

In the Jungle of Law

Adivasi Rights and Implementation of Forest Rights Act in Kerala

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This article examines the implementation of the Forest Rights Act of 2006 in the historical context of Wayanad's adivasi land struggles. The left-wing Government of Kerala (2006-11) aimed to interpret the FRA as a legal opportunity to obtain forest (department) land and to fulfil decade-old promises to redistribute land to landless adivasis. However, the provisions of the Act were not the right means to bring them redistributive justice. The well-intentioned FRA failed to make an impact in the specific historical and legal environment of the region.

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The Forest Rights Act (FRA) 2006,¹ representing a legislative landmark in the history of forest laws in India, was passed by India's United Progressive Alliance (UPA)² government to restore the rights of "forest-dwelling scheduled tribes" and "other traditional forest dwellers" to control and use natural resources. The FRA aims to recognise people's ownership and land-use rights at the individual and community level and, at the same time, to integrate conservation. Scholars and activists in India have praised the Act as a "testimony to the power of people's movements to participate in and push the legislating process" (Sundar 2011: 184) and an opportunity to correct the "historical injustice", as stated in the Act's preamble, committed against India's forest dwellers. Adivasi³ organisations such as the Campaign for Survival and Dignity (CSD), a federation and national platform of tribal and forest dwellers' organisations,⁴ have celebrated the FRA as a possible means of introducing more inclusive and democratic forms of environmental governance. It "makes a beginning towards giving communities and the public a voice in forest and wildlife conservation", as stated on the FRA homepage, managed by the CSD.⁵

This article critically engages with the implementation of the FRA in Wayanad, Kerala. As a necessary background, we start with a summary of the controversial debate about the Act using primary and secondary sources. We discuss both critiques of the legal provisions in the FRA, as well as the deficiencies in implementing it, that were expressed by civil society organisations and from within India's political establishments at the central and state level. Second, we situate the implementation of FRA in Kerala within

a wider historical context of left-wing struggles and particularly, adivasi assertion in the state. Finally, we present quantitative data and ethnographic observations on the implementation of the FRA in Wayanad. We argue that the well-intentioned, national law was not the right means to solve the district's adivasi struggles for land – the majority of the region's scheduled tribes (STs) today are landless labourers, not living on forest-land. Wayanad's diverse adivasi groups have received only a token amount of land, if any, under the FRA.

The findings are based on several periods of ethnographic fieldwork from 2009 to 2012. We conducted participant observation in different adivasi colonies and hamlets in Wayanad's forest bordering the panchayats of Pulpally, Noolpuzha, and Sultan Bathery. In order to ethnographically document how the local state, in its institutional and personal diversity, works to achieve the task of introducing such a far-reaching, legal reform, we spent many hours in government offices, leading extensive discussions with higher- and lower-level officials of the main government agencies involved: the tribal welfare department, and the forest department (FD), as well as with representatives of the local self-government (grama panchayat, grama sabha, *ooru koottam*).⁶ We also interviewed involved forest range officers, foresters, forest rangers, forest guards, and forest watchers working in different ranges of north and south Wayanad's forest divisions, as well as the Wayanad Wildlife Sanctuary. Additionally, we travelled with tribal extension officers (TEOs) and tribal promoters on their visits to adivasi hamlets. In order to balance official perspectives on the FRA implementation, we asked adivasi-activists, members of environmental groups, non-governmental organisations (NGOs) workers, and committee members of the joint forest management (JFM) programme for their experiences and assessments.

Methodologically, our study continuously shifted between the field sites in Wayanad and an analysis of primary and secondary sources (newspapers, reports,

and legal documents). Working with actors in the field (officials, as well as potential beneficiaries) uncovered a great sense of confusion, ambiguity, and even ignorance about the FRA. On the other hand, official reports (like that of the National Forest Rights Act Committee (NFRAC)) very often lacked a sense of people's lived experience of the local government implementing such a grand legislative innovation. Thus, in this article, our reading of the FRA and its implementation in Wayanad is informed by heterogeneous discourses among various players, government officials and others, about the FRA, its impact, controversies, failures, and shortcomings, as well as about the hopes and expectations it created. A widespread sense of "failure" of the FRA to make an impact on adivasi lives in Wayanad encouraged us to seek the regional, historical, political, and legal reasons behind the deficiencies in the Act's implementation.

Controversies over the FRA

Since the very beginning, the passing of the FRA has been accompanied by a keenly contested debate in India. Adversaries of the law claimed that it would lead to "eco-suicide"⁷ to massive destruction of India's remaining forest ecosystems, and should thus be repealed. The so-called "wildlife lobby" (Sundar 2011: 186) among Indian middle class environmentalists has expressed particularly harsh criticism of the new legislation. Regarding the survival of wildlife being incompatible with intensified human interference in forest areas, many wildlife lovers raised objections to the policy changes provided by the FRA and its aim of a more inclusive form of forest governance (Sethi 2007). Some voices amongst conservationists are currently even calling for a return to "fortress style" conservation methods (Brockington 2002; Guha 2003), as K Sivaramakrishnan notes: "Most recently, hard line conservationists decry as romantic the people and parks programmes that build on notions of possible coexistence between wild animals and farming and other forest-dependent communities" (Sivaramakrishnan 2011: 102). Yet in spite of widespread opposition to the Act,

shortly after the announcement of the FRA rules on 1 January 2008, most states and union territories with traditional forest dwellers began implementing the Act (Government of India 2010: 10).

However, almost three years later, in December 2010, a report on the state of implementation of the FRA submitted by the NFRAC⁸ dampened euphoria about the Act's reformative scope. The report makes it clear that there have been serious deficits in the way the FRA was implemented. Major problems were identified which prevented the new legislation from being entirely successful and effective.⁹ One of the key challenges of the implementation process was the involvement of three government agencies which have traditionally pursued contradictory objectives: the Ministry of Tribal Affairs (MOTA), the Ministry of Environment and Forests (MOEF) and the revenue department (Government of India 2010; Sathyapalan and Reddy 2010: 37). Many rules of the FRA have not been implemented so far. It is increasingly clear that the implementation was stalled by interdepartmental conflicts, bureaucratic and legal confusion (Sathyapalan 2010), a lack of provision of information and publicity (Kothari 2011) and by conflicts about who is eligible for rights under the Act (Sathyapalan 2010; Kothari 2011). In the absence of an accepted census of who had been occupying what land, many individual claims under the FRA were rejected.¹⁰

Soon after the publication of NFRAC's report, the National Advisory Council (NAC), advisory board of the central UPA government chaired by Congress President Sonia Gandhi, took up the report's critique. Recommendations and amendments to the FRA were published by the NAC, to be issued under Section 12 of the FRA¹¹ (Shrivastava 2011: 9).¹² Currently all over India, adivasi organisations, representatives of different communities and NGOs are demanding that the government make sure that a lawful and sufficient implementation of the FRA takes place. Recently, in October 2011, discussions held at the Community Rights Sangama, a four-day national adivasi convention in Kushalnagar in Karnataka's Kodagu district resulting in

a joint declaration¹³ adopted by various organisations, gave testimony of the rising discontent among adivasis about the failure of the new Act to strengthen their rights.

Kerala's Left-Wing Involvement

In Kerala, members of the Communist Party of India (Marxist) – CPI(M) continue to uphold the FRA as a great victory for tribal rights in the country. The CPI(M) representatives depict the FRA as the outcome of political pressure from the left, supporting the UPA government in the centre¹⁴ between 2004 and 2008.¹⁵ As a matter of fact, the CPI(M)-led coalition (2006-11) in Kerala was one of the first state governments to have completed the FRA's implementation process (Sathyapalan 2010: 72). Nevertheless, there has been harsh critique of the FRA's implementation by the left-wing government in the state. Adivasi activists and environmentalists alike argue that the CPI(M) made use of the Act for their own political gain in Kerala's competitive party politics.¹⁶ It is claimed that the Communist Party's political lobbying in the centre led to several amendments to the FRA¹⁷ and, most importantly, provoked the extension of the FRA's cut-off date for the recognition of land rights from 25 October 1980, as proposed in the original bill, to 13 December 2005.¹⁸ Arguably, the CPI(M)'s request for this change of date emerged from a situation of unsolved adivasi land issues in Kerala. The communists' motive, as CPI(M) members and environmentalists explained in our interviews, was to use the FRA as a means to legalise adivasi encroachments on forestland, which had mainly been supported by the Adivasi Kshema Samithi (AKS), the "tribal wing" of the CPI(M) before 2005. Especially in Wayanad

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district, the extension of the cut-off date for legalising claims under the FRA played a critical role during the implementation process. Those who benefited most from the FRA here were not the “traditional forest dwellers” of the region, who only received nominal land grants, but landless adivasis who had encroached upon vested forestland with the support of the CPI(M)-led AKS before 2005.

Wayanad's Adivasis

Wayanad is located in the hilly interior in the biodiversity-rich mountain range of the Western Ghats. According to the 2001 Census of India, the total population is 7,86,627, with a ST population of 1,36,062. In Kerala, it is the district with the highest percentage of ST – 17.43% as compared to 1.14% for the state as a whole. The major adivasi communities living in this region are Paniyar (44.77%), Mullu Kurumar (17.51%), Kurichyar (17.38%), Kattunaikar (9.98%), Adiyar (7.10%) and Urali Kurumar (2.69%).¹⁹ Historically, these communities were heterogeneous in their culture, kinship organisation, and gender relations. These groups lived in economic and ritual interdependence with each other and with Hindu castes. They were situated in hierarchical relationships with each other. For example, members of the Mullu Kurumar and Kurichyar tribal groups were the region's landholding agriculturalists. They cultivated rice and other cereals on the communally owned, wet land and some dry land near the forest with the help of agricultural labourers from the Paniyar and Adiyar communities.

The forest was used by these peasant groups for hunting mainly deer, boar and other small mammals. It was the place where they conducted worship and rituals. Mullu Kurumar and Chettis²⁰ also held cattle for consuming and, until recently, selling milk and ghee, so cows and buffalo were sent into the forest's grassland for grazing. Forests were the sole source of livelihood of the non-sedentary forest-dwelling Kattunaikar, hunters and gatherers, collecting mainly tubers, medicinal plants and wild honey until the arrival of the British (Nair 1911). The Urali Kurumar, traditionally weavers and potters, occasionally used the forest for swidden

cultivation of millets and vegetables. Additionally, they collected bamboo from the forest for weaving baskets and gathered clay from the forest's wetlands for making pottery (Padmini 2001).

Alienation from Land and Struggles for Justice

The story of the adivasis' land alienation in Wayanad goes back to the late 14th to early 15th century, when the tribal kingdom under the Vedar kings (Mullu Kurumar) was abolished by the rajas of Kottayam, a neighbouring chiefdom. The expansion of the administrative system of Kottayam to Wayanad resulted in a far-reaching transition of land relations. Temple economy and village division of labour replaced tribal self-governing. Slowly, the ownership of land and power was transferred to the hands of high-caste Nairs who were appointed by the raja as caretakers of the temples and administrators of the region (Kjosavik/Shanmugaratnam 2007; Kurup 2010). Paniyars and the Adiyars became bonded labourers under the upper-caste landlords (*jenmis*) of Wayanad (Chettis, Nairs, Nambiyar and Jains).

Large-scale dispossession of Wayanad's adivasis continued during colonial times, when the British imperial government introduced land titles and new concepts of ownership and property in resource use (Kurup 2010). Through the Indian Forest Act of 1882, scientific forest management was established on an all-India level (Rajan 2006; Sivaramakrishnan 2009; Rangarajan 1996). The land was surveyed, divided into administrative blocks, and ownership rights of forests were fully taken over by the government. Forests with the most valuable timber

were designated as “reserved forests”, whereas all non-forested areas which were not “private forests” became “revenue land”. In the name of science, government forests were managed on commercial lines as sources of revenue for the state. The customary community rights of the adivasis to the forest were denied (see also Bijoy and Raman 2003), their traditional use of the forest was criminalised and forest use was restricted to the collection of minor forest produce (Philip 2004; Kjosavik and Shanmugaratnam 2007). After Independence, the Government of India took over the ownership and management of forests and continued a coercive control over forest resources in the name of conservation under the Wildlife Protection Act 1972 and the Forest Conservation Act 1980. However, the FD made use of the traditional knowledge of communities such as Kattunaikar and Urali Kurumar for managing the forest. The Urali Kurumars were largely appointed by both the British and the Indian FD, until the 1970s, as elephant trainers, and for trapping and taming wild elephants.²¹ Yet they remained in the forest as illegal occupants at the mercy of the FD. They were transferred from one place to another, depending on the department's work requirements such as establishing elephant pits, cutting trees, planting new seedlings of teak trees and other works related to the management of teak and other timber plantations on forestland.

Between the 1930s and the 1970s, a further wave of violent alienation of Wayanad's adivasis from their land took place, caused by the large inward migration of Christian settlers from Travancore to Wayanad (Prasad 2003: 32). Encroachments and illegal transfers of adivasi

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land – mainly of agricultural land held under customary leases by Kurumar and Kurichyar – again led to extensive dis-possession of the adivasis. Therefore, these traditional farming communities became agricultural labourers under the migrants (Prasad 2003). As a result, Wayanad's adivasis are predominately landless labourers²² today, living in over-crowded colonies, with Adiyar, Paniyar, Kattunaikar and Urali Kurumar belong-ing to the poorest section of Wayanad's society, most vulnerable to exploitation and structural violence (Indian Institute of Management 2006).

Today's Forest Dwellers

According to the statistics of the Kerala forest department, Wayanad's forestland is occupied by a total of 4,014 families, of whom 3,490 are tribal families.²³ Therefore, 12.8% of Wayanad's sts presently live on forestland. According to the recently published Scheduled Tribes Survey Report (STSR) (Government of Kerala 2011), 1,986 st families (5.49%) in the district are landless tribal fami-lies, 7,001 families (19.37%) are holding less than five cents of land, and 17,300 families (47.86%) own less than 50 cents of land. The survey also reveals that 2,168 adivasi families occupy forestland without any ownership documents.²⁴ Among them, 232 families hold less than five cents of land and 706 families pos-sess more than one acre of forestland. One thousand three hundred and seventy four adivasi families hold forestland with possession certificates issued by the FD before the introduction of the FRA.²⁵ Consequently, the families living on forestland without ownership docu-ments, and who are not considered as landless in the above survey, are the real beneficiaries of FRA in the district.

The category of "other traditional forest dwellers" in Wayanad consists mainly of small-scale farmers of the Chetti community who had already settled inside the forest during the time of the British rule, and then later as part of the state's "grow more food" programme. However, as a senior forest officer emphasised, Chettis could not claim their rights to land under the FRA, even though they fulfilled the FRA's provision of occupying

forestland for at least three generations (FRA, Chapter 1, Section 2(o)). In Kerala, under the land reform tribunals of the 1970s, all disputed land claims had been settled. Therefore, if Chettis live on forest-land today and do not have an ownership document for their land, their possession of land was not legalised during the land tribunals. Hence, according to the forest officials' statement, their occupation is in fact illegal and thus their rights to land cannot be recognised by the FRA.

Overall, forest use by those members of the district's adivasis who are truly "forest-dwelling scheduled tribes" had been very limited for decades. A strict enforcement of India's forest laws through the FD took place from the late 1980s onwards.²⁶ Particularly for adiva-sis living inside the Wayanad Wildlife Sanctuary, access to forestland (for hunting,²⁷ grazing of animals and col-lection of wood and minor forest pro-duce) became extremely restricted. In the 1990s, due to the region's severe and increasing human-wildlife conflict (see also Madhusudan and Sankaran 2010), the FD established wildlife proof trenches, and later erected electric fencing. There-fore, forest dwellers could hardly enter the forest or use its resources for liveli-hood purposes: there was no cultivation possible beyond the forest's physical demarcations and the additional fear of wildlife attacks prevented people from transgressing the fortified forest boundary. In areas of severe conflicts with wildlife, the Mullu Kurumar and Kattunaikar told us that they even stopped collecting fire-wood inside the forest for fear of being attacked by an elephant, wild boar, or buffalo. The adivasi settlements in these regions could not grow crops, nor could the terrain they occupied be extended further into forest land.²⁸ As a result, the actual "area of occupation" of most forest-dwelling adivasis, which was mapped and recorded in the bureaucratic FRA's census, was only a few cents in size.

Left-Wing Attempts

At the time of implementing the FRA, the left-wing Government of Kerala (2006-11) was faced with long overdue promises to distribute land to landless adivasis. The state's adivasis had been juridically

marginalised in the long process of land reform which was implemented primarily through land tribunals in the 1970s. The Kerala Private Forests Vesting and Assignment Act of 1971 had likewise only partly been realised to their advantage. Some of the vested forests taken over by the government were brought under "Tribal Rehabilitation Projects" which proved, however, to be quite unsuccess-ful. Subsequently, the Kerala Act 1975 (Restriction of Transfer of Land and Res-toration of Alienated Lands) was enacted to address the issue of land alienation.²⁹ Unfortunately, this Act has hardly been implemented. Besides that, it benefited only those adivasis, mostly (higher rank-ing) Kurichyar and Kurumar, who had possessed proper land records prior to their alienation. The Paniyar and Adiyar in particular were largely excluded from the benefits of land reforms in Kerala. Even though they were living on the landlords' (*janmam*) land as bonded labourers, they were not considered to be "tenants" in the land reforms Act and failed to claim the rights to the land on which they lived. Instead, many Paniyar and Adiyar families were chased away from the land owned by the then *janmis* and settled on the fringes of the forest and on revenue lands.

Both the 1971 and the 1975 Acts pro-vided the legal basis for the commence-ment of the widespread adivasis' strug-gles for land rights in the 1990s. The *jathas* (political rallies) were organised in different parts of Kerala, culminating in a 48-day sit-in strike (*dharna*) in front of the then Chief Minister A K Antony's residence in Thiruvananthapuram, led by C K Janu's Adivasi Gothra Maha Sabha (AGMS) (Steur 2009: 26). On 16 October 2001, the then United Democratic Front (UDF)-controlled government agreed to distribute five acres of land to all landless adivasis in the state, to be implemented by December 2002. Politicised by Janu, and encouraged by the government's promise to redistribute land, adivasis within the communist party founded the AKS, popularly known as the "tribal wing" of the CPI(M). They immediately took advantage of the political climate of the time and organised encroach-ments (*stalam pidikam*)³⁰ on estate land

with legally insecure titles, as well as on vested forestlands in various locations in Wayanad. Many AKS encroachments did not last long, as protesters were evicted from the squatted land soon after their arrival. Arrests notwithstanding, with the knowledge that they had nowhere else to turn, adivasis activists frequently re-encroached after their release, encouraged by the AKS. Often, adivasis claimed that the unbearable living conditions were the motivation behind their encroachments:

We did not even have a place to spit out. We did not have a place to bury our dead bodies; we buried them right next to our houses. We were suffering with 15 people in one single house. Because of that we came here and encroached on this land. Many went to jail, but we continue our struggle so at last we would get some land, one Paniyar woman recalled.³¹

However, more than a year later, the government's agreement to hand out land had still not been acted upon. Subsequently, on 4 January 2003, led by Janu, more than 1,000 adivasis, predominantly Adiyar and Paniyar groups from Thirunelli, initiated a widely publicised and assertive encroachment inside the Muthanga Range of the Wayanad Wildlife Sanctuary. After 45 days, police forces and armed FD officials brutally terminated the encroachment, an event that is bitterly remembered today as "the Muthanga incident" (Bijoy 1999; Bijoy and Raman 2003; Sreerekha 2010).

Three years after Muthanga, in 2006, the FRA was passed by the central government. Within the context of unsolved adivasi land issues, Kerala's left parties, who were supporting the UPA government at that time, had strongly lobbied for an extension of the FRA's cut-off date.³² By extending the date to 13 December 2005, the CPI(M) was hoping to use the FRA to finally be able to distribute some of the long-promised land, especially to the landless adivasis whose encroachments on (vested) forest had been supported by the communist AKS. Therefore, when the FRA's implementation process started in Kerala in January 2008, the Left Democratic Front government had decided to give one acre of (forest) land to all landless "forest-dwelling scheduled tribes" under the FRA.³³ However, when the

scheduled tribes development department (STDD) started collecting applications from the eligible families as the first step of implementation, protest from Wayanad's environmentalists arose. The Wayanad Prakruthi Samrakshana Samithi (WPSS), a group of (mostly middle class) environmental activists in the region, working in close alliance with the FD on several issues, filed a petition praying for a stay order at the Kerala High Court and to suspend the proceedings. The unlawful implementation of the Act, the environmentalists argued, would lead to a severe destruction of Wayanad's ecologically fragile and dispersed forests. The Kerala High Court decided that, as stated in Chapter 3, Subsection (6) of the FRA, the distribution of land should be restricted to "the area under actual occupation on the date of commencement of this Act" (Government of India 2006). Therefore, with the FRA's central monitoring committee agreeing upon the court's decision, it became clear that the FRA would not be the right means to solve the district's adivasi issues.

A Controversial Mission: Implementing the FRA in Wayanad

As mentioned previously, the implementation of the FRA was a huge bureaucratic project. The Rules to the FRA elaborately specify the process of determining and distributing rights. To monitor the implementation, the state government was requested to form a subdivisional level committee (SDLC), a district level committee and a state level monitoring committee (SLMC).³⁴ The tribal welfare department was appointed as the nodal agency to coordinate the implementation process. Thus, in Wayanad, it was mainly the Tribal Department's lower officials, TEOs and tribal promoters, who had the role of "translating" and "interpreting" the Act for villagers and communities living on forestland. Additionally, however, party members of the AKS, as well as adivasi activists and NGO employees, were important intermediators between the government institutions, implementing the Act, and the local communities.

Initially, in compliance with the rules of the FRA, special grama sabhas were held in the presence of the panchayat

secretary, the TEO, and tribal promoters. Through these grama sabhas, the forest rights committees (FRCs) were to be formed and the record of forest rights to be prepared. Soon, however, for the involved officials, it became apparent that it was impossible to articulate tribal interests through the FRCs formed by the ward-level grama sabhas. "Adivasis simply did not show up in the meetings", the Integrated Tribal Development Programme (ITDP) officer remarked, while speaking about the difficulties her department faced during the implementation process. The participation of adivasis in grama sabhas has been generally very limited. The meetings were dominated by "mainstream" society (Christians, Muslims, Hindus), discouraging adivasi participation through cultural means of exclusion. Contrary to the anticipation of the policymakers, there were no single-community, scheduled tribe-panchayats in Kerala – moreover, as stated earlier, adivasis are heterogeneous, have hierarchical relationships among each other, and live today as minority groups in panchayats.

So to strengthen adivasi participation in determining their rights and in decision-making processes, the ITDP decided to create FRCs through ooru koottam, separate grama sabhas in their settlements, under the leadership of tribal promoters.³⁵ Nevertheless, many members of ooru koottam we interviewed stated that they had not been properly informed about the new law or about their role in the implementation process. In most adivasi hamlets and colonies, people were neither aware of their rights, nor did they know that special FRCs existed. Some thought of the FRA as just another (unfulfilled) government order to distribute land among landless adivasis.

Adivasi encounters with the local state proliferated during the implementation process. The state's interactions with the adivasis represent a micro-sociology which is part of the picture of the FRA's limited impact in Kerala. To handle the FRA's enormous bureaucratic effort, the Kerala's survey department initiated Bhoomi Keralam (literally "the land of Kerala"), a special programme for "the completion of survey of forestland in 12 districts of

the state to allot land to the tribal families under the FRA³⁶. The Bhoomi Keralam teams conducted the survey with the support of tribal promoters and a few members of FRCS. They demarcated the land, verified the claims, and sketched the area and plot for each applicant. Frequently, however, people had no idea what the busy officials were doing in their settlements. As one older Kattunaikar woman described the survey procedures in her colony:

Many outsiders came here, rushed through the colony; they were very busy, they asked our name and made measurements; they did not tell us what it was for. We did not question them because they are *padippulla sarummar*³⁷ (educated people).³⁸

For foresters and forest rangers on duty to support the survey team by pointing out localities and identifying the potential beneficiaries, conducting the census was a strenuous process as well. Foresters complained about the adivasis' lack of a stationary lifestyle. Especially members of the Kattunaikar and Urali Kurumar frequently visit and live with relatives in other colonies of Wayanad or the neighbouring states of Karnataka and Tamil Nadu. Sometimes, family members were not present when the survey was conducted; hence, the foresters argued that their possessions could not be recorded and they received no land under the FRA.

Hindrances to the FRA's effective implementation were also exacerbated by inter-departmental conflicts. According to the ITDP officer, Wayanad's tribal development department (TDD) received 6,937 FRA applications, among which 4,698 were eligible to receive land without any objection under the FRA. Out of this 1,146 applications were rejected as pertaining to people living on revenue land. By November 2011, 4,331 land claims under the Act had already been settled, with 3,141 hectares of forestland distributed to STs. The rest of the applications were still being processed. Many claims under the FRA, the ITDP explained, could not be settled due to disputes with the FD. Frequently, officials of the TDD in Wayanad held the FD responsible for the unsatisfactory implementation of the FRA, accusing them of not cooperating in the FRA's implementation process.

In our conversations with higher officials of the FD in Wayanad, they expressed their deep concern about the ecological impact the FRA would have on the fragile ecosystem of the region. Like our interlocutors of Wayanad's environmentalist group WPSS, the forest officers were afraid that the FRA would bring severe destruction to this "biodiversity hotspot" in the Western Ghats. They argued that Wayanad's forests, harbouring a unique flora and fauna,³⁹ including many endemic and endangered species, such as the largest remaining wild elephant population in south Asia (Sukumar 2003), could not cope with any further disturbance by humans. Therefore, many representatives of the FD understood it as their "occupational duty" to protect the region's remaining forests from additional damage and human interference, and thus, to defend and guard its territory. In their discourses, some were well aware of the contradiction that the main causes for Wayanad's forest destruction had been the (British and Indian) FD's extraction and profit-oriented management logic itself. Some of the critically-minded, higher forest officials pointed at the insincerity of the FD in promoting so-called "ecotourism"⁴⁰ and permitting "drive-through" jeep tours (Münster and Münster 2012) into the core areas of the wildlife sanctuary, while at the same time strongly advocating the need for establishing a human-free (adivasi-free) wildlife zone though "fortress conservation" and the implementation of a "voluntary human relocation" project (Kerala Forest and Wildlife Department 2003) for communities living inside "critical wildlife areas".

Who Profited?

According to the official records, in October 2011, after a four-year-long implementation process, all "forest dwelling

scheduled tribes" in the Wayanad district received a FRA land possession certificate, at least for the land upon which their houses stand. The 367 applications, however, are still being processed. The official data available on the FRA's implementation were the SDLR reports, which were handed over, after the completion of the FRA's land survey, to the district collector for issuing the FRA's land possession certificates. We obtained access to the SDLR reports by filing an RTI⁴¹ application to the sub-collector in Mananthavady, Wayanad.

Out of the 4,331 families who received land documents under the FRA, 41 are Adiyar, 1,013 Kattunaikar, 279 Kurichyar, 324 Mullu Kurumar, 821 Urali Kurumar and 773 are Paniyar families, not including the recipients living on AKS encroachment sites and project lands, where we could not identify the community they belonged to.⁴² Among those few who received the largest area of land under the FRA are three Kattunaikar families who were granted possession rights for four hectares of land in Aranamala forest, in the Meppadi range of the south Wayanad forest division. Furthermore, there are only six families who received more than three hectares of land, among them five Kattunaikar families and one Mullu Kurumar family. Accordingly, more than 76% of the total beneficiaries received less than one acre of land. The proportion of individual families who received less than 50 cents of land is more than 57%. Four hundred and seventy Paniyar, 22 Adiyar, 548 Kattunaikar, 69 Mullu Kurumar, 46 Kurichyar and 421 Urali Kurumar families received less than 50 cents of land (Table 1). The 285 families living on encroachment sites or project land received less than 50 cents of land. In brief, the land distributed under the FRA will have little impact on people's livelihoods.

Table 1: Adivasi Landholdings in Wayanad – Community-wise

Community	No of Families	Total Land in Ha	Land in Acre	Average Holdings in Ha	Average in Acre
Adiyar	41	6.76	16.71	0.16	0.407
Kattunaikar	1,013	266.81	659.29	0.26	0.651
Kurichyar	279	115.77	286.07	0.41	1.025
Mixed	750	222.33	549.39	0.30	0.733
Mullu Kurumar	324	173.80	429.45	0.54	1.325
Urali Kurumar	821	194.00	479.38	0.24	0.584
Paniyar	773	176.98	437.33	0.23	0.566

In Wayanad, as in many other areas of India (see NFRAC report) community rights were ignored during the implementation process. A highly placed forest official interpreted the FRA's provision of community rights as "the right to collect minor forest produce", which according to him had already been granted to scheduled tribes in the State/Union Territory Minor Forest Produce (Ownership of Forest Dependent Community) Act (2005). Officials in the lower ranks of the FD received no information or instructions for implementing the FRA's provisions of community rights. Consequently, the FRA in Wayanad was reduced to the acknowledgement of individual "patta" rights. In the words of one Mullu Kurumar Moopan⁴³ (showing us the FRA possession certificate that certified his possession of 20 cents of land): "This is only a piece of paper, it will change nothing; we need at least one acre of land to make a living".⁴⁴ This disappointment with the inadequacy of the sizes of allotted land through the FRA was shared by most of those adivasis who were aware about the FRA at all. In north Wayanad, where AKS members had informed their neighbours about their new rights under the FRA, resistance arose during the implementation process. When it became evident that the Bhoomi Keralam survey team that had come to measure land recorded only a few cents of land for each family, people in some communities stopped cooperating and prevented the survey team from finishing its work. As a consequence, the official implementation of the FRA could not be completed and the survey is still pending in these areas.

Uncertainty on JFMs

Another widespread disregard of the FRA's provisions pertained to the Act's reformative role in establishing new forms of forest conservation, based on democratic decision-making processes and participation at the community level. Wayanad's higher forest officials stated that there was no need for reform, as participatory forest management had already been established in the 1990s. Among them there was uncertainty whether the existing joint forest management (JFM) committees,

eco development committees (EDCs) and vana samrakshna samithis (vss), supervised and set up by the FD, should coexist with the newly formed FRCs that work under the grama sabha, or whether they should be abolished (Shrivastava 2011; Sathyapalan 2010). In the FRA, this is not stated. Therefore, in Wayanad, there were no efforts to integrate pre-existing institutions into the reformative forms of forest governance that needed to be established under the FRA. As Springate-Baginski et al (2008: 4) write: "The new provisions don't automatically 'fit' with other local and state-level institutions and distributions of power".

As a consequence, officials in the lower ranks of the FD had not been sufficiently informed about people's rights to participate and be in charge of wildlife and biodiversity protection, as provided in Chapter 1 Section 2(n) of the FRA (see also Taghioff and Menon 2010). The new legal situation created by the FRA, especially the overlapping jurisdiction regarding environmental governance that emerged, proved to be unclear (see also Sarin and Springate-Baginski 2010: 28).⁴⁵ Therefore, interpreting the FRA became open to various possible perspectives. FD officials and environmentalists argued that to safeguard Wayanad's biodiversity in this densely populated area under high ecological stress, an authoritarian and scientific management would be the only way. "There is nothing to participate in Wayanad's conservation, only to protect", as a high level FD official put it.

Many of our interlocutors involved in implementing the FRA agreed that the law was unsuitable for improving the living conditions of adivasis in Wayanad. It is evident that district's adivasi land issue cannot be solved by this act. Even though the CPI(M) had made efforts to appropriate the FRA for redistributing long-promised land to landless adivasis, they could not bend the law. The landless adivasis continue to wait for redistributive justice. As an Urali Moopan adivasi we interviewed expressed it: *Sarkar bhoomi tharunnathum kattirunnu kattirunnu kathirunnu da ividethanne* (we were waiting and waiting and waiting for land to be distributed by the

government, but that is how we remain), showing us his small hut among many others on the fringe of a teak plantation at Chekadi.

NOTES

- 1 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, popularly known as Forest Rights Act or Tribal Rights Act, was passed in 2006 but came into force on 1 January 2008. The Act is available on the MoTA website: <http://tribal.nic.in/index2.asp?sublinkid=655&langid=1>
- 2 The United Progressive Alliance (UPA) is a ruling coalition of political parties, led by the Indian National Congress (INC).
- 3 Adivasi is the Hindi word for "original inhabitants".
- 4 See http://www.forestrightsact.com/index.php?option=com_content&view=article&id=73&Itemid=400055, accessed on 15 April 2011
- 5 See <http://www.forestrightsact.com/>, accessed on 10 March 2011.
- 6 Interviews were conducted and discussions were held all across the departments' hierarchy.
- 7 Ashok Kumar, a senior adviser to Delhi's Wildlife Trust of India, quoted in National Geographic News 5 December 2007: <http://news.nationalgeographic.com/news/2007/12/071205-tigers-tribes.html>, accessed on 10 November 2009.
- 8 The NFRAC was established in April 2010 as a 20 member joint committee combining the MoEF and the MoTA (Government of India 2010: 9), see also Kothari (2011) and <http://fra-committee.icfre.org/>
- 9 The report's findings are in line with several preliminary state-level studies on the progress and outcomes of the act's implementation (see for example Taghioff and Menon 2010; Sathyapalan and Reddy 2010; Reddy et al 2011; C R Bijoy 2011).
- 10 In some states, rejection rates are more than 60%, see the recommendations by the NAC, http://nac.nic.in/pdf/fra_recommendations.pdf, accessed on 6 August 2011.
- 11 Recommendations can be downloaded on the NAC homepage, http://nac.nic.in/pdf/fra_recommendations.pdf, accessed on 20 September 2011.
- 12 See also <http://www.business-standard.com/india/news/nac-wants-actiontribals-forest-rights/421433>; <http://www.thehindu.com/news/national/article1493326.ece>
- 13 See <http://www.countercurrents.org/kd131011.htm>, accessed on 26 October 2011.
- 14 Interviews with active members of the CPI(M) were conducted in April and May 2011, see also the CPI(M) Manifesto for the 15th Lok Sabha Elections, 2009, available on: <http://www.indian-elections.com/partymanifestoes/cpi.m.html>, accessed on 18 September 2011.
- 15 For commentaries on the left's involvement in the passing of the FRA see <http://www.hindu.com/2008/04/05/stories/200804053020300.htm>, accessed on 27 September 2011, see also <http://www.himvani.com/news/2009/04/14/%E2%80%98bjp-congress-in-himachal-follow-feudal-policies%E2%80%99/2668>, accessed on 10 September 2011.
- 16 In Kerala, since the formation of the state in 1956, the Left Democratic Front (LDF) under the leadership of the Communist Party of India (Marxist) (CPI(M)) has alternated in power with the United Democratic Front (UDF), an Indian Congress-led coalition. In Kerala, the UDF is usually called the "right-wing".

- 17 See also <http://www.fra.org.in/FRA%20Newsletter%207,%2016.4.pdf>, the National Newsletter of the Kalpavriksh Environmental Action Group, accessed on 10 March 2011.
- 18 Interview with AKS district secretary, 23 April 2011, see also <http://www.aitpn.org/Issues/II-09-06-Forest.pdf>, paper of the Asian Indigenous and Tribal Peoples Network (AITPN), 15 December 2006, accessed on 3 March 2011.
- 19 Government records distinguish between 20 indigenous groups in Wayanad. The rest of the communities are very nominal in population (Government of Kerala 2011).
- 20 Today, Chettis are classified as "Other Backward Classes" (OBCs) by the government.
- 21 Interview with a woman of the Urali community at Begur, 6 April 2011.
- 22 The Tribal Resettlement Development Mission (TRDM), formed 2001, identified 14,031 Adivasi families as landless and 12,184 more families whose individual land holdings are less than one acre (Kerala Forest and Wildlife Department 2003).
- 23 Working Plan of the South Wayanad Forest Division, Working Plan of the North Wayanad Forest Division, KFD 2010; Relocation of Human Settlements Project Proposal (Kerala Forest and Wildlife Department 2003).
- 24 The survey data collection was conducted in 2008 before the land distribution under the FRA had started in Wayanad.
- 25 There is a difference between the number of adivasi families living on forestland as stated in the recent ST survey report and in the forest department's data.
- 26 Interview with retired divisional forest officer (DFO), 26 March 2010. Many elders we interviewed in the Mullu Kurumar and Kattunaikar colonies, as well as the Chettis living on forest land, remembered going hunting until the early 1990s without much disturbance from the forest department.
- 27 Hunting was banned in India's forests through the Wildlife Protection Act 1972.
- 28 Interview with DFO, Kalpetta, Wayanad, 19 April 2011.
- 29 The Act declares all land transactions involving Adivasi land that occurred during the period from 1960 to 1976 to be invalid, and calls for land to be restored to the original owners.
- 30 *Stalam pidikam* literally means "catching (a) place" in Malayalam.
- 31 Interview, Kuttiyam vayal encroachment, 20 April 2011.
- 32 Interview AKS district secretary, 23 April 2011.
- 33 Interview with the ITDP officer in Kalpetta, Wayanad, 18 April 2011; interview with WPSS members, 27 April 2011.
- 34 For the role of these committees under the FRA see also Bhullar (2008).
- 35 Later, in the NAC recommendations this became one of the main suggestions for ensuring a successful implementation of the FRA.
- 36 <http://www.itmission.kerala.gov.in/e-governance-in-departments/334-bhoomi-keralam.html>, accessed on 13 October 2011.
- 37 Padippullavar is a Malayalam word for those who are educated; Sarummar is the plural usage of Sir, it is a combination of English and Malayalam.
- 38 Interview with women at Ponkuzhi Kattunaikar colony, 12 April 2011.
- 39 See Ratheesh M K Narayanan (2009) and C K Vishnudas (2009).
- 40 See <http://wayanadsanctuary.org/Pages/eco-Tourism.aspx>, accessed on 5 May 2011.
- 41 Right to Information under the RTI Act, 2005.
- 42 A list of all FRA beneficiaries was compiled from the sub-divisional level committee (SDLC) reports (1 to 8) on the "Proceedings of the revenue divisional officer and chairperson sub-divisional level committee", issued by the office of the sub-collector and sub-divisional magistrate, Manandavady, Wayanad. Although the community was not listed on the individual possession certificates, it could be inferred from the address mentioning the colony name. This was cross-referenced with complete lists of all Adivasi colonies, naming their communities.
- 43 Moopan is the headman of a community.
- 44 Interview 6 April 2011.
- 45 For a discussion on the controversial CWH guidelines set up by the MoEF and their contradictions to the provisions of the FRA, see: http://articles.timesofindia.indiatimes.com/2011-05-22/pune/29570711_1_critical-wildlife-habitat-cwh-parks-and-wildlife-sanctuaries

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