

# Human Rights as Paradox and Equivocation in Contexts of Adivasi<sup>1</sup> (original dweller) Dispossession in India

Journal of Asian and African Studies  
47(4) 404–420  
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DOI: 10.1177/0021909612438092  
[jas.sagepub.com](http://jas.sagepub.com)  


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## Abstract

This paper advances the proposition that a dialectical appreciation of the politics of state-institutionalized human rights in colonial and neoliberal hegemonic (imperial) contexts helps to shed light on why Adivasi facing development displacement and dispossession are unlikely to advance their political and existential interests through recourse to an estatized human rights mechanism embedded in global and national political and economic structures imbricated in the historical projects of colonialism and imperialism (globalization of capitalism). Adivasi social movement inspired ‘human rights’ (and related conceptions) informed by an anti-colonial/imperial project that transgress these trajectories continue to provide the primary political impetus for asserting the continued place of Adivasi (see Kapoor, 2011 for an elaboration on such assertions). The paper is informed by funded research into ‘Learning in Adivasi social movements in eastern India’ (2006–2009), the author’s relationship with Adivasi and rural movements/activism in this region since the early 1990s, and secondary literature addressing the politics of human rights in Adivasi contexts of development displacement and dispossession.

## Keywords

Adivasi/original dwellers, anti/colonialism, hegemony, human rights, empire/neoliberalism, social movements

The ‘new’ nations of Asia and Africa somewhat understandably insisted that the right to self-determination extended only to situations of ‘classic colonialism’, available to their ‘peoples’ only once in history: to determine their collective status as sovereign states within the meaning of international law. That right once exercised was extinguished for all times; this presumed that the ‘logic’ of colonialism, which made all sorts of different peoples, cultures, and territories vessels of imperial unity, should continue in the post-colony. (Baxi, 2002: 36)

## Introduction

According to the United Nation (UN)’s working group on indigenous populations and the International Work Group for Indigenous Affairs (IWGIA), problems faced by indigenous peoples

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of Asia include 'plundering of resources', 'forced relocation' and 'forced integration of indigenous peoples into market economies' (Eversol, et al., 2005: 32; Fisher, 1999). These problems have been exacerbated in the post-1991 New Economic Policy (NEP) environment in India (Baviskar, 2005; Fernandes, 2006; Ghosh, 2006; Kapoor, 2011; McMichael, 2010; Mehta, 2009; Menon and Nigam, 2007; Oliver-Smith, 2010; Patnaik, 2007; Prasad, 2004; Ray and Katzenstein, 2005; Sanyal, 2010) where the key neoliberal response to the Adivasi as a state-defined category of impoverished peoples in need of inclusion and amelioration or what amounts to a political exercise in exclusive governmentality and socio-economic control (Ghosh, 2006; Kapoor, 2010), has been to enable processes of displacement, dispossession or market assimilation (Cameron and Palan, 2004; Padel and Das, 2010).

Subsequently, while Adivasis constitute 8% of the Indian population (or 80 million or more people belonging to some 612 scheduled tribes), they account for 40% of development-displaced persons (DDPs). In the state of Orissa (the context of the research base for this paper), which is home to 62 groups numbering eight million or more people where Adivasis make up 22% of the population, they account for 42% of DDPs (Fernandes, 2006; Hussain, 2008). According to some estimates, dams, mining, industries and parks have displaced 21.3 million people between 1951 and 1990 (prior to the neoliberal-turn in the Indian economy and the establishment of special economic zones, or SEZs, that have accelerated this process) of which 40% were Adivasi and 20% were Dalit (or scheduled castes) peoples (Nag, 2001). The government of India acknowledged 15.5 million displaced persons when it finally drafted a national rehabilitation policy in 1994, of which 75% are/were still awaiting 'rehabilitation' (Bharati, 1999: 20).

Development-displacement and dispossession of Adivasi and rural subalterns (including Dalits) continues to proliferate while India remains a signatory to the International Labour Organization (ILO) Convention No. 169 (and several other inter/national human rights and legal commitments) that require governments to recognize indigenous 'rights of ownership and possession ... over the lands, which they traditionally occupy', while further stipulating that

indigenous peoples have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. (Hannum, 2003: 88)

A UN document entitled 'The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development Based Displacement' states that evictions constitute a prima facie violation of a wide range of internationally recognized human rights, while a 1990 UN document ('Global Constitution on the Realization of the Right to Development as a Human Right') explicitly recognizes 'that the most destructive and prevalent abuses of indigenous rights are a direct consequence of development strategies that fail to respect the fundamental rights of self-determination' (Das, 2001: 86). Indigenous peoples have finally, after persisting over a 30-year period, secured ratification (including more recent 'partial' endorsement by the United States [US], Canada, Australia and New Zealand) for the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP; November 2007).

This paper attempts to make sense of these processes of on-going Adivasi development displacement and dispossession despite the proliferation of various human rights instruments and guarantees that should in effect supposedly pre-empt such continued colonization and neoliberal exploitation of Adivasi space. The proposition advanced here is that a political

analysis of human rights as a politics of imperialism and colonial continuity in contexts of development-displacement and dispossession of Adivasi provides a compelling explanation for why human rights-based approaches to address the coloniality of the contemporary neoliberal project (or what Peruvian political-sociologist Anibal Quijano [2000: 215] has referenced as the *coloniality of power* being expressed through a globalizing capitalism) remains paradoxical at best and/or equivocal by design. Such human rights deployments, whether as paradox or as *necessary* equivocation in hegemonic designs, require close scrutiny in the *Age Of Rights* (Henkin, 1990) when, 'for many in the west, human-rights discourse has emerged as the sole language of resistance to oppression and emancipation in the Third World' (Rajagopal, 2003: 172). Furthermore, such scrutiny is also warranted given that some observers have pointed to the symbiotic relationship between human rights and imperialism, suggesting that 'Empire's powers of intervention might best be understood as beginning not directly with its weapons of lethal force but rather with its moral instruments' such as those 'global, regional, and local organizations that are dedicated to relief work and the protection of human rights' (Hardt and Negri, 2000: 35–36); that is, international human rights activism as a form of high moral imperialism in the service of empire. According to Randall Williams (2010), there is an urgent need to re-examine the politics of human rights given the 'ascendancy of rights as the privileged discourse for the symbolic articulation of international justice in an era of advanced global capitalism' (xv), especially since the demise of state-socialisms in the late 1980s. Reading the politics of the Zapatistas in Chiapas, Mexico, Williams (2010) describes their attempt to construct another way of practicing politics as a turn away from a statist-rights-defined approach and as 'a refusal to accept any modified project of modernity that reproduces the colonial capitalist divisions of humanity' (xxiv).

Having acknowledged these dubious links between human rights and colonialism and imperialism, human rights simultaneously offer an albeit problematic ethico-political-legal space and a derivative-politics/discourse for Adivasi/other rural subaltern social movement politics addressing continued colonization and neoliberal hegemony (imperialism). The paper subsequently alludes to the relatively limited potential of official/estitized human rights (as opposed to movement-generated conceptions of human rights which are briefly referenced) for Adivasi and rural subaltern movements that seek to deploy these state human rights mechanisms for redress and the *delivery of human rights* (Stammers, 2009) in the age of imperialism (Boron, 2005; Chomsky, 1998; Evans, 1998; Hardt and Negri, 2000; Harvey, 2003; Mookerjee, 2011; Williams, 2010).

These insights are developed from funded research exploring and contributing towards Adivasi (Kondh, Saora and Panos/Dalits) social movement learning (Kapoor, 2009a, 2009b) between 2006 and 2009 in South Orissa (Gajapati district) that has addressed the politics of the Adivasi-Dalit Ektha Abhijan (ADEA) movement (which encompasses 120 villages or some 20,000 people) and translocal Adivasi/subaltern activism in Orissa (Kapoor, 2011); the author's engagements with Adivasi movement activism in South Orissa since the early 1990s; and pertinent theoretical and secondary literatures concerning Adivasi and/or the politics of human rights. The academic project addressed here seeks to avoid an anthropologization of Adivasi (Kapoor and Shizha, 2010; Tuhiwai-Smith, 1999) as objects of knowledge-production for efficient statecraft or for purposes advancing the reproduction of capital (Kapoor and Jordan, 2009); the attempt is to objectify, scrutinize and expose the processes and institutions of continuous colonial domination and neoliberal (imperial) penetration and exploitation of Adivasi and rural subalterns, including related hegemonic constructions and deployments of human rights in-service of this project.

## **Towards a Political Appreciation of State-Institutionalization of Rights and the Politics of Human Rights in Contexts of Development-Displacement: Colonialism, Neoliberalism and Adivasi Dispossession in the 'Post-Colony'**

Popular conceptions of human rights are often associated with the international system that was initiated in 1948 as the Universal Declaration of Human Rights (UNDHR). As noted by Neil Stammers (2009: 116), in contrast to a process whereby human rights have arisen out of various social struggles and then been institutionalized, the construction of the international human rights system was an institutionalized process from the outset: an institutionalized process between elite actors at the level of the inter-state system. Critics of this institutionalization have pointed out the western and Eurocentric bias of the UNDHR in terms of the foundational values and ethics embedded in the declaration (e.g. primary commitment to liberal-individualism), in turn serving the wider political-economic and cultural interests of capital and powerful western states (Evans, 1998), despite the shaping influence of non-western states and anti-colonial critics like Gandhi and Nkrumah (Ishay, 2004). Randall William's (2010) analysis points to the predictability of such an arrangement once we shift our analytical perspective from one that assumes that colonialism and imperialism is a *problem for* international law and human rights to one that 'grasps their mutually constitutive relationship' (p. xx). China Mieville's (2005: 293) Marxist analysis of international law, similarly argues that international law and human rights, in fact, '*assumes imperialism*' (emphasis added). According to this line of thinkers, the rise to prominence of international human rights regimes needs to be understood keeping in mind the context of the post-war era and the advance of global capitalism driven by the ascendance of US imperial power (economic and military) and the reconfiguration of global power under the aegis of 'the collective imperialism of the triad of the US, Europe (west of the Polish frontier) and Japan' (Amin, 2006). Williams (2010) points out the need to recognize that the post-war re-formation of international institutions

did not constitute a break with the historical structures of colonial violence but instead was part and parcel of an imperialist-directed reorganization of relations within and between contemporary state and social formations: the colonial, the neocolonial, and the neoimperial. (Williams, 2010: xx1)

The post-1991 (new economic policy) opening-up of the Indian political-economy to the historical development and reproduction of capital advanced by the imperial collective, arguably, makes the Indian state a complicit actor in this project with associated implications for similar deployments of an institutionalized human rights apparatus.

### ***Estatized-Human Rights and the Politics of Institutionalization***

The institutionalization of human rights thus conceived have served to not only propagate a post-colonial capitalist development project in the post-colony but, by being located in the very structure of power of the state (given the associated conception of *delivery of human rights by the state* – see Stammers, 2009), seriously constrained the possibility of using human rights to challenge the power of the state. Indeed, the power of *eminent domain* or the power that the Indian state may exercise over all land within its territory and the law related to the compulsory acquisition of land for a *public purpose* (Ramanathan, 2009: 133, emphasis in original) with a wide open interpretation of *what exactly constitutes public purpose* or *for which public* is pertinent here in relation to development displacement and dispossession of Adivasi for state-corporate projects (e.g. mining in Orissa)

as appeals to relevant human rights enshrined in covenants, conventions and constitutional schedules/provisions by Adivasi social movements/struggles becomes 'a matter solely for executive determination and statement, and, is therefore, non-justiciable'. In fact

the endorsement of the *eminent domain* power of the state in the early constitutional years of independent India was assisted by jurisprudence that developed around the colonial Land Acquisition Act of 1894 . . . it has also not been tempered by altered notions of the relationship between citizens and the state which independence from colonial power may well be expected to bring in its wake. (Ramanathan, 2009: 133–134)

Thus, as noted by Stammers (2009: 115), the 'institutionalization of human rights within modern nation states has resulted in understandings, approaches and policies with respect to human rights which are often deeply ambiguous in relation to power'.

The institutionalization of human rights in state power and mechanisms for redress was also largely predicated on the assumption that the people's right to self-determination enshrined in article 21 of the UNDRH, which states that 'the will of the people shall be the basis of the authority of government' (Rajagopal, 2003: 192–193), was to be understood exclusively as a right of national self-determination for independent statehood during the time of national anti-colonial struggles, as Third World states accepted human rights because there was an understanding that this would expand the ambit of the state and the sphere of governance. Such a truncated notion of the right to self-determination, or what Richard Falk (2000: 102) describes as a 'sanction that only repudiates alien rule at the level of the state', effectively precludes similar appeals to self-determination by Adivasi peoples and internal minorities subsequently failing to provide a similar rights mechanism for such struggles against various forms of internal colonization (see related quote by Uppendra Baxi at the commencement of this paper), thereby negating what Falk (2000: 97) calls a potentially 'powerful mobilizing instrument with which to resist involuntary governance', as in the case of development-dispossession of Adivasi and rural subalterns; that is, 'neocolonialism is born just when the practices of the right to self-determination seem to succeed [national decolonization in the post-war period]' (Baxi, 2002: 26). Or in the words of a Kondh Adivasi elder, 'We fought the British thinking that we will be equal in the independent India' (interview, January 2007). Even at the international level, some observers have noted that 'the wider human rights network does not see development aimed at integrating indigenous peoples into the national society as a human rights violation' (Blaser, et al., 2004: 6). That is, the ability of indigenous organizations to call on human rights groups to further indigenous projects is limited (Choudry, 2007) since the latter tend to view the state's integrationist agenda as being legitimate, as long as the development state follows the model of the developed countries and avoids the most flagrant violations of human rights in executing its projects.

The institutionalization of human rights within state power not only limits (or renders relatively ineffective) Adivasi people's recourse to such rights when questioning the actions of the state in relation to the dispossession of Adivasi: the content and reach of human rights is also subject to state-corporate monopolization and definition. For instance, in contexts of Adivasi development displacement and dispossession (neocolonial appropriations of space and peoples) for accelerated neoliberal-inspired economic growth projects (exploitation of Adivasi land, labour and ecology in the pursuit of profit), fundamental relationships between violence and human rights discourse can be assessed to determine which types of violence are recognized as 'violations' by the human rights discourse and which are not and why. As Balakrishnan Rajagopal (2003: 173) puts it, 'does human rights discourse have a theory of violence and how does this theory relate to development?'

His own analysis suggests that the 'estatization of human rights' and the role of the state in the realization of human rights is, as Upendra Baxi explains, 'a discourse concerning justified violence' (quoted in Rajagopal, 2003: 174). Human rights discourse, then, is not based on a theory of non-violence but it approves certain forms of violence and disapproves certain other forms. Pertinent to the Adivasi context of development displacement, dispossession and colonization, Rajagopal (2003: 195) suggests that, while the mass deportation of 1.5 million people from Phnom Penh by the Khmer Rouge in 1975 is considered a crime against humanity, 'the mass eviction/deportation of 33 million development refugees from their homes due to development projects such as dams, by the Indian government, is simply seen as a social cost (if at all) of development'. He concludes that such selective blindness around certain forms of violence can be explained by the pathological link between human rights and models of the state in the economy that are derived/embedded in the development discourse; that is:

human rights discourse ... remains aloof from the 'private' violence of the market on individuals and communities. This tendency has become more pronounced in an era of globalization and privatization wherein the march of the market is celebrated unreservedly ... In essence, economic violence – that is, violence caused by the market – is treated as out of bounds of human rights law, even as it attempts to assert itself as the sole liberatory discourse in the Third World. (Rajagopal, 2003: 196)

It follows that the biggest myth, then, is that human rights is an anti-state discourse or an unambiguous avenue for Adivasi resistance to neoliberal state-market-led displacement, dispossession and continued colonization or what Jack Donnelly (1989: 188) has referenced as 'development repression' in the contemporary Indian scenario. In the words of a Jhodia Adivasi with regard to violence and resistance to the Kashipur bauxite mine in Rayagada, South Orissa, that has now clocked some 17 years:

People were questioning why after so many years of protesting for a school and a health centre which is not available in a 35km radius, they are now building a police station in Kuchipadar village instead!

... There were at least 5,000 of us when they fired. I too was one of 12 injured (pointing to scar on the thigh) but I never spoke up for fear of police retaliation. I have endured my lot in poverty and silence and could not get treated but we will never back down ... even in Chilika, after Tatas got shut down by the Supreme Court decision because they violated the Coastal Regulation Zone with their aquaculture project, their mafias came and destroyed people's fishing boats ... it seems we act non-violently and use the law and the courts but they always respond with customary violence and break their own laws ... signatures of 'consent' for the project (in Kashipur) were sometimes taken at gun point and under heavy police presence and after 'consenting' we were forcibly fed meat and liquor. (Focus group notes, February 2008)

Frantz Fanon's (1963) theorization of violence is instructive here in relation to necessary Adivasi political responses to market and colonial violence and the related blindness of an estatized-human rights recourse to the same while simultaneously advocating for civility and non-violence as axiomatic principles for any response considered by Adivasi or other aggrieved groups. Violence, as Fanon saw it, is the *sine qua non* of imperialism and colonialism and, in his conception, the totalizing nature of colonial violence must not only be challenged by the absolute violence of decolonization but such a confrontation also carries with it an obligation to take sides; that is, an injunction to affirm the material praxis of anti-colonial violence as a necessary and strategic response to colonial violence in contrast to approaches that, once more, place the colonial burden on the colonized by the immediate demand for truth and reconciliation (Williams, 2010: xxviii). Perhaps echoing an element of Fanon's analysis, Adivasi leaders share the following:

They are fighting against those who have everything and nothing to lose. We will persist and as long as they keep breaking their own laws – this only makes it easier for us! (Focus group notes, February 2008)

The movement is here to fight collectively (*sangram*) to save (*raksha*) the forests and to protect our way of life. (Focus group notes, February 2007)

We, who have been lying low for so many years, are now actively tightening our belts (*onta bhirunchanti*) ... (Focus group notes, January 2007)

State-sanctioned market violence and the selective blindness of a human rights regime predominantly wedded to neoliberal market-developmental interests also enlists a racist-colonial ploy once used to justify British colonialism in India (and to downplay the threat to British rule posed by anti-colonial movements) against Adivasi (and related rural subaltern, including Dalits) struggles in order to play down this threat to unjust state-market neoliberal rule today. Essentialist and racist views pertaining to the duality of modern India/ns (with moral/caste-race superiority) and Adivasi traditionalism and backwardness (inferiority) are frequently marshalled to justify development repression of Adivasi as expressed by Evans-Pritchard in 1965 in relation to Indian anti-colonial movements:

we are rational, primitive peoples, pre-logical, living in a world of dreams and make believe, of mystery and awe; we are capitalist, they are communists; we are monogamous, they are promiscuous; we are monotheists, they are fetishists, animists, pre-animist or what have you and so on. (As cited in Rajagopal, 2003: 179)

In the words of a Kondh Adivasi woman leader of the ADEA in South Orissa:

The *sarkar* (government) and their workers think that we Adivasis do not know anything and we are good for nothing ... That is why they think they do not need to ask us anything before going ahead. That's why they think they can put their pressure and power on us (*shakti a bong prayogo karanti*). So they are selling our forests, they are selling our water and they are selling our land and maybe they will sell us also. (Interview notes, February, 2007)

Or, as a Dalit leader of the ADEA puts it, 'where we live, they call this area *adhusith* (akin to an Adivasi-Dalit "pest infestation"); we are condemned to the life of the *ananta paapi* (eternal sinners), as *colonkitha* (dirty/black/stained), as *ghruniya* (despised and hated)' (Interview notes, February, 2007).

As Evans (1998: 4) has also noted, when rights are construed as 'power over people, expressed in exclusionary practices that deny the full participation of those who fail to support the interests of the dominant group' – that is, when rights are concerned with establishing and maintaining the moral claims that legitimate particular interests such as neoliberal state-market interests or religious conservative casteist interests in the Adivasi or Dalit context (Prasant and Kapoor, 2010) – such exclusions are often justified on the basis of an alleged lack of rational or moral capacity of excluded groups to engage in decision-making processes or the simple prejudiced assertion that such groups are 'mad' (Keeley, 1990).

### ***Hegemony and the subversion of human rights commitments: Controlling realities***

In Gramscian terms (Gramsci, 1971), in a bid to secure the right to exercise social and political control that binds the ruler and the ruled in a consensual order that legitimates power, the hegemon

or neoliberal Indian state or corporate-state nexus utilizes human rights rhetoric (made evident in numerous examples cited in this paper of state duplicity in delivering rights to Adivasi and rural subalterns around development displacement and dispossession) as part of a process of socialization to enhance control based on might with that based on right, in order to secure its intellectual and moral leadership; that is, the human rights commitment of an increasingly corporatized Indian state can be convincingly construed as an instrument in the exercise of hegemonic control by the corporate state, as different and potentially resistant groups like the Adivasi are encouraged to accept an order characterized by a common social-moral language, namely human rights and citizenship, 'that expresses a singular version of reality informing with its spirit all forms of thought and behaviour' (Evans, 1998: 5). While *dominance without hegemony* (Guha, 1997) is always a reality in Adivasi contexts of dispossession (e.g. for a chronology of state-corporate violence in the service of mining market fundamentalism in Orissa, including the macabre spectacle of the dismemberment of the hands of six Adivasi killed by the police after police firing on unarmed protestors on 2 January 2006 in the case of anti-Tata Steel protests in Kalinganagar, see the coverage of [www.sanhati.org](http://www.sanhati.org) regarding Kalinganagar or for anti-bauxite mining activism-related intimidation and violence, see Das and Das, 2006), the use of force is always a costly affair, both in ethico-political (as 'public relations') and material terms. Subsequently, Gramsci's proposition that coercion alone cannot guarantee the long term success of a hegemon and that hegemony requires and signifies the building of a (false) consensus around a set of values (e.g. expressed as human rights) that support the hegemon's interests, remains instructive to some degree in relation to an Adivasi-state-market-civil society politics of dispossession and displacement, especially when Adivasi seem to have accepted such development. The hegemon exercises control through a combination of might and the legitimation of right, the highest form of hegemony being exercised when the hegemon's values (e.g. all forms of legitimate political expression are boiled down to a human rights-based Eurocentric or 'Third World-elitist-politics') are accepted as 'common sense' (Evans, 2005: 17–18; Gramsci, 1971).

More importantly, as Randall Williams (2010) suggests, regardless of whether Adivasi accept elite values/conceptions and political conceptions (e.g. estatized international human rights), by being encouraged (e.g. by international non-governmental organizations [INGOs]) or compelled (by the state) to resort to a state-sanctioned and administered human-rights based politics, they effectively enter in to a dependent politics whose rules and possibilities are dictated by the state; that is, a realm of depoliticization (or a sanitized 'civil society' politics) that has little to no room for a more militant brand of politics for decolonization (see point made in relation to Fanon) in response to the daily violence of colonial control which characterizes processes of displacement and dispossession (Kapoor, 2009c; Nandy, 2008). Or, in Balakrishnan Rajagopal's terms, 'the institutionalization of human rights helps to manage mass resistance' (2003: 53).

In understanding the working of human rights and hegemonic propensities alluded to by Evans (1998), an examination of several examples of human rights duplicity and contradiction would help to begin to substantiate the case and lend credence to the argument that human rights provisions are merely part of the state's arsenal in securing hegemonic control over the populace (by offering them rights in a bid to secure the moral right to govern) while all the while simultaneously usurping these rights in the service of securing the dominant interests of a global and national corporate-consumer class/caste elite as is being suggested.

Since the first notification to recognize scheduled tribes in India in 1950 and the Indian commitment to indigenous/tribal peoples expressed through the ILO and other international covenants and conventions, according to a report on the Draft National Policy on Tribals by the Asian Centre for Human Rights (ACHR), 'non-implementation of these laws and adoption of laws and procedures

to negate these legal protections has had an adverse impact on indigenous people' (ACHR, 2005: 2). The report notes that 'contradictory legal provisions and failure to implement or translate constitutional provisions in to reality' (p. 4) continue to undermine indigenous assertions as self-determined peoples. For instance, and as pointed out in this report, while the fifth schedule of the constitution and the Provisions of the Panchayat's Act (Extension to the Scheduled Areas; 1996) or PESA, 'recognize the ownership rights of indigenous peoples to their traditional lands recognized as Protected Areas' (p. 4), such assertions are undermined by forest laws that confer 'usufruct rights' to use minor forest products without a right to ownership and subject to a 'whimsical no damage to the forest' determination by forest officials (p. 5). In the words of a Kondh Adivasi man,

The government and the companies come and take away truckloads of bamboo. The forests which our ancestors nurtured (*banchaye chanti*) is getting destroyed by these outsiders (*bahari ko lok*). When these things happen, the forest guards give them protection and, when we have needs, they ask us if we have paid our royalty or have you paid your taxes on the tamarind trees – we are taxed for each of these trees. When they take tuck loads of sal, timbers, bamboos and the paper mills exploit this for their business – how can they say the Adivasis are destroying the forests? We depend on forests for life, the business people (*vyavasahi*) and the government are destroying them for their own profit (*labho*). (Interview notes, February 2007)

When it comes to forced or illegal evictions (euphemistically referred to as 'displacement' in official parlance), the report of the ACHR notes several such contradictions between protections under the fifth and sixth schedules of the constitution (or commitments under the international covenants on civil and political rights and economic, social and cultural rights) on the one hand and specific acts such as the Forest Conservation Act (1980), the Wild Life (Protection) Act (1972) and the Land Acquisition Act (1894). The latter has been instrumental in the eviction of indigenous and tribal peoples for more than a century and, until recently, had no provisions for resettlement and rehabilitation (R&R), not to mention right to free, prior and informed consent. Some studies have demonstrated, for instance, that there is practically no evidence of consultation of the Gram Sabha by the state (despite said stipulations in PESA) when it comes to land acquisition and/or R&R packages, not to mention that the latter is not even recognized as a right under the constitution of India (Bandopadhyaya, 2004; Das, 2001).

Under the Indian Forest Act (1927) and the Forest Conservation Act (FCA; 1980), cultivable lands that existed prior to both acts are being categorized as encroachment areas. For instance, the National Commission on Scheduled Castes and Tribes has noted that, as a result of the FCA (1980), some 148,000 people (mainly tribals) occupying 184,000 hectares of land in forest areas in the state of Madhya Pradesh suddenly became encroachers on 24 October 1980, and thus liable to eviction (ACHR, 2005). Under the recent Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act – or FRA – (2006), hailed in some quarters as a victory by people's movements in the struggle for Adivasi autonomy and sovereignty as the act appears to recognize the Adivasi way of life, there is now a growing scepticism in some quarters that this is yet another 'law and "new welfare model" used by the state to retain its authority, power and supremacy over resources, alienate people from their land and way of life, and create and sustain capital markets' (Ramdas, 2009: 72). While the FRA recognizes community and customary rights to the forest and confers power to the communities to protect forests in accordance with their own modes of conservation, the Ministry of Tribal Welfare and the Forest Department have interpreted these provisions as a license to sanction export/urban market oriented mono/cash-crop rubber, coffee, and fruit plantations in conjunction with the National Rural Employment Guarantee Scheme

(NREGS), whereby tribals are reduced to being a source of cheap labour for these so-called tribal development schemes (Kapoor, 2010).

Now tribals can cultivate their lands with dignity and without any fear. Tribals can plant rubber plants, mango, cashew nut, orange, lime, or palm oil as per local conditions. The state government would also develop lands in tribal areas and the tribals will be paid daily wages under the NREGS programme though they are working on their own land (Ramdas, 2009: 69).

The 'free choice' between palm oil and coffee mono-crop for markets is ironic to say the least, as Adivasi agriculture (indigenous choice of crops) focused on food for families is being viewed by the Forest Departments (for instance) as 'encroachment' and being met with considerable aggression to evict Adivasi/forest dwelling communities from their homelands across the country (see World Rainforest Movement bulletin 135, October 2008, for a disturbing analysis of atrocities committed by state agents against Adivasi/Dalit women, while allegedly implementing the FRA):

when FRA and PESA is actually supposed to strengthen the hands of Adivasi communities and local Gram Sabhas to decide on whether or not to implement mono-crop plantations or any other programmes that might threaten to displace Adivasi production, cultures, ecosystems, knowledge and ways. The claim on the state, that continues to fall on deaf ears, is to recognize Adivasi ways of living and being as a political right and not as an essentialized-inferiority in need of protection and welfare from a self-appointed guardian or paternalistic state. (Kapoor, 2010: 28–29).

In the words of a Kondh woman:

The Forest Department comes and asks us to create a Forest Protection Committee (*jungle surakshya manch*). Protection from whom should I ask? . . . We do not cooperate because they really do not care about the forest! We need to protect the forest from them! (Interview notes, January 2007, village D).

Such examples of consistent and widespread legal/rights contradictions and duplicity in relation to forced/illegal evictions, forest and land rights, lends credence to the argument that human rights commitments serve hegemonic aspirations of the state and the dominant interests that inform state partiality to elite projects that contradict the well-being of Adivasi despite these various so-called protective provisions.

In their analysis of neoliberal impacts on land policies and processes of land alienation, Pimple and Sethi (2005: 239) conclude that 'under the application of neoliberal land policies . . . traditional occupiers of land under customary law confront the prospect and reality of becoming illegal encroachers on land they have cultivated and sustained for generations' (see earlier reference to example from Madhya Pradesh re: the same). They identify some key strategies and approaches employed by the neoliberal state to accomplish this: (1) originally practiced by the British in the 1800s, reservation of forests whereby large tracts of land are declared as reserved or protected forests and cultivable and wasteland areas and these demarcated territories are declared to be out of bounds (leads to eviction unless a cheap source of labour is required to work the land/forest); (2) leasing of forests to industrialists for timber felling, regeneration, agribusiness, mining, and tourism ventures; (3) land alienation enabled by the Land Acquisition Amendment Act, which simplifies the procedures for the acquisition of land by state-controlled or state-owned enterprises on the grounds of serving the public purpose; and (4) the Wild Life (Protection) Act (1972) 'which has been used to define the tribal as the enemy of ecology and the outsider/environmentalist as protector' (p. 242), as tribals are displaced from lands and forests demarcated as national parks and sanctuaries and even grudging concessions such as licenses that permit limited access are challenged by some environmentalists (conservationists).

Even today you will find there is not enough cultivable land available for our people because they have taken it away . . . They have the power of *dhana* (wealth) and *astro-shastro* (armaments). They have the power of artificial laws and rules (*kruthrima ain*) – they created these laws to maintain their own interests. (Adivasi leader of the ADEA, interview notes, February 2007)

There is communal conflict around land and forests because the political powers, in order to keep their control and access to these vital resources, are promoting division and hatred among the communities (Domb, Kondh and Saora). Our communities once had equal access to land and forests, which today is being controlled by these outside methods of the *sarkar* (government) and the *vyaparis* (business classes) and upper castes (Brahmins). They want to perpetuate their ways and ideas among us and always keep us divided. We are all poor classes (*garib sreni*) and land and forest are vital for our survival. And if they succeed in controlling them, they also end up controlling our lives. As has the case over the ages, they want us to live in disharmony and difference so that they can be the rulers (*shashaks*) all the time. So they have done this. (Adivasi elder, interview notes, February 2007)

The likelihood of such displacement and dispossession increasing, regardless of the state-institutionalized legal/human rights ‘protections’ (or blindness) regarding the same, is real and on-going as noted in relation to what is being referred to as the global *land grab*; that is, the purchase or lease of large tracts of land by wealthier, food insecure nations and private investors from mostly poor, developing countries in order to produce crops for export. According to the International Food Policy Research Institute (IFPRI), foreign investors sought or secured between 37 million and 49 million acres of farmland in the developing world between 2006 and 2009 (Daniel and Mittal, 2009). Such market-driven neoliberal policy prescriptions around land markets, and development and poverty alleviation are actively promoted by the World Bank, a central agent and global architect of imperial control, which sees similar opportunity in addressing climate change (Ramdas, 2009); that is, it is deemed to be an investment opportunity that will assist communities to use forests as a means for moving out of poverty, suggesting that local ownership offers opportunities to capitalize on forest assets, an approach being pursued through the bank’s short-term financing from the BioCarbon Fund to mobilize small/marginal farmers to raise plantations of tree species with high rates of carbon sequestration in their lands, from which they will earn income from carbon credits. According to Ramdas (2009: 72), ‘The powerful convergence of global climate change policies and neoliberal markets appears to be an overriding force that is shaping current environment and forest policy in India ... All initial evidence points towards the displacement of Adivasi subjectivities and livelihoods’. The Indigenous People’s Declaration on Climate Change (The Anchorage Declaration, 2009) exposes sustainable development dispossession of Adivasi and indigenous peoples globally, while still appealing to ‘human rights’:

We, Indigenous People challenge States to abandon false solutions to climate change that negatively impact Indigenous People’s rights, lands, air, oceans, forests, territories and waters. These include . . . agro-fuels, plantations and market based mechanisms such as carbon trading, the Clean Development Mechanism and forest offsets. The human rights of Indigenous Peoples to protect our forests and forest livelihoods must be recognized, respected and ensured. (As cited in Kapoor, 2010: 28)

The preceding examples and arguments have been used to demonstrate the active, premeditated and non-accidental (consistent pattern) nature of the subversion of Adivasi and indigenous human and legal rights around displacement/dispossession, forest and land-related issues and the related implications for Adivasi’s exercising sovereign control over their own ways/development processes as affirmed in the fifth and sixth schedules of the Indian constitution. There is good and

ample reason to believe that state-institutionalized human/legal rights discourse in India have been used by the corporatized and developmentalist state to advance colonial controls and neoliberal and dominant religious conservative interests in relation to the Adivasi place (or active exclusion) in the contemporary Indian polity, subsequently raising critical questions in relation to the limitations of a human-rights based state-institutionalized politics of justice/redress with respect to displacement and dispossession of Adivasi and other marginalized rural subaltern communities.

### *Colonial Continuities, Neoliberal-Hegemony and the Re-Politicization (?) of Human Rights: Concluding Reflections*

If, at some level, the modernist purpose of rights and related notions of citizenship are to create the conditions for individuals and peoples to lead a dignified and peaceful life, then the promise of non-institutionalized human rights lies in its potential to stimulate political struggles (movements and movement-defined conceptions of human rights or other political possibilities thereof?; Kapoor, 2011) that transgress the hegemonic hijacking of the construction, interpretation and mis/application of rights in the wider interests of an Adivasi and indigenous politics for pluri-nationalism and co-existence (Kapoor and Shizha, 2010; Meyer and Alvarado, 2010), while being against colonization and imperial appropriations of peoples, cultures, lands and ecology. The Eurocentric and state-centric institutionalized conception of human rights/legal codings, as discussed, are mostly constitutive of (or re-shaped in the interests of) the project of colonialism and today's neoliberal hegemonic project (imperialism), with limited prospects for deployment by Adivasi/indigenous peoples who are compelled (when engaging in *real politik*) to resort to this mostly derived politics/discursive formation to repeat what has always already been said before. A human rights discourse is deemed *necessary* in order to enhance the prospects of becoming audible in imperial/metropolitan society.

If there is an Adivasi conception of something akin to 'human rights', it probably resides in an affirmation of a way/state of being that is under constant challenge by the imperial and colonial project of a globalizing capitalism. At a global level, a statement by Via Campesina (the largest peasant-indigenous people's network of movements) expresses the claim as follows:

No agrarian reform is acceptable that is based only on land redistribution. We believe that the new agrarian reform must also include a cosmic vision of the territories of communities of peasants, the landless, indigenous peoples, rural workers, fisherfolk, nomadic pastoralists, tribal, afro-descendants, ethnic minorities, and displaced peoples, who base their work on the production of food and who maintain a relationship of respect and harmony with Mother Earth and the oceans. (Via Campesina, 2006)

In Adivasi terms from the South Orissa region, a manifesto developed by 13 Adivasi-Dalit-landless peasants and displaced peoples movement organizations express their claim as follows:

We, the people's movements present here representing people's struggles from South and coastal Orissa have discussed and debated our issues and are hereby resolved to stand as a broad-based platform known as Lok Adhikar Manch (LAM) in support of the following manifesto [people's statement]:

(1) We are communities dependent on natural resources like land, forest and water, which are more than resources for us – our life system depends on them. Our way of life, beliefs, knowledge and values have historically and as it is today revolve around our natural surroundings. More than at any point of time in our lives as traditional communities, today we feel pressurized and pushed hard to give up our ways and systems and give way to unjust intrusions by commercial, political and religious interests for their development and domination (*shemano koro prabhavo abom unathi*). We have been made to sacrifice, we

have been thrown out throughout history by these dominant groups and forces for their own comfort and for extending their way of life while we have been made slaves, servants and subordinates (*tolualoko*). Our natural systems have taught us that each of us is important, each of our communities are important and we are an integrated part of the natural order we live in. At this critical juncture, we resolve to work together to protect ourselves, our interests, our natural bases (*prakrutic adhar*) and fight against any unjust appropriation of our natural habitations by commercial and state developmentalist interests. The manner in which industrialization is taking place (especially mining and dam projects), displacing the sons and daughters of the soil, destroying our resource and life base: we collectively oppose it in the future. We have nothing to gain from liberalization (*mukto bojaro*), privatization (*ghoroi korono*) and globalization (*jagothi korono*), which are talked about today. We want to live the way we know how to live among our forests, streams, hills and mountains and water bodies without culture, traditions and whatever that is good in our society intact. We want to define change and development for ourselves (*amo unathi abom parivarthonoro songhya ame nirupono koribako chaho*). We are nature's friends (*prakruthi bandhu*), so our main concern is preserving nature and enhancing its influence in our lives. (LAM statement, field notes, April 2009)

While the conceptions of the claims are clear, the issue is one of politics and possibility thereof around moving from where we are to where we need to be. Drawing on the work of Frantz Fanon, Randal Williams (2010) alludes to the pitfalls and cul-de-sacs of the recourse to a human-rights-based politics in colonial circumstances by any anti-colonial formation (in this case, an Adivasi/indigenous challenge) or by euphoric advocates for a human rights-based approach to these political conundrums:

Fanon offered, well beyond what was specific to the conditions of colonialism proper (and wholly relevant for today), a critical set of political directives developed out of the relative certainty that any strategic appropriation of dominant structures and forms in the course of struggle must reckon with the corrupted histories of those same forms after the achievement of their tactical ends. This enduring lesson should trouble, albeit in different ways, any non-dialectical advocacy of human rights or decolonization, insofar as any readily available 'way' out of the structures of domination is, both, likely at the same time, a 'way' back in. In the case of human rights, for example, inserting the formal equality of the universal human into structures of violence regulated by domestic and international law subjects any 'successful' appropriation of juridical terms to swift and effective counterappropriation. (p. xxix)

## Funding

The author acknowledges the assistance of the Social Sciences and Humanities Research Council of Canada (SSHRC) for this research in to 'Learning in Adivasi (original dweller) social movements in India' through a Standard Research Grant (2006–2009). Reflections and grounded discussions in this paper are both informed by this research.

## Notes

1. Adivasi is a claim to indigenous location as 'original dwellers' or first (mulo nivasi or 'root people' is the expression used by Kondh Adivasi research participants in this study) inhabitants vis-à-vis later arrivals. In keeping with the UN and the Declaration of the Rights of Indigenous Peoples, self-definition is consistent with recognition for the self-determination of indigenous peoples and the usage in this paper is in keeping with this understanding. Adivasi is also understood in terms of what may well be the common historical and contemporary experience of most indigenous peoples including: being original inhabitants of a land later colonized by others; non-dominant sectors of society with unique ethnic identities and cultures; strong ties to land and territory; experiences or threats of dispossession from ancestral territory; the experience of being subjected to culturally foreign governance and institutional structures; and the threat of assimilation and loss of identity

vis-à-vis a dominant society (McNeish and Eversole, 2005: 5). This being said, the designation in the Indian and Asian contexts (estimated to be the spatial container for 70% of the world's indigenous peoples) in general is vigorously contested given that: (1) governments in Asia (including India) do not recognize the category (with the exception of the Philippines); (2) indigenous could often mean prior rather than original peoples given the multiple waves of colonization and migration in Asia/India; (3) dissident ethnic/caste groups (e.g. Dalits/scheduled castes in India) sandwiched between indigenous and non-indigenous peoples obscure such claims by demanding indigenous status as well (e.g. given ameliorative and other perceived or real advantages of scheduled tribe status which is the state-category/taxonomy for Adivasi in relation to a politics of exclusive governmentality – see Ghosh, 2006 for a critique of such ethno-racist statecraft); and (4) indigenous peoples of Asia (post colony) do not have the clarity of definition afforded to indigenous peoples of the settler colonies of North America, Australia and New Zealand where the indigenous category came in to existence vis-à-vis western European colonialism (Barnes, et al., 1995). Archana Prasad (2003: 28) refers to the 'original peoples = forest dwelling' argument as a 'creation myth of the original inhabitant' citing historical evidence/records to suggest that forest-dwelling status/location happened largely as a result of marginalization of tribals by caste Hindu peasants in central India and 'their sedentization in to forests by the British land settlements'; that is, the permanent settlement of agricultural and zamindari lands (feudal arrangements) by the British ensured that the movement of tribals between the highlands and plains was stopped forever. That said, in terms of the politics of representation, the Adivasi/indigenous category troubles the real and representational left-politics (Kamat, 2001; Prasad, 2004) of class struggle by disaggregating the preferred category of peasant (compels a peasantization of Adivasi – see Kapoor, 2011 for this discussion). Left-academic politics also obscures/dismisses (either as pure caricature/representational politics or as mere British colonial invention) Adivasi claims to being 'original peoples' in the necessary interests of addressing the real politik of class struggle aimed at the very forces (including a conservative saffron politics that dismisses Adivasi as 'jungle peoples' or, conversely, pragmatically enlists Adivasi in a divisive caste politics aimed at scheduled castes/Dalits) that displace and dispossess Adivasi and/or peasant alike. Gandhian-environmentalist (Shiva and Bandopadhyay, 1990) politics of representation are also similarly critiqued by Guha (1988: 83–84) and others (Prasad, 2003, 2004) for their attempts to deploy the Adivasi (forest/original peoples positioning and aranya sanskriti or forest culture as embodying a living-critique of development) to set up an ideological counterpoint to development (caricaturing) which excludes Adivasi as conscious subjects of their own history, while Alpa Shah (2010: 130) refers to the same tendency as 'eco-incarceration'. This politics of representation adds to the complexity of definition and location of Adivasi (original dwellers) in India.

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