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The UN Declaration on the Rights of Peasants, National Policies, and Forestland Rights of India's Adivasis

Prakash Kashwan, University of Connecticut, Storrs.

Ishan Kukreti, Correspondent, Down To Earth, New Delhi

Rahul Ranjan, Institute of Commonwealth Studies, University of London, London

Abstract : The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) is one of the most ambitious UN declarations. We analyse the policy and legal challenges of protecting these rights vis-à-vis India's indigenous Adivasi peasants. Longstanding social and political mobilizations have enabled Adivasis to secure significant statutory and legal rights, which address the goals of land rights and food sovereignty, sustainable development, and socially just climate action. However, powerful actors and agencies opposed to these rights hold considerable sway over India's political and judicial institutions. For example, contrary to its reputation as an activist court, India's Supreme Court has failed to protect Adivasi rights. Such countermobilization against Adivasi rights, especially by some environmental groups advocating for the enclosure of Adivasi lands for the sake of wildlife and biodiversity conservation underscores the difficulty of enforcing economic and social rights. This article offers five key insights to inform future human rights advocacy and praxis to protect the rights enshrined within UNDROP. Our analysis identifies synergies between international human rights activism and the national and subnational struggles to protect peasant rights.



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The UN Declaration on the Rights of Peasants, National Policies, and Forestland Rights of India's Adivasi Peasants

Prakash Kashwan,¹ Ishan Kukreti, and Rahul Ranjan

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), adopted in October 2018, is the most recently enacted UN human rights declaration. In some ways, UNDROP is comparable to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 2007, insofar as it focuses on a well-identified group of peoples. However, unlike UNDRIP, the target group for UNDROP is based mainly, though not exclusively, in the global South. The widely reported social, economic, and political marginalization of target beneficiaries mean that the UNDROP's implementation is crucial for socially just responses to climate change, which threatens to upend lives and livelihoods of peasants and smallholders, including women peasants.¹ Additionally, smallholder farming is an important part of food security and food sovereignty for a large section of the world's population in a climate-changed world.

UNDROP offers an important avenue for such transnational solidarities by focusing on questions of pervasive social and economic inequalities that are structural in nature. By implication, successful enforcement of UNDROP would also help address structural inequalities to some extent. This is a crucial point for the emerging debates in human rights practice and scholarship, including the recent critiques of human rights movements. Samuel Moyn has argued, for instance, that the human rights movement seems to have detracted from the goals of fighting inequality.² Not everyone within the human rights community agrees with Moyn's grim assessment, though many support the efforts to strengthen the links between human rights movements and grassroots movements engaged in the various pursuits of social justice. According to Martín Abregú, the Vice President of International Programs at the Ford Foundation, the need to focus on 'structural causes underlying human rights violations' motivated the Ford Foundation to transform its standalone International Human Rights program into a program focused on inequality.³

UNDROP's emphasis on economic and social rights sets it aside from much of the other human rights scholarship and advocacy that tends to focus on civil and political rights of the victims of human rights violations. We argue that the focus on economic and social rights requires an approach that differs significantly from the one taken within conventional human rights scholarship. As Abregú argues, addressing human rights violations rooted in structural patterns requires going beyond setting human rights standards to actual enforcement and implementation.⁴ It would require embedding the protection afforded by UNDROP within domestic policies and programs related to food security, climate change, and economic development, among others. For example, the enforcement of UNDROP's protections for land

¹ Direct correspondence related to this article to: prakash.kashwan@uconn.edu

rights would require more robust regulatory arrangements on land grabs that are often justified in the name of economic development and more recently, in the pursuit of climate mitigation programs.⁵

This article contributes to the debate about the enforcement of human rights in ways that would help address the structural causes of economic inequalities. To do so, we analyze the policy and legal challenges of enforcing the rights of India's indigenous peasants. In developing and using the category of 'indigenous peasants' we intervene in a complex debate with important implications for the human rights architecture on indigenous peoples. As we explain at length in subsection 2.1 the distinction between indigenous peoples and peasants is not so clear outside of the Americas. Yet, these distinctions are taken for granted in the existence of two separate conventions UNDRIP and UNDROP. While being deeply appreciative of the historical trajectory of the evolution of these two important conventions, we seek to foster a conversation about the need for exploring synergies between these two conventions. Instead of seeing them as two distinct instruments, it would be productive to see these two UN declarations are better seen as being interconnected and complementary in their scope. Investigating the enforcement of the key provisions of India's Forest Rights Act (FRA) of 2006 offers an important way of exploring these synergies.

The provisions of the FRA, which were meant to be implemented via the executive rules enacted in January 2008, reflect several of the protections under UNDROP. It also provides a highly salient context for the potential applicability of UNDROP to indigenous peasants in India and elsewhere. The FRA addresses some of the fundamental structural disadvantages that affect an estimated 250 million people in India, the largest population of indigenous peasants anywhere outside China. Such an analysis is also useful because the conflicts around and enforcement of the FRA has involved the legislative and executive branches of the state, social movements, nature conservation NGOs, and the judiciary. While we are deeply appreciative of the importance of social and cultural factors in defining and enforcing the rights of Adivasi peasants, our focus here is on the administrative, legal, and policy processes that influence the enforcement of these rights.⁶

India enjoys a favorable reputation with regards to the strength of its democratic institutions, including the rule of law. Scholars and global policymakers often cite the Supreme Court of India (SCI) as an activist court.⁷ The strength of India's civil society groups and social movements would have us believe that India would effectively implement various statutory provisions. Because of these a priori factors, India constitutes the most likely case of the potential for successful enforcement of statutes intended for the protection of the rights of peasants and other rural people. However, the depth of India's democratic institutions, especially their efficacy in addressing the grievances of its poor and socio-culturally marginalized citizens, came under scrutiny even before the current regime under the authoritarian leadership of Narendra Modi.⁸ Accordingly, instead of romanticizing India's institutional strengths, we use the Indian case to illustrate the challenges of enforcing the UNDROP protections even in a country with a reputation for being a successful democracy.

This research builds on the authors' collective engagement with and expertise on the subject of forest and land rights of India's Adivasi peasants for nearly a quarter century. Kashwan spent six years (1999-2005) working with Adivasi communities, NGO professionals, and the state forest department to build and strengthen local institutions meant to foster autonomous resource governance arrangements in central and western India. Since 2008, he has spent more than 15 months conducting field research investigating the enforcement of statutory forestland rights in India, including conducting elite interviews, ethnographic research, and an extensive survey on the grassroots understanding and implementation of forestland rights.⁹ Kukreti has spent more than five years in the field reporting on the question of Adivasi land and resource rights from 300 districts in 15 states of India. His reports have been referred to and cited in various court cases, including in the Supreme Court of India. Similarly, Ranjan has spent 18 months doing field research in eastern India beginning in 2015 and has conducted archival research in London on the historical evidence of Adivasi insurgency. The evidence presented here draws on ethnographic notes from immersive fieldwork, desk-based research on policy and legal dimensions of the arguments, academic-activist engagements, and demonstrated research outputs. The richness of the authors' collective research experience and expertise affords us an insightful longitudinal view of the grassroots struggles, policy contestations and their apparent resolutions, and the barriers that came up in implementing the law. The benefits of such qualitative research are likely to extend beyond the frontiers of India's borders. We argue that an investigation into and engagement with the rights of peasants, including indigenous peasant groups such as the Adivasis and forest-dependent social groups in India, is likely to lend new vigor to the international human rights movement.

To explain the merit of the analysis presented here, the first section foregrounds the conceptual discussion of why a human rights framework, specifically focused on economic, social, and cultural rights, has the potential to strengthen the longstanding and ongoing campaigns of social justice activism. It presents a broad conceptual framework, which helps in situating this research within human rights scholarship, while also addressing the focus of this special issue: the intersection of forest rights and human rights. Section 2 offers an essential introduction to the evolution, enactment, and contents of UNDROP, while emphasizing the applicability of this new declaration to indigenous Adivasi peasants. This section also discusses our arguments about why it may not be helpful to make watertight distinctions between the protection of the cultural and territorial rights of indigenous peoples that is the subject of UNDRIP and the rights of peasants and rural people that are the focus of UNDROP.¹⁰ Section 3 offers a detailed mapping of the evidence about the emergence, enactment, and enforcement of forest and land rights under the FRA. In Section 4, we draw on the evidence presented in this article to draw five key insights for effective enforcement of UNDROP. We conclude in Section 5 by reflecting on the broader context of human rights scholarship and the potential for building a comparative research program.

1. Conceptual framework: When Human Rights Advocacy Meets Policy Engagements

Peasant struggles have been historically known for their revolutionary potential. This includes the Mexican revolution in the first decade of the 20th century, which is widely believed to be the moment of the birth of the myriad *campesine*¹¹ movements or the contemporary peasant movements active in Latin America.¹² Arguably, UNDROP owes its existence to the success of Latin American peasant movements, without which *La Via Campesina* would not have achieved the same kind of grassroots strength and global influence. Yet distilling global lessons from the peasant and indigenous rights movements in Latin America and human rights declarations inspired from there takes historically and politically contextualized comparative analyses.¹³ In this article, we seek to contribute to such comparative analyses for the sake of strengthening human rights architecture and its advocacy in different contexts.

The adoption of UNDROP by the UN General Assembly, which brought peasant rights within the ambit of human rights offers several important benefits. Philip Alston, the United Nations rapporteur on extreme poverty argues that adoption of human rights commitments is crucial to: 1) direct policymakers' attention to painstakingly crafted internationally agreed-upon formulations of economic rights, social rights, and jurisprudence, 2) introduce an element of immediate salience that might be otherwise missing from the conventional public policy approaches, 3) ensure that in the programs designed to promote collective wellbeing, the rights of the individual are taken into account, and 4) ensure the dignity and agency of all individuals, thereby empowering them to demand accountability.¹⁴

The human rights framework also offers opportunities for transnational learning and exchange as the same set of challenges are addressed simultaneously in different countries. Consequently, these exchanges also create possibilities for transnational solidarities and advocacy. In some cases, civil society groups and social activists may be able to leverage the power of transnational mobilizations to apply pressure to national governments to hold them to account. Keck and Sikkink refer to this as the 'boomerang effect' of transnational advocacy by non-state actors.¹⁵ Considering the historically entrenched inequalities and disadvantages that peasants face in the status quo, human rights advocacy to support the rights of the world's peasants today is perhaps a necessity. For example, as we discuss in the next section, UNDROP offers important avenues for strengthening the regulatory role of the state to create a level playing field in markets for peasants' products, preventing disruptive market failures, and ensuring proper regulation of transnational corporations and business enterprises to protect peasant land rights. Such provisions respond to arguments made by critics of the human rights movement, such as Samuel Moyn, who argues that '...local and global economic justice requires redesigning markets.'¹⁶ In other words, if UNDROP provisions are robustly implemented, it will help expand the scope and impacts of international and transnational human rights advocacy

quite significantly. By implication, human rights research and scholarship needs to build newer and broader bridges with the research on social justice and poor people's struggles for economic development.

This paper builds on arguments about the localization of human rights, which, according to De Feyter 'implies taking the human rights needs as formulated by local people [...] as the starting point both for the further interpretation and elaboration of human rights norms and for the development of human rights action, at all levels ranging from the domestic to the global.'¹⁷ Emerging scholarship on the demands for a UN declaration of peasant rights has built on arguments about localization of human rights. For instance, Arne Vandenberg argues that while the incremental opening up of global institutions such as the Human Rights Council to the influences of transnational movements such as La Via Campesina is commendable, the processes of 'learning from below' need to be institutionalized.¹⁸ In this perspective, local struggles have a vital role in informing 'the norm-setting at the international level in order to offer effective protection against contemporary violations of human rights.' Vandenberg argues for the development of a mechanism like the International Food Security and Nutrition Civil Society Mechanism (CSM), which recognizes civil society organizations as institutional participants engaged in the decision-making processes of the UN Committee on World Food Security (CFS). These arrangements improve the prospects of accountability of corporate actors, who control a sizeable portion of the global food trade.¹⁹

However, the norm-setting efforts of international institutions have often had only a limited impact on the enforcement of rights. As much as these efforts signal an important breakthrough in the development of international human rights norms, they still indicate the national policy process as a sort of black box that is left to domestic actors. This paper seeks to map out the factors and processes that either facilitate or obstruct the realization of rights via national policymaking and programmatic efforts. International relations scholars Steven Bernstein and Ben Cashore identify four distinct pathways through which transnational actors and international institutions produce policy change: 1) the use of markets, 2) international rules, 3) normative discourse, and 4) infiltration of domestic policy-making processes.²⁰ The research that we have undertaken over a period of two decades suggests that the fourth pathway, i.e., the influence over domestic policy-making processes, is the most crucial and the most challenging for the effective realization of the rights of peasants in the global South. This also applies to the rights recognized in the UNDROP, which are inseparable from the functioning of state and non-state actors at both national and sub-national levels. They cannot be reined in by name-and-shame campaigns alone, even though such campaigns are useful for overcoming some types of domestic barriers.

This research extends the debate on how transnational advocacy efforts could be complemented by domestic political and policy interventions to realize the economic and social rights in practice.²¹ Such political reforms are a prerequisite for peasants' exercise of the rights protected within UNDROP. To this end, we integrate insights from scholarships in the fields of comparative public policy and development studies to identify the factors and processes that

foster effective domestic action. While much attention has been focused on the question of state capacity, we argue that the failure to enforce the rights and entitlements of the marginalized groups results from the imbalances of social and political power and the dominance of bureaucratic and economic interests in the development of state policy. Development studies scholarship is specifically relevant to the efforts aimed toward the realization of the rights of peasants. In a crisp synthesis of the reasons for the success of women's rights advocates, Anne Marie Goetz and Rob Jenkins argue that it depends on their strategic capacity for 1) 'framing' policy demands, 2) forming and managing civic alliances, and, 3) engaging with state actors without compromising organizational autonomy.²²

Our analysis identifies areas of synergy between international human rights action and the national and subnational struggles for the rights of peasants. While the strategies of framing and alliance formation within civil society are important, we focus on state-society engagements, which seems to be the most crucial yet perhaps the least studied aspects of human rights advocacy and action. In agreement with Thomas Risse's critique of the 'mainstream human rights scholarship,' we do not base our arguments on the expectations attached to a fully functional Weberian State.²³ However, we also depart from Risse's argument that 'areas of limited statehood' that lack 'domestic sovereignty' is the major barrier against the realization of human rights.²⁴ On the contrary, we show alongside other research on resource politics and resource struggle from various parts of global South, that it is the overly powerful and non-accountable top-down interventions of the state that undermine the realization of rights in practice.²⁵ In many instances, state actions toward abrogation of rights, including formally recognized property rights, exemplifies the tyranny of state sovereignty without accountability.

We analyze factors and processes that contribute to the realization of rights for the most marginalized groups - especially in the presence of a state that some scholars have referred to as the 'cunning state.'²⁶ In doing this we build on and contribute to recent scholarship that shows that 'mutually empowering coalitions' of actors in both state and society are crucial for fostering state accountability.²⁷ We also draw on recent research, which suggests that the *longue durée* evolution and protection of the entitlements of marginalized groups of citizens occurs in the presence of well-established and *enduring* mechanisms of political intermediation among actors in state and society.²⁸ Overall, we draw on cutting-edge social science research to illuminate the promises and the challenges of the localization of human rights action that builds on shared human rights norms and ideals and promotes transnational solidarity.

2. UNDROP and its Application to Indigenous Peoples

2.1 UNDROP: Background and key features

In the last few decades, we have witnessed dramatic changes in the global political economy of land and food. A global land rush or land grab has been underway.²⁹ On the food front, a few global agribusiness corporations and conglomerates have tightened their hold over food

processing, trade, and marketing, while peasants and smallholders struggle to continue to rise.³⁰ In the face of such adverse context and continued concerns about the failure of global trade institutions to step up to the challenge, peasants across the world have sought to forge networks of transnational solidarity.

In 2006, La Via Campesina, a transnational network of peasant unions and federations, took the initiative to debate the question of development of peasants at the UN Human Rights Commission. In 2008, the Special Rapporteur on the right to food, Olivier De Schutter, conducted a study on the food crisis across the globe. The Human Rights Council (HRC), which is also an inter-governmental body within the UN system, led another study on the right to food and discrimination in 2009. Both studies were published around the time of the global food crisis in 2009, which the World Bank attributed to a sudden shift in land use patterns toward biofuel crops.³¹ This prompted the HRC to reconsider LVC's proposal for the Declaration of Rights of Peasants, Women and Men.³² Over six years of negotiations, a majority of member states were convinced about 'the extreme vulnerability and discrimination' that peasants experience around the world.³³ The extensive negotiations within the HRC led the UN General Assembly (UNGA) to adopt the UNDROP on December 17, 2018 with the support of 33 member states, with 3 opposing votes and 11 abstentions.³⁴

It is important to remember that the declaration came to fruition because of a long-fought campaign led by La Via Campesina, which represents nearly 200 million farmers organized under the ambit of 164 local and national organisations in 73 countries. LVC worked in collaboration with Third World Centre (CETIM) and the World Federation of Democratic Youth (WFDY) to mobilize forces to initiate a dialogue with the Human Rights Commission. This dialogue focused on the detrimental effects of the state-led promotion of the chemical-intensive green revolution policy, followed by the onslaught of neoliberal policies that paved the way for corporate control of agriculture. The introduction of genetically modified crops further reinforced these disadvantages and contributed to the loss of natural wealth that is central to the survival of peasant agriculture. Lastly, the incentivization of biofuels redirected crop patterns away from staple crops, thereby contributing to the 2008 worldwide food inflation. The mobilisation for the UNDROP took place in the backdrop of such unscrupulous conditions of the dominance of chemical-intensive green revolution, corporate control of global food production, processing, and distribution, the promotion of biofuels, and the endangerment of agrobiodiversity. Among its several key provisions, three are especially relevant to the scope of this paper.

- i. The UNDROP lays the groundwork for the peasants and other poor people working in rural areas to develop their own strategies for local development and management of natural resources.³⁵ Article 17 states, "Peasants and other people living in rural areas have the right to land, individually and/or collectively, in accordance with article 28 of the present Declaration, including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures."³⁶ In doing

so, it ascribes a normative value to the ideals of food sovereignty, in which peasants control their own food value system and the natural resources critical for that system without running into the hurdles related to corporate control of food systems. It also promises to assist peasants in securing the right to food.

ii. Second, while there are limits related to the non-binding nature of UN declarations, the UNDROF mandates that states ensure that the peasants do not face external constraints, which means that the state takes proactive steps to prevent any form of discrimination. It obliges the state to take necessary legislative and administrative actions to achieve the progressively full realization of rights enshrined in this declaration. It asks the states to consult peasants before enacting legislations and international agreements that may impinge on the rights of peasants and other rural people and to take into consideration existing power imbalances between different parties to ensure “active, free, effective, meaningful and informed participation” (Article 2). Lastly, the UNDROF also asks the states to take appropriate regulatory measures to ensure that private individuals and organizations, including transnational corporations and other business enterprises, respect and strengthen the rights of peasants and other people working in rural areas.

iii. Third, the UNDROF formalizes the right to be protected against the unlawful disposessions of property or other resources crucial to peasant lives and livelihoods. Article 12 asks the states to provide “effective mechanisms for the prevention of and redress for any action that has the aim or effect of violating [peasants’] human rights, arbitrarily dispossessing them of their land and natural resources or of depriving them of their means of subsistence and integrity, and for any form of forced sedentarisation or population displacement.”³⁷

Overall, the UNDROF is significant in two ways that are remarkably different from the conventional understanding of human rights action. First, it lends legal sanctity to the recognition of dignity and respect for peasants, who are often socially and politically marginalized within their countries. It clearly stipulates that “Peasants and other people working in rural areas have the right to the full enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and all other international human rights instruments, free from any kind of discrimination in the exercise of their rights based on any grounds such as origin, nationality, race, colour, descent, sex, language, culture, marital status, property, disability, age, political or other opinion, religion, birth or economic, social or other status.”³⁸ However, it does so without making peasants into a reductionist technical category, thereby recognizing the rights of any person engaged in “artisanal or small-scale agriculture, crop planting, livestock raising, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area, [including] dependent family members of peasants... indigenous peoples and local communities working on the land, transhumant, nomadic and semi-nomadic communities, and the landless engaged in the above-mentioned activities...[and] hired workers, including all migrant workers regardless of their migration status, and seasonal workers, on plantations, agricultural farms, forests and farms in aquaculture and in agro-industrial enterprises.”³⁹

Second, UNDROP recognises the contribution that peasants make to global food production and the increasingly important agendas of food sovereignty. The declaration constitutes a formidable anchor for the idea of food sovereignty, which protects “access of peasants and landless people to the land, water, seeds, and credit and prioritizes ...local agricultural production in order to feed the people.”⁴⁰ Peasants’ attachment to their land thus become vital for the global agendas of food justice and climate resilient agriculture. These two crucial components of the declaration shift the focus from the confines of national agriculture policy debates onto transnational arenas of plant breeding, seed production, genome editing, patenting, biopiracy, and global food trade.⁴¹ As such, the UNDROP promises to advance the agenda of protecting the fundamental human rights of peasants, while also contributing to potential democratization of global agriculture.

To summarize, the UNDROP intervenes in the most pressing questions of the proper balance of the role of the state and markets in the domain of land and natural resources that are key to peasant subsistence and food sovereignty. It encourages the states to pursue appropriate agrarian reforms to ensure that the peasants and other people have adequate access to resources. Noticeably, the UNDROP provisions would apply not just to the firms seeking control of peasant land for commercial production, but also for land seizures for public infrastructure and others that have been justified in the name of biodiversity and wildlife conservation, as mentioned previously. To better focus on the interlocked nature of the subsistence and commercial agriculture, as well as the broader processes of access to and control over land and other natural resources, it is useful to consider the emphasis of UNDROP vis-à-vis members of indigenous communities who also earn their livings as peasants and smallholders.

2.2. Indigenous Peasants: Building an Interdisciplinary Understanding and Transnational Solidarities

The demands for UNDROP are founded on the successful adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 2007. UNDRIP offers a comprehensive framework of standards for the survival, wellbeing, and human rights of indigenous people.⁴² UNDROP now offers similar types of recognition and protection for the world’s peasants and rural populations. Despite a shared history of marginalization and exclusion that affects both indigenous peoples and peasants, they are embedded within broader political and economic systems very differently in different world regions.

The Americas have the oldest and by far the most influential indigenous peoples’ movements supported by intergovernmental institutions such as the Inter-American Court of Human Rights based in the city of San José, Costa Rica. Outside of the Americas, especially in Africa and Asia, states have resisted the efforts toward formal recognition of indigenous peoples, even though specific laws on questions of land rights of indigenous people do exist.⁴³ These tensions are reflected in the lack of unanimity about the definition of indigenous peoples. Unlike

UNDROP, which lays out a clear definition of peasants, the UN does not offer an official and comprehensive definition of the indigenous peoples. Instead, it lists several distinct ways for the recognition of indigenous people including ‘self-identification; historical continuity with pre-colonial era; and, existence of distinct language and culture.’⁴⁴ The subjectivity of these criteria leads to tensions, especially in Africa and Asia, where some argue that the notion of indigeneity is a product of western discourses, which are both obscure and disconnected from local histories.⁴⁵ These questions cannot and must not be resolved through epistemic debates alone because these contestations are rooted in the politics and political economy of control over land and other natural resources.⁴⁶ A recognition of the tensions related to criteria and definitions is therefore crucial in recognizing that these debates are not merely academic debates – they are closely intertwined with challenging political and economic questions.

The LVC has sought to build bridges between indigenous peoples’ movements and peasant movements, as evident in the central role they accord indigenous people within the movement for food sovereignty. A press release that LVC issued at the annual global climate negotiations held in Bonn, Germany in November 2017 reiterated that peasants, small farmers and indigenous peoples ‘feed the world and cool the planet.’⁴⁷ Noticeably, LVC deployed an inside-outside strategy: they articulated these demands in the official spaces of global climate negotiations, as well as at the People’s Climate Summit where social movements mobilized to advocate for the cause of climate justice and to promote alternatives to capitalism. LVC also ensured that UNDROP included ‘indigenous people working on the land’ within the definition of peasants who are engaged in agriculture.⁴⁸ This is a significant departure from the essentialized arguments that portray indigenous peoples as noble savages, whose lives and livelihoods are in harmony with the globally-defined agenda of conserving a mythical pristine nature.⁴⁹ Such prefabricated notions of nature-society harmony precludes any discussions of indigenous peoples’ dependence on subsistence farming. Such exclusions and omissions are rampant in the arguments that big conservation NGOs, such as the World Wide Fund for Nature (WWF), make about the role of indigenous people in nature conservation. The politics of selective and instrumental cooption of indigenous identities, while neglecting aspects of an identity that militate against the interests and aspirations of the dominant groups becomes quite apparent if one examines the tensions and trials of indigenous Adivasi movements in India, to which we turn next.

2.3 Political contestations over indigenous peasant movements in India⁵⁰

The concentration of multiple disadvantages linked to the intersectional effects of sociocultural exclusions and political-economic marginalization of indigenous Adivasi peoples are visible more starkly in India than perhaps anywhere else. The government of India (GOI)’s approach to the question of indigenous people constitutes an interesting point of entry to the scope of this paper. India is a signatory to International Labour Organization (ILO) Convention No. 107 on Indigenous and Tribal Populations (the predecessor to the more powerful Convention 169, which India has not ratified) and it voted in favor of the UNDRIP. However, GOI rejects the

applicability of the concept of ‘indigenous peoples’ in the Indian context, while insisting that all Indians are indigenous.⁵¹ Indeed, a group of indigenous rights scholar-practitioners reports that India is “particularly hostile to any reference to the rights of indigenous people to autonomy, self-governance or self-determination.”⁵² To be fair, GOI is not the only one to express skepticism regarding the concept of indigeneity, as some social scientists argue that “it is neither possible nor desirable to single out any such category of peoples in the country.”⁵³

GOI’s hostility toward the concept of ‘indigenous people’ and its claim that all Indians are indigenous is like the counter slogan ‘All Lives Matter’ being used by the opponents of Black Lives Matter. Some of these arguments reflect how fraught the relationship of caste Hindu society with Adivasis has been since ancient times. Culturally, Adivasis have been on both the figurative and geographic margins of Indian caste society – Hindu scriptures describe Adivasis as the *Asuras*, demons who lived in the uninhabited wilderness. Hindus, who form the religious majority, selectively patronizes a few Adivasi figures who served Hindu gods and deities with devotion, while referring to Adivasis in general as backward or even “primitive.”⁵⁴ Adivasis (and Dalits, the so-called untouchable castes) were marginalized in the movement for India’s independence, which was led by luminaries such as Mahatma Gandhi and Jawaharlal Nehru – also the first Prime Minister of independent India.

In a speech delivered at a 1952 conference, Nehru acknowledged that while the struggle for freedom was a great liberating force for many Indians, this experience was not shared by Adivasis. Notwithstanding such a sympathetic stance, Nehru’s views about Adivasi development were rooted in a rather simplistic binary of culture versus development. He once told a gathering of Adivasis, “Your old customs and habits are good. We want that they should survive, but at the same time we want that you should be educated and should do your part in the welfare of our country.”⁵⁵ As the chief architect of the newly decolonised Indian state, Nehru thus promised to *protect* Adivasi culture in return for persuading Adivasis to “do their part” for the sake of the nation.⁵⁶ In practice, this meant Adivasis having to give up their claims to ancestral lands for large ‘development’ projects, which Nehru’s Hinduized erudition labeled as the ‘temples of modern India.’ These temples served India’s dominant classes and castes very well, while forcing Adivasis off their lands and depriving them of their resource rights.

The privileging of cultural aspects of Adivasi communities over the questions of agriculture and economic development, in the imaginations and functioning of the Indian state’s bureaucracy and leadership, reinforced the patronizing and racialized discourses of protectionism first instituted by the British colonial administration. Instead of promoting overall economic development in Adivasi areas, the government created ‘income-generation’ activities — such as goat-keeping, poultry, and tribal handicrafts — for the stereotyped ‘backward’ Adivasis. Gandhian-inspired social workers sought to ‘uplift’ Adivasis out of their supposed ‘primitive’ habits that ran contrary to the majoritarian values of vegetarianism and abstinence. The insensitive behavior of bureaucrats, who take their own social and cultural superiority for granted, further mar development programs and normalize petty corruption. The most important

consequence of the patronizing cultural framing of the Adivasi question was the Indian government's neglect of land reforms in forested regions.

India's national and state leaders used the rhetoric of land reforms to maintain their legitimacy among poor peasants, but in practice, neglected the agenda of land reforms among the Adivasis. Indira Gandhi, India's prime minister for three terms in the period between 1966 and 1984 and one of the most populist leaders India has ever had, argued that land reforms embodied 'the most crucial test which our political system must pass in order to survive.'⁵⁷ Contrary to such pronouncements, land reforms were implemented poorly in general and were entirely neglected in forested areas in particular. The percentage of Adivasis that government statistics identified as 'cultivators' went down from 68 per cent to 57.5 per cent between 1950 and 1970. On the other hand, Adivasis, who comprise less than 9 per cent of India's population, constituted over 40 per cent of the estimated 30 million people displaced because of the state exercising its powers of eminent domain to promote megadevelopment projects, e.g., dams, mines, power plants, and other large-scale industrial installations.⁵⁸ Sociologist Nandini Sundar characterizes the post-independence India's development model as 'property-less socialism.'⁵⁹

Adivasi peasants face multiple concentric disadvantages that result from the concentration of poverty and socioeconomic and cultural marginalization. Arguably the most debilitating of those disadvantages are related to the colonial appropriation of large swathes of community and public lands by the regime of territorial state forestry, which was designed primarily with the goals of extraction of timber and maximizing state income from land tax.⁶⁰ The colonial era Indian Forest Act of 1927, which remains the mainstay of India's forest governance to date, characterized forest-dependent people as 'encroachers' or unwelcome intruders in the ancestral tribal land that is now classified by law as the state property. Independent India's prioritization of the economic value of forests, coupled with the re-trenchment of the caste and ethnic hierarchies, reproduced the colonial-era systems of forest management controlled by the elite Indian Forest Service. The forest policies of independent India reflected the state's interests in promoting mining, hydropower, infrastructure development, and the production of timber and non-timber forest products for various state and non-state enterprises.⁶¹ The narrative of 'national development' justified the Indian state's promotion of mega-development projects, while also reinforcing the centralisation of forest governance.

3. Statutory and Legal Reforms Targeted at Indigenous Adivasi Peasants

In this section we outline the evolution of important statutes and judicial precedents and their relevance to the rights of Adivasi peasants in India. This discussion is especially important because the statutory recognition of territorial rights that is part of the legal structure in the Americas does not apply to the countries on the continents of Asia and Africa. Accordingly, the following discussion illustrates the nature of challenges that are common outside of the Americas.

3.1 Local Governance Laws and Lands Struggles in Adivasi Areas

The 73rd amendment to the Indian Constitution, introduced in April 1993, institutionalized a system of local governance meant to complement the federal and provincial governments. However, these amendments did not apply to the areas with significant populations of indigenous people that were given an exceptional status in the Constitution of India (5th Scheduled).⁶² The Parliament of India sought to rectify these deficiencies by enacting the Panchayats (Extension to the Scheduled Areas) Act (PESA) in December 1996. PESA devolves the authority of self-governance to self-constituted village assemblies within Adivasi areas – a unique model for decentralization of power. The PESA also gives discretionary powers to the village assembly to manage natural resources, including forests, land, water, and minor minerals within its jurisdiction. Significantly, it gives the village assembly a veto over any development projects that interferes with the local community's rights to manage its resources autonomously. PESA contains provisions of a Free, Prior, and Informed Consent (FPIC) that requires any government agencies or private actors seek formal consent of residents before implementing any development projects, including infrastructure development projects.⁶³

Notwithstanding the radical language and potential of the law, in over two decades of the law's existence, its applicability and efficacy have been undermined by various federal ministries and provincial governments. The enforcement of the law would create a significant barrier against the state-led or state-sanctioned exploitation and expropriation of natural resources – land, water, forests, and minerals. The natural resources extracted from the so-called 'hinterlands' are an essential input into the extractive model of economic development, which has received a major fillip since India's federal government and various state governments pivoted significantly toward neoliberal reforms in 1991.⁶⁴ India's robust civil society has sought to resist, with some success, the dismal performance of federal and state governments on this account. For example, in response to lawsuit filed by the NGO Samata, the SCI ruled in July 1997 that any public land, including forestland or community land in Schedule V area, cannot be leased over to non-Adivasis, including the state governments. The Samata judgment has served as a vital reference point for civil society struggles and remains a frequently cited precedent in a variety of legal battles, including judgments by environment tribunals.⁶⁵ However, various loopholes in the SCI judgment have allowed government agencies to pursue resource development projects that stand in violation of the letter and spirit of PESA and the Samata judgment. Indeed, on different occasions the SCI has also muddied the waters by contributing to the dispossession of Adivasis.

In February 2002, the SCI asked forestry agencies to update the court about the status of the reported cases of forest land 'encroachments.'⁶⁶ The forestry agencies mostly use 'encroachment' as a reference to the land claims of Adivasis and other forest-dependent people, whose traditional land claims have never been codified in the law of the land. The forestry agencies used the SC order this as a pretext to force 300,000 families off an estimated 150,000 hectares of land they had been farming for decades, in some cases generations.⁶⁷ These large-

scale dispossessions led to numerous human rights violations, including the deployment of intoxicated elephants to level thatched dwellings and some cases of police shootings.⁶⁸ Such unjust actions mobilized nearly 200 civil society organizations and social movements to form a national federation – named evocatively as the Campaign for Survival and Dignity (CSD). In July 2003, CSD staged a ‘public hearing’ in Delhi, which involved live testimonies by aggrieved families and was attended by thousands of Adivasis from several states. The efforts of CSD in bringing the plight of Adivasis to national press and policymakers helped mobilize the grievances against land dispossessions into a political question during the national general elections held later in 2004. The pre-election mobilizations continued well after, eventually culminating in the enactment of the Scheduled Tribe and Other Forest Dweller (Recognition of Forest Rights) Act (FRA) in 2006. Both the motivations for the FRA and its benefits illustrate important aspects of the promises and challenges of the UNDROP.

3.2 The Forest Rights Act of India and Its Enforcement

The FRA offers legal security of rights over the land that Adivasi peasants had already been farming, as well as the rights to collectively manage forests designated under the ‘community forest rights’ provisions of the law. The provisions of the FRA also include the rights to use and sell forest products other than timber, manage and conserve forests, the right of access to biodiversity, and community right to intellectual property. The FRA also recognizes the procedural rights of affected families and communities and gives them a major role in the process of adjudication of contested forest and land claims.⁶⁹ Notwithstanding these somewhat radical provisions, though it has been more than 10 years since the act became the law, its implementation has generally been disappointing, though there has been some variation across states.⁷⁰

To avoid the apparent conflict of interest on the part of the Ministry of Environment and Forests (MoEF), the GOI appointed the Ministry of Tribal Affairs (MOTA) as the nodal ministry responsible for implementation of the FRA.⁷¹ However, the expectations attached to the formal policy process have not come to fruition. According to the Ministry of Tribal Affairs, 4,102,4387 claims to household land rights were filed by April 2020. Only 48 per cent of these claims have been approved, while around 40 per cent of the claims have been rejected. On the other hand, about 51 per cent of the total 149,108 community forest rights (CFR) claims have been approved. The low rate of the approval of claims is only one of the ways in which the implementation of FRA has been undermined. The MoEF manipulated the national policy process, creating roadblocks against the implementation of the law.⁷² The structure of India’s forestry ministry and the state forestry administration does not create incentives for accountable behaviour.

The MoEF is one of the most well-resourced and most powerful ministries that holds jurisdiction over 22.5 per cent of India’s total landmass that is designated legally as forest. Maintaining territorial control of the forest estate, as opposed to the often-cited scientific expertise, forms the fundamental driver of the actions of Indian foresters.⁷³ The elite Indian

Forest Service (IFS) controls powerful positions in the forestry administration in central and state governments. The state forest departments are also led by IFS officers, who use the formidable network of officers in the state forest department to influence the implementation at the grassroots level. Despite a multi-tiered process for implementing the FRA, which includes elected representatives and officials from the tribal welfare department, our field research shows that local forest department officials work as a de facto authority in determining the outcomes of the process of the adjudication of priorities and decisions of district and sub-district level FRA committees.

The rights that the FRA guarantees for forest dwellers are also subverted, especially when they threaten the monopolistic control of the state and market actors over commercially lucrative non-timber forest products, such as tendu leaf used for the rolling of country cigarettes and bamboo.⁷⁴ The data from the Tribal Co-operative Marketing Development Federation of India Limited suggest that the estimated annual value of tendu leaves in the country is Rupees 10.4 billion and that of bamboo is Rs. 12 billion. This accounts for about 58 per cent of the total estimated *annual* value of all the major Non-timber forest products put together. The FRA gives Adivasis and other rights holders to collect and sell these two forest products, which was illegal previously, and if successful could contribute to a significant boost in local economic development. Dozens of villages in the Gadchiroli and Chandrapur districts of Maharashtra and six villages in the Kalahandi district of Odisha have successfully marketed these NTFPs.⁷⁵ However, in most other cases, the state forest departments continue to control the collection and sale of these valuable forest products. For instance, in December 2017, the MoEF changed the formal legal designation of bamboo from a ‘tree’ species to that of a ‘grass,’ which allowed for the deregulation of trade in the open market. However, the ministry has limited the applicability of this change to bamboo sourced from areas outside the legally designated forest areas, which constitutes a very small portion of the overall bamboo supply. These constraints are another example of how the MoEF has used policy processes to create barriers against the realization of gains from the FRA, which recognizes the rights of local communities to collect and trade bamboo from state forestlands designated under community forest rights.⁷⁶

Other actors with a vested interest in the exploitation of local natural resources also create barriers against the FRA. For example, we found that in the Sarguja district of Chhattisgarh, the district administration rescinded a duly approved community forest rights title because the area of forest that was part of the community claim included parts of an important coal block. Such failures and reversals are not limited to a select few cases. Our research in the central Indian states of Madhya Pradesh and Chhattisgarh shows that the rate of rejections of FRA claims correlates very significantly with the level of mining activity measured by the amount of District Mineral Funds.⁷⁷ Many environmental groups and forestry agencies seem to have actively undermined the exercise of CFRs, which are meant for promoting community-based forest and biodiversity conservation. Our research suggests that in some cases, senior forest department officials did not share full information about the community forest rights provisions of the FRA with local forest officials.⁷⁸ The MoEF or environmentalists have rarely stood in favor of the

protection of the CFRs threatened by mining and other commercial interests, such as tourism.⁷⁹ On the other hand, the advocates of the rights of Adivasis and other forest-dependent people are forced to spend a significant degree of time, energy, and resources to defend these rights.

Many international actors and agencies have spoken in solidarity with the rights of Adivasi peasants. This includes the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, the International Union for Conservation of Nature (IUCN), and the Washington based Rights and Resource Initiative. These and other groups have been advocating the proper implementation of FRA and has carried out studies to show the importance of FRA in improving the life and livelihood of Adivasis in the country.⁸⁰ Even so, these influential transnational voices seem not to have persuaded domestic actors to rethink their positions on the forest and land rights. This is especially true of the SCI that is often known for its activist verdicts. We turn next to the role that India's apex court has played in the contestation of rights within the purview of the FRA.

3.3 Counter-mobilising the Courts

The challenge of enforcing Adivasi land rights go beyond an 'implementation failure.' Soon after the enactment of the FRA, a group of retired forest department officials, acting in concert with some of India's most prominent wildlife organisations, lodged copycat lawsuits in several state High Courts (e.g., Tamil Nadu, Karnataka, Andhra Pradesh) simultaneously to challenge the constitutional validity of the FRA. They argued that enforcing the forest and land rights would undermine the ability of forestry agencies to be the 'custodian of forest lands,' violate India's international commitments, and lead to the destruction of forests.⁸¹ Additionally, wildlife conservation groups, such as Wildlife First, Wildlife Trust of India, Bombay Natural History Society, and Wildlife Conservation Society, lodged separate legal challenges in the Supreme Court of India. In 2015, the Supreme Court centralized the proceedings related to all these anti-forest rights cases, including those that had been filed originally in the state High Courts.

The centralization of these lawsuits should have allowed the central government to protect more effectively the sanctity of the law enacted by the Parliament of India. Similarly, the Ministry of Tribal Affairs and the relevant state governments, who are designated as formal respondents in the case, should also defend a law of the land. However, each of these actors have failed to perform their statutory obligations. Specifically, the attorneys of the Ministry of Tribal Affairs often fail to appear in the court, thereby giving the FRA opponents undue legal advantage.⁸² Moreover, the organizations representing Adivasis and other forest-dependent people, e.g., the Human Rights Law Network, All India Union of Forest Working People, and Citizens for Justice and Peace, are not allowed to intervene in these legal proceedings.⁸³ None of these actors who could potentially defend the FRA have access to the affidavits filed by the respondents or the petitioners, even though the outcomes of this legal suit would have massive consequences for the life, liberty, and subsistence of forest-dependent people.

The question of the constitutional validity of the legislation seems to have been lost in the ongoing proceedings of the case in the Supreme Court.⁸⁴ Instead, the apex court has veered into the executive functions of scrutinizing and managing the implementation of the law. For instance, the court has asked Forest Survey of India to assess the validity of FRA claims using geographic information systems (GIS). Such instructions go against the ruling of the High Court of the state of Gujarat, which found major problems in GIS-based analyses of FRA claims.⁸⁵ One of the most important decisions to have come out of this lawsuit reflects the consequences of asymmetrical engagement of different parties. Going beyond the question of proper implementation of the FRA's justice-oriented provisions, on February 13, 2019 the Supreme Court instructed state-governments to ensure 'time-bound eviction of all those families whose land claims the authorities had rejected, often erroneously. Computations based on a November 2018 report from the MOTA showed that if implemented, the Supreme Court's order would threaten the land rights, including homestead land in many cases, of an estimated 1.89 million households or nearly ten million Adivasis and other forest-dependent people.⁸⁶

The SCI's instructions outraged the forest rights movements who organized mass protests in several states. Social activists and concerned scholars argued that the court was punishing Adivasis and other forest peoples for the mistakes and negligence of the MoEF and state forest departments. They also pointed to the court's fixation on the vocabulary of 'encroachers' and the apparent intent to deprive them of their right to life and subsistence. Strong political mobilization forced eight states – Assam, Bihar, Chhattisgarh, Jharkhand, Karnataka, Maharashtra, Tamil Nadu, and Uttarakhand – to submit affidavits in the SCI acknowledging that they had failed to follow the proper legal process stipulated in the FRA.⁸⁷ For instance, the affidavit filed by the state government of Chhattisgarh acknowledged that it failed to provide a written communication to claimants about the rejection of their claims and to allow them to appeal these decisions, as the FRA requires. The state asked the court to grant it an additional period of time of two years to complete the process of reviewing all rejected claims and allowing for the due process for appealing such rejections.

Taking a cue from the affidavits filed by the state governments, the Ministry of Tribal Affairs has asked the states to undertake *suo moto* (cognizance by the court on its own) reviews of all the rejected claims. Some states have launched such reviews, but at least in some cases, the review process has also run into barriers similar to the ones that marred the implementation of FRA in the first place. The review process in states such as Odisha has turned into a proforma process of getting the claimants to sign a document saying that they have been informed of the rejection of their claims. Although the state government informed the Supreme Court that claimants would be notified about the date of their review hearing at least 15 days in advance, most of the claimants the second author talked to had received the information about the hearing only a day before the meeting. The review process did not seek to collect any evidence or require a hearing. It is a process that seems designed to reiterate the outcomes of the flawed process that led to the large number of claims being rejected in the first place, in many cases, quite

erroneously.⁸⁸ These constitute major violations of the notions of substantive and procedural justice germane to questions of human rights in any context.

4. Analysis

The pursuit of rights protected under UNDROF is likely to be challenging because of the broad-based scope of rights covered within the ambit of this declaration and the very high levels of socio-cultural and economic diversity among its intended beneficiaries in different parts of the world. India's indigenous Adivasi peasants, one of the largest populations of indigenous peoples who rely on a combination of subsistence farming and forest-based livelihoods represent an important exemplar of UNDROF's targeted beneficiaries.⁸⁹

The preceding text presented a case analysis of indigenous Adivasis to illustrate the complexities of the pursuits of economic and social rights of peasants and other rural populations. The analyses that we present in this section are preliminary and are intended to foster a debate on these important questions. A juxtaposition of the questions of forest and land rights vis-à-vis human rights scholarship points to five key themes relevant to the UNDROF agenda of protecting the rights of peasants and other working people in rural areas.

4.1 Embedded nature of the causes and sources of rights violations: The discussion above shows that the complex historical legacies and sociocultural contexts contribute to the systemic corroding of the economic and social rights of Adivasis and other forest-dependent people. These deeply embedded features of social and legal systems make it challenging to protect economic and social rights through new domestic laws or international declarations. This is especially true for the enforcement of procedural rights, which must be institutionalized through sustained efforts of actors and agencies working at different levels – from the consultations of the Human Rights Council and other human rights bodies within the UN system to the street-level bureaucracies responsible for the realization of procedural rights in practice. The squandering of the opportunity that the FRA presented for meaningfully engaging local communities and the ongoing proceedings of forest rights lawsuits in the Supreme court offer apt illustrations of these challenges.

These failures are not a result of a lack of legal provisions or a lack of awareness among those responsible for these violations, but of well-considered strategies for the pursuits of specific political and economic agendas. The challenges of mainstreaming the protection of rights enshrined within UNDROF are especially formidable in the context of the surge of populist right-wing leaders in India, Brazil, and the Philippines, among others. The evidence presented above reinforces the argument that Philip Alston makes for seeking more effective 'synergies between international and local human rights movements.'⁹⁰

4.2 Institutional context of democracy and economic liberalism: The liberal foundations of the human rights movement and scholarship make it vulnerable to the expectations that are often

attached to formal democratic institutions and the contributions that the processes of ‘liberalization’ can make to protection of human rights. From the vantage point of a liberal democratic framework, India counts as one of the most promising sites for the protection of human rights. However, these assumptions have been proved to be misplaced in a variety of different contexts. Socially and politically marginalized groups, e.g., Dalits, Muslims, Adivasis, and residents of Kashmir and north-eastern states, have frequently been targets of serious human rights violations.⁹¹ More specifically, Adivasis, Dalits, and other rural communities have been at the receiving end of the processes of economic liberalization and the attendant changes in the practices of law-making.⁹² The evidence on the undermining of FRA we presented above shows that while both democracy and liberalism can contribute to positive gains under certain conditions, neither guarantees the protection of economic and social rights, especially when such rights are entangled in powerful political and economic interests.

4.3 Political-economic entanglements of peasant rights: The evidence on the undermining of FRA we presented above is susceptible to be characterized in the vocabulary of ‘implementation failure.’ One way of dealing with these failures is to develop ‘safeguards’ meant to guard against the ‘unintended’ negative consequences of development projects, as exemplified in the Safeguard Policy Statement (SPS) issued by the Asian Development Bank (ADB) for the guidance of ADB staff and consultants, borrowers/clients and executing agencies, and private sector clients.⁹³ The evidence presented in this article and documented elsewhere shows that the safeguards approach is likely to be least effective in contexts where the recognition, enforcement, and protection of economic and social rights – rights to land, forests, water, and other natural resources in particular – are entangled with political and economic power concentrated in the hands of dominant social, political, and economic actors.⁹⁴ This suggests the need to revive old arguments about economic and political explanations of human rights violations.⁹⁵ Indeed, addressing these entanglements is likely to be more challenging in the context of economic and social rights protected under UNDROP because of the various conflicts of interest that cloud the decision-making of governments and powerful business actors. This is evident in the exacerbation of business-related threats to the lands, territories, and resources of indigenous communities amidst the ongoing COVID-19 pandemic.⁹⁶

4.4 Competition and contestations among progressive values and campaigns: The evidence presented above points to another daunting challenge that advocates of lands and resource rights enshrined within the UNDROP will have to address. Land and other natural resources – forests, fisheries, subsistence animal husbandry – are crucial for the subsistence and livelihoods of peasants and other rural people; they are also under the threats of environmental degradation and the loss of biodiversity. In many cases, the arguments made by advocates of exclusionary models of nature conservation clash with the arguments of social justice advocates, though cross-national research shows that the poorest countries and the poorest people within those countries bear a disproportionate share of the costs of global conservation.⁹⁷ Moreover, recent research has

shown potential synergies between the rights of local communities and the protection of natural resources.⁹⁸ Despite these research findings, the contestation and violation of economic and social rights at the hands of those advocating for other worthy causes, e.g., environmental conservation, is likely to prove quite a daunting conceptual and strategic challenge for human rights advocates. This also points to the importance of human rights advocates and scholars working with scholars of environmental policy and politics who have addressed these issues extensively.

4.5 Who will guard the guardian? The role of transnational advocacy coalitions: Lastly, the analysis of the trajectory of FRA also demonstrates the importance of holding the various institutions of the state, including the judiciary, to account. Liberal institutionalism often takes for granted the neutrality of the rule of law, which needs to be questioned in light of the near universal devotion that state institutions have shown to the agenda of neoliberalism.⁹⁹ While human rights advocates are no strangers to the bureaucratic and corporate resistance to the agenda of human rights protections, human rights scholarship has yet to examine the ways in which the hegemony of neoliberalism has affected the judiciary.¹⁰⁰ The evidence about the enforcement of FRA suggests major risks in relying excessively on the courts for the protection of human rights, especially in light of the powerful narratives of nature conservation deployed by some of the environmental groups. Under the conditions, the human rights community have the responsibility of supporting transnational advocacy coalitions for creating more robust lobbying capacities on behalf of Adivasi peasants.

5. Conclusion

In this article, we juxtaposed the rights protected under UNDROP vis-à-vis those that the Parliament of India has institutionalized via domestic laws, such as the PESA and the FRA. Considering India's reasonably strong institutions of democracy and an activist Supreme Court, one would expect a fair degree of success in rights protection. However, the insights we gain from this research on the FRA policy process and implementation for the past 12 years point to the daunting nature of the task ahead. Part of this has to do with the simple fact that the rights recognized under the FRA stand in contrast with the interest of dominant political and economic actors, which, we argue is likely to be a central challenge that UNDROP practitioners will confront in other contexts as well. To clarify, the lessons we distill from the foregoing analysis were drawn from the contestations over the FRA, which is legally binding domestic law. Since the provision of UNDROP are not legally binding, the challenges for UNDROP practitioners are likely to be even more daunting. Accordingly, our analysis also offers a transnational framework to mobilise the law from below by coalescing with existing domestic laws, such as the FRA, which was one of the motivations for this special issue, i.e., "Echoes from the Woods: At the Crossroads of Forest and Human Rights in Postcolonial India."

The analysis presented in this article is one of the first attempts to bring the strong body of research on India's forest and land rights struggles in conversation with the layered reading of human rights scholarship. Because of the space constraints, we have focused on forestland rights of Adivasis, and future research should pursue similar analyses focused on the tribes in the northeastern states and Dalits peasants in various parts of the country.¹⁰¹ Each of these groups are marginalized within Indian society, though the specific political and economic contexts differ significantly from the case of Adivasi forestland rights discussed here.¹⁰² Future research on the topic should also engage more deeply with the 'gendered geographies' of struggles of working men and women, including the fisherfolks and herders.¹⁰³

However, the preceding analysis points to a few potentially productive avenues for comparative collaborative research. While the sociocultural histories of the forest peasants in other countries in Asia and on the continents of Africa differ quite significantly, the broader question of the political and economic determinants of rights protections is applicable in those other contexts as well. The existing scholarship suggests that it is likely that Latin American countries will spearhead the advocacy around UNDROP because the discourses and policy tools linked to human rights doctrines have a stronger acceptance in this region. If that happens, it would be crucial to recall that the political and policy contexts in Latin America make these contestations more visible and are addressed with greater relative success there.¹⁰⁴ Somewhat ironically, Latin America has also witnessed a tendency to prioritize the rights protections for indigenous peoples as compared to the rights of peasants.¹⁰⁵ The analysis of FRA we present here cautions against putting indigenous peoples and peasants in discrete legal or conceptual categories. At the same time, we invite scholars to engage with the regionally specific formulations of indigenous, campesine, and peasant identities, and to investigate the implications for human rights scholarship and advocacy. Drawing on an interdisciplinary analytical approach, we encourage collaborations among scholars of human rights, development studies, and environmental politics and policy.

We have argued that situating UNDROP within the context of the contestations over forest and land rights yields five key insights: 1) importance of recognizing the embedded nature of the sources and causes of the violations of economic and social rights; 2) need to exercise caution against pinning false hopes on institutions of democracy and economic liberalism; 3) political economic entanglements of economic and social rights; 4) being alert to the competition and contestations among multiple progressive values and campaigns; and, 5) the failure of internal conflict resolution mechanisms and the need for building stronger transnational advocacy coalitions. We hope these arguments generate some debate and give rise to further engagements among scholars and human rights practitioners.

References

- 1 Sudgen F, Agarwal B, Leder S, Saikia P, Raut M, Kumar A, et al. Experiments in farmers' collectives in Eastern India and Nepal: Process, benefits, and challenges. *Journal of Agrarian Change*. 2020.
- 2 Samuel Moyn, Human Rights Are Not Enough, *The Nation*, March 16, 2018, <https://www.thenation.com/article/archive/human-rights-are-not-enough/> (2018).
- 3 Martín Abregú, What strengthening human rights has to do with challenging inequality, Ford Foundation, May 22, 2017, <https://www.fordfoundation.org/ideas/equals-change-blog/posts/what-strengthening-human-rights-has-to-do-with-challenging-inequality/> (2017)
- 4 Abregú (See note 3)
- 5 Catherine Corson and Kenneth Iain MacDonald, 'Enclosing the Global Commons: The Convention on Biological Diversity and Green Grabbing', *Journal of Peasant Studies* 39, no. 2 (2012): 263-83. George Holmes, 'What Is a Land Grab? Exploring Green Grabs, Conservation, and Private Protected Areas in Southern Chile', *The Journal of Peasant Studies* 41, no. 4 (2014).
- 6 Adivasi is the marker of identity used most by India's indigenous people in central, western, and parts of eastern India. This is the focus of analysis in this article. However, indigenous peoples in north-eastern India, who constitute approximately 12% of the total population of India's indigenous peoples, often use the identity of different tribes. For an analysis of the entanglement of cultural factors in shaping the articulation of Adivasi rights and their political mobilization, see, Ranjan R. Politics of Symbolism: The Making of Birsa Munda's Statue in Post-colonial Jharkhand, India. *Bandung*. 2020;7(1):130-61.
- 7 TN Srinivasan, 'Evolution of Judicial Activism: The Supreme Court of India', in *Development in India: Micro and Macro Perspectives*, eds. S. Mahendra Dev and P.G. Babu (Springer, 2016).
- 8 Kashwan P. Botched-up Development and Electoral Politics in India. *Economic & Political Weekly*. 2014; XLIX (34):48-55.
- 9 For results of the survey research, see, Kashwan P. What explains the demand for collective forest rights amidst land use conflicts? *Journal of Environmental Management*. 2016. 183: 657-66.
- 10 Mauro Barelli, 'Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples: Developments and Challenges Ahead', *The International Journal of Human Rights* 16, no. 1 (2012).
- 11 The usage here are in solidarity with a new movement in Argentina, Chile, and other parts of Latin America to use gender neutral terminology for social movements. Campesine is being used as a gender-neutral term for a joint reference to movements of campesinos and campesinas. We thank Thomas DeGolier for drawing our attention to this via Twitter.
- 12 Solon L. Barraclough. *The Legacy of Latin American Land Reform*. NACLA. September 25, 2007. <https://nacla.org/article/legacy-latin-american-land-reform;>

- 13 Prakash Kashwan, *Democracy in the Woods: Environmental Conservation and Social Justice in India, Tanzania, and Mexico*, (New York: *Oxford University Press*, 2017).
- 14 Philip Alston. Phantom rights: the systemic marginalization of economic and social rights. 4 August 2016 <https://www.opendemocracy.net/en/openglobalrights-openpage/phantom-rights-systemic-marginalization-of-economic-and-social-rights/> (2016).
- 15 Margaret E Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, (Cornell University Press, 1998).
- 16 Samuel (See note 2)
- 17 K. De Feyter, *Localizing human rights*. Antwerpen: Universiteit Antwerpen, Institute of Development Policy and Management; 2006. No. 2006/02, *IOB Discussion Papers*. (2006).
- 18 Arne Vandenberg, 'Localizing the Human Rights Council: A Case Study of the Declaration on the Rights of Peasants', *Journal of Human Rights* 16, no. 2 (2017)
- 19 De Feyter (See note 17)
- 20 Steven Bernstein and Benjamin Cashore, 'Globalization, Four Paths of Internationalization and Domestic Policy Change: The Case of Ecoforestry in British Columbia, Canada', *Canadian Journal of Political Science / Revue canadienne de science politique* 33, no. 1 (2000): 67-99, www.jstor.org/stable/3232618.
- 21 Gillian MacNaughton and Angela Duger, *Translating International Law into Domestic Law, Policy and Practice*, in Lawrence O. Gostin and Benjamin Mason Meier (eds), *Foundations of Global Health and Human Rights*, Oxford University Press (2020): 113-132.
- 22 Anne Marie Goetz and Rob Jenkins, 'Feminist Activism and the Politics of Reform: When and Why Do States Respond to Demands for Gender Equality Policies?', *Development and Change* 49, no. 3 (2018): 714-34.
- 23 Thomas Risse, 'Human Rights in Areas of Limited Statehood: From the Spiral Model to Localization and Translation', *Human Rights Future* (2018): 135-59.
- 24 Risse (See note 23)
- 25 Prakash Kashwan, 'Power Asymmetries and Institutions: Landscape Conservation in Central India', *Regional Environmental Change* 16, no. 1 (2016): 97-109.
- 26 Shalini Randeria, 'Cunning States and Unaccountable International Institutions: Legal Plurality, Social Movements and Rights of Local Communities to Common Property Resources', *European Journal of Sociology* 44, no. 01 (2003): 27-60
- 27 Jonathan A. Fox, 'Social Accountability: What Does the Evidence Really Say?', *World Development* 72(2015): 346-61
- 28 Kashwan (See note 13)
- 29 Maria Cristina Rulli, Antonio Savioli, and Paolo D'Odorico, 'Global Land and Water Grabbing', *Proceedings of the National Academy of Sciences* 110, no. 3 (2013): 892-7.

- 30 Tobias Gumbert and Doris Fuchs, 'The Power of Corporations in Global Food Sector Governance', in *Handbook of the International Political Economy of the Corporation*, (Edward Elgar Publishing, 2018).
- 31 Chris Malins, *Thought for Food - a Review of the Interaction between Biofuel Consumption and Food Markets*, (London: Cerulogy, 2017).
- 32 Claeys, Priscilla and Edelman, Marc, "The United Nations Declaration on the rights of peasants and other people working in rural areas" *Journal of Peasant Studies*, 2020, VOL. 47, NO. 1, 1–68 <https://doi.org/10.1080/03066150.2019.1672665>
- 33 Claeys and Edelman (See note 32).
- 34 UN General Assembly Resolution 39/12, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018), A/HRC/RES/39/12 (28 September 2012), available from <https://digitallibrary.un.org/record/1650694?ln=en>
- 35 UN General Assembly (See note 34)
- 36 UN General Assembly, p. 11 (See note 34)
- 37 UN General Assembly, p. 8 (See note 34)
- 38 UN General Assembly (See note 34)
- 39 UN General Assembly (See note 34)
- 40 Via Campesina English. 2003. *Food Sovereignty - Via Campesina*. [online] Available at: <<https://viacampesina.org/en/food-sovereignty/>> [Accessed 15 May 2020].
- 41 Peschard K, Randeria S. 'Keeping seeds in our hands': the rise of seed activism. *The Journal of Peasant Studies*. 2020:1-33.
- 42 UN General Assembly (See note 34)
- 43 Andre Beteille, 'The Idea of Indigenous People', *Current Anthropology* 39, no. 2 (1998): 187-92,
- 44 United Nations Declaration on the Rights of Indigenous Peoples. A/61/295, 13 December 2007 <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (2007).
- 45 B.K. Roy Burman, 'The Indigenous Peoples and the Problem of Human Rights', in V.K. Gupta (ed.) *Perspectives on Human Rights*, Vikas Publishing House, (1996)
- 46 Li Tania M. Indigeneity, Capitalism, and the Management of Dispossession. *Current Anthropology*. 2010;51(3):385-414.
- 47 La Via Campesina, Press Release: La Via Campesina responds to COP23 calling for Peasant Agroecology, November 9, 2017 <https://viacampesina.org/en/via-campesina-responds-cop23-calling-peasant-agroecology/> (2017)
- 48 UN General Assembly (See note 22)

- 49 Personal interview, Brazilian indigenous leader and activist Sonia Guajajara, February 14, 2020.
- 50 This section builds quite significantly on and quotes liberally from Kashwan P. Democracy in the Woods: The Politics of Institutional Change in India's Forest Areas: Indiana University. <http://gradworks.umi.com/34/82/3482493.html>; 2011.
- 51 CR Bijoy et al., *India and the Rights of Indigenous Peoples: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous and Tribal Peoples in India and Their Relation to International Law on Indigenous Peoples*, (Asia Indigenous Peoples Pact, 2010).
- 52 Bijoy et al. (See note 51)
- 53 Bengt G. Karlsson, 'Anthropology and the 'Indigenous Slot': Claims to and Debates About Indigenous Peoples' Status in India', *Critique of Anthropology* 23, no. 4 (2003): 403-23.
- 54 Uday Chandra. Going primitive: The ethics of indigenous rights activism in contemporary Jharkhand. *South Asia Multidisciplinary Academic Journal*. 2013 (7).
- 55 B.P. Singh. Nehru's Tribal Philosophy in Jawaharlal Nehru Centenary Volume (1989), Cited in Kashwan (See note 13).
- 56 Singh (See note 55).
- 57 Prime Minister Indira Gandhi speaking to state chief ministers at a conference on land reforms on September 26, 1970.
- 58 Walter Fernandes, 'Development Induced Displacement and Sustainable Development', *Social Change* 31, no. 1-2 (2001): 87-103.
- 59 Nandini Sundar, 'The Rule of Law and Citizenship in Central India: Post-Colonial Dilemmas', *Citizenship Studies* 15, no. 3-4 (2011): 419-32.
- 60 Kashwan (See note 8)
- 61 Ishan Kukreti, Long overdue change made in new draft of Forest Policy, *Down to Earth*, March 15, 2018, <https://www.downtoearth.org.in/news/forests/moef-releases-draft-national-forest-policy-2018-59898> (2018).
- 62 Noticeably, Schedule VI areas, which are a similar category of administrative designation, apply to regions dominated by tribal communities in the north-eastern states of India.
- 63 CR Bjoy, Panchayat Raj (Extension To Scheduled Areas) Act Of 1996. Policy Brief, 2012. United Nations Development Program, New Delhi. (2012)
- 64 Anindita Adhikari and Vasudha Chhotray, 'The Political Construction of Extractive Regimes in Two Newly Created Indian States: A Comparative Analysis of Jharkand and Chattisgarh', *Development and Change* (2019).
- 65 Ravi Rebbapragada, 'The Importance of the Samata Judgement: A Weapon of the Weak and the Marginalised', *Common Cause Vol. XXXVI No. 3 (July-September 2017)*: 15-18

- 66 Down To Earth, 'The battle over forests, Down to Earth', <https://www.downtoearth.org.in/indepth/the-battle-over-forests-12366> (2015).
- 67 Kundan Kumar and John M. Kerr, 'Democratic Assertions: The Making of India's Recognition of Forest Rights Act', *Development and Change* 43, no. 3 (2012)
- 68 Prakash Kashwan, 'The Politics of Rights-Based Approaches in Conservation', *Land Use Policy* 31(2013): 613-26.
- 69 Kashwan (See note 68).
- 70 Bidhan Kanti Das, 'Denial of Rights Continues: How Legislation for 'Democratic Decentralisation' of Forest Governance Was Subverted in the Implementation Process of the Forest Rights Act in India', *The European Journal of Development Research* 31, no. 4 (2019).
- 71 Personal interviews with the FRA drafting committee members, Delhi, March 2018. Noticeably, the MOEF was rechristened as the Ministry of Environment, Forests, and Climate Change (MOEF & CC), for the sake of historical accuracy we use MOEF throughout the text.
- 72 Das (See note 70).
- 73 Forrest D. Fleischman, 'Why Do Foresters Plant Trees? Testing Theories of Bureaucratic Decision-Making in Central India', *World Development* 62 (2014). Kashwan (See note 13).
- 74 Each conceptual category such as the Adivasi, peasant, and farmer are rooted in specific dimension of the historical origin and mobilization (as shown above in citation 7). The paper advocates for and demonstrates the strength on drawing on the basic formulation – the access to land and forest rights. The paper shows the overlapping interest, use and function of land – and by extension the impact of their livelihoods.
- 75 Interviews with villagers in Chandarpur, Gadchiroli and Kalahandi districts, Delhi, November, 2017
- 76 PTI, Bamboo not a tree: Parliament passes Bill amending Forest Act, December 27, 2017 <https://economictimes.indiatimes.com/news/politics-and-nation/bamboo-not-a-tree-parliament-passes-bill-amending-forest-act/articleshow/62270040.cms>
- 77 Nitin Sethi, Chhattisgarh govt cancels tribal rights over forest lands (Business Standard), February 18, 2016, https://www.business-standard.com/article/current-affairs/chhattisgarh-govt-cancels-tribal-rights-over-forest-lands-116021601327_1.html
- 78 Prakash Kashwan, 'What Explains the Demand for Collective Forest Rights Amidst Land Use Conflicts?', *Journal of Environmental Management* 183 (2016, 664): 657-66.
- 79 Kashwan (See note 25).
- 80 Rights and Resources Initiative, Evicting Millions of Indigenous and Local Peoples from Their Forest Homes—as Ordered by Indian Supreme Court—Is Condemned by Global Experts, March 19, 2019. <https://rightsandresources.org/en/blog/evicting-millions-of->

- indigenous-and-local-peoples-from-their-forest-homes-as-ordered-by-indian-supreme-court-is-condemned-by-global-experts/; Sabrangindia, UN to India: Implement FRA 2006, Stop forced evictions of Adivasis & Forest dwellers, August 20, 2019, <https://www.sabrangindia.in/article/un-india-implement-fra-2006-stop-forced-evictions-adivasis-forest-dwellers>; Anon, Open Letter to Prime Minister Manmohan Singh, Gram Sabha's voice in forest clearance needs to be strengthened, not diluted, January 24, 2013, <<https://www.fra.org.in/document/Open%20Letter%20to%20Dr.%20Manmohan%20Singh,%20for%20fax,%20hard%20copy%20mail.pdf> [Accessed on May 3, 2020].
- 81 Sethi, N. After activists, retd officials file plea against forest act. *The Times of India*. 2008. <https://www.pressreader.com/india/the-times-of-india-new-delhi-edition/20080715/281865819241682>
- 82 Opposition Leaders, People's Organisations Ask if Govt Has Decided to Sacrifice Forest Rights Act, <<https://forestrightsact.com/2019/02/04/opposition-leaders-peoples-organisations-ask-if-govt-has-decided-to-sacrifice-forest-rights-act/>>
- 83 Kukreti, the second author on this article, has been regularly attending the hearings at the Supreme Court.
- 84 Arpitha Kodiveri, 'Wildlife First and People Later? Forest Rights and Conservation - Towards an Experimentalist Governance Approach', *Indian Journal of Law and Society* 9(2018): 39-63.
- 85 Explainer: Millions Face Possible Eviction – What is the Supreme Court Forest Rights Case About? July 23, 2019. https://forestrightsact.com/2019/07/23/explainer-millions-face-possible-eviction-what-is-the-supreme-court-forest-rights-case-about/#m_5823298656838915593gmail-what-is-all-this-talk-about-satellite-imagery.
- 86 Nitin Sethi. SC eviction order likely to impact 1.89 mn tribal, forest-dwelling families. *Business Standard*. February 21, 2019. https://www.business-standard.com/article/current-affairs/sc-eviction-order-likely-to-impact-1-89-mn-tribal-forest-dwelling-families-119022101132_1.html
- 87 Sumedha Pal, States Admit Due Process Not Followed While Investigating FRA Claims, *NewsClick*, August 1, 2019. <https://www.newsclick.in/states-admit-due-process-followed-investigating-FRA-claims>
- 88 Personal observation, Author 2, Review meeting at the sub-divisional committee, Kutra block, Sundargarh district, July 5, 2019.
- 89 In this special issue, for instance, Shaunna Rodriguez shows the arrangement of sixth schedule, different processes and the ways in which it shapes the administrative pursuit of restoring the rights of the Indigenous Peoples.
- 90 Alston (See note 14)
- 91 Arundhati Roy. How deep shall we dig? *The Hindu*, April 25, 2004. <https://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/how-deep-shall-we-dig/article27602147.ece>

- 92 Shah A, Shneiderman S. The practices, policies, and politics of transforming inequality in South Asia: Ethnographies of affirmative action. *Focaal*. 2013;2013(65):3-12.
- 93 Asian Development Bank. *Indigenous Peoples Safeguards: A Planning and Implementation Good Practice Sourcebook* (Draft Working Document), 2013
<https://www.adb.org/documents/indigenous-peoples-safeguards-planning-and-implementation-good-practice-sourcebook>
- 94 Ranjan, R., “Unravelling the Narratives of Adivasi Dispossession: A Case Study of Land Acquisition in Nagri Village, Jharkhand.” *Development* 60, Issue 3–4 (December 2017): 227–234
- 95 Neil J. Mitchell and James M. McCormick, 'Economic and Political Explanations of Human Rights Violations', *World Politics* 40, no. 4 (2011): 476-98
- 96 OHCHR. “COVID-19 is devastating indigenous communities worldwide, and it’s not only about health” – UN expert warns. 2020
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx>
- 97 Kashwan P. Inequality, democracy, and the environment: A cross-national analysis. *Ecological Economics*. 2017;131 139–51.
- 98 Annie Sneed. What Conservation Efforts Can Learn from Indigenous Communities. *Scientific American*. 2019. <https://www.scientificamerican.com/article/what-conservation-efforts-can-learn-from-indigenous-communities/>
- 99 Hertel S. Hungry for justice: Social mobilization on the right to food in India. *Development and Change*. 2015;46(1):72-94.
- 100 O'Connell P. The Death of Socio-Economic Rights. *The Modern Law Review*. 2011;74(4):532-54.
- 101 Kothari M, Karmali S, Chaudhry S. The human right to adequate housing and land. New Delhi: National Human Rights Commission. 2006;56.
- 102 For a discussion of Dalit land rights in the context of the FRA, See, Kodiveri A. *Narratives of Dalit Inclusion and Exclusion in Formulating and Implementing the Forest Rights Act*, 2006: Hindu Centre for Politics and Public Policy; 2016.
- 103 Desai M. *Subaltern movements in India: Gendered geographies of struggle against neoliberal development*: Routledge; 2015.
- 104 Kashwan (See note 13).
- 105 Lorenza Belinda Fontana, 'Indigenous Peoples Vs Peasant Unions: Land Conflicts and Rural Movements in Plurinational Bolivia', *Journal of Peasant Studies* 41, no. 3 (2014): 297-319.