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The politics of rights-based approaches in conservation

Prakash Kashwan*

Department of Political Science, University of Connecticut, Storrs, CT, USA

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ABSTRACT

Scholars and advocates increasingly favor rights-based approaches over traditional exclusionary policies in conservation. Yet, national and international conservation policies and programs have often led to the exclusion of forest-dependent peoples. This article proposes and tests the hypothesis that the failures of rights-based approaches in conservation can be attributed in significant measure to the political economic interest of the state in the tropics. To this end, the article presents findings from the empirical analysis of the Forest Rights Act of 2006 in India. Two key recommendations emerge from this analysis. One, the proposals for operationalizing rights-based approaches will likely be far more effective if they protect the inalienability of a *minimal* set of rights critical to the subsistence and well-being of forest people, as opposed to promising the protection of an expansive set of rights subject to the instrumentality of conservation. Two, the proponents of rights-based approaches in conservation need to guard against their actions reinforcing the institutional status quo of the state control of forests. This, in turn, requires international conservation groups to join hands with national forest rights movements.

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Introduction

The era of forest hinterlands has come to an end with forests attracting unprecedented national and global attention and investments ([Rights and Resources Initiative, 2010](#)). The highly anticipated influx of international finance into the forestry sector adds to the overwhelming complexity of claims over forests in the developing countries ([Larson and Petkova, 2011](#)). A number of emerging challenges to the interest of forest-dependent groups have prompted scholars to advocate increased attention to rights-based approaches (RBAs) in forest conservation ([Larson et al., 2010](#); [Sikor et al., 2010](#); [Sikor and Stahl, 2011](#)). At the same time, a number of prominent international conservation groups have issued significant policy statements supporting the rights of forest peoples ([Campese et al., 2009](#); [Greiber et al., 2009](#)).

The in-principle celebration of forest rights stands in contrast to the realities on the ground, where ongoing conflicts over forest and wildlife conservation persist ([Brockington, 2002](#); [Chapin, 2004](#); [Beymer-Farris and Bassett, 2012](#)). Indeed, the magnanimity of the scope of the rights mentioned in the proposals for operationalizing the RBAs makes the failures on the ground quite striking. This paper seeks to build on the existing research and the ongoing debates to analyze the reasons for the painfully slow progress made in operationalizing the RBAs in conservation. More

important, perhaps, is the need for a better understanding of the systemic barriers to implementing RBAs across the forested regions in developing countries ([Cousins, 1997](#)).

This article employs a political economy perspective to analyze the barriers against the operationalization of RBAs in practice. It demonstrates that the political economic interests of the state are perhaps the most significant barrier against the operationalization of RBAs. Further, it is argued that instead of promising support for an expansive set of rights, such as the right to territorial sovereignty, only to subject them to the priorities of nature conservation, the proposals for operationalizing RBAs would benefit from according unconditional protection to a minimal set of rights critical to the subsistence and well-being of forest-dependent people. By discussing the case of the Forest Rights Act (FRA) of 2006 in India, the article shows that the goals of nature conservation and the rights of forest people are likely to be bolstered when international conservation groups and national forest rights movements join hands to demand greater state accountability. To these ends, the article draws upon scholarship in the fields of political economy, political ecology, and human rights ([Nickel, 2005](#); [Sen, 2006](#); [Forsyth, 2008](#); [Caporaso and Levine, 1992](#)).

A number of important factors motivate the political economy approach that this article employs. One, governments own over 75 percent of the world's forests ([Larson et al., 2010](#)), a figure which would be much higher if one were to focus solely on tropical countries that are the main sites of international nature conservation. Two, the RBAs in nature conservation must account for the competing interests of actors with significant differences of power and authority in the domains of policy formulation and

* Correspondence address: 365 Fairfield Way, U-1024, Storrs, CT 06269, USA.
 Tel.: +1 860 486 7951; fax: +1 860 486 3347.
 E-mail address: Prakash.kashwan@uconn.edu

implementation. Three, the forested countries recognized as biodiversity hotspots, are also known to be socio-political hotbeds, characterized by high levels of poverty, tenure insecurity, high rates of landlessness, and a long history of colonial and post-colonial state repression (Brechin et al., 2002, p. 42; see, also, Rights and Resources Initiative, 2010).

A recent compilation of statistics from a variety of sources puts the number of forest people, those who depend primarily and directly on forests for their livelihoods, at about 1.5 billion (Chao, 2012). The salience of socioeconomic and political factors to the agenda of nature conservation makes political economic analysis an important, but, an underutilized tool in this debate (Cousins, 1997; Boyce, 2008). Scholars of forest rights and nature conservation seem to agree that widespread power asymmetries have prevented forest peoples from realizing their rights in the face of exclusionary conservation (see essays in Sikor and Stahl, 2011). Such agreements aside, as Molnar et al. (2008, p. 14) argue, even after a decade of brainstorming the RBAs, "(t)he environment and development communities by and large have not yet adjusted or rethought their approaches" to address the apparent conflicts of interests over nature conservation. This article leverages the political economy perspective to analyze the barriers against realizing rights in practice.

The following section briefly discusses the basic tenets of the political economy framework, and the methods employed in this research. Section 'Rights-based approaches and forest conservation: proposals and their applications' summarizes the conceptual evolution of the RBAs in conservation, followed by a brief discussion of the proposals that international conservation groups have developed to operationalize the RBAs in the developing countries. Section 'Forest and forest land rights in India: the problem and attempted solutions' synthesizes background information on the historical and contemporary status of forest rights in India, and Section 'The FRA and forest responses of actors concerned with conservation' discusses how different actors related and responded to the promulgation of the Forest Rights Act (FRA) of 2006. Building on the empirical evidence presented in the previous sections, Section 'Explaining the FRA's bumpy ride so far: a political economic analysis' analyzes how the interests and strategies of prominent conservation actors shaped the politics of forest rights in India. The concluding section reflects on these analyses and offers specific recommendations on bolstering the operationalization of RBAs.

Analytical framework and methodological approaches

The political economic perspective that this paper employs draws our attention to the differences of interests, endowments, and authority among key actors, and how such differences shape the distribution of decision making powers in the policies and programs related to nature conservation (Raik et al., 2008). In particular, it focuses on the state's control over natural resources, and the important role it plays in mediating competing demands for the resources (see, Caporaso and Levine, 1992). The state is also the key, although not the only, provider and custodian of public goods. While it is customary to think of nature conservation as a public good, an equally important one is the institutional structure comprising the rules, norms, and conventions, pertaining to say, forest property rights (see, Brown, 2003). Accordingly, governments must take lead in reforming colonial forest property rights institutions, which in turn, is vital for securing the legitimacy of forestry laws (Brechin et al., 2002).

Institutional reforms are easier said than done, partly because the apparently 'bad' policies, including the colonial era laws, often reflect the preferences of national elites who benefit from resource extraction (Ascher, 1999). This explains, perhaps, why

many post-colonial governments have retained, at times verbatim, outdated colonial forestry laws (see, Haque, 1998; Sundar, 2011). At the same time, inspired by the catchy thesis of the 'tragedy of the commons', national governments continue to micro-manage natural resources such as land, water, and forests (Johnson and Forsyth, 2002; Ostrom, 2010). The dual role of the state as a guarantor of fundamental institutions and rights on the one hand, and an actor invested in resource extraction on the other, institutionalizes conflicts of interests (Sundar, 2011). Such conflicts, in turn, have been linked to the violations of human rights, including the social and economic rights, of forest people the world over (Peluso and Watts, 2001; Brockington, 2002; Baviskar, 2005).

The tussle between the maintenance of state authority and the goals of socioeconomic justice intertwine with the ongoing conflicts between wildlife conservation and the rights of forest peoples (Brosius et al., 2005). As Wilshusen et al. (2002, p. 20) argue, the international conservation organizations' pursuit of exclusionary protected areas ignores the fact that protected areas have been used as tools to serve the various goals of "territorial control, domination by rival social/ethnic groups, and advancement of elite interests." The extent of support for and the investment in exclusionary conservation strategies alters the balance of power between forest-dependent groups and the public agencies (Rodríguez et al., 2007).

The analytical approach this article employs is motivated by the core challenge of situating the concerns of social justice within the complex field of international support for nature conservation. The context of historical and the continued marginalization of a large number of forest people is arguably at center of the ongoing debates over the RBAs in conservation (Bawa et al., 2011; Sikor and Stahl, 2011). Accordingly, instead of embracing an 'uncritical pluralism', i.e. treating the stakes of different actors as equal and all positions as equally valid (Belsky, 2002), this article focuses on the key actors, specifically the state as well as national and international non-governmental groups that promote policies and programs of nature conservation. It also highlights the powers these actors bring to bear upon the agenda and activities related to nature conservation.

The analyses presented here are inspired by Forsyth's (2008) proposal for an 'epistemology of social justice'.¹ Comparing the endeavor of scholarly inquiry to 'peeling the layers of an onion', he underlines the need for triangulation of multiple information sources to consider the "relationship of facts and norms" (Forsyth, 2008, p. 762). The present article outlines the essential elements of normative goals derived explicitly from the existing proposals for the RBAs as discussed in the following section. The expectations that emerge from a political economy perspective are triangulated with qualitative and quantitative evidence pertaining to the politics of forest rights in India. Such triangulations inform the inferences drawn and the suggestions offered here for the effective operationalization of the RBAs.

The second key aspect of RBAs in conservation relates to the multi-scale nature of the problem. Accordingly, instead of a detailed investigation of outcomes observed either at the local or at the national level, this article seeks to reveal important linkages across scales. This analytical approach has implications for how cross-sectional variation at sub-national level is understood. For instance, while past studies have analyzed variation in organizational attributes of forest departments across different states in India (Kumar and Kant, 2005), little variation exists vis-à-vis forest property rights and the conflicts they engender (Dreze, 2005; Asher and Agarwal, 2007). As Section 'Forest and forest land rights in India: the problem and attempted solutions' outlines, the state forest departments have faithfully followed the forest property rights

¹ The author is thankful to an anonymous reviewer from this journal for suggesting this citation.

related policy prescriptions that the federal Ministry of Environment and Forests (henceforth, the ministry) has issued. Similarly, no perceptible differences are visible in the manner in which forest departments have responded to the broader policy and programmatic implications of the FRA (NCFRA, 2010; Kumar and Kerr, 2012).

The political economy perspective outlined in this article is most relevant to the forested regions of peninsular India, including the states of Gujarat, Rajasthan, Madhya Pradesh, Chhatisgarh, Orissa, Jharkhand, Maharashtra, and Andhra Pradesh with significant *Adivasi*² populations (literally, aboriginals; henceforth, forest people). These states share the socioeconomic and political context that characterizes the socio-political hotbeds in other forested regions of the world (Sunderlin et al., 2008, p. 24). Accordingly, situating the forest rights politics in the context of India's forest peoples makes the findings of this article applicable to forested regions in other developing countries.

This article builds on a long-term research project on the politics of forest management and forest rights in India, beginning the summer of 2006 and comprising research visits in the states of Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh. The most intensive and extended segment of field research was conducted in 2009. The majority of the yearlong field work was in Gujarat, which involved collecting quantitative and qualitative data pertaining to the formulation and implementation of the FRA, including interviews with the key state and district level forest officials, NGO representatives, activists, and community members cited in the article (see, Kashwan, 2011 for details of the larger project). In addition, the author also interviewed activists, scholars, and policymakers in the national capital New Delhi and the state capital Ahmedabad. Given the contested nature of the questions of forest rights and forest conservation, the interviews do not always yield the most pertinent information. To overcome these limitations, this research also draws upon an exhaustive review of newspaper articles, government circulars, and the reports produced by civil society groups including the 'National Committee on the Forest Rights Act' (NCFRA) appointed jointly by the ministries of the environment and forests, and the tribal affairs. The insights put together from the primary and secondary sources are juxtaposed to the available evidence on the forest rights claims made in the major forested states in the country.

Rights-based approaches and forest conservation: proposals and their applications

Principles of RBAs in conservation

The early discussions of RBAs in forest and nature conservation conceptualized the devolution of rights to individuals or community groups as an instrument meant to serve the goals of mitigating forest degradation or wildlife poaching (Johnson and Forsyth, 2002). Research on forestry decentralization shows that national governments pledged the devolution of a variety of forest rights entitlements, but they failed repeatedly and consistently in upholding these rights in practice (Tacconi, 2007; Ribot and Larson, 2011; Rights and Resources Initiative, 2012). These failures contributed to the frequent violations of forest rights in conservation projects the world over (Brockington, 2002; Chapin, 2004). The recurrent forest tenure conflicts prompted scholars and activists to demand that secured forest property rights be made an integral

component of the RBAs (Campese et al., 2009; Greiber et al., 2009; MacKay, 2011).

By bringing together a diversity of voices on the RBAs in forestry and conservation Sikor and Stahl (2011) outline an expansive and inclusive forest rights agenda. Instead of justifying forest people's rights on the basis of their presumed stewardship of forests, or, in the name of poverty alleviation, they advocate the recognition of forest rights on the basis of historical and political grounds (Sikor and Stahl, 2011; see also, Colchester et al., 2008). They engage with the grassroots movements demanding forest tenure redistribution, indigenous peoples' rights to self-determination, and the international human rights advocacy (Sikor and Stahl, 2011; see also, Colchester et al., 2008).

The policy statements on the RBAs that international conservation organizations have put forth also restate the ambitious rights agenda articulated by indigenous rights advocates (Colchester et al., 2008). For instance, the World Wide Fund for Nature (WWF) supports the indigenous peoples' rights to "the lands, territories, and resources that they have traditionally owned or otherwise occupied or used" (WWF International, 2008, p. 2; see also, Campese et al., 2009). Similarly, Greiber et al. (2009, p. 13) list over a dozen major rights including the right to property, the right to adequate standards of living, and even the right to self-determination, which these authors regard as "controversial". Given the long history of exclusionary conservation in the tropics, the acceptance of the rights of forest people amounts to a significant change. The following subsection reviews some of the key proposals for the operationalization of RBAs by international conservation organizations.

The operationalization of RBAs in conservation

The 2003 World Parks Congress held in Durban was unusual in that for the first time, a large contingent of indigenous leaders participated in this annual congregation of the international conservation community. Recognizing that forest peoples bear a disproportionate share of the costs of nature conservation, the congress issued a declaration christened as the Durban Accord. A media report explained it as "a paper infant many hope will grow up to change the face of conservation and heal old wounds" (Carnie, 2003). This 'new paradigm' in conservation, indigenous rights scholars hoped, would foster recognition and the respect for the rights of indigenous and mobile people (Colchester et al., 2008).³

A number of international conservation groups, including the International Union for Conservation of Nature (IUCN), Center for International Forestry Research (CIFOR), and the World Wide Fund for Nature (WWF) have since published policy statements calling on the global community to embrace rights-based approaches (RBAs) for effective and equitable conservation outcomes (Maginnis and Sayer, 2008; WWF International, 2008; Campese et al., 2009; Greiber et al., 2009). The IUCN's Environmental Law Centre developed an internet portal (www.rights-based-approach.org) dedicated exclusively to rights-based approaches (RBAs) to conservation.

A review of these proposals suggests that key international conservation groups consider RBAs as an instrument meant to serve the goals of nature conservation. For instance, Greiber et al. (2009, p. 5, emphasis in the original) state that RBAs are "expected to be a means to ensure *conservation with justice*. Given their mandate, the instrumental approach that international conservation groups employ is, perhaps, understandable. Even so, considering

² *Adivasis*, India's aboriginal peoples are divided into more than 600 distinct groups. They constitute over 84.3 million or 8.2 percent of India's population, and roughly a quarter of the estimated total population of indigenous people worldwide (Bijoy, 2008). *Adivasis* are often referred to as "tribals", or as "Scheduled Tribes" in the official parlance in India.

³ IUCN – The World Conservation Union, Durban Accord, accessed June 1, 2012 at <http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/wpcdurbanaccordeng.pdf>.

that RBAs are needed to protect forest people against the violation of their rights, RBAs must be designed to deal with situations of direct conflict between forest rights and the goals of nature conservation. Jayal (2001, p. 82) refers to these as “unhappy tradeoffs”, and wonders to what extent a “wide gamut of political values... fundamental and integral to the quality of human life in society” may be traded off against conservation values.

None of the key proposals for RBAs reviewed for this article addressed this fundamental question in any conclusive way. The most relevant statement concerning this tradeoff is made in the WWF report, which otherwise favored protection of an expansive set of indigenous rights (WWF International, 2008, p. 4, emphasis added): “[The] WWF may choose not to support, and *may actively oppose, activities it judges unsustainable from the standpoint of species or ecosystems*” (WWF International, 2008, p. 4, emphasis added).

The WWF position on conservation-social justice trade-off as reflected in the document mentioned above is not explained in terms of concrete criteria about specific conservation requirements pitched against specific rights. Instead, it reserves the right to oppose activities *it judges* to be unsustainable. The position that WWF outlines is not anomalous to the general understanding of RBAs among international conservation organizations. Despite recognizing the limitations of instrumental approaches, a key IUCN report notes, “it is difficult, and perhaps not very useful, to make too strict a distinction between rights-based and instrumentally driven approaches” (Campese et al., 2009, p. 13). The instrumentalist approach to RBAs begs the following questions: What if politically influential national and international actors argue that the conservation gains they expect to make from supporting forest rights are not sufficiently attractive? What types of rights would be worth protecting in any case?

The empirical analysis that follows seeks to shine light on these questions in the context of forest rights in India. It seeks to place the instrumentality of rights within the political economic context characterized by the conditions of widespread asymmetries. The insights emerging from this analysis are then used to revisit the key attributes of RBAs in conservation discussed above. The following section describes the historical and contemporary context of forest and forest land rights in India.

Forest and forest land rights in India: the problem and attempted solutions

The historical and contemporary context of forest tenure conflicts

In 1864 the colonial British Government of India founded the Imperial Forest Department, primarily for “securing the best possible legal titles” in favor of the colonial government (Haeuber, 1993, p. 55). The colonial forest officials’ jobs were not easy given that they avoided visiting the remote forests with significant populations of forest peoples, who the officials considered criminals likely to mount violent attacks (Rawat, 1993, pp. 114–5; Rangarajan, 1996). As a result, the officials relied on cartographic techniques to classify as public forests the vast areas of land that forest peoples occupied, watched over as common property, or simply used as open-access (see also Kalpagam, 1995; Vandergeest, 1996). The governments in independent India failed to resolve the colonial era conflicts related to forest tenure (MoEF, 2004). Instead, the area classified as *de jure* public forestland increased from 40.48 million hectares in 1951 to 69.63 million hectares in 2008. In other words, Indian governments classified over 70 percent additional land as government

forest land.⁴ This expansion not only reinforced the colonial era conflicts, but in many cases, also created new conflicts (Guha and Gadgil, 1989).

Notwithstanding that the forest peoples lived in these areas long before the Imperial Forest Department came into existence, the actions of the colonial and post-colonial governments reduced them to mere squatters. More important, the legislative and administrative structures, including the Indian Forest Act of 1927, put in place by the colonial government continue to serve as the foundation for forest management in India even to this day. In fact, the 1972 Wildlife Protection Act institutionalized an even more exclusionary wildlife conservation regime (Bijoy, 2011). Subsequently, the promulgation of the Forest Conservation Act of 1980 placed a legal moratorium on non-forestry use of forest land, the demarcation of which had been erroneous in many cases (Asher and Agarwal, 2007; Dreze, 2005).

While the Forest Conservation Act was ostensibly aimed at preventing large scale deforestation, given the widespread power asymmetries and poor implementation of a rule of law, forestlands continued to be given away for mining and industrial projects which created few jobs for the forest peoples (Sundar, 2011). In the absence of titles, forest-dependent groups failed to secure compensation even in cases where privately held and cultivated lands were acquired via eminent domain, often for industrial development (Ramanathan, 2009). In parallel, hundreds of thousands of families whose ancestors lost the rights to existing property usage – including residences, cultivations, a variety of customary rights, and open-access utilization of forest produce for subsistence – continued to be regarded as “encroachers” in forest department records (Guha and Gadgil, 1989; MoEF, 2004).

Moreover, the Forest Conservation Act severely restricted the ability of forest-dependent people to claim rights to the pre-existing cultivations and homesteads. In many cases, entire villages, located inside the erroneously demarcated boundaries of public forestlands, were recorded as “forest villages” and were kept out of the purview of the civil administration (Shah, 2005). The moratorium on the use of forest land for non-forestry purposes prevented public agencies other than the forest department from putting up essential infrastructure related to drinking water, health, education, and all-weather roads (Kumar and Kant, 2005; Springate-Baginski and Blaikie, 2007). A powerful group of Indian wildlife conservationists constantly lobbied the government of India to increase the number of protected areas devoted exclusively to wildlife conservation (Guha, 1994; Saberwal, 2000).

These systematic institutional constraints, reinforced through the dynamics of inter-regional and intra-regional inequities, led to widespread poverty and marginalization among the forest people (see, Baviskar, 1994; Shah et al., 1998). Recent estimates of the Oxford Poverty and Human Development group put the poverty rates among India’s forest peoples at 81.4 percent (Alkire and Santos, 2010). Accordingly, the statutory recognition of pre-existing forestland cultivations and homesteads, as well as the forest rights – related to the collective protection and management of the forests that aid livelihood security – is critical to the forest peoples’ ability to exercise broad-based social and economic rights. India’s longstanding forest and land rights movements have sought to mobilize forest peoples to demand these rights (Guha and Gadgil, 1989).

The first major national level forest rights mobilization aimed to protest the 1982 Draft Forest Bill, which the activists saw as an attempt by the government of India to further recentralize India’s forest policies (Chhatre, 1994). The draft act would allow

⁴ Data available from <http://www.indiastat.com>.

state governments to suspend the rights of forest peoples and to declare any forest closed for 30 years. It would also empower forest officials to arrest individuals under “reasonable suspicion” of intent to commit forest offenses (Kulkarni, 1982, p. 57). The nationwide civil society mobilization against the draft bill was successful in halting government’s attempts to further centralize forest governance in India. The movement also helped galvanize non-governmental organizations seeking to promote collaborations between forest departments and forest peoples to promote joint and community-based forest conservation (Chhatre, 1994).

The collaborative program of Joint Forest Management (JFM), introduced in 1990 by the ministry, and subsequently replicated in a dozen countries, was expected to help resolve long-standing conflicts between forest officials and forest users (Sivaramakrishnan, 1996; Joshi, 1999). While JFM helped bring communities around to the idea of collaboration and contributed significantly to local forest conservation, it suffered from a number of fundamental weaknesses (Khare et al., 2000; Sundar, 2001). The rights devolved under JFM were not protected by a statute, which allowed the state governments to unilaterally alter the benefit sharing mechanisms by issuing new executive orders (Springate-Baginski and Blaikie, 2007). In effect, this amounted to the public agencies capturing the gains in forest productivity clearly attributable to community-based forest protection (Véron and Fehr, 2011).

A World Bank study concluded that the participants in JFM were “reduced to mere laborers, hired mainly to plant trees” (World Bank, 2005, p. 9). These findings vindicated critics who argued that the multi-million dollar forestry projects, often promoted by bilateral and multilateral donors as policy and programmatic reforms, were not equipped to bring about substantive reforms to the forestry sector (Lele, 2000; Brosius et al., 2005). On the contrary, scholars documented numerous cases in which state forest departments used international aid to reinforce and even expand the de-jure forest boundaries demarcated during the colonial times (Sundar, 2001; Sarin, 2005; Springate-Baginski and Blaikie, 2007). Such attempts by the forest department reached an unprecedented scale in 2002.

Following an executive order by the ministry, the state forest departments ‘cleared’ 152,400 ha of pre-existing cultivations located within the de-jure forest boundaries (Dreze, 2005; Bijoy, 2008). While the ministry did not disclose the number of families affected by these evictions, press reports put this number at over 150,000 families (Kaur, 2002). The eviction campaign also led to human rights violations. Forest departments employed elephants to crush mud-thatch houses in the states of Maharashtra, Assam, and Kerala (CSD, 2003; Asher and Agarwal, 2007), and the forest and police personnel fired gunshots at women and children participating in anti-eviction agitations (Dreze, 2005). Amnesty International noted these instances of human rights violations committed against forest-dependent groups.⁵

Forest rights collectives, such as the Campaign for Survival and Dignity (CSD) and the National Forum of Forest People and Forest Workers, among others, demanded recognition of and respect for the rights of forest people (CSD, 2003; Prasad, 2006; Asher and Agarwal, 2007). The nationwide mobilization, combined with fortuitous political circumstances, led to the enactment of the Forest Rights Act (FRA), which is briefly introduced in the following subsection.

Forest rights act: recognizing private and collective rights

The Forest Rights Act (FRA) of 2006 provides for the statutory protection of the historical rights of forest-dependent groups (Lele,

2009). Unlike other forest restitution policies that resulted in standing forest patches privatized in favor of households (see, Fay and James, 2009), the FRA provides neither for the clearing of forests, nor the privatization of collectively owned lands. Instead, to paraphrase Kothari et al. (2011), the FRA recognizes the rights of forest peoples to the lands currently under subsistence cultivations and homesteads, but classified in government records as “forests”. This description matches with the ministry’s characterization of the situation in an affidavit it submitted to the Supreme Court of India (see, MoEF, 2004). The FRA also grants statutory protection to the collective rights of forest-dependent groups to protect, regenerate, conserve or manage community forest resources (GOI, 2006a). In addition to the clearly delineated private and collective rights, the FRA is equipped with a number of safeguards against potential misuses of the statute.

The Act requires the locally elected forest rights committees to conduct a field verification of a household’s claim, and record in writing the evidence gathered during the verification process. The committee is also required to invite forest department officers to be present during the verification. The forest officers present during the field verification, or the senior forest officials represented on sub-district and district-level committees, are authorized to record in writing any objections they may have regarding forest land claims under consideration (GOI, 2008). Though the FRA also applies to forest rights claimed within what are now national parks or wildlife sanctuaries, any forest areas that actually house endangered wildlife can be declared “critical wildlife habitats” (CWHs). A more detailed discussion of the issue of CWHs is reserved for Section ‘The forestry administration and forest rights’.

The FRA provisions led to a vigorous debate from 2005 to 2007. With some simplification, the participants in the FRA debates could be classified into three different groups: the forest rights activists, wildlife conservation groups, and the proponents of community-based conservation. The FRA activists articulate an explicitly political perspective, justifying forest rights based on the historical injustices meted out to forest peoples. At the same time, somewhat counter intuitively, they also justify their demands with an instrumental position – they add that the environmental ethos integral to forest peoples’ culture make them the ideal forest stewards (Bijoy, 2008; Gopalakrishnan, 2010). On the other hand, India’s wildlife conservation groups lobbied for securing inviolate nature reserves to be protected through stricter security measures (Sahgal and Scarlott, 2010). Similarly, the forestry establishment raised fears of ecological destruction to voice objections against the FRA (Venkatesan, 2005).

The third group in the debate comprises votaries of community-based conservation, many of who came together to form the Future of Conservation in India network (Lele, 2009; Kothari et al., 2011; Bawa et al., 2011). The network has been equally active in developing a scientifically robust approach to operationalize FRA proposals related to critical wildlife habitats (CWHs). The votaries of community-based conservation point to the potential gains to be had from the mitigation of pending tenure conflicts and the recognition of collective rights to forest management under the FRA (Lele, 2009; Kothari et al., 2011). In addition, they have emphasized the clarity of property rights, and the scope for further clarifying the institutional arrangements in the vein of the commons literature (see, Lele, 2009; Bawa et al., 2011; Kashwan, 2011).

The FRA has led to an extensive literature on the challenges of implementation across the country, which is reviewed in Springate-Baginski et al. (2009), NCFRA (2010), and Kothari et al. (2011). As discussed above, the empirical analysis presented in this article focus on the politics that the FRA unleashed among competing interest groups. Accordingly, the following section offers a documentation of the policy positions and actions of the two key

⁵ Amnesty International, Forced Evictions Target Adivasi, 27 April 2007, accessed June 5, 2012 at <http://www.amnesty.org.au/news/comments/1160/>.

FRA actors: the forestry establishment led by the ministry and the exclusionary wildlife conservation organizations.

The FRA and forest responses of actors concerned with conservation

The forestry administration and forest rights

An apparent confusion engulfs the positions and actions of the Ministry of Environment and Forests vis-à-vis the questions of forest rights. In June 1990, the ministry issued a series of six circulars that dealt with the various aspects of forest tenure conflicts (Dreze, 2005). These circulars remained unimplemented, an outcome that the ministry attributed to the failure of the state governments (MoEF, 2004). Seeking to avert potential opposition from the ministry, the committee that wrote the FRA based its key clauses on these circulars (Rajshkhar, 2009). Yet, the ministry consistently opposed the statute while it was debated between 2004 and 2006 (Asher and Agarwal, 2007). The chairperson of the National Forest Commission, a body appointed by the ministry, publicly criticized the FRA as being “politically motivated and ecologically suicidal” (Ananthakrishnan, 2006). The Prime Minister’s office noted that “the [ministry] was trying to consciously sabotage” the FRA (Rajshkhar, 2009, p. 31).

Even so, some of the reservations against the FRA likely concerned the statute’s lack of specific conservation guidelines and its potential to aid forest fragmentation (see, Lele, 2009; Bhargava, 2011). That being the case, a rational action for the ministry and state forest officials would be to strengthen and popularize the collective forest rights regime within the FRA. Within the Indian context, community forest rights are not linked to logging or other large scale extractive operations. Instead, collective rights allow community groups to organize local forest-protection efforts in return for harvesting and marketing of minor forest produce (Lele, 2009). A variety of evidence available from all over the country would suggest that India’s forestry administration also resisted the FRA provisions related to the devolution of collective forest rights (NCFRA, 2010; Kashwan, 2011; Bawa et al., 2011). Similarly, a national review of the FRA suggested that instead of using the provisions related to Critical Wildlife Habitats (CWHs) to promote high value conservation, the ministry attempted to exploit this provision to the end of excluding protected areas from the purview of the FRA altogether (NCFRA, 2010; Bijoy, 2011).

The discussion above suggests that the ministry’s opposition to the FRA could not be explained in terms of any systematic assessment of the potential impact that different provisions of the FRA could have on the conservation of forests or biodiversity. The following section gets into the details of the politics over two specific aspects related to the provisions of the FRA: the trade in non-timber forest produce and the declaration of CWHs.

Non-timber forest produce

The FRA devolves “rights of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected” (Chapter 2, Section 3.1c GOI, 2006a). The case of FRA rights over bamboo presents an interesting illustration. Botanically, bamboo is classified as a grass species, and as a non-timber forest produce in the technical forestry literature. However, India’s forestry laws categorize bamboo as “tree”, which brings it under the purview of laws meant to keep timber trade under government control (Springate-Baginski and Blaikie, 2007).

The forestry officials cited these regulations and the penal provisions instituted under the colonial era 1927 Indian Forest Act to argue against non-timber forest produce (NTFP) rights that the forest peoples secured through the multi-level FRA adjudications

(Kothari et al., 2011). The most senior forest official in the state of Maharashtra argued, “the *alleged* rights . . . recognized under the [FRA, cannot be exercised] without permission in writing by a forest-officer.”⁶ Such dismissive attitude was also evident when a senior forest official from the state of Chhatisgarh claimed, “I have not heard of any demand for rights over [NTFPs]. . . I think this is the latest obsession of NGOs” (Mahapatra et al., 2010).

Newspapers reported that forest department officials in Maharashtra refused to issue permits the communities needed to transport harvested bamboo to markets and threatened to arrest community leaders asserting the rights they had secured under the FRA (Pallavi, 2011). Notably, the forest rights that community groups sought to exercise had already been approved by the district level FRA committee, of which a senior forest department official is a voting member. The forest officials eventually issued transit permits to one village,⁷ which should have paved the way for other villages to access transit permits. However, the state forest departments denied transit permits to a large number of villages in the state of Maharashtra (MoRD, 2012), and elsewhere in the country (NCFRA, 2010; Kashwan, 2011).

Critical wildlife habitats (CWHs) and community forest rights

A CWH may be declared if a committee comprising scientists and civil society representatives conclude after proper investigations that the exercise of forest rights may cause “irreversible damage” (Chapter 1 section 2, GOI, 2006a). In such cases, those living in the areas of critical wildlife habitats could be relocated, but only after the government has provided “secure livelihood for the affected individuals and communities” (GOI, 2006a). The FRA also stipulates that conservation projects involving displacements may be taken up only with free, prior, and informed consent of a village general assembly. On the contrary, press reports suggested that the ministry and wildlife groups did not want the existing protected areas to be subjected to the adjudication of forest rights under the FRA (Awasthi, 2008). Well before the implementation of FRA began in January 2008, the ministry rushed an executive order asking the state forest departments to notify all protected areas as critical tiger habitats per the provisions of a 2006 amendment to the Wildlife (Protection) Act 1972 (Bijoy, 2011).

Taking note of the ministry’s attempts at preempting the recognition of rights under the FRA, the upper house of the Parliament considered serving the ministry a notice for a ‘breach of parliamentary privilege’ (Awasthi, 2008). At the same time, most states followed the ministry’s instructions to initiate unilateral notification of tiger habitats without going through either the scientific or the consultative process mandated under the FRA (Bose and Kothari, 2008; NCFRA, 2010). The ministry’s attempts to institutionalize tiger habitats under the 1972 wildlife act inspires comparisons with the provisions of wildlife habitats mandated under the FRA.

One of the key differences between these two provisions lies in the procedural rights that the FRA grants to the communities affected by declaration of wildlife habitats. Two, the tiger habitats notified under the 1972 wildlife act can be, and have been, diverted for mining and other development projects. On the other hand, the FRA prevents the government from diverting wildlife habitats for

⁶ Letter No. Desk-12/Land/3/Gadchiroli/C.R.320 (10-11)/86/2011-12 dated 04/24/2011 issued by the office of the Principle Chief Conservator of Forests (Head of Forest Force), Maharashtra State. Circulated over the Yahoo! group Forest Rights on 04/24/2011, available at <http://groups.yahoo.com/group/forestrights/> (membership required).

⁷ It is important to note that this became possible because of the presence in the village of the federal environment minister, the chief minister of the state of Maharashtra, and a number of national civil society groups advocating for community rights to the village (Menon, 2011).

any purpose other than wildlife conservation (Bijoy, 2011). In other words, the ministry employed a legal provision that offered weaker legal protection in comparison to the protection mandated under the CWH provisions of the FRA. By implication, the ministry's apparent breach of the parliamentary proceedings did not serve the cause of wildlife conservation. On the other hand, the ministry's actions in bypassing the FRA had a significant effect on the administration of forest rights on the ground.

Elected leaders represented on two different sub-district FRA committees indicated that the forest officials on the committee repeatedly vetoed forest rights claims related to areas currently classified as wildlife sanctuaries.⁸ These statements were corroborated by the chairperson of another sub-district FRA committee, who stated that the divisional forest officer on the district committee had objected to his approval of collective forest rights.⁹ The evidence from Gujarat matches with the reports from other states also where the forest departments argued against the recognition of forest rights within areas of national parks or wildlife sanctuaries (Kothari and Meena, 2010; NCFRA, 2010).

More recently, documents that a journalist accessed via the right to information provisions revealed that the ministry officials had proposed relaxing the regulatory framework governing tiger reserves.¹⁰ This would further weaken the already frail provisions of the Wildlife Protection Act related to tiger habitats. In other words, even as the ministry went about relaxing federal regulations pertaining to tiger reserves, the reserves were being used as a pretext to create obstacles against the recognition of forest rights. Given the outright and consistent opposition from India's forestry administration, the role of national conservation groups would be critical in shaping FRA debates. The following subsection surveys the response the FRA evoked from India's wildlife groups.

Response of the national conservation organizations

A number of national and international conservation organizations such as the World Rainforest movement wrote to the Prime Minister of India urging proper implementation of the FRA (The Hindu, 2007). On the other hand, some well-known Indian wildlife conservation groups vociferously criticized the law and challenged its constitutional validity in the Supreme Court of India (Sethi, 2008). The editor of the Sanctuary Asia magazine called the enactment of the FRA Indian "democracy's lowest hour" (The Hindu, 2010). Other wildlife activists argued, by creating incentives for local communities to clear-fell standing forests,¹¹ the FRA would prove to be "the decisive nail in the tiger's coffin" (Sahgal and Scarlott, 2010, p. 306). The Bombay Natural History Society (BNHS) is among the wildlife conservation groups that sued India's federal government arguing that the enactment of the FRA violated India's constitution. Debi Goenka, the BNHS treasurer, contested, "We believe that there is not enough forest left to give... to every tribal. Besides we don't believe that tribals need the forests".¹² As noted earlier, the FRA did not provide for clearing of forest, or any amount of forest land to be given to every family or individual.

Instead, it merely gave statutory right to the land up to a maximum of 4 ha cultivated prior the enactment of the FRA.

The wildlife activists also objected to the FRA provisions for collective forest rights. Valmik Thapar, a member of the National Wildlife Board, rejected the philosophy of participatory conservation, calling it "utopian" (The Indian Express, 2006). Instead, he advocated strict protection measures, which would further reinforce exclusionary conservation measures. Speaking to the "save the tiger campaign", Thapar said, "Like the [Prime Minister] needs Black Cat commandoes for his protection, if the tiger has to live, it needs a protection group for it to make it safe."¹³

On the other hand, the FRA has also invigorated healthy debates within the conservation community (Sekhsaria, 2007). The Bombay Natural History Society (BNHS) is reportedly considering withdrawing their name from the lawsuit challenging the FRA.¹⁴ A wildlife activist suggested that conservation successes achieved through the FRA had the effect of softening the opposition among wildlife enthusiasts.¹⁵ Anecdotal analysis of the media reports on the FRA also reinforces these trends – very few stories published in 2011 and 2012 depict the extreme views that were common in 2005 and 2006 when the proposals for the FRA were debated.

More important, perhaps, wildlife scientists have started demanding accountability from the ministry and the forest departments. Renowned wildlife scientist Ullas Karanth's advice on tiger conservation in India is instructive: "The top priority is to stop the misapplication of substantial amounts of tax payer's money by Forest Departments for destructive 'eco-development' and 'habitat management' practices; this is at the root of the mission drift away from protection."¹⁶ Commenting on the rapid expansion of tiger reserves, Karanth criticized the ministry and forest departments for their "unscientific and... arbitrary decision-making on tiger reserves."¹⁷ At least in some cases, the heated debates are giving way to a more informed dialogue. Even so, few others have opposed the continued attempts by the ministry to violate the substantive and procedural rights recognized under the FRA (Bijoy, 2011).

Given their compatibility with the apparent preferences of India's forestry establishment, wildlife experts arguing for exclusionary conservation seem to have elicited better reception in the federal corridors. Valmik Thapar, who rejected the philosophy of participatory conservation, was one of the two experts called on to review FRA rules from a wildlife conservation perspective (Sethi, 2008). Ironically, by weakening the collective rights provisions of the FRA, Thapar and other wildlife experts weakened the FRA's potential in facilitating conservation (Venkatesan, 2005; The Indian Express, 2006; Rajshekhar, 2009).

On the other hand, the forestry administration has not yet accepted the Future of Conservation in India network's proposals to operationalize the provisions on critical wildlife habitats.¹⁸ To the contrary, the ministry has launched an "anti-poaching tiger force

⁸ Sub-divisional committee member, personal interview, Patansar, August 27, 2009. The names of places cited have changed to pseudonyms to protect identity of the respondents.

⁹ Sub-district officer, personal interview, Netranpur, October 15, 2009.

¹⁰ Tejpal, Cara. MoEF Subverts its own conservation mandate. Accessed May 26, 2012 at http://www.tehelka.com/story_main52.asp?filename=Ne020612MoEF.asp.

¹¹ Indeed, there have been some reports of forest clearings (see, NCFRA, 2010; Kothari et al., 2011). Yet, given that the question of forest property rights concern millions of India's forest people, such incidents have been few and far between.

¹² 'There isn't enough forest land to give to tribals'; Q&A: Debi Goenka; BS Reporter/New Delhi April 1, 2008.

¹³ The Nation Joins NDTV's 'Save the Tiger' Campaign Businesswire India, accessed May 5, 2012 <http://www.financialexpress.com/news/the-nation-joins-ndtv-save-the-tiger-campaign/282992/0#>.

¹⁴ Electronic mail correspondence, senior community-based conservation activists, May 7, 2012.

¹⁵ Telephonic conversation with a Mumbai based wildlife activist, December 4, 2011.

¹⁶ Anon, An Interview with Dr. K. Ullas Karanth, accessed June 5, 2012 at http://www.truthabouttigers.org/home/?page_id=163.

¹⁷ Mudur, G.S., Expert raises ecology doubt on tiger park, January 16, 2010. Accessed June 5, 2012 at http://www.telegraphindia.com/1110116/jsp/frontpage/story_13447959.jsp#.

¹⁸ Future of Conservation In India Network, accessed June 5, 2012 at <http://www.kalpavriksh.org/index.php?option=com.content&view=article&id=90&Itemid=172>.

trained in “jungle survival and weapons use”.¹⁹ The forest minister in the state of Maharashtra recently issued ‘shoot at sight’ orders, arguing that forest guards shooting poachers should be free of human rights obligations (Thirani, 2012). Arguably then, even while India debated the FRA, the forest policy outcomes, driven by the forestry establishment and wildlife conservation groups, shifted away from securing rights for forest peoples. The following section analyzes this conundrum.

Explaining the FRA's bumpy ride so far: a political economic analysis

The previous section documented the actions and arguments of two key conservation actors, the forestry administration and the wildlife conservation groups, in contesting the FRA. From 2004 to 2006, when the proposed statute was debated widely, many among the forestry administration and the wildlife conservation groups put forth a simple argument reminiscent of the tragedy of the commons thesis (Hardin, 1968): The opportunity for villagers to claim forestland would “pockmark the heart of tiger country and there simply won't be any forest anymore”, argued a senior advisor and trustee to Delhi's Wildlife Trust of India (Basu, 2007). To others, the FRA amounted to a “sell-out to vote-bank politics” (Munshi, 2005, p. 4406).

Notwithstanding such claims and the counterclaims by forest rights activists, few systematic analyses have been conducted thus far regarding the magnitude of forestland claimed under the FRA. Such analyses would allow us to check if the gloomy prognosis that the wildlife activists offered about the potential impact of the FRA was borne out by the available empirical evidence. The existing documentation focuses largely on the forestry administration's sabotage of the FRA (NCFRA, 2010). Table 1 compiles all data available in the public domain on the area of forestland approved by the village councils, and in some cases, by the district level FRA committees in the key forested states.

To appreciate the implications of the data presented in Table 1, it is helpful to note that the forest-dependent groups, the locally elected forest rights committee, and the village council have significant autonomy in making claims under the FRA. The village council sends its recommendation to the sub-district level committee, which in turn sends its recommendations for approval to the district level committee. Each of the two higher level committees, headed by a civil servant, has the authority to reject claims approved by the committee at the lower level. While there have been intense debates about the very high rates of rejection of the FRA claims by the subdistrict and district level committees (NCFRA, 2010; Kumar and Kerr, 2012), an analysis of the forestland claimed by forest-dependent households, and the average area of forestland pertaining to claims approved at each level, helps explain if the FRA led to opportunistic claim-making. If it did, the average size of claims that the village councils approved would be closer to the maximum allowable area of 4 ha. After all, a household would not invest resources in forest clearing and risk penal proceedings to clear and claim a meager hectare of forestland.

Data from the states of Gujarat and Andhra Pradesh reported in Table 1 above suggests that the average area of forestland claimed at the village level is less than 2 ha per household. Because the area of forestland claimed to be under cultivation per claim is far below the maximum allowable area of 4 ha, it is reasonable to conclude that the forest people did not try to take advantage of the autonomy that the FRA afforded to them. Similarly, the data on the size of forestland claimed aggregated at the district levels in the states

of Andhra Pradesh and Orissa also does not support claims of a land rush. Finally the state level data (shown at the bottom of Table 1) also allow the readers to test the claims made by wildlife conservation groups that elected leaders, with a short time horizon and an eye on forest peoples' votes, would use the FRA as a land grant program (Munshi, 2005). The current statistics available from five major states puts the average area per claim for household titles under the FRA at close to or less than one hectare (MoTA, 2012). In other words, elected leaders represented on the higher level FRA committees did not misuse their positions for large scale clientelistic land grants. Even the forest officials in the states of Madhya Pradesh and Chhattisgarh acknowledge in private that the number of claims and the area of forestland claimed under the FRA were much lower than expected.²⁰

If the forestry administration and the conservation groups opposed the FRA for fears of opportunistic forest clearance, they would have rethought their positions in response to this empirical evidence suggesting a low level of forest land claims. Instead, the forestry administration has increasingly moved away from arguing about the effects of the FRA to the issues of control and ownership of forests and forest lands. For instance, the Deputy Inspector General of Forests responded critically to the recommendations of wide ranging forestry reforms proposed by the national committee reviewing the FRA. He commented:

It is the question of who will have the overall control on (*sic*) the Community Forest areas. Obviously any system of dual control/responsibility will be unviable on (*sic*) the long term. ... The proposal that State Forest Department will give the protection while community would have ownership/control is not a workable arrangement.²¹

This senior official's statement explicitly rejected the proposals for strengthening collective forest rights, which the existing research associates with successful conservation outcomes (Agrawal, 2001; Bray et al., 2006; Chhatre and Agrawal, 2009; Ostrom, 2010). This begs the question of why the foresters charged with forest conservation did not act to resolve longstanding conflicts and enroll forest people in the task of forest conservation. Potential motivations for the continued assertion of control by the forestry administration must then be linked to the political economic interests that governments and public agencies pursue in Asia, Africa and elsewhere (see, Ascher, 1999). A brief review follows, outlining the interests and material stakes of Indian forestry administration in maintaining an exclusive control over the *de jure* forestlands, which cover about 23 percent of the country's total area. Remarkably, only about one third of the *de jure* forest lands have forests with over 40 percent of canopy cover.²²

The FRA challenges the forestry administration's monopoly over forest management in a number of ways. One, by vesting forest-dependent community groups with the statutory right to collect and sell non-timber forest produce, the FRA threatens the state forest department's control over NTFP trade worth over USD 10 billion a year (Mahapatra et al., 2010; Sethi, 2011). The desire to maintain control over the NTFP trade is reflected in the text of the Minor Forest Produce (Ownership of Forest Dependent

²⁰ Personal communication, graduate researcher, Anand, July 26, 2009; Personal email communication, NGO professional, August 31, 2010.

²¹ An undated statement by the Deputy Inspector General circulated over the Yahoo! group Forest Rights on 02/10/2011, available at <http://groups.yahoo.com/group/forestrights/> (membership required), or from this author.

²² A report published recently in the Economic Times suggested the ministry resorted to “statistical jugglery and the use of flawed definitions” (of forests) to give an inflated picture of country's forests. M. Rajshekhkar, ‘Guess Who Calls Lodi Gardens a Forest?’, The Economic Times, April 5, 2012.

¹⁹ Beary, Habib, India's first anti-poaching tiger force begins work, January 4, 2012. Accessed June 5, 2012 at <http://www.bbc.co.uk/news/world-asia-india-16410137>.

Table 1
Empirical data on household forestland FRA claims approved.^a

State/s	Details	Total number of claims	Per-household area of forestland claimed/approved (ha)	Source
Village level data				
Gujarat	Primary data collected from 60 randomly selected villages	3156	1.63 ^b	Kashwan (2011)
Andhra Pradesh	Primary data from 439 households from 5 villages in	275	1.67 ^b	Reddy et al. (2010, p. 26)
District level data				
Andhra Pradesh	Adilabad district as of May 2010	36,319	1.45 ^{b,c,d}	Reddy et al. (2010, p. 36)
Orissa	Kandhamal District as of 15.02.2012	54,216	0.64 ^{b,d,e}	Data available from the district administration portal
State level data				
Maharashtra	State level data as of April 30, 2012	97,176	0.87 ^{c,d}	MoTA (2012)
Kerala	Citing starred question number 428 (23-3-2010) posed in the state legislative assembly	6004	1.00 ^c	Sathyapalan and Reddy (2010)
Andhra Pradesh	Status of claims made throughout the state as of April 2010	3,22,955	1.17 ^{c,d}	Reddy et al. (2010, p. 39)
Orissa	State level data as of April 30, 2012	2,99,018	0.65 ^{c,d}	MoTA (2012)
Chattisgarh	State level data as of April 30, 2012	2,14,668	1.00 ^{c,d}	MoTA (2012)

^a The Ministry of Tribal Affairs releases monthly updates through the website <http://www.fra.org.in>. However, most of the data made available in these updates does not clearly distinguish between the private/household claims and the various types of collective claims. Therefore, the choice of states represented in this table is determined solely by availability of unambiguous data on the area of forestland claimed or approved per household, aggregated at different levels. The table covers all of the important forested states in the India with significant Adivasi populations except for Madhya Pradesh.

^b The data reflect the area of forestland claimed at the village level.

^c The data reflect the area of forestland approved by the district level FRA committee. In the Adilabad district of Andhra Pradesh, no claims were rejected at district level committee. Therefore, in this case, the average area of forestland approved for private titles is same as the average area of forestland claimed.

^d Original data in units of acres, converted to hectares for this table (1 ha = 2.5 acres).

^e <http://www.kandhamal.nic.in/main/results/itda.pdf>.

Community) Act of 2005 that the ministry posted on its website.²³ The draft defines “Ownership” as the “right to collect and process the Minor Forest Produce in a manner prescribed by the State/Union Territory Government. . .” According to the draft document, which of the forest peoples are counted as ‘forest dependent’ and what forest produce is counted as NTFPs would be decided by the forestry administration.

Two, the control over forest territory is also related to the justification that the top-heavy forest bureaucracy and its powers should be maintained. Demands for a greater share of the federal budget, and a greater say in policy-making, are often made by forest officials on the basis of their supervision of 23 percent of India’s geographical territory and its apparent contribution to economic growth (GOI, 2006b; Thakur, 2007). Three, the forestry administration’s claims to these funds have been tightly linked to its claims regarding the notionally participatory program of JFM. The FRA devolves far stronger rights to community groups than was the case under JFM. Consequently, it raises questions over the *locus standi* of state forest departments in receiving millions of dollars in international conservation funding aimed at promoting participatory forest management (see, MoEF, 2010).

The implementation of JFM merits closer attention. The policy statements issued by the ministry early on promised to transfer control of JFM committees to locally elected leaders within two to three years (Sundar, 2001; Springate-Baginski and Blaikie, 2007). Yet, over two decades after the program was launched in 1990, government forest guards continued to be in control of the village

JFM committees and their bank accounts. While community groups were successful in protecting forests under JFM, state governments unilaterally cut back on the proportion of forest income that they would share with participating community groups (Sundar, 2001; Springate-Baginski and Blaikie, 2007). In the few cases the participating communities received any benefits at all, they were highly inadequate (for national level data on the benefits shared under JFM, see, Ravindranath and Sudha, 2004).

In the state of Madhya Pradesh, the per capita benefits were so embarrassingly low that the department had to cancel its original plans to share benefits with individual households. Instead, the department put the funds into JFM bank accounts controlled by their own staff. Moreover, the department insisted that the funds be reinvested into forest regeneration.²⁴ In effect, the forest people, among the poorest in the country, ended up subsidizing environmental public goods without receiving adequate returns for the hard work and the valuable time they invested. Even worse, in the states of Gujarat and Maharashtra, the state forest departments leased the community-protected forests to paper mills without consulting the community groups involved (Pallavi, 2011).²⁵

The most counterintuitive aspect of JFM pertains to how it reinforced the historical and contemporary forest property rights conflicts. The JFM committees have been widely documented as a case of ‘elite capture’, i.e. controlled by local leaders with whom the forest departments collaborate selectively (Sundar, 2011). As Sarin

²³ Ministry of Environment and Forests, Draft document, Minor Forest Produce (Ownership Rights of Forest Dependent Community) Act, 2005. Accessed June 5, 2012 at http://moef.nic.in/downloads/rules-and-regulations/ownership_forest2005.pdf.

²⁴ Anon, Promised Moon, Paid Pittance – Madhya Pradesh, Down to Earth, September 15, 2011. Accessed June 2, 2012 at <http://www.downtoearth.org.in/content/promised-moon-paid-pittance-madhya-pradesh>.

²⁵ Chief Executive Officer, an international non-governmental organization, personal interview, Ahmedabad July 7, 2009. Multiple community leaders, personal interviews, September 4, 2009; September 29, 2009; October 12, 2009.

(2005) documents, forest departments employed the services of the JFM committees to dislodge the poor among the local community from shifting fields they have cultivated for generations. Taking a leaf from these 'successes', the ministry plans to bring shifting cultivation land under carbon forestry plantations (Kant, 2006). Aside from the fact that the FRA recognizes shifting cultivation as one of the household rights, this proposal seems quite at odds with the performance of ministry in protecting forestland against large scale development projects.

A recent analysis published by the Center for Science and Environment (CSE) revealed that even as the ministry was busy fighting the FRA, it gave away 204,425 ha of forest land for mining, industrial, and other development projects from 2007 to 2011.²⁶ Merely 1.7 percent of the forestland diverted during the period related to "social services, rehabilitation, and human settlement". On the other hand, 40 percent of the forestland diverted since 1981 was for mining and power projects (see footnote 26). The findings of the time series data presented by CSE have been validated by the in-depth investigations of the Western Ghats Ecology Expert Panel, which the ministry appointed in 2010.

The Western Ghats is one of the thirteen critical biodiversity hotspots in the Asia-pacific region.²⁷ According to media reports, the panel's report chronicled the cases of "corruption, repeated violations of India's laws, ill-planned schemes that irreparably destroyed forests for little or no benefit, and... livelihood threat to the millions who depend on the Ghats".²⁸ The ministry banned the report's release and forbade its authors, including some of India's best biologists, from talking about it. A ministry official argued that the report would compromise the "scientific and economic interests" of the country.²⁹

The wildlife conservation groups that opposed the FRA had little direct leverage over the functioning of the ministry. Valmik Thapar writes, "Our senior wildlife scientists are confronted today with criminal cases of trespass, their jeeps seized, offensive reports written against them, and this done by forest officers".³⁰ Yet, as the discussion of the FRA policy process above suggested, actions of Mr. Thapar and his contemporaries in wildlife conservation groups effectively reinforced the control and authority of the forestry administration. The concluding section synthesizes the analyses presented above and makes concrete recommendations for bolstering the operationalization of the RBAs.

Conclusion: toward comparative justice in the woods

A review of the proposals for RBAs that international agencies such as IUCN, WWF, and CIFOR have developed shows that they recognize an expansive set of indigenous rights, including the rights to territorial sovereignty. Perhaps it is a moot point that such rights may not always be compatible with the goals of nature conservation (Campese et al., 2009). For instance, recent forest restitution policies in post-socialist European countries and in East Asia provided for the redistribution of standing forests to individual households. Research suggests that these reforms had some adverse impact on

biodiversity and wildlife without necessarily benefiting the poorest within local communities (Fay and James, 2009; Sikor and Ngoc Thanh, 2007). Therefore, the RBAs, founded on a combination of an ambitious list of rights and an instrumentalist approach, are likely to lead, almost by design, to a conflict between the goals of social justice versus those of conservation. Such a design of RBAs also systematically puts the conditions of universality and inalienability of rights under stress (Campese et al., 2009 citing United Nations 2003).

The human rights scholarship, which has debated the issue of whether to focus on an expansive set of rights as opposed to a minimalist notion of rights, is relevant to the present discussion. Nickel (2005, p. 386) suggests that advocates of human rights...

"...should not be much concerned with promoting the highest possible standards of living or with identifying the best or most just form of economic system. Rather they should attempt to address the worst problems and abuses in the economic area. Their focus should be on hunger, malnutrition, preventable disease, ignorance and exclusion from productive opportunities."

The lack of secured rights to lands, which forest-dependent people cultivate in India and elsewhere, has been linked to socio-political and economic marginalization (Baviskar, 1994; Peluso and Vandergeest, 2001).³¹ By implication, forest property rights are critical for the basic wellbeing of the forest people, and a necessary condition for empowering them to contribute to conservation goals (Bawa et al., 2011; Kumar and Kerr, 2012). The FRA analyzed in this article offers an example of a limited, but more realistic, formulation of RBAs based on a minimalist notion of social and economic rights (cf. Nickel, 2005).

The FRA offers secured rights to small parcels of pre-existing cultivations, permits no parceling or clearing of standing forests, and grants collective forest rights, which the existing research suggests, is likely to be correlated with better conservation outcomes. Therefore, forest officials and wildlife activists' explicit rejection of the minimalist rights enshrined within the FRA suggest a rigid adherence to exclusionary models of conservation, while ignoring the potential for achieving synergy between the recognition of forest rights and nature conservation. More fundamentally, this is also a rejection of the fundamental rights of forest-based subsistence and well-being (Sikor et al., 2010).

One could certainly argue that forestry officials and wildlife activists should not compromise at all on the goals of nature conservation. Yet, the evidence presented above suggested that the forestry administration was not fully committed to the goals of nature conservation. Instead, it permitted large scale mining and industrial projects within the same forest areas that it sought to secure from forest dependent people (Colchester et al., 2008; Beymer-Farris and Bassett, 2012). The wildlife activists largely ignored this stark reality in their pursuit of more exclusionary conservation (Rodríguez et al., 2007). Read together, these findings would lead one to reject the notion that contestation over forest rights in India was rooted in an inherent conflict between the goals of social justice and those of nature conservation, broadly speaking. Instead, forest rights are pitched against one particular form of exclusionary conservation, but mainly against the political economic interests of the state.

More importantly, international conservation groups perhaps intend to avoid confronting national governments in an attempt to pursue governments to be pro-conservation (Chapin, 2004). In response, governments and government leaders are likely to behave strategically to please environmental groups and the

²⁶ Center for Science and Environment (CSE), Public Watch: Overview (Forest and Environmental Clearances). accessed June 5, 2012 at <http://www.downtoearth.org.in/dte/userfiles/images/1Overview.Forest.Environment.pdf>.

²⁷ Conservation International, Biodiversity hotspots. accessed June 5, 2012 at http://www.conservation.org/where/priority_areas/hotspots/asia-pacific/Pages/asia-pacific.aspx.

²⁸ Halarnkar, Samar; Not for your eyes at all, Hindustan Times, May 09, 2012, accessed June 5, 2012 at <http://www.hindustantimes.com/StoryPage/Print/853252.aspx>.

²⁹ See footnote 28. Eventually, the ministry released the report, but only after it had failed to get a favorable injunction from the Delhi high court.

³⁰ Valmik Thapar, 'Tiger, Tiger Burning Bright: Only in Forests of Government Files'. The Indian Express, February 6, 2005.

³¹ For various estimates of the number of people dependent on shifting cultivations around the world over, see, Mertz (2009).

donors without being sincere about promoting nature conservation (Ascher, 1999; Brosius et al., 2005). Indeed, governments may want to protect the status quo of exclusionary institutions, ostensibly designed to promote conservation, even if it entails continued violation of the rights of forest peoples. Given the political economy of policymaking and program implementation, it is worth considering if it would be useful for RBA proponents to protect the subsistence rights of forest-dependent people irrespective of its implications for the goals of nature conservation.

The current proposals for the RBAs list an expansive set of rights, subject them to the instrumentality of nature conservation goals determined by conservation groups, and leave it up to the discretion of local managers to weigh in on how to settle tradeoffs. Such approaches lead to the wildlife professionals and activists retaining disproportional and undemocratic power in defining the terrain of RBAs (cf. Guha, 1989; Saberwal, 2000). More importantly, it puts socially and politically marginalized forest people at a significant disadvantage and risks threatening the credibility of RBAs as an instrument (Colchester et al., 2008).

Instead, the critical rights linked to forest-based subsistence should be treated as inalienable, and pursued through multi-pronged strategies aimed at realizing rights (Sikor and Stahl, 2011). Moreover, the criteria for potential tradeoffs between the goals of social justice and nature conservation should be widely deliberated, bearing in mind the historical legacy of exclusionary conservation coupled with the state control of forests and other natural resources (Brosius et al., 2005; Bawa et al., 2011). The FRA accommodates these aspects through the recognition and protection of currently existing subsistence cultivation and grants substantive and procedural rights to the forest people affected by programs aimed at conservation of critical wildlife habitats. The ongoing attempts of the Future of Conservation in India network is a useful illustration of the operationalization of the minimalist notion of the RBAs presented here.³²

The longstanding mobilizations by the country's forest and land rights movements contributed to the enactment of the FRA. The watchful advocacy of forest rights by movements and the votaries of community-based conservation has also ensured that the agenda of implementation of the FRA remains relevant to the national political landscape (Asher and Agarwal, 2007; NCFRA, 2010; Bijoy, 2008, 2011; Kumar and Kerr, 2012). The civil society initiatives on forest rights also found support among the members of the national advisory council (Kumar and Kerr, 2012), which worked as a bridge between the federal government and national civil society organizations. Even though the forest departments have continued to displace people from the areas of national parks and sanctuaries (Bijoy, 2011), the FRA has granted forest and forestland rights, leading to livelihood security for a significantly large number of forest people.

The FRA has also enabled forest people to contest some very high profile mining and development projects that would threaten biodiversity and wildlife (Sundar, 2011; Vira et al., 2012). For instance, the ministry was forced to suspend environmental clearances given to Vedanta Alumina Ltd., a multinational corporation that planned to invest \$9.6 billion in mining and steel plants in the Niyamgiri Hills in the eastern Indian state of Orissa. This happened after months of sustained protests by the Dongria Kondh forest people living in the hills rich in flora and fauna (Sundar, 2011). The minister of environment Jairam Ramesh stated that the company and the state government had failed to recognize and respect the substantive

and procedural rights that the FRA afforded to the forest people.³³ The national green tribunal also cited violations of the FRA in suspending the environmental clearances given to a mega-steel plant proposed by the Indian subsidiary of the South Korean steel corporation POSCO.³⁴

As discussed briefly in Section 'Response of the national conservation organizations', there is some evidence to suggest that the conservation successes achieved through the FRA are helping reshape the positions of wildlife conservation activists. Even so, as the recent policy pronouncements discussed above would suggest, the balance of power continues to be stacked in favor of exclusionary conservation. This conclusion conforms to the findings of a global review of RBAs, which suggested that conservation organizations, in general, had yet to rise to the challenge outlined in the Durban Accord (Colchester et al., 2008). On the contrary, the reviewers found that the continued imposition of exclusionary conservation, just as in the Indian case, led to increased skepticism among indigenous groups about the sincerity of conservation activists in respecting forest rights.³⁵ The ongoing plans for Reducing Emissions from Deforestation and Forest Degradation, and Enhance Forest Carbon Stocks in Developing Countries (REDD+) are likely to put additional strains on the movement for RBAs (Sikor et al., 2010).

Early evidence suggests that the sudden deluge of private finance related to REDD+ is likely to significantly reshape the politics of forest rights (Melick, 2010; Sikor et al., 2010). Agrawal et al. (2011) report that important international conservation organizations are adopting carbon forestry as their main business model. More worrying are the cases, such as the one documented in detail by Beymer-Farris and Bassett (2012), in which international conservation groups are actively promoting carbon forestry projects at the cost of forest peoples' access to forests and forest lands. These interventions, aimed apparently at securing additional financial resources for wildlife conservation, risk provoking resistance and the severe hostility of forest peoples against international conservation (Beymer-Farris and Bassett, 2012). As the analyses above suggested, the RBAs in conservation must be attuned to avoid precisely such strategic and instrumental blindsiding of forest rights, which requires fundamental changes in the existing approaches to wildlife conservation.

Rodríguez et al. (2007) urge conservationists to look beyond conservation models relying on the branding of globally applicable models such as 'biodiversity hotspots' or 'eco-regions'. Instead, they recommend "locally produced strategies and agendas, implemented by strong local institutions and individuals" (Rodríguez et al., 2007, p. 756). Bawa et al. (2011) similarly argue for empowering local community groups without making such support contingent on specific conservation outcomes. Yet, as the Indian case suggested, the political economy of state control led to the government forestry agencies privileging the exclusionary models of conservation over more balanced approaches emerging from within the conservation community. The international conservation community needs highly concerted effort, including an aggressive use of its control over the purse strings. As Ribot and Larson (2011, p. 80) suggest, the proponents of RBAs need to be "hyper-progressive and affirmative" in joining forces with forest rights movements to demand the accountability of the public

³² Anon, Identifying Critical Wildlife Habitats (FCN statement), January 30, 2008, accessed June 5, 2012 at <http://www.indianjungles.com/300108.htm>.

³³ Ghosh, Padmaparna, Vedanta's Orissa project nixed, LiveMint.com, August 24, 2010 accessed June 5, 2012 at <http://www.livemint.com/2010/08/24234751/Vedanta8217s-Orissa-project.html>.

³⁴ National Green Tribunal, principal branch, New Delhi, Appeal No. 8/2011, March 30, 2012, accessed June 5, 2012 at <http://greentribunal.in/orderinpdf/8-2011%28Ap%29-30Mar2012.final.order.pdf>.

³⁵ See <http://www.forestrightsact.com>, for a number of statements issued by India's forest rights movements.

officials and the governments (see also, [Saberwal, 2000](#); [Chhatre and Saberwal, 2005](#)).

The key recommendations emerging from the political economic analysis presented in this paper can be summarized as follows: First, the attempts at operationalizing RBAs are likely to be more successful when they encompass minimalist set of inalienable rights, instead of an expansive set of rights subjected to the priorities of conservation. Second, there seems to be broad agreement about recasting the conservation toolbox to accommodate a plurality of approaches, with increasing attention paid to local solutions customized to specific regional settings. Finally, given the historical legacy of exclusionary conservation, progress toward holding the state to account requires conservation groups to enter into partnerships and a genuine dialogue with forest rights movements. RBAs thus implemented are likely to be far more successful in helping the global community of the environment and development scholars, activists, and policy makers realize a truly just and sustainable world.

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