of hearing can be done in two ways: through direct hearing from the DLC or by referring the petition back to the SDLC for reconsideration.

If the hearing is done directly by the DLC, then the DLC shall fix a date for the hearing of the petition. Following this, the DLC shall intimate the Petitioner and SDLC through a Public Notice prior to 15 days of hearing date. The hearing shall then take place at a convenient public in the village of the petitioner. The DLC shall hear the viewpoints of both parties (SDLC & Petitioner). After listening from both parties, the DLC shall pass appropriate orders, either accepting or rejecting the petition. The DLC shall communicate the order in writing to both parties.

If the petition is referred back to the SDLC for reconsideration then information regarding this has to be provided to the petitioner. The DLC may refer back the petition to the concerned SDLC for reconsideration with an intimation to the petitioner. After receipt of the reconsideration letter from DLC, the SDLC shall intimate the petitioner and the GS about the date and place of the hearing. The SDLC shall hear the views of both the parties (GS and Petitioner). The SDLC shall then take a decision and intimate its decision to the DLC. The DLC shall then consider the decision taken by the SDLC and pass appropriate orders, either

accepting or rejecting the petition. The DLC shall communicate a copy of the order in writing to both parties.

## **Case Studies and Learnings**

### **Case Study I**

**The Maldharis (pastoralists) of the Banni grassland, which is located in the Kachchh district of Gujarat, are the first pastoralist group in India to claim Community Forest Rights (CFR) under the Forest Rights Act.**

#### **BACKGROUND**

Banni is a 2500 sq km grassland that is categorised as a Protected Forest. It has been traditionally accessed, managed and protected by the nomadic/semi-nomadic Maldhari pastoral communities. Presently nearly 7000 families, mostly Maldharis, reside in and thrive on the grassland along with their Banni buffaloes and Kankrej cattle. Administratively, Banni has 48 villages in 19 Panchayats. Banni grassland has never had internal boundaries and hence there is a vast overlap of resource use and access.

#### **ORIENTATIONS & MOBILISATION**

The Banni Breeders Association (BPUMS- Banni Pashu Uchherak Maldhari Sangathan) started a dialogue with the government authorities regarding their rights over Banni in 2011. After several rounds of discussions and awareness building, the Maldharis decided: that the Banni will be used as a common resource and will be claimed as community forest resources. This was significant since for the first time such a large community of people had come together to claim rights on such a large land resource. In 2012 they undertook a mass rally demanding that FRA be implemented and their customary rights be formalised.

#### **GS AND FRC FORMATION**

The pastoralists decided to organise GSs and initiate the formation of FRCs to submit their claims as per the provisions of the FRA. In November 2013, Gram awareness building, the Maldharis themselves reached a major decision: that the Banni will be used as a common resource and will be claimed as community forest resources. In 2012 they undertook a mass rally demanding that FRA be implemented with regard to the area. Sabhas began forming Forest Rights Committees at the village level. 48 villages formed their FRCs and submitted resolutions to the SDLC and DLC. This process was preceded by several rounds of discussion at the community level and even with the district administration. Since Maldharis form the bulk of the local population, the FRA GSs formed were largely homogeneous in nature.

Since the process was going to be similar for the GSs of each hamlet and these hamlets were, on the other hand, scattered across a large area, the GSs decided to form a Maha GS (collective of GSs) for easier coordination and consultation. The Maha GS served as an umbrella institution throughout the process of claim filing and recognition.

## **FILING CLAIMS**

The first step undertaken by the GSs and by FRCs was the determination of rights, resource mapping and determining access and use-overlaps. The FRCs asked Sahjeevan, a non-governmental organisation, for help in carrying out resource mapping. Several meetings were organised at the village level with various groups and mapping was undertaken of seasonal access to different grazing areas.

In the interim, there were orders from the district administration to officially form FRCs and thus in 2014, claims were prepared and filed as per the FRA.

The Secretaries and Presidents of all GSs came together to discuss how the claim filing should take place – a single claim over the entire Banni grasslands or a set of claims. After many rounds of consultation, it was decided that each GS would prepare and file its CFR claim. However, the demand and format for each would be similar and they would, ultimately, all be passed through the Maha GS.

The claims were approved by the GSs and Maha GS and were submitted to the SDLC. In this manner, 48 claim files were prepared from their respective GSs and passed in the Maha GS.

### **The GSs claimed the following rights under FRA**

1. Nistar Rights under FRA Section 3 (1) (b): Habitat rights, grazing rights, rights over water resources, rights over natural resources for livelihood generation in the Banni grassland.
2. Non-timber forest produce (NTFP) rights under FRA - 3 (1) (c): The collection of minor forest products such as honey, gum, grass, fodder, medicinal plants, firewood and charcoal making in drought conditions, etc.
3. The following community rights were claimed:
  - a.) Rights to the use of water resources, fishing, drinking water for humans and animals over various wetlands, etc.
  - b.) Grazing: Grazing and seasonal resource access rights under (3) (1) (d) for animals over 2500 Sq. km
  - c.) Pre-agricultural communities' grazing and habitat rights over the Banni grassland.
4. Management and governance rights under section 3 (1)(i) of FRA that provides for the right to protect forests and biodiversity
5. Conversion of forest villages to revenue villages under FRA- 3 (1) (h): A demand was made to convert all forest villages into revenue villages
6. Rights to access to biodiversity as well as community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity under FRA- (3) (1) (k) including conservation, protection and development of native/indigenous livestock breeds such as the Banni buffalo, Kankrej cattle, Kachchhi horse, indigenous sheep and goat breeds, the Kachchhi donkey etc. This further included access and benefit-sharing rights in relation to the economic benefits of these breeds.
7. Other traditional rights if any under 3 (1) (L)

The claim making and hence recognition happened at two levels. All GSs recognised their CFR over the Banni grassland and secondly, access of other villages/user groups in the periphery of their villages.

### **EVIDENCE & DOCUMENTS**

The Banni Maldharis are not Scheduled Tribes (ST) and hence are recognised under the Other Traditional Forest Dwellers (OTFD) category of FRA. They used two broad categories of evidence in support of their CFR claim:

1. Towards the end of the 19th century and the beginning of the 20th century the local ruler (the Maharao) had provided a number of judgements that mention both the names of these and other pastoral communities and make reference to the Banni.
2. The community had receipts of grazing tax paid to the Maharao.

### **ROLE OF STATE AND DISTRICT LEVEL ADMINISTRATIVE INSTITUTIONS- DLC, SDLC AND STATE GOVERNMENT**

The Banni case expresses the combined efforts of both community-driven institutions like the Breeders Association and a responsive, functional state administration. The importance of the DLC assuming responsibility in claiming and recognising pastoral communities' rights is highlighted. In 2012 the Government of Gujarat issued a GR for the implementation of FRA in Non-Scheduled Areas of Gujarat. Within a year, the Collector of Kachchh issued resolutions for the formation, in a campaign mode, of SDLCs, DLCs and GSs in villages that had forest land. Another significant step was the District Collector's appointment of the District Social Welfare Officer as the Nodal officer for FRA in the district. The SDLC was instrumental in organising the required number of meetings and consultations with the GSs. It must be mentioned, however, that even though the claim process is complete and 48 claims were approved by the SDLC and the DLC, official recognition of the pastoralists' CFR rights is yet to be given and the GSs are yet to receive their titles. The successful pursuit of the process and its acceptance by the administrative machinery provides a clear blueprint; its incomplete status represents an omission that must be speedily resolved.

## **Case Study II:**

### **Claiming and Recognition of pastoral rights across administrative and territorial boundaries in Multhan tehsil, Kangra district of Himachal Pradesh**

#### **BACKGROUND**

Himachali pastoralism, like mountain pastoralism more generally, is premised on spending the summer and monsoon grazing in high altitude pastures, while winters are spent grazing forests in the Himalayan foothills. Up to four months of the year are spent moving between these summer and winter grazing grounds. While on migration, herders graze their animals along roadsides, in village commons and on forest lands. In 1999 the Dhauladhar Wildlife Sanctuary was notified and from 2008, restrictions on grazing became more severe. More than 700 sq. km. of the 1000 sq. km. of the Sanctuary had been common grazing land that served not only 200 agro-pastoralists (shepherding-based households of Multhan) but 600 other pastoral families that had used the land for their summer grazing for many centuries.

#### **GS AND FRC FORMATION**

In Himachal Pradesh, the FRA was initially implemented only in the Schedule V areas -Lahaul, Spiti and parts of Chamba district, and it was later extended to the whole state. In 2014, FRCs began to be formed.

#### **DETERMINATION OF FOREST RIGHTS AND CLAIM MAKING**

When the pastoral communities started filing claims in Multhan, they involved not just the local stakeholders from the 28 GSs but also the other dependent households from various districts whose summer grazing was located in Multhan. This was used strategically to strengthen the case for the collective management of the community resource through multiple stakeholders. A list was prepared of all people from different districts that accessed the area in question with details of the time of year when they accessed it. A similar list was prepared for the local shepherds from Multhan with the list of the forests that they use for the winter grazing.

Thus the resource mapping consisted of the documentation of grazing areas, routes and halts of nomadic shepherds. One of the major challenges they faced while filing cross-boundary pastoral claims was deciding on the GSs with which to file claims and the procedure for getting them passed by all GSs that they accessed while on migration. In Multhan they decided to file claims from the GSs they were residents of and recorded the entire migratory routes used while on migration, including places they halt at. Therefore, the GS where the shepherds were originally residents received and verified the claims and forwarded them to the SDLC. This entire resource mapping was done with the shepherds as primary respondents.

Since this was the first attempt in the country involving the filing of inter-DLC claims for pastoral nomadic communities, meticulous documentation was undertaken of not just the grazing areas but also the route that they take, with a focus on where they halt and what water

resources they use while moving. Additionally, a list was also made of the GSs, FRCs, SDLCs and DLCs that all those villages/forests fall under.

A number of multi-stakeholder meetings took place and matters such as boundary demarcation, nature of rights, etc. were discussed thoroughly at this stage of pre-claiming and claiming of pastoral rights to prevent tensions amongst stakeholders surfacing at a later point. For example, Bada Gran GS decided the boundaries with regard to the area that they would graze themselves and that which they would allow the shepherds to graze on. The GS in Bara Bhangal Village decided to grant only grazing rights and not the right to herb collection to the shepherds coming from outside. In Rulling GS, the facilitators held joint consultations with different groups and then with all the groups together. These included discussion and negotiation among communities forming the GS at Rulling and also with those who came from elsewhere to graze their animals there in the summers—even those communities that did not actually stop here but passed through while moving towards other summer grazing areas. Besides this, they also held consultations with GSs of the areas that residents of Ruling used for winter grazing. The entire process took almost two years but was pursued successfully in accordance with the democratic and communitarian spirit of pastoralism and FRA.

#### **EVIDENCE AND DOCUMENTS**

In Himachal Pradesh, they used the *Wajib-ul-Arj* (record of customs) to prove the communities' historic access and use of the resources they were filing claims for. In Karnathu GS, as supporting documents for evidence, an old Working Plan copy of the relevant Forest Division (Palampur) and a copy of Anderson's 'Forest Settlement of 1887' was also furnished.

#### **ROLE AND FUNCTIONS OF ADMINISTRATIVE INSTITUTIONS**

It is not every household or GS's responsibility to send the inter-SDLC and inter-DLC claims to multiple platforms, rather it is the DLC's responsibility. The pastoral communities in and around Kangra made use of the legal provisions of FRA; Rule 8 (e) that states one of the functions of DLC is to 'coordinate with other districts regarding inter-district claims.'

#### **TITLE TO THE COMMUNITY FOREST RIGHT**

The nature of community rights in pastoral context is two-pronged – it is held by the community but practised individually. The titles issued were in the name of all the permanent residents of the concerned GS and most significantly mentioned that Seasonal Access and use rights of Nomadic and Pastoralist communities within the Community Forest Resource area shall be respected by the GS under section 3(1) (d) and (i) of the Act. The GS and such user communities shall jointly decide rules for regulating access for sustainable use of the area under section 5 of the Act.'