



OVERVIEW OF INDIA'S TENURE REFORM, 1992–2012

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Historical overview, post 1992 Earth Summit

India's forested landscapes are arenas of intense conflicts. These conflicts are rooted in historical-political processes by which ecologically diverse lands used by culturally diverse communities for multi-functional values have been legally (mis)classified or "recorded" as forests and brought under centralized, uni-functional state forest management. Post-independence India failed to review colonial forest policy in light of the new mandate of an independent, democratic nation; instead, it pursued, with even greater vigor than the colonizers, policies of state appropriation of the commons for commercial exploitation, and state-community conflicts in forest areas intensified greatly. Between 1951 and 1988, the national forest estate was enlarged from 41 million hectares to 67 million hectares,¹ largely through sweeping notifications declaring constitutionally protected Schedule V² tribal areas as state forests. In most cases this was done without recognizing pre-existing rights mandated even by the colonial Indian Forest Act, 1927. Recognized rights were converted into "privileges" or concessions, and large areas of forest were handed over to industry and private contractors for commercial exploitation. The post-independence reservation of Schedule V tribal areas as state forests violated all the constitutional provisions for safeguarding tribal wellbeing, making the state the biggest encroacher on tribal lands (rather than *vice versa*).

Despite protests and rebellions from the 1970s onwards by impoverished forest-dependent communities against such wanton forest destruction, rather than forest tenure reform it was the conservation agenda that gained prominence. Enactment of the Wildlife Protection Act, 1972, led to the further curtailment of rights, and the Forest Conservation Act, 1980, centralized the power to permit non-forest uses of forest land in the federal Ministry of Environment and Forests.

Under civil-society pressure, the 1988 forest policy attempted to restore balance by proposing the greater involvement of tribal people in environmental protection and forest development. A major outcome of this policy, however, was non-statutory joint forest management (JFM) based on administrative orders. JFM skirted around conflicts over tenure and forest boundaries by soliciting community participation in state forest protection on the promise of a share of regenerated forest produce; it did not involve any recognition of rights or devolution of authority to communities. Instead of community empowerment, donor-funded JFM evolved during the 1990s into an instrumentalist approach, enabling the forest bureaucracy to extend its control *within* villages through co-opted local leaders and to expand forest boundaries to cultivated and common lands by claiming such lands to be "recorded" as forests. Indeed, while there has been little of the promised sharing of benefits with communities, or any "joint" management, JFM committees today are often used to evict forest dwellers labeled as encroachers.

The disquiet in tribal forest areas resulting from tenurial conflicts following the reservation of tribal lands as state forests was brought to the government's notice by the Commissioner for Scheduled Castes and Scheduled Tribes in his 29th report (1987–89) to the President of India. As the constitutional authority responsible for over-seeing compliance with constitutional provisions for safeguarding tribal wellbeing, the Commissioner recommended a framework for resolving disputes related to forest land between tribal people and the state. Based on the Commissioner's recommendations, the Ministry of Environment and Forests issued a set of six circulars on September 18, 1990,³ less than four months after it had issued its first JFM resolution ignoring tenure reform. These circulars required the recognition of un-recognized rights as a way of

addressing the problem that millions of people were being labeled as encroachers on their ancestral lands because of the super-imposition of contradictory forestry and wildlife laws over them. No state government (other than that of Maharashtra in 2002) took meaningful action on these circulars, leaving millions of forest-dwellers trapped in a state of semi non-citizenship, ever vulnerable to rent-seeking, brutal eviction, and displacement without entitlement to compensation or rehabilitation. The Ministry of Environment and Forests pursued enforcement of only one of the circulars for regularizing encroachment on forest land, without emphasizing the distinction between encroachers and those whose rights had not been recognized. It continued to promote non-statutory JFM, which vests no rights, as its flagship program.

The provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, have met the same fate of non-implementation. This Act was designed to implement the constitutional mandate for self-governance in tribal areas by making the *gram sabha* (the body of all adult voters of a self-defined community) “competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution”.

The publicity around environmental and biodiversity conservation issues in the build-up to, during, and after the 1992 Earth Summit, convened in Rio de Janeiro, Brazil, provided a further fillip to growing middle-class environmentalism in India, in which tenure reform had no place. This phenomenon, essentially rooted in exclusionary conservation, manifested itself in multiple Supreme Court orders in two (still ongoing) public-interest litigation cases filed in 1995.⁴ These court orders further narrowed the ecological focus to protecting *trees*, *wildlife*, and forest *land* and the administrative focus to central control (rather than tenurial reform and democratizing forest governance). Thus, the Supreme Court ordered the settlement of rights in all protected areas (covering 4.75 percent of the country’s land area) within a year, without defining rights or providing clear guidelines for settling the complex diversity of pre-existing customary tenure systems. A subsequent court order banned the collection of non-timber forest products (NTFPs) in all protected areas. This exacerbated the already acute livelihood crisis among protected-area inhabitants, who usually depend on NTFPs for both income and subsistence, while increasing their vulnerability to eviction and relocation. The court order with the most far-reaching consequences extended application of the Forest Conservation Act, 1980, not only to lands recorded as forest in any government record but also to the “dictionary definition of forest”, irrespective of ownership.

The Supreme Court orders under the two ongoing public-interest litigation cases have effectively rewritten forest law by extending forest boundaries to all forested landscapes irrespective of ownership, ignoring even legally and constitutionally protected customary tenure and designating the forest bureaucracy as the sole agency competent to manage forests. The cumulative impacts of these processes on the citizenship and survival rights of already marginalized Scheduled Tribes and other forest-dwelling communities have been devastating. Today, India’s central forested tribal belt, which is also rich in mineral resources, has the country’s highest concentrations of poverty as well as significant left-wing militancy.

Birth of movement for tenure reform

Matters reached a flashpoint in May 2002 when, citing Supreme Court concerns, the Ministry of Environment and Forests ordered the time-bound eviction of all encroachers on state forest land, the majority of them tribal forest-dwellers inhabiting their ancestral lands. The ensuing spate of brutal evictions, including the use of elephants to destroy the huts and crops of impoverished tribal communities during a drought year, caused uproar and led to protests across the country. Between May 2002 and August 2004, evictions were carried out on 152,000 hectares of forest land.⁵ With forest rights becoming a major national political issue due to the evictions, an informal alliance of grassroots movements, rights activists, and academics came together under the umbrella of the Campaign for Survival and Dignity (CSD).⁶ Together with left-wing political parties and other rights

movements, the CSD undertook nationwide political mobilization with mass protests, rallies, public hearings, and conventions aimed at members of Parliament, state legislatures, and political parties.

Compelled by these protests, the Ministry of Environment and Forests issued a clarification in October 2002 that its 1990 circulars remained valid and that not all forest-dwellers were encroachers. Indeed, the Ministry admitted in an affidavit filed in the Supreme Court in July 2004 that, during the consolidation of state forests, “the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become encroachers in the eyes of law”. The affidavit continued that such rights needed to be recognized “to remedy a serious historical injustice” and that “(this) will also significantly lead to better forest conservation”.

With a new central government in 2004 having made a commitment to stop forest evictions, the initial demand of the CSD and other mass movements was for the implementation of the 1990 circulars of the Ministry of Environment and Forests. However, this soon transformed into a demand for a comprehensive law for the statutory recognition of pre-existing rights, not only over cultivated lands but also over customary forest resources, and for the empowerment of village assemblies to protect, conserve, and manage such resources.

Key provisions of the Forest Rights Act

The outcome of this prolonged struggle by grassroots movements was the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, referred to below as the FRA, which emerged as a legislative means for remedying a historical wrong through forest tenure reform. The FRA is a milestone in Indian law-making because it acknowledges the historical injustice done to India’s tribal and other traditional forest-dwellers by the failure to recognize their rights to ancestral lands during the consolidation of state forests. By declaring that rights recognized under the Act include the “responsibilities and **authority** for sustainable use, conservation of biodiversity, and maintenance of ecological balance thereby strengthening the conservation regime ... while ensuring livelihood and food security” [emphasis added], the FRA questions the very basis of current state-controlled, exclusionary forest management.

The Act has three major provisions: on the rights to be recognized and vested in all categories of forest lands, including protected areas; on the authorities and democratic procedures for receiving and verifying claims; and on the empowerment of rights-holders and/or their *gram sabhas* for the conservation of forests, wildlife, and biodiversity. The FRA bars the eviction of claimants from forest land until the completion of an investigation into their claims to rights. To reinforce that most lands that have been declared state forests are tribal homelands, the nodal ministry for implementing the law is the Ministry of Tribal Affairs—rather than the Ministry of Environment and Forests.

The FRA is among the most contested laws to be passed by the Indian Parliament. Powerful elite conservationists and the forest bureaucracy launched a tirade against it, contending that it would lead to the destruction of the country’s forests and wildlife. In particular, they wanted protected areas to be kept out of the FRA’s ambit, asserting that the 3–4 million people living within them needed to be relocated. Other areas of contention were whether only Scheduled Tribes should be eligible to claim rights, or whether other traditional forest-dwellers should also be included; and the cut-off date for proving occupation of forest land to be eligible to make a claim. Concerted lobbying of a joint parliamentary committee constituted to examine the initially weak draft law led to the substantial strengthening of the draft before it was passed by Parliament. Even so, the bureaucracy subverted some of the committee’s recommendations at the last minute, as it wanted to restrict the FRA’s mandate to recognizing rights over only cultivated land (seeing the law purely as a tool for reducing unrest in tribal areas).

Authorities and transparent procedures for recognizing rights

The *gram sabha* is the authority for initiating the process to determine the nature and extent of forest rights claimed under the Act. This is a major departure from typical bureaucracy-controlled procedures and is designed to ensure transparency and accountability in the claim-making process. The claims verified and approved by the *gram sabha* are to be consolidated, examined, considered, and approved by committees at the sub-division and district levels consisting of representatives of the revenue, tribal, and forest departments and three elected local-government representatives at those levels. A state-level monitoring committee chaired by the Chief Secretary and with similar multi-departmental and political representation is to monitor implementation of the Act in each state. Although represented in the higher-level committees, forest officials must share decision-making authority with the elected representatives and officials of other departments.

The rights to be recognized under the FRA

The Act specifies 13 claimable rights providing individual and/or community tenure. Claimable community forest rights include rights to *nistar* (usufructs); NTFPs; water bodies; community tenure over customary habitat in the case of pre-agricultural communities; seasonal resource access for nomadic and pastoral communities; other traditional rights; and, most importantly, the “right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use”.

Empowerment to protect and conserve

The rights provided by the Act over community forest resources, combined with the power to protect adjoining forests, wildlife, and biodiversity and to prevent destruction of cultural and natural heritage, reinforce the empowerment of *gram sabhas* to manage community resources also mandated by the Panchayats (Extension to the Scheduled Areas) Act, 1996. By creating space for statutory community forest governance (in contrast to forest department-controlled JFM), the FRA challenges the forest bureaucracy’s hegemonic control over the country’s forested landscapes.

The FRA is also unique in making wildlife authorities accountable for decisions related to the relocation of communities from protected areas. The modification of recognized rights in protected areas is permitted only in “critical wildlife habitats” identified within them through a transparent and consultative process. Relocation from such habitats can take place only after all rights have been recognized, it has been established that co-existence could lead to irreversible damage to threatened species or their habitats, and with the free and informed consent of the concerned *gram sabhas*. A resettlement package must ensure a secure livelihood and be acceptable to the concerned communities, and land allocation and the development of facilities in the new location must be complete before relocation.

Which communities can benefit?

Sixty percent of India’s recorded forest area falls in 187 tribal majority districts spread over only 33 percent of the country’s geographical territory. The FRA has particular significance for the forested, tribal-inhabited, and mineral-rich but mostly impoverished belt of central and eastern India, where constitutionally protected ancestral tribal lands have largely been declared state forests or protected areas without following due legal process. This population of the country’s poorest people, numbering perhaps 100 million, suffered institutionalized disenfranchisement during colonial rule and after independence; it stands to benefit most from the proper implementation of the FRA.

The individuals and communities eligible for claiming rights under the FRA must be Scheduled Tribes or other traditional forest-dwellers, the latter needing to prove residence in the forest area for three generations or 75 years. With 170,000 villages estimated to be in the vicinity of forests or having

forest as a land use, the law can potentially benefit several million marginalized forest-dependent communities who have been deprived of their rights to forest land and resources, whether for cultivation, grazing, NTFP collection, or management as per their own priorities.

Official implementation of the law to date—procedural subterfuge and statistical achievements

The intensity of bureaucratic resistance to the radical mandate of the FRA became evident in the concerted efforts made to stall the implementation of the Act soon after it was passed unanimously by both houses of the Indian Parliament and finally brought into force on January 1, 2008, more than a year later. Many state and non-state actors attempted to undermine the FRA by ignoring it or subverting it through willful misinterpretation. Within India's federal structure, although the law was enacted by the Indian Parliament its implementation lies with the state governments. The federal nodal Ministry of Tribal Affairs has provided poor leadership, including by notifying rules for implementation that lack clear procedures for recognizing the diversity of claimable rights. The Ministry monitors only the number of claims received, rejected, or accepted, without any attention to compliance with *gram sabha*-centered procedures or to the diversity of rights claimed. The Prime Minister's Office exhorted the states to start time-bound implementation as soon as the FRA came into force, without ensuring that potential claimants and the officials responsible for implementation were fully informed about the law's provisions. Statements from the Prime Minister's Office, the Ministry of Tribal Affairs, and the office of the President of India referred only to the individual land rights claimable under the FRA, ignoring the diverse community *forest* rights and *gram sabha* empowerment also provided for. Central-government statements also conveyed the impression that the FRA was meant only to recognize the rights of Scheduled Tribes and not those of other traditional forest-dwellers, despite the law providing otherwise.

Taking a cue from the central government, the states started implementation with a primary focus on recognizing only individual land rights and those of Scheduled Tribes, with almost blanket rejection of claims by other traditional forest-dwellers. While some states are yet to begin or have been slow starters, others, which had upcoming state elections, initiated rapid, time-bound, and haphazard implementation with the intent of gaining electoral benefit. In Gujarat and Himachal Pradesh, implementation is being extended to non-tribal majority districts only now, four years after the FRA came into force. Most states identified *gram sabhas* at the level of multi-village *panchayats* (instead of at the hamlet or village level, as required by the law), in which marginalized claimants had little voice. Orissa was an exception in its early notification that *gram sabhas* are to be called at the individual village level and in issuing guidelines explaining the correct procedures to be followed, although the majority of the implementing field officials as well as villagers remain unaware of these guidelines. States like Chhattisgarh, with one of the largest forest-dwelling tribal populations, refused to distribute or accept claim forms for community forest rights and permitted lower-rung field officials to accept, reject, modify, or reduce claims as they liked, throwing all specified procedures to the wind. The rules permit rejected claimants to appeal, but this has been denied in most states. In almost all states there has been little generation of awareness or dissemination of information about the law's provisions among potential claimants or implementing officials.

Central and state governments even attempted to declare implementation complete by the end of 2009, despite the law having no such provision. In addition to the flagrant violation of the procedures laid down in the law, the forest departments of most states have illegally taken effective control of implementation, even though the state tribal departments are specified as the nodal agencies. The Ministry of Tribal Affairs has been a mute spectator to all this, despite being flooded with complaints. The state forest departments have unilaterally been rejecting claims without authority, or demanding evidence not required by the rules. Even before the FRA had come into force, evictions and/or the forced establishment of plantations on cultivated forest lands were undertaken to prevent cultivators from claiming rights over the land. In many states, the widespread

use of JFM committees for evictions to enable the establishment of plantations on cultivated lands continues to be reported. In many areas, JFM committees have been made into forest rights committees to receive claims, with state forest departments controlling the claim-making process through them. New JFM committees are being formed for areas being claimed as community forest resources (CFRs), or compliance with JFM guidelines and not obstructing the implementation of forest department working plans are being inserted as conditions in the titles issued for CFRs. Forest departments have also been spreading misinformation about the FRA—that it is not applicable to reserve forests and protected areas and that only Scheduled Tribes are eligible for claiming rights. Huge areas of forest were hurriedly notified as critical tiger habitats without following the specified legal process and by delaying the coming into force of the FRA. The villagers living within these critical tiger habitats are now being pressured—illegally—to relocate without recognizing their rights, proving that co-existence will lead to irreversible damage, or obtaining their free and informed consent, all required under the FRA.

Official implementation achievements

The statistics of official achievements need to be seen in the above context of systematic subterfuge. According to the website of the Ministry of Tribal Affairs, as of March 31, 2012, 3.175 million claims had been received, 1.25 million titles had been issued over an area of 1.76 million hectares of forest land, and 2.736 million of the received claims had been “disposed of”. This implies that 54 percent of the total claims processed so far (i.e. 1.486 million of the 2.736 million disposed-of claims) have been rejected. The majority of the claims filed and titles issued are for individual land rights, which is only one of the 13 rights claimable under the FRA. Many of the issued individual titles are faulty because they do not show the location of the land or are for areas far less than the area claimed. Accurate data about the number of claims received or titles issued for genuine community forest rights, particularly CFR rights, are unavailable because data from the Ministry of Tribal Affairs does not distinguish between the various forms of community rights and the diversion of small areas of forest land for development facilities. The present number of CFR titles issued in the country probably does not exceed 3,000 (when the country has 170,000 forest-fringe villages) and the vast majority of even these titles suffer from illegal restrictions that nullify the rights afforded. In any case, these official figures are a poor reflection of the situation on the ground (see below).

On the positive side, states such as Orissa, Andhra Pradesh, and Madhya Pradesh have issued instructions to extend regular development programs such as subsidized housing, wells or water tanks for irrigation, agricultural inputs, and insurance against crop loss to lands for which rights have been recognized. Orissa and Andhra Pradesh have also withdrawn forest offense cases against those granted titles. Despite all the shortcomings of implementation, about one million households—about 5 million people—have already benefited from increased tenurial and livelihood security from the recognition of individual land rights.

Creative grassroots assertion of rights

Grassroots movements have maintained sustained pressure for the proper implementation of the FRA and have been challenging and protesting the illegalities being committed. In states and regions where such movements have a strong presence, mobilization and awareness among communities has been increasing, with the widespread filing of both individual and community claims. Through networking, experience-sharing, media coverage, and political mobilization, this awareness is beginning to reach new and distant areas.

The arbitrary time-limit imposed on implementation has been withdrawn, and some states that had stopped accepting claims have re-opened their processes. In some states, inquiries into reasons for the excessive rejection of claims have been ordered, and attention is finally also being given to the recognition of community forest rights. Using the FRA as a weapon, sustained protests are being organized against the Ministry of Environment and Forests for continuing to divert forest land to non-forest uses, such as mining and dams, without recognizing forest rights. A significant milestone

resulting from this was the denial of forest clearance in Orissa to enable Vedanta Alumina Ltd to mine bauxite in the sacred hill of the Dongria Kondh community. Also in Orissa, villagers resisting the allocation of their forest land to POSCO for a major steel plant have challenged the permission for forest clearance granted to the company by the Ministry of Environment and Forests on the grounds that their forest rights have not been recognized.

The growing political importance of the FRA finally compelled the Ministry of Environment and Forests to undertake the first important complementary reform in the procedure for diverting forest land under the Forest Conservation Act, 1980. On July 30, 2009, the Ministry issued an order to all state governments that no permission for forest diversion would be granted without evidence that the process of recognition of rights in the concerned forest area had been completed. *Gram sabha* resolutions certifying the recognition of the habitat rights of pre-agricultural communities and CFR rights, and giving informed community consent for the use of forest for a non-forest purpose, must now be attached with each application for forest diversion, although the Ministry of Environment and Forests has blatantly been violating its own order in permitting the large-scale diversion of forest land. Many villages to be affected by the large Polavaram Dam in Andhra Pradesh protested against the granting of forest clearance without recognition of their rights or their consent; this led the federal Minister of Environment to seek an explanation from the state government. The Ministry of Tribal Affairs has accepted, in principle, most of the substantial recommendations lobbied for through the National Advisory Council (which advises the federal government on policy matters) to ensure that implementation conforms with the law's provisions by issuing new directives and rules, although action on these is awaited.

In Gujarat, close to 90 percent of claims were rejected initially without informing the claimants of the reasons for rejection or providing them with an opportunity to appeal. Using the Right to Information Act, the *Gujarat Adivasi Mahasabha*, a network of grassroots organizations working with forest-dwellers, compiled a list of the illegalities committed in the process of recognizing rights and filed a public-interest litigation case in the state's high court. After the first hearing, although the authorities challenged the case's contentions, there was a flurry of hearing pending appeals and the rejected claims for several areas were approved. Even some CFR claims have reportedly been approved, although titles are yet to be issued. In other states, rejected claimants have also mounted challenges, and rectifications are beginning to be made.

In response to protests and the observations of a couple of high-level committees, authorities in Andhra Pradesh found, in January 2011, that as many as 71 percent of the villages/habitations with a forest interface had been left out of the first, hurried phase of implementation of the FRA; an invitation has been issued for fresh claims from both new and old villages. The state has also permitted the reconstitution of forest rights committees at the hamlet level in place of those formed for large, multi-village *panchayats*.

The ongoing struggle for community forest resource rights

Andhra Pradesh

On paper, the largest number of CFR titles (1,970 titles over 379,000 hectares of forest land) have been granted in Andhra Pradesh to villages with 100 percent Scheduled Tribes populations. However, instead of these titles being claimed by *gram sabhas* based on their customary boundaries, as required by the FRA, the completion report (July 2010) of a World Bank-funded forestry project in the state reported that the titles were granted (illegally) to JFM committees by "invoking" the FRA. Since the Andhra Pradesh Forest Act could not be amended to provide legal status to JFM committees before the World Bank project ended, the Andhra Pradesh Forest Department decided to abuse the FRA for the purpose, even though JFM committees are not even eligible to claim rights under the FRA. A condition was inserted in CFR titles that the JFM committees

would continue functioning in accordance with the Andhra Pradesh Forest Department's JFM order. Through this coup of sorts, the department attempted to bestow legal status on its JFM program, which the program currently lacks, while retaining control over village institutions. Strong protests by organized villagers about their CFR claims being ignored in favor of JFM committees have compelled the Andhra Pradesh Scheduled Tribes Department to permit the *gram sabhas* of these villages to file fresh claims based on their customary forest boundaries. The extensive customary rights that can be claimed have also been listed. The titles issued in favor of JFM committees have been held back and, so far, 324 villages/hamlets mobilized by *Adivasi Aikya Vedike*, a local tribal movement, have submitted their genuine CFR claims as per their customary boundaries.

Orissa

About 300 community titles have been issued in Orissa, where the state's forest department has tried to use the same trick as the Andhra Pradesh Forest Department in the Mayurbhanj and Gajapati districts. Although the titles there have not been awarded in the name of JFM committees, the areas over which rights have been recognized are the smaller areas assigned by the Orissa Forest Department for JFM, with the titles requiring the continuation of JFM, even for CFRs. Despite a joint FRA committee of the federal Ministry of Environment and Forests and Ministry of Tribal Affairs pointing out the illegality of this in 2010, these titles are yet to be withdrawn. A recent campaign by *Orissa Jungle Manch* (a state-level platform of community forest management groups) to increase awareness about community forest rights is beginning to change the situation. Some villages in Kalahandi District, which have received CFR titles for their JFM areas, have passed resolutions dissolving the JFM committees formed by the Orissa Forest Department in their villages. Three villages in Mayurbhanj District have stopped the department from implementing an ecotourism project designed to fence off the forest they have been protecting for 25 years and over which they have claimed CFR rights. The mobilization and awareness generated by protests against this ecotourism project is motivating surrounding villages to also claim and assert their CFR rights. Even before they have filed their claims, several villages in Kandhamal District have successfully prevented the Orissa Forest Department and a paper company from harvesting bamboo in their customary forests, which they assert they now own.

Karnataka and Uttar Pradesh

The Soliga tribal community in Karnataka has received community titles over three of the five forest ranges within the core area of the BRT Tiger Reserve, covering a number of forest and cultural rights. The community has also restarted NTFP collection earlier banned by the Karnataka Forest Department (although they still have to deal with the department's resistance). In Uttar Pradesh, land titles have been awarded to the tribal residents of a forest village (which the Uttar Pradesh Forest Department had been trying to evict) in the core area of another tiger reserve and the process of converting it into a revenue village has started.

Maharashtra

Gadchiroli District in Maharashtra represents a microcosm of the potential and pitfalls entailed in the struggle for the recognition of CFR rights. With a network of struggle-based and civil-society organizations active in the district, Mendha and Marda villages were among the first in the country to receive CFR titles. Now, an estimated 400 villages in the district have received CFR titles for a forest area of over 350,000 hectares. Receiving the paper titles, however, meant little at the time because the Maharashtra Forest Department insisted that under the Indian Forest Act, 1927, bamboo was classified as timber (over which villagers have no ownership rights under the FRA). The Maharashtra Forest Department refused permission to Mendha's *gram sabha* to harvest and transport bamboo from its CFR outside the village. The federal Minister of Environment, the state's Chief Minister and Forest Minister, and other high-ups needed to go personally to the village to force the Maharashtra Forest Department to hand a transit passbook over to the *gram sabha*, after firmly conveying to the department that the FRA over-ruled the Indian Forest Act. Once authorized,

the village earned, in 2011, about Rs.10 million from the harvesting and sale of bamboo, with a large percentage of the money going to villagers as wages.

With the high availability of bamboo in 76 percent of the district's area under forest, the Maharashtra Forest Department earns considerable revenue from leasing the bamboo forests to a paper company. Although many villages have been issued with CFR titles for the leased areas, and despite their demands, the department has been reluctant to revoke the paper company's lease or to permit rights-holding villages to issue their own transit permits. Some villages have resorted to physically stopping the company from harvesting bamboo in their CFRs, leading to situations of conflict. With persistent struggle and lobbying, more villages are being authorized to issue transit permits to transport their bamboo harvests to the market.

More than 70 villages organized by the grassroots organization *Bharat Jan Andolan* in the Dhanora, Chamorshi, and Armori talukas of Gadchiroli District are moving to establish control over their forest resources. Four of these villages expect to earn Rs.75.5 million from their bamboo harvest this year, of which 40 percent will be paid as wages to the local harvesters. The villages plan to spend the remaining 60 percent on new schools, health care, and legal education to strengthen community control. Of the remaining 66 villages, all but one also expect to begin their bamboo harvests this year and are planning to use the income in similar ways.

Community harvests of bamboo in Gadchiroli District provide a glimpse of the potential extent to which the FRA can restore livelihoods and income flows to communities. *Gram sabhas* in Gadchiroli District are also struggling to get the illegal conditions inserted into many CFR titles—such as not preventing the Maharashtra Forest Department from implementing its working plan in their community forests—revoked by the department.

West Bengal and Tamil Nadu

In many states, although few community rights have been recognized to date, organized and aware communities have started asserting their authority over customary forests granted by the FRA by preventing forest departments from undertaking tree-felling or other activities in them. In the north of West Bengal, several villages have put up boards outside their customary forests announcing that no one may undertake activities in them without permission from the *gram sabha*; they have not permitted the West Bengal Forest Department to undertake felling in their customary forests. In about 30 villages, the local movement has initiated community institution-building by encouraging the *gram sabhas* to elect forest governance committees, which are evolving rules for regulating forest use. The *gram sabhas* have sent notices to the relevant authorities informing them of the constitution of their forest governance committees under the FRA rules for asserting their powers of protection and management. In one area, where there was a problem with the police over the assertion of local rights, the police backed off after being shown a copy of the FRA. In the Nilgiris in Tamil Nadu, 59 *gram sabhas* have put up boards outside their demarcated CFRs and banned the Tamil Nadu Forest Department and police from entering them without *gram sabha* permission. In most of these areas, in confrontations with departmental staff it is the foresters who have had to back off due to the FRA.

Jharkhand

Jharkhand is a forested state with a large tribal population that had compelled even the colonial government to recognize its extensive customary rights. It is the latest state in which tribal communities have decided to assert their rights under the FRA, irrespective of formal recognition. Eighteen *panchayats* mobilized by the *Jharkhand Jungle Bachao Andolan* in Ranchi District filed CFR claims, essentially to reclaim their recorded rights over large forest areas under the Chhota Nagpur Tenancy Act, 1908. These forests were vested in the Jharkhand Forest Department by executive fiat after independence without due legal process. The district head agreed to approve their claims but the Jharkhand Forest Department raised spurious objections, arguing that NTFP ownership rights

could not be recognized until the state government withdrew its monopoly control over two commercially valuable NTFPs. The department also argued that local communities were responsible for forest degradation and could not be trusted with forest protection. Angered by this, all 18 *panchayats* decided to assert their authority over their CFRs on the grounds that their rights stand recognized from the day the FRA came into force.

Assertion of rights by a pastoral community in Gujarat

The Maldhari pastoral community in the non-tribal Kutch area of Gujarat has rejected the Gujarat Forest Department's working plan, which aimed to exclude the pastoralists from their customary pasture land. The Maldharis have started mapping their seasonal-use areas to make a collective claim for community rights over 2,500 square kilometers of the Banni grasslands misclassified as forest. In response to massive protests by the Maldharis, the Gujarat government has finally had to extend FRA implementation to non-tribal areas of the state. Shaken by the Maldharis protest against its working plan, the Gujarat Forest Department wants to initiate a dialogue with them. Pastoral communities in other states are also beginning to claim their customary grazing rights.

Pre-agricultural and particularly vulnerable tribal communities are similarly beginning to claim their habitat rights over large territories. Forest villages and un-surveyed settlements in forest areas in Uttar Pradesh, Uttarakhand, and Orissa are demanding the conversion of their settlements into revenue villages.

Although uneven across the country, such grassroots assertion of rights under the FRA is spreading, with a discernible transformative impact on the balance of power between forest departments and forest communities. Unlike in the pre-FRA days, brutal evictions, beatings, arrests, and the burning of houses and villages by forestry staff have now become rare. In areas with strong grassroots movements, day-to-day rent-seeking and harassment by forest staff has declined. If a forest department continues with illegalities, villagers are now able to implead the nodal tribal department or the district administration to hold it accountable; many have submitted complaints about violations to state-level monitoring committees constituted under the FRA. With elected as well as multi-departmental representatives in the higher-level committees responsible for recognizing rights, these committees can be mobilized by communities to exert pressure on forest departments to conform with the new law. Despite the shortcomings in implementation to date, the very existence of a law recognizing forest rights has diminished the forest bureaucracy's exclusive dominance and control over forest lands, and there has been a perceptible shift in the balance of power between communities and the forest bureaucracy. The FRA has created space for democratic control over forests, which communities have started using in creative ways to assert their rights.

Risks of pushback

The forest bureaucracy and the federal Ministry of Environment and Forests remain the biggest pushback risks to forest tenure reform in India. They have made no effort to initiate complementary institutional reform by amending or withdrawing existing forestry laws and regulations contradicting the FRA. On the contrary, the forest bureaucracy has been attempting to argue the opposite—as it did by asserting that NTFP ownership rights over bamboo could not be recognized because the Indian Forest Act, 1927, treated it as timber. The ongoing policies and programs of the Ministry of Environment and Forests still fail to acknowledge the existence of statutory CFR rights and the fact that they supersede forest department-controlled JFM. The forest bureaucracy is making every effort to subsume CFR management within its JFM framework. Forest departments in Orissa, West Bengal, and Maharashtra have already issued new JFM guidelines with this intent. The massive funding for forestry projects from international donors and the federal government continues to be routed through JFM committees. This is enabling forest departments to confuse and divide communities that are claiming forest rights and to push JFM, even in areas being claimed as CFRs.

Despite complaints and protests against such violations of the FRA, the Japanese International Cooperation Agency continues to lend huge amounts of money for such forestry projects in several states. Protests against plantations being established under such projects on cultivated lands and forests claimed under the FRA in Orissa and Gujarat are leading to conflicts—as organized communities fight to protect their hard-won statutory rights.

In the same vein, the National Tiger Conservation Authority and the National Board of Wildlife continue to pursue policies and implement management plans for tiger reserves and other protected areas as if the FRA did not exist. Major conflicts are emerging in tiger reserves due to the illegal relocation of villagers without recognizing their rights, establishing that co-existence is not viable, or seeking their free and informed consent, as now required by law. The Ministry of Environment and Forests continues to violate its own July 2009 order requiring *gram sabha* certification of completed rights recognition and informed consent for any diversion of forest land. Between 2008 and August 2011—after the FRA had come into force—182,000 hectares of forest land were diverted for development projects without any recognition of forest rights. Some conservation organizations and retired forest officers have challenged the FRA in the courts on environmental grounds, and unfavorable judicial orders on their pending petitions remain a potential pushback risk. Three state high courts had initially stayed the granting of titles under the FRA: these were subsequently withdrawn in Orissa and Andhra Pradesh but remain in force in Tamil Nadu, and for this reason no titles have yet been issued in that state.

The stalling of the large Vedanta and POSCO projects due to the assertion of forest rights has made state agencies and corporations apprehensive about the FRA’s implications for development. This has already increased the resistance of the Orissa government to the recognition of community forest rights—an unanticipated pushback effect of the successful assertion of rights. With increasing demand for the diversion of forest land for mining, dams, and other development projects, and forest rights movements demanding that such diversions conform to the order of the Ministry of Environment and Forests requiring recognition of rights and informed community consent, corporate pressure on the government to dilute FRA provisions is another pushback risk.

Finally, there is the possibility that the Ministry of Environment and Forests will sign international agreements related to climate change without a democratic or consultative process, with negative impacts on people’s forest rights. The Ministry has already formulated an ambitious “Green India Mission” for mitigating climate change by increasing forest/tree cover by more than 10 million hectares in the next 10 years, at an astounding cost of Rs.460 million. Primarily aimed at attracting international funds for REDD+, this plan attempts to subvert the FRA by subsuming it within JFM. Although organized communities with recognized rights will be in a stronger position to challenge such impositions, scattered and remote communities remain highly vulnerable.

Summing up

The outcome of a prolonged struggle, the FRA represents a milestone in Indian legislative history, with radical provisions for major reforms in tenure and forest governance. Acknowledging historical injustices, it challenges the misclassification of ancestral lands as state forests and provides for their extensive restoration to rights-holding communities. Perhaps for the first time in Indian law, the FRA clearly recognizes the concept of common property resources by providing for a range of community forest rights and powers. By stating that empowered rights-holders vested with the “**authority** for sustainable use, conservation of biodiversity and maintenance of ecological balance” [emphasis added] will strengthen the conservation regime while ensuring livelihood and food security, the FRA questions the colonial principle of eminent domain and the very rationale of current state-controlled, centralized, and uni-functional forest management.

Evidence about implementation to date suggests that the state—at both the federal and state levels—is attempting the narrowest possible interpretation of the law’s provisions, with the Ministry of Tribal Affairs doing little to prevent blatant violations and attempted subversion by most state governments. Forest departments, in particular, are being permitted to subvert the law. But this is not going unchallenged.

Grassroots movements continue to mobilize communities and lobby political parties and parliamentary bodies, demanding the proper implementation of the FRA as per its spirit. The very enactment of the law has become a weapon in their hands to challenge illegalities and the authority of forest departments in many creative ways. The assertion of rights by organized communities, even where these are yet to be recognized formally, is changing the balance of power between communities and the forest bureaucracy. Over one million households are already enjoying tenurial security over their cultivated lands obtained under the FRA, while community control over forests is beginning to expand to areas beyond the pockets in which it was achieved initially. With villagers increasingly retaining the income flows from resource control, they have also begun to strengthen their institutions for equitable and sustainable forest management and to invest in strengthening community control and benefits.

Major challenges remain, however. These emanate both from the limitations of the FRA as a pro-people law and the political context in which it is being implemented. Despite the unanimous passage of the FRA through the Indian Parliament, the Indian government has been unable to muster the unequivocal political will needed for its full implementation—as that would undermine its ability to support extractive industries and similar interests by manipulating the hegemonic control of the forest bureaucracy over the country’s forests. Complementary institutional reform, such as the order of the Ministry of Environment and Forests making the diversion of forest land subject to the recognition of rights and the consent of rights-holding communities, needs to be extended to other areas and implemented. An inherently dichotomous legal regime, in which the existence of contradictory forestry, wildlife, and other laws impede the implementation of laws like the FRA, needs systematic reform to ensure the unambiguous recognition of rights and the transfer of democratic control over forests to communities.

The most significant change that the struggle for the FRA has brought about in recent years has been the removal of the blind spot whereby authoritarian forest policies are considered to be “natural”. The fundamental questions of who owns the country’s forests, and by whom and for what objectives they should be governed and managed within the country’s democratic and constitutional framework, are now at centre stage. Neither political parties nor policymakers can afford to dismiss forest-dwellers as encroachers or to take for granted the centralized diversion of forest land for other uses, as they once did. This change in the terrain of the debate is spreading and gaining depth, as forest communities and struggle organizations take up new and creative ways of defining democratic control over forests.

Where does India fit within the broader South Asian context?

Being the oldest and most deeply entrenched forestry establishment in the South Asian region, Indian forestry has been the most resistant to change. It viewed the handing over of community forests to forest user groups in Nepal in the 1990s as a sign of weakness in the Nepalese forest bureaucracy. Instead, it not only used JFM to extend its control inside villages in India without any tenure reform, it also exported the JFM approach to other countries, including to the Terai region of Nepal. With the Indian forest bureaucracy continuing to view the FRA as a serious threat to its territorial hegemony, it is unlikely to be an advocate of similar tenure reform in neighboring countries. Change in India, however, is likely to spread in the region through civil-society and community networks, which have shown an appreciation of the FRA and the way in which long-deprived forest communities have started enjoying more authority over their ancestral lands.

¹ India's "recorded forest area", over which forest departments exercise management control, is now 76.9 million hectares, which is 23.4 percent of the country's geographic area. This is despite the fact that 17.3 percent of the recorded forest area has not been legally notified as forest and has diverse owners and tenures, the largest percentage consisting of customary shifting cultivation land in the northeastern states protected under Schedule VI of the Indian Constitution.

² The Indian Constitution provides special protection for the culture, governance systems, resource rights, and livelihoods of tribal communities by "scheduling" tribes and tribal areas. Tribal majority areas demarcated under Schedule V of the Constitution are meant to have a different system of administration, under which laws considered detrimental to tribal interests can be withheld from them. Areas under Schedule VI of the Constitution in the northeastern states protect traditional governance institutions and customary tenures. All government interventions in scheduled areas need to be in harmony with constitutional provisions and other policy directives for safeguarding tribal wellbeing.

³ Circular No. 13-1/90-FP of Government of India, Ministry of Environment and Forests, Department of Environment, Forests and Wildlife, dated September 18, 1990, addressed to the secretaries of forest departments of all states/ Union territories. The six circulars under this were: FP (1) Review of encroachments on forest land; FP (2) Review of disputed claims over forest land arising out of forest settlement; FP (3) Disputes regarding *pattas*/ leases/ grants involving forest land; FP (4) Elimination of intermediaries and payment of fair wages to laborers on forestry works; FP (5) Conversion of forest villages into revenue villages and settlement of other old habitations; and FP (6) Payment of compensation for loss of life and property due to predation/depredation by wild animals.

⁴ T. N. Godavarman Thirumulpad vs Union of India W.P. (C) No. 202 of 1995; and Centre for Environment Law, WWF vs Union of India, W.P. (C) No. 337 of 1995.

⁵ Although the number of people evicted is unavailable, assuming the cultivation of one hectare by each household, an estimated 150,000 households, or 750,000 forest-dwellers, were evicted.

⁶ See CSD's website: www.forestrightsact.com.