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**The Indian Forest Rights Act: A Path Towards Greater Inclusion in Indian Forests or a Detour Towards Further Marginalization?**

**Abstract**

In 2006, India passed the Forest Rights Act (FRA), which legitimized tribal groups’ and other forest dwellers’ access to and use of their ancestral forest lands, promoted collective conservation and management of forested areas by tribal groups themselves and solidified a claims system, giving such forest dependent communities the option to pursue both individual and community owned land titles. Highlighting the south eastern state of Odisha as a case study, this paper seeks to answer “To what extent has state controlled forest tenure reform in Odisha been able to devolve decision making power and access rights to forest dependent communities?” The theoretical literature being used for this research is steeped in the tradition of institutional analysis and follows Ribot and Peluso’s notions under “Bundles of Power” and Agarwal and Ribot’s decentralization framework on “actors, power and downward accountability.” These two theoretical approaches have specifically been chosen as they take into account different property rights arrangements, account for the influence of power in devolution related policy programs and allow for substantial analysis of both primary stakeholders and accountability measures. Qualitative data collection has been used for this research, including individual key informant interviews and focus group discussions in four districts of Odisha. These interviews have been analysed using the NVIVO10 program.

Initial results show that implementation efforts have shown positive outcomes selectively, largely due to complex administrative procedures, narrow beneficiary definitions and narrow inclusion of marginalized groups, both in consultations and rights recognition.

**Disclaimer[[1]](#footnote-1)**

**I. Introduction**

Since 1985, developing countries in Asia, Africa and Latin America have increasingly applied decentralized reforms to natural resources, which have aimed at escalating management, use and ownership of natural resources by historically marginalized groups at the community level (Larson and Dahal, 2012; Sun et al 2011; Araral, 2004; White and Martin 2002). One of the most dynamic policy sectors has been forest tenure reform, focusing on legitimizing access to and use of forest land and resources by groups who have traditionally lived in the forest (Larson and Dahal, 2012). Specifically, forest tenure reform defines “who is allowed to use which resources, in what way, for how long and under what conditions, as well as who is entitled to transfer rights to others and how” (Larson et al, 2010).

In 2006, India passed the Forest Rights Act (FRA)[[2]](#footnote-2), which legitimized tribal groups’ and other forest dwellers’ access to and use of their ancestral forest lands, promoted collective conservation and management of forested areas by tribal groups themselves and solidified a claims system, giving tribal groups and other forest dwellers the option to pursue both individual and community owned land titles. Heralded with much fanfare and described as addressing “historical injustices” (FRA, 2006), this act came into force in 2008. Its implementation has received mixed reviews so far, especially since interpretation of the act has differed from state to state and opposition towards this legislation has been strong among the conservationists and members of the government forest bureaucracy. Civil society activist, Madhu Sarin, recently wrote: “the FRA questions the very basis of current state controlled, exclusionary forest management” and that it is one of “the most contested laws to be passed by the Indian Parliament. Powerful elite conservationists and the forest bureaucracy launched a tirade against it, contending that it would lead to the destruction of the country’s forests and wildlife” (2012).

In order to understand why this act is so contested, what its impact has been on forest dependent communities’ livelihoods, decision-making and access rights so far and what the future may hold for collective management and conservation of forested areas by tribal communities themselves, the main research question of this paper is: “Has state controlled forest tenure reform in Odisha been able to devolve decision making power and access rights to forest dependent communities?” Based on recent qualitative data collection in the southeastern state of Odisha and an indepth literature review, this paper argues that *devolution in the context of the Indian Forest Rights Act has worked selectively. This is largely due to non-transfer of rights to forest dependent communities and inert bureaucratic structures lacking in downward accountability towards self-governance systems at the village level.*

The paper proceeds as follows. Section two covers both a literature review on decentralization policies and legislations related to forest tenure reform and a brief historical overview of the Indian experience. Section three introduces the theoretical influences and framework used for this research, including institutional analysis on natural resource property regimes and Agarwal and Ribot’s framework on downward accountability for decentralization attempts. Section four summarizes the driving research questions and overall design. Section five presents initial findings and interpretation of results. The final section provides relevant policy recommendations and proposals for future research.

**II. Literature review on decentralization and natural resource property regimes**

*Decentralization and Natural Resource Property Regimes; The Global Experience*

Decentralization, in the context of this research, is specifically covering devolution, which is often considered the most intense form of decentralization and refers to transfer of decision-making power from the central government to a non-government entity, such as an NGO, or the forest dependent communities themselves (Ribot, 2001; Sundar, 2000). This research is also geared towards analyzing devolution in the developing country context, with the assumption that “communities can be good forest managers but that community forestry and other forms of devolution are not a panacea for obtaining improvements in livelihoods and forest conservation” (Larson et al., 2010).

Despite the rhetoric of “inclusion” and “community participation” for user groups in devolution centered policies (Sundar, 2002), it is often unclear how beneficial such reforms actually are for the marginalized communities they are targeting. What are important determinants in expected policy outcomes,that are being overlooked when analyzing forest tenure reform in the developing country context? Is the actual policy process user-friendly and inclusive enough, so that both local government officials and user groups have the information and resources they need to create an environment in which forest rights, such as land rights and collection and ownership of non-timber forest produce (NTFPs), can effectively be exercised? The global experience in forest tenure reform policies may shed some light on what the long-term consequences will be for forest dependent communities, trying to benefit from the Indian Forest Rights Act.

Indonesia, for example, has been experimenting with decentralization reforms since 1998. Initially, a lot of decision-making power was given to district heads, resulting in the exploitation of forest resources (Komarudin et al., 2012). Worried about how increased authority among district heads would impact the actual management of natural resources and the needs and rights of communities living in and around them, the central government reduced district heads’ decision making power in 2002 and amended the decentralization law in 2004. Despite the revised law giving more pathways to communities for participation in the policymaking process, overall contributions from communities remained low due to conflicting laws on natural resources and low inclusion of marginalized groups, such as women (Komarudin, 2012).

In Guatemala, decentralization in the forestry sector took place in 1996, giving a substantive amount of administrative, fiscal and political power to the municipal governments. Besides having their own budget, municipal governments are allowed to own their own forest land and either manage it according to their own rules or lease it out to local users. In fact they can give full control of resource management to local users through local agreements (Andersson et al, 2005:582). In a comparative study on the importance of the forestry sector at the municipal level in Guatemala and Bolivia, it was found that in addition to support for decentralization from the central level, donor organizations and conservation outfits, incentives of local level politicians is also an important determinant for policy outcomes (Andersson et al, 2005:590).

In Thailand, the Community Forestry Bill was passed in 2007, after nearly two decades of negotiation among stakeholders. Whilst decentralization efforts of 1998 and the Thai Constitution, which explicitly state that communities should participate in natural resource management, the 1961 National Parks Act is contradictory to this content. In addition, Thailand’s diverse ethnic population is testament to marginalized groups being excluded in the process of forest tenure reform, especially if they are migratory groups, such as the Hmong (Johnson and Forsyth, 2002). In the Thai context, it is due to lack of citizenship and having less negotiating power with powerful state actors who control the process (Johnson and Forsyth, 2002). Among all these processes, it has been found that they are not equitable due to elite capture. Groups with any type of disadvantage, whether it be lack of citizenship, gender, caste, class, ethnicity, lack of social capital or just pure lack of information, are either left out of the process entirely or are only able to participate in the following circumstances:

* if the process is taking place in an area where social movements have existed for an extended period of time (at least ten years), resulting in representatives of this movement having negotiation and bargaining power (Fernando, OECD, 2012).
* if there is a strong civil society presence in the form of a well resourced and experienced NGO that invests the time in awareness raising, training and monitoring, the chance that marginalized communities will participate and have some decision making power is higher (Bebbington et al, 2008; Banks and Hulme, 2012).
* if there is a high ranking individual in the district administration (in India’s context), specifically the District Collector, who has a certain degree of autonomy in deciding how central level legislations shall be implemented at the district level, and this individual has the leadership qualities and motivation to ensure equitable implementation of this legislation, then the processes are likely to be more inclusive (Grindle, 2007; Gordillo et al, 2009).

*The Indian Experience:*

In order to set the development of the Forest Rights Act, its emergence and implementation into context, it is important to give a historical backdrop to forest related issues in India, such as the evolution of forest dependent communities, the creation of the forest department, colonial versus state interests, and their often tumultuous relationship with each other. It is not a clear-cut story of forest land appropriation by the state for commercial interests, continuously sidelining and exploiting indigenous groups[[3]](#footnote-3), that commenced during colonialism and continued to the present day. Rather, it is a complex history, whereby the changing nature of institutions, various property regimes and a range of civil society, public and private actors make it a difficult landscape to analyze.

According to the 2011 Indian Census, nearly 105 million persons in India are considered to be *Adivasis* or members of “scheduled tribes.” Derived from the “schedule” of tribes the British first created in 1872, 635 tribal groups are listed in the Indian Constitution and the majority of them live in forests and mountainous regions (Gupta, 2012; Bose, 2011). The scheduled tribes of India largely fall under four main language groups: the Santhals, the Munda, the Gond and the Bhil – these are also the names of these four large tribal groups (Gupta, 2012). Despite having been granted customary rights over the land they inhabit in the fifth schedule of the Indian Constitution, *Adivasi* history has been mired in a bitter battle over forest land and resources (Gupta, 2012). In order to highlight some of the historical root causes, which ultimately led to the Indian Forest Rights Act, a brief overview is given on the pre-colonial, colonial and present day time period.

*Pre-colonial time period (before 1505)*

There is little documentation on forest dependent communities before the advent of colonialism (Guha, 1983:1), except that in most areas they were free to do what they wanted, whether it was the type of cultivation, the amount of non-timber forest produce (NTFP) collection, indigenous land conservation or timber felling (Guha, 1983). This does not mean that there were not certain systems between forest dependent communities and the zamindari rulers, who in some cases, owned the land inhabited and cultivated by these communities. Systems that required small payments to the rulers to use the land or small shares of the NTFPs collected. Rarely, however, did these systems impinge upon traditionally held rights by these forest dependent communities. Guha elaborates:

**While the native kings did subject the produce of the forests (such as medicinal plants) to a small cess and when they were exported, the products of the forests consumed by people themselves were not taken into account (Atkinson col.1, 1884). Similarly, it was reported from Madras that villages had traditionally owned all forests within their boundaries (Stebbing vol.I, 1922-27, p14ff). Such a situation would have arisen in a state of equilibrium, arrived at through a process of conflict and struggle between the feudal state and the village communities under its aegis. This equilibrium entailed payment of a certain tribute by the peasantry to the feudal authority, which in turn recognized the existence and continuation of certain communally-held rights in relation to forests and wasteland (Guha, 1982). The freedom enjoyed here was extensive…(Guha, 1983:2).**

It is important to note that the majority of these forest dependent communities comprised of adivasis[[4]](#footnote-4), who created a culture of rites, beliefs and customs based on experience living in and depending on the forest, whether it was holding certain areas sacred, worshipping deities that were strongly related to nature, planting certain tree species near temples for additional protection from harm or respecting traditional territorial boundaries (Guha, 1983:p.2). Glimpses of these traditional rites and beliefs remain present to this day, as is evidenced by the Dongria Khond indigenous group in Odisha, who was able to prevent a takeover by corporate mining giant Vedanta on land which included “sacred hills” (Sambhav, Down To Earth, 18 April, 2013).

*Colonial time period (1612 – 1947)*

Initially, Indian forests were exploited for both military and commercial purposes, as oak tree reserves were dwindling in western and northern Europe and the British Royal Navy was in dire need of timber for its ships. In the late 1800s, the great Indian Railway project began and indulged in great expansion without setting any limits on how much timber could be felled. Guha writes: “The early years of railway expansion saw an unprecedented assault on the more accessible forests. Great chunks of forests were destroyed to meet the demands for railway sleepers, no supervision was exercised over the felling operations, and a large number of trees being felled whose logs could not be utilized (Stebbing, vol.I, 1922-27:298-99, as cited in Guha, 1983:3). Witnessing the negative consequences of such reckless behaviour and realizing that India’s natural resources are finite, the colonial administration decided to create the forest department in 1862. It was initiated “because government became aware that the magnificent forests of India and Burma were being worked by private enterprise in a reckless and wasteful manner, and were likely to become exhausted if supervision were not exercised” (An officer’s remark in Webber, 1902:xii-xiii; as cited in Guha, 1983:3).

The assertion of state monopoly (Guha, 1983) came not only with the new forest department, but also with accompanying legislation, which largely limited user rights (Guha, 1983). Besides curtailing rights of private actors, the 1878 Forest Act (a more comprehensive and detailed version of the 1865 one) also largely limited rights of village communities dependent on forests for their daily livelihood. Their usage of forest areas was no longer considered a “right,” but rather a “privilege” which would be decided by the “ruler” (Guha, 1983:5). This act also legitimized state appropriation of forest land for the building of the railways and allowed for further appropriation of “valuable tracts of land” \*Guha, 1983:5) if necessary. It should be mentioned, that in the making of the 1978 Act, reactions to its content could be divided up into three perspectives: the “annexationists” who supported state monopoly over forest areas; the “populists” who supported that the customary rights and control formerly enjoyed by village communities should be retained; and the “pragmatists” who attempted to bridge the two perspectives by creating different “classes” of forests within the language of the act, including “state forests,” “village forests” and “private forests” (Gadgil and Guha, 1992: 123-43). “Village forests” for instance were meant to be demarcated for the use of forest dependent village communities, including the creation of a “council of men (one elected from each village) form a forest court to settle disputes arising out of the management of village forests” (Guha, 1996:92, as cited in Sundar, 2000:261).

Contrary to popular belief, not all forest areas were controlled solely by the British for timber exploitation or by native kings and landowners, who had similar interests to the British. There were numerous areas in which forest dependent communities had a certain degree of decision-making power, as a result of opposition to the British. At times, these communities are presented as completely autonomous, self-initiated and managed. However, the majority of them remained linked and answerable to both the forest and revenue departments, especially in matters of governance, formulation of usage rules and NTFP collection (Sundar, 2000: 259). For example, the “community-managed” commons in North India’s Kangra region were carefully created by the state, in order to make revenue monitoring easier (Chakravarty-Kaul,1996 as cited in Sundar, 2000:259).

*Post colonial time period (1947 – 1980)*

Post-Indian independence, the rights and privileges of tribal groups and other forest dwellers were further curtailed. Between 1947 and 1980, adivasis not only lost three quarters of forest land which was their traditional habitat and some “privileges” from the 1927 Indian Forest Act (1952 Forest Policy Act), but were often considered encroachers under the 1980 Forest Conservation Act (Bose 2011). Sarin explains:

**Between 1951 and 1988, the national forest estate was enlarged from 41 million hectares to 67 million hectares, largely through sweeping notifications declaring constitutionally protected Schedule V tribal areas as state forests. In most cases this was done without recognizing pre-existing rights mandated by the colonial Indian Forest Act 1927 (Rights and Resources initiative, 2012).**

However, in the 1970s and 1980s, India began to mirror the global trend: “indigenous peoples’ rights demands, democratic decentralization and conservation interests” (Larson et al, 2010). Indigenous group activism usually came in the form of demanding formalized land or usufruct rights for forest areas that had been taken over by the state, without consultation with communities who had customary rights in these areas (Larson et al. 2010; Anaya and Grossman, 2002). Much of the formal land titling procedure has occurred in Latin American countries, such as Brazil, Nicaragua and Bolivia (Larson et al, 2010). The second global trend at this time was decentralization of natural resource management. The third global trend was the conservation lobby, which at times has bridged its agenda with development and shaped community conservation efforts in positive ways (Larson et al., 2010). However, it has also been a competitive or negative force at time, resulting in “significant direct losses to livelihoods and agricultural incomes” (Larson et al, 2010:83).

It was during the 1980s that these two opposing agendas, in India, became starkly defined, the conservation agenda versus scheduled tribes and forest dwellers pushing for forest tenure reform, rather than further destruction of forests (Sarin, 2012). In the 1980s, the conservation lobby gained greater momentum through the Wildlife Protection Act in 1972 and the Forest Conservation Act in 1980). However civil society pressure on behalf of scheduled tribes and forest dwellers continued, leading to the Joint Forest Management (JFM) Programme in 1990. In addition, there had also been “community forestry successes” (Agarwal, 2010) in the 1970s and 80s, including the Chipko movement in north-west India and examples of strong forest protection groups in states such as Orissa and Bihar. Examples of joint collaboration between village councils and forest field officers in West Bengal, led to the formation of the Indian JFM program. This program was not only India’s “formalization of decentralized forest management” (Agarwal, 2010), but it was also meant to do the following:

**…to establish a partnership between the state forest department and village communities, with a sharing of responsibilities and benefits from the regeneration of degraded forest land, subject to a joint agreement. The state level orders allow a 25-50 percent share (varying by state) of the mature timber when finally harvested. This provides incentives to villagers, and the assumption of a shared common interest is expected to enhance prospects of cooperation. NGOs can act as catalysts in group formation (Agarwal, 2010:85).**

However, a program, which was meant to empower communities, uphold their customary rights and give more power to the village level in management of forest land and resources, proved to be a great disappointment (Sarin 2012, Bose 2011, Hilyard et al, 2001 and Shah and OG, 2009). At times JFM committees made their primary task the eviction of forest dwellers, rather than encouraging community participation for the protection and preservation of forest lands (Sarin, 2012). Increasing discontentment and conflicts over land tenure continued.

The 1990s saw two new developments, which were meant to strengthen rights for tribal groups and other forest dwelling communities: (1) six circulars sent out by the Ministry of Environment and Forests (MOEF), with the goal of reducing illegal evictions of forest dwelling communities, guidance towards claims disputes over forest land and on the conversion of forest villages to revenue villages (Circular no 13-1/90 FP of the Government of India, Ministry of Environment and Forests, September 18, 1990); (2) the Panchayats Extension to the Scheduled Areas (PESA) Act, which was supposed to empower self-governance groups at the village level in tribal areas “to safeguard and preserve the traditions, customs of the people, their cultural identity, community resources and the customary mode of dispute resolution” (Sarin, 2012). However, both the circular and PESA act resulted in low implementation rates, continuing in a chain of evictions, land disputes and confrontations between conservationists, developers and groups supportive of indigenous rights (Sarin 2012).

In 2002, the MOEF, ignoring its six circulars from 1990, referred to all tribal and other forest dwelling communities as “encroachers” and started giving out eviction notices on a large scale. This particular eviction campaign resulted in widespread outrage, prompting the creation of a national alliance, called the Campaign for Survival and Dignity (CSD). This alliance was made up of “grassroots movements, rights activists, and academics” (Sarin, 2012) with the initial aim of implementing the 1990 MOEF circulars, which soon developed into “a demand for a comprehensive law for the statutory recognition of pre-existing rights” (Sarin, 2012). In 2004, with a new central government in power, the Forest Rights Act finally came into existence in 2006. Its actual implementation, however, started in 2008, with the Ministry of Tribal Affairs (MOTA) being the main government focal point, purveyor, monitor and implementer at the central government level. The figure below explains the Forest Rights Act claims process that eligible beneficiaries have to go through: For the main provisions in the act, please see Annex One.

**FIGURE 1: THE INDIAN FOREST RIGHTS ACT AND ITS CLAIMS PROCESS**

**STATE LEVEL MONITORING COMMITTEE**

-monitors the process of recognition and vesting of forest rights. Submits regular records (such as claims submission, resolutions and rejections) and reports to MOTA

**DISTRICT LEVEL COMMITTEE**

-If a claimant is unhappy with the decision of the sub divisional level committee, he/she can petition the district level committee within sixty days

-makes a final decision on the resolutions made by the Gram Sabha. The district level committee’s decisions are final and binding.

**SUB DIVISIONAL LEVEL COMMITTEE (formed by the state government)**

-If a claimant is unhappy with the decision of the Gram Sabha, he/she can petition the decision with the sub divisional level committee within sixty days

-examines the resolutions made by the Gram Sabha and sends it to the district level committee for a final decision

-raises awareness on community rights

-provide documentation, records and technical assistance to Gram Sabha in claims verification

**GRAM SABHA (VILLAGE ASSEMBLY)**

-consolidates claims and verifies them

-prepares map delineating area of the claim in question

-makes a recommendation on whether claim should be accepted or rejected and then submits the suggestions, in the form of a resolution, to the sub divisional level committee

**FOREST RIGHTS COMMITTEE**

-prepares claims for Gram Sabha to review

-collects claims for either individual or community rights to land and passes them on to the Gram Sabha for consolidation and verification

-helps to map land areas, which informs the map the Gram Sabha is to prepare

 In 2012, the rules of the act were amended, bringing about greater clarity on how the claims process was supposed to be implemented on the ground. Some of the clarifications included the creation of panchayat level lists which have updated and accurate information on hamlet, villages and unsurveyed areas; more detailed information on the composition of individuals for Gram Sabha meetings and members of the Forest Rights Committees; updated description of how sub-divisional and district level committees are supposed to function. Despite the amendment, there remains a gap in the actual intention of the act and how much marginalized communities, such as scheduled tribes, actually benefit. The next section reviews both the theoretical influences and framework applied to the Indian Forest Rights Act context in this paper.

**III. Theoretical Framework**

Bundles of Rights

One of the most applied theoretical traditions used to analyze evolutions in property regimes, is institutional analysis. Particularly, Schlager and Ostrom’s work on “bundles of rights” (1992) tries to take into consideration not only whether property, within the natural resource context, is owned individually, by the government, by the community, or falls outside these three realms, but also what types of rights have been allotted to those using these different types of properties. Are they “authorized users,” “claimants,” “proprietors” or “owners?” (Schlager and Ostrom, 1992:249). Their conceptual schema is based on day to day operational level rules, which can be changed by “collective choice actions.” “Rules” in this context are defined as “agreed-upon and enforced prescriptions that require, forbid, or permit specific actions for more than a single individual” (Schlager and Ostrom, 1992:250) and “rights” are defined as “particular actions that are authorized” (Ostrom, 1976). Every right has a rule or set of rules, which not only authorize, but also prescribe which types of actions should be used in order to execute this right. These rules also prescribe the complementary duties right holders have to observe (Schlager and Ostrom, 1992:250).

 This conceptual schema is particularly appropriate to the Indian Forest Rights Act, as beneficiaries have the chance to claim both individual and community owned property rights. Whilst the land is still owned by the government, claimants receive user rights for life, which can also be passed down to the next generation. They cannot, however, sell or lease this land. Schlager and Ostrom’s “bundle of rights” consists of the following types of rights (1992:251):

1. Access: “The right to enter a defined physical property”
2. Withdrawal: “The right to obtain the ‘products’ of a resource” (such as collection minor forest produce)
3. Management:
4. Exclusion: The right to decide who can and cannot enter and use the physical property in question (who can and cannot access) and how such a right may be “transferred.”
5. Alienation: the authority to sell or lease the land in question

In the case of the Indian Forest Rights Act, content in the actual legislation regards beneficiaries as actual “claimants,” defined by Schlager and Ostrom as “individuals who possess the same rights as authorized user plus the collective choice right of management” (1992:253). The ground reality in Odisha, however, points to a more complex situation, where the level of access among claimants to these rights remains low and power struggles between new right holders and the state, specifically, the forest department, ensue. These initial study results shall be discussed in greater detail in the Findings section. Other important factors to mention, which are also significant in Schlager and Ostrom’s conceptual scheme, include that claimants under the Indian Forest Rights Act have de jure property rights. Even though they are not allowed to sell or lease the land, they can appeal decisions with the district administration, which officially allotted property rights to them in the first place.

 The final point integral to Schlager and Ostrom’s “bundle of rights” is differentiating between those who may have the full bundle of rights, the so called “owners,” versus those who only have some of the rights, the so called “authorized users” or “claimants” (1992:256). Even though owners may not conserve the resource in question (Clark 1973, 1974), or even abuse it (Larson and Bromley 1990), they have a higher guarantee that there will be a return on their investments (Schlager and Ostrom, 1992: 257). Specifically, it can make a big difference if the rights of exclusion and alienation do not exist for beneficiaries, which in the case of the Indian Forest Rights Act, they do not. In some areas, even management and withdrawal rights do not exist (such as sanctuaries), leaving them to be “authorized users” rather than “claimants.”

Claimants, who usually do not have access to the rights of alienation and exclusion “face stronger incentives than do authorized users to invest in governances structures for their resources even though their incentives are weaker than proprietors or owners” (Schlager and Ostrom, 1992:257). Two important considerations which are missing in Schlager and Ostrom’s “bundle of rights” concept are to what extent claimants or authorized users are able to access these rights, whether they have the means or not and whether they choose to access these rights by legitimate or illegitimate means. In addition, the role of external power relations and how these can shape the type of access claimants or authorized users have to the final “bundle of rights” is also not explored in enough detail.

Bundles of Power

In order to better explain how access mechanisms and power relations are important in the design, implementation and overall aftermath of forest tenure reform, Ribot and Peluso’s theory of access is instructive (2003). Ribot and Peluso define access as “the ability to benefit from things – including material objects, persons, institutions, and symbols” (2003:153). The emphasis on ability, allows them to concentrate on a myriad of social relationships, which “constrain or enable people to benefit from resources without focusing on property relations” (2003:153).

Two aspects which are significant in the theory of access are the inherent link that social relationships have power and that access literally includes “all possible means” (2003) from which a person can benefit, including both socially accepted means, such as the law, and illicit means, such as violence and theft (Ribot and Peluso, 2003:156). By including illicit means in their analysis, Ribot and Peluso try to go one step further than conventional property rights literature, which examines resource ownership and control that remains socially acceptable, that is “sanctioned in some way by some social institution” (2003:157). In essence, access relations are always evolving, based on an individual’s or group’s power dynamics in a social relationship (Ribot and Peluso, 2003:158). In order to further illustrate their point, Ribot and Peluso integrate Ghani’s “Bundles of Power” (1994) idea, explaining:

**These bundles of powers become nodes in larger webs and, at the same time, can be disaggregated into their constituent strands. Placing this analysis within a political-economic framework helps us identify the circumstances by which some people are able to benefit from particular resources while others are not (2003:158).**

Besides having control and maintenance of access, the process of “gaining access” is just as important (2003:160). Gaining access is rarely straightforward in decentralization attempts in the developing country context. Often times, legislations, which are meant to expand and ease the process of gaining access, remain ambiguous because “powers associated with particular rights” are not fully expressed (2003:163). Such ambiguity results in more discretionary power for state actors, leading to the “means of transfer” problem (Conyers, 2000). In such a scenario user rights are not permanently recognized and legitimized, rather they become “insecure arrangements or privileges that decision-making agents can change at will” (Ribot and Peluso, 2003:163). It is important to incorporate what ability members of a forest dependent community have to gain access to rights in the first place and how this process of gaining access is influenced and linked to power dynamics in surrounding social relations.

In the context of the Indian Forest Rights Act, this research is focused on access to authority, knowledge, identity and social relations. Access to authority is defined as “nodes of direct or indirect forms of access control where multiple access mechanisms are bundled together in one person or institution. People and groups gain and maintain access to other factors of production and exchange through them” (2003:170). The two main nodes of authority for the Indian Forest Rights Act are the Forest Department, which has historically exercised control over the land that forest dependent communities are now trying to claim, and the district administration, which ultimately decides whether a claimant or community receives the so called “rights” or not. Strongly connected, is the access to knowledge, which is an umbrella for many types of important means leading to benefitting from resources, such as: “beliefs, ideological controls and discursive practices, as well as negotiated systems of meaning, shape all forms of access” (2003:168; Shipton an Goheen 1992; Peters 1994; as cited in Ribot and Peluso, 2003). What is most relevant to the claimants in the Odisha environment is the actual control over knowledge and information. Expert knowledge over the claims process or awareness on the specific content of the actual act can be crucial in gaining access to resources.

Two additional forms of access, which can be a deciding factor in how much a claimant benefits from forest tenure reform in India, is the access to identity and social relations. Ribot and Peluso write: “Access is often mediated by social identity or membership in a community or group, including groupings by age, gender, ethnicity, religion, status, profession, place of birth, common education or other attributes that constitute social identity” (2003:171). Social identity is particularly relevant to the Indian Forest Rights Act. Even though the legislation states that forest dependent communities are to benefit from this act, the actual implementation of this act has resulted in only one type of community reaping the majority of the benefits, members of the scheduled tribe community living in and around forest areas. Indian indigenous groups, which are not on the government scheduled tribe list or individuals in heterogeneous communities, labeled as “other forest dwellers,” such as members of scheduled casts are unable to benefit from this act, because of an additional stipulation that has been placed upon them. They must show documentary evidence that their family has been living on the land they are claiming as theirs for at least 75 years (Forest Rights Act, 2006).

The Theoretical Framework

It has been established that both “bundles of rights” and “bundles of power” are important concepts of analysis when trying to understand broader decentralization programs aiming to change natural resource governance. However, it is also important to use a framework, which takes both concepts into consideration and gives a more substantive overview on what the consequences of such programs are. The main framework applied for analysis in this context is by Arun Agarwal and Jesse Ribot, who concentrate on actors, power, and downward accountability in decentralization of natural resources policies.

In order to prove their framework’s applicability, Agarwal and Ribot use four examples of natural resource management decentralization programs, two from the South Asian context and two from the West African context. They conclude that such programs are only effective when “empowered local actors are downwardly accountable” (1999:474). The framework’s most important elements, which aid in evaluating the effectiveness of such a decentralization program are actors, power and accountability. It is important to mention that one of the framework’s limitations lies in the fact that it does not account for numerous other factors that may result in effective decentralization measures, such as “issues of training, physical infrastructure, or education” (1999:474). Following an explanation of what Agarwal and Ribot mean by the framework’s essential elements, the implementation of the Forest Rights Act in select districts of Orissa, shall be viewed through the lens of its actors, power relationships and strands of downward accountability. This analysis is meant to extract and highlight some of the key challenges and success factors in not only the reach of the decentralization program, but also the level of meaningful participation by indigenous groups, and both access to and use of forest rights attained by village level communities.

*Actors*

Actors in this framework specifically refer to individuals, departments, organizations, groups, movements etc who exercise some amount of power over public resources at the local level. This broad definition allows for the inclusion of district level government officials to NGOs to committees at the village level. Not only do each of these actors have some element of power, but they are also accountable for their actions at a certain level. Agarwal and Ribot elaborate:

**These relations depend on the historical, social, and political constitution of the powers of each actor, which may be based on ideology, wealth, heredity, election, appointment, or other means. Actors may also be differentiated from each other by their beliefs and objectives; the internal structure of their organization, including the membership and funding sources of the organization; and the laws to which they are subject (1999:476).**

Besides these characteristics, actors are also considered to have different capacities for social action and be motivated by a range of interests. The results of any decentralization attempt, therefore, will largely depend on which interests the actions are eminating from, how much power the actor in question can exercise and how accountable this actor is towards local level stakeholders. (1999:476).

*Power*

This framework concentrates on four types of powers associated to decision making[[5]](#footnote-5), including:

1. the power to create rules or modify old ones
2. the power to make decisions about how a particular resource or opportunity is to be used
3. the power to implement and ensure compliance to the new or altered rules
4. the power to adjudicate disputes that arise in the effort to create rules and ensure compliance (1999:476).

The power to create rules or modify old ones is important as it ultimately provides the blueprint for the actual structure of the decentralization process, and who benefits from what, to what degree and under what circumstances (1999:477). The power to make decisions about how a particular resource or opportunity is to be used is not necessarily related to rule making leading to sanctioned behaviour. Rather, it usually increases the discretionary authority of local actors impacting the use of the resource in question. The example Agarwal and Ribot use to explain such a scenario is e.g. a local body in the decentralization process having a larger degree of decision making on how the budget is to be spent on the resource. Such decision making power does not have to lead to new or altered rules, but already fulfills the goal of greater autonomy for the local body and decentralization in its fiscal powers (1999:477).

The power to implement and ensure compliance is following-up on and monitoring the implementation of decisions and rules related to the decentralization process. Part of monitoring the implementation stage includes placing sanctions on those groups or individuals who are violating the new and/or altered rules. This stage is especially significant, because the power of rule making without the genuine power to enforce these rules, results in the failure of the decentralization process (1999:477). Agarwal and Ribot further stipulate that successful decentralization outcomes will only be possible if actors who have the power to enforce are either easily accessible to or have authority over those who are making the decisions and rules. (1999:478).

The final category in the area of powers that is significant in decentralization processes is the power of adjudication. Specifically, it is vital that accessibility and independence be the main components in the adjudication framework (1999:478). When decisions are altered or new rules are framed, there is always some level of negotiation and opposition. It is important that communities directly affected by decentralization programs should be able to challenge, question and appeal the new and or altered decisions and rules in place (1999:478). The process to challenge, question and appeal should not only be accessible, but also handled in a non-biased manner (1999:478).

*Downward accountability*

Besides the different actors involved and their levels of power in decision making, another measure of responsibility in decentralization programs is accountability (1999:478). Accountability in this framework is not referring to situations when individuals with decision and rule making power are not accountable to e.g. village level beneficiaries, but only to themselves or other individuals within the government bureaucracy. Agarwal and Ribot are referring to public actors who are downwardly accountable to their local constituents, not just via elections, which can easily fail as an accountability mechanism, but via other channels, including but not limited to:

**Procedures for recall; referenda; legal recourse through courts; third-party monitoring by media, NGOs, or independently elected controllers; auditing and evaluation; political pressures and lobbying by associations an associative movements; provision of information on roles and obligations of government by the media and NGOs; public reporting requirements for governments; education; embeddedness of leaders in their community, belief systems of leaders and their communities; civic dedication and pride of leaders; performance awards, widespread participation; social movements; threats of social unrest and resistance; central-state oversight of local government; and taxation (1999: 479).**

It is these examples of downward accountability, with the combination of some upward accountability from appointed and representative actors, the relationship between administrative and customary authorities and vertical and horizontal ties between government branches, that are likely to impact the effectiveness of the decentralization program and the levels of participation within it (1999:479).

The following section elaborates upon the overall methodology used for qualitative data collection in this research.

**IV. Methodology**

The research design: Qualitative data collection

After conducting an indepth literature review and holding informational discussions with experts, academics, civil society members and government officials, the driving research questions for the qualitative data collection were as follows:

1) How are non-state institutions (such as NGOs, forums, campaign groups, federations and cooperatives) using the FRA to increase access to forest land and resources for forest dependent communities?

2) How are state institutions and existing governance frameworks responding to claims submissions made by forest dependent communities?

3) How are groups at the margin of the community, such as women and scheduled castes, being included in decision-making processes related to forest tenure reform?

4) How accessible and inclusive are the forest rights act governance structures (forest rights committees, sub-divisional level committees and district level committees) for forest dependent communities?

5) How are forest dependent communities able to exercise their forest right after receiving either individual or community tenure?

In order to answer these questions effectively, the following qualitative methods and data collection tools were used:

1. The case study approach (Yin, 2008; King, Keohane and Verba, 1994) was utilized both for the selection of Odisha and the districts within it. Schramm writes: “The essence of a case study, the central tendency among all types of case study, is that it tries to illuminate a decision or set of decisions; why they were taken, how they were implemented, and with what result” (1971, as cited in Yin, 1994:12). The case studies for this research are exploratory in nature and the unit of analysis is the system of action surrounding the Forest Rights Act and how it has been implemented in the Odisha context. This system of action is reflected by the FRA claims process taking place in select communities at the village level in four districts of Odisha. Explanation of the selection criteria is explained in further detail below.
2. The actual qualitative tools applied were as follows:
* Field Observation: Field observation included observing meetings of gram sabhas (village assemblies), sub division level committees, district level committees, state level monitoring committees, federations and cooperatives**.** In addition, field observation also included observing how NGOs are helping individuals and communities file for claims procedures, what daily activities communities are undertaking in the forest areas and how their livelihoods have been affected by the FRA.
* Key informational interviews and focus group discussions (FGDs): Both key informational interviews and FGDs were held in order to collect the following information: Perceptions by different groups of the FRA and its impact; use of the range of institutional channels to both make use of the FRA; functioning of the new committee structure and claims procedure for the FRA; external involvement of government, NGO, community based organizations in either helping or hampering FRA implementation; status of the debate between the conservationists and groups supporting tribal rights. A total of 39 key informational interviews were held face to face, via telephone or e-mail (based on the contributor’s preference and availability) with the following individuals:
* Members of the forest rights committee, the Gram Panchayati institution, the sub-divisional, district and state level monitoring committee
* Officials within the Ministry of Tribal Affairs and the Ministry of Environment and Forests (at the central, state and district levels)
* Individuals working with NGOs, federations, cooperatives and campaigns
* Individuals in academia
* Individuals who consider themselves conservationists

FGDs were held with community members affected by the Forest Rights Act, meaning that they were either title holders, in the process of applying for titles, or were aware of the FRA in some way because of an NGO or government led sensitization. A total of 16 FGDs were held and were disaggregated into the following categories:

* Women only (including women of all ages and backgrounds)
* Men only (including men of all ages and backgrounds)
* Mixed group with men and women (of all ages and backgrounds)

*Field Sites for District Case Studies, Participant Observation and Focus Group Discussions:*

The primary field site chosen to answer the main research question for this dissertation, was the southeastern, Indian state of Odisha. Justification for choosing Odisha as a case study for this research, includes the following reasons: First, Odisha has an interesting evolution in the management of forests, starting with transfers of large forest land areas from zamindars (ladowners) and princes to the government in the 1950s, followed by a unified state policy in 1972 for the classification and management of forests. These developments led to the formal involvement of communities under the 1985 Forest Village Rules, which spurred community forestry in many areas, and the national joint forest management (JFM) policy (Rout, 2001). Mirroring these historical developments, Odisha currently has three types of forest land tenure, including national parks and wildlife sanctuaries, reserved forests and protected forests, managed in 3 different ways: via the Joint Forest Management system (amended with FRA implementation), community forestry and private management by developers (such as paper mills) using the forest land (Singh, Singh and Sinha, 2003).

Second, it has the second highest tribal population in India (62 groups in total, of which 13 are particularly vulnerable tribal groups – ***PVTGs***) and the largest forest cover. In addition, the state government of Odisha keeps consistent data records on FRA implementation, has both reserve and non-reserve forest areas, varied levels of development indicators from state to state and a range of intervention from both local and international non-state institutions. Based on monthly Government of India status reports on the number of FRA titles distributed, on a state level, Odisha is also considered to be a more “successful” case example as compared to other states.

Within the state of Odisha, out of a total 30 districts, 4 districts were purposively chosen for qualitative data collection, including: Mayurbhanj, Sambalpur, Kandhamahal and Nayagarh, based on the following selection criteria: differences in ecological and socio-economic conditions; differences in the level of scheduled caste and tribe population and type of tribal groups residing in these districts; district wise FRA status of implementation based on Odisha state government data; and presence of community forestry groups.

Broadly speaking, there are 4 types of ecological regions in Orissa: (1) the central tableland region, (2) the coastal plains, (3) the eastern ghats and (4) the northern plateau region. Sambalpur is in the central table lands region, Nayagarh in the coastal plains, Kandhamal in the eastern ghats and Mayurbhanj in the northern plateau region. Socio-economically speaking, Sambalpur is the most resource rich state, whereas development indicators in Kandhamal district are some of the lowest in the state. Both Nayagarh and Mayurbhanj have mid-level development indicators. All 4 districts also have different levels of schedule caste and schedule tribe populations. In Sambalpur, the scheduled caste population is 17%, whereas the scheduled tribe population is 34.5% (the majority is comprised of the Kisan and Mundan tribes). In Kandhamal, the scheduled caste population is 16.89%, whereas the scheduled tribe population is 51.96% (the majority is comprised of the Khond tribe). In Nayagarh, the scheduled caste population is 14%, whereas the scheduled tribe population is 5.88% (the majority is comprised of the Khond tribe, with some presence of the Saora tribe, which is a PVTG). Finally, in Mayurbhanj, the scheduled caste population is 7.68%, whereas the scheduled tribe population is 56.60% (the majority is comprised of the Santal and Kolha tribes).

According to the latest data compilation (August 2013) of district wise FRA implementation by the State Government of Orissa, all 4 districts also have varied levels of individual and community claims submission and acceptance. It is important to mention how many claims the Gram Sabha initially verified and how many were finally distributed as actual titles. According to this status report, there are a total of 3758 eligible villages in Mayurbhanj district. Gram Sabhas had submitted 27421 individual claims to the sub-divisional level committee, out of which 18586 were finally issued as titles. Concerning community titles, the numbers do not match up, as 45 were submitted by the Gram Sabha to the sub-divisional level committee, but 91 have been issued as titles. It is not clear where the additional titles are coming from. In Kandhamahal, 58,264 individual claims were submitted by the Gram Sabha to the sub-divisional level committees, out of which 852 were distributed as titles. In Nayagarh, 3,158 individual titles were submitted to the sub-divisional level committee, out of which 2554 were issued as titles. Regarding community claims, two were submitted to the sub-divisional level and both were issued as titles. Finally in Sambalpur, 19849 claims were submitted by the Gram Sabha to the sub-divisional level committee, but only 10814 were distributed as claims. For community claims, 193 were submitted to the sub-divisional level committee, however, only 37 were distributed as titles. On a final note, it is important to mention that Mayurbhanj is home to the Simlipal National Park, consisting of a large protected area and Sambalpur has a strong mining influence.

Within each of the four districts, 2-4 villages were purposively chosen, based on the following selection criteria: villages which are already recipients of individual or community rights titles versus villages which are in the process of applying for them; villages which are close to district administration and sub-divisional offices versus villages which are in more remote locations; villages with heterogenous populations (scheduled tribe and scheduled caste) versus villages with more homogenous populations (only scheduled tribe); villages closer to protected areas versus villages in non-protected areas; and villages affected by mining versus villages which are not affected by mining. The above mentioned criterion is directly connected to the qualitative research questions and reasoning selection is as follows:

1. Comparing villages which are already recipients of individual or community rights titles to villages which are merely in the application process can give insight into whether title holders are able to better exercise their rights in gaining access to forest land and resources.
2. Comparing villages closer to district and sub-divisional government offices to villages which are based in remote locations can give insight into whether villages closer to government offices have an advantage in becoming title holders due to increased access to information. Such a comparison can also give insight into whether remote villages have a lower level of awareness on forest rights and a disadvantage in the level of convenience to submit claims applications to government offices.
3. Comparing villages with heterogenous populations versus homogenous populations will provide insight into numerous factors: whether scheduled caste populations in heterogenous villages are at a disadvantage as they fall into the “other forest dweller” category and have to provide documentary evidence of 75 year continuous residence in the same area; whether there is conflict within villages where scheduled tribe populations have become title holders, but scheduled caste populations have not; and whether it is easier for homogenous villages to submit claims to the government versus villages with heterogenous village populations.
4. Finally, looking at villages closer or in protected areas and villages directly affected by the mining industry gives insight into whether it is more difficult for such villages to become title holders as there are strong external factors working against them.

**V. Findings and Discussion**

After conducting the NVIVO analysis for both the key individual interviews and the focus group discussions, the following key findings emerged:

*Under individual key informational interviews:*

**For non-governmental actors, members of the media, activists and academics:**

Overall, the FRA is a good tool and legislation. It has provided a good opportunity and opening for groups that have suffered historical injustices, however it is ahead of its time and, therefore, is plagued by implementation problems. Key advantages include its emphasis on Gram Sabha consent in decision making processes, its prevention of large scale evictions (more indirectly) and the success of mass based movements to sensitize and mobilize communities to benefit from this act. Challenges largely remain due to power roles of significant actors, such as the forest department and clashes with other significant legislations such as Wildlife Protection Act, Forest Conservation Act and the 1927 Forest Act. Implementation challenges are apparent in the operationalization of the so called rights, such as selling and marketing of NTFPs. In addition, convergence programming has been difficult as it requires a large amount of physical and monetary resources. “Other Forest Dwellers” have largely been overlooked in the title distributions, causing community fragmentation among heterogeneous village populations. Much of the decisionmaking power continues to lie with the district administration and specifically the District Collector and the sub-divisional level committee. Ultimately, there has been a low level transfer of access rights to forest dependent communities.

**For government officials:**

Government officials spoke at length about the difficulty in implementing the act. Specifically, there were problems in coordination between the different government departments involved (Tribal Affairs department, Forest department and the Revenue department). These coordination issues were expressed much more at the district and block level, whereas officials at the state and central level either spoke of coordination in a positive light or declined to comment. Many at the state level commented that there should be a deadline for conferring such titles, that is cannot be an everlasting process. In addition, the problem was large, unsurveyed areas in Odisha was often mentioned. There were mixed perspectives on Gram Sabha consent, as many felt that capacity building at that level would take too long and that the time and resources do not exist. For example, giving Gram Sabhas authorization to issue transit permits is a complicated process. It was emphasized that there was more of focus on individual rights rather than community rights, due to administrative ease and lack of knowledge, rather than purposeful exclusion. It was acknowledged that there was increased clarity and a positive change in process after the 2012 amendment rules came out. It was not clear to government officials who is actually in the “other forest dweller” category and that non-conferment of titles occurred because they did not want wrongful land grabbing or “interference by non-tribals” to take place. Finally, many government officials also spoke title holders benefitting from convergence programs such as NREGA or Indira Awas Yojana.

*For the village case studies (information largely elicited from Focus Group Discussions):*

Inhabitants in villages which were already recipients of individual or community rights (or on rare occasion both), were not necessarily more aware or showing a greater sense of ownership over their land. Many of the title holders had simply received a *patta* (land certificate) from a government official who was trying to fulfill a target number for title distributions. This *patta* was often given without explanation and process. The sense of community ownership was often missing as the stronghold of the powerful forest department remained in most community members’ minds, even if forest department officials tried to be cooperative in the claims process or transfer of NTFP related rights. Villages which were home to mass movements (not necessarily NGOs), had had a history of sensitization on forest rights, usually by a non-governmental actor, or a pro-active and motivational district administration, showed greater sense of ownership and willingness to discuss change. Villages which were close to sub-divisional committees head quarters or district committee headquarters had a clear advantage, not just in their level of awareness but also for follow-up in the claims process. Both government officials and civil society members had independently reached out to them because of ease and proximity and they had a higher chance to appeal unfavorable claims results. Villages with homogeneous populations, especially if all inhabitants were scheduled tribe members, had a much higher chance of receiving titles than heterogenous village populations, simply because they fell under the district administration’s definition of who was a priority for receiving individual or community rights. The “other forest dweller” category of individuals in heterogeneous village population never had titles, whilst members of scheduled tribes in their villages nearly always did. This is where the difference in eligibility criteria was starkly visible. Villages in and around mining areas were at a clear disadvantage, due to powerful, external influence from the industrial sector. Community members often had to go through more procedures for the claims process, hold lengthy negotiations with mining representatives and give more in depth reasoning as to why they should benefit from the Forest Rights Act. In these cases, their process would either come to a halt and remain stagnant, or more forward because an administrative official with discretionary powers decided to help.

Juxtaposing these findings against the theoretical influences and framework applied in this paper, it is clear that there is a clear discrepancy in opinions and perspectives among different actors on the meaning, implementation and future of the forest rights act. Forest dependent communities are selectively receiving the so called “bundles of rights” they are supposed to, largely because of the strongholds in the “bundles of power,” ranging from the district administration to the forest department to civil society groups, which are exerting control at different levels. This control is preventing even minor shifts in governance from the state level down to the village level. If looking at the situation through Agarwal and Ribot’s framework, there is a clear lack of downward accountability, especially on the part of the district administration towards the forest dependent communities. Both the outcome of land titles and being able to exercise other rights listed in the Forest Rights Act are dependent upon specific definitions by government functionaries, rather than non-governmental actors. For example, the majority of the beneficiaries are members of schedules tribes, non-schedules tribes and other forest dwellers are not able to benefit, even though they may have suffered the same “historical injustices,” in the form of land grabbing or forced evictions. Similarly, the conferment of individual rights takes precedence over community rights, both because of administrative convenience, a lack of understanding of community rights and low level of confidence in successful governance at the village level.

**VI. Conclusion and Public Policy Recommendations**

Forest tenure reform, especially in a developing country context and targeted towards marginalized groups, is difficult to implement. The dangers of a complex bureaucratic process, a stagnant governance system, threats of elite capture and powerful, historical influences are huge barriers to overcome when trying to implement such policies. This does not, however, mean that their formulation or implementation is largely unsuccessful, but that such policies take a long time to mature and will have positive impacts selectively. These selective positive outcomes are guided by actors such as non-governmental mass movements, government bureaucrats with a large amount of discretionary power and successful coordination internally (between government departments or between civil society actors) and externally (coordination between government and non-government actors). In the specific case of Odisha, the following policy recommendations can be given for better implementation of the Indian Forest Rights Act and more sustained inclusion of marginalized groups:

* A review of legislations which conflict with the Forest Rights Act and how these clashes can be amended at both the central and state level.
* Better monitoring and documentation of the Claims committee process, from the State level down to the Forest Rights Committee level.
* A more sustained effort by the district level administration to include marginalized groups (not just scheduled tribes, but non-scheduled tribes and other forest dwellers) in consultations on clarifications to the Act, appeals processes and suggestions for possible amendments
* Replication or adaptation of successful coordination processes between government departments in other districts and states.
* Documentation of best practices by District Collectors across India and civil society actors for sensitization methods, the claims process and an understanding of long term capacity building post-rights recognition.

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**ANNEX ONE: Main Provisions of the Indian Forest Rights Act**

* Section 3 (a) : *right to hold and live in the forest land under* ***the individual or common*** *occupation habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers*
* Section 3(b) : *community rights such as* ***nistar*** *–* “Nistar” refers to the access rights and usufruct to forest resources, held by local communities over such a long period of time that they are now considered customary rights. Some of the resources and activities which fall under such rights, include “timber, firewood, grazing, minor forest produce or other specific resource uses mentioned in the claim” (Government of Orissa circular, 2010).
* Section 3(c): *right of ownership, access to collect use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries* – the Act further defines “minor forest produce” as: *bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.*
* Section 3(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*
* Section 3(e): *rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities* – the Act defines “habitat” as: *the area comprising the customary habitat…of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes.* For example, in Orissa, there are thirteen primitive tribal groups, each with their designated area of customary habitat. When community rights claims are submitted, it is important to include a map which shows the actual land area of the tribal group in question (Government of Orissa circular, 2010).
* Section 3(i): *right to protect, regenerate, or conserve or manage any community forest resource, which they have been traditionally protecting and conserving for traditional use* – the Act defines “community forest resource” as: *customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoralist communities, including reserve forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access*
* Section 3(k): *right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity* – this could include knowledge by indigenous groups that is medicinal, related to cultural art forms or to e.g. conservation systems and practices.
* Section 3(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 animal.*
1. This research is based on my ongoing dissertation research. Therefore, the findings in this paper are initial results from qualitative data collection and do not reflect findings from quantitative data collection, which is yet to be completed. For a complete list of references, please contact the author. Please do not cite or circulate this paper without permission from the author. [↑](#footnote-ref-1)
2. Officially known as “The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill 2006 [↑](#footnote-ref-2)
3. Also referred to as “adivasis” or “tribals” throughout this paper. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)