FORESTS, RIGHTS, AND CONSERVATION

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, India

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Introduction

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (hereafter called the Forest Rights Act or FRA) is one of the most controversial pieces of legislation to emerge since India gained independence. Born out of popular struggles of tribal (indigenous) peoples and their supporters, the FRA has caused considerable and often-violent debate amongst activists, academics, government officials, and others. This paper attempts to assess:

- the implications of the FRA for conservation and people's rights and livelihoods,
- the ways in which different actors have shaped the FRA, including the extent to which tribal peoples have been involved, and
- the problems and prospects of the FRA's implementation.

This paper first describes the extent and types of dependence that communities have on India's forests. It then provides a brief history of policy and legislation relating to forest and wildlife. The discussion next turns to the key provisions of the FRA and its history and background. How the FRA has changed from its first version as a Bill up to its final version as an Act is also assessed. The final section considers the implications of the FRA on livelihoods and conservation.

Forest-based livelihood dependence in India

Forest biodiversity and resources have supported the livelihoods and lives of forest-dependent people in India for thousands of years. Animals and plants have been worshipped and play a central role in various cultures and traditions. Forests, rivers, mountains, and lakes have been seen as the abode of gods. Many Indian communities have protected forest patches dedicated to deities and ancestral spirits as sacred groves. Even today many sacred groves still provide a refuge to several endangered and threatened species of flora and fauna (Malhotra et. al. 2001).

Seventy-two per cent of the total population of India lives in rural areas (Bose 2001) and is directly dependent on terrestrial and aquatic natural resources for its food, health, shelter, and diverse livelihood systems. This population includes both *adivasi*[1] (tribal) and non-*adivasi* communities, comprised of settled farmers (mostly small and marginal), shifting cultivators, pastoralists, fishers, or artisans. The economic and occupational profile of the country is predominantly agrarian – 58.4% of the employed population works in agriculture, animal husbandry, forestry, fisheries, and related occupations. In particular, produce from forests such as fuel wood and non-timber forest products (NTFPs) contributes significantly to household subsistence and income for people living in or adjacent to forests. An estimated 147 million villagers live in and around forests and another 275 million villagers depend heavily on forests for their livelihoods. Additionally, 170,000 villages with a total population of 147 million have forestland within their village boundaries (FSI 2002). Livelihood security for this segment of the population is critically linked to both ecological security and the security of access to, and control over, natural resources. The sustainability of such livelihoods requires a sustainable natural resource base, since land, water, and biodiversity are their very foundation (Kocherry 2001 in TPCG and Kalpavriksh 2005).

Despite these realities, a lack of tenurial security over forestland and access to forestland for gathering, pasture, shifting cultivation, and pastoralism remains a major source of livelihood insecurity (Kothari 2001). Since independence in 1947 well over sixty million people have been displaced by large development projects (such as hydroelectric dams, mines and other industrial projects) and wildlife protected areas (Mathur 2008). Comprehensive figures for displacement by protected areas are not available; some social activists claim that in the past five years, 300,000 families have been evicted from protected areas alone (NFFPFW 2007), while other estimates are more in the range of 100,000 families displaced over the last three – four decades (Lasgorceix and Kothari 2007). More critical than physical displacement however, is the heavy restriction on access to forestland and resources, resulting in at least three million forest-dependent people becoming amongst the most marginalised in the country (Wani and Kothari 2007).

[1] The term *adivasi* means "original inhabitant" and is used in reference to what can broadly be called India's indigenous or tribal peoples. The more specific term "scheduled tribes" is used for those who have been listed in the Constitution of India, using broad cultural and political criteria, and being accorded special privileges.

History of forest and wildlife legislation, and resource alienation of forest-dependent communities

1.1. Background

The history of forest-dependent, tribal and non-tribal communities in India is rife with experiences of exploitation by "invading" communities. This has been in the form of pre-colonial rulers and their representatives, traders, colonial government agents, or the post-independence state agencies and corporations.

Prior to the early 19th century in most parts of India the land and natural resources were more or less the property of big landlords (*zamindars/jagirdars*) or local rulers. Simply put, these rulers were mainly interested in the taxes that could be collected from these areas and the day-to-day management was largely left to the people who lived and depended upon these locations. Their deep cultural, economic, and political relationships with the surrounding resources led to the development of intricate systems of management, including the development of rules, regulations, and institutions. Private ownership of land was much less important than community use and management of resources. In fact there were many tribal communities, particularly practicing shifting cultivation or hunting gathering, who had nearly no concept of individual land ownership.

British colonisation of India in the early 19th century is seen as a period of sea change in the way land, resources, and people were viewed by the state. The colonial government's primary interest was to generate as much revenue as possible through collection of taxes on privately owned resources and state extraction of resources from lands which were not privately owned. The most organised and catastrophic waves of dispossession that millions of people in India had to face were the enactment of forest and conservation related laws in pre- and post-independent India. Management of natural resources that excluded local people was endorsed by the colonial government in the 19th century. In the 1800s, the colonial government started the process of "survey and settlement," which essentially meant documenting the land that was under the private ownership of individuals and state takeover of the rest of the land and resources (Rangarajan 2000). This process completely ignored the world view of the communities who managed land and resources largely as common resources belonging to the entire community rather than individuals.

A centralised bureaucracy in the form of the Forest Department was established for the administration of forest resources. The Indian Forest Act was enacted first in 1865 (revised subsequently in 1878 and 1927; the latter revision remains current). It provided for conversion of forests into reserved

forests, protected forests, and village forests, the l being rarely used. Reserved forests and protected forests were both controlled by the state. The laws and their implementers clearly exhibited a distrust of the local people who they mostly viewed as encroachers or the primary destroyers of government forests. The forests were to be protected from the people for state use and commercial exploitation. It was during this period that regions such as Kumaon and Central India saw uprisings as huge tracts of forests were declared "reserved" for use by the colonial regime (Nagarwalla and Agrawal 2009). Most such uprisings were either brutally suppressed or pacified through piecemeal solutions.

Once the reserved forests were declared, the colonial government claimed that they had settled all the rights that existed in those forests. This meant that the communities that lived in and around these forests had severely regulated rights (those that the government found acceptable, which varied from province to province), or no rights at all, to use and manage these resources. Communities, however, continued to exist in these areas (unless forcefully removed) and remained dependent on forest resources. A substantial part of this resource use continues to be technically illegal.

Forest clearance was also aggressively encouraged by the colonial government to extract as high a tax return from cultivated land as possible and for counter-insurgency in order that the Indian revolutionaries would not have cover to hide (Rangarajan 2000). It was even suggested that landlords not clearing jungles and sheltering "destructive wild animals" should be punished (Datta 1957). The large-scale denudation was to have serious implications for both the ecology and livelihoods of the forest-dependent people. Although the British rulers had a grudging respect for the tribal communities in India, particularly their hunting and gathering skills, they were opposed to shifting cultivation mainly because it had an impact on tax collection (i.e. tax could not be collected because the exclusive ownership of land could not be attributed to individuals) (Rangarajan 2000). As this kind of agriculture was not officially recognised, in many areas communities practicing shifting cultivation were never entered in the settlement records and were (and still are) considered illegal occupants of their traditional lands.

Another practice that had implications for forest-dependent communities was the hunting of wild animals by elites. This existed prior to colonial rule but gained further momentum through the policies of the British. Towards the end of the 19th century hunting was one of the predominant sports for the Indian elites and British military and civil men. Although hunting for food was common among the peasants and hunter gatherer communities, it was the impact of the sport hunting by the elites that eliminated the last of the Indian cheetahs and reduced the populations of numerous wild birds and mammals to the status of threatened.

From the 1880s onwards attention began to be paid towards the decreasing numbers of wild animals. Official circles began to discuss ways in which some wild animals could be protected. However, this attention reflected the same attitude as was shown towards other natural resources. Answers to what needed to be protected, how and from what, were formulated from the point of view of the colonial government and its royal allies. There was a strong condemnation of local hunters and trappers as their entry was linked with forest fires that endangered valuable trees. Forest rules were put in place which provided penalties for illegal access, limited the time and amount of hunting, and prohibited the use of snares, traps, bows and arrows, and spears which the local inhabitants relied upon. If any animal was declared a vermin, it was only the license holders who could hunt the animal (ibid.). More and more areas were declared game reserves, restricting the access of communities such as *pardhis*[2] and other tribes so that elites could hunt during the hunting season. Game rights were put up on auction as was access to fish in ponds and streams in the state forests. Restrictions on entry into shooting blocks affected those who gathered twigs and branches for fuel, herbs for medicine, grass, bamboo for baskets, or small articles for sale.

Carnivores were extensively killed as they impacted the populations of deer, which the elites wanted to hunt. With populations of carnivores declining, herbivore populations increased causing serious crop damage. In many places, bamboo, vital for livelihoods and cultural activities, was eliminated in favour of economically valuable species, and restrictions were imposed on shifting agriculture. Forest fires, which were used for keeping away wild animals or for agriculture, were heavily controlled since they were perceived as causing damage to commercially valuable crops. As a result, by the end of the 19th century the landscapes which held tremendous cultural, economic, and political value to forest-dwelling communities were appropriated by a select group of society (ibid.).

By the early 20th century another interest group was emerging from amongst the government officials and the Indian elites. This group was concerned about the depletion of populations of wild animals, such as rhinoceros. These emerging conservationists[3] were most critical of sport hunting. Some threatened species were declared protected while others could still be hunted. The declaration of areas protected for wildlife conservation began during this period. In 1935, Hailey (now Corbett) National Park became the

[2] Mobile hunting community.

[3] The term 'conservationist' has been used in this document to include those individuals and groups who explicitly prioritise wildlife protection. This is not to imply that those advocating *adivasi* rights, or development rights, are necessarily unconcerned about or averse to wildlife protection.

first protected area to be declared in India. Declaring protected areas, while understandable from a purely conservationist point of view, meant no presence of, or use of resources by, local communities, thus further dispossessing thousands of peasants and tribal communities who lived in these areas. In this sense, while differing from earlier game reserves that allowed rulers and those they favoured to hunt, modern protected areas were a continuation of the ideology of exclusion of local communities.

From this period on the legislation and policies related to forests evolved mainly in two streams, one dealing with forests outside of protected areas and the other with areas protected for wildlife. In the following section we examine theses two streams separately.

1.2. Forests outside protected areas

The two trends described above – (a) the take-over of forests by the state for commercial use and (b) an exclusionary model of natural resource management – were reflected in the legislation of the time, and a similar mindset carried on after Indian independence. The first and much quoted national forest policy of 1952 revealed what was to be the government's stance on the rights of forest-dependent communities over the next three decades, stating that "The accident of a village being situated close to a forest does not prejudice the right of a country as a whole to receive benefits of a national asset." In 1976, the National Commission on Agriculture stated that "Production of industrial wood would have to be the *raison d'etre* for the existence of forests."

From the 1950s to the 1970s India's industrial expansion relied heavily on commercial timber exploitation. This was a period of large-scale deforestation due to government policy favouring subsidised forest access to industry. Natural forests were replaced with commercial plantations and forest land was also diverted to development projects and agriculture. By the 1970s deforestation was occurring at a rate of 1.3 million ha per annum. According to government statistics this rate has slowed since, due to a number of measures including the enactment of the Forest Conservation Act 1980, which required state governments to seek central government permission before allowing any diversion of forests. However, the quality of natural forest ecosystems continues to deteriorate. It is estimated that 45% of India's land is "wasteland,"[4] half of which includes degraded state forestlands. This amounts to about sixty-one million ha of degraded forests. Meanwhile, plantations have expanded at a rapid pace, rising from three million ha in 1980 to thirteen million ha in 1990 (Poffenberger 2000). Wood-based industries such as

[4] This is a problematic and often deceptive term originating from the colonial regime labelling non-private lands that did not yield any revenue as the "wastes."

packaging, paper mills, agricultural implements, and railway construction expanded rapidly, and by the 1970s and 1980s there was a perceptible shortage of raw material (Apte and Pathak 2003).

Facing a severe shortage of raw material for the wood-based industry, the Forest Department started a "social forestry" scheme in the 1970s. The adoption of social forestry was also to a certain extent an outcome of the struggle for alternative forms of natural resource management and community control over resources by a number of local level and voluntary organisations (Asher and Agrawal 2007). Social forestry focused extensively on large-scale plantations of fast growing, mostly exotic species. The intention was to facilitate private – industry relationships by encouraging farmers to grow fast growing species for industrial use. Similar plantations were also established on public and common lands to meet the fodder and fuel subsistence needs of village communities. It was expected that this would reduce pressure from local needs on the government forests which could then supply industrial needs. Social forestry in different states was supported by a large amount of foreign funding from donors such as the World Bank, Swedish International Development Agency, Canadian International Development Agency, United States Agency for International Development, Danish International Development Agency, and the Overseas Development Administration. Sundar et al. (2001) report that during the 1980s there were fourteen social forestry projects across fourteen states, costing Rs 994 million. They argue that while social forestry was particularly successful in achieving the target number of trees planted and meeting industrial demand, it did not satisfy local requirements of fuel and fodder as the focus was on quick growing timber for commercial purposes. Eventually the scheme collapsed as many donors, faced with the criticism that social forestry subsidised industry and caused a fall in timber prices due to increased supply and badly planned marketing strategies, withdrew support. Another criticism was that social forestry focused heavily on land owners while the people most dependent on forests were the marginalised communities, particularly the landless.

Apte and Pathak (2003) describe two outcomes of the colonial approach to managing forests, carried on by the Indian state, as follows:

> first, it severely restricted the access of locals to resources on which their livelihoods were based, and second, it effectively removed all responsibility of communities to look after their natural surrounds. Thus, local people have often become hostile to, or apathetic towards, official management and protection of forests because the law has excluded them from their own surroundings. While communities have never stopped using forests unofficially, since their livelihoods depend on this, they have suffered much hardship, for example having to bribe forest staff in order to collect fuel wood, and facing harassment from guards who threaten action against them. In many cases, they viewed forests as the property of

> an insensitive government, something to be used and exploited, often with great hostility towards Forest Department officials. A lack of dialogue and trust between the two sides has exacerbated the problem. Local hostility has manifested itself in many ways, including non-cooperation, deliberate destruction of forests and violence against people by the officials and against officials by people. Such instances, along with the alarming degradation of India's forests, led to the government becoming increasingly aware that it was not possible to protect millions of hectares of forest without the co-operation of local communities.

Numerous national level grassroots struggles demanding rights over forests, environmental NGOs seeking forest protection, and some amount of donor driven international pressure resulted in a change in the government's stance towards forestry by the 1980s. The idea of greater devolution of powers to local communities began to seep into debates related to forest management and into the thinking of the decision-makers. For the first time the 1988 Forest Policy noted that "domestic requirements (of forest dwellers) of fuel wood, fodder, minor forest produce and construction timber should be the first charge on forest produce… A primary task of all agencies responsible for forest management… should be to associate the tribal people closely in the protection, regeneration and development of forests" (Poffenberger 2000).

Apte and Pathak (2003) describe the emergence of Joint Forest Management during this period:

> The 1988 Forest Policy formed the basis of Joint Forest Management (JFM), a government programme designed to share benefits with local communities in exchange for helping to protect forests near their villages. It was announced in 1990, and over the next few years almost every state in India passed JFM resolutions. In a nutshell, JFM is the regeneration, management and conservation of a forest by local communities and Forest Department officials, through appropriate joint committees. Under JFM, village communities are entitled to a share in usufructs, but the extent and conditions of the sharing arrangements is left to individual state governments to prescribe. If forests are successfully protected, a portion of the sale proceeds is supposed to go to the communities. All adult voters in a village make up the general assembly of the Forest Protection Committee (FPC)[5] or the *Van Suraksha Samiti* (VSS), while decisions and management are carried out by an executive committee made up of a few elected villagers and a forest official as the secretary. As JFM has progressed, many state level JFM resolutions have undergone continuous evolution in order to fine-tune the programme.

[5] In some cases the Forest Protection Committee includes only one representative per household, and a minimum participation of 50-60% of households can suffice.

Satellite imagery from the past few years shows that JFM has been a success in regenerating and conserving forest areas in several parts of India. As of 2007, 22.09 million ha spread over twenty-seven states were being managed through 106,479 JFM committees (MoEF 2008). However, many groups working on JFM have expressed concerns about the lack of real sharing of decision-making powers with the local communities, including the fact that the member-secretary continues to be a Forest Department staff member. Additionally, even after twenty years JFM remains under-prioritised as a participatory method of forest management in the country. JFM continues to be dealt with as a project heavily dependent on external funds for its execution and hence the force with which it is implemented depends on the availability of these funds. Among many other criticisms of JFM has been that the JFM committees are still not legal entities so in case of conflicts they have no legal support. JFM also does not grant any legal rights or long-term tenurial security on common resources to the communities. The communities in many states, even after decades of protection, have not received their promised share of profits and there is little that they can do to force the government to keep its promises.

Overall, it can be said that in some states where people's rights over resources were totally extinguished through earlier state actions, JFM did provide an opportunity for them to be part of the system of forest utilisation and management. However, in the states where indigenous systems of forest use and management had survived, JFM led to more conflict as it proved detrimental to community interests because it has been imposed upon the existing community management institutions, which sometimes have better legal status than the JFM committees (Sarin 2001a).

Despite the new forest policy and an increased awareness of the state of forest degradation, in the zeal to develop in the post-independent India the forests continued to be overexploited. According to the Forest Survey of India, between 1951 and 1981 4.238 million ha of forest land was diverted to non-forest use. Increasing demand on forest resources for industrial and local use, breakdown of local systems, lack of tenure security for the users of the resources, and corruption within the Forest Department resulted in further degradation of the remaining forests. This situation led to the enactment of the Forest Conservation Act in 1980, which restricted forest use rights for non-forestry purposes. Under this legislation it became mandatory for private as well as government parties wishing to divert forest land for any large or small development project to obtain "forest clearance" from the Ministry of Environment and Forests. This requirement slowed the pace of diversion of forestlands for environmentally destructive projects. The Act also further curtailed access to forests for NTFPs, fuel, and fodder by local communities and also halted the regularisation of existing "forest lands" that were already under occupation (Asher and Agrawal 2007). The centralising nature of the

Forest Conservation Act has remained a point of debate; while some favour it for having slowed down the pace of deforestation (though, as we point out below, this is being reversed in the current phase of economic globalisation), others criticise it for causing further alienation of local communities.

Albeit at a slower speed forests continued to be cleared for large projects such as dams, mines, industries, and highways. These projects also caused the eviction of thousands of people many of whom were compelled to settle in forests in the absence of adequate (or often any) rehabilitation.

1.3. Areas protected for wildlife and emergence of Wild Life (Protection) Act

The history of wildlife protection after independence featured the following events. In 1948, the then Prime Minister, Shri Jawaharlal Nehru, wrote to authorities in Junagadh to take steps to protect lions, which had until then been protected by the Nawab of Junagadh, who had fled to Pakistan post-partition. One of the better known provincial acts on wildlife, the Bombay Wild Birds and Animals Protection Act, was passed in 1951. Also in 1951, the advisory committee for coordinating scientific work in India appointed a committee of leading sportsmen and wildlife enthusiasts "to examine and suggest ways and means of setting up National Parks and sanctuaries for the conservation of the rich and varied fauna in India." This led to the setting up of the Indian Board for Wildlife in 1952. Despite these measures, the 1950s and 1960s continued to see a decline in Indian wildlife. Consequently, in a process starting from the late 1960s, under the patronage of India's then Prime Minister, Mrs. Indira Gandhi, a process for drafting a comprehensive wildlife legislation was undertaken. This resulted in the promulgation of the Wild Life (Protection) Act 1972 (WLPA).

India currently has over 600 protected areas covering about 4.6% of the country's total landmass. The WLPA has served to protect vital ecological habitat and threatened species of plants and animals, particularly from development projects. However, this Act is based on a number of assumptions that are a continuation of colonial attitudes: that any local community use is detrimental to wildlife, that only a centrally trained bureaucracy can protect forests, and that local knowledge and practices of ecosystem management are of no use in "modern" wildlife conservation. As a result, the WLPA also led to land and resource alienation for many communities. National parks (which by law do not allow for the continuation of rights or settlements within them) and some sanctuaries physically displaced villagers. With no provisions for people to participate in their conception and declaration, protected areas were created without information delivery or consultation. People often found out about the changed status of their area indirectly as a threat of being evicted by the

local forestry staff, or because they were suddenly stopped from accessing local resources.

The WLPA was amended in 1991 when Section 24(2)(c)[6] was added, which specified that rights can continue in wildlife sanctuaries, if specifically allowed to do so in the process of settlement of rights. Despite this provision, there has been considerable conflict between protected area administrators and local communities. This is primarily because of selective and often arbitrary stoppage of rights, long delays in settlement of rights, non-provision of alternatives while stopping or curtailing rights, and the assumption that eventually all rights have to be extinguished in a protected area, irrespective of their impact on the area.

In another amendment section 26A(b) of the Act specified that the settlement of the rights process would not be required for a reserved forest to be declared a protected area. The assumption here is that settlement was carried out when the area was designated a reserved forest (the procedures for which, under the Indian Forest Act, are the same as those under the WLPA). In reality, as explained above, rights continued to exist either in recorded or unrecorded (and therefore "illegal") form within reserved forests; these were ignored in the automatic transformation of reserved forests into sanctuaries. Because of its exclusionary clauses, the WLPA has come to be seen as an anti-people Act and has evoked an aggressive reaction from local people. An increasing number of state governments are finding it difficult to declare protected areas, while the denotification of protected areas often has popular support.

In a third amendment in 2002 the WLPA specified that, between the time a state government notifies its intention to declare a sanctuary and the settlement of people's rights, it "shall make alternative arrangements required for making available fuel, fodder and other forest produce to the persons affected in terms of their rights as per the Government records." This implied that such rights were to be stopped as soon as a sanctuary is *intended* to be declared and that they would not continue after settlement. This is in contradiction to Section 24(2)(c) which specifically allows continuation of rights. This was a completely unrealistic provision and understandably could not be implemented anywhere. The 2002 amendment also banned commercial use of any of the forest produce.

As the situation in the affected areas became more complex and the management of protected areas more difficult, the government resorted to a

[6] Sec 24(2)(c): "If such claim is admitted in whole or in part, the collector may allow in consultation of any right of any person in or over any land within limits of the sanctuary."

solution for protected areas similar to JFM in forests outside protected areas. A scheme labelled "ecodevelopment" was initiated in 1990 which aimed at eliminating the dependence of people on forests by creating alternative sources of income. In 1997-2002, with World Bank funding, an ecodevelopment programme was implemented in seven protected areas across the country. However, there are few examples where ecodeveloment has been successful in reducing pressure or conflicts. Periyar Tiger Reserve in Kerala is one of the few (Kothari and Pathak 2004), but its success has depended on the innovative way in which local staff have used the project, rather than something inherent in the project design. Indeed, the ecodevelopment approach has remained largely within the conventional bounds of top-down conservation, with little or no involvement of local people in protected area management, no reinforcement or granting of traditional resource rights, and little encouragement of traditional resource conservation practices or knowledge.

In 1992, a radical legislation was enacted, namely the 73rd Amendment to the Constitution. This Act gave greater decision-making powers to the Panchayati Raj Institutions (PRIs) (i.e. urban and rural local self-governing bodies). One of the strong recommendations of the Act was that the management of social forestry, fuel wood plantations, and NTFPs needs to be decentralised to PRIs. The Act was extended to scheduled (i.e. tribal dominated) areas by the Panchayat (Extension to Scheduled Areas) Act 1996 (PESA) (Sarin 2001b). This Act states, "every *gram sabha* (village assembly comprising of all adult members of the community) shall approve the plans, programmes and projects for social and economic development before such plans . . . are taken up for implementation by the Panchayat at the village level." The PESA also mandated that through *panchayats* and *gram sabhas* local communities are given ownership of NTFPs and are consulted before any developmental projects are approved for the area.

Considering that the PESA was meant for scheduled areas, which are mainly inhabited by forest-dependent tribal and non-tribal communities, this legislation could have been significant in shaping the management of natural resources by communities. However, there was nearly no political will to implement it. Most states in their legal adaptations of the Act went against its spirit by excluding community ownership over the most valuable NTFPs, such as tendu patta (leaves of *Diospyros melanoxylon*) and bamboo. Nationalised forests and protected areas were also excluded from the jurisdiction of the Act by most states. It also contradicted other policies and laws, e.g. in areas where both JFM and PESA applied it was unclear what the relationship between the two should be (Pathak 2002). Apte and Pathak (2003) note that "While PESA allowed for community based forest management by *gram sabhas* in tribal areas, JFM established village Forest

Protection Committees under the supervision and control of the Forest Department."

1.4. Emergence of the judiciary

The judiciary in recent times has become one of the main tools to deal with the ineffectiveness of the executive, or the lack of implementation of laws and policies related to conservation.

One of the significant cases dealing with protected areas has been WWF (World Wide Fund for Nature) India Vs Union of India (WP 337 of 1995). Given the complex nature of land tenure it is not surprising that by the mid-1990s (more than twenty years after the enactment of the WLPA) the process of settlement of rights had not been completed in the majority of protected areas. Seeing this as one of the major reasons for ineffective management of protected areas, WWF-India filed a case in the Supreme Court urging it to direct states to implement the WLPA in full spirit and letter. The resulting orders had tremendous impact on the forests and protected area management across the country. In 1997, the Court passed an order directing the "concerned State Governments/ Union territories to issue proclamation under Section 21 (related to settlement of rights) in respect of the sanctuaries/ national parks within two months and complete the process of determination of rights and acquisition of land or rights as contemplated by the Act within a period of one year." States, in their hurry to finish the process, either ignored a huge number of existing rights or accepted all human uses without any process. Most states of course never managed to complete procedures in this time frame and indeed many are still struggling to complete them.

Legislative interventions have also been significant in forests outside protected areas. Based on a set of recommendations by the then Scheduled Castes and Scheduled Tribes Commissioner, B.D. Sharma, the Ministry of Environment and Forests (MoEF) issued a set of six circulars in September 1990 under the National Forest Policy. These circulars were progressive as they distinguished between encroachments and disputed claims; they also recommended that the *gram sabhas* could play an important role in the verification of claims. They provided that any state orders for regularisation of encroachments could be implemented (which had been stayed because of Forest Conservation Act 1980) and dealt with conversion of forest villages[7] to revenue villages[8] and settlement of old habitation.

[7] Forest villages are villages established by the Forest Department as labour camps for forestry operations, or existing settlements within forest areas designated as such; in both cases, the village is/was entirely under the jurisdiction of the Forest Department and many government schemes or privileges accorded to revenue villages were not available to residents.

The only states which took any significant steps towards the implementation of these circulars were Madhya Pradesh and Maharashtra (Asher and Agrawal 2007). This was largely because of very strong grassroots movements and court cases. In 1995, the Supreme Court directed that competent authorities must enquire into land claims and hear evidence from claimants, and that meanwhile occupants should not be dispossessed of their lands.

Despite these efforts and orders, the state governments failed to implement the guidelines. Most states found the guidelines and verification processes difficult and the distinction between encroachments and disputed claims and unrecorded rights persisted. The complex situation of unrecorded rights, unregularised new encroachments, and encroachments augmented by the development projects remained.

In 1995, a petition was filed by T.N. Godavarman regarding deforestation in private forests in Tamil Nadu. This petition was heard in the Supreme Court, which recognising the seriousness of the deforestation and ecological degradation happening across the country, caused it to pass a number of orders. The first order was of tremendous consequence throughout the country. As an immediate measure, the Supreme Court stayed all forestry activities being undertaken without the prior approval of the Central government; it also directed that the "dictionary" definition of forests should be used, which considerably expanded the scope of the judgment (and consequently also the areas over which the Forest Department had some jurisdiction). Further, each state was required to form an expert committee to identify areas that are forests. A Centrally Empowered Committee was instituted to advise the Supreme Court on violations of forest-related laws. The *amicus curiae* filed a petition in 2001 seeking to restrain regularisation of any encroachments and further encroachments, and requested steps to clear post-1980 encroachments in all forests. The Supreme Court registered the petition and passed an interim order to stay all processes towards regularisation. In 2002, the Supreme Court directed the chief secretaries of Orissa, Maharashtra, West Bengal, Karnataka, Tamil Nadu, Assam, Madhya Pradesh, Chhattisharh and Kerala to respond within four weeks as to what steps were taken to control further encroachment of forests and clear the existing encroachments from the forests, particularly in hilly areas, national parks and sanctuaries. In 2002, the Inspector General of Forests instructed the state governments, citing the 2001 interim order of the Supreme Court, to clear ineligible and post-1980 encroachers from forest areas, starting a wave of brutal evictions. The brutalities reportedly included trampling of crops and houses with the help of elephants and burning homesteads in many parts of

[8] Revenue villages are villages under the jurisdiction of the Revenue Department, and entitled to all the government benefits, schemes, and privileges normally to be accrued to an Indian citizen.

the country. At the same time, based on sustained groundwork by many grassroots organisations, particularly Kashtakari Sangathana, the Maharashtra government towards the end of 2002 issued an order laying down a comprehensive procedure for verification of claims by a village level committee in consultation with the *gram sabha*. In another turn of events, the MoEF on 03 February 2004 issued supplementary guidelines for speeding up the process of conversion of forest villages into revenue villages. Three days later the MoEF issued supplementary guidelines to encourage the state governments to carry out settlement of rights of the tribal people and forest dwellers. The Supreme Court, however, stayed these guidelines on 23 February 2004.

Another Public Interest Litigation (PIL) filed in 1995 (merged into the ongoing Godavarman case mentioned above) had a significant impact on the lives and livelihoods of those residing in protected areas. The case was filed against the Karnataka government as it was found that some felling activities were being proposed inside national parks and sanctuaries in the name of removal of dead and decaying wood. The court passed an order dated 14 February 2000 restraining all state governments from ordering the removal of dead, diseased, dying, or wind fallen trees, drift wood, and grasses, etc. from any national park, game sanctuary, or forest (on 28 February 2000 the order was modified to remove the word "forest"). This order was subsequently interpreted by the MoEF (reinforced by the Centrally Empowered Committee) in a circular directing all state governments to cease rights within protected areas. The fact that this was a grossly erroneous interpretation has been pointed out by NGOs such as Kalpavriksh and Vasundhara, but a legal intervention filed by them requesting the Supreme Court to strike down the MoEF circular has not come up for hearing for over three years.

The result of the above order and MoEF's circular, along with relevant WLPA provisions, is a complete ban on removal of NTFPs from national parks and sanctuaries for commercial purposes (including small-scale sale) and, due to progressive curtailment of their access to forest produce for subsistence and survival income, many forest dwellers are reportedly dying of starvation or suffering from acute malnutrition (Barik 2006; Wani and Kothari 2007). The order completely ignored the fact that several million people living in and around protected areas derive livelihood support from collecting and marketing NTFPs, which provide subsistence and farm inputs, such as fuel, food, medicines, fruits, manure, and fodder. The collection of NTFPs is a source of cash income, especially during the slack seasons, because of their increasing commercial importance. The issue of rights and access to NTFPs and incomes from NTFPs is basic to the sustenance and livelihoods of the forest dwellers.

1.5. People's struggles and actions

In contrast to this story of deforestation and loss of community livelihoods, throughout history and today there are numerous vibrant examples of communities who have independently taken the initiative to protect forests for religious, cultural, political, economic, and other needs. Apte and Kothari (2000) provide the following description:

> The federations of forest users in Orissa are probably among the most impressive examples of large-scale community mobilisation for forest protection, with 400,000 ha of forest land being protected and managed by village communities living in an estimated 5,000 villages. Hundreds of villages in Alwar district, Rajasthan, have established a secure water regime, regenerated forests and helped to control poaching. Several of them have declared an Arvari Parliament [informal decision-making and conflict-resolution body based on traditional customs of the small Arvari River in Rajasthan] over a water catchment of 400 sq. km., with the aim of moving towards sustainable land, water and forest use. A couple of villages have declared a "public" wildlife sanctuary over a thousand hectares of forest. The villagers of Mendha (Lekha), Gadchiroli district, Maharashtra, have protected 1,800 ha of deciduous forest by warding off a paper mill, stopping forest fires and moving towards sustainable extraction of non timber forest products. In Kailadevi Sanctuary, Rajasthan, the villagers have established "no axe committees", which fine anyone caught cutting a live tree, over a large part of the sanctuary. In Jardhargaon (Tehri Garhwal, Uttar Pradesh), villagers have regenerated and protected a large stretch of forest, which now harbours leopards, bears, over a hundred species of birds and an itinerant tiger.

Despite their prevalence, conservation laws and policies or even discourses do not recognise these as important areas for conservation. Not surprisingly therefore many of these areas are critically threatened by internal and external factors including development projects, government policies, and market forces. For example the process of forest clearance for development activities does not take into account such community protected areas (Pathak 2009). Lack of recognition leads to imposition of schemes like JFM and ecodevelopment, which often end up disrupting community initiatives, as in the case of Kailadevi in Rajasthan (Das 2007).

While some areas are being cordoned off for wildlife protection, others are facing tremendous development pressures. The resource base of forest-dependent communities has been shrinking in both instances. The state's model of conservation and development has largely rejected the role of natural ecosystems in sustaining local economies. Aggressive development at the expense of nature and centralised conservation at the expense of local people has forced more and more people to share resources from even smaller areas. This has seriously impacted people's traditional systems of resource management and use, often causing inter-community conflicts. Traditional systems of management have also suffered from the takeover of

land and resources by the government, negating people's rights and responsibilities towards managing resources.

The opening up of the Indian economy in 1991 and the processes of urbanisation and modernisation have put increasing pressure on forest resources, threatening ecosystems as well as the existence and livelihoods of millions of forest dwelling communities. Laws related to environmental clearances have been systematically diluted, and in the last few years processes such as public hearings (meant to take into account the opinions of the local people) have been held in ways that are doctored to suit the project proponents. The Forest Conservation Act, once held up to be a revolutionary law for substantially reducing diversion of forest land, is now hardly an impediment to the increasing diversion of forestlands for mining, industries, and other purposes. In Jharkhand, Orissa, Chhattisgarh, Maharashtra, and other states, many *adivasis* and non-*adivasis* have lost their lives, or been repressed, imprisoned, or harassed in struggles against development projects.

Throughout the history of forest-related legislation there have been uprising and struggles of local communities opposing the legalisation. Depending on the degree of marginalisation and support received, these struggles have ranged from organised networks lobbying for change, *dharnas* (a fast), and *andolans* (group protest) to silent, unorganised non-compliance with the laws. There have been movements and agitations against the forest policy, WLPA (or protected areas set up under it), Forest Conservation Act, JFM, and the Ecodevelopment Programme. Grassroots movements have opposed loans that the government has taken from the World Bank and others for these programmes. The net result of these movements has been occasional changes in the policies or slight amendments in the existing laws to accommodate people's issues. As stated by Shankar Gopalakrishnan of the Campaign for Survival and Dignity (CSD), "amendments in the existing laws would never have taken into account people's issues as the laws are based on very different fundamentals." [9] The roots of most of the forest laws in India lie in appropriating resources for commercial use of the colonial government or the elitist views on conservation. These laws, the system put in place to implement them, and the attitudes of the decision-makers, would have to fundamentally change for the demands of grassroots groups to be accepted. Within this context, grassroots groups began to feel a strong need for a separate legislation, particularly to handle the issues of settlement of encroachments and forest rights.

[9] Shankar Gopalakrishnan, personal interview, 14 August 2008.

Description of the Forest Rights Act

The FRA aims to address the historical injustice done to those communities whose forest rights have so far not been legally recorded and thereby were denied their traditional rights to forestlands and resources. The Act recognises and grants forest related rights to scheduled tribes and other communities, both who have traditionally been living in or depending on forestland for their legitimate livelihood needs. Members of scheduled tribes (in states where they are scheduled)[10] can claim rights under this Act if they have been residing in or dependent on forests prior to 13 December 2005. However, other traditional forest dwellers can only claim rights if they have been in occupation for at least three generations, i.e. seventy-five years prior to 13 December 2005. The Act extends to all of India except the state of Jammu and Kashmir (Kalpavriksh 2008 and FRA 2006). [11]

Forest rights can be claimed by forest-dwellers on an individual or community basis or both. The various rights that can be claimed are as follows:

1. Right to hold and live in forest land under individual or common occupation providing that
    a. the land must be for the purpose of habitation or cultivation to provide for livelihoods needs
    b. the land should be under occupation prior to 13 December 2005
    c. the land claimed is restricted to the area under actual occupation
    d. the land cannot be more than four hectares.
2. Community rights such as nistar (user rights) or those used in erstwhile princely states, zamindari or such intermediary regimes.
3. Right to own, collect, use and dispose of minor forest produce which has been traditionally collected within or outside the village. Minor forest produce includes all NTFP of plant origin (including bamboo, brushwood, stumps cane, honey, wax, tussar, cocoon, lac, tendu or kendu leaves, medicinal plants, herbs, roots, tubers and the like).
4. Other community rights of use or entitlement, such as rights to fish and other products of water bodies, grazing or traditional seasonal access to natural resources by nomadic or pastoralist communities.
5. Community tenure of habitat for particularly vulnerable tribal groups and pre-agricultural communities.

[10] Some scheduled tribes listed in the Indian Constitution are accorded differential status in different states, being scheduled tribes in one state but not in another.

[11] Some states have declared that the Act will not be implemented in their state since all forestland is already privately owned (Nagaland) or because there are no resident traditional forest-dwellers (Haryana).

6. Rights in or over lands under any categorisation in any state where there are any disputes regarding claims to such lands.
7. Rights to convert leases or grants issued by any local authority or any state Government on forest lands to titles (ownership deeds).
8. Rights to convert the following types of habitation into revenue villages: forest villages, old habitations, un-surveyed villages and other villages in forests.
9. Rights to protect, regenerate, conserve, or manage any community forest reserves which the individual or community has been traditionally protecting and conserving for sustainable use.
10. Rights that are recognised under any of the following kinds of law: State laws, laws of any autonomous district council, rights of tribals as accepted under any traditional or customary law.
11. Right of access to biodiversity, and community rights to intellectual property in traditional knowledge related to biodiversity and cultural diversity.
12. Any other traditional rights enjoyed which are not mentioned above. However, this excludes the traditional right of hunting or trapping or extracting a part of the body from any species of wild animal.
13. Rights to rehabilitation on the individual's or community's currently occupied land or alternative land, in cases where they have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation.
14. Rights to development facilities. The Central Government will use forest land to provide for the following facilities to be managed by the Government, and these lands and facilities will be exempted from the operation of the Forest Conservation Act:
    a. schools
    b. dispensary or hospital
    c. fair price shops
    d. electric and telecommunication lines
    e. tanks and other minor water bodies
    f. drinking water supply and water pipelines
    g. minor irrigation canals
    h. water or rainwater harvesting structures
    i. non-conventional source of energy
    j. skill up-gradation and vocational training courses
    k. anganwadis
    l. roads
    m. community centres.

However, the use of forest land can be allowed only if the forest land to be used is less than one hectare in each case, not more than seventy-five trees are felled per hectare and the clearance of such developmental projects is recommended by the *gram sabha*.

While eligible forest-dwellers are given legal titles, deeds and entitlement, there is some debate about whether these rights are equivalent to ownership rights since they are not alienable. Although the rights can be inherited, they cannot be transferred to another person, nor can they be bought or sold.

The FRA also has special provisions for sanctuaries and national parks. Areas inside such protected areas can be declared "critical wildlife habitats." These are important wildlife areas that are to be kept inviolate, i.e. no human activity that is scientifically and objectively shown to damage wildlife is permissible in these areas. Although this implies that some livelihood activities of forest-dwellers could be modified or restricted in these areas, the process through which this is to occur is transparent and consultative. Even the identification of the critical wildlife habitat is consultative, involving an Expert Committee that includes "experts from the locality." However, one of the most crucial elements of this Act is that even in protected areas from where forest-dwellers are to be resettled, absolutely no resettlement can occur without prior, informed consent of the affected persons.

Additionally, the Act states that the critical wildlife areas cannot be subsequently used for purposes other than wildlife conservation. Many environmentalists have enthusiastically supported this provision since it is a strong legislative measure to protect wildlife and forest areas from take-over by industry.

The actual implementation of the FRA, or more specifically the recognition of rights via claims, is to occur through a multi-layered process of various authorities. These authorities range from the *gram sabha* to committees at the sub-district, district, and state level. The *gram sabha's* primary role is to consolidate and physically verify the claims of each individual in the village. The role of the sub-district and district committees is to verify and maintain records of the claims, while the state-level committee is responsible for monitoring of implementation at a state level. Implementation of the FRA is a unique step towards decentralisation of governance. The Act relies heavily on the *gram sabha* to drive the claims process forward. Although the power of final decision on the validity of a claim lies with the district committee, it is the *gram sabha* that starts the process to determine the nature and extend of individual or community forest rights (Kalpavriksh 2007 and FRA 2006a).

The FRA was passed by the Parliament of India in December 2006 and came into force on 1 January 2008. It is a landmark forest and forest rights legislation in India. It is the first central legislation that recognises injustice towards forest-dependent communities that was committed during the state's appropriation of forest resources towards commercial use or conservation. Some activists consider that the provisions are rather weak and miss out on some essential

rights such as that of prior, informed consent for development projects on lands being used by forest-dwellers. Nevertheless, this legislation goes further than any before it in providing a range of crucial rights.

History of the Forest Rights Act

In 2004, after the Supreme Court stayed the MoEF guidelines on settlement of rights of the tribal and forest dwelling communities, a few grassroots and social groups came together and began lobbying with the members of Parliament and the Prime Minister's Office. This was the year of elections and one of the election manifestos of the United Progressive Alliance government (which the two main communist parties of India were a part of) had been that the FRA would be enacted. Once the government came to power this issue was taken up by the National Advisory Committee, which was set up to advise the Prime Minister. This led to a decision by the Prime Minister's Office in January 2005 that the Ministry of Tribal Affairs (MoTA) with the help of a Technical Support Group would draft a bill for recognition of forest rights. The Technical Support Group included some members who had been associated with movements lobbying for recognition of *adivasi* rights. These members belonged to the CSD.

The formation of the CSD had been catalysed by the mass evictions across the country. The CSD consisted of grassroots groups and village members from different parts of the country, all with a diversity of visions and ideologies but connected through a shared history of exploitation by the state and desire to bring justice to those who have been marginalised. The CSD has preferred to have grassroots networks and organisations that are a part of local movements and struggles rather than NGOs working with funded projects. It continues to be involved with monitoring and implementation of the FRA and wishes to continue till they can mobilise people politically (Asher and Agrawal 2007).

There may have been other possible motivations (unconfirmed by the authors) within the central government, such as providing forest rights to quell the growing discontent amongst forest-dwelling communities in central India related to lack of livelihoods access, which was believed to be directly fuelling extreme Leftist ("Naxalite") activities. It can also be speculated that the potentially enormous electoral gains to be made by governments that hand out what could be considered economic sops to a large population may have been another motivation.

In March 2005, the Technical Support Group submitted the first draft of the Bill. At this time, news media published letters that the MoEF was reported to have written to the Prime Minister's Office (reportedly "leaked" by MoEF itself). These letters expressed the MoEF's displeasure about the intent of the Bill and

the possible loss of forests that the new Act might lead to. The first draft was substantially changed by the government (such as dropping of the Other Traditional Forest Dwellers category, time specifications of the first *gram sabha* meeting, rights to shifting cultivation, 1980 cut-off date, etc.).[12] Although a number of movement leaders may have been aware of the fact that the FRA was being drafted, the apparent "suddenness" with which the first draft came out was widely criticised by a number of groups. There followed many months of dramatic debates, discussions, controversies, agitations, and movements, dividing activists, academics, and government officials sharply between the Bill's supporters and opponents, with a largely marginalised section trying to advocate a balanced view. Though the debate was often characterised as one of conservation vs. human rights, in actuality it was more about the divergent ideologies on *how* should forests be managed or conservation be achieved and by *who*, with one section favouring the status quo of a centralised bureaucracy aided by formally trained "experts," another arguing for complete decentralisation to local communities, and yet another advocating some kind of balance between the two.

In all this one question that arose was: How much was the Act a result of the voices of the intended beneficiaries themselves? Opponents derided it saying it was the brainchild of politicians and contractors who were conjuring up easy ways to take control of forestlands. Proponents countered that it was an outcome of popular *adivasi* struggles over many years. According to Shankar Gopalakrishnan of the CSD "the first draft was taken to the people and discussed and debated; in fact five – six main points came from the people themselves. The debate was democratised on the ground and not through dominant circles/media. This law actually emerged from the local struggles; it is unique in that way."[13] According to Meena Gupta, ex-secretary, MoTA and MoEF, the Act is an outcome of local struggles and demands: "If politicians took it up, it was because they felt heat from the ground."[14] She believes that if earlier processes had taken into account the long-standing demand of resolving the rights issues, a need for a new act would probably not have been felt.

In the meanwhile the eviction drive in many states continued, as did efforts by MoEF and MoTA to dilute various provisions of the Bill. Because of a series of internal political lobbying by those opposing and those supporting the Act, the process of tabling the Bill in Parliament was delayed. Finally, after much vacillation, the Bill was tabled on 13 December 2005 in a significantly

[12] Shankar Gopalakrishnan, personal interview, 14 August 2008; M. Rajshekhar, personal communication, 20 June 2009.

[13] Shankar Gopalakrishnan, personal interview, 14 August 2008.

[14] Meena Gupta, personal interview, 13 August 2008.

changed and in many ways diluted form. The Bill was referred to a Joint Parliamentary Committee (constituted by the Parliament by including members of various political parties) to review it, invite comments, and advise the Parliament. After many discussions and review of submissions the Joint Parliamentary Committee presented its recommendations on 23 May 2006. The period between June and December 2006 was again one of struggle from the CSD and its member communities to push for acceptance of the Joint Parliamentary Committee report and those concerned about the outcome of the Act (primarily some conservation groups) to try and dilute some provisions. The law was finally passed on 18 December 2006. Most of the Joint Parliamentary Committee recommendations were accepted while some crucial points were dropped by the government. This was followed by another year of much debate on the rules under the Act, which were framed and finally notified in January 2008 (Asher and Agrawal 2007).

Comparison of the Bill and the Act

The FRA was first introduced to the Lok Sabha[15] on 13 December 2005. The drafting of the legislation occurred ten months after the Prime Minister had officially mandated the MoTA to "draft a central legislation to redress historical injustice done to tribal communities" (PIB 2006). Soon after its introduction in the Lok Sabha, the Bill was referred to a Joint Parliamentary Committee consisting of over thirty members of Parliament across various political parties. During this time several hundred people and organisations submitted written statements expressing their views and concerns on the Bill. Based on these comments the Joint Parliamentary Committee presented a revised version of the Bill on 23 May 2006.

The final version of the Act varies considerably from the original Bill. Highlighted below are some of the key differences and key commonalities between the versions that still remain as concerns (Kalpavriksh 2005, 2006b).

1. The Scheduled Tribes (Recognition of Forest Rights) Bill 2005 applied only to scheduled tribes and, unlike the FRA, did not extend to "other traditional forest dwellers." This provision was recommended by the Joint Parliamentary Committee.
2. The Bill stipulates that all eligible forest-dwellers must have been in occupation of forestland in 1980 in order to claim land rights. The Joint Parliamentary Committee recommended that this cut-off date be changed to 2005. The Act has retained this recommendation.
3. The Bill referred to "core areas" of National Parks and Wildlife Sanctuaries, which were to be kept inviolate for conservation. Based on recommendations by Kalpavriksh, the Joint Parliamentary Committee recommended the term "critical wildlife habitats." This

[15] The Lok Sabha is the Lower House of the Parliament of India.

was inserted to avoid confusion with the existing use of the term "core areas" in wildlife management. This term prevails in the Act as well.

4. The Bill required "core areas" to be identified centrally by the MoEF. The Joint Parliamentary Committee recommended that independent scientists be involved. The Act further requires an Expert Committee in determining critical wildlife habitats, which includes independent scientists, Forest Department officials, protected area managers and a representative from the MoTA.
5. The Bill stipulated that provisional forest rights in "core areas" would be permanent only if holders of such rights were not relocated from the area within a period of five years. The Joint Parliamentary Committee recommended that relocation would occur only if independent scientists concluded that harmonious coexistence was not possible. The Act is similar to the Joint Parliamentary Committee version but requires an Expert Committee to also scientifically prove that the activities of forest-dwellers are causing irreversible damage to wildlife and wildlife habitat. Crucially, the Act provides for relocation to take place only after consent of the concerned community.
6. While the Bill makes no mention of this provision, the Joint Parliamentary Committee recommended that critical wildlife habitats cannot be subsequently diverted for any other purpose. The Act retains this as is.
7. The Bill has a limit of 2.5 hectares as the amount of forestland that can be claimed as a right. The Joint Parliamentary Committee recommended no limit while the Act has settled for a four hectare limit.
8. While the Bill makes no mention of this provision, the Joint Parliamentary Committee recommended that diversion of forestland for non-forest purposes can only occur with the consent of the *gram sabha*. The Act omitted this recommendation.
9. The Bill extended forest rights only to individual and community land occupied before 1980, to forest resources and to conserve community forests. The Joint Parliamentary Committee recommended that basic developmental facilities be included as forest rights. The Act further clarifies what kinds of development facilities are permissible and specifies that no forest clearance will be required for such facilities.
10. The Bill mandates that if any rights-holder "kills any wild animal or destroy forests or any other aspect of biodiversity" and is convicted more than once, the forest right of the offender shall be derecognised for a given period. The Act has omitted this, and offenders are only required to pay monetary fines.

11. The Bill entrusts the "responsibility and authority of protection, conservation with sustainable use and regeneration of adjoining forests where community rights have been vested." Additionally, the Bill requires rights-holders to inform the *gram sabha* and forest authorities on any activity that is in violation of the WLPA 1972, the Forest Conservation Act 1980 and the Biological Diversity Act 2002. In contrast, the Act states that rights-holders and/or *gram sabhas* are "empowered" to conserve biodiversity, water and forest resources. In their place, it has put the onus on the *gram sabha* to ensure conservation, but without providing any recourse if it fails to do so.

Will the FRA achieve livelihood security and conservation?

The FRA's explicit intention is to undo a historical injustice and provide security to the livelihoods of forest-dependent communities. Will it do this, and in the process, will it help achieve forest conservation?

The analysis below is part-predictive, part-factual. Though it is over a year since the FRA came into force, implementation has been slow (predictably) and information has not been easy to obtain. The picture presented here will sharpen over the next few months as implementation proceeds and more information becomes available.

1.6. Social and livelihoods impacts

For a large number of forest-dwelling people the FRA is a major opportunity to strengthen economic and social security, and also perhaps to facilitate their political empowerment. Hundreds of thousands of families have lived for decades in the fear of eviction, or denial of access to forest resources, since these have never been recognised as legitimate in the eyes of the law. That now *could* change.

We stress that there is no inevitability in such an outcome, despite the explicit intention of the FRA. Whether and how many forest-dwellers actually benefit from the FRA will depend on a whole host of factors. First, forest-dwellers need to be informed about the law, which is especially challenging for communities that live deep inside forests and do not enjoy NGO support or official outreach of any kind. Second, communities need to be sufficiently organised to register their claims in as clear a manner as possible, using available evidence, which can be daunting especially for the weakest of them. Evidence may be hard to obtain. Third, *gram sabhas* need to be effective and equitable enough to register all the legitimate claims, before forwarding these to the sub-committees. Powerful castes and classes within communities could try to capture benefits. Finally, the sub-committees,

consisting of forest and revenue officials and *panchayat* members, all of whom may be far-removed from the realities of each village, or not particularly favourable towards the most needy people in the village, are expected to be unbiased in accepting or rejecting the claims. Neither the Act nor the Rules specify a time limit for the committees to finalise their orders. Given past experience with similar processes, claims could remain pending for years, or be rejected on flimsy grounds.

A number of claims have been put forth since the Act came into operation (Table 1). Some of the states like Andhra Pradesh, Chattisgarh, Gujarat, Orissa, Tripura, and West Bengal have already almost reached their full potential as far as collection of claims is considered. Therefore, the concentration in those states is on the process of actual issue of titles. As per the information collected from the states till 31st May, 2009, more than 2.1 million claims have been filed and about 166,000 titles have been distributed. More than 189,000 titles are ready for distribution.

Table 1: Status of State-wise Implementation, 15 June 2009

State	**Claims filed**		**Titles distributed or Approved**	
	Individual Rights	Community Rights	Individual Rights	Community Rights
Andhra Pradesh	9,942 228,000*	4	4,412	2
Bihar	2	0	2	0
Chhattisgarh	6,453 250,000*	32 (Bastar District)	52 (430 rejected) 59,548*	0
Delhi	2	0	0	0
Goa	0	3	0	1
Gujarat	33,185*	425*	Unknown	Unknown
Kerala	0	1	0	0
Madhya Pradesh	1,43,724 297,000*	3	2,696 88,107*	0
Maharashtra	5 116,000*	1 1,500*	2	0
Orissa	5,347 1,91,000*	0	1,097	0
Rajasthan	2,548	4	1,772	2
Tripura	2,973	1		0
West Bengal	20*			

Sources: Ministry of Tribal Affairs;

**Asterisk denotes unofficial information taken from media reports: "The centre reviews implementation of the Forest Rights Act: Over 60,000 land Pattas distributed to the*

Tribals and Traditional Forest Dwellers under Forest Rights Act", Press Information Bureau, 11/11/2008; Jha, A.K., Tribal Commissioner, Maharashtra State Government, 12/1/2009.

There are already indications of a lack of seriousness in the central and many state governments towards the implementation of the FRA. For instance the Rules notified by the central government specify that villagers will have three months to make their claims before the *gram sabha* committee. Additionally, many state governments have issued deadlines inconsistently, specifying one date and then promptly another. However, most of the deadlines are perceived by implementing groups as being too short, especially for communities whose land records are poor, or where communication regarding the FRA's provisions is going out late, or where the needy members of the community require capacity building to make their claims.

Additionally, there have been allegations of violations by the state, in particular the Forest Department vis-à-vis the Act. For example, evictions have been reported from forested areas of Gujarat, Rajasthan, and Madhya Pradesh, though the Act explicitly disallows evictions before the claims process is gone through. Reports also suggest interference of the state in the election of *gram sabhas* and verification of claims. While the Act calls upon the people-based Forest Rights Committee to verify the validity of claims, in many states like West Bengal, Gujarat, and Madhya Pradesh, the Forest Department has been insisting on its approval of claims. In some cases, Forest Department officers have also rejected claims prima facie, without reviewing the evidence.

Other factors are also likely to have influence. Vested interests from within and outside the communities can be expected to try to subvert the process. A number of grassroots NGOs in Himachal Pradesh, for instance, have pointed out that more recent settlers in villages fringing forests may be able to make their claims heard and undermine or subvert the claims of the politically weaker original residents. Conflicts could also erupt between *adivasis* and non-*adivasis* where the latter have recently encroached on the formers' lands, as in Assam; or even between one set of *adivasis* and another set (more recent encroachers), as in Andhra Pradesh. Especially difficult will be the process for nomadic populations, as they will need to make their claims before *gram sabhas* controlled by settled populations, which may be hostile to their claims. Across much of India traditional symbiotic relations between these two sets of people have turned into ones of hostility as the cropping and land use patterns of the settled communities has changed, or as the livestock herds of nomadic people have grown significantly in size. Nomadic communities may also find it difficult to make the claims within the three-month specific period if they are moving during this period. The Act and Rules make special provisions for nomads, but it will still take an enormous effort on

their part, and very focused and sustained interventions by officials or NGOs, to help them make use of these provisions. For example, in April and May 2009, the Van Gujjar nomadic community were denied entry into their seasonal grasslands in the state of Uttarakhand. The Forest Department had prohibited their migration through Govind Pashu Vihar Wildlife Sanctuary on the grounds that the community could not be allowed into a sanctuary area. However, after concerted protests and lobbying by civil society organisations who stated that such restriction of migration constitutes forceful eviction and is therefore a violation of the Act, the Van Gujjar community was finally allowed entry into the Sanctuary.

The social and economic impact of the FRA is therefore likely to be mixed, with the greatest benefits being in places where *adivasi* populations are well organised and where inter-community relations are relatively harmonious. In north-western Maharashtra, for instance, movements like the Kashtakari Sanghatana have prepared for such a law for years and have helped to file thousands of claims. In Tamil Nadu and Karnataka, *adivasi* groups are well federated to make their demands heard. At the other extreme is Bastar in Chhattisgarh, where the mass displacement of *adivasis* by the ongoing violent "Salwa Julum" campaign (fed by the state government itself) against naxalites in Dantewada and Bijapur districts has led to a situation in which several hundred villages have been depopulated. There is no one here to claim rights! A number of prominent civil society organisations and individuals who otherwise favour the speedy implementation of the FRA have recently appealed to the Chhattisgarh Chief Minister to:

> suspend implementation of the Act in the affected areas while facilitating speedy return of the villagers to their own villages. In the meantime, no land should be allocated to outsiders and no leases or prospecting licenses for minor minerals should be given in these villages as under PESA. These also require Gram Sabha permission, which is not possible under present circumstances (*The Hindu*, 23 March 2008).

Yet another issue that many claimants will likely face is an attempt to capture their lands once the claims are accepted. In many parts of India landless farmers who have been given land under land reforms or in rehabilitation schemes have subsequently faced take-over by more powerful elements from within or outside the village. The land often continues in the name of the original recipient but its bounties are being enjoyed by those who have appropriated it. Tribal land alienation is a serious problem in many states and it will take considerable mobilisation and alertness by recipients and also civil society and government to prevent this from happening with the lands that the FRA gives titles to.

Some of the above issues make it vital that the community rights provisions of the Act are given high priority. Treating forests as a "commons" has been a

time-tested way to reduce abuse by individuals within the community or by outsiders. In this context the lack of attention to these provisions in the implementation so far could significantly weaken the Act's socio-economic (and political) potential.

Provisions of the FRA relevant to the granting of development rights to forest-dwellers are also likely to lead to greater economic and social security. There is little evidence of this aspect being part of implementation so far and it remains to be seen whether *gram sabha* claims for health, educational, communications, and other developmental activities would now be better heard and acted upon, if nothing else because the Forest Conservation Act will not apply, eliminating lengthy and often frustrating processes of obtaining permission from the central government. Precisely for this reason, however, this provision could be problematic from an ecological point of view (see below).

Despite all the problems mentioned above, the FRA is bound to provide various degrees of livelihood security and community empowerment, wherever it is implemented with any kind of effectiveness. Will this, however, be sustained if the forests themselves become degraded? The conservation impacts of the FRA are also important to understand.

1.7. Conservation impacts

For any forest-dwelling community a framework of rights in the absence of an appropriate framework of conservation is going to be short-lived. Any legislation on forest rights therefore needs also to have clear provisions for the protection of forests and their biodiversity, or supplement existing laws that do. What impact will the FRA have on forests?

The FRA's conservation impact can be judged in three arenas: areas specially designated for wildlife protection (especially national parks and sanctuaries), government forests (reserved and protected) outside such protected areas, and community/private or unclassified forests. Each of these could be impacted in positive or negative ways by the FRA, depending, again, on a host of factors.

1.7.1. Protected areas

The most intense criticism of the FRA from some wildlife conservationists is related to what they say are its implications for protected areas. It is undeniable that such areas have been the single most important step towards halting the rapid decimation of India's wildlife. Without them, many species, such as the Indian rhinoceros and Asiatic lion, would be long extinct.

But, as explained in section 5 above, the majority of India's protected areas are inhabited by communities and most of this habitation predates the notification of the protected areas. For at least two decades many environmental groups have argued that laws enabling the participation of these inhabitants in conservation and the recognition of their basic rights to survival and livelihood resources, without compromising conservation values, are needed. Unfortunately, a handful of powerful conservationists have remained unmoved by this logic (even when shown its global acceptance – see Springate-Baginski et al. 2008) and have systematically blocked attempts to change the Wild Life Act in this direction. Further, the Supreme Court's Centrally Empowered Committee and the MoEF have used a Court order to direct state governments to stop all rights in protected areas. The result has been the dispossession and threatened displacement of three to four million people.

The FRA will have a significant impact on this situation. It provides for the establishment of land and forest resource rights within protected areas (though this will not apply to lands that have earlier been vacated by villagers). Amongst these is the right to "protect, regenerate, or conserve or manage any community forest resource which they have been traditionally protecting or conserving for sustainable use." If fully implemented, this provision has the potential to considerably change the relationship between protected area managers and local communities. The FRA also allows for the establishment of critical wildlife habitats within protected areas to be scientifically determined, followed by a process of dealing with the rights of forest-dwellers inside them. If it is shown that their activities are causing "irreversible damage" and that "co-existence" is not possible, people can be relocated. However, this will need their "informed consent" and the availability of rehabilitation facilities before the actual relocation. In fact, even many conservationists agree that displacement of people should only be with their consent.

A crucial provision that is in synergy with the concerns of conservation groups is that any critical wildlife habitat where people's rights have been modified (including relocation) cannot be subsequently diverted for any other use. This means that no dams, mines, roads, tourist resorts, and so on can come into existence in such areas, a provision that is even more powerful than the Wild Life Act.

How much will state governments use the critical wildlife habitat provision and in how many of these will relocation of people actually take place? This is very difficult to predict, for many reasons. Some states may simply be lax in identifying and notifying critical wildlife habitats. Convincing people to relocate will be difficult, especially because the FRA now also provides for rights to developmental facilities. These include schools, health centres,

communication facilities, roads, water supply, non-conventional energy sources, and so on. Many villages inside protected areas have thus far been denied such facilities due to conservation related restrictions, or simply because of inefficient government departments. This denial is one major reason for many villages wanting to opt for relocation. The question arises that if these facilities are provided as a matter of right, will people still want to move? Not only will considerable persuasion be required to gain the consent of people to move, but also evidence that the state can deliver good resettlement will be necessary. The quality of dialogue with local people and the nature of rehabilitation will have to be substantially upgraded, something which is anyway long overdue. Even more important, though, is the need to start considering co-existence options within protected areas, since most villages currently inside them will never be relocated. Levels and kinds of human uses that are compatible with conservation objectives, institutional mechanisms that involve people in planning and decision-making, and other considerations have to be urgently worked out through a transparent process of consultation and negotiation, if the co-existence option is to be optimally used. That communities will now be able to negotiate as rights-holders rather than as people with uncertain legal status, will force the negotiations to be far more democratic than they have been so far.

The provision of developmental facilities in protected areas (and other forests) is, however, a potential source of ecological damage; especially if they are interpreted by state governments as a sink for money or a means to attain greater power through large-scale development such as major road and construction works. In combination with vested interests present in many *panchayat* this could be the biggest threat to protected areas.

One major relief is that rights to quarrying or mining, listed in previous versions of the FRA, have been dropped. Also, there are conditions on the kind of forest land that can be used, with only seventy-five trees per hectare to be felled. Additionally, the Wild Life Act will continue to apply, which means that developmental facilities would need to be cleared through the wildlife authorities, thus reducing their potential to damage the environment.

The key is to ensure basic developmental inputs to communities, without compromising conservation values; not all roads in protected areas should be viewed negatively (otherwise environmental activists should have been asking for all roads leading to tourism complexes within protected areas, such as at Corbett Tiger Reserve and Kanha Tiger Reserve, to be closed), and construction does not have to be destructive. But negative examples, such as large scale road networks in the Melghat Tiger Reserve, made ostensibly to deal with malnutrition amongst *adivasis*, do exist. Especially vulnerable may be grasslands or naturally sparse forest lands, as these will likely be mistakenly considered "degraded" enough to be diverted for development facilities.

A number of protected areas are already the hub of FRA-related activity. Tree-felling initiated by a political party was reported in July 2007 in Kawal Sanctuary, Andhra Pradesh, the alleged motivation being to capture more land and then claim it under the FRA. This was however revealed to be part of a long-standing ongoing campaign (*bhooporatam)* by the Communist Party of India (Marxist) to take over lands and give them to the landless; it was quickly halted by the Andhra government. Of late, new cases of felling have been reported. Unconfirmed reports of similar forest land clearing in some protected areas in Chhattisgarh and West Bengal have been received. On the other hand, there are also initiatives by people's groups and NGOs to carry out systematic participatory mapping of resource rights and crucial wildlife areas, e.g. in Badrama Sanctuary of Orissa and Biligiri Rangaswamy Temple Sanctuary of Karnataka. This is with a view to use the FRA's provisions to enhance both conservation and livelihood security.

Meanwhile, in October 2007 the MoEF came out with a set of guidelines for declaring critical wildlife habitats. These were issued to all states, which were given deadlines to complete the process. These guidelines have some strong provisions for consultation with *gram sabhas*, but their conservation science elements are weak and their timelines are so rushed that crucial scientific and democratic processes are likely to be overlooked. Another set of guidelines that cover all aspects of critical wildlife habitats (identification using the best available knowledge, co-existence strategies, and processes of relocation) have been brought out by several NGOs as part of the Future of Conservation network (see http://www.atree.org/FoC_flyer_090609.doc). The Future of Conservation co-organised a national workshop on this subject with the Indian Institute of Science (Bangalore, 8-9 May 2008), whose recommendations deal with crucial steps needed to declared critical wildlife habitats and critical tiger habitats.

1.7.2. Forests outside protected areas

Most forest-dwellers who will gain rights under the FRA are in forests outside protected areas. Conventionally, in most reserved forests and many protected forests, customary and traditional rights to land and resource use have been inadequately recorded and granted. In states such as Orissa and Chhattisgarh, and parts of the north-east, several hundred thousand hectares of land traditionally occupied or used for farming (including shifting cultivation or *jhum*) have simply not been recorded as such. On the contrary, they have been declared forest lands under government management in an ad hoc manner. On the other hand, there are also huge areas of actual encroachment in forest areas, both by very poor people and by powerful commercial interests. The encroachment situation is especially serious in states such as Assam.

The FRA provides for recognition of "encroached" lands for scheduled tribes who can show occupation up to December 2005 and for other forest-dwellers who have occupied the lands for at least three generations (seventy-five years). The conservation implications are, again, mixed.

Ever since the FRA appeared in its first avatar as a Bill in 2005, some conservationists have claimed it will be the "death-knell" of India's forests. Unfortunately they have continued to indulge in unsubstantiated exaggeration. Estimates by the MoEF from state government data suggest that about two per cent of the country's forests are under encroachment. Even on the assumption that this is an underestimate, not more than five percent of the total forest land could be "encroached" (and this includes lands not truly encroached, as argued above). Only a subset of this would be eligible for regularisation under the FRA. Of course, misuse by state governments to regularise massive encroachments by the land mafia or by recent settlers must be guarded against.

For most traditional forest land occupiers, obtaining a *patta* (documented legal right to property) could be a strong incentive to develop more sustainable land use practices. Insecure tenure (rights and ownership) to land and resources is a major cause of unsustainable and destructive land use globally (the FRA's Statement of Objects and Reasons stresses this; see also Springate-Baginski et al. 2008). This situation is reversed when laws and policies assure more secure tenure, as is clear from many community conservation initiatives in India (Pathak 2009). From this perspective, the FRA could enhance the possibility of conservation.

However, the cut-off date of 2005 is problematic. Already there are scattered reports that people are being encouraged by political interests to encroach forest land, with the assurance that they will be regularised under the FRA. The Andhra incident, mentioned above, is one example. In Maharashtra, news reports and oral reports from social activists suggest fresh forest clearing (no details are available at the time of writing). At a meeting in March 2008 on "Important Bird Areas" ornithologists from Chhattisgarh reported that there was widespread felling in Bastar. Unfortunately, however, most of these reports are anecdotal and very few independent investigations seem to exist. One of these, in Gujarat, showed that an alleged case of fresh encroachment was actually invented by forest officials and exaggerated by the media.[16]

[16] Report of the Fact Finding Team of Adivasi Mahasabha, http://groups.yahoo.com/group/forestrights/files/Police-Firing-Feb08-Guj-Vijaynagar%20Report.pdf.

Nevertheless, the use of the best available land records, satellite imagery, and vigilance by civil society groups will be needed to ensure that the FRA is not misused to incite or allow fresh encroachment. Traditional forest-dwellers themselves should have an interest in stopping this trend as it threatens their own continued existence. After the incidents in Kawal Sanctuary in Andhra, the resident *adivasi* organisations are reported to have issued a statement disassociating themselves from the fresh encroachment.

The provision of rights to developmental facilities could also be problematic if they are employed in deep forests. As in the case of protected areas, other forest areas could also become fragmented by roads, transmission lines, buildings, and so on, resulting in increased biodiversity loss. It is not clear if there is any safeguard against this outside protected areas, since for this purpose the FRA overrides the Forest Conservation Act (under which all projects requiring diversion of forest have to obtain central government clearance).

Some other provisions that could considerably enhance conservation have largely been overlooked. Communities will now have the right to "protect, regenerate, or conserve or manage any community forest resource which they have been traditionally protecting or conserving for sustainable use." As NGOs such as Kalpavriksh, Vasundhara, and others have shown (Pathak 2009), there are thousands of community conserved areas in India (e.g. 10,000 community forests in Orissa, forests protected under tribal self-rule in central India, and catchment forests conserved in Rajasthan, Nagaland, and Mizoram) covering hundreds of thousands of hectares. Most of these, other than in the north-east, are government forests, but with hardly any government staff present. But most also lack legal backing, rendering them open to damage and destruction by outsiders. The FRA could now provide the legal backing that community conserved areas need, on terms that communities themselves can decide. Indeed the community forest protection provision has the potential to radically alter the relations of inequity between the forest bureaucracy and local communities, as it could effectively transfer power to the latter.

Unfortunately, however, as discussed above, this aspect of the FRA remains highly neglected by officials (many of whom would undoubtedly be resistant to its above-mentioned potential), NGOs, and communities themselves, and there is an urgent need to advocate this more strongly. The CSD issued a call in September 2008 for communities to mobilise around these provisions; it subsequently reported in October that community claims were being increasingly made in several states (CSD communication, forestcampaignnews@gmail.com, 13 Oct 2008). In January 2009, a meeting was organised by the National Centre for Advocacy Studies and the Tribal

Research and Training Institute, specifically to discuss how to promote the community rights provisions in the state of Maharashtra.[17] Meanwhile, some villages, such as Mendha-Lekha in Gadchiroli district of Maharashtra, have filed community forest rights claims for the 1800 hectares of forest they have been conserving.

Secondly, the FRA "empowers" *gram sabhas* and other village level institutions to "protect wildlife, forest and biodiversity" and ensure that "habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices." An earlier version even had a provision requiring community consent before diverting forest for any non-forest use. This has unfortunately been dropped, but the above two provisions could still give communities a tool to check the incursions of unsustainable development projects. This would have been even stronger had *gram sabhas* been given not only "empowerment," but also the responsibility of ensuring conservation. This crucial element was contained in the 2005 version of the FRA. The Rules now provide for *gram sabhas* to establish a committee to carry out the conservation functions, though it is not clear what recourse there is if the committee or the *gram sabha* itself does not ensure conservation.

The FRA's potential to enable communities to challenge destructive development projects is being tested even as we finalise this report. In Orissa, tribals of the Jagatsinghpura area have issued a notice that any attempt to take over their forest lands would be a violation of the FRA; this is a bid to stop the entry of the powerful POSCO corporation, which wants to set up mines and industries there (*The Times of India*, 10 August 2008).[18] The CSD and others have pointed out that any displacement of forest-dwellers without first having completed claims procedures under the FRA would be a violation of the Section 4(5): "Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed." In the case of *adivasis* classified as "primitive tribal groups," the diversion of their habitats for development projects would be a violation of Section 3(1)e.

1.8. Legal challenge

As of the time of writing, there are already nine writ petitions (five in High Courts, two in the Supreme Court) challenging the FRA. Four of these are by retired forest officials, the others by conservation organisations.

[17] The report of this meeting is available from the authors.

[18] The article can be retrieved at http://timesofindia.indiatimes.com/India/Orissa_village_to_use_forest_Act_to_block_Posco_project/articleshow/3347658.cms.

One of the Supreme Court petitions has been filed by three conservation NGOs and one Assamese *adivasi* group. It argues that the FRA is constitutionally invalid, that it will impinge on the rights of every citizen of India to a clean environment, and that it will condemn *adivasis* to a life of subsistence with no access to development facilities. The grounds used for this challenge to the FRA are not only flimsy, but also dangerous. It is argued, for instance, that the Parliament does not have a right to pass laws on land matters, since these are exclusively the domains of state governments. If this argument is accepted, the very basis of most current environmental laws would be struck down. The Forest Conservation Act, the Wild Life Protection Act, and the Environment Protection Act (including its specific notifications protecting coastal areas and ecologically sensitive areas) would become constitutionally invalid, since they all pertain to "land" issues including forest land.

The petition in the Supreme Court also betrays a strongly elitist orientation. Regarding the granting of forest rights to forest-dwellers, the petitioners have invoked Right to Life and other provisions of the Constitution. Strangely, they have not invoked the Constitution with regard to the large number of forests that are converted for development projects such as mining, dams, expressways, and industries. This is especially curious because the FRA does not provide for any standing forest to be cut for land rights, whereas such projects often affect standing forests, and sometimes the most pristine forests.

The petition does have a few sound arguments against the FRA, but these are buried under the general diatribe and polemics. Three of India's most prominent conservation NGOs have thereby lost a good opportunity to bring about some substantial improvements in the FRA in a way that could have allowed implementation of the provisions that will strengthen people's livelihoods as well as conservation.

Conclusion

This paper has attempted to assess:

- the implications of the FRA for conservation and people's rights and livelihoods,
- the ways in which different actors have shaped the FRA, including the extent to which tribal peoples have been involved, and
- the problems and prospects of the FRA's implementation.

The assessment has been placed within the context of the reality and history of forest-based livelihood dependence of a very large part of India's population. Several hundred million people live within or use forests as a basis for their sustenance, livelihoods, and cultural identity. Their millennia-old

association with forests has also helped them develop sophisticated knowledge systems and practices oriented towards sustainability and conservation, though in recent times this relationship has begun to change. This changed relationship, along with rapid industrialization, has had serious consequences for India's biodiversity. This history is also ridden with the experience of exploitation of many forest-dependent people, particularly tribal communities, by "invading" communities, before, during, and after the colonial occupation of the Indian subcontinent. The British rule itself marked a major shift in the way natural ecosystems like forests, and their human and wildlife inhabitants, were treated. One aspect of this was the takeover of large forest tracts by a centralised bureaucracy, divesting communities of management control and many customary rights. Another was the nationwide expansion of commercial timber felling. These and other aspects of colonial forest management negatively impacted the lives and livelihoods of forest-dwelling communities. Unfortunately, even after Independence in 1947, centralised control remained and was consolidated, continuing the alienation of such communities. This was especially strongly manifested in the creation of protected areas for wildlife, in which most kinds of rights and activities were severely curtailed or altogether stopped. Judicial orders in the last decade or so have intensified the denial of customary rights and access to livelihood resources.

A change in this scenario was hinted at by the 1988 Forest Policy, which acknowledged the relationship of *adivasis* and other forest-dwellers to forests, and sought their participation in conservation and management. One key outcome was the programme on Joint Forest Management. However, the issue of rights to land classified as "forest" and to forest resources remained unresolved.

It is in this context that the FRA was born. Part of its origin can be attributed to the growing movements of *adivasis* demanding rights to the lands they were occupying and the forest resources they were using. A series of evictions of people classified as encroachers in many states led to the consolidation of these initiatives into a national campaign for a new legislation to provide forest rights. There may have been other motivations (unconfirmed by the authors) within the central government, such as providing forest rights to quell the growing discontent amongst forest-dwelling communities in central India related to lack of livelihoods access, which was believed to be directly fuelling extreme Leftist activities. It can also be speculated that the potentially enormous electoral gains to be made by governments that hand out what could be considered economic sops to a large population may have been another motivation. Whatever the forces behind it, the FRA was enacted in 2006 after a tortuous journey through official processes. It came into force in 2008 after Rules under it were notified.

The FRA provides for a series of rights to forest-dwellers, including both *adivasis* (scheduled tribes) and other traditional forest-dwelling communities. These include rights to land occupied (before December 2005 for *adivasis* and for at least seventy-five years for others), to forest resources used traditionally, to development facilities of various kinds, to protect traditional knowledge, and others. The Act lays out processes and institutions for implementation.

Ever since it was mooted, the FRA has generated enormous controversy in India. Many grassroots organisations and social action or conservation groups viewed it as historic, the culmination of a 200 year old struggle of the tribal and forest-dependent communities. In contrast, several other conservationist groups see it as a law that would be "the last straw" for already dwindling forests and wildlife in India, and a number of *adivasi* organisations in north-east India expressed concerns about its potential to exacerbate conflicts between traditionally resident *adivasis* and recent settlers. However, according to Deo "this act was never intended to be a land distribution bonanza, as has been claimed by some conservationists; this is only a process by which existing claims can be recognised." [19] He adds "the MoEF had provided the data which stated that only 2.5 to 3% of the forest area was under encroachments, making it obvious that 97 – 98% is still under the Forest Department. Additionally, special recommendations such as establishment of critical wildlife habitats were included in the Act to ensure the interests of wildlife."

Another criticism of the FRA has been that it provides a uniform solution for the nation, whereas the local realities are vastly different in different regions. This, according to some, leaves an opening for groups with a vested interest to take advantage of the situation. Deo agrees that different recommendations for different regions would have been ideal, but the Joint Parliamentary Committee only had three months, which is not enough time for regional discussions and recommendations (ibid.).

This report examines what impacts the FRA is likely to have, both for the livelihood security of forest-dwellers and for forests. The legislation could mean a revolutionary change in the lives of forest-dwellers, if the various rights it provides for are granted. It could also lead to greater democratisation of forest management, providing communities the ability to strengthen or initiate management of forests near their settlements. However, we stress that there is no inevitability of such outcomes, given a number of confounding factors: the majority of forest-dwellers are unaware of the provisions and processes of the FRA, the bureaucracy is in many places unhelpful or even obstructive, local civil society groups that could help communities do not exist in all places, and strong inequities within communities themselves could restrict the access of

[19] V. Kishore Chandra Deo, personal interview, 13 August 2008.

less powerful sections to the Act's benefits. Many of these factors have already emerged in the fledgling attempts at implementing the legislation. Where however communities are well-organised and/or have civil society or sensitive officials to help, the Act's benefits will reach many forest-dwellers.

Conservation impacts are equally difficult to predict. While the fears of some conservationists who pronounced the FRA as the death knell of India's forests and wildlife are obviously exaggerated, there are nevertheless real chances of fresh encroachment in some places where political or other forces incite it (especially because of the "generous" cut-off date of 2005), as also fragmentation of forests where rights to land and development facilities are claimed in deep forest areas. The FRA's provisions empowering communities to protect forests and wildlife, as also those for setting up critical wildlife habitats within protected areas after due process, could however be a major positive force. Also with significant potential is the possibility of community rights to forests being claimed and used to challenge development projects that seek the conversion of these forests. In the one year of implementation so far, there are some examples of both negative and positive impacts of these kinds, but it is yet early to pronounce any conclusive judgement on the Act's overall environmental impact.

One aspect of implementation has emerged as a clear issue needing urgent action. Although the Act is about both the individual and community rights of forest-dependent people, in practice most of the debates and in recent times the process of implementation have focused heavily on regularisation of individually encroached land. By mid-2009, a year and a half into the implementation of the Act, there were few states where substantial numbers of claims were filed for community rights and the right to protect traditionally protected and managed forests. There is absolutely no clarity about how these claims are to be filed and what would be the relationship of community institutions managing forests, if they are given such a right, with the Forest Department. In fact, till recently, community rights were not even the focus of the organisations working with the communities, including CSD members. According to Gopalakrishnan, the fact that the rules need to be clearer about community rights has been brought to the notice of the MoTA many times but there seems to be a deliberate downplaying of the same.[20] The reason why the claims process for community rights has been downplayed, according to him, could be because focusing on land *pattas* could be less threatening for the Forest Department and those concerned about forests; this could be a result of "(1) the attitude of the forest bureaucracy, which knows full well where the real challenge to their power lies; and (2) in wider terms, particularly as regards the responses of movements, a reflection of the fact that India is a capitalist society in which a continuous process of

[20] Shankar Gopalakrishnan, personal interview, 14 August 2008.

commodification, enclosure, and privatisation is underway in all resource spheres as part of the effort to expropriate resources into the capitalist economy" (ibid.). According to Meena Gupta, there was and is very little understanding about community rights among the drafters of the legislation and rules at the level of the Ministries; it is therefore not surprising that the rules are not clear about them or that implementation is not focusing on them. [21]

Finally, it is important to note the legal challenges to the FRA that been filed in the Supreme Court and several state High Courts. Most of these have claimed the FRA to violate the Constitution. As yet the only impact of these has been partial stays (e.g. to tree-felling, or to the granting of deeds to land) in some states (one of which was lifted on 01 May 2009) and it is impossible to predict what impact the petitions will have.

A number of crucial steps are needed, by both civil society and government if the FRA's potential is to be maximised. Very important is that the government does not rush implementation, but gives the process the time to be able to take into account the differences in social, cultural, ecological, and administrative conditions that each state (or region within a state) displays. This diversity of conditions has a great bearing on the FRA's impacts and any uniform implementation will only create complications and conflicts in many states. People's groups in Assam, Himachal, and elsewhere have already warned of escalated conflicts and ecological damage if implementation is rushed; in other states, delays in implementation could lead to greater chances of fresh encroachments by people hoping to get into the list of eligible claimants.

A huge effort is needed by civil society groups in all aspects of the FRA to track its implementation, help communities to make legitimate claims and build capacity to handle the processes of recognition and vesting of rights, raise alerts about any misuse such as fresh encroachments or forcible evictions, and intervene in other ways when implementation threatens conservation or creates social conflict. Simultaneously, pressure must be sustained regarding suitable amendments (e.g. for a cut-off date that is less prone to misuse, for a provision requiring prior informed consent from communities for any diversion of forest land for non-forest purposes, for some decentralised form of environmental impact assessment for development projects sought by *gram sabhas*, and for the reinsertion of conservation responsibilities tied to rights).

[21] Meena Gupta, personal interview, 13 August 2008.

Also needed are revisions and additions to the Rules for the following provisions: the identification of critical wildlife habitats, the process of ensuring fair relocation (including what informed consent should mean), and processes by which communities can use the provisions on protecting forests and wildlife (including for community conserved areas) without having to go through lengthy bureaucratic processes. Also crucial is an independent monitoring mechanism to show what impacts the FRA's implementation is having and to point to corrective actions where necessary. Ideally, the first six months or so of the implementation phase should have been used to do a complete mapping of "encroached" areas, other forests where resource rights will be extended, and community conserved forests that could be legally recognised, and further elements of a baseline on which monitoring can be done. Even at this stage, such a baseline needs to be established.

It is also crucial to lobby for the inclusion of environmental and social action groups in the committees at sub-divisional, district, and state level. Such members can act as critical checks against the misuse or abuse of the FRA and enhance the role of the committees to help *gram sabhas* in the process of implementation.

Finally, there is an urgent need to clarify how precisely the FRA relates to existing conservation laws. The FRA states that "save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to Scheduled Areas) Act 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force." One interpretation of this is that the provisions of the Wild Life Act and the Forest Act will continue to apply, except where they impinge on rights that can be claimed under the FRA. However, what is very unclear is the institutional mechanisms. What will be the precise relationship between *gram sabhas* and their conservation committees and Forest Departments that have a mandate in the same areas that villages claim under community rights? Can or should the FRA be used to move towards meaningful (i.e. with real power-sharing) joint management partnerships for protected areas and reserved forests?

If advocates of wildlife conservation, human rights, and ecologically sustainable development (none of which are intrinsically antithetical to each other, as shown by many groups that combine all three in their work) do not work together, the interests of both local people and of wildlife will be defeated by powerful corporate and commercial interests that are having increasing influence because of the national goal of achieving a ten per cent rate of economic growth. Even as the government gives forest rights to *adivasis*, it is opening up *adivasi* and other forest areas in Chhattisgarh, Jharkhand, Orissa, and elsewhere, for mining, industries, etc. Without a sustained collective effort by civil society, lands given to forest-dwellers could

be alienated for industry; with a sustained effort, however, the FRA could become a bulwark against such alienation. If the FRA could be used in conjunction with conservation and *panchayat* laws, it could be a powerful tool to halt development activities that are destructive for both wildlife and forest-dwellers.

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