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Changing Paradigms in Wildlife Conservation in India

Background

Until very recently, the dominant conservation paradigm in India has been a 'fortress' approach (Brockington 2002) focused on the establishment of a network of wildlife reserves emphasizing law enforcement through 'fences and fines' (Gadgil and Guha 1993). Although the history of competing claims over forest commons may be as old as the history of conservation itself, these contestations were heightened after the creation of state-governed Protected Areas (PAs), a term which gained legal standing and prominence after the promulgation of the Wildlife Protection Act (WLPA) in 1972 (Saberwal *et al.* 2001). This Act (hereafter referred to as the WLPA 1972), and subsequent amendments in 2002 and 2006, allowed for the establishment of PAs of various categories such as National Park, Wildlife Sanctuary, Conservation Reserve, Community Reserve, and Tiger Reserve. Although, control of access and use in these categories varies, with National Parks and Tiger Reserves being the most strictly restricted, the majority of decision-making power across all

categories of PAs lies with the state forest department (FD). The underlying assumption behind strict PAs was that human use is necessarily detrimental to biodiversity/wildlife. However, it can be argued that the rationale to maintain fortress PAs was as political as it was scientific, a form of enclosure and imposed land-use based on a notion of what is desirable by a certain section of society, particularly those who are not directly affected by such enclosures (Saberwal *et al.* 2001).

The social costs of PAs are well documented across the world and in India too, PAs have had severe consequences for communities resident in and dependent on forests and other natural resources (Adams *et al.* 2004; Brockington *et al.* 2006; Ghimire *et al.* 1997; Saberwal *et al.* 2001). Studies suggest that there are three to four million people living inside PAs, and several million more around these, with livelihoods and cultures that are related to the forests and other ecosystems in these (Kothari *et al.* 1995). Many of them have faced physical displacement, or negative social and economic impacts through the loss of access to resources (Lasgorceix and Kothari 2009). The economic, social, and political rights of local communities within PAs have been undermined, usually without consultation, consent, and the provision of adequate alternatives (Wani and Kothari 2007). In a country with widespread hunger and poverty, political marginalization, and overall poor human-development indices, the legitimacy of exclusionary PAs as the primary strategy of wildlife conservation has been strongly questioned by civil society and grassroots social movements (Brechin *et al.* 2002; Wani and Kothari 2007).

The conservation effectiveness of exclusionary PAs and policies is also a highly debated issue. While PAs have been successful to some extent in protecting ecosystems and species, they have also adversely impacted environmental stewardship at a local level as well as the ecological security of wildlife. In many PAs in India, there are strong local constituencies against conservation where people have been compelled to engage in activities detrimental to wildlife, either directly through extraction or indirectly through lack of active support for PA management. The ecological integrity of island PAs and endangered species continues to remain in doubt if conservation efforts do not also address ecosystem conservation at a landscape level, especially the rapid ecological degradation outside PAs due to 'development' activities and intense human use. The Global Environment Outlook 5 report (UNEP

2012), has revealed that while globally, PA coverage has gone up in both numbers and spread in the last two decades, bringing under them 13 per cent of the world's land area, global biodiversity has declined at population, species, ecosystem, and possibly genetic levels. The vertebrate populations are reported to have declined by as much as 30 per cent since the 1970s. The report goes on to say that 51 per cent of the sites identified by the Alliance for Zero Extinction as critically important for some endangered species and 49 per cent of Important Bird Areas (IBAs) are still outside PA coverage. The report acknowledges that not all PAs have led to an increase in biodiversity and that not all species may require conventional PAs for protection.

It is increasingly being argued that local stewardship for conservation cannot be built if conservation paradigms do not address the social costs of conservation or take into account traditional indigenous knowledge and common property management practised by local communities for the past millennia. There is now a growing body of knowledge about and political movements in support of what are globally called the territories and areas conserved by indigenous peoples and local communities. These are finding space within the Indian conservation discourse as Community Conserved Areas (CCAs).¹ Numerous examples exist in India where forests, wildlife, and biodiversity are being conserved by people based on their socio-cultural and livelihood relations and dependence on the forests around them (Pathak 2009). In the Ranpur block near Bhubaneswar, Odisha, 180 villages (many of them adivasi settlements) have conserved forests for several decades, and have come together to form a federation. This is to enable combining their forest conservation initiatives at a landscape level, to minimizing conflicts, and to providing a unified organization. Several hundred Van Panchayats in Uttarakhand have conserved forests for several decades, under state legislation. In Nagaland, the Khonoma Tragopan and Wildlife Sanctuary spread over 2,000 hectares (ha), is an example where through decision-making by communities, hunting and resource extraction is completely prohibited; in another 50 sq. km or so, very minimal resource use for home-use only is allowed. In the nearby Sendenyu village, too, residents have established a Biodiversity Reserve with a complete ban on hunting and destructive resource extraction. Such efforts have historically been ignored in conservation policies and continue to find compromised spaces, if at all, within conservation legislation even today.

This chapter attempts to gain an understanding of the extent to which the idea of democratizing wildlife conservation has actually progressed in India legally and in practice, and the challenges that hinder this progression. We focus on three important new provisions that could potentially lead to democratization of conservation, namely, Critical Tiger Habitats (CTHs) under WFLPA 2006; and Critical Wildlife Habitats (CWHs) and Community Forest Rights (CFRs) under the Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter the Forest Rights Act or FRA). The chapter attempts to explore answers to the following questions:

1. To what extent do new legislative provisions support possibilities of democratizing and diversifying PA governance in India, in particular, recognizing and vesting access and ownership rights to relevant rights-holders and stakeholders; providing possibilities of inclusive decision-making processes, and creating avenues for the co-existence of humans and wildlife within PAs? How is the actual implementation of these provisions playing out on the ground?
2. What are the wider challenges that need to be tackled while implementing these, which have and would hamper their progression towards realizing true transformation on the ground?

Admittedly, legal provisions are necessary but not sufficient to ensure democratic practices in conservation, as numerous social and political factors also come into play. But we have limited the scope of this chapter to the newly emerging legal spaces to provide a window into the progress towards democratic conservation in India.

Emergence of Democratic Spaces in Laws and Policies in India

In India during the 1980s, questions about exclusionary conservation policies became a more visible and vigorous part of public debate. The mobilization of forest-dependent communities through grassroots social movements, and advocacy by associated social and environmental activists, researchers, intellectuals, and others brought issues about the social impacts of conservation to the forefront of environmental debate. What followed in the next two decades was a highly polarized discussion about the existing fortress approach and whether a paradigm

shift towards more inclusionary policies was in order (Kothari *et al.* 1996).

Amongst the first shifts towards such inclusionary policies was the Forest Policy of India in 1988, which prioritized ecological and social functions over commercial ones, and led to schemes such as ecodevelopment (including the World Bank funded India Ecodevelopment Project) on PAs and the Joint Forest Management (JFM) scheme on the rest of the forested landscape. However, because these schemes lacked the necessary legal foothold and democratic vision, and their implementers lacked the intention to relinquish power, they did not fully address many critical issues such as tenure security, access and rights to resources, and community rights to decision-making. On the contrary, the implementation of these schemes has largely meant constitution of local committees to implement activities predetermined by the state, through funds provided by the FD (Das 2007). Till very recently, these were the only legal and policy spaces available to the local communities to voice their concerns in biodiversity management. These schemes have come under criticism on a number of grounds, including that the committees were often undemocratically constituted and suffered from elite capture, and also undermined institutions and initiatives set up by communities themselves (Shahabuddin 2010). Meanwhile the Panchayat (Extension to Scheduled Areas) Act, 1996 was passed. The Central Act provided for the extension of the panchayat local governance system to 'scheduled' areas, with predominantly tribal populations. It required state laws to be made 'in consonance with the customary law, social and religious practices and traditional management practices of community resources'. Gram sabhas were considered competent to protect community resources. They were expected to approve development plans and projects at the village level. This Act was, however, much diluted in state adaptations and limited rights were eventually granted to the communities concerned, thus resulting in much less devolution and fewer benefits to local communities as compared to their expectations (Vagholikar and Bhushan 2000). This once again reflected a lack of willingness of the state and its functionaries to relinquish power.

The decade of 2000 saw further mobilization, including protests and advocacy, in the wake of a directive by the Union Ministry of

Environment and Forests (MoEF) to evict forest-dwelling communities, viewed by the MoEF as 'encroachers'.² In the policy arena, a number of interesting changes took place. Recommendations for collaborative management of PAs were contained in the National Wildlife Action Plan (NWAP) 2002, the draft National Biodiversity Strategy and Action Plan (NBSAP) 2004, and the National Environment Policy (NEP). However, the NWAP and the NEP are still at the policy level, with implementation yet to begin, and the submitted draft of NBSAP in 2004 was not accepted by the government, which came up with a much more diluted version of its own (TPCG and Kalpavriksh 2005). The more significant of legislative changes was the promulgation of FRA in 2006. To a lesser extent, but nevertheless important, the WLPA 1972 was amended in 2006 with the inclusion of a section on tiger reserves. Provisions of CFRs and CWHs within the FRA, and CTH within the WLPA 2006 included aspects with potential for greater participation and consultation in part of the formal conservation landscape. Before both of these, the Biological Diversity Act, 2002 offered some possibilities of participation through village-level institutions both inside and outside PAs, though there was little in it to override the alienating provisions of the WLPA 1972 and other forest legislations. It focused more on documenting local traditional knowledge than actually empowering the knowledge-holders and ensuring their continued access to the concerned elements of biodiversity (Pathak Broome *et al.* 2012).

Global Discourse on Democratizing Conservation Laws and Practice

The democratization of conservation laws and practice have been discussed internationally for a few decades, but their acceptance at global conservation forums has been more apparent since 2003. The International Union for Conservation of Nature (IUCN) World Parks Congress (WPC) at Durban, 2003, and the Seventh Conference of Parties of the Convention on Biological Diversity (CBD COP7), at Kuala Lumpur, 2004, have been two major international events to bring these trends into greater focus.

At the WPC, over 3,000 conservation practitioners, policymakers, and others, gathered for what till then was the largest ever gathering of

people working on PA issues, and included about 200 representatives of indigenous peoples and other local communities. The presence of the latter was instrumental in the WPC in bringing about the much sought paradigm shift represented by the trends mentioned earlier. This was further pushed by a number of civil society representatives. Elements of new conservation paradigms endorsed by the WPC were included in each of its key outputs: the Durban Accord, the Durban Plan of Action, the Message to the CBD³ and recommendations on Good Governance of PAs, Diversity of Governance Types of PAs, Indigenous Peoples and PAs, Co-management of PAs, CCAs, Mobile Indigenous Peoples and Conservation, and Poverty and PAs. The Convention on Biological Diversity (CBD) Conference of Parties (CoP) 7 in 2004, heavily influenced by WPC outcomes and civil society organizations (CSOs) and Indigenous Peoples networks mentioned above, adopted a comprehensive Programme of Work on PAs (PoWPA), which included clear goals and actions for moving towards new governance models for PAs, and improving participation, equity and benefit-sharing. A subsequent (2008) review of PoWPA by the CBD Secretariat however showed that progress on these aspects was highly dissatisfactory.

This brings to the fore a global trend, namely the reluctance of state to relinquish their own power and devolve it to other rights-holders and stakeholders. The reasons cited by the signatory states, including India, for lack of implementation included lack of capacity. Consequently, since 2010, a group of agencies including IUCN, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, the ICCA Consortium, and the CBD Secretariat have compiled and published a resource kit to help signatory countries implement governance reforms in PAs more effectively and locate them within the internationally accepted principles of good governance (Borrini-Feyerabend *et al.* 2013).

Primary Values for Democratizing Conservation in the Global Context

The above-mentioned local and global processes have led to the conceptualization of elements that would be crucial for the democratization of conservation globally and within India, including:

1. That territorial and resource rights of indigenous peoples and other local communities that have traditionally lived in or used natural ecosystems, need to be respected in conservation policies and practice, and that the costs and benefits of conservation need to be much more equitably distributed.
2. That governance of PAs needs to be distinguished from management of PAs. The effectiveness of PAs does not merely depend on what decisions are taken but also on *how the decisions are taken, who takes them and what processes and information systems are followed to take these decisions*. PA governance is defined as 'the interactions among structures, processes and traditions that determine how power and responsibilities are exercised, how decisions are taken and how citizens or other stakeholders have their say' (Borrini-Feyerabend *et al.* 2013).
3. That there is not only *one* kind of governance of PAs (by governments), but several kinds; in particular, collaboratively or jointly managed ones, and that local communities and indigenous peoples themselves can and are conserving sites and species across the world. While governance regimes for PAs vary greatly around the world, IUCN and the CBD PoWPA distinguish four broad governance types (Dudley 2008):
 - Governance by government (at various levels and possibly combining various institutions)
 - Governance by various rights-holders and stakeholders together (shared governance)
 - Governance by private individuals and organizations
 - Governance by indigenous peoples and/or local communities⁴
4. It is important to note in this context that there cannot be a standard governance arrangement for all PAs. Governance models are appropriate only when tailored to the specifics of its context and effective in delivering lasting conservation results, livelihood benefits, and the respect of rights. That specific ecological, historical, and political contexts, and the variety of worldviews, values, knowledge (including the local) and outside experts, skills, policies, and practices (including informal and local) that contribute to conservation, should be reflected in the governance regime for each specific PA.

5. That instead of being immutable, the institutions and rules governing PAs must be dynamic and adaptive in response to existing challenges and change. Such adaptive governance should be cautious and well-informed, and nested within a larger vision, developed collectively by all rights-holders and stakeholders.
6. That diversified governance of PAs itself is not enough to achieve democratic and effective PAs. Equally important are the processes by which democratic institutions are set up, those involved in decision-making processes are chosen, the processes by which decisions are made, the processes and knowledge-base which is used to set goals, the fairness with which institutions function, and how effective, transparent, accountable, and well informed the concerned institutions, systems and processes are. The answers to these questions would help determine the *quality of PA governance*. Legal and institutional changes related to governance of PAs alone will not lead to desired results till the actual implementation on the ground is monitored for the *quality of governance* using principles of good governance and parameters of effective management. The governance quality of a PA, or of a PA system, can be evaluated against a number of broad principles of good governance that have been developed by a variety of people, nations, and United Nations agencies, including legitimacy and voice; direction; performance; accountability; fairness and rights (see Box 5.1).

Box 5.1 Principles of good governance of PAs

Legitimacy and voice

- Legitimacy of a governance arrangement comes from the establishment of institutions with a broad acceptance and appreciation in society; as much as possible attributing management authority and responsibility to the capable institutions closest to natural resources (subsidiarity); ensuring that all mutually agree rules are honoured.
- Voice in a governance arrangement is ensured by making available appropriate and sufficient information to all rights-holders and stakeholders and ensuring that they have a say in advising and/or making decisions; seeking active engagement of all vulnerable groups, such as indigenous

(Cont'd)

peoples, women, youth, and others in decision-making; maintaining an active dialogue and seeking consensus on solutions that meet, at least in part, the concerns and interest of everyone; mutual respect among all rights-holders and stakeholders.

Direction

- Developing and following a consistent strategic vision for the PAs and conservation objectives grounded on values mutually agreed by all rights-holders and stakeholders; ensuring that governance and management practice for PAs are consistent with the agreed values.
- Ensuring governance and management practice for PAs are compatible and well-coordinated with the plans and policies of other levels and sectors in the broader landscape/seascape.
- Ensuring governance and management practice are respectful of national and international obligations (including CBD PoWPA).
- Providing clear policy directions for the main issues of concern for the PA and, in particular, for contentious issues (for example, conservation priorities, relationships with commercial interests, and extractive industries).

Performance

- Achieving conservation and other objectives as planned and monitored, including through ongoing evaluation of management effectiveness.
- Being responsive to the needs of rights-holders and stakeholders by providing timely and effective response to inquiries and reasonable demands for changes in governance and management practice.
- Ensuring that PA staff, rights-holders, and stakeholders, as appropriate, have the capacities necessary to assume their management roles and responsibilities and that those capacities are used effectively.
- Making an efficient use of financial resources and promoting financial sustainability.

Accountability

- Upholding the integrity and commitment of all in charge of specific responsibilities for the PAs.
- Ensuring transparency, with rights-holders and stakeholders having timely access to information about, what is at stake in decision-making?
- Ensuring a clear and appropriate sharing of roles for the PAs, as well as lines of responsibility and reporting/answerability.
- Ensuring that the financial and human resources allocated to manage the PAs are properly targeted according to stated objectives and plans.

- Evaluating the performance of the PA, of its decision-makers and of its staff, and linking the quality of results with concrete and appropriate rewards and sanctions.
- Establishing communication avenues (for example, websites) where PA performance records and reports are accessible
- Encourage performance feedback from civil society groups and the media.
- Ensure that one or more independent public institution (for example, ombudsperson, human rights commission, auditing agency) has the authority and capacity to oversee and question the action of the protected areas governing bodies.

Fairness and rights

- Striving towards an equitable sharing of the costs and benefits of establishing and managing PAs and fairness in taking all relevant decisions.
- Making sure that the livelihoods of vulnerable people are not adversely affected by the PAs; that the costs of PAs—especially when borne by vulnerable people—do not go without appropriate compensation.
- Making sure that conservation is undertaken with decency and dignity, without humiliating or harming people.
- Dealing fairly with PA staff and temporary employees.
- Enforcing laws and regulations in impartial ways, consistently through time, without discrimination and with a right to appeal (rule of law).
- Taking concrete steps to respect substantive rights (legal or customary, collective or individual) over land, water, and natural resources related to PAs, and to redress past violations of such rights.
- Taking concrete steps to respect procedural rights on PA issues, including: appropriate information and consultation of rights-holders and stakeholders; fair conflict management practices; and non-discriminatory recourse to justice.
- Respecting human rights, including individual and collective rights, and gender equity
- Ensuring strictly the free, prior, and informed consent of indigenous peoples for any proposed resettlement related to PAs.
- Promoting the active engagement of rights-holders and stakeholders in establishing and governing PAs.

Source: Based on description of the principles by Abrams *et al.* (2003); Borrini-Feyerabend *et al.* (2006); Eagles (2009); Graham *et al.* (2003); Institute on Governance (2002).

Legal Spaces for Democratization of Conservation in India (with a Focus on PAs)

The promulgation of legislations like the FRA 2006, the WLPA 2006, and a number of other legal changes mentioned above, and at the international level, processes within the CBD, have been a conceptual turning-point in the way that forest- and other ecosystem-dependent communities access and interact with traditionally state-governed spaces like PAs. However, the complexity of implementing these legislations on the ground is that the process would involve a paradigm shift, not only in the process of changing words on a piece of paper but also in the historical vision, power dynamics, and mindset of various actors involved. The big question is whether or not the Indian state would be willing to enable the redistribution of power and the building of capacity that is required to implement these legal changes in a meaningful manner.

This section describes the legal provisions within the FRA and WLPA, which have attempted to provide democratic spaces for conservation, their interface, and the manner in which they are being implemented on the ground. What is visible today is a mix of situations. While on the one hand, there is often reluctance in the FD to implement the recent legislation and policy changes, on the other hand, local people, civil society organizations, and conservationists advocating for participatory forest governance do now have some legal provisions in their favour.

The Provisions

The FRA aims to undo historic injustice to tribal and non-tribal forest residents and dependent communities in India by establishing their rights to forest land and resources, including within PAs. In addition to the establishment of rights of ownership and use, FRA also provides for establishment and conservation of CFRs, hence creating a possibility and potential for decentralizing forest governance. As much as possible, it aims to attribute management authority and responsibility to the capable institutions closest to natural resources, that is, to the

smallest (recorded or unrecorded) hamlet and settlement or mobile communities. It also vests in the village assembly of such a settlement the right to constitute the governance and management committee, and ensures participation of women and scheduled tribes (STs) in such committees.

FRA also has a provision for creation of CWHs within PAs, where the rights of the local communities can be partially or totally modified, if proven to be irreversibly damaging for wildlife. However, no such modification can be carried out without following clearly laid out steps for doing so in the Act. These include the establishment of rights where they have not been established legally, local consultations with the rights-holders and stakeholders and conducting scientific research to establish impacts of human activities. The WLPA 2006 amendment (coming just two months before the FRA was enacted), introduces the category of CTHs for exclusive protection of tigers in addition to other PA categories. It also supports a participatory process for relocation and modification of rights while creating these CTHs.

Critical Wildlife Habitats and Critical Tiger Habitats

Critical Wildlife Habitat (CWH) and Critical Tiger Habitat (CTH) are, therefore, two similar-sounding concepts introduced by FRA and WLPA respectively,⁵ without either of the laws making a reference to the other. Both are special provisions for conservation in PAs, which were introduced into policy discourse in 2005–6, mainly in anticipation of the impacts on conservation of wildlife after recognition of rights under the FRA, which was then being discussed and debated. However, both the laws explicitly support the recognition of the rights process before the creation of these categories and also specify that no relocation can take place without following a process as prescribed in both the laws. These two categories are being used as an example here as they have emerged in a period where recognition of access and rights of local communities have received more priority, and hence carry a greater potential for democratizing PA governance (see Box 5.2).

Box 5.2 Similarities and differences between CWHs and CTHs

The provisions for CWHs and CTHs are similar in that they are both marked out of PAs; both are defined as areas required to be kept as inviolate on the basis of scientific and objective criteria; both require evidence of irreversible damage being caused, of co-existence not being possible and consent of the village assemblies or gram sabhas before making an area inviolate for wildlife.

There are a few differences though: the purpose of CTHs is tiger conservation whereas the purpose of CWHs is wildlife conservation in general, indicating a difference between a single-species-based and biodiversity-based approach. As a pre-condition for relocation, CWHs mention 'free informed consent' of the gram sabha obtained in writing, whereas CTHs require 'informed consent' only. For rights modification, a pre-condition for CWH is recognition and vesting of forest rights whereas for CTHs, the pre-condition is recognition, determination, and *acquisition* of land and forest rights. CWHs from which relocation has taken place, cannot be subsequently diverted by the state government, central government, or any other entity for any other uses; this is potentially the most powerful conservation provision in Indian legislation. There is no such restriction on a CTH, which is ironical, given the high degree of attention that tigers have received from formal conservationists compared to other species.

Source: FRA (2006) and WLPA (2006).

In terms of their interface with the local communities, these provisions can be interpreted to allow for the following broad elements:

1. They provide for somewhat broader societal input into the constitution of CWH/CTH areas, as they explicitly require inputs for natural and social scientists.
2. They provide for exploring possibilities of co-existence (which remains legally undefined) between local communities and wildlife, even if, in the case of CTHs, exploration of co-existence is restricted to the buffer zones of CTHs only.
3. They provide for a just process of relocation of communities from the proposed CWHs/CTHs, where their presence is shown to be irreversibly detrimental and they consent to relocate.

Community Forest Resource Rights

As mentioned above, the FRA has certain provisions that entrust the gram sabhas (village assemblies) with the rights and responsibility for sustainable use of their CFR. The CFRs, protection of which is provided as a right (under Section 3[1] i), is traditionally accessed as customary common forest land, and may include such areas within PAs. The gram sabhas are empowered to create mechanisms for the conservation of biodiversity and wildlife, preservation of natural and cultural heritage, for ensuring that internal and external factors do not destroy their community forests, and for maintenance of ecological balance (Section 5). For performing these functions, gram sabhas are to make committees (under Rule 4[1] e). As per the preamble of the Act, these provisions are for strengthening the conservation regime while ensuring livelihood and food security for the concerned community.

Therefore, the CFR provisions could be a powerful basis for initiating processes towards co-existence, co-management, and shared governance resulting in a diversity of PA governance categories and other forest conservation sites, and supporting equitable distribution of benefits thus arising. CFRs, through Section 5 of FRA, also give power to the communities to stop destructive development activities, if they so desire. This has been further strengthened by a circular, issued on 3 August 2009 by the MoEF, stating that all development project proposals requiring diversion of forest land need to enclose evidence that rights of the local people who are likely to be affected have been recognized under FRA, and that consent of the relevant gram sabhas has been obtained, before any clearances are sought under Forest Conservation Act, 1980 (MoEF 2009).

By taking these elements into account, the FRA to a certain extent, establishes the principle of legitimacy, voice, and subsidiarity as mentioned in Box 5.1, as well as certain elements from the principle of fairness and rights. The WLPA is also attempting to move in that direction but falls short by not dealing with a number of contradictions that arise because of the two Acts being silent about each other, and hence not meeting the requirements of *direction*, one of the principles of good governance mentioned in Box 5.1. For example, the WLPA is silent about the settlement of rights process that has been prescribed in WLPA for declaration of PAs, which is in contradiction with the FRA.

This contradiction is further apparent in a lack of clarity on the exact relationship of the two Acts with each other; for example, if local communities claim CFR rights inside a PA, what would be the exact relationship between many such CFRs within a larger PA? On what grounds would the management and governance strategies be decided? Who would decide them and what would be the mechanism to bring various actors together.

In addition, the Acts do not describe the process of identification of CTHs and CWHs other than mentioning that the basis should be 'scientific and objective criteria' although official protocols and guidelines to implement the provisions are present or under preparation. A number of CSOs argue that the seeds of democratic governance of PAs lie in the process by which they are identified and declared. While the importance of wildlife science in this process cannot be overestimated, many CSOs (including those within a national network called Future of Conservation or FoC)⁶ submit that the knowledge relevant for such identification also exists amongst amateur wildlife enthusiasts, and even more so with local communities who have valuable traditional knowledge and resource management systems. In particular, given that the CWH/CTH process could involve the modification of people's rights, it is crucial to build a sense of ownership amongst local communities who live in or use sites that are likely to be proposed as CWHs/CTHs, and their say in the decision related to the declaration is a must in creating this sense. This clearly indicates a lack of complete commitment to the principle of voice and legitimacy.

The premise for relocation for creating CWHs and CTHs is to create 'inviolate' zones. However, neither WLPA nor FRA define what 'inviolate' means. In this regard, many CSOs have argued that interpreting a CWH/CTH to be completely human-free (as appears to be in the minds of many conservationists and state forest officials implementing these laws) would lead to only very small areas being notified, whereas interpreting it to mean free of *incompatible* human uses would enable much larger areas to be notified.⁷

All the above-mentioned factors, along with the fact that there are no independent public institutions (with representation of all rights-holders and stakeholders) that have the authority and capacity to oversee the issues and practice related to PA governance, has led to a number

of hurdles as described in the process of implementation in the following section.

Implementation of the Provisions

This section describes the official guidelines framed for the process of implementing the above provisions, and the status of onground implementation.

Critical Wildlife Habitats

In 2007, a set of guidelines were issued for implementation of CWHs. Some elements of these guidelines had the potential to enhance conservation of biodiversity through more scientific and democratic means. For example, according to this document:

1. The process of identification of CWHs would have required the involvement of experts from both within and outside the government.
2. Section 4 (vii, viii, ix) required that information to be submitted along with the application for CWHs by the state should include a resolution of the gram sabha certifying that recognition and vesting of rights is complete.
3. Section 5 mandated the Expert Committee to engage in an open process of consultations with local communities in areas to be declared CWH and even required a quorum of two-thirds of the adults in the gram sabhas without whose consent a CWH could not have been declared.

These guidelines did have a few limitations (FoC 2007), but in general, these were considered as a good starting-point. However, these guidelines were suddenly withdrawn by the Ministry in 2011 citing 'demand from various quarters'⁸ as a reason and a new set of guidelines were issued in February 2011. The new guidelines were criticized for their lack of space for democratic approaches to determining such habitats; and insufficient attention to a proper scientific, knowledge-based approach.

Following public protest, including by FoC members, the February 2011 guidelines were withdrawn and a revised set was made public for comments. These draft guidelines or implementation protocol (as they

were called) were a significant improvement over the earlier guidelines. These had a much greater emphasis on public consultations and on acknowledging the possibility of co-existence within CWHs (as mandated by the FRA). With some minor changes, this protocol could be very helpful in furthering the cause of wildlife conservation by respecting people's livelihood rights and hence generating their support and stake for conservation. This protocol, however, has been with the MoEF since March 2011 and a final version had not been issued till the time of writing this chapter.

In the meanwhile the state FDs have approached the identification of CWHs in diverse ways, ranging from total exclusion (contrary to the provisions of FRA themselves) to sticking to the implementation of FRA both in letter and spirit. Assam, on the one hand, and Kerala on the other, represent these two positions with other states located at various points of this continuum. The Assam State FD had planned to declare a total area of 9,67,366.436 ha, consisting of all existing PAs as well as some Reserved Forests (RFs) outside PAs as CWHs. This proposal was not inclusive of the views of the local communities or any scientific report showing whether the impact of local people on these PAs was irreversible. On the other hand, the Kerala FD publicly stated that gram sabhas have a crucial role in the implementation of the FRA.

Proposals for CWHs from different states (Sitamata Wildlife Sanctuary in Rajasthan, Guru Ghasiram National Park, Chhattisgarh, and Gahirmatha Turtle Sanctuary, Chandaka Elephant Sanctuary, and Chilka Bird Sanctuary in Odisha) based on the earlier guidelines of 2007 were reviewed by Kalpavriksh in 2010. Copies of these proposals were obtained through RTI applications. The review revealed the following issues, among others:⁹

Involvement of local communities: Out of all the above mentioned proposals, only one (Sitamata WS) had organized a process that engaged with local communities to some extent. The proposal mentioned that: a) a notice to gram sabhas was sent through the *sarpanchs* of the concerned villages; b) the 2007 CWH guidelines were distributed to the concerned gram panchayats.

Establishing possibilities of co-existence: Little or no evidence is given to establish that co-existence is not possible in proposals which mentioned a need for relocation, such as in the case of Chandaka WS

in Odisha. The proposal of the Guru Ghasiram NP mentions that co-existence is not possible as grassland had been converted to agricultural fields and cattle from 78 villages depend on it for grazing, but does not give any scientific proof of the same.

Recognition of rights: In most proposals, there is no mention of recognition of rights under the FRA (except the Sitamata WS where it is mentioned that the verification process under the FRA is under progress). In the Guru Ghasiram NP, the 'recording of rights' had been done by the collector for 29 out of 78 villages, but not under the FRA.

Gram sabha consent for relocation: Consent for relocation by the gram sabha was not attached in any of the proposals. Proposals from the sanctuaries of Gahirmatha and Chilka mentioned that there was no question of rights as there were no human habitation inside, ignoring completely the dependence of a large population on these ecosystems. The proposal of Guru Ghasiram NP mentions eight villages giving their consent, but does not provide copies of gram sabha resolutions.

Some of these issues seem to have been noticed also by the Central Expert Committee constituted in 2007 for evaluating state-level proposals, as indicated in a response by the Minister of Environment and Forests in the Rajya Sabha on 8 May 2012. The response states that the CWH proposals submitted by Odisha to the central-level committee were found to be incomplete and have been sent back for revision and resubmission.¹⁰

This has not necessarily led to the states following the legally prescribed procedure. The FRA action plan of Tripura presented on 3 December 2012 specifies that a CWH is being established and 2,055 families have been selected for relocation. There is no mention in the plan of the process used for selection of this site or the villages to be relocated. It also does not specify whether or not there has been prior recognition of rights and whether the consent of the gram sabha has been received for relocation.

In Maharashtra, in a response to a circular issued by the department of revenue and forests, the process of identification and declaration of CWHs began in 2012. In some PAs such as the Bhimashankar Wildlife Sanctuary in Maharashtra, the FD held detailed consultations with all

the concerned gram sabhas, which rejected the proposal for the creation of CWH, fearing strong restrictions. In others such as the Yawal Wildlife Sanctuary, a process of identification of CWHs was initiated by the FD, but discontinued when in April 2013 the local communities and CSOs raised the issue that implementation cannot be initiated on the basis of draft guidelines, without discussions with the local communities, and without prior recognition of the pending claims under the FRA to the affected villages (Pathak 2013). Thus, CWHs have not been actually implemented anywhere yet, and where proposals are pending, they all fail to follow due process.

Critical Tiger Habitats

Unlike CWHs, which have not been declared anywhere yet, CTHs have been declared all over the country. Available information reveals that the notification of most CTHs in the country has been in violation of the WLPA and FRA. The declaration of CTHs started with rushed notifications of several core/critical tiger habitats in 2007 arguably to create such areas before the implementation of FRA began. On 17 November 2007 the National Tiger Conservation Authority¹¹ asked all states to set up expert committees to 'finalise and delineate core or critical tiger habitats of tiger reserves... within 10 days of the receipt of this letter'. All relevant states complied by sending in proposals for core or CTHs. As a result, of the total 41 CTHs notified till 2012, 31 were already notified by the end of 2007 with several of them notified on 31 December 2007. It is not a coincidence that this was just one day before the FRA rules were notified, on 1 January 2008. It should be clear from this that no proper scientific or consultative process would have been possible in such a rush.

Indeed, a member of the National Board of Wildlife who was involved with the above notifications of core or CTHs, has recently admitted:

Declaration of cores was done in a rush in order to insulate our tiger areas against the Forest Rights Act (FRA), which came into being before the end of 2007.... A new core had been created overnight with little basis in science. In Ranthambore, Kailadevi Sanctuary became a core critical habitat encompassing 595 sq km with one tiger, 25,000 people, 40,000 livestock and 44 villages. This makes up 53 per cent of Ranthambore's CTH. (Thapar 2012)

Thus it is apparent that neither the CTHs have been demarcated on the basis of any 'case by case scientific study' as required by Section 38V (4) of the Wild Life (Protection) Act nor have the concerned forest-dwellers been consulted, or their consent taken, in any meaningful manner on this demarcation, nor any attempts made to assess possibilities of co-existence with the local communities. Because of this, many civil society groups and local communities consider these CTHs as illegal.

At the time of writing this chapter, there was no single document consolidating guidelines for notification of tiger reserves and the various issues related to them in a holistic manner. A draft set of guidelines on co-existence and identification of such areas has been submitted by the FoC and could form a useful basis for discussion.¹² It may be useful to add here that in a meeting organized by the MoEF on the revised guidelines for declaration of CWHs held on 4 March 2011,¹³ it was decided that the member secretary of the National Tiger Conservation Authority (NTCA) will prepare two protocols related to tiger reserves: one regarding village relocation from tiger reserves and another for 'declaring new tiger reserves after the Forest Rights Act, 2006 has come into effect.' While the protocol on relocation from CTHs has already been prepared, there are still no guidelines on demarcating tiger reserves, securing them for conservation and exploring possibilities of co-existence, particularly in the buffer areas, clearly indicating what the priority for the government is. This issue of a comprehensive set of guidelines has been also raised in the matter of the *Ajay Dubey vs. NTCA and others* case, commonly known as the 'tiger tourism case' (see Box 5.3).

The protocol on relocation from the CTHs has been finalized in 2011 without addressing issues of concern raised by many groups and networks, including FoC.¹⁶ The guidelines do not explain what happens where there is scope for co-existence. Nor does the checklist for relocation require (as should have ideally been the case) a report that would show evidence of irreversible damage and no scope of co-existence. While the protocol mentions that recognition of rights of STs and OTFDs should precede relocation, how such rights and their record in official documents would be useful to the villagers in the place to which they are relocated is left unclear. Even though settlement of rights as a concept and a term is only given in WLPA and not FRA, in many instances 'recognition' and 'settlement' are used in a

Box 5.3 The Ajay Dubey case and conservation through Tiger Reserves

One noticeable development in the tiger conservation scenario has been the case of *Ajay Dubey vs. NTCA and others*. In 2011, a writ petition was filed before the Madhya Pradesh High Court, by Ajay Dubey¹⁴ for stopping 'all kinds of tourism, mining, development or any activity within the core/critical areas of "Tiger Reserves"'. The petitioner also asked for the preparation and implementation of a 'Tiger Conservation Plan' as well as the status of notifications pertaining to core and buffer areas. In response to one of the orders passed on the case, many state governments rushed to notify buffers. The case also led to an NTCA affidavit stating that a 'comprehensive set of guidelines is being framed by the NTCA and the Ministry of Environment and Forests with regard to fixation of core areas, buffer areas, and tourism, including welfare and religious tourism as contemplated, amongst other laws in force, under Section 38-O (c) of the Wildlife Protection Act as well as with regard to the protection of the tigers in forest areas as well as non-forest areas'. It was also submitted that the NTCA 'would consider all aspects while formulating the guidelines after taking the views of Expert Bodies and after letting all stakeholders participate'. However, the guidelines were put in the public domain as a website link for only one week of comments. Moreover, the committee which finalized the guidelines limited its scope to tourism and did not cover issues relating to identification and declaration of core/buffer areas as also issues related to co-existence. Some of its members stated that the committee also had a mandate to formulate guidelines on identification and declaration of core/buffer areas of tiger reserves and that this aspect had not been completed. They believed that this needs to be done, but by following a much wider consultation process. The latter however was neither mentioned in the submission to the Court by the NTCA nor subsequently done.

The NTCA finally did not frame guidelines for the fixation of core and buffer areas. It has also not framed comprehensive guidelines for various aspects of tiger reserves, from identification to demarcation to zonation, management, and governance. What NTCA did submit to the Court (mentioned above) as guidelines are essentially a set of data and principles.¹⁵ These principles have also not gone through the process of consultation with all concerned stakeholders, particularly the local communities. Many CSOs felt that the NTCA had not fulfilled its responsibility and mandate under Section 38Vc of the WLP and an intervention has been filed by Kalpavriksh raising the above-mentioned issues of concern. There was an interim ban on tourism in the CTHs but the same was lifted with the enforcement of the guidelines. The case is still being heard.

The delineation of buffers without any detailed guidelines for co-existence in buffer zones of tiger reserves, which are inhabited by thousands of tribal and non-tribal forest-dependent communities, makes it appear that reconciling conservation and livelihoods through co-existence is not a priority for the decision-makers.

Source: Authors.

single sentence. For example, 'In case of voluntary relocation also, the rights of people should be recognized and settled before relocation' (page 9). How community rights like intellectual property and traditional knowledge related to biodiversity and cultural diversity, access to sacred sites, to grazing in specific areas, and so on can be 'settled' is unclear. There must be a procedure or clarification on how the more intangible rights, such as use and access rights, are transferred to the relocation site.

Despite the legal provisions and the protocol, a survey carried out in 2011 by Kalpavriksh along with local CSOs in four tiger reserves (the Simlipal Tiger Reserve in Odisha, the Sariska Tiger Reserve in Rajasthan, the Melghat Tiger Reserve in Maharashtra, and the Achanakmar Tiger Reserve in Chhattisgarh) found that legal requirements for creating CTHs or for relocation (even in accordance with these flawed guidelines) were not carried out.¹⁷ Even the reports of the NTCA monitoring committees¹⁸ point to these violations, as summarized by the authors in the table below.

Even while many CSOs are attempting to draw the attention of the MoEF, Ministry of Tribal Affairs (MoTA), and state FDs about provisions of the law not being fulfilled during relocation from tiger reserves, the NTCA recently has approved a proposal for using Rs 1000 crores per year for the next five years from the funds of the Compensatory Afforestation Fund Management and Planning Authority (CAMPA) for relocation from CTHs and CWHs of PAs (Kalpavriksh *et al.* 2013). It is not surprising that this decision had received the disapproval of many CSOs, who have expressed their concern to the MoEF, urging that relocation should be stopped until there is a detailed investigation on ongoing violations, including prior recognition of rights before relocation, and processes of co-management and participation implemented in PAs.

TABLE 5.1 Violations and shortcomings in relocation from critical tiger habitats of Tiger Reserves as evident from NTCA relocation committee reports

Legal requirement	Relevant provisions	Relocation violations and shortcomings as evident from NTCA 2010 Relocation Committee report
Prior recognition of rights	38V (5) i of WLPA	No rights' recognition happening. (Achanakmar, Panna, Sariska reports mention this explicitly)
Documentary evidence of 'irreversible damage' and that co-existence is not possible	38V (5) ii and iii of the WLPA	No reports of evidence / basis used for arriving at such a conclusion
Informed consent from gram sabha	Section 38V (5) v of the WLPA	Mostly individual consent, no evidence of 'gram sabha consent' and 'informed' consent (Sariska reports mentions lack of FRA information; Achanakmar report mentions only individual consent)
Compensatory package	38V (5) iv of WLPA, protocol for relocation from CTHs	Land option and compensation for actual assets not being made available (Sariska), Inconsistencies in package (Panna, Ranthambore, and Bandhavgarh), Exclusion from lists (Achanakmar, Panna, and Bandhavgarh)
Stable livelihood and basic facilities in rehabilitated villages	38V (5) iv of WLPA	Insufficient water facilities leading to scarcity for drinking and irrigation (Achanakmar and Panna)

Source: Compiled by authors based on the NTCA 2010 relocation committee reports.

Community Forest Resource Rights

According to official figures (MoTA 2013), 19,680 CFR titles have been recognized over more than 6,50,716.84 acres.¹⁹ Despite the potential of the CFR provisions, it has been noticed, however, that effective implementation is taking place only for a few communities and only in a few states (Desor 2013a). Implementation is especially poor in PAs across the country, where it has actively been discouraged by the FD. Till recently there has also been a lack of clarity among the ground level activists on whether CFR provisions are applicable in PAs.

CFRs, however, have a huge potential in creating a diversity of conservation areas being managed and governed by multiple actors. Such potential is right now visible in a few sites outside PAs and still fewer sites within PAs. Outside PAs, Gadchiroli district of Maharashtra appears to be far ahead of other areas in terms of community claims to forests under the FRA. 3,72,658.17 acres have been claimed and 805 titles handed out as per data presented by tribal commissioner's office during the state-level CFR workshop held in Mumbai on 22 January 2013. Mendha-Lekha, one of the first two villages to receive CFR titles, has subsequently also set an example for a number of processes that can be initiated, using this law towards a more equitable and sustainable local governance and economy. In another village, Murumbodi falling under the Bhikarmaushi gram sabha after recognition of fishing rights over the village lake in 2011, villagers protested against leasing of the lake by the block development officer to the Co-operative Fishing Society of the Dihvar community without any discussions with the villagers. They also demanded benefit-sharing. The Society had to comply to their demand and 50 per cent of the benefits are at present with the villagers (Jathar and Pathak 2012). At the same time, the reasons for such success can be varied, and require an environment of facilitation or a history of community-based efforts. For instance, Mendha-Lekha had moved towards self-rule and forest conservation nearly two decades prior to the Act. Gadchiroli district has also had a history and currently an environment of collective civil society action. A few communities have also mobilized. This, along with a pro-active tribal and revenue department have contributed to effective implementation of the Act (Thatte and Pathak 2013).

In some areas where the process of recognition of rights was essentially government-driven (as in Godda and West Singhbhum districts of Jharkhand) and had taken place without active engagement of gram sabhas as required, not much has changed after recognition of rights (Tenneti 2013).

Slowly, examples are emerging where the CFR provisions are being used in and around PAs to move towards a more democratic resource planning. In BRT Wildlife Sanctuary (also declared a tiger reserve in 2011) where CFRs have been recognized in the CTH area, the Soliga adivasis have developed a three-part plan for collaborative management for conservation, livelihoods, and governance structures, with some landscape-level meetings. However, the villages demand recognition of rights for all the villages of the sanctuary before implementation of the plan (Madegowda *et al.* 2013). In Maharashtra, 45 CFR claims have been filed and titles received in and around the Melghat Tiger Reserve. KHOJ, a local group that has facilitated the process has also moved ahead by drafting and implementing a co-existence plan in some of these villages, which lie in the buffer zone of the reserve. These villages have formed committees for wildlife management under Section 5 of the Act and Rule 4(1)e. In the Yawal wildlife sanctuary in north Maharashtra, the local tribal organization called Lok Sangharsha Morcha (LSM) has used the provisions of the PESA, FRA, and WLPA, to initiate a process of verification of rejected claims under FRA, identification of illegal occupations causing damage to the PA, and micro-planning for social development and conservation in 17 villages inside and around the sanctuary. Although the process has a long way to go, it is a beginning made possible by a strong local resistance movement, using the above-mentioned provisions.

Similarly 33 villages of the Shoolpaneshwar WLS in Gujarat have received CFR titles. Now meetings are being organized for post-recognition conservation and management, with the help of Arch-Vahini, a local CSO. There are also other PAs such as the Tadoba Andheri Tiger Reserve in Maharashtra and the Kumbhalgarh Wildlife Sanctuary in Rajasthan, where although there has been no recognition, people have been filing claims and initiating processes towards such recognition (Desor 2013a).

While CFRs include rights of ownership over NTFP, there have been certain challenges in exercising such rights in PAs. This is evident

from the incident in the BRT Tiger Reserve when a range officer confiscated honey collected by the gram sabha of Hosapodu village in Chamarajanagar taluk (Madegowda *et al.* 2013). The village, after receiving CFR rights, had initiated honey-processing and local marketing as an activity independent of the LAMPS cooperative. This happened after discussions with the local NGOs (Zilla Budakattu Girijana Abhivruddhi Sangha [ZBGAS] and Soliga Abhivruddhi Sangha [SAS]) as well as the conservator of BRT. Yet, on 9 May 2013, the range forest officer of the Punanjanur Range seized the honey stored in the village community hall and destroyed the processing equipment, filing a forest offence case under the Karnataka Forest Act, 1963 along with a plea for immediate disposal of the honey. The gram sabha appealed to the Court, claiming ownership of the honey under Section 3(1) (c) of the FRA and requested the Court to stay the disposal of honey and for it to be returned to them. On 23 May 2013, the Yellandur Court ordered that the honey be returned to the interim custody of the gram sabha, stating that the gram sabha is empowered to collect minor forest produce for their livelihoods, leading to subsequent release of the confiscated honey.²⁰

CFRs are also being used, especially in the post-recognition scenario, as a tool for demanding more democratic processes of decision-making on forests. An example is the case of local opposition to coupe-felling in forests of Baiga Chak (Dindori district, Madhya Pradesh) using CFRs as a means of assertion. Their argument for these protests is that coupe-felling is leading to degradation of their customary forests and any such felling cannot take place without gram sabha consent. They have been successful in stalling felling operations in some CFR forests (Desor 2013b; Kothari and Desor 2013). The FRA and associated circulars are also being used in some parts of the country by forest-dependent communities to protest against development activities seriously affecting their livelihood base or other interactions with forests, and/or to assert their right for a greater democratic engagement with the process of forest diversion for 'development' projects. The struggle of the Dongria Kondh against Vedanta company's proposal to mine in its habitat (including a sacred mountain) in Odisha is well known and it uses FRA as one of its prime tools for assertion of community forest rights (Patnaik 2013). In Singrauli in Madhya Pradesh, first-stage clearance for coal-mining was given based on what NGOs claim were

fake gram sabha resolutions. Simultaneously, the CFR claims process is underway in 62 villages with many villages protesting against neglect of their forest livelihoods due to the diversion (Desor 2013b; Kohli *et al.* 2012). In Thane in Maharashtra, villagers are fighting against the illegal construction of the Kalu dam (being constructed to provide water to Navi Mumbai) with the help of the Shramik Mukti Sanghatna. The dam was being constructed without completing processes under FRA. Many affected villages have filed CFR claims, thus asserting their community rights. Though the project proposal was rejected by the central government, a fresh proposal has been presented by the project proponent to the government in March 2013 and this has been recommended by the FAC (Forest Advisory Committee) on 4 April 2013, despite non-completion of the FRA process. In most instances, forest land continues to be diverted for non-forestry purposes such as mining and power projects without rights recognition and gram sabha consent. Many such instances are also within or around PAs. An example is the forest clearance granted to the windmills project of Enercon-India in 2009. These reserved forests that were cleared were within the boundaries of 14 villages in Pune district and situated within a 10-km radius of the Bhimashankar WLS. Despite this, no consent was taken from the 14 village gram sabhas.²¹

An analysis of official efforts towards implementation of the provisions related to co-existence, and a number of associated events, including judicial processes, indicates an overall lack of seriousness in moving towards co-existence and co-management in PAs and hence a more democratic and diverse PA governance system. This is particularly so in CTHs and CWHs. Even in other PAs or in forests outside PAs where CFR provision has been used by the local communities to assert their rights and responsibility of what they call their community forest resource, there is no linkage between the practices to be followed in these areas and the provisions of the WLPA. Despite the potential of CFR provisions in moving towards shared governance systems within and outside PAs, there is an apparent lack of synergy in implementation of the two laws. Neither of the Acts clarifies the relationship between the people who would govern these areas and the state, which has governed them so far and continues to have certain legal jurisdiction over them. The mindset that conservation cannot take place with people inside PAs continues to be very strong, leading towards prioritizing

relocation over exploring co-existence in areas considered important for species and their habitat. Directions in good governance (Box 5.1) include a consistent strategic vision for conservation grounded on values mutually agreed by all rights-holders and stake holders and ensuring compatibility with plans and policies of other sectors in the broader landscape/seascape. Both of these seem to be missing. The following section deals with some of the challenges which have led to the current state of implementation despite the legal provisions being strong, continuous pressure from the ground, regular supporting circulars from the MoTA, among other reasons, which should have led to a diversity of PA and conservation governance models in the country.

Challenges Obstructing Effective Implementation of Such Provisions

Lack of Clear Definitions and Explanation within the Law

The WLPA states that exploring co-existence is a key objective of declaring buffer areas of tiger reserves. However, as mentioned in the sections above, it does not define co-existence. Various CSOs have argued for and the MoEF has agreed to the need for a set of guidelines on co-existence, but this has not been done so far. On the other hand, the protocol on relocation has already been prepared and is in use, clearly reflecting that the priority for implementing agencies is relocation.

Both the FRA and WLPA mention creation of 'inviolable' areas for effective wildlife management. For this purpose, rights of the local communities are to be modified and relocation can be carried out. However, as also mentioned earlier, the term 'inviolable' has not been defined in either of the Acts. There is an urgent need for it to be clarified. Does it mean 'no-use' or 'human-free' areas, or could it also include 'compatible uses' that do not violate conservation objectives. CSOs have given specific suggestions based on wide consultations to the MoEF in which they have suggested broad ecological criteria,²² which could be used for identifying CWHs. While these criteria provide greater conceptual clarity, many practical complications could arise in implementing these. In a data-deficient scenario, it may be necessary to use thumb rules for decision-making given the urgency of notifying such areas, with the

proviso that as data gaps are filled in, adaptive management can review and revise earlier conclusions and conservation recommendations.

There is also a lack of clear direction or guidelines on what should be the progression of the decision-making process while establishing CTHs and CWHs. Should it be first establishment of rights, then exploring co-existence models, and then if proven to be not possible, relocation? If yes, as suggested in the Acts, then the mechanism by which this progression is ensured is not clear. This lack of clarity has led to a situation where it is being assumed that co-existence is simply not possible, and relocation is being insisted upon, at least in the case of CTHs.

Lack of Knowledge, Capacity, and Forums for Monitoring and Evaluation

Lack of adequate ecological and socio-economic knowledge and lack of adequate systems for incorporating traditional and local knowledge is a challenge for identification of areas important for wildlife, and effective conservation management. Government officials, local communities, and CSOs often work in isolation, with little interface to synergize knowledge and experience and develop a long-term vision for governance and management of PAs and other conservation sites. This leads to a situation where the FD identifies an area, decides whether or not co-existence is possible (the knowledge and information basis used for this conclusion is often unclear), and finalizes a management strategy. In the absence of any formal forum for intervention and/or participation, the CSOs and local communities are left to express their views through articles, protest letters, mass movements, rallies, and other such methods.

Officially, none of the CTHs or PAs have carried out an extensive planning process taking into account all the ecological and socio-economic data and all rights-holders and stakeholders. Nor does an inclusive system exist that could constantly monitor the implementation of laws and the progress of jointly established objectives and management goals towards an adaptive management strategy.

Clearly, a one-time planning exercise is not adequate to ensure that implementation of such concepts meets its objectives. Unanticipated problems always crop up. Even the most well-made plans do not

necessarily work out perfectly, and local ecological or social situations may change in unexpected ways. It is, therefore, necessary to bring in a continuous monitoring, evaluation, and feedback process, which is fully participatory, and contains independent oversight. Such a process could point to crucial changes in management strategies, governance, boundaries, or other parameters. This also implies that the governance and management institution must be flexible and open to such changes. This is a critical issue and if the process is to move quickly, then adaptive management must be built into the decision-making system.

Ambiguity in Governance Because of Lack of Clarity in the Relationship Between FRA and WLPA

The forest governance regime in PAs is currently ambiguous as the precise relationship of the FRA with the WLPA is unclear, leading to possible confusion on the ground of what action can be taken if a right granted under the Act violates a provision of the WLPA. A conflict could arise in a situation where the management practices/beliefs of the village committee recognized under FRA are in contradiction with the management practices of the FD recognized under WLPA or the other way around. For instance, traditional use of fire, shifting cultivation, and extractive use for commercial purposes are potential points of conflict; these are necessarily detrimental to conservation, as official mindsets would have us believe (nor, of course, can they be unregulated). How this situation will be resolved and what kind of supportive and regulatory mechanism needs to be in place, is not clear from the existing provisions in the two laws and will require further clarification. Additionally, although FRA empowers gram sabhas to ensure conservation and to set up committees for this purpose, it is not clear what happens if, for instance, the rights to harvest of a non-timber forest resource adversely affect its conservation status, in cases where no limits based on ecological criteria are set for resource extraction. Conversely, if the FD imposes conservation or management regimes on communities who demonstrate or feel that such regimes are detrimental to biodiversity (for example, a ban on fire where regulated fire is helpful to local biodiversity), by what mechanism would such feedback and the appropriate action be taken?

There are also some more general post-rights' recognition issues needing resolution, for the forest landscape as a whole. At the policy/governance level, appropriate institutional arrangements, granting of powers to gram sabhas akin to those of the FD, sharing of such powers between gram sabhas and the FD and the relationship between gram sabha plans and FD's working plans, or other such arrangements, still remain to be worked out (Joint MoEF-MoTA Committee 2010). This is especially relevant in view of the continued operation of FD control and works, even where communities are objecting to these, such as plantations and working plan activities (for example, in Rajasthan and Odisha, the government is collaborating with funders like the Japan International Cooperation Agency (JICA) to implement forestry projects under which plantations are carried out in community land claimed under the FRA).

There is also an absence of planning and institutional structures for conservation and management at a landscape level, that could bring together gram sabhas (or village-level forest management committees), the FD, the tribal department, other relevant departments, and local civil society organizations. Such agencies could monitor and guide forest/wildlife conservation and enjoyment of CFR rights, facilitate landscape-level planning and implementation, and facilitate convergence of various schemes towards these objectives (Joint MoEF-MoTA Committee 2010). Moreover, there is a lack of convergence between different forest-related laws and policies, partly because the government has not issued any clarification on the relative powers, roles, functions, and responsibilities of the gram sabha and the FD, despite clear recommendations in this regard from a number of sources including the Joint MoEF-MoTA Committee and the National Advisory Committee (NAC).

Conservative Attitudes and Reluctance to Share Power

Anti-democratic attitudes and reluctance to share power amongst government agencies, are one of the key challenges slowing down the decentralization of decision-making powers, or the move towards collaborative or community-based conservation. This is already in evidence, for instance, in the abysmal implementation of the panchayati raj constitutional amendments, especially those pertaining to Scheduled Areas, nearly two decades after they were promulgated. The

same is true of the FRA, especially in PAs. State governments and their local departments have simply been reluctant to share administrative and financial powers. There is also a continued belief in conservation by exclusion as indicated by the violation of FRA and in general human rights, in CTHs mentioned above. There have been no fundamental changes in the Indian Forest Services curriculum to cover legislative developments like the FRA, which could support a more democratic model of conservation (Kothari 2013).

This difficulty in implementing the FRA can be understood by recognizing that forests and wildlife habitats in India are spaces that have been largely controlled by the Indian state, first colonial then independent. It could be argued that the purpose of implementing the FRA within this state-centred context is a struggle over governmentality, within which certain types of exclusionary conservation models have been historically deployed to further the government's larger aim of managing the lives of its constituents (Foucault *et al.* 1991). Such centralized control gets internalized both within the constituents of the state, and also amongst many people outside the state, creating enormous resistance to paradigm shifts requiring decentralized redistribution of power (Agrawal 2005; Bryant 1998; Foucault 1991).

However, despite the larger challenges of moving the state, there have been a number of officials within the environment bureaucracy who have shown different ways of doing things on the ground (for example, in promoting tribal livelihoods linked to the Periyar Tiger Reserve in Kerala, or providing employment options to pastoralist communities in conservation areas of Sikkim). This has resulted in policy level changes with more conviction. Additionally, other wings of government, such as the MoTA in the case of the FRA, in the period from 2011 onwards have also taken more proactive role in influencing conservation policy.

Outside of the state, there is an almost equally powerful force of resistance: a strong section of formal sector conservationists continuing to believe in or espouse exclusionary, top-down conservation. The debate on tiger protection is dominated by such people, as they dogmatically hold to the assertion that only 'inviolable' (read: human-free, except tourists) areas will do if the tiger has to be saved. This automatically leads to one of the problems mentioned above, that even where the law mandates an exploration of co-existence, it is relocation that gets all the attention, budgets, and political will. Even increasing

scientific evidence of the possibilities of co-existence within specified limits of human activity, and the ethical imperative of democratic decision-making (which they may even assert in other contexts), has not substantially shifted this mindset amongst a small but powerful section of the conservation community.

Development Context

It is important to look at the larger landscape (and seascape) within which each PA or CFR is located. Such areas will not survive long as islands within a landscape of unsustainable development, for sooner or later the forces of demand and conversion, and long-range phenomena like pollution and climate change, will also enter these. Possibly the greatest threat to both wildlife and forest dependent livelihoods in India today is India's economic growth model. In the pursuit of a double-digit growth rate, environmental priorities have been brushed aside in the last few decades. Since 1991 in particular, with economic liberalization and globalization, this process has greatly intensified (Shrivastava and Kothari 2012). There is pressure for dilution of norms of gram sabha consent of affected villages in the process of forest clearance to speed up clearances and remove 'bottlenecks' to the inflow of huge investments. Such a pressure has led to the formation of a Cabinet Committee of Investments and recent exemption (through an MoEF circular on 5 July 2013) from the need of gram sabha consent for linear projects such as roads, highways, and canals (Kothari 2012).

Such policies, lacking a focus on areas outside of the PAs, create an ever-increasing competition between the local people, urban needs, industrial needs, and needs of wildlife, particularly the less charismatic ones, for the fast-reducing ecosystems and resources therein. As fuel and fodder resources outside a PA diminish, people inevitably try to enter into the PA; as mining and hydro-electricity sites reduce outside, commercial agencies inevitably ask for the opening up of PAs. In a situation where a local community stake has been created in the continuation of the P, government agencies and conservation NGOs will find it impossible to contain these forces. Already several PAs are threatened with such forces (for example, several dozen have mining going on or proposed within or just adjacent to their boundaries). Many PAs, from where traditional communities are being moved out, are being opened

up for large-scale commercial tourism in the name of ecotourism. Such pressures will only increase as globalization makes further inroads into India unless seriously challenged by both environmental and human rights groups working with local communities. Also, focusing on merely the PA network for conservation, as seems to be the case in official implementation, could leave out many crucial wildlife habitats that are currently outside the PA network, such as most of our marine ecosystems. It will also impact migratory species and species with large home ranges. Therefore, what is lacking and is urgently required, is planning at landscape (and seascape) level where natural resources and biodiversity both within and outside of PAs are conserved and managed (TPCG and Kalpavriksh 2005). Yet, the larger developmental process has no interest in or time for conservation, and even less for participatory conservation.

The FRA 2006 and WLPA 2006 (through its newly inserted provisions), provide significant legal opportunities for Indian conservation to take steps towards more democratic and effective conservation. This includes participatory and knowledge-based ways of identifying and managing special areas for wildlife, strategies for a wide range of governance arrangements depending on the local context, a focus on inclusion and co-existence, strong legal and social protection of critical conservation areas against destructive development processes, and enlarging the scope of conservation to include entire landscapes and seascapes rather than only islands of protection. These could also help lead to greater livelihood security, and more democratic and robust governance, across such scapes. But to enable this potential to be met, civil society organizations and those within the government who are sensitive to such issues, will need to join hands, and also win the trust of and help empower local communities who have been thus far at the receiving end of both the 'development' and the 'conservation' sticks. Further legislative changes are needed, especially to strengthen (with reference to Box 5.1) the direction, accountability, and performance. There will need to be continued shifts in mindset and attitudes, through dialogue, assertion of community controls, changes in the training of the forest bureaucracy, and greater public participation. Perhaps most

important, the conservation 'community' will need to seriously challenge the currently dominant economic development model in the search for sustainable, equitable alternative models.

This is a very difficult task, but not impossible. In many ways India's conservation story has been one of swimming against the tide with some remarkable stories of reversing processes of extinction. We need a similar resolve, this time with a much stronger knowledge and democratic base, to achieve lasting conservation and livelihoods security.

Notes

1. Globally these are now termed Indigenous Peoples' and Local Community Conserved Territories and Areas (ICCAs), mirroring (and having emerged from) the concept and practice of community conserved areas in India; for conceptual treatment, case studies, and analytical reports on ICCAs, see www.iccaforum.org. See www.iccaconsortium.org for more information on ICCAs and Pathak Broome and Dash (2012) and Pathak (2009) for Indian examples.

2. Circular no. 13-1/90-FP of Government of India, Ministry of Environment and Forests, 18 September 90. Addressed to the forest secretaries of all states and union territories.

3. See http://www.iucn.org/about/work/programmes/gpap_home/gpap_capacity2/gpap_parks2/?2137/2003-Durban-World-Parks-Congress, accessed January 2014.

4. The WLPA amendment introducing the category of CTHs was dated 4 September 2006 and the FRA introducing the category of CWHs was passed on 29 December 2006.

5. The Future of Conservation in India is 'a network of ecological and social organizations and individuals committed to effective and equitable conservation of biodiversity. FoC is not an organization, but a forum where organizations and individuals can meet, dialogue, and take joint actions.' (See <http://kalpavriksh.org/index.php/conservation-livelihoods1/networks/future-of-conservation.html>.)

6. See 'Proposed Guidelines on Identification of Critical Tiger Habitats, Co-existence and Relocation related to Tiger Reserves (in pursuance of the WLPA as amended in 2006)', submitted in September 2007, by Ashoka Trust for Research in Ecology and the Environment (Bangalore), Council for Social Development (Delhi), Himal Prakriti (Munsiari), Kalpavriksh (Delhi/Pune), Samrakshan (Delhi), SHODH (Nagpur), Vasundhara (Bhubaneswar), Wildlife Conservation Trust (Rajkot), WWF-India (Delhi).

7. MoEF circular F. No. 1-39/2007 WL1 (pt) dated 7 February 2011 by Deputy Inspector General Prakriti Srivastava to all chief wildlife wardens.

8. Information based on a summary of RTI data from 2010 received by Sreetama Guptabhaya, member of Kalpavriksh, Delhi/Pune.

9. Response by MoEF minister, Rajya Sabha on 8 May 2012 to question no. 3,439 asked by Ramachandra Khuntia on the Notification of Critical Wildlife Habitats in Odisha.

10. Vide its circular No. 1501/11/2007-PT (Part) to all relevant states.

11. See FoC, 2007, 'Proposed Guidelines for Identification of Critical Wildlife Habitats in National Parks and Wildlife Sanctuaries Under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006, submitted on December 2007 to NTCA.

12. See MoEF, 2011, 'Summary records of the meeting held on 4 March 2011 to discuss the issue of revised guidelines for declaration of Critical Wildlife Habitats', 23 March.

13. SLP (C) no. 21339/2011 (*Ajay Dubey vs. Union of India & Ors*).

14. In August 2012, Kalpavriksh filed an intervention in the *Ajay Dubey* case regarding violations of the FRA and WLPA being caused by the rushed process of notifications of buffer areas of tiger reserves. It intends to extend the intervention to cover overall issues of violations in the process of notification of tiger reserves.

15. See http://kalpavriksh.org/images/CLN/FOC/Relocation%20protocol_Comments.pdf for FoC's comments on the draft relocation protocol. The protocol was finalized without incorporating most of these points.

16. See Kalpavriksh, 2011, 'Recognition of Rights and Relocation in Relation to Critical Tiger Habitats'.

17. Unpublished reports provided by NTCA, Government of India, in 2011.

18. However, it should be noted that there are many gaps and ambiguities in relation to these official figures (Desor 2013a).

19. Information on the Hosapodu incident and the court order was provided by Archana Sivaramakrishnan (Keystone Foundation) and Mahadesha on behalf of the Hosapodu gram sabha.

20. From the letter submitted to Minister of Tribal Affairs on 19 September 2011 by members of Kalpavriksh (Neema Pathak, Saili Palande, and Pradeep Chavan) on the subject 'Permission granted to Andhra Wind Power Project Enercon-India, Maharashtra, based on misrepresented facts and in violation of provisions of the Forest Rights Act, 2006'.

21. See report of the *National Workshop on Critical Tiger Habitats and Critical Wildlife Habitats*, May 2008, <http://kalpavriksh.org/index.php/conservation-livelihoods1/networks/future-of-conservation.html>.

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