

# 8<sup>TH</sup> KAMTA PRASAD SAGREIYA MEMORIAL LECTURE

## *Who Owns the World's Forests and Why it is Important: Global Tenure Trends and Imperatives with Special Reference to India*

Arvind Khare

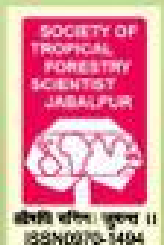


Organized by

State Forest Research Institute, Jabalpur

&

Society of Tropical Forestry Scientists, Jabalpur





**Late Shri Kamta Prasad Sagreiya**

**10th February, 1904 - 19th May 1984**



Arvind Khare is a natural resources management specialist with more than 30 years of non-profit, corporate, and public sector experience. He was the first chair of the Board of Directors of the International Land and Forest Facility (the "Tenure Facility"), the first and only international, multi-stakeholder institution exclusively focused on securing land and forest rights for Indigenous Peoples and local communities. He is the past Executive Director and co-founder of the Washington-based Rights and Resources Initiative, which created and incubated the Tenure Facility until it was formally launched as an independent institution in October 2017. He is currently the Senior Director of the Rights and Resources Initiative. Throughout his career Mr. Khare has contributed to the critical examination of poverty-environment linkages, initiated a number of innovative rural development projects, and was involved in social risk assessment of development investments in India. An alumnus of the Indian Institute of management, Ahmedabad, he is currently based in Washington, DC.



RIGHTS AND RESOURCES INITIATIVE | FEBRUARY 2018

---

*Who Owns the World's Forests and Why  
it is Important: Global Tenure Trends and  
Imperatives with Special Reference to India*

Arvind Khare

---

## Contents

Contents.....	2
Foreword.....	3
Introduction.....	4
The Case for Recognizing Indigenous Peoples’ and Local Communities’ Land and Forest Rights .....	4
India and the Forest Tenure Reforms Process .....	13
Conclusion.....	21
About the Rights and Resources Initiative.....	22

## Foreword

I am grateful to the Society of Tropical Forestry Scientists, especially to its president, Dr. P.K. Shukla, and to the State Forest Research Institute, Jabalpur for inviting me to deliver the K.P. Sagreiya memorial lecture. I do not know what led to this honor except that I also belong to this great city where I was born and brought up.

I have checked the past five speakers for this lecture series. Four of them were foresters and one an ecologist. I am neither a forester nor an ecologist and therefore an odd choice to follow in their footsteps. However, considering the great scientific work done by Dr. Sagreiya and the fact that it is a society of tropical forestry scientists, I consider my remit as to present the evidence and facts to the best of my abilities, and the scientists can derive their own conclusions.

## Introduction

Today, nearly a third of the world's population lacks secure rights to the lands and forests they customarily claim and have historically used and protected. These Indigenous Peoples (IPs) and rural communities customarily own and manage more than half of the world's lands and forests. Inadequate recognition of these rights and constraints on the ability of communities to effectively exercise their rights endangers the livelihoods and survival of communities and thus puts at risk the sustained protection of the natural resources, forests, and waters we all depend on for human development and global environmental sustainability. The lack of recognition and support also makes these lands and forests vulnerable to unregulated exploitation, feeding corruption. By contrast, communities and Indigenous Peoples with secure rights to their forestlands have lower deforestation rates and, by protecting their forests, help protect our climate.

These challenges are particularly acute for women. Despite facing historic injustice in both security of land rights and land governance, they are increasingly becoming the leading managers and political defenders of forests and lands across the world. This means that advancing the equal rights and voice of women is not only a global imperative for gender justice and women's socioeconomic advancement, but is also one of the most promising paths to protect forests and rural landscapes as well as advance inclusive development and social stability.

Secure land rights have been a cornerstone of social, economic, and environmental stability as well as equitable economic progress for centuries, providing the foundation underpinning the development of democracy, sustained peace, and shared prosperity across many parts of the world. Today, securing the rights and livelihoods of communities, especially of women in communities and of Indigenous Peoples—in order to support sustainable resource use, enable responsible investment, and prevent illegal land use—constitutes one of the most pressing and necessary steps to achieving global progress toward sustainable and equitable development.

In recent years, there has been strong global commitment to address insecure community land rights—demonstrated by the endorsement of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which celebrated its 10th year anniversary in September 2017; the Committee on World Food Security's Voluntary Guidelines for the Responsible Governance of Tenure (VGGT), endorsed in 2012; and the Sustainable Development Goals (SDGs), endorsed in 2015. Securing Indigenous Peoples' and communities' land rights is also recognized as a strategy within the New York Declaration on Forests in 2015; and the UN Framework Convention on Climate Change (UNFCCC) agreement in Paris in 2016. More than 600 organizations and communities worldwide have endorsed the Global Call to Action on Indigenous and Community Land Rights, launched in 2013.

In most countries, governments have claimed ownership of much of the forest estate through historical processes of expropriation, and those claims have been formalized in statutory laws<sup>1</sup>. The simple fact that vast areas of customary lands have been grabbed from Indigenous Peoples (IPs) and local communities, often by colonial or authoritarian governments, and that this has caused immense suffering and displacement, has been a powerful argument for returning these lands back to IPs and local communities.

## The Case for Recognizing IP and Local Communities' Land and Forest Rights

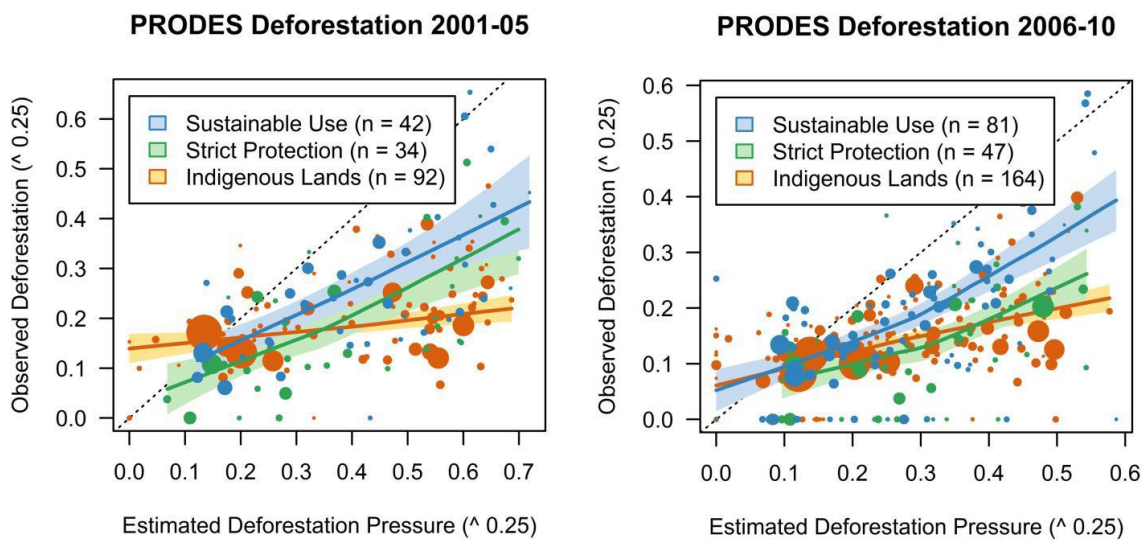
Apart from the clear moral and ethical imperative to recognize the land and forest rights of IPs and local communities, there are very strong pragmatic and practical reasons why this should be done. Below we

present the evidence and argue the case for recognition of IPs' and local communities' land and forest rights from more pragmatic perspectives:

**1. In absence of rights, conservation efforts will be unsustainable**

Recent research provides evidence that: i) when deforestation pressures are high, Indigenous Peoples' territories and rights bearing local communities reduce deforestation more than other types of protected areas; and ii) local participation in forest rulemaking is crucial for producing sustainable forest outcomes.

- a) A 2013 study analyzed the relationship between deforestation and governance using data from 292 strictly protected areas, sustainable-use areas, and indigenous lands in the Brazilian Amazon during two periods (2001–2005 and 2006–2010). It found that all three regimes inhibited deforestation, but Indigenous Peoples' territories reduced deforestation more than the other two categories when deforestation pressures were high.



- b) A 2011 study published in *Science* examined the relationship between biodiversity conservation (as indicated by tree species richness) and livelihoods in six countries in East Africa and South Asia. Data from 84 forest sites demonstrated that i) forests were more likely to have sustainable outcomes (above-average tree species richness and household incomes) when local forest users were involved in making forest rules; and ii) local participation in rulemaking was associated with a lower probability of unsustainable outcomes (or tradeoffs) and a higher probability of sustainable outcomes for forests of all sizes.
- c) Another study, headed by Porter-Bolland, carried out a meta-analysis of published case studies comparing 40 state-protected and 33 community-managed forests. It found that, while deforestation was the norm in both types, "as a whole, community-managed forests presented lower and less variable annual deforestation rates than state protected forests." Blomley and colleagues studied 13 forests in three areas of eastern Tanzania and found that community-managed areas were gaining in forest coverage and had a greater volume of trees, while government forests (and open-access forests) showed a decline, and concluded that community forests were a successful model for conservation.
- d) Molnar et al (2003) estimates that there is at least as much forest area under community conservation, 370 million hectares, as in public protected area networks. Khare (2003) estimated



that communities invest a vast amount of time and effort in conservation; in fact, for developing countries this investment is comparable to the investment put in by the governments and conservation organizations.

In brief, IPs and local communities have demonstrated better stewardship of forests, shown more care for biodiversity, and have invested more in conservation compared to the western model of strict barricaded protected areas.

## ***2. In absence of land and forest rights, development goals will be unattainable***

Rural households generate high "environmental incomes," i.e., cash- or subsistence-based contributions from non-cultivated lands such as natural forests, bush, mangroves, rivers, or other wildlands (Wunder et al 2014; Angelsen et al, 2014a), and lack of secure tenure on these lands threatens these livelihood contributions.

- a) An extensive study across 24 countries in Asia, Africa, and Latin America found that forests provide an average annual household income of \$US440, representing 22.2 percent of total household income (Angelsen et al, 2014b). The same study finds that income shares for forests are higher for the poorest households (ibid).
- b) In Nepal, local communities generate at least four times more revenue per hectare from their forests than do government-managed forests. A recent study found that most of those benefits accrued at the community level, such as investments in basic infrastructure, rather than at the household level.<sup>2</sup>
- c) In China, more than 400 million people with stronger rights to over 100 million hectares of forestland steadily increased farmer incomes.<sup>3</sup>
- d) Family and smallholder plots in Java, Indonesia, added far more value to the economy at far lower costs than industrial palm oil, rubber, and pulp production in Sumatra and Kalimantan, where community rights were transferred to foreign companies on a massive scale.<sup>4</sup>

There is also increasing evidence to suggest that securing communities' forest rights enhances the economic flows not only to these communities but also to governments. For example,

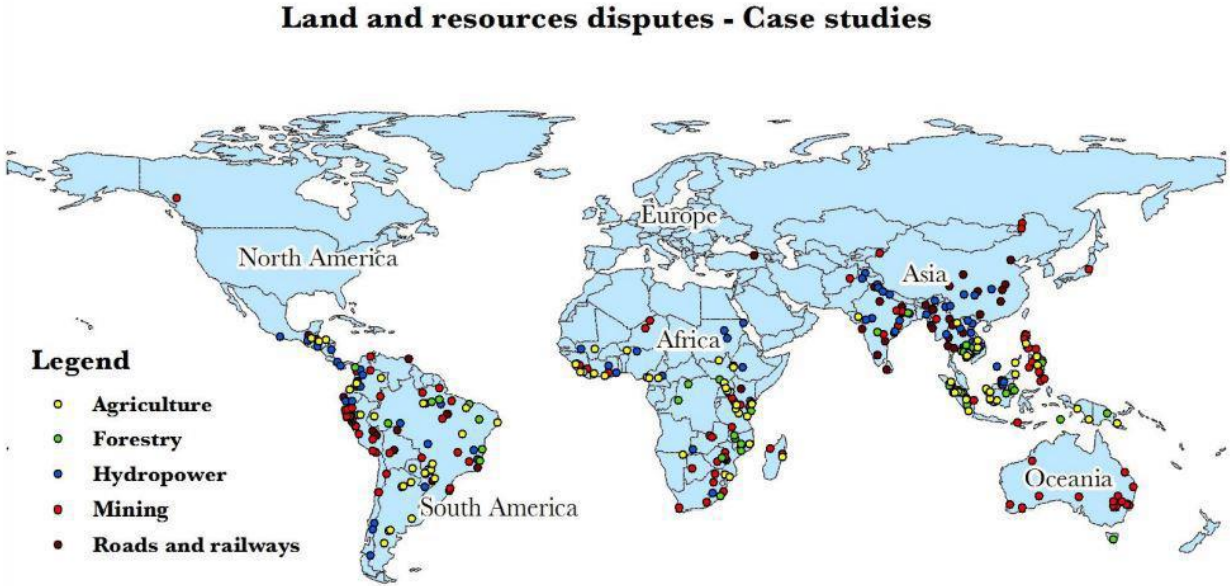
- e) A Mexican forestry project enabled communities to bring 175,000 hectares under more sustainable forest management, set aside 13,000 new hectares of conservation areas, and create 1,300 permanent jobs while generating US\$1.2 million per year in new fiscal revenues for the federal government.
- f) Recent analysis shows that 80 to 90 percent of commercial forest user groups in developing countries are in fact small to medium enterprises, managed through rural communities or smallholders supported by local cooperatives. Collectively, these generate US\$125-\$130 billion in gross revenues annually worldwide.<sup>5</sup> Community forest enterprises based on secure forest tenure can become a major source of economic development in forested areas of the world.<sup>6</sup>

Six countries stand out as promising examples for the development of SMFEs, especially with regards to community forest enterprises, namely China, Gambia, Guatemala, Mexico, Nepal, and South Africa. In each of these countries communities have access to or property rights over forests.

**3. In absence of clear land rights, conflicts will increase and investors will suffer**

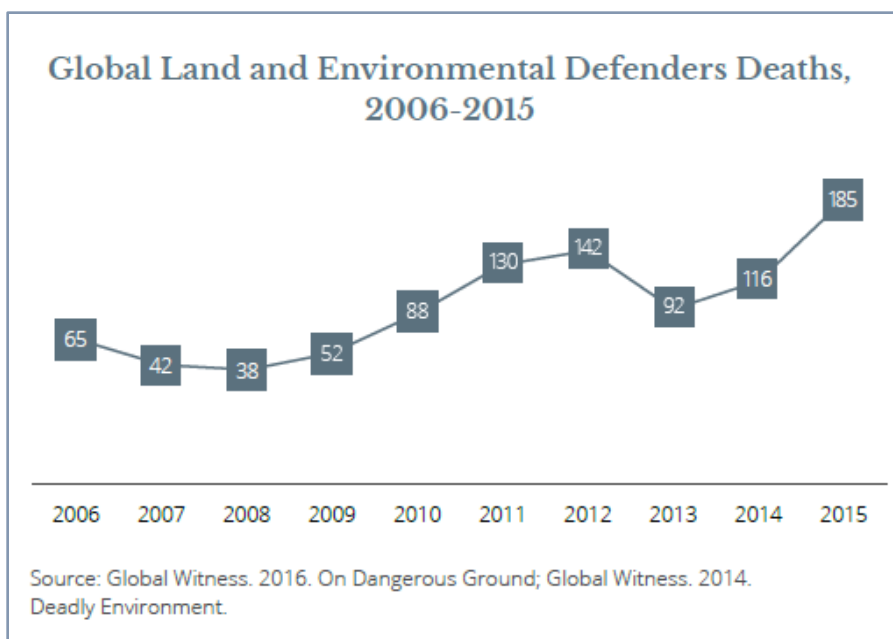
The cost of conflicts related to non-recognition of land and forest tenure can be considerable and widespread. One analysis of 71 cases of civil conflict and war across the world found that more than two-thirds of the conflicts were driven, at least in part, by contested claims around land.<sup>7</sup> A UNDP report found that “insecurity of ownership, mismatches between state and indigenous forms of ownership, and unequal distribution of ownership are frequent sources of conflict and poor environmental decisions.”<sup>8</sup>

- a) Spatial analyses of over 73,000 developing world concessions and population density datasets indicate that people were present in 93 to 99 percent of the concessions analyzed.<sup>9</sup> This has made forested landscapes across the world intense sites of contestations. Cases of conflict between local communities and powerful actors are pervasive, and illustrate the negative consequences of insecure community tenure rights for all involved, including for governments and private sector investors.
- b) The Environmental Justice Atlas documented over 2,354 resource-related conflicts worldwide, many caused by extractive projects that polluted or damaged the land, air, water, forests, and livelihoods of communities.<sup>10</sup> An exhaustive examination of 362 cases of projects in agriculture, mining, hydropower, infrastructure or forestry found significant disputes with local populations over land or resource rights.<sup>11</sup> These extended across a wide range of countries, as displayed on the map below:



The study also found that the most important driver of disputes was displacement of local communities, almost always based in the absence of rights over land and forest.

- c) Some of the dramatic and far-reaching impacts of tenure-related conflicts include violent evictions, torture, and murder. In 2017 alone, more than 190 environmental defenders, mostly IPs and local communities defending their land and forest rights, have been killed. See the chart below:



- d) Another study in 32 cases of land related conflicts in Africa showed that 69 percent of the African conflicts involved a delay in operations and a subsequent loss of money for investors, with displacement of local peoples from their customary lands being the most significant driver of these disputes. Similar evidence of the cost of land tenure conflicts for development and investments has emerged from other countries. In Indonesia, a study estimated 639 cases of new agrarian conflicts, mostly related to non-recognition of customary lands and forests.<sup>12</sup> These conflicts affect more than 6 lakhs people and more the 5 lakh hectares of land. The highest number of conflicts, 208, relate to plantation sectors.
- e) First paper on tenure risk (2012) by TMP showed that disputes can increase project costs by 29 times, primarily through delays induced by direct action or by legal challenges.
- f) A database of 400 case studies suggests that disputes have increased by over 300 percent since 2003. Over half of the disputes (53 percent) that TMP analyzed globally had materially significant impacts for the companies or investors involved.

Secure forest and land rights along with the provisions of free, prior, and informed consent (FPIC), ensure that communities are able to negotiate with companies and government, rather than being thrown off their land. It also makes business sense for the investors.

#### ***4. IP and LC land and forest rights – the low hanging fruit for climate change mitigation***

Research shows that legally recognized and protected community forestlands tend to store more carbon and experience lower rates of deforestation than forests owned or managed under other regime types, including protected areas.

- a) In Brazil, deforestation in indigenous community forests from 2000 to 2012 was less than 1 percent, compared with 7 percent outside them. The higher deforestation outside indigenous community forests led to 27 times more carbon dioxide emissions than were produced from deforestation on indigenous community forests. Moreover, indigenous community forests contain

36 percent more carbon per hectare than other areas of the Brazilian Amazon.

Figure 4 | Comparing Forest Cover Loss, 2000–12, and Average Carbon Density Inside and Outside Indigenous Lands in the Brazilian Amazon



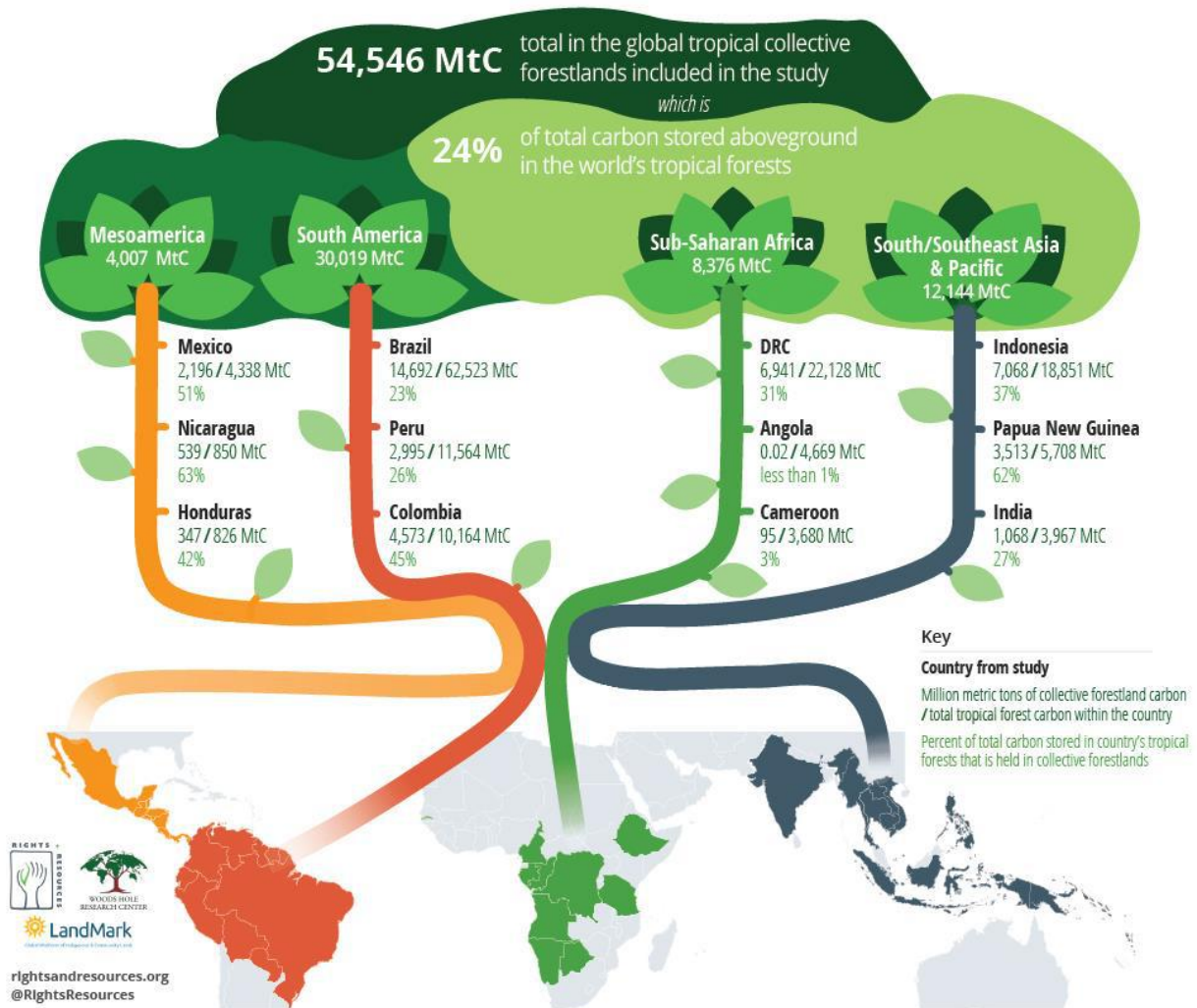
Source: Hansen et al. 2013. Carbon data from Saatchi et al., 2011.

- b) A recent study shows that across the tropics, forestlands that are legally owned or traditionally held by Indigenous Peoples and local communities (hereafter “collective forestlands”) contain at least 54,546 million metric tons of carbon (MtC). Globally, this represents at least 24 percent of the total carbon stored aboveground in the world’s tropical forests. While considerable, the true amount of carbon sequestered in collective lands across the tropics and beyond is potentially much greater, as the data for all of the territories customarily inhabited and claimed by Indigenous Peoples and local communities, which far exceeds what is legally recognized, is not available.

## Toward a Global Baseline of Carbon Storage in Collective Lands

The countries with the highest concentration of forest carbon per region are highlighted, and the proportion of carbon managed by Indigenous Peoples and local communities is presented as a percentage of the total carbon stored aboveground in each of these countries.

Read the full report at: <http://www.rightsandresources.org/carbonmapping2016>.



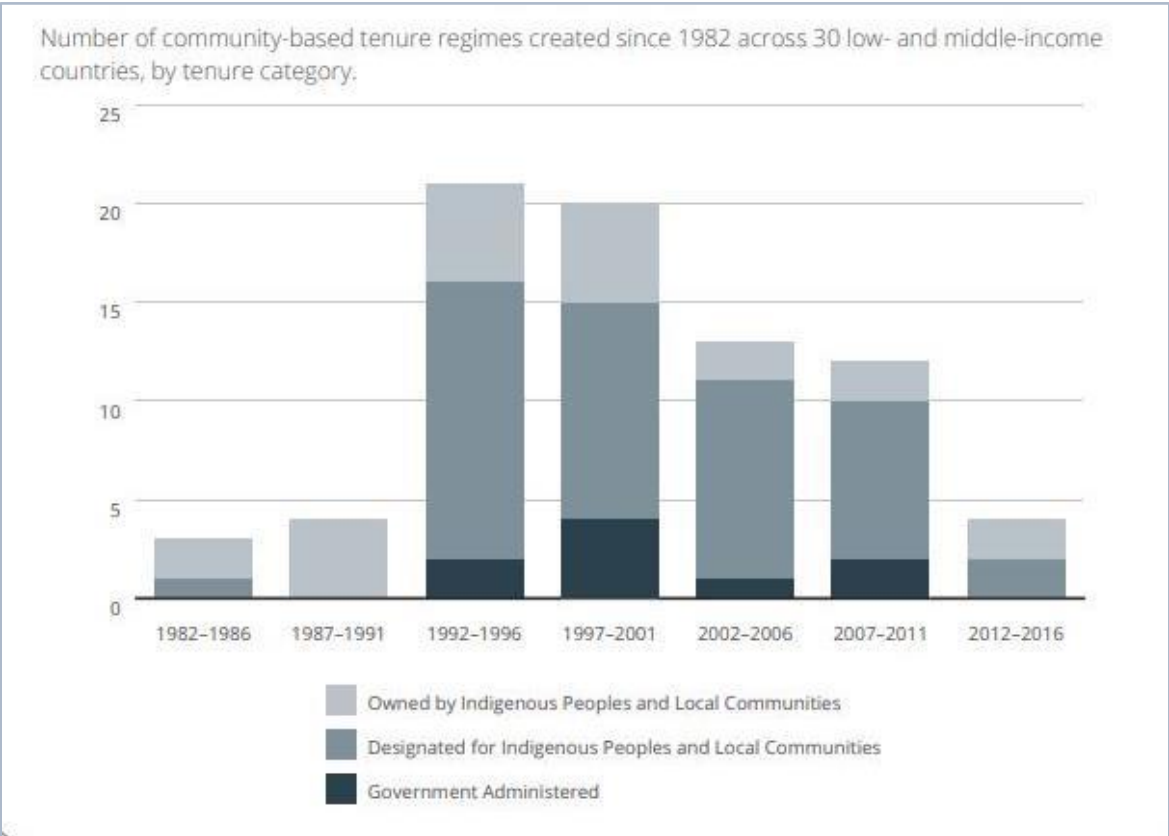
Forestry and agroforestry is also going to play a critical role in carbon sequestration and negative emissions. For example, the Bonn Challenge seeks to restore degraded forests over 350 million ha. by 2030, which would lead to sequestration of approximately up to 1.7 gigatonnes of carbon dioxide equivalent annually. Most country's INDCs have included negative emissions through forestry. However, given the contested nature of tenure over most of world's degraded forests, it is almost impossible to achieve these levels without secure tenure to communities who live in and use these forests.

### **Recognizing forest rights of IPs and local communities**

Given the multiple benefits of recognizing Indigenous Peoples' and local communities' rights over lands and forests, there has been an increasing impetus for the same globally. Secure tenure rights have now

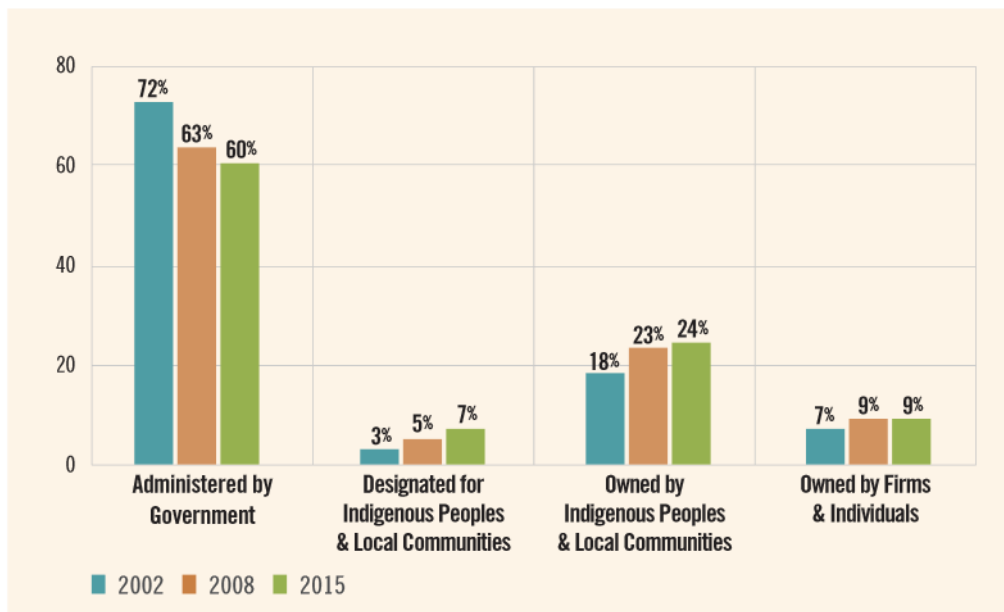
been incorporated into SDGs. Almost all global institutions, including major companies, have started throwing their weight behind community rights recognition. There are numerous examples of governments that have begun to recognize indigenous and other community land and forest rights.

A more recent analysis shows that between 2014 and 2016, no less than 39 laws and regulations relating to Indigenous Peoples’ and local communities’ forest tenure were passed or amended across 30 countries. However, in spite of these significant legislative achievements, the establishment of new legal frameworks supporting indigenous and community forest rights has slowed over the last five years (please see chart below).



Research from RRI has identified 80 community-based forest tenure regimes recognized by the national governments of 30 low- and middle-income countries around the world. Of those, only 29 community-based tenure regimes (CBTRs) were established over the 15-year period from 2002-2016, including just four CBTRs established since 2011. More than two-thirds (20) of the CBTRs recognized over the 15-year period has only limited rights to access, withdraw forest resources from, and either manage and/or exclude outsiders from their forestlands; they do not have the full “bundle of rights” constituting ownership of their forestlands. Only *six of the community-based tenure rights accorded full ownership rights* to indigenous and local communities, and three were so weak they classify as government administered.

A detailed study of Low and Medium Income Countries (LMIC) by RRI showed that there is a slow trend of increasing rights recognition of forest rights of local communities and indigenous people (Please see graph below).



Source: Rights and Resources Initiative. 2016.

#### *Change in Forest Tenure in LMIC Countries – 2002-2015*

India is one of the countries which passed a strong legislation for recognizing the rights of tribals and forest dwellers. We will next examine the Forest Rights Act, 2006, its key provisions and potential and its actual implementation.



## India and the forest tenure reforms process

### *India's contested forest history*

One quarter of India's land is legally categorized as forest (FSI, 2005). India is also the home of the largest number of forest-dependent people in the world. More than 275 million poor people in India, including marginalized tribal communities, partially or fully depend on forestlands for their livelihoods. The forestry regime established by the British brought vast areas of forested landscape under the direct administrative control of state and systematically redefined social interactions with forests, privileging colonial commercial interests over subsistence uses (Gadgil and Guha, 1992; Rangarajan, 1996; Sivaramakrishnan, 1999). Overlapping discourses of conservation (Grove, 1995), public interest (Jewitt, 1995), progress, and revenue generation (Guha, 1990) were used to justify the colonial state's takeover of forested areas and exclusion of local forest users. Colonial forestry was framed as modern and scientific, while forest-dependent rural populations were depicted as destroyers of forests, and most subsistence forest use was criminalized (Jewitt, 1995). Practices like shifting cultivation were made illegal. Colonial forest laws provided the legal instruments of control, and established the Forest Departments on paramilitary principles, forming the frontline apparatus of state's transformation of forest landscapes and of people–forest relations. The result was large-scale exclusion and marginalization of local populations, and conflicts and contestations that persist in forested areas (Gadgil and Guha, 1992; Guha, 1990; Kumar and Kerr, 2013; Sivaramakrishnan, 1999).

Even after independence, the Indian State retained the exclusionary colonial forest governance framework. Creation of legal forests continued apace (Saxena, 1997). Until the 1970s, forest conservation was not a high priority in India's developmental polity, and forest exploitation for industrial demand and revenue generation remained paramount. Large areas were also brought under agriculture. The 1952 Forest Policy invoked the national interest to specifically discount local forest-dependent people's needs and demands from the forests. In the 1970s, deforestation, forest and land degradation became important environmental issues (Rangarajan, 2006). However, instead of rethinking centralized forest governance, India responded by further centralizing forest governance. It enacted two important laws: the Wildlife Protection Act, 1972, and the Forest Conservation Act (FCA), 1980. Both laws expanded the power of the forest department without creating any space for local participation. The centralizing trend was further strengthened by the Supreme Court of India's strict and literal interpretation of forest laws, especially the FCA, 1980 (Rosencranz and Lélé, 2008).

Forest governance intersects with the local political economy of India's inequitable society in diverse ways. Most of the forest dependent communities are either tribals or lower castes at the bottom of the Indian caste and social hierarchies. The criminalization of most forms of livelihood dependence on forests exacerbated social and economic marginalization of forest-dependent people. It created conditions for illegal rent seeking, coercion, exploitation and surplus extraction from the forest-dependent people, especially tribals (Kumar and Kerr, 2013). Local tribal communities continue to see the FD as "antagonists," and conflicts over forests have been identified as a major reason for armed insurgency in Central India (GOI, 2008a). Thus, the relationship between the forest bureaucracy and the forest-dependent people has been a fraught one. In many areas, forest law enforcement was ineffective in the face of local resistance, unrest, political interference, and corruption. Centralized, exclusion-based forest governance also came into conflict with the Indian state's developmental and poverty alleviation priorities, and global discourses of people's participation, decentralization and human rights.



During the 1970s, as these contradictions became apparent, there was increasing pressure—internal and external—to involve local people in forestry. Social movements like the Chipko and Appiko, in conjunction with the global discourse of citizen participation and concerns about forest degradation, led to the initiation of the Social Forestry Programs in the 1970s and 1980s. The underlying rationale was that if forestry needs of rural populations could be met from non-forest areas, it would ease off pressure on forestlands. However, the heavily funded interventions to create plantations on non-forest lands failed to meet these goals, as most of the produce from plantations ended up being used for industrial purposes (mainly paper mills) and local subsistence dependence on forest lands continued more or less unabated. The 1988 Indian Forest Policy, which laid emphasis on both conservation and local dependence on forests, encouraged people's participation in forest governance (GOI, 1988). Positive outcomes from a participatory forest protection effort in Arabari in West Bengal helped inspire the idea of JFM which became the flagship program for forest governance in the 1990s (Ravindranath and Sudha, 2004), following the first JFM policy resolution in 1990.

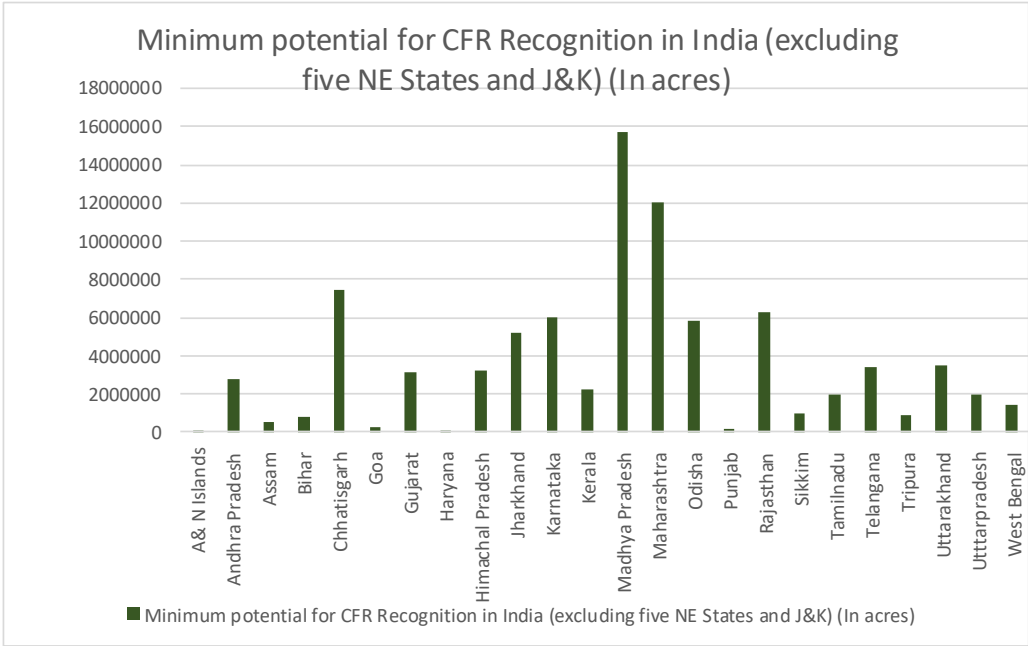
The outcomes of JFM have, however, been mixed. Diverse studies have reported improvements in forest conditions and provisions of ecological services (Murali et al., 2003; Prasad and Kant, 2003), increased availability of forest products including non-timber forest products (Singh et al., 2005), additional income generation from forests (Prasad and Kant, 2003), employment generation through wage labor offered under JFM (Bhattacharya et al., 2010; Murali et al., 2003), etc. At the same time, critical analysis of JFM has indicated that it has not led to a fundamental transformation of the relationship between the forest bureaucracy and forest-dependent peoples (Springate-Baginski and Blaikie, 2007). Furthermore, it has not met the goals of democratic decision making (Sarin et al. 2003, Sundar et al., 2001), and inclusion of marginalized forest dependent people. More fundamentally, it has not questioned the issue of forest tenure, state authority over the forest estate, and the issue of "historical injustice" in the creation of legal forests. Failing to address these fundamental reasons for forest conflicts and contestation, it has been seen as a case of "too little, too late"; and often as a strategy by the forest department to continue to exercise control by providing a few concessions to local people (Saxena, 1997, Sarin et al., 2003).

The conversion of a quarter of India's land area into legal forests using colonial era forest laws had left tens of millions of people living on or cultivating forestlands. Poor or non-settlements of rights of forest dwellers on forest land led to millions of forest dwellers being treated as "encroachers" (Kumar et al., 2005; Sarin, 2005). This became a major political concern in 2002 after the Government of India, following the Supreme Court's directions, tried to evict millions of people living on or cultivating legal forests. The resultant human rights violations led to a nationwide movement in favor of forest rights for forest dwellers. A combination of grassroots mobilization, a tenacious nationwide campaign, and conducive political circumstances in India's electoral politics led to the enactment of the FRA in 2006 (Kumar and Kerr, 2012).

The FRA's intent is to provide forest rights to forest dwellers, recognizing the historical injustices done to them in denying their rights in the creation of India's legal forests (GOI, 2006). The law is applicable to forest-dwelling scheduled tribes (STs) and other traditional forest dwellers (OTFDs). Some of the significant rights provided to STs and OTFDs include rights over legal forest land occupied for cultivation or habitation; community rights of ownership and access to collect, use and dispose of minor forest products (MFPs) and rights to protect, conserve and manage "community forest resources" (CFRs). All these rights have the potential to create spaces for forest dwellers' voice and participation in forest governance. In terms of forest governance, the rights to conserve and manage CFRs are critical as they provide a statutory basis for community ownership and governance of forests for the first time in India.

**Quantitative estimation of the minimum potential area for community forest resource rights to be recognized under FRA**

The bare minimum estimated potential forest area over which CFR rights can be recognized in India (excluding five north-eastern states and J&K) is approximately 85.6 million acres (34.6 million ha), as shown in the below table. Amongst the states, the largest potential for Rights recognition under FRA is in the states of Madhya Pradesh, Maharashtra, Chhattisgarh, Odisha, AP, Telangana, Rajasthan, Karnataka, Himachal Pradesh and Uttara hand.



Source: CFR-LA (2016) *Promise and Performance: Ten years of the Forest Rights Act in India*. CFR-LA

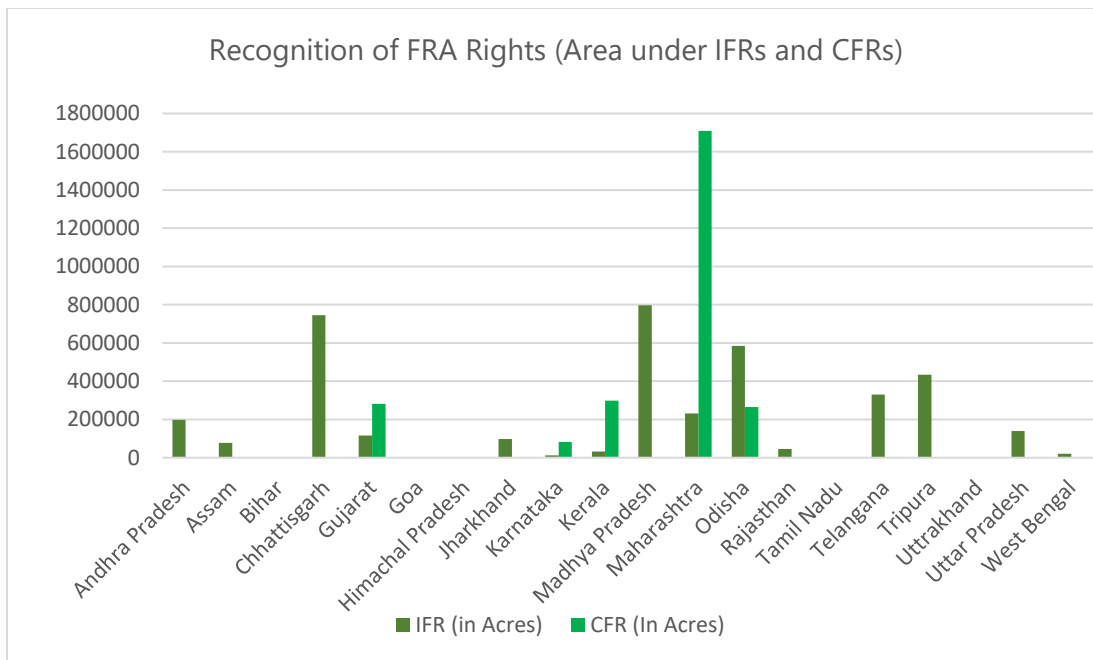
**Potential Number of people to benefit from FRA**

It is estimated that the rights of over 200 million Scheduled Tribes and OTFDs would get recognized under FRA, mostly through its community rights (CRs) and community forest resource (CFRs) rights provision in over 170,000 villages.

**Performance Of FRA: A National overview**

The performance of FRA has been very diverse across the states, and even within states. Attempts to collect data for this report revealed that data collection and reporting system of FRA implementation remains in shambles in most states.

The state performance for the CFRs and IFRs is provided in the below graph and subsequent tables. In most states, only individual forest rights (IFRs) have been recognized and only a few states have implemented the CFR provision.

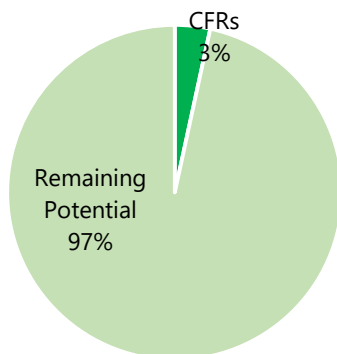


Source: CFR-LA (2016) *Promise and Performance: Ten years of the Forest Rights Act in India*. CFR-LA

***Promise and Performance of the Forest Rights Act: A quantitative comparison for CFRs***

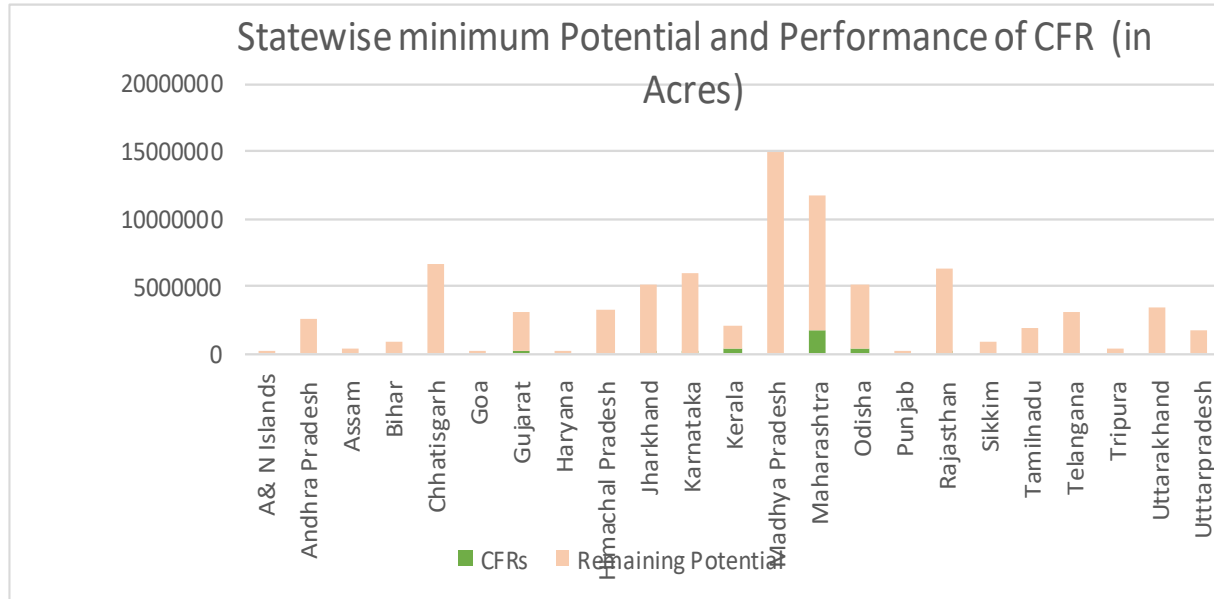
Given that we can make a quantitative estimate for the potential area only for the CFRs, we have carried out a quantitative comparison between the potential and the performance of CFRs in the below figures. This quantitative comparison doesn't reflect the actual quality of CFR rights recognition which is discussed in the issues sections. **For the whole country (excluding the five north-eastern states and J&K), only 3 percent of the minimum potential of CFR Rights has been achieved in the last 10 years.**

**Percentage of Potential of CFRs achieved: India**



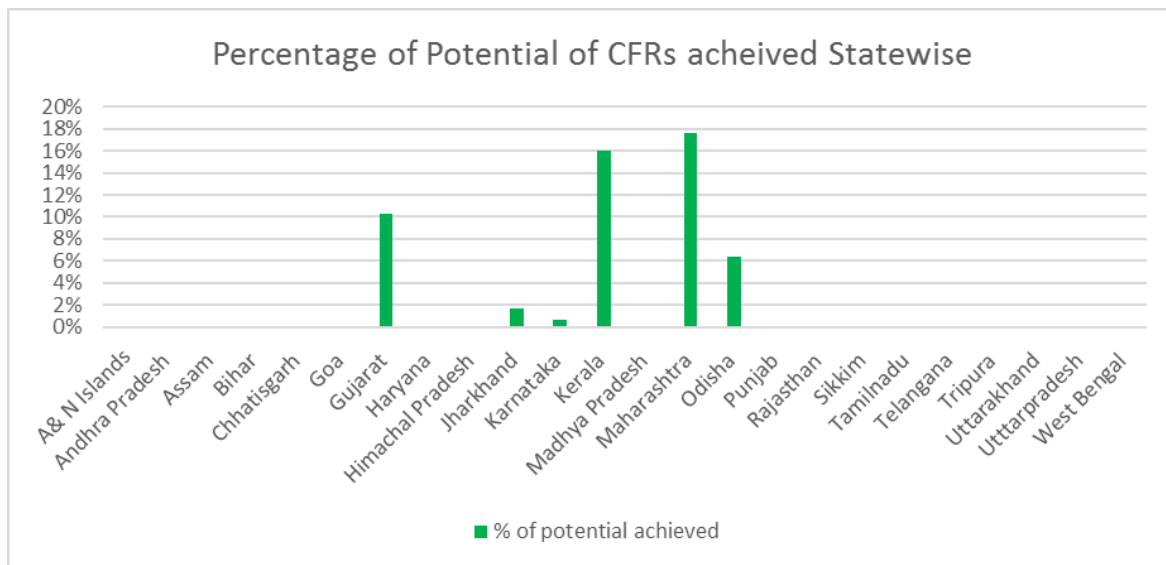
	Area in Acres	% of minimum total Potential for CFR Recognition
<b>Community Forest Resource Rights Recognized</b>	2,782,078	3%
<b>Remaining potential for FRA implementation</b>	78,978,123	97%

The statewise Promise and Performance of the CFRs (in terms of area) is provided in the following two graphs. It is clear that none of the states, even the ones which are deemed to have done better, have come close to meeting the potential for recognition of CFRs.



Source: CFR-LA (2016) *Promise and Performance: Ten years of the Forest Rights Act in India*. CFR-LA

The picture becomes clearer when one looks at the performance percentage vis-à-vis the potential.



Source: CFR-LA (2016) *Promise and Performance: Ten years of the Forest Rights Act in India*. CFR-LA

### ***Promise and performance: How well have states performed?***

Certain patterns emerge in overall performance of the FRA and these are sought to be captured in the table below. States in category 1—namely *the laggard states*—haven't started implementing FRA or have had extremely poor performance. The *low performing states* in category 2 have a very low level of implementation as compared to their potential (less than 2 percent). The *IFR Focused states* in Category 3 have only implemented IFR (individual occupancy) and ignored CFR and CR implementation. The *CFR laggard States* in category 4 have implemented both IFRs and CRs, but have ignored the implementation of the most important CFR rights. Finally, the better *performing* category 5 states show substantial efforts in implementing both CFRs and IFRs. Maharashtra stands out in the area of CFRs recognized in the state, while also recognizing IFRs. However, it needs to be emphasized that even Maharashtra's CFR recognition drive has only achieved 18% of the total potential for CFRs in the state. Similarly, Odisha—another well feted state—has barely recognized 6 percent of its CFR potential. Thus, the revolutionary potential of FRA remains untapped.

	<b>Categories</b>	<b>States</b>
<b>1</b>	The <b><i>Laggard states</i></b> : No or Extremely Poor Performance	Assam, Bihar, Goa, Himachal Pradesh, Tamil Nadu, Uttarakhand, Haryana, Punjab, Sikkim
<b>2</b>	<b><i>Low Performing states</i></b> (achieved less than 2% of minimum potential)	Rajasthan, West Bengal, Karnataka, Jharkhand
<b>3</b>	<b><i>States with only IFR Implementation</i></b>	Tripura, Uttar Pradesh
<b>4</b>	States which have ignored CFRs but implemented CRs and IFRs	Telangana, Andhra Pradesh, Madhya Pradesh, Chhattisgarh
<b>5</b>	<b><i>States with both IFR and CFR implementation</i></b>	Maharashtra, Odisha, Kerala, Gujarat

Source: CFR-LA (2016) *Promise and Performance: Ten years of the Forest Rights Act in India*. CFR-LA

### ***Dramatic results despite limited implementation:***

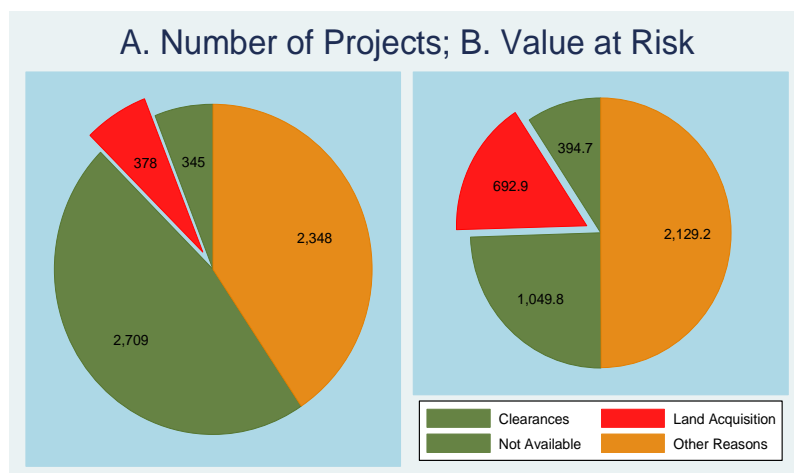
The enactment of the FRA and rights recognition under the law has shown dramatic impacts. The Government of Odisha has supported more than 200,000 individual households holding forest land titles through programs related to housing (IAY), land development (MGNREGA), irrigation, and horticulture. In over 200 villages in Gadchiroli, Amravati, Gondia, Yavatmal, Nandurbar and Jalgaon in Maharashtra, convergence programs for individual title holders as well as for forest conservation and management plans under CFRs have led to remarkable change in livelihoods and employment security.

Residents in Sirsanapalli village in Andhra Pradesh State, India, for example, began receiving significant incomes from bamboo after their rights were recognized, and dedicated half of that income to restoring their forests.<sup>13</sup> Tribal Gram Sabhas who have obtained community rights over forests under the Forest Rights Act are generating wealth and livelihoods for the most marginalized and poor people in India through utilization of their forest resources sustainably. Gram Sabhas who have received community rights have not only started managing their forests sustainably but have also generated large incomes through sustainable harvesting and marketing of forest products such as Bamboo and Kendu Leaves (KL) from their community forests. A set of examples are given in the table below:

Year	State/district	Village	Income
2011-12	Gadchirolli, Maharashtra	Mendha Lekha sells bamboo from CFR for first time	Rs. 1.12 crores
2013	Gadchirolli & Gondia, Maharashtra	14 village Gram Sabhas sell Tendu leaves from CFRs	Rs. 47 Lakhs
2014	Gadchirolli & Gondia, Maharashtra	24 village Gram Sabhas sell Tendu leaves from CFRs <sup>14</sup>	Rs. 72 lakhs
2014-15	Narmada district, Gujarat <sup>15</sup>	Sale of Bamboo from CFR by 64 villages	Rs. 18 crores
2015-16	Gadchirolli, Maharashtra <sup>16</sup>	Sale of bamboo from CFRs by 69 villages <sup>17</sup>	Rs. 28 crores
2015-16	Gadchirolli, Maharashtra	Padaboria village sale of bamboo from CFR	Rs. 2.51 crores
2016	Gadchirolli Maharashtra	Sale of Tendu leaves by Gram Sabhas <sup>18</sup>	Rs. 35 crores
2016	Gadchirolli & Gondia, Maharashtra	21 Gram Sabha sells tendu leaves	Rs. 1.28 crores
2017	Gondia, Maharashtra	19 villages of Arjuni Tahasil sell tendu leaves from CFR	Rs. 1.18 crores

***Delayed implementation, increasing conflicts, investment risks:***

A study of stalled investment projects was conducted by the Bharati Institute of Public Policy, Indian School of Business, Hyderabad.<sup>19</sup> As per the CAPEX database of CMIE, 378 investments worth Rs. 6.9 lakh crores were stalled due to land acquisition problem by 2016, and these constituted 6 percent of number of total stalled projects.



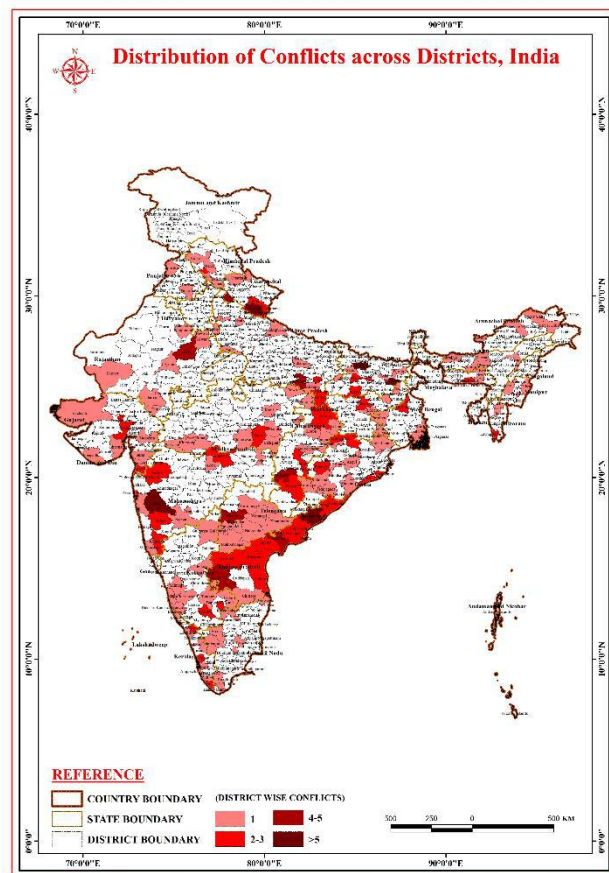
The study did a deep dive into 80 high value stalled projects, and found that out of **sampled 80 high value stalled projects**, even though CapEx database attributes only 7 Projects (9 percent) to land acquisition, three times as many i.e. 21 of the sampled projects (26 percent) have been stalled due to

land disputes. Even more important, disputes over common lands, mainly forest lands were as important as disputes over land acquisition of private lands in stalling investment projects. The total investment at risk in these 21 projects was Rs. 1.92 lakh crores. 12 projects in this sample of 80 have been stalled by **disputes related to common lands**, including forestlands. The total investment value of the stalled projects involving common land disputes was Rs. 1.18 lakh crores.

The [www.landconflictwatch.com](http://www.landconflictwatch.com) portal has documented 565 ongoing land conflicts, which affect investments worth Rs. 122 lakhs crores. A study based on the land conflict watch data showed that significant number of land-related conflicts in India involve forest lands, which are largely concentrated in regions where the customary rights of tribal communities are not recognized.<sup>20</sup> The study also points out that while less than 15 percent of the country's districts are LWE affected they account for 26 percent of all ongoing land conflicts and 32 percent of the land-conflict affected population. *Almost 80 percent of the conflicts in LWE districts involved common lands, and 45 percent of the conflicts in the LWE districts involved forest lands.* The non-recognition of forest rights and diversion of forest lands without taking in account local communities claims and access is a major factor.

The cost of these tenure conflicts in terms of delays and the stalling of infrastructure, development, and investment projects is not inconsiderable. Companies operating in areas where land and forest tenure is insecure may face costs of up to 29 times higher than baseline, or even risk abandonment of their operations as a result of conflict with communities, as was the case with SN Power in Chile of Niyamgiri or POSCO projects in India.<sup>21</sup>

The above makes it very clear that conflict over commons, especially forests, arising out of non-recognition of rights imposes a massive cost on investments, and therefore development. India has particularly suffered due to disputes over common lands, mainly forests. The government treats these areas as state property and releases them for investment projects, which is then vehemently opposed by communities dependent on these lands and with customary claims. If the community rights over these lands are recognized, not only can communities negotiate with the state and projects over these lands, but will also be eligible for compensation for the acquisition of these lands. In India, the tragic fact is that the massive compensation for forest lands (for compensatory afforestation and NPV) ends up in government coffers rather than go to the communities who actually claim these forests; and through Forest Rights Act, 2006, actually own the forests.



## Conclusion

It is a sign of changing times that the solid moral and ethical reasons are not sufficient to recognize the land and forest rights of ethnic and rural communities. Surprisingly and despite the equivocations of governments, self-interest is proving to be a bigger driver for increasing recognition of the claims of the Indigenous Peoples and local communities. A critical mass of influential investors and companies now recognize the market rationale for respecting community land rights. There is increased understanding that development projects that ignore these rights carry significant financial and reputational risks, cause conflicts and always fail to deliver on development promises. Sadly, despite the growing awareness of tenure risks worldwide, local communities continue to face ever increasing levels of violence and criminalization when they stand up for their rights, with women and Indigenous Peoples disproportionately victimized.

Governments across Africa, Asia and Latin America seeking to become emerging economies have increased natural resource exploitation to drive economic growth. Many investors see them as the last frontier for cheap land, and many governments view foreign direct investment as a means to promote economic growth. But far from delivering improved economic wellbeing for all, such investments often drive conflicts.

The same dueling forces and dilemma afflict us here in India. The transformative potential of FRA, representing the largest land and forest tenure reform in the country, to not only restore to forest dwelling communities their historical rights but also to democratize forest governance through empowered gram sabhas, conforms with the country's Constitutional obligations, international commitments as well as development goals. Positive examples of assertion of CFR rights, poverty alleviation, sustainable and equitable forest use and management based on democratic decision-making cited in the report, are unfortunately being met with greater hostility than support from the establishment. Wherever forest dwelling communities have successfully challenged non-consultative diversion of their customary forests for non-forest use, efforts have been made to dilute FRA provisions and the requirement of gram sabha consent for forest diversion. The assertion of rights by organized communities, even where these are yet to be recognized formally, is changing the balance of power between communities, the forest bureaucracy and other state authorities. The fundamental questions of who owns the country's forests, and by whom and for what objectives they should be governed and managed within the country's democratic and constitutional framework can no longer be left ignored.

### ***Acknowledgements:***

*This paper has been prepared with the help of Dr. Kundan Kumar, Director Asia Program, and Dr. Andy White, President of the Rights and Resources Initiative, Washington DC. It is based on the past ten years of analytical work of RRI including the research sponsored through various outside organizations.*



## About the Rights and Resources Initiative

RRI is a global coalition consisting of 15 Partners, 7 Affiliated Networks, 14 International Fellows, and more than 150 collaborating international, regional, and community organizations dedicated to advancing the forestland and resource rights of Indigenous Peoples and local communities. RRI leverages the capacity and expertise of coalition members to promote secure local land and resource rights and catalyze progressive policy and market reforms.

RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, DC. For more information, please visit [www.rightsandresources.org](http://www.rightsandresources.org).

### Partners



### Affiliated Networks



### Sponsors



*The views presented here are not necessarily shared by the agencies that have generously supported this work. This work is licensed under a Creative Commons Attribution License CC BY 4.0.*

- 
- <sup>1</sup> White, Andy, and Alejandra Martin. Who owns the world's forests? Forest tenure and public forests in transition. Forest Trends, 2002
- <sup>2</sup> Kanel, Keshav Raj. 2008. So far so good: next steps in community forestry. In: Ghate Rucha, Narpal S. Jodha, and Pranab Mukhopadhyay (eds.). Promise, trust, and evolution: Managing the commons of South Asia. New York: Oxford University Press.
- <sup>3</sup> Xu, Jintao, Andy White and Uma Lele. 2010. China's Forest Tenure Reforms: Impacts and implications for choice, conservation, and climate change. Washington, DC: RRI. Available at [www.rightsandresources.org/en/publication/view/chinas-forest-tenurereforms-impacts-and-implications-for-choice-conservation-and-climate-change](http://www.rightsandresources.org/en/publication/view/chinas-forest-tenurereforms-impacts-and-implications-for-choice-conservation-and-climate-change).
- <sup>4</sup> Rhein, Matthias. 2014. Industrial Oil Palm Development: Liberia's path to sustained economic development and shared prosperity? Lessons from the East. Washington, DC: Rights and Resources Initiative. Available at [www.rightsandresources.org/en/publication/view/industrial-oil-palm-development-liberias-path-to-sustained-economicdevelopment-and-shared-prosperity-lessons-from-the-east](http://www.rightsandresources.org/en/publication/view/industrial-oil-palm-development-liberias-path-to-sustained-economicdevelopment-and-shared-prosperity-lessons-from-the-east).
- <sup>5</sup> Mayers, J, L Buckley, and DJ Macqueen. 2016. Small, but many, is big: Challenges in assessing the collective scale of locally controlled forest-linked production and investment. IIED, London. Available at: <http://pubs.iied.org/pdfs/16615IIED.pdf>.
- <sup>6</sup> Macqueen, Duncan, and Team Leader-Forest Team. "Building profitable and sustainable community forest enterprises: enabling conditions." International Institute for Environment and Development: Edinburgh, UK (2010).
- <sup>7</sup> Alden Wily, Liz. 2008. Whose Land Is It? Commons and Conflict States. Why the Ownership of the Commons Matters in Making and Keeping Peace
- <sup>8</sup> UNDP, UNEP, World Bank, and World Resources Institute. 2003. World Resources 2002-2004. Decisions for the Earth: Balance, voice, and power. New York: UNDP. Nairobi: UNEP. Washington DC: World Bank. Washington DC: World Resources Institute.
- <sup>9</sup> Alforte, A., J. Angan, J. Dentith, K. Domondon, L. Munden, S. Murday, and L. Pradela. "Communities as Counterparties. Preliminary Review of Concessions and Conflict in Emerging and Frontier Market Concessions. Washington, DC: Rights and Resources Initiative." Communities-as-Counterparties-FINAL\_Oct-21. pdf (2014).
- <sup>10</sup> <https://ejatlas.org/>
- <sup>11</sup> [http://static1.squarespace.com/static/556c0de7e4b0518b1fa5df44/t/57165311a3360ca1d47d2301/1461080851778/IAN\\_Managing+Tenure+Risk\\_FINAL\\_.pdf](http://static1.squarespace.com/static/556c0de7e4b0518b1fa5df44/t/57165311a3360ca1d47d2301/1461080851778/IAN_Managing+Tenure+Risk_FINAL_.pdf)
- <sup>12</sup> <http://www.thejakartapost.com/news/2017/12/28/cases-of-agrarian-conflict-increase-in-2017-consortium.html>
- <sup>13</sup> Rights and Resources Initiative. 2015. Potential for Recognition of Community Forest Resource Rights Under India's Forest Rights Act: A preliminary assessment. Washington, DC: RRI. Available at [www.rightsandresources.org/en/publication/potential-forrecognition-of-community-forest-resource-rights-under-indias-forest-rights-act](http://www.rightsandresources.org/en/publication/potential-forrecognition-of-community-forest-resource-rights-under-indias-forest-rights-act).
- <sup>14</sup> Source: Dilip Gode, Personal communication
- <sup>15</sup> <https://swarajyamag.com/ideas/lesson-from-a-gujarat-ngo-property-rights-for-tribals-will-see-them-prosper>
- <sup>16</sup> <http://blogs.timesofindia.indiatimes.com/Swaminomics/gujarat-tribals-turn-bamboo-plantation-owners/>
- <sup>17</sup> <http://indianexpress.com/article/india/india-news-india/grassroots-change-a-bamboo-revolution-4367307/>
- <sup>18</sup> <https://scroll.in/article/819849/advaisis-have-taken-charge-of-the-tendu-auction-in-gadchiroli-but-theres-room-for-improvement>
- <sup>19</sup> BIPB and RRI 2016 Land disputes and stalled investments in India. RRI, Washington DC.
- <sup>20</sup> RRI and TISS. 2016. Land Conflicts in India: An Interim Analysis. RRI, Washington DC.
- <sup>21</sup> The Munden Project and the Rights and Resources Initiative. 2013. The Financial Risks of Insecure Tenure: An Investment View. Available at <http://www.rightsandresources.org/publication/the-financial-risks-of-insecure-land-tenure>.