ADB

Land and Cultural Survival

The Communal Land Rights of Indigenous Peoples in Asia

Edited by Jayantha Perera

Asian Development Bank

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Foreword

In 1986, the Asian Development Bank (ADB) issued the *Staff Instructions on Socio-cultural Impacts of Bank Projects* identifying "rights of tribal/ethnic minorities, cultural integrity and traditional land use control" as factors affecting the success of development projects. In 1994, ADB revisited the *Staff Instructions*, outlining a broad approach to indigenous peoples issues to ensure that development interventions facilitate informed participation of affected indigenous peoples; foster full respect for their dignity, human rights, and cultural uniqueness; provide them with culturally compatible social and economic benefits; and avoid adverse impacts on them. In 1998, ADB adopted the *Policy on Indigenous Peoples*, which pays special attention to their customary rights over ancestral lands and territories, the legitimacy of their social and economic institutions, and their right to direct the course of their own development.

In 2009, ADB updated the *Policy on Indigenous Peoples* and integrated it into a comprehensive safeguard policy framework to enhance the relevance and effectiveness of its application. In the process, ADB endeavored to reflect on and learn from past experience; respond to changing political and legal contexts; and reflect changing best practices of other multilateral financial institutions and of private sector institutions.

This book focuses on indigenous peoples and their communal land management. The analyses it contains explore how some Asian countries recognize indigenous peoples' environmental interests and land rights, and engage them in the development discourse. Collectively, the chapters examine how some Asian countries have introduced laws, regulations, and institutional mechanisms to safeguard and promote indigenous interests in areas such as natural resources, communal land management,

and consultative decision making. These analyses are supported with case studies and timely critical reflections.

I thank the contributors to this important book for not only addressing the outcomes of past project experiences but also for providing insights into how the development processes might better accommodate the development needs and aspirations of indigenous peoples. I would like to acknowledge the work of Jayantha Perera in editing the book in his capacity as the focal person for the environment, involuntary resettlement, and indigenous peoples safeguards in the South Asia Department. I hope that this work will catalyze further scholarship on indigenous peoples issues.

Xianbin Yao
Director General
Regional and Sustainable Development Department
Asian Development Bank

Acknowledgments

In 2004, the Asian Development Bank (ADB) celebrated with indigenous peoples and international development agencies the completion of the "International Decade of the World's Indigenous Peoples". As part of this celebration, ADB organized a workshop to discuss the distinctive relationship between indigenous peoples and their habitat. Ten in-depth case studies were presented and discussed at the workshop held in Manila. This volume contains eight chapters, six of which were selected from the papers presented at the workshop. The other two chapters and the introduction were especially written for this book.

The contributing authors are people from diverse backgrounds who hold different views regarding indigenous peoples, their development rights, and communal land management as a way of life. Their expertise ranges from anthropology to environmental issues, development studies, public administration, forest management, and development practice. It has been a stimulating intellectual exercise for me to discuss each chapter with its author(s) and to agree on the contents, the analysis of data and information, and the presentation. All contributors took a keen interest in writing their chapters in several drafts following the general theme of the volume, that is, communal land management of indigenous peoples in Asia.

As indigenous peoples' rights, particularly their communal rights over ancestral lands, are becoming part of international law, it is important to share information on such rights and how they are applied in varied sociocultural and political milieus with development practitioners, academics, and the public. It is fascinating to watch how fast indigenous peoples' interests and rights are being recognized and applied by various countries in Asia and by international development agencies. This book

has attempted to capture the general trends while examining how individual countries have accommodated them, particularly with legislative changes.

The book does not claim to be an exhaustive treatment of the close relationship between indigenous peoples and their communal land rights in Asia. But it presents diverse aspects of the connections between the state and indigenous peoples and shows how such connections affect their worldview, economic survival, and cultural identity. The views and opinions expressed by the contributors reflect their own personal views and convictions; they do not necessarily reflect the views of ADB.

Kunio Senga, director general of the South Asia Department of ADB, encouraged and supported this project, and Xianbin Yao, director general of the Regional and Sustainable Development Department, kindly wrote a foreword to the book. I owe an enormous debt to my guru, Professor Scarlett Epstein, who chaired the workshop in Manila where the preliminary drafts were presented and inspired me to edit and publish this book. Muriel Ordoñez coordinated the production of the book with keen interest and dedication, and Judy Burke diligently edited the manuscript with acuity. Frederick Roche, Nessim Ahmad, Indira Simbolon, Natasha Davis, Jan Van Heeswijk, Ruben Martinez, and Shyamala Abeyratne helped me at various stages of this project. I thank all of them.

Jayantha Perera
Editor

Abbreviations

ADB	Asian Development Bank
BARS	Batang Ai resettlement site
FRA	Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act
ICES	International Centre for Ethnic Studies
ILO	International Labour Organization
IPRA	Indigenous Peoples Rights Act
NGO	nongovernmental organization
PESA	Panchayats (Extension to Scheduled Areas) Act
SALCRA	Sarawak Land Consolidation and Rehabilitation Authority
SLDB	Sarawak Land Development Board
UNDP	United Nations Development Programme
UNOHCHR	United Nations Office of the High Commissioner for Human Rights

Contributors

Lorelei Crisologo-Mendoza, MA, PhD, is a professor of economics at the University of the Philippines Baguio, where she has taught since 1976. She served as director of the Cordillera Studies Center there from 1990 to 1991 and from 1998 to 2003. From 2003 to 2006, she was the dean of the College of Social Sciences, University of Philippines Baguio. She has conducted research on the livelihoods of farming households in the Cordillera communities, gender and household economics, local governance, and local resource management practices.

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Oeur Il is a candidate for a master of science degree in public policy at the University of Maastricht in the Netherlands. As researcher and coordinator of the Analyzing Development Issues Project of the Cooperation Committee of Cambodia for 10 years, he coauthored research reports on topics such as labor migration, drug use, domestic violence, land titling, and indigenous conflict resolution. His work has appeared in the *Cambodia Development Review* and the *Proceedings of the Socio-Cultural Research Congresses* of the Royal University of Phnom Penh.

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Administering Development in the Third World; Managing Projects That Involve Resettlement: Case Studies From Rajasthan, India; Development Projects and Impoverishment Risks: Resettling Project-Affected Peoples in India; Managing Resettlement in India: Approaches, Issues and Experiences; Can Compensation Prevent Impoverishment: Reforming Resettlement Through Investments and Benefit-Sharing; and *India Social Development Report 2008 (Development and Displacement).* He has been a consultant to several United Nations (UN) organizations, the Asian Development Bank (ADB), and the World Bank.

John P. McAndrew, PhD, is a social anthropologist who has worked in Southeast Asia, mainly in the Philippines and Cambodia, for more than 35 years. He has published *People of Power: A Philippine Worldview of Spirit Encounters and Urban Usurpation: From Friar Estates to Industrial Estates in a Philippine Hinterland;* and *Aiding Inequality: The General Santos City Project in the Philippines*. He also edited the book *Monks, Dreamers, Preachers, and Rebels: Religious Solutions to the Problem of Meaning in a Peripheral Capitalist Society* and has contributed articles to the *Philippine Sociological Review*, *Philippine Studies*, and *Aghamtao*. His work on Cambodia includes Cambodia Development Resource Institute working papers on development assistance, food security, and rural development programs; Cooperation Committee for Cambodia research reports on rural livelihoods, land titling, garment industry, informal economy, and local governance; and articles in the *Bulletin of Concerned Asian Scholars* and the *Cambodia Development Review*.

Kinsuk Mitra, PhD, is a natural resource economist specializing in decentralized natural resources management, local livelihoods, and socioeconomic and poverty-related issues. His recent projects include "incentive-based mechanisms" to address environmental services and link local enterprise development to conservation and the application of environmentally friendly approaches in development initiatives. He is the president of Winrock International India, a nonprofit organization based in New Delhi and specializing in renewable energy, the environment, natural resources, and climate change.

Jayantha Perera, MA, LLM, PhD, is a development anthropologist and is currently the principal safeguards specialist of the South Asia Department at ADB in Manila. He is a fellow of the Royal Anthropological Institute in

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June Prill-Brett, MA, PhD, is professor emeritus of anthropology of the University of the Philippines Baguio, where she has taught since 1973. She served as director of the Cordillera Studies Center from 1987 to 1989. Her studies of the Bontoks of Central Cordillera, indigenous common property systems, ancestral domain, legal pluralism, and indigenous political institutions have been published in national and international journals.

Indira Simbolon, LLM, MA, PhD, is a legal anthropologist and has published widely on indigenous peoples, customary lands, property rights, land acquisition, and gender and environmental issues. From 1985 to 1990, she was the principal coordinator for a legal aid and advocacy desk of a rural nongovernment organization in Indonesia, handling legal complaints on the environment, involuntary resettlement, land acquisition, and land compensation issues involving communal lands and traditional communities. From 1990 to 1997, she was an adviser to the Council of Lutheran World Federation in Geneva and member of its Program Committee for Mission and Development. In 1998, she was a postdoctoral research fellow in the Department of Anthropology of Nijmegen University and the Department of Agrarian Law of Wageningen Agricultural University, focusing on social protection and social security policy issues in developing countries. She joined ADB in Manila in 1999. She is a principal social development specialist and the focal person for ADB's indigenous peoples' safeguards. She is also a board member of the International Commission on Legal Pluralism, a position held since 1997.

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Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006: A Charter of Forest Dwellers' Rights?

Jayantha Perera

In the late 20th century, particularly after the United Nations drew up international environmental principles in the 1972 Stockholm Declaration and the 1992 Rio Declaration, the Government of India progressively introduced different policies and laws that paved the way to recognize that tribal peoples, especially forest dwellers, had rights over ancestral land, including the right to earn their livelihood from forests and maintain a cultural identity that is linked to them. After nearly 25 years of debate and extensive consultations, this process culminated in the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Government of India 2007). This legislation, known as the FRA, is a landmark in the evolution of the government's attitudes on tribal people and their rights. It attempts not only to correct a "historic injustice" committed by the colonial and postcolonial rulers but also to vest in forest communities a primary role in sustaining forest ecosystems by restoring their rights as well as their environmental duties. It became active on 31 December 2007, and its implementing rules were issued on 1 January 2008. The law basically grants legal recognition to the rights of traditional forest-dwelling communities, partially correcting the injustice caused by successive forest laws in the 19th and 20th

centuries, and it makes a beginning toward giving those communities and the public a voice in forest and wildlife conservation.

The preamble to the FRA states that it is "[a]n Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; [and] to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land."

The FRA elaborates the justification for the above as follows:

> Whereas the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;
>
> And whereas the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers which are integral to the very survival and sustainability of the forest ecosystem;
>
> And whereas it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State Development interventions.

Indian forest laws enacted in the 19th and 20th centuries treated forest dwellers and other traditional forest users and especially their farming practices such as shifting cultivation as a threat to forest ecology. The new recognition of forest dwellers as "integral to the very survival and sustainability of the forest ecosystem" is a crucial policy reversal compared with previous forest laws, as the new law makes them the custodians of forests and their ecology. The FRA guarantees their livelihood, food security, and forest rights and recognizes their rights to ancestral lands, tenure security, and access to forests and forest produce. Associated with these rights are

their responsibilities, namely, sustainable use of forests, conservation of biodiversity, and sustenance of ecological balance.

The reference to "historical injustice" to forest dwellers during the colonial and postcolonial periods sends a powerful political message to all state governments in India. Its operational implication is that the new law cannot accomplish significant improvements in the status of forest dwellers unless a constructive political and administrative dialogue is continued at the state level to take urgent and comprehensive actions to implement it. Also needed is a campaign to raise public awareness. Indian society at large must see the validity of forest dwellers' customary rights to earn their livelihood and sustain their cultural identities through the legally recognized relationship between them and their ancestral lands.

Rights of Forest Dwellers

The FRA lists the following as forest dwellers' rights:

- Right to hold and live on forest land as an individual or community and to cultivate land as a livelihood
- Community rights such as cattle grazing on forest land
- Right to collect, own, use, and dispose of minor forest produce that has been traditionally collected within or outside village boundaries by forest dwellers
- Community rights to fish and collect other products from water bodies
- Right to use traditional seasonal resources such as pastures and water bodies as nomadic or pastoralist communities
- Community rights including tenures of habitat for primitive tribal and pre-agricultural groups
- Right to reclaim any disputed land over which forest dwellers had user rights
- Rights for converting to titles leases or grants of forest lands issued by local authorities or state government
- Rights of settlement and conservation of all forest villages, old habitation, un-surveyed villages and villages in forests
- Right to protect, regenerate, conserve, or manage any community forest resource that the community has traditionally protected and conserved for sustainable use

- Rights that are recognized under state law or laws of any autonomous district or regional council or rights that are accepted as rights of tribal people under any traditional or customary law of the concerned tribes of any state
- Rights to claim intellectual property rights over traditional knowledge related to biodiversity and cultural diversity
- Any other traditional right enjoyed by the forest-dwelling scheduled tribes or other traditional forest dwellers, but excluding the traditional right of hunting or trapping of animals
- Right to relocation and rehabilitation if evicted or displaced from forest land without providing legal entitlement to relocation or rehabilitation before 13 December 2005
- Right to use forest land not exceeding 1 hectare to build schools, dispensaries, fair-price shops, communication lines, minor irrigation canal sor other water bodies, vocational training centers, roads, community centers, and drinking water supply pipelines, subject to approval by the *gram sabha* (village assembly)

These various rights of forest dwellers can be classified into four broad types.

Land rights. No forest dweller can claim user rights over any forest land that he or she was not cultivating before 13 December 2005 and is not cultivating at present. Those who are cultivating such land but do not have documents to prove continuous land use can claim up to 4 hectares if they cultivate the land themselves only for their livelihood. Those who possess government leases for forest land can claim user rights even if the land was taken by the Forest Department or is the subject of a dispute between the Forest Department and the Revenue Department. However, if those lands are reconferred on an individual, a household, or a community, they cannot be sold or transferred to anyone except by inheritance.

User rights. The FRA restores the forest dwellers' right to collect minor forest produce such as edible herbs and medicinal plants. But the forest dwellers cannot fell trees for sale. They are allowed to take timber from forests only for household use. The law also recognizes the use of grazing grounds and water bodies by nomadic or pastoralist communities.

Right to protect and conserve. Until the FRA was enacted in 2006, only the Forest Department was entrusted with the duty of protecting forests. This legislation for the first time gives forest-dwelling communities the right to protect and manage the forest in which they live. It authorizes forest dwellers to conserve community forest resources by giving the community a general power to protect wildlife and forests. This is vital, as thousands of forest dweller communities are trying to protect their forests and wildlife against threats from forest mafias, industries, and land grabbers, most of whom operate in connivance with the Forest Department.

Relief and development. The FRA guarantees a right to get rehabilitated in case of illegal eviction or forced displacement and also to receive basic amenities, subject to the restrictions imposed to protect forests.

The FRA states in section 4(1) that, "notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognizes and vests forest rights in (a) the forest dwelling Scheduled Tribes in States or areas of States where they are declared as Scheduled Tribes in respects of all forest rights mentioned in section 3, (b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3." This is a powerful and unambiguous recognition of rights of forest dwellers and an unreserved vesting of such rights on them.

"Free, Prior, Informed Consent" and Conservation

The FRA prescribes that all future creations of "inviolate" conservation zones and curtailment of rights in protected areas shall require the "free, prior, and informed consent" of tribal people who live on such land. It also emphasizes that all forestlands—irrespective of location and category—that have traditionally been used by tribal communities will henceforth be treated as "community forest resources" and says that forest dwellers can act decisively in conserving such resources. What is most important, the FRA says that recognized rights of forest dwellers include conservation of forests and biodiversity (section 5).

The FRA empowers holders of forest rights and their gram sabhas to

- protect the wildlife, forest, and its biodiversity;
- ensure that adjoining catchment areas, water sources, and other ecological sensitive areas are adequately protected;
- ensure that habitats of forest-dwelling scheduled tribes and other traditional forest dwellers are preserved from any form of destructive practices affecting their cultural and natural heritage;
- ensure that the decisions taken in the gram sabha to regulate access to community forest resources and stop any activity that adversely affects the wild animals, forest, biodiversity, and natural heritage are complied with.

The legislation recognizes both the individual and collective rights of forest dwellers to forests that provide them livelihood and cultural identity.

Key Rules to Implement the FRA

It took nearly 2 years to publish rules for the implementation of the FRA. Political interventions, bureaucratic twists, and hectic lobbying by activists representing tribal people and wildlife interest groups took center stage during the review of draft rules that were presented for public comment. The compromises and the accommodation of various interest groups in the formulation of the final rules, which were published in January 2008, have diluted in a number of ways the strong, forcefully stated forest rights enshrined in the law. A good example is that although the law provides for forest dwellers to have rights over water resources in forests and avail themselves of traditional fishing rights, the published rules do not address this critical subsistence issue. There are four key aspects of forest rights that are not sufficiently addressed in the rules.

Who rules in disputes?

According to the FRA, the gram sabha plays a key role in determining who has what rights to which forest resources. This is an attempt to devolve decision-making powers to the grassroots level, that is, to the hamlet level. However, the rules direct that in any area under dispute that is not a "scheduled tribal area", the decision-making authority will be the

panchayat ("revenue" village council), not the gram sabha. (Each panchayat comprises several gram sabhas.) If a forest-dweller village is only one among many villages that form a panchayat, where the non-forest-dwellers are the majority, the forest-dweller village might find it difficult to get its rights approved if the others oppose. This is because corrupt officials and village elites could easily exploit the vulnerability of forest dwellers in such a council and manipulate the council resolutions in favor of vested interests, or against forest dwellers.

Who conserves forests?

The FRA authorizes forest-dweller communities to protect forests against destruction. Instead of defining this key right and the environmental interests of forest dwellers and specific powers to implement them, the government has said in the rules that a forest-dweller community should conserve forest and forest resources as a "duty", closely following an official "working plan" prepared by the Forest Department. The rules do not clarify whether forest dwellers will be consulted on a free, prior, and informed basis in formulating such working plans or what actions they could take to halt or regulate forest destruction by any external agency, including government departments and private companies. This means that the forest-dwelling communities could become tools in the hands of the Forest Department and private companies that would like to exploit resources in forest areas.

Where do displaced people go?

Indian courts have clearly stated that if a forest-dwelling community is physically displaced because of a development project, the state should make all possible arrangements for the community to continue its livelihood and maintain its cultural identity elsewhere. This is one of the core forest rights that are bestowed on forest dwellers by the FRA. The rules published in 2008 neither elaborated this key right of forest dwellers nor stipulated how a development project that would displace them could rectify such a breach of their rights. Instead, the central government has handed over the responsibility of formulating the rules for dealing with land acquisition and resettlement of displaced forest dwellers to the Ministry of Environment and Forests. The ministry strenuously opposed the draft bill of the FRA on the grounds that such rights would increase

human activities in forests and thus harm the sensitive ecology of forests and wildlife (Empower Poor 2008). Although the FRA was enacted, the ministry has not changed its opposition to the awarding of forest rights to forest dwellers. Such attitudes and opposition to the environmental rights of forest dwellers make them vulnerable to the actions of a powerful central ministry, which does not recognize their livelihood and survival rights. Moreover, the ministry could interpret the FRA narrowly in formulating the rules, which could limit their enjoyment of forest rights.

How do people prove they are eligible?

The rules do not clarify how the two intertwined criteria of eligibility—forest dwellers should reside in forests and should prove 75 years of family residence in the area—will be applied to evicted forest dwellers and those whose land have partially been taken over for public purposes. Without such clarifications, it is easy to apply the two criteria to exclude many forest dwellers from the purview of the FRA, as many of them do not possess documentary evidence to prove that they have been forest dwellers at least for three generations (75 years). Furthermore, there is no rule that provides a way for "other traditional forest dwellers" to prove that they qualify for the rights guaranteed by the legislation.

The FRA—A Charter of Tribal Rights?

Ever since the FRA was enacted, the Government of India and state governments have been claiming it as a major victory for tribal peoples' rights in India. But this law will not be able to resolve tribal peoples' human rights and livelihood issues without similar or greater advancement in law and administration in other areas (which are intrinsically linked with tribal peoples' rights) such as land acquisition, development-induced displacement, and political autonomy. The proposed National Rehabilitation and Resettlement Bill, 2007 was a positive step toward improving land laws that affect tribal people directly.[63]

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[63] The National Rehabilitation and Resettlement Bill, 2007 was approved by the lower house of Parliament in 2009. It specifically addresses the land rights of tribal people and special procedures that should be followed in acquiring their territories. In February 2009, the bill was rejected by the upper house of Parliament.

The greatest value of the FRA is that it effectively recognizes rights of forest dwellers who previously were considered encroachers on state land. The Forest Department had powers to expel them without paying appropriate compensation, and such expulsion had taken place mainly when they did not have sufficient evidence to prove their right to ancestral land (Leelakrishnan 2002). Corrupt practices, bribery, and tribal vendetta often influenced such actions. Unfortunately, however, the FRA has not taken into account those thousands of forest dwellers who face charges under different provisions of the Indian Forest Act, 1927 and Forest Conservation Act, 1980 for illegal felling of trees, encroachment, and collecting minor produce. There is no provision in the FRA that would close or drop such charges against forest-dwelling scheduled tribes. There were 257,226 such cases pending against 162,692 forest dwellers and other tribal people under sections 26, 33, and 41 of the Indian Forest Act 1927 by 2004 (Ghosh 2006).

Although the FRA seeks to strengthen forest conservation by giving powers to forest-dwelling communities to protect forests, such powers are *in addition to* not *instead of* the powers that the Forest Department and other government agencies possess, thereby creating room for a clash between communities and the Forest Department. This can happen if forest dwellers disagree with government's decisions to transfer forest land to development projects. In this regard, the FRA stipulates that the government should obtain the "free informed consent" of affected forest dwellers and their village councils for such transactions (section 4(2)[e]). However, a framework for how to obtain free, informed consent of affected forest dwellers has not still been formulated by the government. The marginalized status of forest dwellers and other tribal populations, the powers vested in Forest Department officials regarding forest management, and the higher political, economic, and social status of the rural elite will make it difficult to formulate such a consultation framework and to apply it.

Section 4(2)(d) of the FRA stipulates that the displacement of tribal people may occur only after a resettlement or alternative package has been prepared in consultation with them. The package must ensure that affected communities will have appropriate income and livelihood sources. It will fulfil "the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government." Section

4(2)(f) says that "no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package." This is a great improvement in land acquisition, compensation, and rehabilitation of project-affected forest dwellers. However, its application in association with the Land Acquisition Act of 1984 could lead to the payment of only cash compensation at the statutory value of land decided by the local government administrators, which is often substantially lower than the replacement cost of such property.

Several agencies—both private and public—have challenged the FRA in high courts in several states and in the Supreme Court of India on several grounds. In March 2008, the Supreme Court told the central government and the state governments to respond to several petitions that challenged the constitutional validity of the FRA in permitting allotment of forest land to tribal people. The argument is that land administration is under the purview of a state government; therefore, the central government cannot allocate or decide the size of such allocations. In another petition, a group of wildlife organizations—Wildlife First, the Nature Conservation Society, and Conservation Trust—challenged in 2008 the legal and constitutional validity of the FRA on the grounds that it violates the fundamental rights of the citizens guaranteed under Article 14 ("The State shall not deny to any person equality or equal protection of the laws within the territory of India") and Article 21 (protection of life and personal liberty) of the Indian Constitution, as it is against the principles of "sustainable development". It will take several months, if not years, to know how the judiciary views such challenges based on a broad interpretation of the fundamental rights of citizens.

Conclusion

The FRA is a landmark in the struggle of forest dwellers and other tribes to get legal recognition of their environmental rights over forests. The FRA definitely has converted key environmental interests of forest dwellers into environmental rights that could be enforced by courts. The strength and value of the FRA, however, have been diluted by the rules that have been approved to implement it and by the rules that are missing, leaving gaps instead of covering the entire charter of forest rights.

The struggles over forest rights of tribal people need to be seen in the broader political context, both nationally and internationally. When the FRA was presented as a bill to the Parliament in 2005, there was a conscious attempt by several ministries to undermine tribal community control over forest resources. A similar attempt by the government to change environmental regulations to facilitate the construction of mines, dams, and industries indicates the reluctance at the highest political level to award forest rights to tribal people or to strengthen their control over their ancestral lands in forests. The drive to acquire both fertile agricultural land and village commons for "Special Economic Zones" and for big private companies has been moving on a fast track. Granting of mining leases to private companies in forest areas has increased in recent times.

Despite the alarming rate at which ancestral land is being lost to companies and private developers, the FRA provides tribal communities a political space to articulate their forest rights. The passage of the FRA encourages forest dwellers all over India to build an alliance, embracing India's democratic and pluralistic political and social organizations and based on environmental and social justice. However, the state-capitalist nexus will be a formidable obstacle to implementing the FRA. The decisions of the high courts and the Supreme Court of India on legal challenges will reveal how the judiciary considers forest dwellers' rights elaborated in the law.

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Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia

Development in Asia faces a crucial issue: the right of indigenous peoples to build a better life while protecting their ancestral lands and cultural identity.

An intimate relationship with land expressed in communal ownership has shaped and sustained these cultures over time. But now, public and private enterprises encroach upon indigenous peoples' traditional domains, extracting minerals and timber, and building dams and roads. Displaced in the name of progress, indigenous peoples find their identities diminished, their livelihoods gone.

Using case studies from Cambodia, India, Malaysia, and the Philippines, nine experts examine vulnerabilities and opportunities of indigenous peoples. Debunking the notion of tradition as an obstacle to modernization, they find that those who keep control of their communal lands are the ones most able to adapt.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries substantially reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.8 billion people who live on less than $2 a day, with 903 million struggling on less than $1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

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