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Promise and Performance of the Forest Rights Act A Ten-year Review

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The Forest Rights Act, 2006 has the potential to democratise forest governance by recognising community forest resource rights over an estimated 85.6 million acres of India's forests, thereby empowering over 200 million forest dwellers in over 1,70,000 villages. However, till date, only 3% of this potential area has been realised.

December 2016 marked the 10th anniversary of the promulgation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (hereinafter FRA). FRA was enacted in response to an unprecedented public mobilisation of forest dwellers for rights over forestland (Kumar and Kerr 2012). It also sought to redress historical injustices meted out to Adivasis and other traditional forest dwellers in the creation of forest estates in the colonial era. FRA recognises 14 types of pre-existing rights of forest dwellers on all categories of forestland, including protected areas. The most significant rights include,

- (i) Individual rights over cultivation and homesteads in forestlands, that is individual forest rights (IFRs);
- (ii) Community forest rights for use and access to forestland and resources. These include rights to firewood, grazing and other products for subsistence; rights over minor forest products; waterbodies and fishes; rights to access biodiversity; intellectual property and traditional knowledge, etc;
- (iii) Community forest resource (CFR) rights to use, manage and govern forests within the traditional boundaries of villages; and
- (iv) The empowerment of right-holders and/or gram sabhas for conservation and protection of forests, wildlife, biodiversity, and their natural and cultural heritage.

The FRA is laden with potential to further goals of sustainable development, conservation and democratisation of India's forests. Critical to realising this potential, however, is the granting of CFR rights (iii above) in combination with conservation and protection rights

(iv above). These rights provide a critical opening for establishing community-based forest governance, which we believe is essential for reconciling the goals of forest conservation and local well-being. Community-based forest governance will ensure that forests used by forest dwellers are managed in a way that best meets their livelihood needs, rather than the objectives of the forest department. Moreover, it is much more likely to ensure forest conservation and sustainable use as forest dwellers have a long-term stake in the forest and are best positioned to use their traditional knowledge and proximity to protect and manage the forests.

This special section of four commentary pieces, edited by Sharachchandra Lele, looks at the past and future of the FRA, particularly the CFR rights provisions. In this piece, we review the performance of the FRA as compared to its promise. In the next piece, Geetanjoy Sahu, Tushar Dash and Sanghamitra Dubey outline the obstacles to proper implementation of the CFR rights provisions, highlighting the political economy of the FRA. The piece by Venkat Ramanujam provides a bottom-up perspective on the challenges faced in the implementation of FRA based on fieldwork in Baiga Chak, Madhya Pradesh. Neema Pathak, Nitin Rai and Meenal Tatpati then discuss the links between FRA and conservation, arguing that the FRA can and is being used for, and not against, conservation. The final piece by Sharachchandra Lele shows how FRA provides a strong counterpoint to state-centred forest governance, how this has created confusion and opposition, and suggests a way of reframing the issue to break the current deadlock on post-claims forest governance.

This commentary draws upon the recent report by the Community Forest Rights-Learning Alliance (CFR-LA), an alliance of civil society organisations, forest rights movements and activists working on the FRA, of which the authors are members. The CFR-LA report (2016) was published on the 10th anniversary of the FRA. We use the report's estimates on FRA's projected potential and actual

The EPW thanks Sharachchandra Lele for putting together this set of articles on the Forest Rights Act.

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performance to highlight the gap between promise and performance of the FRA, between the potential area and the actual extent of CFR rights and individual rights recognised. We comment on the variations in performance of the different states in implementing the law and conclude with a discussion on the potential of FRA to transform forest governance and contribute to improving the lives of forest dwellers.

Potential of CFR

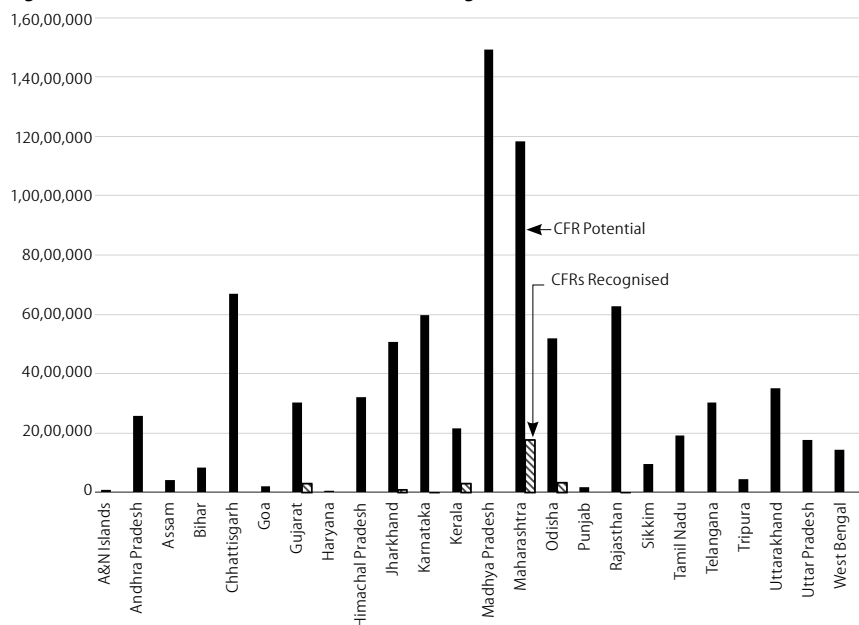
In terms of area, potentially, up to 85.6 million acres or 34.6 million hectares of forests could be recognised as CFRs in the country. This estimate excludes the states of Arunachal Pradesh, Manipur, Nagaland, Mizoram and Meghalaya, and is based on the data from the Census of India (2011) (for detailed methodology, see CFR-LA 2016). The statewise potential for the extent of CFR is presented in Figure 1.

In terms of potential beneficiaries, an estimated 200 million Scheduled Tribes (STs) and other traditional forest dwellers (OTFDs) in over 1,70,000 villages are the users of this potential area, and could, therefore, gain collective rights over forests under the CFR provisions of the FRA (CFR-LA 2016: 11). These are significant numbers, but they are not surprising given the intense dependence of more than 250 million people on India’s forests. India’s joint forest management programme itself claims to have covered 55 million acres (Bhattacharya et al 2010). In Nepal, the extremely successful community forestry programme covers more than a third of Nepal’s forests. Through the FRA, India can finally begin to decolonise its forest governance and bring justice to Adivasis and OTFDs whose rights over forests have been historically denied.

Performance of CFR

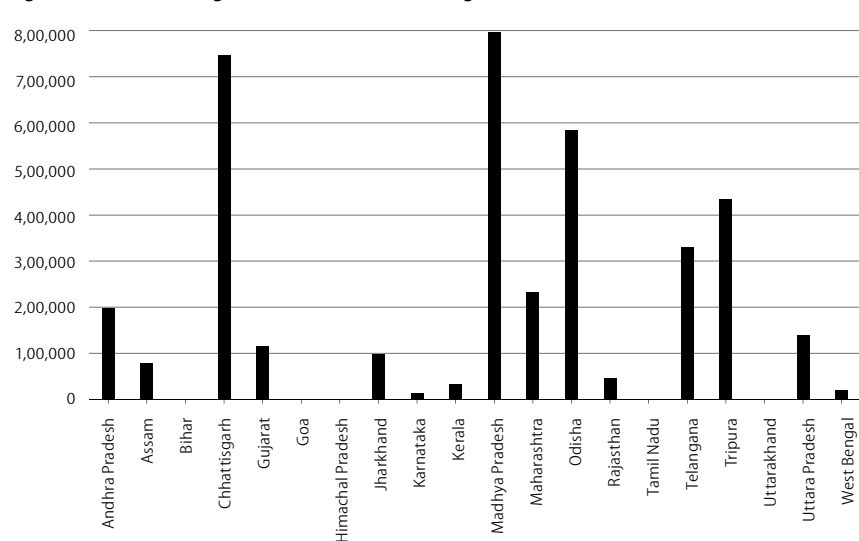
How does the actual performance, that is, recognition of CFR rights compare against this potential? CFR-LA (2016) reports that only 2.7 million acres have been recognised as CFRs in the last 10 years. This is barely 3% of the potential for CFR rights. The statewise promise and performance of CFRs is provided in Figure 1.

Figure 1: Statewise Promise and Performance of CFR Rights



Source: CFR-LA (2016: 32–33).

Figure 2: Statewise Recognition of Individual Forest Rights



Source: CFR-LA (2016: 34).

The data shows that very little of the potential of the FRA has been achieved. Indeed, most states have not even started recognising CFR rights. Specifically, the data shows that Madhya Pradesh, Maharashtra, Chhattisgarh, Odisha, Andhra Pradesh, Telangana, Rajasthan, Karnataka, Himachal Pradesh and Uttarakhand are the states with high potential for CFR rights recognition. Of these high potential states, Uttarakhand and Himachal Pradesh have made no progress. Madhya Pradesh and Chhattisgarh, the highest and the third highest potential states, also show little progress in CFR recognition.

Andhra Pradesh, Telangana, Jharkhand, Karnataka and Rajasthan have also recognised very small areas of CFR. The only states with substantial CFR recognition are Maharashtra, Odisha, Gujarat and Kerala.

Performance of IFRs

IFRs are another significant category of rights provided under the FRA. Most states prioritised the implementation of IFRs, treating the FRA as a land distribution scheme rather than the recognition of pre-existing rights. A total of 3.845 million acres have been recognised as

IFRS till July 2016.² The statewide data on IFR recognition in Figure 2 (p 41) is adapted from the CFR-LA (2016: 34) report.

This data shows that Madhya Pradesh, Andhra Pradesh, Telangana, Chhattisgarh, Odisha, Maharashtra and Tripura have done well in IFR recognition, quantitatively speaking. However, various reports and feedback from the ground indicate that these rights recognitions have been ridden with several problems. The problems include illegal rejection of land claims, non-acceptance of valid claims, under-recognition of claims and mistakes in the titling process. In many cases, the proper procedure for recognition of rights was not followed and decisions were taken by local officials rather than by the gram sabhas.

Performance of States

An analysis of statewide data on the recognition of IFR and CFR claims shows that states can be categorised into five broad categories (Table 1). Some states, which we call “laggard states,” have either not started implementing FRA at all or have barely made a beginning. A surprisingly large number of states fall in this category. Two states, Tripura and Uttar Pradesh, have focused only on “IFR implementation.” Some others have recognised IFRs and community forest rights instead of CFR rights; Madhya Pradesh is an example of this. The “low CFR performing” states have implemented CFR rights but are at a very low level of implementation compared to their potential (less than 2%).

Finally, four states fall in the better-performing category as they show substantial efforts in implementing both CFRs and IFRs. Maharashtra stands out as the state with the highest achievement in recognising CFRs but even Maharashtra has only achieved 18% of its

potential. Similarly, Odisha, another well-feted state, has achieved barely 6% of its CFR potential. Thus, the revolutionary potential of FRA remains largely untapped.

Our primary research shows that the states have prioritised individual rights recognition, for the granting of “land titles” are seen as a populist measure with political benefits. Field functionaries have also seen individual rights recognition as an opportunity for rent-seeking. The forestry departments have not opposed recognition of IFRs as these lands are already under cultivation. Thus, Madhya Pradesh even won an award for the best FRA implementation, simply based on its implementation of IFR recognition.

However, the recognition of collective rights over forests as CFRs is another story. Forests coming under the authority of gram sabhas are obviously seen as a threat to the forest bureaucracy’s control over critical forest resources. Several studies show that the forest bureaucracy has tried to subvert community rights recognition process (Springate-Baginski et al 2012; Kumar et al 2015). FRA is also seen as obstructing the rapid diversion of forestland for infrastructure and industrial purposes given the need to take prior consent from gram sabhas and has, therefore, not been in political favour with state governments competing for investments. A more detailed exploration of the political economy of poor implementation of CFR rights is presented in the following article by Sahu et al in this series.

The states that have made good progress in the recognition of community rights have done so due to pressure from civil society organisations and local mobilisations. In these states, civil society actors have been able to assert pressure and convince the political and bureaucratic

leadership of the benefits of recognising CFR rights. Collective pressure from civil society actors and grass-roots mobilisations in these states have pushed the nodal agencies, district administrations, and the political leadership to take action. Some progressive bureaucrats, especially officials from the tribal departments and district collectors, have actively sought civil society support for CFR rights recognition, for example, in Gadchiroli, Maharashtra and Mayurbhanj, Odisha.

In Maharashtra, the governor’s office has intervened and used its special power for Schedule v areas to promote CFR rights. This intervention by the Governor’s office ensured that the Village Forest Rules, a strategy used by the Maharashtra Forest Department to subvert community rights was not applied to the Schedule v Areas of Maharashtra. In Gujarat, civil society organisations, especially Arch Vahini played a key role in showing the benefits of community rights recognition. In Odisha, the civil society actors have developed a close alliance with progressive officials and have worked closely with the Tribal Welfare Department to support community rights recognition. At the same time, they have worked closely with the district collectors such as Mayurbhanj and Kalahandi on rights recognition, and relied on the capacity building of government officials through trainings and orientation.

In other high potential states such as Madhya Pradesh, Chhattisgarh, Himachal Pradesh, Uttarakhand, and Jharkhand as well as undivided Andhra Pradesh, unfortunately, there has been limited mobilisation of civil society and responsiveness from the state. The political leadership in these states seems to be unaware or unconvinced about the importance of CFR rights, and have not pushed for its implementation. The weakness and lack of capacity of the nodal ministry, the Ministry of Tribal Affairs, has also meant that the FRA and CFR rights have been rendered political orphans.

Transformative Potential

IFRS give forest dwellers a sense of security against future evictions. Bureaucratically, the granting of IFRs meets little

Table 1: Broad Categorisation of States in Terms of FRA Implementation

Type	States
Laggard states: No or extremely poor performance on all fronts	Assam, Bihar, Goa, Himachal Pradesh, Tamil Nadu, Uttarakhand, Haryana, Punjab, Sikkim, West Bengal
States with only IFR Implementation	Tripura, Uttar Pradesh
States with high IFR and CFR ³ recognition, but very little or no CFR rights recognition	Telangana, Andhra Pradesh, Madhya Pradesh
States with high IFR but low CFR rights recognition (less than 2% of minimum potential)	Rajasthan, Karnataka, Jharkhand, Chhattisgarh
States with high IFR and significant CFR rights implementation	Maharashtra, Odisha, Kerala, Gujarat

resistance because these areas by definition were already under cultivation or habitation. Politically, the “handing out” of IFRs as if it is a land grant programme, even if misguided, can create the impression of a pro-Adivasi government. But in fact, CFR rights are the most critical for going the whole way in terms of both forest conservation and sustainable livelihood enhancement.

Granting community management rights over large tracts of forests means the FRA has the potential to finally decolonise most of India’s forests and forest governance, and restore local rights over forests. The FRA, thus, opens up the possibility of bringing in much needed public lands reform. Research from around the world, including India, shows that communities can be good stewards of local forest resources and can be more efficient and effective in managing, protecting and conserving forests as compared to private entities or governments (Ostrom 1990; Somanathan et al 2009; Stevens et al 2014). Also, in the process of “caring for their forest,” local communities can regenerate their communities, cultural heritage, and relations with the forest (Singh 2013).

CFR rights would also be the most cost-effective way of meeting India’s Intended Nationally Determined Contributions (INDC) to sequester an additional 2.5 billion tonnes of carbon (MoEF 2015). Communities in different parts of the country have successfully used the FRA to protect forests and their biocultural habitats as illustrated in examples of the Dongria Kondhs’ campaign to protect Niyamgiri (Shrivastava 2013). Thus, FRA promises a grass-roots democratisation of forest governance, empowering the weakest and most marginalised sections of India’s rural populations, and allowing these communities to conserve and protect forests effectively.

At the same time, secure rights over CFRs can help alleviate poverty in the forested heartlands of India by ensuring that benefits from forest product harvests and enterprises, and from reforestation, carbon sequestration, and provision of ecological services, go directly to the right-holding gram sabhas and

their members. For instance, several tribal and OTFD gram sabhas in Gadchiroli district of Maharashtra and Narmada district of Gujarat have earned tens of lakhs of rupees from the sale of bamboo and tendu leaves from their CFRs (Aiyar 2013). The FRA can also strengthen food security from forests and tree-based systems in forested areas (Bhaskar et al 2015) through secure rights over forestland and forest products (Blackie et al 2014).

Conclusions

Barely 3% of the estimated potential for CFR rights recognition, that is, 2.7 million acres out of 35.6 million acres, has been achieved. The recognition of IFRs has fared better in comparison with an estimated recognition of 3.84 million acres, though evidence shows that even that process has suffered from serious shortcomings. And yet, despite this poor overall implementation, FRA has already become one of the largest land reforms in India’s history. Its true potential through the CFR rights for development, empowerment, poverty alleviation, and conservation, has been realised only in a few locations such as Gadchiroli, Narmada and Mayurbhanj. These instances illustrate the potential of FRA to dramatically transform the forested landscapes of India and unleash the creative potential of India’s forest-dependent communities for sustainable development and conservation through democratic forest governance. However, realising the full potential and meeting the stated goals of redressing historical injustices against forest dwellers will require broader political will and effort both at the central and state levels.

NOTES

- 1 We exclude CFR from this calculation, as many CFR rights are not territorial in nature and often overlap with other communities’ CFR rights. However, CFRs refer to territorial claims inside the traditional and customary boundary of the villages and can, therefore, be measured and calculated.
- 2 The corresponding Ministry of Tribal Affairs figure is larger, but includes inflated reporting from Madhya Pradesh and Telangana.
- 3 CFRs do not provide gram sabhas the power to manage and govern forests, which are explicitly defined for CFRs, making it a comparatively weaker right.

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