

The Indian Forest Rights Act 2006: Commoning Enclosures?¹

O Springate-Baginski², M Sarin, S Ghosh³, P Dasgupta⁴, I Bose⁵, A Banerjee, K Sarap⁶, P Misra⁷, S Behera⁸, MG Reddy⁹, and PT Rao

Abstract:

This paper considers the process of 'commoning enclosures', how tenure of enclosed forest land is reformed, taking the example of the Indian Forest Rights Act 2006. The issue of forest rights in India, affecting forested landscapes that cover about 23% of the country and the livelihoods of at least 200 million, have been highly conflictual for at least a century and a half, and intensifying in recent years. The process of formal state enclosure of forests, from the late 19th Century on, criminalised the normal livelihood activities of millions of local forest-dependent people. In recent years the Forest Departments sought to complete this process through the eviction of what had become, in the eyes of the law, 'encroachers'. This finally united and mobilised movements working with forest users across the country to action.

Despite severe opposition the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (or simply 'Forest Rights Act') was passed in December 2006 and came into force in January 1st 2008 with notification of the rules. It provides for restitution of deprived forest rights across India, including both individual rights to cultivated land in forested landscapes and collective rights to control manage and use forests as common property. The livelihoods of perhaps 100 million of the poorest of the poor stand to improve if implementation can succeed.

Based on currently ongoing primary research in three eastern states (West Bengal, Orissa and Andhra Pradesh), this paper assesses this reform process and how implementation is really happening on the ground. We are establishing baseline information about pre-existing legal rights or the lack of them, and the processes through which these may be changing.

We have found that so far there has been only spasmodic state action, often inconsistent with both the spirit and letter of the Act, and thus rights are yet to be secured on the ground. Only where committed NGOs and movements are active is awareness of the issues and process becoming clarified and the process gathering momentum.

Key Words: *India forest land rights legal reform*

¹ This paper is based on ongoing research in India under the 'Institutions for Pro-Poor Growth' Research Programme Consortium, managed by Manchester University and funded by the Department for International Development, United Kingdom Government. This specific research project has been managed by Overseas Development Group, University of East Anglia.

² Overseas Development Group, University of East Anglia

³ National Forum of Forest People and Forest Workers (NFFPFW)

⁴ Institute of Economic Growth, Delhi

⁵ St. Xavier's College, Kolkata

⁶ Economics Dept. Sambalpur University

⁷ Vasundhara (NGO) Bhubaneswar

⁸ Vasundhara (NGO) Bhubaneswar

⁹ Centre for Economic and Social Studies, Hyderabad

1. Introduction

1.1 Study issues

Forest-adjacent rural populations are amongst the poorest of the poor in India in terms of most socio-economic indicators. Located mainly in a tribal belt across central and eastern areas of the country, their poverty reflects a history of disenfranchisement; having their customary forest land expropriated, and use rights negated by feudal states, by the colonial state and subsequently by the independent Indian government. This reflects of a global process of states' depriving local people of forest rights which can be traced back for over a millennium.

The passing of the Forest Rights Act 2006 undoubtedly represents a seminal moment in India's highly contested forest politics. For the first time an Act has recognised the 'historical injustice' perpetrated by the state:

... the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers (FRA 2006)

The Act makes provision for the restitution of rights to forest dependent households. However, the FRA is only an enabling legislation, the 'prize' itself, the actual allocation of rights at the local level, depends on implementation. And as with several other recent legislative reforms yet awaiting proper implementation the FRA is likely to face a serious challenge. Recognising rights involves shifting resource control away from state Forest Departments, who stand to lose territory and potential revenue streams, both licit and illicit, and who have already exhibited a high degree of autonomy from democratic oversight.

Does the FRA represent a pro-poor institutional reform? This paper seeks to clarify the theoretical and conceptual issues surrounding the emergence and implementation of the Forest Rights Act, and is based on ongoing research which is addressing the following questions as illustrated in figure 1 below:

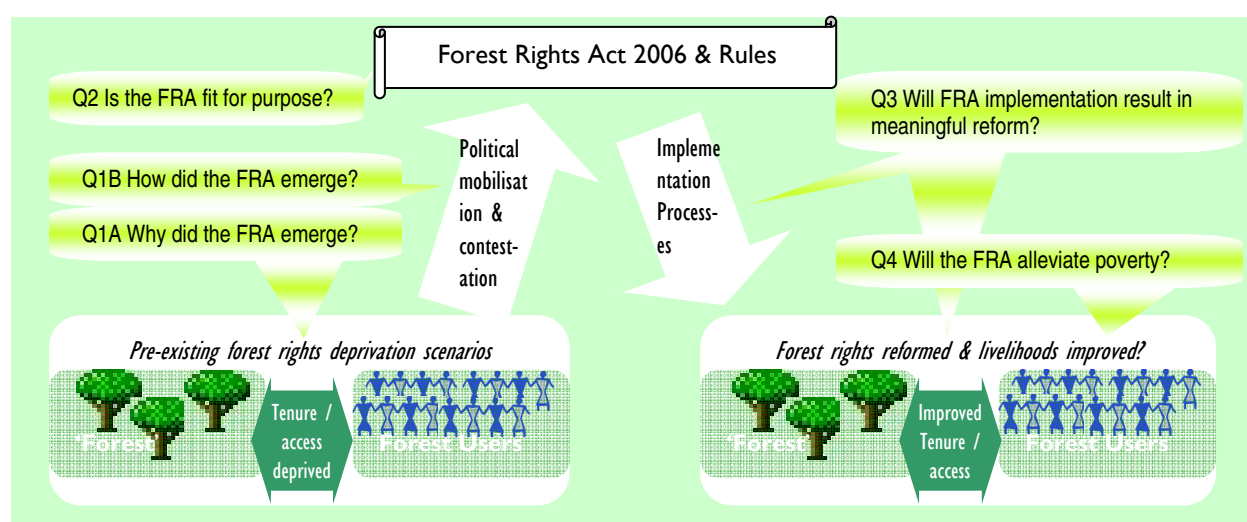


Figure 1: Forest Rights Act process and study questions

1. How and why did the FRA emerge, despite powerful opposition?
2. Is the FRA fit for purpose? Does it really cover the majority of rights-deprived forest dependent poor?

3. Will the implementation of this Act result in meaningful pro-poor institutional reform at the local level? If so, under what conditions?
4. Will the FRA lead to poverty alleviation and pro-poor growth, and if so how? If the forest-dependent poor gain more secure tenure and access entitlements will it help their sustained poverty alleviation and income growth?

The paper briefly summarises current understanding of questions 1 and 2, and then looks in more detail at implementation processes (question 3), presenting initial findings from field research in three eastern Indian study states and villages within them. It is felt to be too early to address the potential livelihood impacts in detail at this stage and so, in the space available, only passing attention is paid to question 4.

1.2 Theoretical context

Orthodox economic development models (Marxist and modernist alike) tend to characterise enclosure (by nationalisation or privatisation) of subsistence common property resources such as forests as an inevitable part of the normal and historically inevitable development process. The process extends the governability of the territory by the state institutions, 'valorises' resources for the capitalist / proprietary class and facilitates the reorganisation of production systems towards higher productivity. Marx labelled the process 'primitive capitalist accumulation' and Lenin and his followers sought to mirror this in 'Primitive Socialist Accumulation.'

Because the enclosure involves appropriation of property through processes transgressing normal contract law and conceptions of 'natural justice' it typically necessitates dubious legal convolutions, pro-elite institutional reform and or the exercise of coercion. Appeals against the injustice and brutality of the highland clearances and enclosures in Britain committed by elites in pursuit of grazing land for wool production have been dismissed by those benefiting and their apologists as anti-progress, atavistic 'Cobbettism'.

That this one-way traffic towards consolidated control of the means of production into the hands of capitalists / proprietary classes must now happen under democratic constitutional conditions is a major paradox for economic development theory. (Bardhan 1984)

Yet the passage of the Forest Rights Act 2006, along with much other recent restitution of land rights to indigenous groups internationally, seems to challenge these assumptions and illustrate that marginalised groups can use the democratic political apparatus to defend the material basis for their 'moral economy' against enclosure and capitalist (and state) accumulation, even reverse it.

It is unusual for democratic processes, especially in India, to have such a direct and reversing effect on the kind of enclosure which goes on in the presumed 'normal' development of capitalism. Indeed it has emerged at the same time as the state's contortions to feather the beds of corporations both Indian and foreign have been becoming more extreme, involving coercive land acquisition relaxation of environmental impact assessment requirements and ignoring of labour relations abuses. (Alternative Economic Survey 2007).

This neo-liberal policy model has been widening inequalities and acting against the interests of rural groups. Whilst India has been experiencing a dramatic urban oriented economic boom in the past decade, it has at the same time been experiencing an 'agrarian crisis' with stagnating farming production and rural incomes. The inadequate ability of the rapidly growing industrial and service sectors

to absorb the rapid population growth is reflected in massive levels of rural un- and under-employment. Malnutrition has also persisted at a very high level despite gradually rising mean incomes, during which the state has been dismantling the public distribution system and manipulating price support against the interests of the poorest. Continuing land and resource degradation as well as resource transfers to capitalist enterprises have had negative impacts on rural livelihoods. In the poorest areas, often upland tribal regions poverty levels have hardly benefited from the boom, yet have been subject to further predations of both the state (forest evictions) and corporations (seeking mining and other concessions including plantations on tribal land).

The key question then is whether the FRA actually signifies a real 'pro-poor' reform in practice or simply a tokenistic political concession to appease 'vote banks' but likely to be diverted by a highly autonomous bureaucracy. Poor and marginal groups are undoubtedly increasingly mobilised and influential, as reflected the ir engagement in the electoral process, for instance alliances in the recent election in Uttar Pradesh. However whether this means they are becoming better able to defend and extend their interests within India's political economy and perhaps even negotiate pro-poor distribution of the benefits of the national economic growth is a more tenuous issue. A more pessimistic view would be that the Act will ultimately represent only a symbolic concession which may ultimately amount to little of significance through evasion or mal-implementation, serving to temporarily mitigate discontent and raise expectations but not challenging elite control of valuable resources and powers to evict.

Whether marginal groups are really more 'empowered' or not achieving the promise of the FRA will depend on continuous active pressure to contest and secure implementation at the ground level. An institutional change of this order undoubtedly requires detailed implementation processes under public oversight, and the new provisions don't automatically 'fit' with other local and state-level institutions and distributions of power. The implementation process itself is therefore a key issue through which to determine whether the 'prize' of improved rights are ultimately secured, and so clarify this dichotomy. (building on the work of Corbridge et al 2005 amongst others).

1.3 Methods

In order to address the research questions a combination of methods are being used at different scales:

1. To address questions 1A and 1B (*'how and why did the Act emerge?'*) we are using a policy process analysis approach (e.g. Sabatier 2003), interviewing key actors in the process, reviewing secondary materials and using historical institutional analysis.
2. To address question 2 (*'is the FRA fit for purpose?'*) we are using textual analysis, again in combination with secondary materials.
3. To address question three (*'will implementation lead to meaningful institutional reform?'*) which is the main focus of our study, we are assessing the implementation processes in three states, looking at state-, district- and local-level processes in a range of different forest rights deprivation scenarios. This involves assessing existing institutional arrangements, both formal and informal, using interviews with government officials, politicians and civil society activists. This is hoped to provide insight into how institutional change occurs, is frustrated or compromised, and how it differs across locations.

4. Finally, to address question four (*'will the FRA lead to poverty alleviation?'*) we are making a household and intra-household livelihood assessment. We have chosen to focus on three states, West Bengal, Orissa and Andhra Pradesh, as they exemplify the range of key issues of the study

2 Why Did The FRA Emerge?

Here we consider the context from which demand for this reform originated.

2.1 Historical origins of forest rights deprivation

Rural livelihoods in India's rain-fed areas (i.e. those areas lacking irrigation, particularly uplands) have rarely been solely agricultural based, due to lower productivity and weather-based insecurity. Livelihood systems have therefore required complementing agriculture with forest and other common land for products and services, including grazing, nutrient exchange, fuelwood, medicinal and other non-timber forest products, safety nets in times of poor rains and so on. Whilst acknowledging that estimating the full extent of current forest dependence is very difficult, partly because the forest-livelihood linkage itself has become seen as undesirable to political elites and therefore restricted or criminalised (Angelsen and Wunder 2003), estimates are around one quarter of India's population:

'Of about 300 million people (or 60 million households) estimated to live below the 'poverty line' in India, about 200 million of the people are partially or wholly dependent on forest resources for their livelihoods (Khare *et al.* 2000).

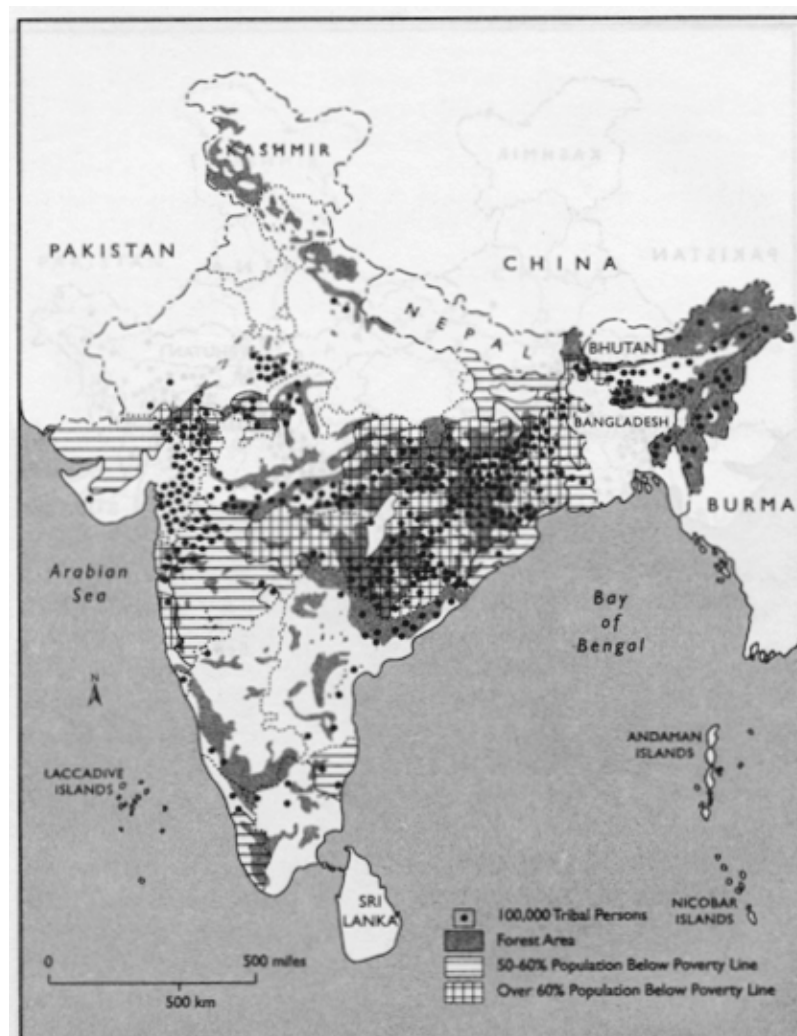
Roughly 275 million poor rural people in India – 27 percent of the total population depend on forest for at least part of their subsistence and cash livelihoods, ... (World Bank 2006)

These forest dependent groups in India contain both 'tribal' and non-tribal forest users. Of 'tribal' groups the 'Scheduled Tribes' (i.e. those recognized and 'scheduled' under the Constitution of India) include over 84 million people comprising 8.3% of the nation's total population (2001 census). An estimated 84% of these tribal ethnic minorities live in forested areas (World Bank 2006). Map 1 below illustrates the coincidence between forest landscapes, poverty and tribal populations in India.

The Indian state's increased interest in forests has inevitably led to conflict as it has sought to impose simplistic territorially-exclusive land use administration, in which adaptive livelihood use of forest and grazing land didn't fit, and also as it has sought to enclose for itself lands under livelihood use. Rural populations have had their customary forest land use negated (Singh 1986, Sivaramakrishnan 1999, Ghosh 2007), and forest-adjacent and forest dwelling populations have become amongst the poorest of the poor in India in terms of most socio-economic indicators. The history of this marginalisation process has been thoroughly rehearsed in the literature (Guha 1984, Hobley, Springate-Baginski & Blaikie 2007), and so here we will simply summarise the key aspects:

There has been a well established state tradition in India of state forest, but also a recognition and respect for village forest management enshrined in customary practice for well over two thousand years (e.g. Kautilya writing around 150 AD). Under the Moghals timber trading expanded, and as the early British colonial regime spread forests were opportunistically plundered by commercial enterprises with state support. However it was only after the 1857 uprising that the principle of village forest rights began to erode. Colonial strategic concerns led to railway-building and

need for sustainable supply of timber for sleepers, leading to the formation of a Forest Department to establish a forest estate and manage its 'orderly exploitation'. Local people's customary forest use became an obstruction to this enterprise, and after intense debate amongst colonial administrators, the policy of separating local forest users from valued forests began to be enforced. The 1878 (and later 1927) Indian Forest Acts and the Madras Forest Act 1882 provided the legal basis for 'settlement' (i.e. commuting or extinguishing) and formal notification of rights. In settlement processes that could take a team as long as 10 years to cover districts even these due processes were often circumvented.



Map 1: Coincidence of Forests, Poverty and Tribal Populations

Source: Poffenberger & McGean 1997

The history of forest reservation indicates intense conflict and repeated agitations and risings. (Arnold and Guha 1997, Grove et al 1998, Sivaramakrishnan 1999, Pathak 2002). These were generally ruthlessly suppressed (e.g. Gudum / Rampa risings) although in several cases the FD did backtrack to strategically minimise unrest, and community institutions were in some cases allowed to persist (e.g. the Mundari Khuntkattis of Jharkhand, the nistari jungles of Bastar; the Van Panchayats in Uttarakhand and the Cooperative Forest Societies of Himachal Pradesh). At independence rather than recognising the colonial injustice and overhauling the structures there was instead a stronger re-affirmation of colonial imperatives. Post

Independence state forestry policies and land annexation processes continued little changed, reflecting a high degree of continuity in the priorities of the new political and commercial power elites (Bardhan 1984), and of the 'high modernist' state (Scott 1997). Although the creation and management of the colonial forest estate had been due mainly to strategic imperatives, these evolved after independence into 'modernisation' and industrialisation. Singh argues that a major objective became the facilitation of private industries' access to forest land and products:

The basic reason for rural and tribal poverty, therefore, is nothing but the privatisation of common property resources in a non-equitable manner ... [t]he state monopolises resources so that it can make these available to specific private industries.' Singh 1986

Indeed for tribals the situation in many cases worsened as processes for settlement of rights according to the 1927 Indian Forest Act were generally forgotten. The West Bengal government for instance took over feudal private forests (in which local people enjoyed rights) and extinguished those rights without following the due legal process. In Madhya Pradesh and Orissa, large areas of the lands of *zamindars* and princely states were declared 'deemed forests' for which the required legal process of settlement of rights has still often not taken place. Even community forests legally recognised by the colonial administration in Bastar were declared state protected forests without any legal process.

Thus through lengthy and complex processes lands a 'legal' forest estate became constructed, and currently 23.57% of the country's area (about 76.96mha) consists of 'recorded forest area' (Forest Survey of India 2003). It is however a myth that all of this 23% of India's land is either legally notified as forest or is under forest departments' control. Of the 'recorded forest area', 51.6% is reserve forest (much of it *not* finally notified after settlement of rights); 30.8% is protected forest, and the remaining 17.6% consists of 'unclassified forest' which is not legally notified but is simply recorded in government records using the word forest (including about 10mha of community shifting cultivation lands in the north-east). The 'recorded forest area' is therefore not the same nor coincident with 'forest cover'. Large areas of the 'forest estate' are not forested due both to forest degradation and to categorisation of grazing meadows and land above tree line. The Forest Survey of India estimate 67.71mha of 'forest cover' of which about 48mha is 'good forest' (FSI 2005).

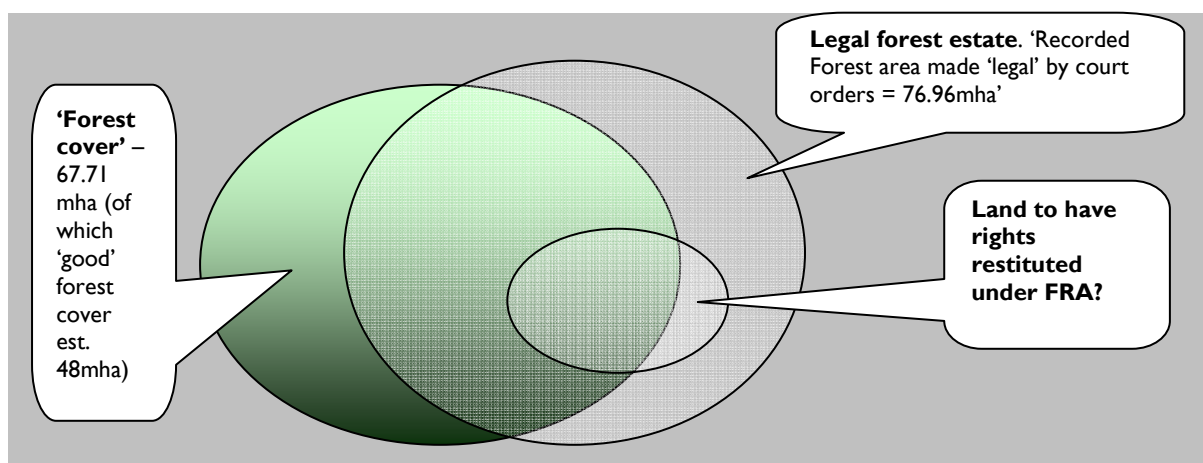


Figure 2: India's divergent 'forest cover' and 'recorded forest area'

2.2 Taxonomy of Rights Deprivations

Thus the rights of forest dwellers and forest adjacent populations, tribal and non-tribal, to control, manage and use hereditary forest lands have not been systematically recognised or allocated, but rather have been negated, and in this way they have often become 'encroachers' on their own customary land in the eyes of the law. (Ghosh et al. 2007, Kumar et al. 2008 *forthcoming*). The range of main forest rights deprivation scenarios on the ground depend on the prior situations of these groups and the historical processes through which the state has extended its estate. The major ones are summarised in the following table:

Table 1: Forest Rights Deprivation Scenarios

Scenario	Rights deprivation process
Rights deprived during settlement / forest reservation process disputes / Unsurveyed villages	This covers a vast number of cases where the forest settlement process has either not been properly conducted according to the due process, not been completed or people were not notified, or where all areas were not checked. A particular issue here is the declaration of vast tracts of land as 'deemed' forests, without any ecological or social surveys, and where the process of settlement of rights was circumvented. Some villages have not been surveyed at all, and so rights have not been recognised.
Estate acquisition	In South West Bengal, immediately after independence the state acquired private forest estates, but in doing so, in violation of the law, it failed to recognise the continuity of normal livelihood forest use rights that users had enjoyed from the previous owners, criminalising them.
Shifting cultivation	Shifting or 'long fallows forest' cultivation can be a sustainable livelihood system adapted to the agro-ecological conditions when fallows tenure is secure, as occurs in the North East. However in peninsular India, shifting cultivation lands were declared state forests without recognising the rights of the cultivators, criminalising the practice and applying punitive treatment to offenders. Much forest cultivation has become sedentary with insecure tenure due to the fallows being declared state forests.
'Encroachment'	This has become an over-riding category including those whose lands were declared state forests without recognising their rights; those displaced from their ancestral lands for 'development' projects without rehabilitation who were compelled to clear and occupy new forest land and those who have occupied lands declared state forests either due to land scarcity / poverty or as a consequence of their traditions of moving to new locations due to disease or declining land productivity
Forest villages	Labour settlements established by Forest Departments mainly of tribal peoples in forest areas to provide labour for forestry operations but lacking secure legal rights or social provisions
Primitive Tribal Groups	Tribes who have been classified as 'primitive' (i.e. original, first, early, ancient) by the state according to anachronistic criteria. This includes 'hunter-gatherers', shifting cultivators and other non sedentary groups. These groups have endured particular deprivation because their livelihoods are inconsistent with the administrative land use categories, as they often avoid contact with outsiders, including administrators, and as they tend to be non-literate can more easily fall foul of legal processes they are less likely to be aware of or contest.
Tribals without Scheduled Tribe status	A large number of tribes were either left out of scheduling altogether or were scheduled in one place but who have moved elsewhere for different reasons and lost the status. Both are deprived of the benefits of positive discrimination (including under the FRA.)

Sacred groves	There has been a widespread traditional practice of conserving local forests as sacred areas. Forest Departments have no special provisions for treating sacred groves differently from other areas of forests, and these have often been incorporated in the state forest estate and felled as part of normal felling. (Deb 2007)
National parks / sanctuaries	Establishment of national parks and sanctuaries has often led to extinguishment of peoples use rights in protected areas without due legal process. Those who have inadvertently become residents of parks can also suffer from all sorts of service provision and access deprivations. As per information submitted to the Supreme Court, 60% of India's national parks and 62% of wildlife sanctuaries have not completed their process of rights settlement, subjecting hundreds of thousands of people to an extremely restrictive regime without acknowledging their rights.
Revenue forest boundary disputes,	The revenue and forest departments maintain separate land records for the areas under their respective jurisdictions. But there are many anomalies between these records.. Both Revenue and Forest Departments often have the same land in their respective records. The "forest area" in the country, in the records of the Revenue Department, is 7.66 million hectares less than that recorded as such by state Forest Departments. These 7.66 million hectares (an area twice the size of Kerala) are disputed between the two departments. The government has no idea whether these areas actually have any forests or not. Revenue departments have distributed leases / 'pattas' for these which the forest department terms illegal, under the Forest Conservation Act 1980.
Joint Forest Management	There are now more than 100,000 Joint Forest Management committees, formed based on ad hoc administrative provisions. However in some cases common forests and cultivated lands with unclear tenure have been brought under JFM by the Forest Department leading to evictions of cultivators, and provoking conflict between villagers
Self-initiated forest protection (CFM)	Local CFM groups have sought to protect forests on which they depend, yet this has often led to conflict with forest departments due to the protecting communities lacking legal rights over their forests
Earlier evictions	Many households have been evicted as 'encroachers' because they have lacked tenure for their customary land.
Displacement / 'diversion' of forest lands	Millions of forest dwelling, predominantly tribal households have been displaced from forest lands, without proper compensation or rehabilitation because of their lacking recognised tenure rights. Sarin 2005

2.3 Failure to redress forest rights deprivations

The inequitable heritage of mainly pre-democratic state territorialisation of forested landscapes into estates under forest departments 'command and control' regimes, managed for timber production, has been remarkably resistant to democratic reform. The colonial and Independent Indian state have provided a range of legislation for the settlement of forest rights and protection of local rights to forest use, including:

- Indian Forest Act 1927 (and previous 1878 Act) particularly Section 28 providing for 'village forests'.
- The Indian Constitution (1949), specifically Schedule V and VI providing special Constitutional protection to the resource rights of tribal communities,
- MoEF guidelines of September 18, 1990 for resolving conflicts with tribals and other forest dwellers related to forest land as well as the 1988 national forest policy,
- The Panchayats (Extension to The Scheduled Areas) Act, 1996 – which provided for self-governance in accordance with their customs and traditions in Schedule V

areas including management control over community resources and ownership of NTFPs by Gram Sabhas.

However, these provisions have hardly been respected by the political or administrative elites, or proved effective in practice. The highly complex, centralised and bureaucratised forest departments have instead displayed a remarkable stability and autonomy, which may partly be explained in part by their 'state-within a state' structure, comprising a revenue generating land estate, staff with quasi-judicial and para-military powers, and their own knowledge creation and training arm generating a legitimating epistemology. The FDs were widely seen as the 'least popular arm of the colonial government.'

The growing crisis of forest loss and consequent rural poverty precipitated by the 'command and control' bureaucratic model did lead to some concessions although not overhaul. Joint Forest Management policies emerged at the end of the 1980s as a means to induce local people to help in the forest departments' regeneration efforts, through legitimating their NTFP collection and offering them a share of the 'major produce' on final felling in return for help in protection. Wage labour opportunities were sometimes also provided (from donor funds). However rights were not provided and forest departments have often used the programmes as instruments to extend their authority structures to the village, generate funds from donors to expand their staffing and even take more lands from local people through enforcing no cultivation on JFM plots. Over 100,000 JFM groups have been formed across the country, although these include at least 25% pre-existing community forest management and protection institutions, and the number that is actually active is unclear and it is apparent that there is a growing village-level disillusionment at the *ad hoc* basis and lack of commitment from the FD side.

2.4 Intensifying Oppression: The 'Forest Case' Process and State Evictions

At the same time as the 'participatory' drama has been playing out across the country, controversy over the unresolved issue of local people's forest *rights* reached a new level of crisis. From 1996 public interest litigation concerning lack of enforcement against commercial encroachment of a nationalised forest, brought by the previous owners (*TN Godavarman vs. Union of India*) resulted in unprecedented action by the Supreme Court. Based on a mis-interpretation of court orders on 3rd May 2002 the MoEF issued a directive to Forest Departments to evict all so-called 'encroachers' in a time-bound manner. The letter estimated the forest area under encroachment to be 1,250,000ha across eight states, and asked the states to remove all encroachments ineligible for regularisation by 30th September, 2002.

Many millions of forest dwellers and forest adjacent populations, who have not had their rights recognised, became seen under this order as illegal 'encroachers' to be evicted. Evictions were attempted in many states leading to public outrage and intense conflict

As a result of the 2002 eviction orders issued by the Ministry of Environment and Forests, more than 300,000 families across India were forcibly evicted. More than a hundred villages were burned in Madhya Pradesh, eight people killed in police firings and 40,000 families left homeless in Assam, and elephants used against villagers in Maharashtra and Assam. In many cases those evicted had been cultivating from prior to 1980 - and hence were legally entitled to their lands The justification for this brutality was the need to remove "encroachers" and protect forests.
CSD November 2007 – from depositions made at a public hearing

According to the Minister of Environment and Forests (in a reply to a Parliamentary question) between May 02 and Aug 04 an estimated 152,000 ha. of forest land was cleared of 'encroachments'. Estimating at 1 ha/household, this would involve 152,000 families or about 750,000 impoverished people brutally evicted.

Ultimately this eviction process became a political liability and had to be stopped, by command at the highest political level. In October 2002, the MoEF itself issued a clarification order that *not* all those in occupation of forest land were illegal encroachers who should not be evicted till their rights are recognised. The MoEF also later issued two orders in February 2004 (under political pressure prior to national elections), one for the states to convert all forest villages into revenue villages within 6 months, and a second to recognise forest rights of tribals within one year. However these were stayed by the Supreme Court

Clearly the acute livelihood insecurity of hundreds of millions of citizens in a democracy at the hands of a semi-autonomous administration, with the highest Court of the land looking the other way, had become politically intolerable and something had to be done.

3 How Did The FRA 2006 Emerge Despite Powerful Opposition?

Here we consider how the campaign for the Act became effectively mobilised, and the nature the negotiation process that led to the Act being passed in its final form.

3.1 Origins: the 1990 BD Sharma note

The drafting of the FRA actually emerged from the struggle for implementation of orders issued by the MoEF in 1990. Dr.B.D. Sharma, a highly respected civil servant then Commissioner for Scheduled Tribes and Scheduled Castes– a Constitutional Authority, gave recommendations in 1990 based on his 1989 review of the conditions prevailing in tribal areas and particularly the unrest due to lack of settlement of land and forest rights of tribals. A Committee of Secretaries and the Cabinet approved these recommendations, based on which the MoEF (three months after the JFM notification), issued guidelines for regularisation of forest land rights and for resolving conflicts related to forest land, aimed at four main issues:

1. To regularise the pre 1980 'encroachment' of forest land
2. To settle disputed claims over forest land arising out of faulty forest settlements
3. To recognise leases / '*pattas*' issued by revenue departments under due government authority on land recorded in it's records as revenue land which was also recorded as forest land in forest department records. Dr BD Sharma argued that there is no reason why people should be penalised due to faulty government land records when revenue departments had issued leases / '*pattas*' under due government authority.
4. To convert 'forest villages' into revenue villages.

These MoEF guidelines, which did not distinguish between tribal / non-tribal claimants, included compensatory afforestation requirements despite the SC/ST Commissioner's objections (which the FRA has now dispensed with). They also restricted eligibility to those able to prove pre-1980 occupation by producing offence reports issued by the FD (the latter against the SC/ST Commissioner's recommendation). However implementation of these orders was neglected. A couple of states issued directions for their implementation but in the absence of systematic follow up by MoEF, and in view of the inability of the potential beneficiaries to demand implementation, barring the guideline for pre-80

encroachments, the other guidelines were all but forgotten. Most attention from the 1990 onwards shifted to JFM while the more critical issue of securing rights escaped public attention.

3.2 Mobilisation of Marginalised Groups

After the attempted evictions in 2002 the ensuing uproar radicalised and mobilised popular movements and a new common cause was recognised between forest dependent groups across the country. This coalesced into the Campaign for Survival and Dignity, a loose federation of grassroots organisations and people's movements spread across 10 states. Representatives met periodically to review emerging issues and develop strategies of action, including organising demonstrations, marches, *jail bhara* campaigns, lobbying with local, state and central political leaders.

The CSD's initial demand was time bound implementation of the 1990 orders. Somewhere along the line, this became converted into a demand for a new law in view of the apprehension that the orders may remain unimplemented as in the past. The procedural guidelines developed by CSD for implementing the 1990 orders were converted into the first draft of the FRA with the major change that instead of MoEF, the Ministry of Tribal Affairs should be the nodal agency for tabling and implementing the law.

3.3 Political Contestation & Passage of the Act through Parliament

There were almost 3 years of heated debates and political lobbying between preparation of the first draft of the new law and its coming into force on January 1, 2008. Initially, lobbying for the Act was done through contacts in the National Advisory Council (NAC) chaired by the United Progressive Alliance (or UPA: the present ruling national coalition) Chairperson Sonia Gandhi. In the early days of the Congress coalition the NAC was pushing for reform, and at the NAC's recommendation, the matter reached the Prime Minister who asked the Ministry of Tribal Affairs (MoTA) in January 2005 to draft the law. MoTA set up a Technical Support Group which included 3 CSD representatives to assist it in drafting the law. The Technical Support Group prepared the first draft of the FRA in just over two weeks in February 2005 as the Government wanted to table the bill in Parliament in the coming budget session. Vehement opposition by the hard core wildlife conservation lobby, however, delayed tabling of a much diluted version of the draft in Parliament until December 2005. This was followed by a joint parliamentary committee (JPC) of 30 MPs examining the bill over six months during 2006 and recommending a major changes and improvements in the version tabled in Parliament. The present FRA is a considerably diluted version of the law recommended by the JPC.

Politicians often needed to be provided with information and analysis of a poorly understood issue concerning people on the margins before being motivated to pursue it. This ultimately led to the Communist Party (Marxist) and other left parties taking up the issue both within and outside Parliament, although this was not solely about UPA coalition politics, as prior to the UPA the BJP-led coalition (NDA) had also recognised the need to appease forest dwellers for their 'vote bank'. Ameliorating civil unrest in tribal areas also definitely seems to have been a consideration in enacting the law, as lack of recognition of forest rights is a major cause for the extensive Maoist movements across India's forested tribal regions.

Opposition to the Act had mainly come from the forestry administration and their 'fortress conservation' allies. Conservationists claim that wildlife conservation requires inviolate 'wilderness' areas as they feel that co-existence between humans and wildlife is not possible. They also fear that recognition of rights in forest and wildlife areas will lead to intrusion of development in interior areas, yet in some cases this seems to be contradictory, as many conservationists have evident interests in commercial wildlife tourism. There was a certain paradox in the selective opposition to the Act at a time when industrial, mining and infrastructural 'development' projects are almost effortlessly gaining permission to exploit some of the most ecological fragile and biodiversity rich areas., and certainly not experiencing the strong and highly emotional opposition reserved for the rights of the most marginalised.

The MoEF and state FDs may have hoped to prolong debate over the Bill until the UPA coalition backing it collapsed or ended its tenure.

At every stage the initial aspirations for the Act have been diluted to be politically acceptable and accommodating the MoEF, Forest Departments and the fortress protection wildlife lobby. There were many further provisions in the draft bill recommended by the joint parliamentary committee which were cut by the bureaucrats at the last minute, such as right to timber and minerals from community forest resources.

The Act was finally passed in December 2006, forming a third prong of legislation empowering to the poor and oppressed, in concert with the Right to Information and the National Rural Employment Guarantee Acts

3.4 Turfwar: The interregnum before pronouncement of rules.

After the act was passed there was an interregnum while the Rules, which would bring the Act into force were drafted. In this period a number of contests played out as actors sought to make pre-emptive manoeuvres, despite the fact that there are provisions in the Act against the legality of many such manoeuvres.

Some people are in the forest and need rights settled, but some have been evicted either historically or more recently. Under the Act only those residing in the forest are eligible to claim recognition of their rights (although there is also provision for those illegally evicted – the main problem is likely to be producing evidence of illegal eviction). Hence there was a rush by FDs to push people out. In AP, the High Court issued an interim stay order against evictions.

JFM has also been experiencing renewed push for implementation in some tribal areas by FDs eager to assert their control of forests. A new draft law already tabled in the Rajya Sabha requires that all compensatory afforestation work be done by JFMCs when they are not even statutory bodies and in direct contradiction to the rights of gram sabhas in the FRA.

Even *after* the rules had been finalised, their coming into force was again delayed through behind the scenes manoeuvres by the wildlife lobby, seeking to use the provision of 'Critical Wildlife/Tiger Habitats' in the Act, which must be notified by the forest departments. FDs have been pre-emptively trying to notify as much as possible by expanding existing 'core areas'. However the FRA lays down a clear procedure for this which MoEF is trying to violate through such hurried notifications.

The Rules were issued 1st January 2008, finally bringing the Act into force.

4 Is The FRA 2006 Fit For Purpose?

A range of forest rights deprivations scenarios exist, as discussed above. Here we consider the extent to which the Act adequately addresses these. The Forest Rights Act does not provide for the state somehow magnanimously 'granting' rights as a welfare measure, but rather it seeks to recognise pre-existing rights which were never recognised due to the unsound processes of state appropriation. A key challenge in drafting the act has been to target these scenarios without focussing too narrowly thereby excluding legitimate groups, nor too broadly to include opportunists.

4.1 Contents of the Act

The Act has preliminaries and then seven chapters. The stated aim of the Act is: to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

The Act is then set out into sections as follows

Table 2: Key sections of the Forest Rights Act 2006 with commentary

Text	Comment
<p><i>Chapter I: Preliminaries</i></p> <p>"forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests and forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities</p> <p>"other traditional forest dweller" means any member or community who has for at least three generations prior to 13th day of December 2005 primarily resided in and who depends on the forest or forests for bona fide livelihood needs</p>	<p>Here some critical definitions are made: Using the category of 'scheduled tribes' may exclude up to 50% of tribal groups who have not been 'scheduled' under the constitutional process.</p> <p>The section '<u>..who primarily reside in and depend on the forest ...</u>' is critically important for defining who is eligible. The 'and' was changed from 'or' just before the bill was passed by parliament and if narrowly interpreted, whilst defending against land grabbers may exclude most rightful claimants.</p> <p>The definition of Other traditional Forest Dwellers is even more stringent & would apply to STs compelled to move to areas other than where they were scheduled of proving residence over 3 generations of 25 years each</p>
<p><i>Chapter II: Forest Rights</i></p> <p>3. (1) For the purposes of this Act, the following rights which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-</p>	<p>The key section of the act:</p>
<p>a. right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;</p>	<p>This provides for both collective and private land rights to those in occupation of forest land, equivalent to the 'regularisation of encroachment' guideline of 1990. It relates to 4.6 below – which states that rights over a maximum of 4 ha to be recognised</p>

b. community rights such as <i>nistar</i> , by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;	<i>This revives customary rights of access to forests</i>
c. right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;	<i>minor forest produce' means non timber forest products of plant origin. This supersedes many state-level NTFP monopoly control and marketing arrangements which are based on assumption that the state is the owner</i>
d. other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;	
e. rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;	
f. rights in or over disputed lands under any nomenclature in any State where claims are disputed;	<i>I.e. disputed between local people and forest departments arising out of faulty forest settlements</i>
g. rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;	<i>I.e. rights disputed between forest and revenue departments. e.g. in MP affects an estimated 19 lakh households (note no 4ha limit)</i>
h. rights of settlement and conversion of all forest villages, old habitation unsurveyed villages and other villages in forest, whether recorded, notified, or not, into revenue villages;	<i>Forest village residents are currently almost like 'non-citizens'</i>
i. right to protect, regenerate, or conserve or manage any community forest resource, which they have been traditionally protecting and conserving for sustainable use;	<i>Most powerful and significant right for re-commoning the enclosures and restoring democratic forest governance</i>
j. rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of concerned tribes of any State;	<i>Applies particularly to the north east Indian states to protect their already recognised rights under state or local laws</i>
k. right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;	<i>This is as yet 'uncharted territory'</i>
l. any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;	<i>e.g. shifting cultivation, Some debate on whether the exclusion have also included threatened plant species.</i>
m. right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description	<i>Not clear whether it means restitution. Who will be responsible for providing alternative land?</i>
Chapter III: Recognition, Restoration and Vesting of Forest Rights and Related Matters (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both	<i>This section elaborates how rights will be recognised with the Gram Sabha (assembly of all village adults) being authorised to initiate the process of inviting and verifying claims:. However the rules are ambiguous over what exactly is meant by the Gram Sabha, and that it has to be different for the three different types of 'village' defined in the Act.</i>

4.6 ... forest rights ... shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares

Beyond the Act there is also the text of the Rules, which fail clarify the precise implementation of many provisions of the Act, such as the definition of the Gram Sabha, provisions for community tenure, and interpretation of the eligibility criteria of 'primarily residing in .. forest and forest lands'.

4.2 Key aspects of the FRA

Overall there are two main sets of rights to be gained in the FRA:

1. land rights (private and/or communal), including for past illegal eviction / displacement
2. 'community rights', including collective management of common (or community) forest resources; rights over common property resources such as produce of water bodies; grazing rights (both for settled and nomadic communities); rights over 'habitat' for PTGs; other customary rights and usufruct (actually 'ownership') rights over NTFPs (there is some ambiguity over whether these shall be 'community' or individual rights)

It is difficult to clarify just how many and which people suffered from lack of recognition of rights in the past, and how many of them are likely to remain outside of the FRA's ambit. The definitions in the Act are vague and cover only those dwelling in the forest as a pre-condition for restitution, which may be used to exclude the majority of tribal poor people who may not be dwelling in the forest but are dependent on it.

4.3 Community use rights

The Act is not just a forest *land* rights act but also an Act recognising rights over forest *resources* (i.e. also for collective management and use) and as such lays the basis for renewing decentralised, community based natural resource governance. . This is a very controversial area for Forest Departments as it challenges their exclusive territorial control. It remains unclear how much more successfully the FRA will be than the previous PESA legislation which has remained unimplemented. In particular the new management regime is as yet unclear.

- How will 'user groups' be formed –(e.g. size and entry requirements)?
- Will management be simply protective or active, and will it be take advantage of technical opportunities?
- Will management planning be democratic?
- What will happen to pre-existing JFM committees given their weak legal standing?

The issue of pre-existing JFM committees is particularly instructive. Rights are now to be vested in the *gram sabha* to protect, conserve and manage the community forest resource for sustainable use. JFM committees are only based on FD administrative orders with virtually no legal standing. In principle therefore where a JFM forest is claimed by a community, the *gram sabha* should automatically replace the JFM Committee. The Gujarat tribal secretary has already issued orders to that

effect. In Orissa self initiated groups will no longer need to accept JFM as the only available means of gaining official legitimacy. Yet implementation will depend on in how many places villages will be organized enough to claim. This is most likely to happen in areas where people still have association with customary forest land, are already engaged in self-initiated CFM and are aware and organised.

4.4 *Non Timber Forest Products*

'MFPs' Minor Forest Products is an old fashioned and prejudicial term for Non-Timber Forest Products. The FRA clearly defines MFPs:

- (a) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, and the like;

There is currently extensive state legislation and administrative regulations governing NTFPs and their marketing involving state monopolies for many products and transit rules. For instance in Orissa Kendu leaf is nationalised: the Orissa Forest Development Corporation has monopoly rights and pays royalty to government reflecting the assumption that the state is the owner. But here in 3(1) c. it states the 'right of ownership to MFPs' including in areas beyond village boundaries, which effectively supersedes such current structures and practices. Things will need to change due to the fact that the government is no longer the 'owner'. However there will still be a need for government support in the market. Perhaps instead of a monopoly, the state could encourage competitive purchasing to push up price but offer a minimum support price. Structures in AP West Bengal, Karnataka and other states, will similarly require overhauling or replacement by totally new institutional arrangements. Typical state royalty rates are also too high for NTFPs and will need to be reviewed. For tendu leaf in Orissa for instance it is around ~Rs.300/ tonne, far higher than bauxite at ~Rs. 30 / tonne.

4.5 *Conservation and wildlife issues*

All rights must be recognised in all Pas. Only after that can any process of relocation or modification of rights can take place. A minor issue here is that the right to habitat has been left out from protected areas provisions in the act

'Critical Wildlife Habitats' (CWH) is a new legal category introduced by the Act in order to ensure that areas that are particularly essential for conservation of threatened species or habitats can be made inviolate through modification or acquisition of rights recognised in such areas. The Act provides for the process of identifying such habitats transparent, consultative and fact based. However conservationists and the forest bureaucracy have been trying to subvert this by declaring all protected areas as CWHs in the name of wildlife protection (as mentioned above). The MoEF issued its own CWH guidelines before the Act came into force and therefore, technically in violation of the law). Critical Tiger Habitats (CTH) have been notified without the mandatory recognition of rights and informed consent of *gram sabhas*. This seems to be an attempted 'confidence trick' but which communities in a number of Protected areas are beginning to challenge..

To sum up the Act gives extensive provision for major reforms in tenure and governance of forests. There are indeed issues with precise wording, however the bigger issue is how and by whom will the Act be interpreted. Whether it will be taken

up and implemented according to its spirit, or rather whether the terms will be interpreted narrowly to divert the intent.

5 Will Implementation of The Act Lead to Institutional Reform and Result in Poverty Alleviation?

The FRA is a major breakthrough of enabling legislation, despite debates over the details, but its success, whether it will actually lead to meaningful pro-poor institutional reform at the local level, stands or falls on whether it is successfully implemented. Unless the rights are recognised and actually recorded in govt land and forest records, they will remain ephemeral.

5.1 Mechanisms for implementation envisaged?

The implementation mechanism envisaged in the Act and Rules involves four levels:

1. The village *gram sabha*. This will elect a Forest Rights Committee to identify, verify and recommend claims through a gram sabha resolution which will be sent on to the ...
2. Subdivisional Level Committees, involving staff from Revenue, Tribal and Forest Departments and three elected representatives of the district government, who are to oversee and facilitate this process through raising awareness, clarifying the rights and responsibilities, providing necessary information resources and monitoring the process to ensure it is free and fair. These committees are also to verify and consolidate the claims received from gram sabhas, hear appeals and send their recommendations to the ...
3. District level committees, who are to examine and finally approve the rights and get them entered in official records
4. The State committee, which will oversee all the District committees.

There are a number of concerns here. One is that resourcing this level of activity would need to be substantial but no funding has so far been provided. The Central govt has simply passed on the buck to the state governments who are finding it difficult to allocate funds for the kind of support required. The second is that in most states, the process is mainly oriented toward granting private land rights, and the complex issues of common land rights and management structures are not being adequately addressed. Another issue here is the village level inequalities and the extent to which hierarchical relations can be overcome. Lastly the Act does not provide for *how* the rights shall be exercised. This will become clear only after the process of recognition has been completed when forest departments are likely to continue trying to assert their authority.

5.2 Are complimentary reforms required?

There are inevitably a large number of inconsistencies between the new Act and pre-existing administration policy at national and state-level which need to be resolved Daniel Brinks (2006: 225) in a study of institutional change in Brazil observes:

“Institutional change ... requires a series of changes in related areas before it can produce the desired effect”.

The Act supersedes previous laws as far as recognition of rights is concerned, but it is ambiguous about the role of existing laws in *regulating the exercise* of those rights. (Section 4 of the Act dealing with the recognition of rights begins with the words:

“notwithstanding anything contained in any other law for the time being in force ... The central government hereby recognises and vests forest rights..”

Thus rights have to be recognised irrespective of the Indian Forest Act, the Forest Conservation Act, the Wildlife Protection Act and so on. However, section 13 confuses the picture by saying that

“save as otherwise provided in this Act and the PESA, 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.”

Different lawyers seem to interpret these 2 sections differently but what is clear to date is that virtually no one is challenging the process of recognition of rights which has already got going (excepting a number of somewhat frivolous petitions filed against the Act in the Supreme Court and some state High Courts).

But there is definitely likely to be conflict with forest departments, especially when people start asserting their power vested under section 5 to protect wildlife, forest, biodiversity etc. and start trying to manage their community forests according to their own rules. It may reasonably be expected that the MoEF will try and compel MoTA to issue guidelines for how these rights should be exercised. However, one saving grace is that the only area in which MoEF is specifically empowered is for the identification of critical wildlife habitats within national parks and sanctuaries. The game they have tried playing with that power is already evident and MoEF's secretary has received a notice for breach of parliamentary privilege for issuing guidelines and instructions for identifying critical wildlife habitats before the Act had come into force.

One area already mentioned relates to NTFP trading provisions. If state Forest Corporations are no longer the monopoly body it would be better if they still maintained some market support role.

Another important area for complimentary reform will be donor adaptation. Donor forest related projects typically go to forest departments but they are clearly not the appropriate agency for taking up tribal development. The World bank and DFID are both involved in forest / rural livelihood issues will need to look again at how to achieve their objectives under the new conditions. JBIC is lending huge funds for forest projects through Forest Departments and forest development agencies, but under the Act many of the JFMCs will get superseded. In Orissa, where JBIC has recently funded a large forestry project through the forest department, villagers are already protesting against plantations with JBIC funding being undertaken in lands being cultivated by tribals before their rights have been recognised. They are demanding suspension of the JBIC project till the process of recognition of rights has been completed and clarity of changed jurisdictions.

In sum there would clearly need to be subsidiary reforms to support the implementation of the Act.

5.3 Challenging the status quo political economy of rights deprivation

The political marginalisation of the poor, and the poverty of the politically marginalised are two sides of the same coin. Political and economic control can be renegotiated by them through concerted mass political mobilisation for institutional reform. However institutional reform alone has not in the past been sufficient to empower the politically marginalised poor to significantly improve their economic positions. Indeed structures have been very obstructive to marginal groups securing

their rights, and to the implementation of progressive legislation like PESA (including resistance from bureaucratic organisations like FDs). On the other hand some recent legislation are being successfully implemented despite resistance and are helping change entrenched power structures (National Rural Employment Guarantee Act, Right to Information Act).

Devolution of power to the reformed institution (that will lead to forest development) and equity within the new institution are the two elements that can make the forest dependant poor richer and provide more dignity to their life. Attaining the first may be a matter of legislation; the second element will need outside support. The distribution of benefits in villages will undoubtedly be affected by local politics. Who that 'outside' is a difficult question and field work in the villages may answer the question.

Political issues are clearly implicated in the local and state institutional ones, to do with local informal and formal sources and forms of power and influence. Who will be for it, politically, and who against it? Can the purpose of the Act be emasculated by implementation delay and obfuscation? How will/does this work out in the different states? What does this tell us of the local political processes in those states? Informal power relations and illegality may be a key factor here. Timber mafias would be likely to be affected and they are believed to have high level political influence.

5.4 Will the FRA lead to poverty alleviation and pro-poor growth, and if so how?

The anticipated improvements to livelihoods and livelihood security through the FRA may be summarised as follows:

1. freedom from regular harassment, rent seeking, destruction of assets and extortion resulting from lack of tenure. The act should alleviate these serious problems for hitherto rights-deprived groups
2. livelihood vulnerability, which is very high where households lack secure tenure and rights. Vulnerability to eviction and legal sanction will be removed thereby preventing a deepening of poverty
3. improved range of rights to control manage forests and secure access to their harvest should provide improved income streams.
4. secure forest rights give incentive for investing in land and forest improvements land-based investment depends on security of tenure and therefore the FRA may help
5. legal forest rights may allow access to credit on basis of patta (as collateral) (although, since the titles will be inalienable, special arrangements will be required to facilitate access to formal credit) The benefit of land reform may be increased with credit or other complimentary inputs (e.g. water). But this is likely to vary with context. In many cases, people have irrigated paddy fields notified as reserve forests, and tenurial security should enable people cultivating such land to substantially enhance their returns even without credit and other inputs
6. Recognition of cultivation rights over forest land through its conversion to revenue land should permit the right holders to gain access to development inputs from other departments which they are currently deprived of.

However for many villages complimentary development support mechanisms will be essential. With the FRA some villages such as 'forest villages' and protected areas

should become eligible for normal service provision such as agricultural extension and clean drinking water sources which currently FDs are often objecting to.

6 The FRA Implementation Process in West Bengal

West Bengal, which came historically under the Bengal colonial administration, may be divided into three agro-ecological regions, Northern hill areas, plains (mainly South West) and southern Sunderban mangrove forests, and here we consider the first two regions

6.1 Rights Deprivations Context

West Bengal was the first region to experience British Colonial 'territorialisation', and has experienced perhaps the most thorough rights deprivation in the South West through the West Bengal Estates Acquisition Act in 1953, which extinguished all *ryoti* (peasant cultivators) rights in the forest, ignoring the due legal process as prescribed by the 1927 Forest Act. (Ghosh *et al* 2007) thereby criminalising forest use. In 2002 an assessment estimated that there was 20,644 ha 'encroached' forest. By 2003-4, 1,113 ha had been 'reclaimed' by the FD mainly through coercive eviction (MoEF, Gol in Ghosh *et al* 2007)

6.2 State-level FRA implementation process so far

The State Government issued almost simultaneous Government Orders (GOs) in March '08, first through the Backward Classes Department, and then through the Panchayat and Rural Development Department. District Magistrates in all districts with recorded forest cover were ordered to initiate proceedings for the formation of Forest Rights Committees at *Gram Sansad* level. It was assumed that gram sansads are *de facto* gram sabhas, ignoring the fact that gram sansads are formed at the panchayat constituency level, and not at hamlet-level. (CSD 2008)

6.3 The regional process in North Bengal

The main rights deprivation scenarios here are 'forest villages', protected areas and 'encroachment'. The main FRA implementation process in WB has so far been limited to and focussed on 'forest villages' in Jalpiguri district and the plains part of Darjeeling district. For this reason it seems clear that the Government has interpreted '*primarily residing on forest land*' literally while defining potential rights-holders. That the process has been guided by the Forest Department in choice of villages becomes clear when both the GOs mention that a list of 'forest villages' will be supplied by the Forest Department. However the departmental list is incomplete, excluding unsurveyed villages / temporary taungya villages on forest land, and so many villages are left out of the official process, including several in the Darjeeling Hills. These have been treated as villages in the FRA (according to section 2-p), but that has been denied in the WB GOs by making the *Gram Sansad* as the only form of village.

According to reports the actual process of FRA implementation on the ground, which began in March, has also been undemocratic and unparticipatory:

- Villagers were informed that a Government team was coming to form FRCs only one or two days before, sometimes on the same day.
- No quorum was achieved in any of the emergent 'gram sansad' meetings convened for the purpose, and the attendance register was circulated among the villagers for add-on signatures.

- It was not made clear to the local people what was happening. The Government Officials simply entered the villages and told them that they would get pattas only when they form FRCs according to the Government prescription.
- In Buxa, Jalpiguri and Coochbehar forest divisions, Block Development Officers pressurised and threatened the protesting villagers and in some cases SDOs and even ADM also used threats, such as: *"you will never get pattas if you do not form FRCs within 28th"* and *"all development projects will be stopped!"*

In Buxa forest division and in parts of Jalpiguri forest division people were confused, and the threats proved overpowering. Thus, many FRCs were formed by the Government officials without proper process, in an unacceptable travesty of the democratic rights that the FRA supposedly enshrines. In the Buxa hills for instance eleven remote and spatially separated forest villages were bundled into one single committee. In some other villages, residents of tea gardens or forest fringe villages were inducted into the FRC because they share a common *Gram Sansad* with the forest villages. In the Chalsa range of Jalpiguri division, five villages have been clubbed in one FRC without any Gram Sansad meeting: the representatives from the local Block Development Offices merely collected some names from each village.

Protests by people's organisations and civil society groups pointed out that the WB GOs clearly violate of the letter and spirit of the FRA. The orders not only violate Section 2(P), but also the Rules which say that the Gram sabha shall elect a FRC. By limiting FRC membership to prior-existing *Gram Unnayan Samiti* (GUS) members, and by installing GUS office-bearers into the FRC as ex-officio office-bearers the GOs step beyond the State Government's legal jurisdiction. Moreover, hastily formed FRCs in the context of ill-defined villages will ruin the entire FRA implementation process, especially in defining and settling of rights and future governance issues in community forest resources. Because the gram sabha has become gram sansad in the GOs, this would require an unmanageably large mass meeting and so it may reasonably be expected that quorums will not be achieved in most cases thus seriously hampering the future functioning of the gram sabha as the governor of forest resources.

The Governmental efforts to form FRCs has however been short-lived, and there have been no fresh visits by the officials since 30th March. As off now, there are committees everywhere in Buxa Tiger Reserve, and in 10 forest villages in Jalpiguri forest division. Many villages are now signing mass petitions saying that the FRC should be dissolved and new hamlet-level FRC be constituted instead.

The Forest Department seem to seeking to further their control of the process. In many areas of the Darjeeling hills, and Jalpiguri and Coochbehar Forest divisions, the FD personnel have been saying that only the agreement-holders in an forest village are entitled to get pattas. Because the GO by the Backward Classes Department provides for a FD representative as a permanent invitee in the FRC, the FD will continue to influence proceedings in the FRC thus formed.

The FD is also circulating misinformation. The Forest Minister of the state went on record saying that the State did not need the FRA, because there are already 'too many rights'. He also said that his department will give pattas to 4000 identified families in forest villages. In Buxa, they have already started quoting a 'price' for relocation from critical tiger habitats (Buxa is one of the two Critical Tiger Habitats (CTHs) notified immediately before the FRA notification).

6.4 Regional Process : South West (Midnapore district):

Here the rights deprivations relate to estate acquisitions, earlier evictions, 'encroachments', Joint Forest Management and sacred groves. There has been very limited implementation activity as yet in the region. The Dept of Panchayats and Rural Development had directed the villages to convene a Gram Sansad-wise meeting, which will be the Gram Sabha, and form the FRCs. But the Panchayats are busy with forthcoming elections so they have not tried to do this as.

As with the situation in the North, foresters have also been getting involved. In interview a Forest Range Officer expressed reservations about the Act and its implementation, particularly that it may be possible for those who are undeserving to get land and those who are eligible may not get it because they are poor and will not be able to produce the required documents.

The research team initially visited 3 villages in Paschim Midnapur district and found limited awareness and no implementation activities as yet.

6.5 Site 1: Bera Village, Gram Panchayat Dherua I

This village contains about 40 households belonging to the Santhal tribe. Most have land inside the forest and some are presently cultivating paddy on this land. Some of the families also have houses inside the forest.

Some families have been displaced from the land they had inside the forest and have not been rehabilitated properly. A group of 13 families, each having approx. 1 acre 13 *cottahs* of land inside the forest has been carrying on litigation with the Forest Department for the past 8 years claiming their ownership. This land is presently being cultivated by them. The village people seem to be badly served by their Panchayat (local government). There is no representation of the Santhal tribal community in the Panchayat, and they said they do not receive any information from the Panchayat about the new Government Acts, programmes and schemes.

The local people do not know about the FRA. No one has heard about it, and the Panchayat has not informed them. Thus neither the Gram Sabha nor the FRC has not been formed.

If they get ownership of their land inside the forest, they said they would cultivate paddy. However they had apprehensions that they would find it difficult or impossible to produce documents supporting their claim to land inside the forest, and they doubted that nor the FRC or the Panchayat would ratify their claim in the absence of documentary proof.

However according to the provisions of the Act and Rules, since they are STs, they only need to prove their occupation of the land since before December 2005 and physical evidence of land development on the land itself can be used as one of the evidence required (eg houses). That combined with the oral testimony of an elder put into writing should provide the second evidence. Offence reports issued to them by the FD would; also serve. In the case of the 13 families who have been fighting a case against the FD, the litigation itself should serve as evidence.

6.6 Site 2 Bagghora Village, Gram Panchayat Dherua I,

Here the population of about 60 households consists of Other Backward Classes (OBC) General Castes and Scheduled Tribes. The forest is some distance away from the village. Some households have land inside the forest which they used to cultivate but were instructed by the ruling political party not to anymore. Most desisted, although some still cultivate land inside the forest despite the crops being periodically destroyed by elephants. The rest of the area has become a plantation.

A few households also have houses inside the forest. One family, belonging to a 'general caste', has family members living inside the forest including a female member who is almost one hundred years old.

There has been no FRA implementation process here. None of the tribals has heard about the FRA. The Panchayat has not informed them about the FRA, and the Gram Sabha nor the FRC has not been formed.

The village people did not seem eager to get ownership of the land they have inside the forest. They said they would prefer land outside the forest.

6.7 Site 3: Jharia Gram Sansad, Dherua I Gram Panchayat

There are 250 households in 4 villages (Sirsi, Jharia, Kanandihi and Maholia) here with approx 55 households belonging to Bhumij and Kora tribes. Few of the village people have agricultural land inside the forest and no one has dwellings there.

The village people have grievances against the Forest Department with regard to the JFM Committee as they feel that the functioning is undemocratic and non-transparent with the Forest Department making all the decisions and expenditure and not taking their opinion or informing them about how much has been spent. For instance the 'share' of the FPC members (revenue from felling returned to the village by the FD) has recently been diverted for latrines by the FD without discussion.

One person has a pending case against the Forest Department with regard to forest land which they have lost ownership of. They could now use these papers to claim their right under FRA.

A farmer who lives in one village but has his agricultural land in another village is not being allowed to cultivate the land as the FPC in that village is claiming that it is forest land. The gram sabha there will have to accept his/her claim under the Act. The problem may arise out of how the condition of 'primarily residing in...forest or forest land' is interpreted, and MoTA has not yet issued any clarification on the matter.)

The Gram Sabha and FRC has not been formed. Instead in March members of the ruling CPI (M) political party discussed the provisions of the FRA with 50 male farmers in the *Gram Sansad*. The women were not involved and had not subsequently learned any more. After this meeting the farmers submitted an application staking their claim to forest land. However the local party member claimed the application was exaggerated, and no progress has been made since, as an official Government Order to proceed with the claims has not been received.

6.8 Conclusions from West Bengal:

The FRA implementation process in West Bengal illustrates how the bureaucracy has already distorted the provisions of the act by misinterpreting them in an authoritarian approach, holding little promise for the prospective claimants.

In the North the FD has been abusing the provisions of the Act. However, because of the organised presence of movement groups in many forest villages, there is an ongoing effort to implement the FRA on the ground as a people-centric process. The process include forming Gram sabhas and FRCs by involving panchayat members, and at a later stage setting up peoples' institutions for forest governance at strategic community forest resources.

In the South West there has been little action. It seems awareness of the FRA and also concrete details of the methods for clarifying their claims are the key to empowerment, and are very much lacking in the field where NGOs are not active.

Presumably this is due to the thin coverage of NGOs and the disinterest of political parties. A key policy finding here therefore is that raising this awareness is crucial.

7 FRA Implementation Process in Orissa

Orissa has a highly complex state due to regional diversity both by agro-ecological conditions and administrative history. The state has been composed in the 1930s from areas previously under the Madras Presidency in the south, Bengal in the North and under Central administration or under princely states in the mid areas. The coastal lowlands are highly productive, and inland there are the Eastern Ghats hill-tracts and plateau areas.

7.1 Rights Deprivations Context

The first revenue survey and settlement was conducted from 1920 to 25 but only lands of non tribals surveyed in order to charge them land revenue. Tribals were excluded from the survey as they were exempted from paying land revenue. A second revenue survey and settlement was conducted from 1965-82. Revenue settlements are supposed to be undertaken every 40 years enabling revision and updating but forest settlement done only once leaving no space for updating and revision.

A forest settlement for reservation of forests in Khandamal was completed by 1968, and due to over 50% of reserve forests being notified before 1980, they were excluded from the 2nd revenue survey, thereby depriving the kondh tribals recognition of their land rights. A revisional forest survey started in 1997 but was soon abandoned without explanation. Some of the land occupations recorded as 'encroachments' were registered during this incomplete survey. Much of the hill tracts were left out of the purview of survey and settlement either as excluded or partially excluded territory in southern Orissa, especially in the Hill Area Agency Tract (this tract was previously under the Madras Presidency). Non settlement of tribal land holds applies both in Khandamal and also other southern districts like Gajapati and Koraput.

Thus large tribal areas which were excluded from pre-independence land surveys as a privilege for exclusion from paying land revenue, meant that post-independence the lack of recorded rights converted them into 'encroachers' on 'govt' land while non-tribals, whose lands were surveyed now have secure rights. 40% of Orissa's reserved forests are "deemed reserved forests" where no settlement of rights took place, but people lost their lands and forest resources without any process at all

The potential livelihood impact of redressing forest rights in Orissa is very significant. Besides getting *patta (title)* for their forest land they would then be eligible to apply for formal loans and thereby get credit both for working capital requirement as well as for investment. The productivity of land cultivated by the forest dwellers are low due to factors like lack of irrigation facilities and traditional farming methods and tools. With credit some innovations could be tried to improve productivity. Tribal agriculture just below the forest tends to have low water holding capacity, so if micro irrigation facility is provided not only would the productivity of the crop rise but it would also stabilize the yield, (based on two of the study villages).

The FRA would potentially also benefit the *patta* holders in many other ways. For example, under the NREGS, land improvement is being carried out on agricultural lands owned by ST households (found in Nuapara study village discussed below). But *forest* land are under possession of these households are not

eligible in this scheme. If patta will be given on forest land which the households are cultivating for long the land improvement scheme will be eligible.

Additionally many households currently do not take up land improvement measures on their possessed land because they are not sure what will happen to such land in the future. The forest department has even created plantations on some of the forest land possessed by the households. Clearly the FRA will provide some assured livelihood to some households to some extent.

7.2 State-level FRA implementation process so far

The committees at state, district, subdivision have been formed, and the government decided to hold all the Gram sabha and panchayat meetings on 16th and 23rd March. The government makes the improbable claim to have formed more than 30,000 FRCs during the two days in March. However after that no local meeting has taken place. It is also claimed that Forest Rights Committees have been widely constituted (at the revenue village level) and the president and secretary have been chosen in the meeting. However it seems from our fieldwork that no detailed discussions relating to implementation of FRA were conducted however.

The formats distributed by the Panchayati Raj (local government) Department for gram sabha resolutions stated that the FRCs had to start inviting claims from the date of their election, and had 90 days to submit applications from that date. Subsequently, the revenue secretary sent a letter to all district collectors asking them to give due importance to implementing the Act. It also said that the maps prepared by FRCs need not be to scale as the SDLCs would have the responsibility to prepare proper maps based on the received claims.

But after the initial burst of energy, no further gram sabha meetings have been officially called to initiate the process of inviting claims. Although the government has printed a large number of claim forms, these have not yet reached all the villages. In many parts of the state people are yet to apply for want of application forms. The SDLC is to provide forms to the people free of cost which have not occurred till date. However wherever the NGOs are active they have been able to distribute forms to the people. Whilst it seems in some districts the collectors and other government officials have been responsive to dealing with problems and procedural irregularities brought to their notice, in many districts no such interest has been taken by senior officials.

The level of understanding of the villagers about the Act, and also the quality of members elected to FRCs varies widely. In large areas of Orissa with high levels of illiteracy people's awareness of the Act and its provisions is very low. Some NGOs (including Vasundhara) are campaigning about the FRA and creating awareness in different areas.

There is as yet no clarity on the "reside in forests" issue, though the Orissa government had earlier indicated that it is unlikely to take a strict interpretation, pending clarification from the Centre. Tribals are also facing acute problems in obtaining ST certificates.

The situation in protected areas seems to be variable. In Karlapat wildlife sanctuary, local people are raising money to buy registers for gram sabha resolutions / FRC meeting minutes, receipt books for claims received. Additionally a large number of active women have been elected to the FRCs. In Sunabeda sanctuary and the Simlipal Tiger Reserve on the other hand, the villagers are facing serious obstructions from the forest department who are not even permitting awareness-raising meetings.

In Kandamal district the *Adivasi Samaj* (social movement) are applying to extend the date for filling of the claim forms in many areas as the forms have not been distributed in the district and the monsoon is approaching.

In Nuapada district some NGOs are trying to raise villagers awareness and help them to fill up the forms. People are trying to gather evidence for this purpose. The potential beneficiaries have to submit caste certificate as one proof for their claim, but many ST do not have a caste certificate. As a result the process of completing will be delayed, and it will be difficult for the claimants to complete the process of submitting the claim forms within the 90 day requirement. This is also the situation in other areas. According to the Act one has to interpret that the claimants can submit the forms within 90 days after receiving the claim forms. (Sources for this section: research team and CSD 2008)

7.3 Study village 1: Lambhipalli 'forest village' in Debrigarh sanctuary, Bargarh Dist.

The majority of the 18 households in this 'forest village' are Scheduled Tribes and all are highly forest dependent, collecting mahul, sal leaves to make and sell cups and plates, kendu patta for sale during summer, bamboo shoots and mushrooms.

A meeting was held on 16th March 2008, among the villagers (*palli sabha*) with the presence of a forester, to form the forest right committee, which now includes five women. After that there has not been much progress. Claim forms for have not yet been given out. However the forester promised in front of the villagers that it will be done within time.

The villagers are aware of the benefits if they should get, including patta on their land and the conversion of the 'forest village' into a normal revenue village. However it seems they are not clear that they can claim the community rights, and unless they claim rights over NTFPs they may be left with only small land pattas with little other livelihood support. In the research meetings a sense of social and psychological security associated to peoples' legal right over land was observed. People said that without legal rights they feel 'rootless' and so the entitlement would give them a sense of security.

7.4 Study village 2: Baghguda, Nuapada block, Nuapada district.

This village, composed of 90 mainly scheduled tribe households located in three *padas*, was previously under the Central Province land tenure system. A majority of households are in the possession of forest land (Reserved forest) and some houses sites are also sited in forest land. The majority of households are highly dependent on forest product collection particularly in summer, collecting Mahul and Kedupatta as well as other products. There is a JFM Committee here but it has recently become inactive due to 'lack of funds'.

A fifteen member FRA committee has been formed in the pallisabha, with committee composition as per the guidelines, and it is anticipated that claim forms will be given to the potential beneficiaries. Under the FRA the villagers will claim for individual possession of (reserved) forest land as they have been cultivating for decades. However it seems unclear at this stage whether they realise they can claim community forest resource rights and rights over NTFPs.

7.5 Study Village 3 Pui paani Village Deogarh district

This village consisting of about 33 households in three settlements are protecting a patch of forest under the (informal) community forest management system.

Vasundhara NGO has been active in this area in raising awareness regarding the FRA. A 15 member committee has been formed, but until now no group has received forms for claiming ownership of community forest. The Vasundhara team advised the groups to try to expedite the process.

7.6 Study Village 4 Bhramanimal Deogarh district

This village comprises three *pada* consisting of about 90 households. Many households are in possession of forest land (khesara forest). A community forest group was formed two years back by the district leader of *Zilla Jungle Manch*, but the forest department is 'converting' this into a JFM Committee with Japanese financial support and has given a grant for a club house which is under construction. .

Here also the 15 member committee has been formed and no other progress is there. The villagers told us that the President and the secretary will collect the form from Deogarh.

7.7 Conclusions from Orissa so far:

Again it seems that awareness raising is the basis for empowering local people to claim their rights and so far this has been partial and depended on civil society groups rather than the state. Whilst there seem to have been assurances given by civil servants there seems to have been only a spasmodic initial burst of activity and little since, with no circulation of claim forms. A particularly worrying sign is the obstruction by the Forest Department of households in protected areas seeking to meet to secure their rights.

8 The FRA Implementation Process in Andhra Pradesh

As with Orissa, Andhra presents a complex regional picture of diverse agro-climatic conditions and legal-administrative histories. The state can be divided into three main agro-climatic areas; the productive lowland coastal belt, the predominantly tribal northern hill and forest areas, and the central plains. The north central area which was under the Nizam of Hyderabad princely state until 1956, the rest came under the Madras presidency until Independence.

8.1 Rights Deprivations Context

Extensive areas in the Northern tribal belt have never had forest rights settled properly (Kumar *et al* 2008 forthcoming) and 20% of Andhra's so called forest land has never been legally notified, although the Forest Department have recently started the process now out of fear of the Supreme Court.

8.2 State-level FRA implementation process so far

The best summary of the limited progress in AP is to be found in CSD's recent June 2008 bulletin

While FRCs have been formed in some districts, in others no FRCs have been formed excepting for pilot implementation of the Act in one or two selected villages. In some districts, only some awareness raising activities have been undertaken by the government. Forms for filing claims have been distributed but haven't reached all the villages.

The procedures laid down in the Act and rules are not being followed in many places. Both forest and revenue officials are accompanying FRC members when they go for field verification of claims. During this, forest department staff have been rejecting claims for land under shifting cultivation. This means that instead of acceptance or rejection

of claims by the FRC and the gram sabha, many claims are being prematurely rejected by the forest department. Revenue officials are unclear about the provisions in the Act related to this. At least in some areas, GPS is being used for preparing final maps.

The AP government is not focusing on strict enforcement of the requirement of residing on forest land, though statements to that effect were made earlier, pending clarification from the Centre. (CSD 2008)

8.3 District Level study: East Godavari

East Godavari District is a Scheduled Area, containing seven Agency Mandals (an administrative unit within a district). Here the *Muttadari* feudal land tenure system prevailed in British times. “*Mutta*” meant a village or group of villages administered and taxed by a Muttadar under permission (*sanad*) of the Government, subject to the payment of a fixed sum of land revenue. This system was abolished in 1969 through the *Andhra Pradesh Muttas (Abolition and Conversion into Ryotwari) Regulation* which vested all rights and interests of the Muttadar in the Government ‘free from all encumbrances’. This generally extinguished local people’s rights, although there was provision for people not to be dispossessed of agricultural land if *prima facie* entitled to a patta. But it seems *ryotwari* settlement *pattas* were only granted for settled agriculture on rainfed revenue land in the plains and not for shifting cultivation practiced on the hill slopes (under the Survey Settlement Regulations which excluded land with over 10 percent gradient from assignment). It is unclear whether this land could now be reclaimed under the Act.

There are two main types of cultivation practiced here. Traditional *podu* cultivation (i.e. shifting forest fallows cultivation on hill areas) is generally no longer rotational; the Konda reddy tribals stopped this some time ago and now grow small millets in the cleared *podu* patches on a sedentary basis. The second type is conventional cultivation on non-irrigated agricultural land on revenue or assigned lands. The tribals were typically granted *ryotwari* settlement *pattas* for land holdings of the later type. However Settlement officers did not grant settlement *pattas* for *podu* lands under the Survey Settlement Regulations following the 10% gradient rule (i.e. sloping land should not be cultivated). It is unclear whether this later land could now be reclaimed under the Act

According to the different forest-rights deprivation scenarios the research team identified two different Mandals, in thick hilly forest areas, and which are affected by Maoists. Two interior villages were selected through stratified random sampling

8.4 Site 1: Addariveedi Village, Panasalapalem Panchayat.

The village, situated close to a thickly forested hill, is inhabited by 25 families of the Konda Reddi tribe (a so called ‘Primitive Tribal Group’) located in the Y Ramavaram Mandal (the headquarters is 5 Kms away). The total literate population of the village is 60, just over half of the 101 total population. Addariveedi is one of nine hamlets of the panchayat. All the families live in 17 *katcha* (old-fashioned non-brick) houses and although the villagers have access to a Government housing improvement scheme they are evidently not utilizing it.

Village facilities are basic. There are no transport facilities. Villagers are getting their drinking water from a well and from a common tank. Although there are working streetlights no house has domestic electricity. The Health Sub-Center is 2

Kms away and there is no separate school, so children have to go to the Panchayat headquarters for the primary School, high school and ICDS centre.

Livelihoods here are based on subsistence cultivation, both *podu* on non-*patta* land and rainfed farming on revenue *patta* land, supplemented by the collection of minor forest produce, hunting, trapping, gathering and plantation on hills slopes. All 25 families have land (both rainfed *patta land* and non-*patta podu* land on hill slopes), and the major crops grown are paddy, jowar, maize, ragi, millet, cotton, tobacco, kerala tubers (*dumpa*), pulses, vegetables, cashew, mango, panasa and citrus fruits. People use draft animals on hire from neighbours or neighbouring villages for which they pay 600 rupees per animal per annum. Villagers are also engaged in broomstick making in the village. Labour wages in the village are from 50 to 60 rupees per day for both men and women.

Forest produce is an important supplementary income source, particularly during the summer. They collect tubers, roots, green leaves, *Shikai*, *Naramamidi Chekka*, and turmeric etc. Both men and women collect fuelwood from the forest for cooking.

In 1998 a JFM Committee was established in the Panchayat for all hamlets, and through it the people have worked collectively. During 2000, they brought 366 hectares of hill land under plantation of bamboo, *teku*, *japra*, cashew and *naramamidi chekka*. They earned Rs.70,000 from this: Rs. 35,000 was saved in a common account and Rs 35000 was distributed to each household.

Whilst some villagers have 'patta' land for settled agriculture most of them depend on 'podu' where no rights are recognised. On land brought under JFM, the tribals have only tenuous usufruct rights.

Officials from the Integrated Tribal Development Agency, Mandal Development Office and Mandal Revenue Office have organized awareness meetings in all the villages in the Mandal about the provisions of the FRA. The officials informed the villagers two days before their visit, and the Gram Sabha meeting for electing the FRC was held in April at Panasalapalem Panchayat. About 250 residents attended the Grama Sabha meeting, including about 150 women. 15 members were selected from the 4 villages and 6 hamlets of the Panchayath as members of the FRC, 2-3 from each village.

However from Addariveedi hamlet only two persons attended the meeting as they did not get proper intimation in advance. Consequently, almost no-one in this hamlet is aware about the FRA and its provisions. The Panchayat president seemed uninterested in the issue, saying he was not able to participate in the Gram Sabha meeting as he was "engaged in other urgent works." Thus the processes of identification of resources and mapping, land survey have not yet started in the Panchayat.

8.5 AP Study site 2: Pamuleru, Maredimilli Mandal, East Godavari District.

Pamuleru Village is situated very close to a thickly forested hill near a stream. The village is inhabited by 47 Konda Reddi households with a total population of 219. Most houses are brick or stone, only six of the 46 are traditional non-brick.

Pamuleru is the main village in a Panchayat which includes six others. The Mandal headquarters is nearly 12 Kms away. The village has no transport facility from the road 4km away. There is no protected water supply nearby so villagers are obliged to use the stream for drinking water. The village has non-functioning street lights, and houses have electricity connection. The village does have a primary school although the primary health centre is at Maredimalli Mandal headquarters. .

Livelihoods are based on subsistence cultivation, both *Podu* and dry land agriculture, supplemented by collection of minor forest produce, hunting, trapping, gathering and plantation on hills slopes. Agriculture is the main occupation and the major crops grown are paddy (vari), pulses (pappulu), maize, korralu, samalu, cashew nuts, panasa, mango and citrus fruits. Three households are completely land less. People are not using draft animals for agriculture, but provide draft power themselves. Villagers are also engaged in broomstick making. Labour wages in the village are from Rs 60 – 80 per day for both men and women when work is available.

Forest produce act as a supplementary source of income, particularly during summer months. They collect tubers, roots, green leaves, mushrooms, amla (usiri), honey, tamarind, gum, adda leaves, shikai, naramamidi chekka. Both men and women collect fire wood from the forest for cooking.

In 1998 a JFM Committee was established, in which people worked collectively, The committee members have brought 125 hectares of hill land under plantation of Bamboo, Teku and Japra. In 2000 Pamuleru people earned Rs 30,000 through selling natural bamboo through the JFM committee, which is being spent on village development.

As with the first village, whilst some villagers have 'patta' land for settled agriculture, most of them depend on 'podu' on hilly forest land where no rights are recognised. On JFM land tribals have only tenuous usufruct rights.

Virtually everyone here is well aware of the FRA and its implications. Officials from the ITDA, MDO, MRO and civil society organizations are organizing awareness meetings about the FRA in all the villages in the Mandal. These officials informed the village community two days before their visit to conduct a Grama Sabha meeting to form the FRC in March. According to the Act the Grama Sabha meeting should be conducted in each and every hamlet, but in this Mandal they conducted it only at the Gram Panchayat level. About 300 households attended the Grama Sabha.

In order to form the FRC, 15 members were elected from Pamuleru Panchayat. Two to three members were chosen by each of the seven villages. Of the 15 FRC members 5 are women.

Identification of resources and mapping has been done with the help of FRC members although the process of conducting land surveys and submitting claim forms have not yet started in the village.

Villagers here are very clear about their claims and they are expecting entitlements even over their earlier podu fields. Some tribal families of Pamuleru village had left their podu lands covering an area of 20 acres at their earlier settlement called "Boyinavada". Now the FRA would enable the tribals to reclaim their those 20 acres.

The newly introduced NREG program has partially affected the hill broom cultivation in the forests in Pamuleru village. The women in the village said they currently stopped hill broom cultivation as they are ensured daily wages of Rs.80 under NREG. They are advised to continue the cultivation and claim their rights on such hill broom cultivation fields.

8.6 Conclusions from AP

Tribals are presently cultivating their podu lands and collecting NTFP without clear rights, but also without, at the moment, major restriction. The Act should ensure their secure entitlements over cultivating forest land patches and collective control of the forest.

In both villages we observe similar rights deprivations but rather different processes, partly due to the lack of cohesion between villages in the former site.

In both the sample villages Gram Sabhas were conducted at the Panchayat level rather than hamlet level in violation of the FRA providing for hamlet level gramas in Scheduled areas.

It is again evident in the state that the official implementation response is spasmodic rather than concerted. Awareness-raising is not taking place and the formation of local FRCs has not been followed up by support for formalising claims.

9 Conclusions

The process in India in some ways reflects an international process of marginalised indigenous and other forest dependent groups seeking to defend rights in their customary lands. The *UN Declaration on Rights of Indigenous People 2007* for instance reflects global recognition of the importance of recognising and protecting indigenous peoples' existing rights. The Act has changed the playing field and put many aspects of the current forest land administration on the wrong side of the law, requiring reform.

We can observe however that since the Act coming into force the government response has ranged from underwhelming at best to outright denial (e.g. statements of the Forest Minister in West Bengal). Forest departments have clearly not 'backed off' but continue to seek to control the forest estate and minimise local peoples' rights to forests. Where there has been action it has focussed on individual's rights and the issue of collective rights has not been broached. Whether there will be any further and more concerted attempts from the state to pursue implementation remains to be seen, but it seems clear already that the main momentum for implementation has come from the civil society groups who have campaigned for the Act. The real contest to 'common the enclosures' on the ground in India is just beginning.

Literature Cited

- Angelsen, A and S Wunder. 2003. Exploring the forest-poverty link: key concepts, issues and research implications. Occasional Paper 40. CIFOR, Bogor,.
- Arnold, David, Ramachandra Guha (Ed.s) 1995 *Nature, Culture, Imperialism: Essays on the Environmental History of South Asia* (OUP: Delhi)
- Bardhan, P (1984) *The Political Economy of Development in India* (OUP: Delhi)
- Brinks, D. (2006) 'The rule of (Non) Law', in Gretchen Helmke and Steven Levitsky (eds) *Informal Institutions and Democracy in Latin America* (Baltimore, Johns Hopkins), pp 201-226.
- Campaign for Survival and Dignity 2003 'Endangered Symbiosis: Evictions and India's Forest Communities – Report of the Jan Sunwai (Public Hearing) July 19-20, 2003 (CSD: Delhi)
- Campaign for Survival and Dignity 2008 'Forest Rights Act: The Current Ground Situation in the States' from: forestrightsact.awardspace.com
- Corbridge, S, M Srivastava, R Veron, G Williams (2005) *Seeing the State: Governance and Governmentality in India* (Cambridge University Press: Cambridge)
- Divan, Shyam and Armin Rosencranz 2001 'Environmental Law and Policy in India' (Oxford University Press: Delhi)
- Gadgil, M and Ramachandra Guha (1997) *Ecology and Equity: The Use and Abuse of Nature in Contemporary India* (Routledge: London)

- Ghosh, Soumitra 2007 'Commons Lost and 'Gained'? Forest Tenures in the Jungle Mahals of South West Bengal' (Overseas Development Group: Norwich)
- Government of India (1948) Fifth Schedule of Indian Constitution [Article 244(1)] Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes
- Government of India (2006) Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- Grove, Richard, Vinita Damodaran, Satpal Sangwan (Ed.s) (1998) 'Nature and the Orient: The Environmental ' OUP; Delhi
- Guha, Ramachandra (1983), 'Forestry in British and Post-British India: A Historical Analysis', *Economic and Political Weekly*, 29 October and 5-12 November issues (in two parts), pp.1882-1896 and pp.1940-47.
- Guha, Ramachandra (2007) Adivasis, Naxalites and Indian Democracy (EPW August 11 2007 pp. 3305-3312)
- Khare, A, M Sarin, NC Saxena, S Palit, S Bathla, F Vania and M Satyanarayana (2000) India – Joint Forest Management: Policy, Practice and Prospects (IIED: London)
- Kumar, Ravi, Gopinath Reddy (2007 Forthcoming) 'The Evolution of Forest Tenure in Andhra Pradesh: An Historical Analysis (University of East Anglia Working Paper Series: Norwich)
- Pathak , Akhileshwar 2002 Laws, Strategies, Ideologies: Legislating Forests in Colonial India (OUP: Delhi)
- Pathak, Akhileshwar (1994) Contested Domains: The State, Peasants and Forests in Contemporary India (Sage; Delhi)
- Sabatier, Paul A. 2003 Theories of the Policy Process (2nd Ed. (Westview:)
- Sarin, M (2005) Laws, Lore and Logjams: Critical Issues in Indian Forest Conservation, Gatekeeper series, 116, IIED, London
- Sarin, M (2003) Paper Forests versus Real Forests, in *The Hindu Survey of the Environment*, Chennai.
- Sarin, M. with Neera M. Singh, Nandini Sundar and Ranu K Bhogal (2003). Devolution as a Threat to Democratic Decision-making in Forestry? Findings from three states in India, *ODI Working Paper 197*, ISBN 0 85003 637 2, February 2003, London. (Also in *Edmunds, David and Wollenberg, Eva (Eds.)*, Sept 2003, Local forest management: the impacts of devolution policies. *Earthscan Publications*, London.
- Sarin, M (2003). *Bad in Law*, Analysis of forest conservation issues in Down to Earth, July 15, 2003
- Singh, Chhatrapati 1986 'Common Property, Common Poverty: India's Forests, Forest Dwellers and the Law' (OUP: Delhi)
- Sunderlin William D., dewi Sonya and Puntodewo Atie (2007) Poverty and Forests; CIFOR, Occasional Paper 47; Bogor
- World Bank 2006 India: Unlocking Opportunities for Forest Dependent People (World Bank: Delhi)
- Alternative Economic Survey 2006-2007 Alternative Economic Survey, India 2006-7 Pampering Corporates Pauperizing Masses Delhi: Daanish Books