“First you push them in, then you throw them out”: The Land Rights Struggle of the Adivasi Peoples in India with Special Reference to South India

Indigenous Strategies and the (Inter)national Law Context

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Vienna, 2008

To the Adivasi peoples of India

SHORT BIOGRAPHY

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ABSTRACT

The highly heterogeneous Adivasi ("original inhabitants") represent India's de facto indigenous peoples. De jure, however, they are not recognised as indigenous and are instead designated as Scheduled Tribes in the Fifth Schedule of the Indian Constitution. India is unique in having a highly sophisticated minority rights protection system for its Scheduled Tribes, which is, however, virtually ineffective because it lacks implementation on the ground. As ethnic minorities within the national structure Adivasis are not recognised as equal in their socio-cultural distinctiveness and suffer widespread human rights violations as a result. The most pressing issue faced by Adivasis is the loss of control over their land. The incongruity is that today they are literally “thrown out” of the forest, while for centuries they were “pushed” to the margins by forces not dissimilar to those causing their dispossession and forcible integration into the dominant society in the 21st century. Under the banner of national development Adivasi land is being opened up for large-scale resource extraction by multinational corporations and Adivasis have become the target of misguided assimilationist development schemes. For Adivasis their land is integral to their indigenous identity and in recent decades the defence of their land rights has evolved from the local to the international level. This book seeks to link and compare anthropological with international law concepts on indigenous peoples’ land rights, leading to the central research question: Why are Adivasis being deprived of their land and can international human rights law provide solutions in this context? Specifically, can Adivasis benefit from the fact that indigenous peoples’ land rights are being awarded more and more positive recognition in international (human rights) law? Taking two case studies from South India this book explores the relevance of international human rights law to Adivasi resistance strategies against land alienation.

Acknowledgements

In the academic field I would like to express my thanks to Univ. Doz. Dr. Traude Pillai-Vetschera for her supportive research supervision, her insightful suggestions and advice and her unrelenting practical support of my research.
Furthermore, my thanks go to the Research Services and International Relations Office of the University of Vienna for the KWA (Brief Scientific Stays Abroad) Research Grant, which enabled me to conduct the main literature research for this research at the School of Oriental and African Studies (SOAS) in London. Equally, I would like to thank the University of Vienna for the Förderungsstipendium, which made the fieldwork for this research in February/March 2007 in South India possible. I am also indebted to all those readers, lecturers and professors at the University of Vienna and elsewhere, and all those organisations who have written references for me in the past for various applications in connection with this research.

In the personal realm I would like to thank my family, Alois Aufschnaiter, Valerie Aufschnaiter, Isabella Aufschnaiter, Nora Flett, Diana Karpinski, Richard Flett, Alfred Soder, Paula Buchberger, Leni Aufschnaiter, Anni Soder, and their families; Jürgen Wagner, and his family, Erna, Rupert and Tanja Wagner; and all my friends, in particular Norma Kirchler and Caroline Schebesta, for their continuous support and their belief in me and my ambitious project – without them this research would not have become reality.

Finally, I would like to dedicate this work to the Adivasi peoples of India, especially the many struggling Adivasi communities in South India, and all those people fighting for the respect of Adivasi land rights and ultimately human rights. My stays with Adivasi peoples and NGOs in Tamil Nadu, Karnataka, Kerala and Mumbai, and their courage, resistance, resilience, strength and hope I encountered there, even in the face of incredible atrocities and adverse discrimination, have left a profound mark on me. A warm thank you to all of you for welcoming me in your villages and houses, for sharing your insights, successes, problems and worries with me, and in doing so, for putting so much trust in me: to the *Paniyan, Adiyan, Kattunaickan, Mullu Kuruman, Urali Kuruman* and *Kurichian* peoples of Wayanad District, Kerala; to the *Betta Kuruba, Jenu Kuruba, Paniya, Solaga, Yerava and Malai Kudiya* peoples of Nagarhole National Park, Karnataka; to the *Irular, Sholiga, Paniyar, Mullu Kurumba, Betta Kurumba, Pulaiyar and Paliyar* peoples of Thalavadi, Gudalur, Bodi and Palani Hills, Tamil Nadu; to the *Pardhi* peoples of Mumbai, Maharashtra and to all the Adivasi peoples I have omitted in this list. My thanks also go to the organisations *Neethi Vedi*, Kerala (Fr Stephen Mathew, Mr Vipin Mathew, Mr K. Kesavan, Mr V.T. Kumar, Ms K. Ammini, Mr C.V. Sasikumar, Sr Sheela); *TUDI*, Kerala (Dr. George Thenadikulam); *CORD*, Karnataka (Mr Roy David, Mrs Shammi David, Mr J.P. Raju, Ms K.K. Jaji, Mr N. Velliangiri, Mr N.K. Gopalkrishna, Mr P.C. Vasanth, Mr Sukumar, Ms Muthurani); *AMS(ACCORD)*, Tamil Nadu (Mr Manoharan, Mr Stan Thekaekara); *TAMS*, Tamil Nadu (Mr Raman, Ms Nanjamal, Mrs Rajamma, Mrs

Madevi, Mr Mahadevan), *TRED*, Tamil Nadu (Fr S. Tony), *SIDT*, Tamil Nadu (Mr M. Xavier, Sr Flora Joseph, Mr Raman, Mr R. Kalmuthu, Ms Shanti, Mrs Ayyammal) and *MAGRES*, Tamil Nadu (Mr Antony Raj and Mrs Rose Raj). Lastly, my thanks go to Mr C.R. Bijoy for his insights; to Sr Rosamma George for her resourceful help in Mumbai and for sharing her research ideas with me; to Theodor Rathgeber of the Adivasi Koordination in Deutschland e.V. for his help; to Mr S.M.A. Viennie for his exceptionally committed support of my research project and his brilliant translation work and to his family, Mrs Chitra Viennie, Miss Poontharannie and Miss Yuvana, for their generous hospitality.

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List of Abbreviations

ACHR	Asian Centre for Human Rights
ADCs	Autonomous District Councils
ADSS	Adivasi-Dalit Samara Samithy (Adivasi-Dalit Action Council)
AGM	Adivasi Gothra Mahasabha
AI	Amnesty International
AICFAIP	All India Coordinating Forum of the Adivasi/Indigenous Peoples
AITPN	Asian Indigenous and Tribal Peoples Network
AMS	Adivasi Munnetra Sangam Gudalur
Art./Arts.	Article/Articles
BJA	Bharat Jan Andolan (Indian Peoples' Movement)
BKS	Budakattu Krishikara Sangha
BP	(World) Bank Procedures
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or Committee against Torture
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women or Committee on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child or Committee on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
EPW	Economic and Political Weekly
FD	Forest Department (India)
GA	General Assembly (of the United Nations)
GfbV	Gesellschaft für bedrohte Völker (Society for Threatened Peoples)
HRC	Human Rights Committee[1]
HRW	Human Rights Watch
IAITPTF	International Alliance of Indigenous and Tribal Peoples of the Tropical Forests
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights

[1] The Human Rights Committee (the treaty monitoring body of the ICCPR) is not to be confused with the UN Human Rights Council or its predecessor, the Commission on Human Rights.

ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICITP	Indian Confederation of Indigenous and Tribal Peoples
ICJ	International Court of Justice
ILO	International Labour Organisation
IWGIA	International Work Group for Indigenous Affairs
MoEF	Union Ministry of Environment and Forests (India)
MoTA	Ministry of Tribal Affairs (India)
MRGI	Minority Rights Group International
NBA	Narmada Bachao Andolan (Friends of the River Narmada)
NBJHS	Nagarhole Budakattu Hakku Sthapana Samithi (Nagarhole Adivasi Rights Restoration Forum)
NCST	National Commission for the Scheduled Tribes
NFTS	National Front for Tribal Self-Rule
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission (India)
OD	(World Bank) Operational Directive
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP CRC AC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
OP CRC SC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
OP	(World Bank) Operational Policies
OP	Optional Protocol
PESA Act	Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996
PMAVI	Palani Malai Adivasigal Viduthalai Iyakkam (Palani Hills Adivasi Liberation Movement)
PUCL	People's Union for Civil Liberties
RSS	Rashtriya Swayamsevak Sangh
SAHRDC	South Asia Human Rights Documentation Centre
SAs	Scheduled Areas
SCC	Supreme Court (of India) Case
SCST Act	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
STRFR Act	Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act, 2006
STRFR Bill	Scheduled Tribes (Recognition of Forest Rights) Bill, 2005
STs	Scheduled Tribes
TACs	Tribal Advisory Councils

UDF	United Democratic Front of Kerala
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDDRIP	United Nations Draft Declaration on the Rights of Indigenous Peoples
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNTS	United Nations Treaty Series
UNWGIP	United Nations Working Group on Indigenous Populations
WB	World Bank
WCIP	World Council of Indigenous Peoples
WGDD	Working Group on the Draft Declaration on the Rights of Indigenous Peoples

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1. Introduction: The Adivasis of India – "first you push them in, then you throw them out"[2]

We dream of our land. Everything we perceive, everywhere we tread, everything we feel with our whole body, belongs to our land. We need the land, in order to be able to imagine our existence, so that we know who we are. Without the land we are nothing and nobody. The government simply has to realise this. You can't negotiate this. The land can't be replaced.
(Sarini 2001: 24, translation from German by the author)

The *Adivasis* (from the Sanskrit and later Hindi words *adi,* meaning "beginning" or "of earliest times", and *vasi,* meaning "resident of", which together roughly translate as "original inhabitants"[3]) are the de facto indigenous peoples of India. With 84.33 million,[4] as per the census of 2001 (Registrar General & Census Commissioner India 2001), they constitute 8.2 % of India's population and approximately 28% of the 300 million or more indigenous peoples worldwide,[5] thus making India the country with the highest concentration of indigenous peoples in the world. In the national context, i.e. de jure, however, they are not recognised as "indigenous" peoples (let alone as the indigenous peoples of India, see 3.3 Adivasis as Indigenous Peoples), but designated as so-called "Scheduled Tribes" (STs), indicating those communities specified by the President of India under Article 342 of the Constitution. "Scheduled Tribes" is a purely administrative term, which is area-specific and designed to reflect the level of socio-economic development, rather than being an ethnic marker. It is used for purposes of "administering" certain specific constitutional privileges and benefits conferred by this status and for the protection of specific sections of the population considered historically disadvantaged and "backward" (Bijoy 2003a). This administrative term does not, however, exactly match all the peoples called "Adivasis", as the following example demonstrates. According to one count, out of the approximately 5653 distinct communities in India, 635 are considered to be "tribes" or "Adivasis". In comparison, one finds that the estimated number of STs varies from 250 to 593 (ibid.). The fluctuation can be explained by the fact that Adivasis appear in more than one State in the census and that, secondly, non-Adivasis, striving for the privileges the ST status entails, are listed as STs. The difference in estimated numbers between Adivasis and STs also derives from the fact that many Adivasi communities are not included in the STs lists.

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[2] For the telling title "First you push them in, then you throw them out" I am indebted to Mihir Shah's (2001: 364) article by the same name.
[3] Bates (1995: 104 ff., emphasis added) compares the Hindi term *Adivasi* to the Latin word for indigenous peoples, *Aborigines*, however, in order to show that the word "adivasi" was an invention by political activists in Chotanagpur in the 1930s and that this is in fact a product of Indian *orientalism*. Bates goes on to argue that the "adivasi movement" owes its existence to "colonial prejudice" and that its "modern" claims to "landed property" are a result of the introduction of land titles/deeds by the British as an instrument of control. While his arguments serve to explain the possible origin of the term "adivasi" and to deconstruct the notion of Adivasis as indigenous peoples, they do not mirror the term's importance in today's India and its meaning as an identity marker for Adivasis. Thus, in denying the Adivasis their indigeneity and advocating they should be treated like any other Indian citizens he makes the same mistake, only inversed, like the British colonialists and the Indian lawmakers, who he vilifies for having created separate legal provisions for Adivasis.
[4] This is the number of STs (84,326,240) in India as per the census of 2001. For the pitfalls inherent in the term and thus in the number see the discussion below.
[5] Estimates for the number of indigenous peoples worldwide range from 300 to 500 million (see Perkins 2005).

The Adivasis are believed to be the earliest settlers in the Indian peninsula and to have already been present at the time of the Aryan invasion around 1500 BC. A phrase often invoked in this context by activists and Adivasis themselves is that they have been living in the Indian forests "since time immemorial". Originally, the term "Adivasi" was used in a cultural and social context to refer to people who were outside the folds of the Hindu social system. It referred to people who had a different culture, religion, language and social system, but without recognising this "otherness" as equal (Bose 1996). The meeting of Hindus (Aryans) and Adivasis was a story of subordination from the onset. In the *Varna* system (that still represents the backbone of the caste system today) introduced by the Aryans the Adivasis (and Dalits) were called the *Atisudra*, denoting sections of the population that were even lower than the *Sudras*, the lowest Varna (Gilbert 2005: 271). It is believed that the Aryans subjugated part of the indigenous population and relegated them to the lowest echelons of the caste system, while the others, who they could not enslave, were pushed into uplands and forests where they enjoyed relative autonomy until the arrival of the British (Bose 1996). One could call it ironic that today the Adivasis – starting in the British chapter of Indian history – are being "thrown out" of their lands, i.e. face ever-growing threats of eviction from their lands and forests, and are thus being deprived of their most important and often only source of survival – land – while for centuries they were "pushed" into the forests by forces not dissimilar to those causing their dispossession in the 21st century.

The British' expressed purpose in coming to India was to take control of the most profitable type of trade and, in consequence, of the Adivasis' territories abundant in natural and mineral resources (Bhengra et al. 1998: 7). The type of land rights problems Adivasis are facing today have their origins in colonial times when the British started introducing their notion of property rights and installing the Common Law system. Since most Adivasis did not have any legal land titles in this new system, let alone written documents to prove their ownership of the lands they had been living on for generations, the disappropriation of these lands was all to easy. As a result the Adivasis experienced immense land losses and displacement during the British rule (Bates 1995: 109). For an overview of the ensuing Adivasi revolts and movements see 5.3 A Brief History of Adivasi Organisations and (Resistance) Movements. The decolonisation process did not prove to be of much benefit to India's indigenous peoples either because – despite the legal reforms and the constitutional protection they now theoretically enjoyed – the Adivasis continued to live under the same colonial patterns after independence as during the British rule, only that India was now a democracy, dictated by the law of the free market and the rules of multinational corporate groups since the beginning of the 1990s.

Whether the indigenous population of India is called Adivasis, STs or "tribals", either term suggests a unity and homogeneity that is – given India's diversity and vastness – neither existent among "the" Adivasis nor in Indian society in general. Adivasis are geographically dispersed and socially, culturally, socio-economically and linguistically diverse (distinct Adivasi languages, for instance, number around 250). To give an impression of their diversity the following (selective) chart lists the

main communities in the respective regions in mainland India (the Andaman and Nicobar Islands politically belong to India, but not anthropologically (see Faschingeder 2001: 106 and the discussion below in 2.1 Constructing the Field):

North East India	Central India	South India
Naga, Mizo, Bodo (Boro), Khasi, Garo, Mhers, Uraon, Kharria, Thau, Apa Tani	Meo-Mina, Bhil, Bhilala, Korku, Gond (the largest group in India), Oraon, Munda, Santal, Ho, Kharia, Bumij, Savara, Kol, Khond	Toda, Irular, Malayali, Naikda, Marati, Paniyar, Kuruba/Kuruman/Kurumba, Kurichian, Hasalaru, Sholiga

Table 1 Distinct Adivasi communities in India

Traditionally the Adivasis were hunter-gatherers, shifting cultivators, fishers, pastoralists, peasants and nomads, but nowadays they are forced to take on wage work (for instance as seasonal agricultural labourers for the plantation landlords who now own the lands the Adivasis used to live on) or to work as migrant workers and coolies (i.e. mainly in the cities). India's indigenous peoples primarily live in the mountainous and densely forested areas of India (although India's forests face inexorable depletion nowadays), forming so-called "tribal belts" in Central and North India and several "pockets" in Southern India that cover around 20% of the subcontinent's geographical area. Their highest concentration is in North-East India, with many of their related communities across the border in Bangladesh and Burma, and their lowest in the North-Western region.

The Adivasi land rights problem is a multi-faceted one and often cannot be attributed to a single factor, but a concurrence of many adverse conditions, the list of which is long. Undertaken in the name of national "development", activities that have undermined their land rights and their very livelihoods include the establishment of national parks and game reserves, the massive logging of forests, large infrastructure projects such as dam and pipeline constructions, mining, commercial hunting schemes, large scale agricultural projects, tourism development etc. Poverty, malnutrition and mortality (increasingly due to HIV/AIDS), illiteracy and unemployment rates are markedly higher among Adivasis. The bitter irony is that the Adivasis largely inhabit areas rich in natural resources (such as Jharkhand, the cradle of Indian industrial development), but receive little or none of the wealth extracted from their lands. As a consequence, 85% of Adivasis live in abject poverty and have become the victims of misguided development schemes that are solely in the national interest. Pradip Prabhu (2004a) aptly characterises the Adivasis' situation today by asserting that "[i]nternal colonialism has taken the place of overseas colonialism, but the effects are the same". Anaya (2004: 4) characterises the plight of indigenous peoples in saying that "[h]istory is repeating or threatening to repeat itself in the name of modernization, development, and security". Taking all this into account Jawaharlal Nehru's promises made to the Adivasis in the 1950s sound all too hollow and paternalistic today (Prabhu 2004a, abbr.):

- People should develop along the lines of their own genius and the State should avoid imposition, but encourage their own traditions and culture.

- Tribal rights in land and forests should be respected.
- The State should work through and not in rivalry with their own [the Adivasis'] social and cultural institutions.

Next to the continuous struggle for their land ownership and land use rights and the constant threat of eviction from their lands, Adivasis face other forms of more or less subtle oppression all over India that threaten their survival, such as police violence and excessive militarisation (mainly North-East India), labour and sexual exploitation, victimisation and bondedness (see Deogaonkar 1990), Hinduisation and denial of their cultural identity, etc. Informed by a paternalistic attitude, Indian mainstream society (the delimitation of which is highly contested) still regards the Adivasis or *van-vasis* ("forest dwellers"), as they are often derogatively called, as "backward", "uncivilised", "primitive" and "simple" (these negatively connotated terms can still be found in official legislative language and on the *Ministry of Tribal Affairs*' website, for instance) (see Ministry of Tribal Affairs 2006). In a nutshell, as ethnic and indigenous minorities within the national structure the Adivasis are not recognised as equal in their socio-cultural distinctiveness.

For Adivasis their lands are integral to their indigenous identity (see 5.1 Adivasis and Their Relationship to Their Lands and Forest) and they depend upon their forests' integrity for their survival. The defence of their right to live on their lands has evolved from a struggle on the local level to one on the national and in recent decades has even taken on international dimensions. Hence, to compare and link Adivasi strategies with the (inter)national law and human rights context forms the topic of this research.

Research Overview

As I approach the whole discussion surrounding Adivasi land rights from the premise that the Adivasis are the de facto (but not de jure) indigenous population of India, the theoretical backdrop of this research is drawn from the growing debate in both legal anthropology and international law about indigenous peoples and their relationship to the international human rights discourse and their position in international law. Within this the main emphases are given to provisions related to indigenous peoples' land rights on the one hand, and to those applicable to India on the other hand, as India has not ratified all the relevant human rights treaties. The legal instruments on the international level that I use to argue for Adivasi land rights encompass:

1. The developing corpus of international human rights treaties and (draft) declarations (particularly those relating directly to indigenous peoples and their land rights): ILO Conventions No. 107 and No. 169; the (Draft) Declaration on the Rights of Indigenous Peoples; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child

2. The directives, communications and reports (relating to indigenous peoples' land rights and India) of international organisations and institutions (such as those of the Permanent Forum on Indigenous Issues, the Working Group on Indigenous Populations and the World Bank Operational Policies and Bank Procedures 4.10) and of human rights bodies (such as the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, the former UN Commission on Human Rights and the UN Human Rights Council) and of treaty monitoring bodies (such as the UN Human Rights Committee; the UN Committee on Economic, Social and Cultural Rights; the UN Committee on the Elimination of Racial Discrimination and the ILO Committee of Experts on the Application of Conventions and Recommendations)
3. Relevant complaints before treaty monitoring bodies.

The instruments on the national level comprise:

1. National legislation relating to "Scheduled Tribes", such as the Fifth and Sixth Schedules in the Constitution of India; the Provisions of the Panchayats (Extension to the Scheduled Areas) Act; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act; the Scheduled Tribes (Recognition of Forest Rights) Bill and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act; and where relevant (South India), State legislation
2. Landmark cases under domestic law.

The overall aim of the research is to link anthropological with international law concepts on indigenous peoples and especially the Adivasis of India. Hence, the main research goals are:

1. To identify the key threats to indigenous, i.e. Adivasi, land rights in India, the reasons for Adivasi land alienation and the existing national laws addressing their problems; to highlight how Adivasis are already countering these threats and which positive/negative effects this has had by examining case studies from South India
2. To compare Adivasi land rights concepts and their strategies against land expropriation with international law and human rights approaches towards the protection of indigenous peoples' land rights
3. To identify what the two systems could learn from each other and to pinpoint how they could respectively profit from the other's approach, i.e. to show in particular how Adivasis could complement their own strategies by harnessing international (in addition to national) human rights instruments directly or indirectly created to address their situation.

In letting the Adivasis and their representatives "speak for themselves" (at least in the recreation of their words in this work) it is my express aim to give precedence to indigenous voices. This aim is best expressed by Brockington and Sullivan (2003: 67) who affirm that "[a]n appropriate role for ethnography today might be the attempt to provide public space for views that otherwise are likely

to go unheard". Needless to say, this stance is informed by the methodological as well as theoretical repercussions the crisis of representation of the social sciences had in the last two decades of the previous century. General criticism of "Third World" (see the discussion below in Terminology) and development research led to several different reactions from social researchers, ranging from detached postmodern responses and the abandonment of fieldwork altogether, to more moderate responses of re-evaluating existing research and learning out of past mistakes. In this regard it has also been argued – from an extreme relativist perspective – that only members of a community can study themselves and hence only indigenous people can study indigenous peoples. I disagree with this position because, as has been put forth by Scheyvens and Storey (2003: 4), it implies that people from "Western" countries can abdicate their responsibility to speak about and change the existing unequal power relations in the world, which especially affect indigenous peoples. At the same time, however, I do not want to commit the fallacy of conceiving of the Adivasis and other indigenous peoples as having no power, public voice or space, which is equally wrong.

Thus, next to the scientific findings this research should contribute to legal anthropology, I want to stress its practical value for the field of indigenous and particularly Adivasi land rights activism. Despite the fact that the indigenous peoples of Asia constitute approx. ¾ of the world's indigenous peoples (Cheria et al. 1997: 12) they have often been neglected in human rights debates and in legal anthropology in the past because of human rights' precarious standing in Asia (Asia not having its own regional human rights protection mechanism or convention like Europe, the Americas and Africa) and the difficulties of applying the term "indigenous" to Asia's original inhabitants (see the discussion in Terminology below). Additionally, the human rights regime in place today with its roots in the European enlightenment is perceived as being too individual-centred in contrast to the collective nature of rights in Asia (for instance, collective land ownership rights). By combining legal and anthropological approaches I seek to overcome these difficulties, as one-sided approaches have too often yielded misleading research outcomes in the past. Indeed, a problem as intricate as the Adivasi land rights situation can only be addressed by employing an inter-disciplinary approach.

Taking all this into account, the central research question is twofold: Why are Adivasis – the indigenous peoples of India – being deprived of their lands and can international human rights law provide solutions in this context?

Further sub-questions related to this are:

- Which status do indigenous peoples' land rights have in international law and the worldwide human rights discourse?
- Consequently, which status do Adivasis have as the internationally, but not nationally recognised indigenous peoples of India, on the one hand in the Indian nation State and on the other hand in international human rights law?
- Which rights do their different positions within different contexts entail? Which human rights (land rights in particular) do they have as indigenous peoples/minorities? Which constitutional

rights (especially regarding land) do Adivasis have as "Scheduled Tribes" in India? What are the existing legal remedies in India concerning Adivasi land alienation? Are these laws being effectively implemented and enforced on the ground and, if not, where are the loopholes? Do rehabilitation policies work and is Adivasi land being restored?

- How do these various legal and socio-cultural positions affect their land rights situation today? How has this situation changed in the course of time?
- What are the causes of Adivasi land alienation? Where do Adivasi land rights concepts and national laws governing Adivasi lands contradict each other and how does this contribute to their land rights problems?
- Which relationship do Adivasis have to their land?
- Finally, what is the Adivasi land rights picture in South India, a part of Adivasi India often neglected in discussions on Adivasi rights because of its non-inclusion in the Scheduled Areas (SAs) (see The Fifth and Sixth Schedules)? How do Adivasis there respond to the different threats? Concretely, can international law help in the South Indian Adivasi context, if yes, how, and if not, why not?

The principal research hypotheses are that

1. India has a comprehensive legal protection system for its "Scheduled Tribes" and their land rights, which, however, is virtually noneffective because it lacks implementation and enforcement on the ground.
2. Adivasis have a special relationship to their land and their survival depends on the protection of their lands and forests.
3. Adivasis are additionally disadvantaged and discriminated against with regard to their land rights because they are not recognised as indigenous peoples in India.
4. Indigenous peoples' land rights can be addressed more holistically and be protected more effectively under a human rights approach.

Central to my research is thus the thesis that Adivasis and their land rights struggles could benefit from the fact that indigenous peoples are being awarded more and more positive recognition in international (human rights) law.

Terminology

(1) Despite the fact that the name "Adi-vasi" is not indigenous to any of the hundreds of Adivasi languages, but is a Hindu collective term for the highly heterogenous indigenous peoples of India, I have opted to use this ("emic") term in this research because it is endorsed and used by most Adivasis themselves and the activist groups affiliated with them. The name "Adivasi" is mostly used when referring to the different indigenous communities of India collectively, but when referring to the different peoples their names, such as Irulars, Gonds, etc., are used. Cheria et al. (1997: d) state that "[o]ur use of the term adivasi [sic] is an explicit political position, recognizing them as

indigenous". Hence, when employing the outdated terms "tribes" and "tribals", and the administrative term "Scheduled Tribes", I hereby explicitly express "etic" notions of Adivasis. It is worth noting that, historically, the terms "tribes" and "tribals" are products of late 19th century Western colonial and scientific thought and to some degree still reflect the patronising and homogenising ideologies of that time. Despite this fact the terms are still widely used in India (and elsewhere) by government officials and anthropologists alike. Singh (1996b: 62) jokingly claims that "when the British took over the country and were faced with a multitude of communities, religions, cultural groups to deal with they simply ran short of vocabulary and the term adivasi [sic] was simply translated into "tribe" in English". Bates likens the growing rejection of the term "tribe" with regard to Adivasis to the situation in "Africa, where the term tribal is no longer used because of its association with white racial supremacism and the divide-and-rule policies of colonial and post-colonial governments". The use of the term with regard to India should therefore always be handled with care and questioned as to its intended meaning, as it often plainly reflects the internal colonialism of the dominant castes and the Adivasis' status on the lowest rung of the hierarchy that is the Indian society. For an extensive treatment of the term with regard to India consult Beteille (1986).

(2) For the lack of a "neutral" term and in rejection of the again homogenising and condescending term "Third World", I use the lesser evil "Developing Countries" to denominate those countries in the world that Euro-American countries differ from in terms of their economic, social and legal systems. With this I explicitly hope to avoid negative judgements that are implied in more problematic terms.

(3) Considerable discussion in anthropology as well as international law has been going on about the relatively new, but meanwhile hugely popular term "indigenous peoples". The question posed most often is whether it can be uniformly applied to the former "natives", "First Nations", "autochthonous" and "aboriginal" peoples of the world. Especially with regard to Asia and Africa the scientific discussions in the last few years have been particularly vociferous, mostly brought forward by indigenous activist groups and sympathetic academics against official government positions. In this context it has to be kept in mind, however, that the use of certain terms always implies particular perspectives and backgrounds and often reveals more about the users than those denoted by the terms. Bose (1996), for instance, points out the pitfalls inherent in applying this and other terms to the autochthonous peoples of Asia. According to him it is impossible to identify any group as indigenous on a chronological basis in Asia because migration has continued for thousands of years on this continent. Looking at India, for instance, research has shown that some Adivasis came to India after the Aryans and some of today's STs have developed out of former castes (Pillai-Vetschera 2006: 1. personal communication).

Today there is no legally binding definition of indigenous peoples and most indigenous peoples themselves even oppose such a definition as they say it would codify and hence "freeze" their identity at a particular point in time, which would, however, not represent the changing nature of

their identity. Several working definitions can be found in the academic literature and in international law, inter alia, in Article 1, para. 1-2 of ILO Convention No. 169, 1989:

Article 1

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Table 2 Delimitation of the terms "tribal" and "indigenous" peoples in ILO Convention No. 169, 1989

The evolution of the term over the last few decades can be clearly seen when looking at the definition of “semi-tribal” and “tribal” populations (who are regarded as indigenous) in Art. 1, para. 1-2 of ILO Convention No. 107, 1957:

Article 1

1. This Convention applies to:

(a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.

2. For the purposes of this Convention, the term semi-tribal includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.

Table 3 Delimitation of the terms "tribal", "semi-tribal" and "indigenous" peoples in ILO Convention No. 107, 1957

Anaya (2004: 3, emphases in original) stresses the factors colonialism and land, which play a crucial role in defining “indigenous”:

> Today, the term *indigenous* refers broadly to the living descendants of preinvasion inhabitants of lands now dominated by others. […] They are indigenous because their ancestral roots are embedded in the lands in which they live, or would like to live, much more deeply than the roots of more powerful sectors of society living on the same lands or in close proximity.

Probably the most-cited working definition is that of Martinez Cobo (1987) in his seminal report “Study of the Problem of Discrimination of Indigenous Populations” submitted to the then UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (now the UN Sub-Commission on the Promotion and Protection of Human Rights) and later to the WGIP:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their

> continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

In this working definition Martinez Cobo emphasises the territorial connection of indigenous peoples on the three temporal levels past, present, future (Gilbert 2004: 30). Likewise, Gilbert (ibid.) stresses the attachment of indigenous peoples to their land as the most important defining factor by referring to the origins of the Greek word *autochthon* – *auto* (self) and *khthôn* (land) meaning "of the land itself".

For the purpose of this research, i.e. to again give preference to autochthonous voices, I go along with the viewpoint the majority of "indigenous" peoples worldwide represent, i.e. that they are in fact indigenous. For an extensive discussion of the term with regard to the Adivasis see 3.3 Adivasis as Indigenous Peoples.

(4) The geographical term "South India" is usually understood to comprise the States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu. For the purpose of this research "South India" denotes the afore-mentioned States with the exception of Andhra Pradesh.

(5) The last point in this terminology discussion concerns the (rather awkward and often fictitious) dichotomisation Adivasis/non-Adivasis, Adivasis/outsiders. In the past and still all too often in the present Adivasis were/are described from the viewpoint of people not belonging to Adivasi societies and as a consequence merely as what was/is different or "other than" mainstream Indian society (see Bates 1995: 117). Bijoy (2006: 3. personal communication, emphases in original) deconstructs this pattern in differentiating that

> [i]t is not the question of non-adivasis [sic] and adivasis (a dichotomy more fictionalised internationally in the development/Donor/NGO sector, for there are numerous non-adivasis who have internalised the adivasis' political aspirations […] and there are many adivasis who have abandoned the adivasi aspirations for the mainstream engineered assimilation theory). […] On the issue of "outsider" [sic] and how adivasi feels. This again is a false construct or rather an imperfect or partial construct, a construct based on origin, race, religion and other parameters. While this is, in a sense a reality, there is another space where the definition of an "outsider" […] is dependent on the outsider's perception of the adivasi. If this perception is part of the mainstream perception and/or emerging from the ideology of oppression, or hierarchy, of inferior-superior etc, then the "outsider" is suspect. […] But if the perception of the "outsider" of adivasis is based on the "authentic" history and perception of adivasis of themselves that has dignity and respect at the core, then the "outsider" is no longer an "outsider", but an "insider" despite her/his other obvious differences.

Hence, when any dualisations along the lines of Adivasis/non-Adivasis are employed in this work it is for reasons of brevity only and with the considerations above in mind.

2. Methodological Considerations

2.1. Constructing the Field(s)

How do I put my research philosophy into practice?

As a first step of broaching the methodological issues faced with when dealing with such a complex arena of competing concerns as the land rights situation of Adivasis I would like to delineate the term "field(s)" for this research. The notion in anthropology of "the field" as a clearly geographical and territorial entity has long given way to notions of the field as being processual, fluid and not marked by physical boundaries, but being constituted by transnational connections and networks. Anthropologists, undoubtedly due to the developments in mass communications and travel, are today able to communicate and interact with their "fields" in myriad more ways than their predecessors were able to. In connection with this the conceptual boundaries between researchers and researched are increasingly becoming blurred and dichotomic distinctions along the lines of scientist/research object, West/Developing Countries, empowered/powerless etc. are becoming less in the social sciences, if not obsolete altogether. In my research, I construct my "field(s)" along these lines and I also try to chart the evolution of my notion of the field(s) involved over the course of the research, i.e. to document how I conceived of the field(s) when first "entering" them and then to capture how my perception of them changed during the research process. This also involves tracing how I moved between the fields and how I redefined and linked them through this largely circular process.

I first became involved with the Adivasi land rights situation when conducting fieldwork on broadly defined developmental and workers' rights issues in South India (Tamil Nadu, Kerala and Karnataka) and Mumbai with local NGOs in 2003, organised by an Austrian development organisation. This initially quite confined and one-dimensional field, which at the time was born out of a purely personal motivation and interest in India and only marginally accommodated academic interests, soon became multi-dimensional and reciprocal when fieldwork organisers from India later visited Austria. In addition to this personal dimension the field was enlarged by degree-related research into several different topics concerning Adivasis (including women's rights and land rights) and my involvement with a human rights NGO in Austria, dealing, among other things, with the human rights violations Adivasis face on a daily basis. I soon realised that a rights-based approach was needed when I shifted the focus of my social and cultural anthropology degree to legal anthropology and human rights related subjects. What was in the beginning a vague idea of combining human rights and international law approaches with anthropological knowledge about Adivasis, in order to create an action-oriented and applied anthropology that the indigenous peoples of India could above all benefit from, soon met with the sheer vastness of these two fields and the need to re-focus. No matter how open I would have liked to keep these multiple fields, at the outset of this research project I had to limit the radius of my enquiry and draw a clear outline around it. This was done in two ways: thematically and geographically. I decided to focus on land rights, the most per-

tinent issue, and on South India, having already gained experience there. Furthermore, I decided to focus on the land rights problems of the Adivasis in mainland South India and not on the indigenous peoples on the Andaman and Nicobar Islands. The latter are, if possible, in an even direr situation, but to include them in the present discussion would have gone both beyond the spatial as well as the temporal scope of this research. Finally – as much as going back in history and addressing past injustices is often necessary and yields valuable findings – this research is above all concerned with the present condition of Adivasi land rights and only deals with the historical context to the extent that it serves to explain the status quo.

2.2. Research Approach

Following Habermas' (1978; cited in Murray and Overton 2003: 21) description of the different types of science[6] and Blaxter et al.'s (1996; cited in Murray and Overton 2003: 23) list of different research types,[7] I would characterise my research approach as:

- A mixture between historical-hermeneutic and critical research, i.e. the interpretation of process and pattern rather than prediction, the uncovering of non-explicit processes and relations, and the communication of these findings to promote progressive social change;[8] such an approach typically necessitates a mix of methods, such as *open* and *semi-structured interviews*, *focus group discussions*, participant observation and the generation of visual texts
- Applied and action-oriented
- Problem-solving
- Collaborative in the sense that the research aims at the full participation of the Adivasi communities in question and should only take place with their prior and informed consent; this includes the interviewees' consent to how the interview data is used in the thesis and the recognition that all interview data is co-produced (Sherman Heyl 2001: 370).

The second point in the above elaboration is linked to the last point, in that *action research,* as described by Bryman (2004: 277), contains an element of collaboration, i.e. the researcher(s) collaborate(s) with research participant(s) in detecting a problem and finding solutions for it. Sol Tax (1958: 77) describes an *action anthropologist* as being a "catalyser" who "wants to help a group of people to solve a problem, and […] wants to learn something in the process".

In a similar vein a combination of the first and last research approaches elaborated above is widely termed *Participatory Action Research* and forms part of the growing set of popular development research methods commonly known as *Participatory Rural Appraisal* (PRA) (Brockington and Sulli-

[6] Habermas (1978) divides science into three types: empirical-analytical, historical-hermeneutic and critical (Murray and Overton 2003).

[7] Blaxter et al. (1996: 5, cited in Murray and Overton 2003: 23) classify different research types along the dichotomies pure/applied, descriptive/explanatory, market/academic, exploratory/problem solving, covert/collaborative, value free/action based and subjective/objective.

[8] Bryman (2004: 12), citing Bhaskar (1989: 2), terms this approach *critical realism*, which holds that "we will only be able to understand – and so change – the social world if we identify the structures at work that generate those events and discourses".

van 2003: 62f.; Sherman Heyl 2001: 377). This involves the researcher taking on an active role as an advocate for the researched and creating opportunities for the latter to benefit directly from the research. Information about their situation generated through the research is shared with the participants, who are themselves actively engaged in researching their own situation and working at alternatives. Without wanting to reinvent the already strained concept of empowerment at this point, this approach seeks to provide for a more reciprocal research process that as many participants as possible on both sides can benefit from. In summary, the action anthropologist "will not use people for an end not related to their own welfare" (Tax 1958: 78).
Understandably, the application of such an elaborately devised research approach to a small-scale research project as the present one was limited, however, having adopted such a stance certainly improved my understanding of people's problems and the communication in research interactions.

In order to address such a complex issue as the competing concerns of actors involved in Adivasi land rights struggles and because my research questions required it, I opted to utilise qualitative research methods. In doing so I wanted to avoid the many structural biases inherent in quantitative methods, such as, for instance, the exclusion of marginalised views in large-scale surveys. I do not propose that qualitative methods are the answer to all the problems quantitative methods pose, but rather that many of the latter's pitfalls and limitations can be circumvented by giving preference to qualitative research tools.
So what are the characteristics and advantages of choosing a qualitative approach? Qualitative research techniques have become more widely used in the social sciences after critical ethnography and feminism[9] criticised quantitative methods for being exploitative and one-sided (Bryman 2004: 22f., 128f., 288f.). Qualitative methods, on the other hand, are perceived to be more reciprocal because they not only entail the receiving, but also the giving of information. They are geared to the research strategies of social scientists interested in interpreting the actions and perceptions of social actors, and **understanding**, rather than **explaining**, the meanings of people's worlds (Brockington and Sullivan 2003: 57; Bryman 2004: 13).[10] It is important to understand the meanings behind people's lives because these individual realities have meaning for the people who construct them and they act upon these meanings. Hence, with the use of qualitative methods it becomes possible to directly access the complexity of human experiences because people are asked about their own interpretations of their lives instead of the scientist inferring them from quantitative data (Sherman Heyl 2001: 370). In this argument also lies the main difference of the subject matter of the social sciences (people and their social realities) to that of the natural sciences, as the latter's objects of study, in contrast to human beings, cannot attribute meaning to their environment

[9] Feminism's concern was above all to treat the people being studied as people and not simply as respondents to research instruments (Bryman 2004: 23).
[10] Bryman (2004: 13) sees the clash of the two epistemologies of *positivism* (the natural science position) and *interpretivism* (the social science view, especially of hermeneutics, phenomenology and symbolic interactionism) epitomised in the division between the **explanation** and the **understanding** of human behaviour.

(Bryman 2004: 279). Overton and Diermen (2003: 54, emphases in original) state that "[q]uantitative data analysis is strong at describing the 'what' but weak at explaining the 'why'". Correspondingly, it is my research aim to explain **why** Adivasis have to fight for their land rights and to draw on existing research for the **what**.
Qualitative methods are often shunned for their unstructured approach to the collection of data and the resulting loss of control over the data, but this perceived disadvantage can also be read in another light, in that qualitative methods allow more flexibility and even a change of the research direction after the start of the research process.

Finally, at the same time as employing an interpretivist approach in epistemological matters – as already implied above – I take a constructivist position concerning ontology, in that I assume that social entities and their associated meanings are continually being constructed by social actors. Consequently, I acknowledge that "the researcher always presents a specific version of social reality, rather than one that can be regarded as definitive" (Bryman 2004: 17). However, unlike the observations in many method textbooks (Bryman 2004; May 2001; Scheyvens and Storey 2003) that qualitative methods are associated with an inductive approach to the relationship between theory and research (that theory is an outcome of research; the most popular form being *grounded theory*), I mostly take a deductive approach, in that the theory on indigenous peoples and their land rights guides my enquiry into Adivasi land rights. Nevertheless, even deductive approaches include an element of induction, as hardly any social science research processes are totally linear and tend to be somewhat iterative, i.e. they move back and forth between theory and empirical data (Bryman 2004: 10). My partial embracement of grounded theory for the data analysis (see 2.5 Analysing Data and Writing up Research) no doubt generates new theoretical categories, even if they only apply to a limited context. Bryman (2004: 7) identifies another approach that to some extent certainly applies to my work: this involves the relevant literature on a research topic acting as the stimulus for an enquiry, i.e. thematic publications serving as a proxy for the theory.

2.3. Research Design

The aim of a research design is to provide the structure that guides (1) the realisation of the chosen methods and (2) the analysis of the data elicited with the help of these methods (Bryman 2004: 27). The design chosen for this research presents a combination of *case study* and *comparative design*.

2.3.1. Case Studies

In a narrow sense a case study requires the detailed and intensive study of a single case whereby the case can consist of a single community, school, family, organisation, person, event, etc. (Bryman 2004: 48-52). What makes case study design special is the fact that the case itself is a study object of interest in its own right, and researchers normally try to highlight the unique features of the case in question, instead of trying to infer statements that can be generalised or have external

validity (ibid.). Bryman (2004: 50) calls this the *idiographic approach* because case studies deal with concrete and individual facts. For Mitchell (1984: 237) the aim of case studies is to "impart a sense of concreteness to an otherwise overwhelmingly abstract account". A case study design is also the link between theory and empiric findings because the latter has to "demonstrate how events and actions are linked to one another in theoretically significant ways" (Mitchell 1984: 240). With regard to this research the case studies in Chapters 6.1 and 6.3 in each case relate to affected Adivasi communities in a specific area.

Moreover, a case study design is better geared to the features of qualitative research, whose analytic units tend to be processes unfolding over time, rather than static points of analysis (Bryman 2004: 281). By following a case over time, the changes felt by its actors can be imparted more easily and it becomes possible to depict these changes in the way those concerned perceived them, i.e. as processes.

Regarding purpose and type case studies can be classified into different categories (Bryman 2004: 51; Mitchell 1984: 238). The case studies employed in this work are:

- The *critical case study*: a case is chosen on the grounds that it can illustrate whether a hypothesis will or will not hold; this applies to the extent that my case studies should demonstrate whether Adivasis can benefit from the international human rights approach towards indigenous peoples or not.
- The *exemplifying case study*: here cases simply provide an appropriate context for research questions to be answered; incidentally, what a case study should exemplify often only becomes clear after it has been finalised.
- The *extended case study* design: the same actors are followed over a series of different situations, giving the whole analysis a dynamic aspect.

As soon as there is more than one case study – as is the case in this research – the whole design usually takes on a comparative aspect and it is more appropriate to speak of a *multiple case study* design (Bryman 2004: 55). Generally, comparison – **the** research tool in anthropology – of two or more contrasting cases generates better understanding of these phenomena. Thus the comparison of detailed case studies on Adivasi land rights issues should yield insights into the structural inequalities Adivasis face and help identify recurring patterns in South India.

2.4. Methods for Gathering Data

2.4.1. Critical Literature Research

Literature research for this research was conducted on and off over a period of approximately one year, firstly in various institutions and libraries (including their electronic resources) in Vienna and London, and secondly on the Internet. The latter material predominantly includes up-to-date information derived from online journals dealing with Adivasi issues (such as Frontline and Combat Law) and from Adivasi (NGO) websites, human rights reports and briefings by organisations such as Amnesty International, Human Rights Watch, the Society for Threatened Peoples and the Asian

Centre for Human Rights, and Government of India publications. Considering the highly differing interests and perspectives involved in an issue like the Adivasi land rights struggle, I have tried to triangulate the material used for my arguments by cross-checking data and findings against information obtained from as many different sources as possible.

2.4.2. Fieldwork Methods

The value of anthropological fieldwork primarily lies in its capacity for yielding information which is usually not obtainable from standardised social science research methods (such as survey research using structured interviews and self-completion questionnaires) (Scheyvens and Storey 2003: 7). First-hand information, the possibility to conduct research in natural settings, rather than in artificial contexts such as laboratories (Brockington and Sullivan 2003: 57), the experience of "having been there", and the development of new perspectives on the research are by far the strongest arguments in favour of fieldwork. Fieldwork is even seen as a precondition for the adoption of action anthropology as the guiding research approach (Tax 1958: 76). Typically, fieldwork involves a prolonged stay in the field, subject to research type and personal resources. Fieldwork for this research was conducted in South India (Karnataka, Tamil Nadu and Kerala) and Mumbai in July/August 2003 and in January/February 2007. Considering the nature of a Master's research, i.e. its limited scale, the fieldwork required for it was similarly brief. Wolcott (cited in Bryman 2004: 293; 1995) terms this a *micro-ethnography*, which typically requires focusing on a particular aspect of a topic. As a result the conclusions drawn from such a micro-ethnography should be regarded as fairly tentative (Hoddinott 1993: 73). Longhurst (cited in Hoddinott 1993: 74; 1981) introduces an effective way of dealing with the problem of matching up required data to the time available, in that he distinguishes between single-point (events that happen once) and continuous (ongoing events) data on the one hand, and registered (events that are easily remembered) and non-registered (events that are neither recorded nor easily recalled) data on the other hand. Ideally, during short fieldwork stints the collection of information should be focused on single-point and registered data.

The choice of research methods is never value-free or entirely driven by research interests, as personal predilections, theoretical inclinations or practical reasons always play a role. The same is true for the writing of field notes and remaining conscious of this fact helps to develop a certain style and consider its implications for the research rather than try to do the impossible of staying neutral and objective all the time. Field notes are initially only intended for the researcher and because they are "behind the scene" documents (cited in Emerson et al. 2001: 358; Lofland and Lofland 1995: 96) they are full of the choices the ethnographer made on the spot of what to include and what to exclude. In short, field noted provide an answer to the question "how to organize the chaos of life on a linear page", but should be thought of "more as a filter than a mirror reflecting the 'reality' of events" (Emerson et al. 2001: 358).

Before describing the different types of interviewing employed during fieldwork, it is necessary to explain the corresponding sampling method, i.e. the sampling of participants. It is unfortunately true that, for lack of resources or several other reasons, ethnographers often have to resort to whatever sources become available to them for gathering their information. In contrast to quantitative research, where probability sampling is paramount, sampling is mostly of the non-probability type in ethnography, i.e. *convenience* or *snowball sampling* (Bryman 2004: 100, 538, 44). In the former case a sample is chosen on the grounds of its availability to the researcher and in the latter case the initial sample is enlarged on the basis of contacts derived from this first group. Both can also be called *purposive sampling* (Bryman 2004: 333f.), which implies that interviewees are sampled on the basis of whose replies are relevant for answering the research questions. As can already be inferred, my sampling method represents a combination of convenience and snowball sampling. For this research 22 interviews were conducted, mostly on the basis of who was available/who knew somebody else who was available and who was ready to participate in an interview.

In-depth (Ethnographic) Interviews: Semi-Structured and Informal/Unstructured Interviews

The names and tags given to this style of interviewing technique inevitably vary from one method textbook to the other. For its conciseness I chose to adapt the style described in Bryman (2004: 318-44) and took into consideration Sherman Heyl's (2001) text on ethnographic interviewing.

Typically, a *semi-structured interview* covers a list of topics and the researcher has an interview guide, which, however, can be modified (Bryman 2004: 320). Thus, in contrast to the rather rigid *structured interview,* the semi-structured interview allows diversions from the main questions, alterations of the order or the wording of questions and even the injection of new questions. Similarly, the interview guide can be expanded with previous interviewees' thoughts as one goes along in the interviewing process. Wanted above all are rich and detailed answers. During my fieldwork semi-structured interviewing chiefly took place on an individual basis with NGO officials in English. In order to ensure a degree of comparability between the case studies, however, I had to somewhat limit the freedoms described above and structure the interviewing.

What I call informal interviewing here is similar to what Bryman (2004: 320) terms *unstructured interviewing*. This is simply a form of interview where the interviewer only has notes on what to ask or sometimes only a single question (ibid.). It often takes on the form of a conversation and the style as well as the questioning is informal.

For the present work six semi-structured interviews and several informal conversations were conducted.

As a result of the openness of the questions and the flexible interview structure, *ethnographic interviewing* gives the research participants more freedom to shape the questions being asked and as a result the research focus too (Sherman Heyl 2001: 369). This can become an important element of power-sharing in research. The emphasis in ethnographic interviewing is on the need for

the interviewers to speak the same or at least a similar kind of language as the interviewees because language use shapes what and how we say something and what we understand and observe. In most languages, for instance, male categories shaped by male practices and concepts predominate over female categories. Hence, women often find it hard to express themselves in male categories or struggle to find corresponding female language categories (Sherman Heyl 2001: 374). Finally, ethnographic interviewing is first and foremost conceptualised as interaction (ibid.).

Focus Group Interviews

To begin with, a distinction has to be drawn between a *focus group interview* and a simple *group interview*. The former concentrates on a specific topic, which is explored in depth, whereas the latter's discussion matter is not limited to one area (Bryman 2004: 113). Originally, in *focused interviews* people with a particular experience were interviewed. Therefore the focus group interview can be regarded as a combination of the focused and the group interview. Normally focus group interviews comprise at least four people. Researchers are drawn to this method if they want to explore the dynamic element which develops through the joint construction of meaning in a group and if they are interested in how individuals express themselves as members of a group (Bryman 2004: 346). In addition, people tend to express their feelings about a certain topic, and why they feel that way, more often in focus groups than in individual interviews because other people's opinions can be gauged more easily. On the part of the moderator (researcher) s/he should not act intrusively and only guide the discussion when important points are not being followed up by the participants. Again, structure is only required to guarantee a certain degree of cross-case comparability and participants should feel free to raise their own points. Lastly, one can distinguish between or should be aware of the two different types of group interactions taking place in focus groups: complementary (agreement) and argumentative interaction (disagreement) (Bryman 2004 257). Generally there tends to be more agreement in group discussions, depending on how controversial a topic is, of course, and on cultural factors (group and discussion behaviour).

Drawing on previous fieldwork experiences it is for mainly practical and cultural reasons that I chose to employ the focus group method. When visiting an Adivasi village, the first event to happen after the arrival would be a village meeting, which – after a short introduction – would always result in a group discussion focused on a particular topic. The argument that focus group interviews are difficult to organise (Bryman 2004: 360) would thus not apply to Adivasi groups internally because their composition is natural. The only dilemma lies in the fact that the multiple views expressed by the Adivasi interview participants are condensed into one view when translated by the interpreter into English.

Sixteen focus group interviews were conducted for this research. The case study design allowed me to focus on particular groups, which become representative of a case, and next to the small research scope this justifies the relatively small number of focus group interviews conducted during fieldwork.

Visual Ethnography

Lastly, I have opted to use photographs in this research, either (1) as an illumination and visualisation of textual data, or (2) as sources of data in their own right, or (3) as prompts in interviews conducted during the second fieldwork stay in order to "elicit" specific responses. This use of visual anthropology is often referred to as *photo elicitation* (Bryman 2004: 313). As prompts I chose photographs of contrasting villages (forest and resettled villages), which I had taken during the first fieldwork period, and asked Adivasi interviewees to compare the pictures and voice their opinions and feelings evoked by them. The experiences with this method are described below in 2.6 Conclusion: Methodological Experiences.

2.5. Analysing Data and Writing up Research

Turning multifaceted fieldwork experiences, hours of unedited interview data and initially disordered field notes into coherent research findings is by no means less a challenge than collecting the data, as, in addition to this, the limits of what can be said and conveyed in terms of the understanding of the social world under study are always defined by the restrictions of what can actually be turned into words, i.e. written (Emerson et al. 2001: 356). Nevertheless, without theorising and thereby generating a better understanding of social phenomena research would be worthless.

Getting to terms with qualitative data is inherently more difficult than analysing quantitative data because, unlike the latter, qualitative data do not come in neat analytic units, which can easily be coded, and are of the descriptive, rather than the quantifiable type. The different qualitative analysis methods have in common that – as mentioned in 2.2 Research Approach – the data collection and the analysis process are interwoven, i.e., ideally, one should start analysing interview transcripts while one is still collecting data and transcribing raw interview data. The analysis then informs the further data collection and, vice versa, the analysis can be strengthened in the light of the new data. This aspect already hints at one of the most popular qualitative analysis strategies, grounded theory (Bryman 2004: 401-8; Glaser and Strauss 1967; Strauss and Corbin 1990), elements of which are contained in almost every qualitative research. I do not claim to use grounded theory in its entirety in my research, but only its most prominent tools: the iterative approach, the coding and the constant comparison. Grounded theory's most important characteristic, the development of theory out of the data, is brought to the fore as much as the research scope allows. Grounded theory advocates leaving research as open as possible, which, however, in my case made it more difficult to implement grounded theory. This was due to the fact that I had to define my research questions quite rigorously and early on because of research grant obligations.

As the iterative approach has already been outlined and the constant comparison of emerging codes is fairly self-evident, I will directly turn to the coding procedure. In order to reduce the vast amount of data, to make sense of raw data and to be able to interpret and compare, replies to open-ended questions require coding (Bryman 2004: 146, 410; May 2001: 138). Coding involves a three-step process: first the data have to be fragmented into parts and secondly these have to be

identified by salient names or tags (numbers, letters, etc.). This process yields *concepts*, which are the "labels given to discrete phenomena" (Bryman 2004: 403) and represent the first abstraction level in the coding process. The next step is to group the concepts and develop *categories* out of them, which are more elaborated and on a higher conceptual level. Out of these categories the *core category* is extracted, around which the other categories revolve. These three stages in this order represent the different forms of coding distinguished by Strauss and Corbin (cited in Bryman 2004; 1990: 402): *open coding* (developing concepts), *axial coding* (elaborating categories) and *selective coding* (selecting the core category). The categories lead to hypotheses and these eventually to a theoretical framework. This theoretical framework, however, does not denote a grand theory with a wide applicability, but a set of related categories that can explain a certain empirical phenomenon, such as, for instance, the alienation of Adivasi lands or the non-recognition of Adivasis as indigenous peoples in India. The grounded theory coding process is not as straight-forward as the coding in quantitative data analysis, nevertheless certain techniques, such as looking for indicators (different word types, recurring words, etc.) in the interview transcripts, can help identify concepts. It is important to code as soon as feasible and to be as imaginative and inventive as possible. Having too many codes in the beginning does not present a problem, as they are later condensed. It remains to clarify how codes and concepts can be named: this can either be done by using *in-vivo codes*, which derive from the language of the interviewees, or *sociologically constructed codes*, which are coined by the researcher (cited in Bryman 2004: 406; Strauss 1987).

Finally, I have employed a methodological procedure termed *respondent* or *member validation* by Bryman (2004: 274), which is aimed at sharing the research findings with interviewees in order to validate the researcher's interpretations and thus achieve greater congruency of the interviewees' accounts and the social science view. Accordingly, the written interview transcripts/recordings were forwarded to the research participants (the Adivasi communities and the NGO staff members) and their reactions and comments were incorporated into this work, which has also been sent to the research participants.

2.6. Conclusion: Methodological Experiences

Taking all of the above into account I prefer to share the view of Brockington and Sullivan (2003: 70) – concerning the quantitative/qualitative method divide – that qualitative methods embrace quantitative techniques. In general, although the social sciences are more about tendencies than hard facts,

> there seems to be no real reason why the "social facts" generated by qualitative and interpretative approaches should not be considered as "real" and accurate as those empowered with the confidence of numbers. (Brockington and Sullivan 2003: 65, emphases in original)

My choice of qualitative methods is born out of a rejection of positivist stances towards the social sciences, and social anthropology in particular, and an endorsement of interpretivism and constructivism. Qualitative researchers are to a large degree committed to viewing the social settings under study through the eyes of the people acting on and in them (Bryman 2004: 279), which in

turn requires close involvement of the ethnographer with these people. This commitment finds expression in my research goal to understand Adivasi world views and to fathom how they make sense of the social reality of their land rights problems.

Next to theoretical considerations, practical ones also played a role. Qualitative methods with their aim of building up an understanding between interviewer(s) and interviewee(s) are more appropriate for the Adivasi context because quantitative methods have tended to be employed by government researchers and the like in the past. The negative implications associated by Adivasis with the latter might have elicited scepticism and hindered rapport if I had employed a standardised questionnaire. Hence, next to their non-imposing nature another advantage of qualitative methods is their flexibility.

In the course of the fieldwork the chosen interview methods were soon modified to meet the requirements of the context and the situation. The interview guides for both semi-structured and focus group interviews were soon replaced by certain keywords, such as the history of land alienation affecting a particular community, current problems, land rights successes and victories, school, health, etc., which subsequently produced more congruent responses from the interview participants than the original, elaborate questions. Additionally, new questions or keywords continuously emerged in the course of an interview that enlarged the existing pool of questions and often became more important than the original questions. Examples for this are the value of *Panchayati Raj* institutions (see 4.1.3 The Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996), which effect the land loss has (had) on Adivasi women in particular, which influence political parties have on Adivasi communities (especially in Kerala), how the traditional funeral rituals and the Adivasis' access to their burial grounds are affected by land loss, how acts passed by the central government are implemented in the States, the question of schooling, the Adivasis' access to health facilities, etc.

An important consideration was whether to openly jot down notes during interviews or whether this would (negatively) influence interview situations and whether it would therefore be better to write down the field notes at the end of the day. Given the fact that all the interview participants consented to their interviews being recorded the only notes that were ultimately taken during interviews were of unknown terms or names and their spellings. In general, interviews demanded complete attention on my part and that of the interpreters/interviewers other than myself and with hindsight it would have almost been impossible to record interviews only on the basis of taking notes. Because of the intensive fieldwork schedule every day and for practical purposes such as having to wait for the opportunity to be alone and have some quiet, the day's experiences and any additional observations were collected as keywords over the course of the day and subsequently written down in the evening.

Contrary to my pre-fieldwork expectations the photo elicitation method did not "elicit" as many responses as I had hoped. This was either because the participants were too occupied with discussing issues during interviews and there was no time left after interviews or both interpreters and

interviewees had difficulties in explaining/responding to my request because, as was explained to me, the concept of voicing one's thoughts without being asked a particular question was unfamiliar.

Lastly, my intended link between these different research methods and approaches was to try and include an element of self-reflexivity at every stage and to turn the anthropological eye back upon the self at certain points. To remain cognisant of the fact that "re-presentation" in anthropology constitutes above all an act of writing in a research context was an important tool for me to stay aware of the limitations of that writing, which are at the same time the limits of expression in a written medium.

PART I
THE INTERNATIONAL CONTEXT

3. Indigenous Peoples' Land Rights in International Law and the International Human Rights Regime

The last five decades have seen a steadily growing number of activities and developments concerning indigenous peoples in international law, both in the creation of formal international human rights law and in the development of customary international law. I will first sketch out the events that led to indigenous peoples (finally) becoming subjects of international law and, secondly, show why the human rights approach is the one best suited to the protection of indigenous peoples' land rights. Thirdly, I will argue for the Adivasis' status as indigenous peoples and, fourthly, the most important human rights instruments will be analysed as to their provisions on indigenous peoples' land rights and their (non-)applicability to India. For reasons of space only it is (unfortunately) impossible to mention all the existing treaties, declarations, recommendations, reports, policies, etc. that are of use for or which contain references to indigenous peoples in this research because there are (fortunately) already too many in international law.[11] For instance, the CAT (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) would be helpful when dealing with the frequent police brutalities against Adivasis and the torture of Adivasis during detention (see 6.2.3 Muthanga), but so far India has only signed and not ratified the convention, thus signalling its endorsement of the convention, but not yet being legally bound by it.

3.1. Indigenous Peoples Becoming Subjects of International Law

Indigenous peoples worldwide (the Adivasis are no exception) are in a position today where their land has been encroached on, incorporated into (whether as a result of colonialism or of a different force) and now forms part of the nation States that politically divide the world at present. Within the respective municipal legal systems of these States the rights of indigenous peoples mostly fall under minority protection laws, however indigenous peoples do not see themselves merely as minorities, but as "peoples", as laid down in Art 1, para. 1, of the ICCPR (emphasis added):

> All **peoples** have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The term "minority", however, as it is employed, for example, in Art. 27 of the ICCPR, takes on a different and more important meaning for indigenous peoples when a treaty lacks specific provisions on indigenous peoples. At the same time it has to be added that minorities and peoples are in no way mutually exclusive. In contrast to a minority within a State that is a majority in another

[11] The Convention for the Prevention and Punishment of the Crime of Genocide, 1948, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, are two of those instruments that are of importance for indigenous peoples, but will not be dealt with in this work.

State, such as, for example, the Slovenian minority in Austria/majority in Slovenia, indigenous peoples do not have a so-called "protector State", which is one of the reasons why they are having particular difficulties in asserting their status as distinct and viable peoples.

Inseparable and interdependent with the term "peoples" is the concept of "self-determination", which is "a principle of the highest order within the contemporary international system" and without which "no discussion of indigenous peoples' rights under international law is complete" (Anaya 2004: 97). In contrast to the positivist notion that only peoples in the sense of nations have the right to self-determination and this only vis-à-vis other States, indigenous peoples have posed the question why the right to self-determination should only apply to non-indigenous peoples and why not to peoples within States as well. Equally, indigenous peoples have strongly called into question the individual- and not community-based approach in most older human rights documents with its roots in Western individualism, for instance in ILO Convention No. 107 (see the discussion in 3.4.7 ILO Convention No. 107, 1957). These concerns have been accommodated in the preamble and in Arts. 3 and 4 of the UN Declaration on the Rights of Indigenous Peoples, 2007 (emphasis in original):

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development, *Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law, *Article 3* Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. *Article 4* Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Table 4 The right to self-determination in the Declaration on the Rights of Indigenous Peoples, 2007

Anaya (2004: 3, emphasis in original) concisely explains indigenous **peoples**' status as **peoples**:

> Indigenous peoples, nations, or communities are culturally distinctive groups that find themselves engulfed by settler societies born of the forces of empire and conquest. […] Furthermore, they are *peoples* to the extent they comprise distinct communities with a continuity of existence and identity that links them to the communities, tribes, or nations of their ancestral past.

This explanation already hints at one of the important historical lines of argument employed by indigenous rights activists in order to advocate for the status of indigenous peoples as "peoples":

> Within this frame of argument indigenous groups have been referred to as "nations" and identified as having attributes of "sovereignty" that predate and, at least to some extent, should trump the sovereignty of the states that now assert power over them. […] Advocates for indigenous peoples point to a history in which "original" sovereignty of indigenous communities over defined territories has been illegitimately taken from them or suppressed. (Anaya 2004: 6, emphases in original)

In the positivist era of international law at the end of the 19th century, however, the (mainly European) States used sovereignty for their own ends in order to undermine indigenous peoples' rights by denying them the status of "peoples", thus excluding them from the realm of States and consequently from wielding sovereignty (Anaya 2004: 27, emphasis added). Over the course of the past century a new emerging theory of statehood – based not only on the recognition of a State by other States, but also on certain other objective criteria – replaced the 19th century notion. International law is now increasingly making way for non-state actors and is not limiting the definition of an "international personality" to States any more (Anaya 2004: 50). At the same time States are still reluctant to grant indigenous peoples greater degrees of self-determination or to even mention self-determination – despite the fact that, as Anaya (2004: 60, emphasis in original) explains,

> indigenous peoples generally have evoked "a right to self-determination" as an expression of their desire to continue as distinct communities free from oppression, while in virtually all instances denying aspirations to independent statehood.

It is in fact a misconception to formulate the full enjoyment of self-determination as exclusively implying the right to independent statehood because the **remedial** consequence ("sanction") of a breach of self-determination (for instance the refusal on the part of States to grant indigenous peoples self-determination) does not necessarily have to be the formation of a new State (Anaya 2004: 104f.), but can be anything from the delegation of certain government departments to a semi-autonomous region to full territorial and institutional autonomy. Hence, self-determination as the **substance** does not dictate the outcome of the remedial prescriptions because this outcome is dependent on the country, people(s), breach of self-determination, etc. in question (ibid.). In the same vein, the distinction has to be drawn between a title to a territory, which entails the sovereignty and the jurisdiction over this territory, and a mere title to land, which entails the proprietory right to own the land and the cultural right to use/not to use the land (Gilbert 2004: 180). In the case of indigenous peoples one has to further distinguish between land as property, which they occupy to the exclusion of others, and territory, which they traditionally use, but do not occupy to the exclusion of others (cited in Gilbert 2004: 36; Inter-American Commission of Human Rights 2000: 78).

The establishment and the growing acceptance of the notion of *legal pluralism* (see Griffiths 1986) has helped to pave the way for the (albeit partial) recognition of indigenous peoples' customary law systems by some of the States in which they live. A particular obstacle on the path to that recognition, however, was and still is the notion that Griffiths (1986: 3) terms *legal centralism*, which holds that "law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions". Legal pluralism, on the other hand, recognises that there is always more than one legal order present in a social field (Griffiths 1986: 1).

3.2. The Human Rights Approach: Protecting Indigenous Peoples' Land Rights

> *(1) Everyone has the right to own property alone as well as in association with others.*
> *(2) No one shall be arbitrarily deprived of his* [sic] *property.*
> (UDHR, Art. 17)

Human rights are universal, indivisible and interdependent. This becomes particularly clear when one looks at the interdependence of indigenous peoples' cultures with their land and of land rights with other rights, particularly fundamental rights, and land rights' inseparability from them, for instance from the right to life, the right to freedom of religious belief, the right to health, the right to equality of treatment before the law, the right to education and culture, the right to an intact environment, the right to humane work, etc. Indigenous peoples' aspirations and human rights are no different in this respect. Still, the recognition of the fact that they have the same rights as other peoples has been slow and difficult, largely because States have usually called for the creation of "special rights" for indigenous peoples, which has the consequence of excluding indigenous peoples from many of the human rights they have as **peoples**.

Land rights as such have been conceptualised both as individual property rights and as collective rights, the latter most often with reference to indigenous peoples and peoples with communal land tenure systems. Gilbert (2004: 3) sees indigenous peoples' claims to collective (land) rights as falling into the gap between States' sovereignty and individual property rights, which is why the theoretical framework of collective rights is still in the development stage.

Next to the growing body of treaties and declarations on indigenous peoples, which will be discussed below, the literature on indigenous peoples in international law also mentions the development of a distinctive corpus of customary international law concerning indigenous peoples. It is indeed the case, as Anaya (2004: 61f.) argues, that a certain "custom" or consensus and norm-building concerning indigenous peoples has steadily evolved since the 1970s among the actors in the international system, such as the international organisations (first and foremost the UN), the States and indigenous peoples. At the same time this kind of practice was accompanied by the corresponding *opinio juris* that this practice in fact ought to be and is right and expected. Significant elements that have led to the emergence of customary international law concerning indigenous peoples are, for instance, the relevant resolutions of ECOSOC and the GA, such the 1971 ECOSOC resolution commissioning the study on the "Problem of Discrimination against Indigenous Populations" by José Martínez Cobo, the establishment of the UN Working Group on Indigenous Populations in 1982 (which has a de facto, but not de jure monitoring procedure), its drafting of a declaration on the rights of indigenous peoples, the adoption of ILO Convention No. 169 in 1989, the revision of the World Bank's policies on indigenous peoples in 1991 and 2005, the establishment of the first Decade of Indigenous People 1995-2004 and the second 2005-2014, the appointment of the Special Rapporteur in 2001, the establishment of the UN Permanent Forum on Indigenous Issues in 2002, etc., to name but a few. Hence, States are now also bound by customary international law on indigenous peoples because – even if a particular State is not party to a treaty – the provisions of the treaty might be applicable to that State if they are part of general or customary international law. This has most descriptively been demonstrated with Art. 27 of the ICCPR (see 3.4.2 International Covenant on Civil and Political Rights, 1966), the right of minorities to cultural integrity, which the Human Rights Committee has designated as constituting general or

customary international law in several of its decisions concerning indigenous peoples (Anaya 2004: 134). In theory, Art. 27 could be invoked by the HRC to address the land rights violations against Adivasis, which are the chief threat to their cultural integrity.

3.3. Adivasis as Indigenous Peoples

The Adivasis, like so many other indigenous peoples and minorities within nation States worldwide, have not been able to exercise their right to self-determination, the established positivist notion being that this right can only be exercised by "nations" and only once in the case of former overseas colonies during the process of decolonisation (see 3.1 Indigenous Peoples Becoming Subjects of International Law). This view was echoed by India (being the one who exercised the right to self-determination at independence from Great Britain) in maintaining that the right to self-determination only applied to nations under foreign rule and not to (segments of) an already sovereign nation (external self-determination vis-à-vis other States). As a consequence, Adivasi movements or campaigns calling for self-rule, (internal) self-determination or greater autonomy are automatically seen as having secessionist tendencies that could endanger India's territorial integrity. However, with the exception of North-East India's indigenous peoples who want independence (see 5.3.6 North-East India), the Adivasis' aim is not secession, but a only a greater degree of autonomy (territorial, social and cultural) and their full participation in the determination of matters concerning their land and livelihoods (see also 3.1 Indigenous Peoples Becoming Subjects of International Law for the discussion on independent statehood vs. self-determination).

The Adivasis are faced with the paradox that – despite the fact that the Indian government has ratified ILO Convention No. 107 in 1958 – it continues to deny the fact that there are indigenous peoples (as a separate category of peoples) in India, the official Hindu-nationalist explanation being that all of India's population is "indigenous". Rather, the Adivasis are classified as "Scheduled Tribes", but for practical purposes and because they fulfil certain criteria (such as self-identification) they are considered the indigenous peoples of India by the UN and the international academic community. For instance, the UN Working Group on Indigenous People (UNWGIP) acknowledged the Adivasis as the indigenous peoples of India in the 1990s (Kulirani 2002: 122). In the past the demarcation line to the so-called "Scheduled Castes" (SCs) often became blurred because, legally speaking, they were treated as a unit, thus denying the STs their distinct cultural identity as Adivasis (see 4.1.1 Constitutional Provisions and their (Non-) Applicability to South India). Today the Indian reality shows that the "tribals" are seen as illegal "encroachers" in the forests they have inhabited for centuries and the "tribal problem" is treated as a "law and order" problem by the police and the respective State governments. On the whole, the Indian government has displayed various lines of argument in international fora in the past and has taken a stance similar to that of France in that it regards all its citizens as "equal", but it equates "equal" mainly with "equal as Hindus" and does not fulfil the positive obligations resulting out of this policy of equality to ensure equal rights for all its citizens, whether they are Adivasis, Muslims, Dalits, Tamils or Christians. When India

acceded to the ICCPR and the ICESCR in 1979 it made the reservation to the identical Art. 1 of the two treaties that "the right to self-determination" contained in the article only applied to peoples under foreign domination and not to sovereign States (meaning not to peoples within the Indian State) (see 3.4.1 Ratification Status of Principal International Human Rights Treaties in India for the full length of the reservation).[12] This statement was reiterated in 1984 by a representative of India before the Human Rights Committee, who stated that "the right to self-determination in the international context [applies] only to dependent Territories and peoples".[13] With regard to the ICERD India has repeatedly stated that the STs and SCs do not fall within the scope of the definitions concerning discrimination contained in the ICERD (ALRC 2004; CERD 1996). India's official position in the UNWGIP in 1984 was that there are "no indigenous peoples in India and that tribals did not constitute what is understood here by the term 'indigenous populations'" (Bijoy 1993, emphasis in original). In a response to an urgent appeal made by the Special Rapporteur on Indigenous Peoples, Rodolfo Stavenhagen, the Indian government affirmed this attitude by refusing to respond to the allegations in the urgent appeal[14] and by merely stating that "it did not recognize any separate category of its citizens as 'indigenous peoples', as there is no internationally accepted definition of an indigenous person" (Stavenhagen 2005: 17, emphasis in original). In Stavenhagen's (2005: 18) counter-response of 6 October 2004 he emphasises

> that the absence of an internationally agreed definition of indigenous peoples does not prevent the international community from constructive action. […] The Special Rapporteur therefore calls on the Government of India to take all the necessary measures to prevent any acts of intimidation against human rights activists collaborating with United Nations mechanisms.

Again, when the newly-formed Human Rights Council approved the Draft Declaration on the Rights of Indigenous Peoples (see 3.4.10 UN Draft Declaration on the Rights of Indigenous Peoples, 1994) in its July 2006 session India voted in favour of its passing, however, on the following grounds (the explanation is worth quoting in its entirety in order to be able to follow the government's arguments):

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[12] In 1997 the HRC, in its concluding observations on India's country report of 1997, invited India to withdraw its reservations (HRC 1997).

[13] Statement by the Representative of India to the Human Rights Committee, U.N. Doc. CCPR/C/SR.498, at 3 (1984), cited in Anaya (2004: 118).

[14] The urgent appeal in question was sent by the Special Rapporteur on Indigenous Peoples, the Special Rapporteur on Torture and the Special Representative of the Secretary-General on the Situation of Human Rights Defenders on 15 September 2004 to the Indian government concerning the alleged arrest and possible torture in detention of the human rights activist Umakanta Meitei from Manipur (Stavenhagen 2005: 16f.). The Special Rapporteur had previously sent an urgent appeal on 22 April 2004 concerning the raising of the height of the Sardar Sarovar Narmada dam and one on 20 September 2004 concerning the alleged brutal killing of Thangjam Manorama Devi, an indigenous woman from Manipur (ibid.).

AMBASSADOR AJAI MALHOTRA
INDIA.

EOV

Action on Draft Declaration on the rights of indigenous peoples

EOV ~~**General Comment made**~~ **before the vote by India**

29 JUNE 2006.

...

India has consistently favoured the promotion and protection of the rights of the indigenous peoples. We have been supportive of the efforts made in the framework of the working group of the Commission on Human Rights to elaborate a Draft Declaration for the rights of indigenous people. The text before us is the result of eleven years of hard work. The fact that we have not been able to reach a consensus on every aspect of the declaration despite such prolonged negotiations is only reflective of the complexity of the issue.

The Draft Declaration does not define who constitute "indigenous peoples". In our understanding, the issue of indigenous rights pertains to peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. This is the definition used in ILO Convention No. C169 of 1989. ~~Accordingly,~~ We regard the entire population of India at Independence, and their successors, to be indigenous, consistent with this definition.

As regards the references to the right to self-determination in the draft Declaration, it is our understanding that the right to self-determination applies only to peoples under foreign domination and that this concept does not apply to sovereign independent states or to a section of people or a nation, which is the essence of national integrity. We note that the Declaration clarifies that this right to self-determination will be exercised by indigenous peoples in terms of their right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

~~It is~~ With these understandings ~~that the delegation of~~ India is ready to support the proposal for adoption of the draft Declaration on the Rights of Indigenous Peoples. and will vote in its favour.

-x-x-x-

"yes"

Table 5 Paper by the Permanent Representative of India to the UN, A. Malhotra
(Neethi Vedi 2006: 23)

However, according to Ram Dayal Munda (2002; cited in Sawaiyan 2002b), chief advisor of the *Indian Council of Indigenous and Tribal Peoples* (ICITP) (see 5.3 A Brief History of Adivasi Organisations and (Resistance) Movements), India has, at least indirectly, recognised the existence of indigenous peoples in India in international fora for the purpose of mobilising international funds, but not for seriously considering the Adivasis' needs. For instance in 1989 India, along with several other countries, reported on the domestic initiatives (for instance constitutional and legislative reforms) it had taken to insure the survival and integrity of indigenous culture to the plenary of the

1989 International Labour Conference.[15] Gilbert (2005: 274) succinctly calls India's stance on the Adivasis "a simple case of political hypocrisy that is hiding racism".

In contrast to the various government stances Adivasis identify themselves as the "indigenous" peoples of India (self-identification being an important factor in determining the status of indigenous peoples[16]). The following criteria were formulated by Adivasis themselves (see Bhengra et al. 1998: 4):

- Relative geographical isolation of Adivasi communities
- Reliance on forest, forest produce, ancestral land and water within Adivasi communities for food and other necessities and the lack of food taboos
- A distinctive culture which is community-oriented and gives primacy to nature
- Relatively high status and freedom of women within the society (compared to mainstream Hindu society; Adivasi women are deplorably often seen as "loose" and easily exploitable by outsiders)
- Absence of the division of labour (such as in the *Jati*-system[17] in Hindu society)
- Non-existence of the caste system: Adivasis see casteism as a form of racism because of the unequal position it places them in and Adivasi societies are not divided along the lines of the caste system in contrast to popular notions that they are (2. focus group interview).
- Absence of the institution of dowry,[18] for instance in the Urali community (Kerala) the husband's and not the wife's family has to meet the wife's expenses upon marriage (ibid.).

Kulirani (2002: 117) derives his understanding of the Adivasis from the debate the "Year of Indigenous Peoples" generated in India in 1993. He defines Adivasis as "culturally distinct communities that have occupied a region longer than other immigrant or colonist groups" (ibid.). In the same way Adivasis argue that "by their very nomenclature they were recognized as first dwellers even by the father of the nation [M.K. Gandhi]" (ibid.). J.P. Raju (5. semi-structured interview 2007), the leader of *Budakattu Krishikara Sanga* (BKS), an Adivasi organisation in the Nagarhole National Park area (see 6.1 Karnataka: Nagarhole National Park), commented on the Indian government's stance in the following way:

> We are Adivasis, we know, but we don't accept some people saying that they are Adivasis. We declare ourselves as Adivasis because of our culture, we are different, our life is different, our culture is different, so many differences, that is our right. But there are many people, especially in Karnataka, they want to pick up Adivasis or indigenous persons or tribals, they call them according to their government language, to get the benefits of the government. So that like that there are millions of people who want to become Adivasis.[…], but we don't accept them as tribals. That is the stand I would apply to the Indian government, we are Adivasis, we know, but whatever the government says is not true. We don't agree with them.

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[15] International Labour Conference, Provisional Record 32, 76th Session at 32/12 (1989), cited in Anaya (2004: 166f.).
[16] This was embodied in Art. 8 of the Draft Declaration on the Rights of Indigenous Peoples, 1994: "Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such". It is significant that this article was omitted in the final version of the declaration passed by the GA.
[17] *Jatis* are sub-castes within the four-tier Varna system of Indian society and often correspond to occupational groups.
[18] "There is no such bridewealth. They say bride is always a wealth" (2. focus group interview).

3.4. Key International Human Rights Instruments Regarding Indigenous Peoples' Land Rights and Their Applicability to India

3.4.1. Ratification Status of Principal International Human Rights Treaties in India

India has not signed, ratified or acceded to all of the international human rights treaties directly or indirectly relevant or necessary for the protection of the Adivasis' rights in India. As a matter of fact, the only international legal instrument pertaining exclusively to indigenous and tribal "populations" that India has ratified and which is binding on the Indian government is the already outdated ILO Convention No. 107 (1957) on Indigenous and Tribal Populations. Under this treaty India is expected to take legislative steps in order to comply with the provisions of the convention, however, whether it has actually done so since 1958 is doubtable and will be discussed in 3.4.7 ILO Convention No. 107, 1957. Concerning the main international human rights instruments India's ratification status and reservations to date are as follows (OHCHR 2006):

Treaty	Signature	Ratification	Accession	Reservations (abbr.)
ICERD	Yes, 1967	Yes, 1968	-	"[…] for reference of any dispute to the ICJ for decision in terms of Art. 22 the consent of all parties to the dispute is necessary in each individual case."
ICCPR	-	-	Yes, 1979	"With reference to Art. 1 of the ICESCR and Art. 1 of the ICCPR, the Government of the Republic of India declares that the words "the right of self-determination" appearing in [this article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation--which is the essence of national integrity."
ICESCR	-	-	Yes, 1979	
1st OP ICCPR	No	No	No	-
2nd OP ICCPR	No	No	No	-
CRC	-	-	Yes, 1992	"While fully subscribing to the objectives and purposes of the Convention […] noting that for several reasons children of different ages do work in India […]."
OP CRC AC	No	No	No	
OP CRC SC	No	No	No	
CEDAW	Yes, 1980	Yes, 1993	-	-
OP CEDAW	No	No	No	
CAT	Yes, 1997	No	No	-
OP CAT	No	No	No	-
ILO Conv. No. 107	-	Yes, 1958	-	-
ILO Conv. No. 169	No	No	No	-
Rome Statute of the ICC	No	No	No	-

Table 6 Ratification status of international human rights instruments and reservations with regard to India

3.4.2. International Covenant on Civil and Political Rights, 1966

The main article indigenous peoples have invoked and which has been employed to argue for indigenous peoples' rights in the past is Article 27 of the convention on the protection of minorities:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Although this article does not grant any collective rights for the protection of a minority's culture, it grants the rights to a member of such a minority to enjoy together with his/her community. The ICCPR does not contain any property rights as such, hence the right to own land is not included in the covenant, but the HRC has subsequently "interpreted article 27 broadly to secure the cultural integrity of indigenous groups, including cultural attributes linked to **land** use, economic activity and political organization" (Anaya 2004: 229, emphasis added). Of relevance to indigenous peoples is also Article 26 on general equality before the law and non-discrimination:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In theory the ICCPR is binding on its State parties, however, in reality the enforcement of the covenant's provisions is somewhat more difficult:

- Under the **individual complaint procedure** the Human Rights Committee, the treaty monitoring body of the ICCPR, can receive communications from individuals who maintain that their right(s) under the covenant have been violated by a State party or parties, however, this is only possible if the State party/parties in question are also party to the 1st optional protocol of the ICCPR (which India is not).
- The HRC can issue general comments and according to Art. 40 it can criticise the mandatory periodical **reports** it receives from the State parties and give country-specific recommendations in its "concluding observations", thus exerting pressure on States who have neglected or violated their obligations under the covenant. However, it cannot render legally binding decisions (Nowak 2003: 80). India has so far submitted three reports since its accession to the covenant in 1979.
- In general, State parties have a duty to implement international human rights law and to "secure enjoyment of human rights and to provide remedies where the rights are violated" (Anaya 2004: 185f.). Depending on how international law is incorporated into municipal law and whether international treaties are self-executing in the different State parties, international human rights law becomes part of the domestic judicial and penal system. In India international treaties are not self-executing, but have to be transformed into domestic law (which has largely been done with the treaties India has ratified), and central law should again be turned into State law, however, this process is often neglected by State governments (6. semi-structured interview 2007, HRC 1997). The HRC, in its concluding observations on India's last report of 1996, therefore recommended to India that it should fully implement the provisions of the cov-

enant, so that individuals can call upon them directly before courts, and that India should ratify the 1st OP of the covenant (HRC 1997). As will be shown in Part II India has a comprehensive system of laws and institutions for the protection of the fundamental/human rights of its STs, which is, however, almost noneffective and marred by many loopholes.

- The so-called **inter-state communication procedure** has to date not been in use and will most likely continue not to be because of the reluctance of States to criticise human rights violations in other States.

In the HRC's (1997) concluding observations on India's last report of 1996 the Adivasis (or STs) are indirectly and directly mentioned in the following passages:

> B.5. […] The persistence of traditional practices and customs, leading to women and girls being deprived of their rights, their human dignity and their lives, and to discrimination against members of the underprivileged classes and castes and other minorities, and ethnic, cultural and religious tensions constitute impediments to the implementation of the Covenant.
> D.15. The Committee notes with concern that, despite measures taken by the Government, members of scheduled castes and scheduled tribes, as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, inter alia inter-caste violence, bonded labour and discrimination of all kinds. It regrets that the de facto perpetuation of the caste system entrenches social differences and contributes to these violations. While the Committee notes the efforts made by the State party to eradicate discrimination it recommends that further measures be adopted, including education programmes at national and state levels, to combat all forms of discrimination against these vulnerable groups, in accordance with articles 2, paragraph 1, and 26 of the Covenant.

3.4.3. International Covenant on Economic, Social and Cultural Rights, 1966

The ICCPR's sibling is the most important international human rights treaty within the "second generation" of human rights, the eponymous economic, social and cultural rights (Nowak 2003: 81). The ICESCR does not contain any articles directly or easily applicable to indigenous peoples' land rights such as Art. 27 of the ICCPR, but many of the social rights codified in the covenant are interdependent with land rights and for indigenous peoples the enjoyment of these social rights is only possible if their land and environment are intact. These rights are, inter alia, the right to social security (Art. 9), which indigenous peoples can only enjoy if they can continue to live on their land, the right to health (Art. 12) (the mental as well as the physical health of most indigenous peoples depend on the intactness of their land), the right to an adequate standard of living including food, housing, etc. (Art. 11), which is the right most directly related to land, and the cultural right to the protection of one's intellectual property (Art. 15) (concerning indigenous peoples' traditional medicinal knowledge, for example).

Regarding the implementation of the covenant's provisions the obligations for State parties in Art. 2(1) are formulated in much weaker terms than in the ICCPR, hence the ICESCR is not seen as having the same force and impact as the ICCPR (Nowak 2003: 81). The establishment of a special committee like the HRC to monitor the progress of States was originally not envisaged and included in the ICESCR, but ECOSOC subsequently set up the committee in 1985. Like the HRC it has the power to receive the reports that are mandatory for the State parties under the covenant

and to issue country-specific recommendations and general comments. Apart from this the ICESCR does not have any other monitoring mechanisms.

India submitted a joint second, third, fourth and fifth periodic report in 2007, which is currently being considered by the CESCR.[19]

3.4.4. International Convention on the Elimination of All Forms of Racial Discrimination, 1966

The general requirements for the successful realisation of self-determination for indigenous peoples are, according to Anaya (2004: 129), cultural integrity, lands and resources, social welfare and development, self-government and, paramount, non-discrimination. While the non-discrimination on grounds of sex, race, ethnicity, language, religion, etc. is included in some form in (almost) every human rights instrument in existence today, ICERD's focus is on the elimination of racial discrimination and to urge States to guarantee equality before the law and the enjoyment of all other rights for all citizens. In this context indigenous peoples have a particularly severe historical "record" of racial discrimination against them, of marginalisation and exploitation and of being treated as "primitive" or "inferior". While the convention, which was adopted in 1966, does not explicitly mention indigenous or tribal peoples, the treaty monitoring committee of the ICERD, CERD (Committee on the Elimination of Racial Discrimination), issued the "General Recommendations No. 23" in 1997 on the rights of indigenous peoples. The non-discrimination of indigenous peoples with regard to land rights is elaborated on in para. 5:

> The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

The monitoring mechanisms provided in the convention are largely the same as for the ICCPR and ICESCR:

- Mandatory state reporting procedure: The CERD investigates the reports and issues country-specific recommendations.
- General Recommendations
- The inter-state communication procedure has again not been made use of so far.
- Individual complaint procedure, contingent on whether a State party has made the declaration under Art. 14
- In addition to the above the CERD has also developed an **early-warning procedure** that is aimed at preventing and responding to violations of the convention in a more effective way.

[19] At the time of writing the CESCR had not yet issued its concluding observations.

In 1996 the CERD (Committee on the Elimination of Racial Discrimination) (1996), in its concluding observations on India's progress report of 1996 (which was ten years due at the time), expressed deep regret that "the report and the delegation claim that the situation of the scheduled castes and scheduled tribes does not fall within the scope of the Convention". According to the Asian Legal Resource Centre (ALRC 2004) this was not the first time the Indian government expressed this point of view before the committee and was criticised by the latter for doing so. The ALRC goes on to say that India has consistently violated its obligations under the convention, first by maintaining that a certain section of its population does not fall under the convention, thereby already discriminating against this segment (the STs and SCs), and, secondly, by grossly discriminating against exactly these citizens in all those ways prohibited by the convention (ibid.). In its concluding observations the CERD (1996) furthermore emphasised the following points:

> E.26. The Committee recommends that the State party continue and strengthen its efforts to improve the effectiveness of measures aimed at guaranteeing to all groups of the population, and especially to the members of the scheduled castes and scheduled tribes, the full enjoyment of their civil, cultural, economic, political and social rights, as mentioned in article 5 of the Convention. […]
> E.27. The Committee recommends that special measures be taken by the authorities to prevent acts of discrimination towards persons belonging to the scheduled castes and scheduled tribes, and, in cases where such acts have been committed, to conduct thorough investigations, to punish those found responsible and to provide just and adequate reparation to the victims. In this regard, the Committee particularly stresses the importance of the equal enjoyment by members of these groups of the rights to access to health care, education, work and public places and services, including wells, cafés or restaurants.

In 2006 India finally submitted its fourteenth (due since 1998), fifteenth, sixteenth, seventeenth, eighteenth and nineteenth reports as a joint document. In its concluding observations of 2007 the CERD (2007) again reprised its main focus on India's indigenous (or "tribal") peoples by recommending to the Indian government to recognise the Adivasis as distinct groups that fall under the scope of the convention (para. 10), to repeal the Armed Forces (Special Powers) Act, 1958, in the North-East of India (para. 12) and to prosecute the perpetrators of crimes of sexual violence and exploitation of Adivasi women (para. 15). The CERD also urged India, inter alia, to implement its obligations under ILO Convention No. 107 regarding the individual and collective land ownership rights of the Adivasis, to ratify ILO Convention No. 169 and to ensure that Adivasis are not evicted from their land under the 1980 Forest Act (para. 20).

3.4.5. Convention on the Elimination of All Forms of Discrimination against Women, 1979

The CEDAW does not include any specific provisions on indigenous women, but again, because these provisions apply to all women and because India has ratified the convention, Adivasi or ST women fall under the scope of the convention. The articles that can be drawn on for the protection of Adivasi women's land rights are, for instance, Art. 14 on the special protection required by rural women:

> 1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

> 2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
> …
> (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;…

The monitoring procedures of the CEDAW again mirror those of the instruments previously discussed and include State reporting, general comments and country-specific recommendations by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), an individual complaint procedure under the OP of the convention (which India, however, has not yet ratified) and – like the CAT, but unlike the other human rights treaties – an **inquiry procedure** under the latter OP, conducted by the committee. States, however, have the possibility of opting out of this procedure when ratifying the OP (Nowak 2003: 87). In para. 47 of its 2007 concluding observations on India's report of 2005 the CEDAW (2007) included the following appeal to the Indian government with regard to Adivasi (or "tribal") women's land rights:

> The Committee urges the State party to study the impact of megaprojects on tribal and rural women and to institute safeguards against their displacement and violation of their human rights. It also urges the State party to ensure that surplus land given to displaced rural and tribal women is cultivable. Moreover, the Committee recommends that efforts be made to ensure that tribal and rural women have individual rights to inherit and own land and property.

3.4.6. Convention on the Rights of the Child, 1989

The CRC derives its particular strength from the fact that all nations of the world have ratified the convention apart from Somalia and the United States, who have so far only signed, but not ratified it. As a treaty containing special provisions for indigenous peoples, i.e. indigenous children, one could say it has the largest scope of application of all the treaties with references to indigenous peoples:

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

…

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

Article 29

1. States Parties agree that the education of the child shall be directed to:

…

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Table 7 Provisions on indigenous children in the Convention on the Rights of the Child, 1989

As is visible the convention's Art. 30 is analogous to Art. 27 of the ICCPR and can again be construed as referring to indigenous (children's) land rights because the enjoyment of an indigenous child's culture is inextricably linked to the enjoyment of its and its parents' (ancestral) lands.

The monitoring mechanisms of the CRC (State reporting procedure and general comments only) within the UN are relatively weak in comparison to the other instruments, however, the convention enjoys extensive monitoring by NGOs and UNICEF.

In its concluding observations on India's State report of 2000 the CRC (Committee on the Rights of the Child) (CRC 2004) expressed its concern about the discrimination of Adivasi (or "tribal") children in India with regard to the rights enshrined in the convention (para. 25) and criticised the neglect of the Indian government and the courts to deal with violations of the SCST Act, 1989 (para. 27).

3.4.7. ILO Convention No. 107, 1957

Considering the time when it was adopted (1957) and due to its integrationist approach ILO Convention No. 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries became increasingly anachronistic by the 1980s when indigenous rights movements were already in existence. The convention is therefore considered outdated today and has de facto been replaced with Convention No. 169. The number of the respective State parties to the two treaties, however, differs greatly. While some States – the laudable minority – have either ratified both treaties or No. 169 only, most States have neither ratified No. 107 nor No. 169 or have only ratified No. 107. India is in the latter group, thus ILO Convention No. 107 is the only human rights instrument concerning indigenous peoples applicable to India.

The aspects of Convention No. 107 that were most often criticised by indigenous peoples and which led to its revision were the integrationist and individualistic approach of many of the provisions in the convention. While Convention No. 107's overall aim was to improve the living conditions of the world's indigenous and tribal populations (not people or even peoples yet) it did not envisage a place for indigenous peoples as distinct and viable groups within society, rather it conceived of indigenous individuals as becoming equal **members** of society via "national programs of integration and non-coercive assimilation" (Anaya 2004: 55). This becomes clear when looking at certain paragraphs of Arts. 2 and 3 in the convention:

Article 2

1. Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

2. Such action shall include measures for:

…

(b) promoting the social, economic and cultural development of these populations and raising their standard of living;

(c) creating possibilities of national integration to the exclusion of measures tending towards the artificial assimilation of these populations.

Article 3

1. So long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong, special measures shall be adopted for the protection of the institutions, persons, property and labour of these populations.

2. Care shall be taken to ensure that such special measures of protection:

(a) are not used as a means of creating or prolonging a state of segregation; and

(b) will be continued only so long as there is need for special protection and only to the extent that such protection is necessary.

Table 8 The integrationist approach of ILO Convention No. 107, 1957

Provisions relating to the land rights of indigenous "populations" are to be found in Part II, Articles. 11-14. In stark contrast to Convention No. 169 (see below) and in line with its almost assimilationist approach No. 107 acquiesces the "removal", in exceptional cases, of indigenous peoples in the interest of national security and economic development. No. 107 does recognise the collective nature of ownership of lands in indigenous communities (Art. 11) and makes provisions for protecting indigenous peoples' customary laws (Art. 13, para. 1), however, a discrepancy can be found when looking at Art. 11 and the wordings "collective" and "members" (highlighted below) because collective land rights are usually not held by (individual) members of a community, but the whole community as such.

Article 11

The right of ownership, **collective** or individual, of the **members** of the populations concerned over the lands which these populations traditionally occupy shall be recognised.

Article 12

1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.

2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

3. Persons thus removed shall be fully compensated for any resulting loss or injury.

Article 13

1. Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected, within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development.

2. Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members.

Table 9 Land rights provisions in ILO Convention No. 107, 1957

The 1986 "Meeting of Experts" of the World Council of Indigenous Peoples at the ILO eventually recommended the revision of ILO Convention No. 107 because, as the previous decades had shown, "integration"

> had become a destructive concept, in part at least because of the way it was understood by governments. In practice it had become a concept which meant the extinction of ways of life which are different from that of the dominant society. (Anaya 2004: 58)

The decades since the coming into force of the convention have shown that India has violated all of the provisions in the treaty with respect to Adivasi land rights, in particular those concerning re-settlement and rehabilitation questions.

The implementation of and the compliance with ILO treaties by the State parties is monitored by the ILO Committee of Experts on the Application of Conventions and Recommendations through required periodical State reports and complaints/representations (Anaya 2004: 226ff., 49-52; Gilbert 2004: 39). In addition to the country reports the committee can request further information from reporting States concerning implementation problems and it has the power to conduct on-site fact-finding visits and ask State governments to appear before a committee at the annual Labour Conference to testify about reasons for the non-implementation of ILO treaties (Anaya 2004: 226). With regard to the committee's supervisory activities of ILO Convention No. 107 the assimilationist provisions in the convention have been absent from the committee's observations and reports for quite some time, indicating that the implementation of the convention's norms by State parties is today judged by more up-to-date norms than those contained in the convention (Anaya 2004: 227). Attached to all ILO conventions and according to Art. 24 of the ILO Constitution, worker or employer organisations (such as, for instance, trade unions) can make "representations" to the ILO, concerning the failure of State parties to comply with an ILO convention, which are reviewed by a committee of the ILO Governing Body (Anaya 2004: 249). For the full procedure regarding these general "representations" refer to Anaya (ibid.). A more specific form of complaint procedure is provided for in Art. 26 of the ILO Constitution. Under this article an ILO member State that has ratified the same convention or a delegate to the International Labour Conference can file a complaint against a State that is not complying with an ILO treaty (ibid.). Complaints are again reviewed by the ILO Governing Body, which, in this case, can also initiate the procedure itself (ibid.). Both of these complaint mechanisms are intended as a means of applying pressure on States that are not complying with ILO conventions they have ratified, however, the impact of theses procedures has to date been minimal due to their lack of use (Anaya 2004: 250). The complaint procedure under Art. 26 has to date, for instance, neither been invoked in connection with ILO Convention No. 107 nor No. 169 and the representation procedure has only seen use under Convention No. 169 (ibid.).

3.4.8. ILO Convention No. 169, 1989

As the South American case impressively shows, ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries of 1989 has become an important human rights instrument and tool for indigenous peoples to assert their rights in international as well as national contexts. Up until now it has, however, due to its predominantly South American concentration, largely remained a regional instrument and has, for instance, not been ratified by any Asian countries so far. In comparison to No. 107 the provisions on land rights are much more extensive and far-reaching in No. 169 (Part II, Arts. 13-19). In theory the convention could also provide better protection of Adivasi (land) rights, but India has to date not (yet) ratified the convention and in light

of India's hesitation to implement its domestic law on STs and Convention No. 107 it is doubtful whether Convention No. 169 would have a different impact.

Of particular relevance for land rights are the revised or newly-created Arts. 13-19. The differences to No. 107 are particularly visible when comparing No. 107's Art. 12 (see above) with No. 169's Art. 16 on the displacement of indigenous peoples from their land. When further comparing the wordings of No. 107 and No. 169 it is also noteworthy that the word "possession" has been added in Art. 14 of No. 169 (corresponding to Art. 11 of No. 107), but the wording "collective or individual" has been omitted:

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term **lands** [emphasis in original] in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

Table 10 Land rights provisions in ILO Convention No. 169, 1989

Despite the fact that ILO Convention No. 169, after its adoption by the International Labour Conference in 1989, drew varied responses and even criticism for not going far enough in its provisions the convention is a milestone on the path towards the recognition of indigenous peoples' collective rights (which challenge State sovereignty) and, as a consequence, the realisation of self-determination (Anaya 2004: 59). This sparked the peoples/populations debate that made the conceptual rift between indigenous rights advocates, who advocated for the use of the term "peoples", and State governments, who refused to use "peoples" and instead used "populations", highly visible (Anaya 2004: 59f.). Unfortunately, the view of the criticising States partly prevailed because the following addition was included in the convention's Art. 1 as para. 3 (emphasis in original): "The use of the term **peoples** in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law". For the discussion on the monitoring mechanisms refer to 3.4.7 ILO Convention No. 107, 1957.

3.4.9. World Bank Operational Policies and Bank Procedures 4.10, 2005

After the World Bank Group's Operational Directive 4.20 (OD) of 1991 came under severe criticism from indigenous peoples and NGOs, amongst others, the Bank's Board of Executive Directors recently passed the new Operational Policies 4.10 (OP) and Bank Procedures 4.10 (BP) in 2005 after a six-year revision process and public comment round. While the OP and BP are mainly intended to guide World Bank projects affecting indigenous peoples and neither have the legal character of a convention nor of a declaration, they do represent a further codification of indigenous peoples' rights and contribute to the emerging corpus of customary international law on indigenous peoples. Especially the directives on the protection of indigenous peoples' land rights are now more comprehensive and concise, as the following excerpts show:

WB OP 4.10

2. The Bank recognizes that the identities and cultures of Indigenous Peoples are inextricably

linked to the lands on which they live and the natural resources on which they depend. […]

16. Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. […]

(a) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihoods;
(b) the need to protect such lands and resources against illegal intrusion or encroachment;
(c) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources; and
(d) Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices.

17. If the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied (such as land titling projects), or (b) the acquisition of such lands, the IPP sets forth an action plan for the legal recognition of such ownership, occupation, or usage. […]

(a) full legal recognition of existing customary land tenure systems of Indigenous Peoples; or
(b) conversion of customary usage rights to communal and/or individual ownership rights. […]

Table 11 Guidelines on indigenous peoples' land rights in WB OP 4.10

At the same time as the operational policies expressly refuse to define the term indigenous peoples because of the changing and highly diverse nature of the contexts in which indigenous peoples live (para. 3 *Identification*) they name four characteristics for identifying indigenous peoples in para. 4, according to which indigenous peoples are "distinct, vulnerable, social and cultural" groups that distinguish themselves through

> (a) **self-identification** as members of a distinct indigenous cultural group and recognition of this identity by others;
> (b) **collective attachment** to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
> (c) **customary** cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
> (d) an **indigenous language**, often different from the official language of the country or region. (emphases added)

The Adivasis, for instance, fulfil all of these criteria except for the recognition of their indigenous identity by the Indian government.

3.4.10. UN Draft Declaration on the Rights of Indigenous Peoples, 1994, and UN Declaration on the Rights of Indigenous Peoples, 2007

The Draft Declaration (UNDDRIP) had a more difficult standing than ILO Convention No. 169 as it went beyond the latter and was criticised from both sides, governments – for whom it went too far – as well as indigenous peoples, for whom it did not go far enough (Anaya 2004: 65). Despite this, after over 20 years of negotiations the DDRIP was finally adopted by the UN General Assembly on 13 September 2007 in its 61st session, with 143 votes in favour, four negative votes (tellingly, Australia, Canada, New Zealand and the United States) and eleven abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa and the Ukraine) (Cultural Survival 2007). On the way to its adoption by the GA the newly-formed UN Human Rights Council (the successor of the discredited Commission on Human Rights) adopted the declaration on 29 June 2006 with 30 votes in favour, two against (Canada and the Russian Federation) and twelve abstentions (Algeria, Argentina, Bahrain, Bangladesh, Ghana, Jordan, Mo-

rocco, Nigeria, the Philippines, Senegal, Tunisia and the Ukraine) (Indigenous Rights Quarterly 2006; Macdonald 2006; Neethi Vedi 2006). The GA, however, postponed its adoption on 28 November 2006 in favour of an amending resolution proposed by Namibia because the African Group of States had serious doubts about the text of the declaration as it was passed by the Human Rights Council earlier on (Cherrington 2006; IWGIA 2007).

The UNDRIP contains several bold provisions on indigenous self-determination, land ownership, land use and resource rights and political autonomy. The importance of land to indigenous peoples is reflected in the number of articles relating directly or indirectly to land rights: Arts. 8 para. 2(b), 10, 25-30 and 32. As will be shown below the number of articles on land rights has remained the same in comparison to the UNDDRIP, but the wording and content have in parts changed substantially, both to the detriment and benefit of indigenous peoples' land rights:

Article 8

2. States shall provide effective mechanisms for prevention of, and redress for:…

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assist-

ance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Table 12 Provisions on land rights in the UN Declaration on the Rights of Indigenous Peoples, 2007

In comparison to the UNDRIP the UNDDRIP included provisions on land in Arts. 7(b), 10, 11(c), 25-28, 30 and 31:

Article 7

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:…

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

Indigenous peoples have the right to special protection and security in periods of armed conflict. States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

Article 26

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Article 27

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

Article 28

Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 31

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

Table 13 Selected articles on land rights in the UN Draft Declaration on the Rights of Indigenous Peoples, 1994

3.5. Conclusion

It is indisputable that the recent decades have seen a significant move of indigenous peoples into the arena of previously State-exclusive international law. At the same time international law has started to make room for the appeals for assistance of indigenous peoples and has started to accommodate their particular needs. Today indigenous peoples – in some regions of the world still more so than in others – can benefit from the norms and procedures that were initially created for their displacement and demise, as only a century ago international law was still "a legitimizing force for colonization and empire rather than a liberating one for indigenous peoples" (Anaya 2004: 26). International law and its constituents, the States, have come a long way from the "state-centered Eurocentric system that could not accommodate indigenous peoples and their cultures as equals" (Anaya 2004: 34), but at the same time they have a long way ahead of them until indigenous peoples' rights are fully recognised and realised.

One of the major findings during the fieldwork for this research was that the Adivasis themselves do not accord the international human rights regime as much importance for the protection and/or improvement of indigenous peoples' land rights or the potential for positive change, as, for instance, their own campaigns, the local action level or the national legal and political level (3., 5. semi-structured interviews 2007). The UN and other international organisations dealing with in-

digenous peoples are perceived – ideologically, politically, legally and in terms of the transparency of their vested interests – to be far removed from the concerns and the plight of Adivasis in India. S. Thekaekara (3. semi-structured interview 2007), for instance, criticises international law for being too academic and for only being of benefit to those who create it, i.e. the States, but not for the people at the grass-roots level who do not have a share in creating it. He goes on to say that the UN has always been and will be an instrument for carrying out the will of the member States (ibid.). It follows from this that if indigenous peoples cannot take up more authorship within international law in the future, they will remain in the sidelines and will not be able to become full subjects of and actors in international law.

Whether international human rights law can in fact benefit the Adivasis will be discussed in Chapter 7 Conclusion, Recommendations and Outlook, after looking at the national legal context and the strategies Adivasis have developed and employ themselves in their struggle for land rights.

PART II
THE NATIONAL CONTEXT

4. Adivasis and Minority Protection within the National Framework

As most indigenous peoples worldwide the Adivasis present a minority within the national Indian framework, more precisely an "indigenous minority" (although they are not recognised as such de jure in India). The particular status Adivasis have been ascribed in the legal context is not founded on their indigeneity, but on their perceived tribality. Resulting out of this conceptual twist is the awkward term "Scheduled Tribes" (*Anusuchit Janjati*). When employing this term to denote Adivasis it has to be borne in mind that many Adivasi communities all over India are not registered as STs (yet), which excludes them from most of the protective legislation created for STs. The newly-passed Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, does grant forest rights to other traditional forest dwellers as well, however, it again mainly applies to those still living in the forest or those fulfilling certain other criteria (see below for the full discussion). Also, the subchapters below on the Fifth Schedule and the PESA Act, 1996, have to be read in light of the fact that the constitutional provisions on Scheduled Areas do not apply to India's Southern-most States (yet), hence the Adivasis living in Karnataka, Kerala and Tamil Nadu cannot resort to these laws for the protection of their land rights.

Having said this I will nevertheless deal with most of the legislation for STs in order to demonstrate what could be possible for South India's Adivasis.

4.1. Protective Legislation: Positive Discrimination of "Scheduled Tribes" in Theory

Ironically, India has one of the best legal protection systems in the world for its STs and their land rights, but at the same time one of the worst records of enforcing or implementing these laws:

> In fact very few countries in the world have made so much effort as India to enact countless laws to protect their rights, special development programmes, etc. But the net result of all these is that the adivasis [sic] and their traditional homelands are being slowly integrated into the "mainstream" on unequal terms. (Singh, Raajen 1996b: 68, emphasis in original)

Next to the safeguards for STs found in the Constitution of India there are a number of Union (central) and State acts and regulations in force to prevent the alienation of lands belonging to STs and to restore alienated lands.[20] The focus in this chapter is on the national legislation and the constitutional provisions and whether they are applicable to South India. The only State acts that are rel-

[20] For instance in Bihar, the Chotanagpur Tenancy Act, 1908; the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949; the Bihar Scheduled Areas Regulations, 1969; the Rajasthan Tenancy Act, 1955, as amended in 1956; the MPLP Code, 1959, in Madhya Pradesh; the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, and amendment of 1970; the Orissa Scheduled Areas (Transfer of Immovable Property) Regulation and the Orissa Land Reforms Act, 1960; the Tripura Land Revenue and Land Reforms Act, 1960; the Assam Land and Revenue Regulation Act, 1964; the Himachal Pradesh Transfer of Land (Regulation) Act, 1968; the Manipur Land Reforms and Land Revenue Act, 1970; the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974; the Maharashtra (Restoration of Lands to Scheduled Tribes) Act, 1974, and its second amendment of 1976; the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 (Bijoy 2002).

evant and will be dealt with in more detail in this work are those of Kerala in Part III Case Studies, as Karnataka and Tamil Nadu have not (yet) passed any ST-specific legislation and the scope of the other State laws in the rest of India is obviously too extensive to be covered satisfactorily in this work. Besides, the maze of colonial legislation that is still in existence, of regionally specific laws and of overlapping fields of legal responsibility is as intricate as one would expect it to be in such a vast and diverse country as India (see also the discussion on legal pluralism in 3.1 Indigenous Peoples Becoming Subjects of International Law).

4.1.1. Constitutional Provisions and their (Non-) Applicability to South India

According to Bijoy (2002) there are as many as twenty articles and two schedules (Schedule V and Schedule VI) in the Constitution of India directly or indirectly concerned with the welfare of the STs of India.[21] Inter alia, Art. 14 provides for the right to equality, Art. 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, Arts. 23-24 concern the prohibition of traffic in human beings, of forced labour and of employment of children, Arts. 25-28 contain the right to freedom of religion and Arts. 29-30 comprise the rights of minorities to culture and education.

Arts. 341 and 342 of the Constitution determine the power by which the State can specify a people for classification as "scheduled", thereby creating "Scheduled Castes" and "Scheduled Tribes" entitled to the following specific benefits:

1. Political reservations under Arts. 330, 332, 334 and 335 of the Constitution, which provide for reserved seats in the *Lok Sabha* (the Lower House or the House of People in the Indian Parliament, whose representatives are directly elected by the people for a five-year term) and also in the States' Legislative Assemblies.

2. Positive discrimination: Art. 15(4) read with Art. 29(2) stipulate the non-discrimination of STs with regard to their admission to educational institutions run by the State or receiving State funds. Arts. 16(4) and 16(4A) provide for reservations for STs in public sector employment. These, however, do not cover the private sector.

3. Art. 338(A) sets up a "National Commission for the Scheduled Tribes" (NCST) with the powers, inter alia, to oversee the constitutional safeguards regarding STs, to investigate any violations of these provisions and to participate and advise in socio-economic development schemes targeted at STs. The previous Art. 338 established a joint commission for SCs and STs and the NCST only became a separate commission in 2003 with the 89th Amendment Act to the Constitution (NCST 2005).

[21] Scheduled Tribes are directly mentioned in Arts. 15, 16, 46, 243D, 243T, 244, 275, 330, 332, 334, 338A, 339, 342 and 366 (including articles containing definitions only) and provisions for minorities can be found in Arts. 29, 30, 350A and 350B (Constitution of India). According to Kulirani (2002: 116, citing Art. 342 of the Constitution of India, the following passage, however, is not in the Constitution) a "tribe" is defined as "an endogamous group with an ethnic identity, who have retained their traditional cultural identity; they have a distinct language or dialect of their own; they are economically backward and live in seclusion governed by their own social norms largely having self-contained economy".

Today these reservations fail to serve the Adivasis' interests and are seen as merely fulfilling constitutional formalities. ST Members of Parliament cannot be regarded as real pressure groups because of their various party allegiances and, in general, it is mostly the higher and more dominant social strata of the Adivasis who are benefiting from these reservations. By becoming part of the ruling establishment they are resented by the upper castes[22] and at the same time considered a danger to Adivasi identity by other Adivasis (Bhengra et al. 1998: 9f.). While some victimise the Adivasis by saying that "[l]ike the discrimination that reservation is supposed to combat, one therefore cannot help but conclude that the *'adivasis'* [sic] are as much victims of the solution as they were of the problem" (Bates 1995: 117, emphasis in original) Adivasis themselves "believe that their real struggle lies in getting recognition for their rights and not in receiving favours from the State" (Bhengra et al. 1998: 9).

The Fifth and Sixth Schedules

It was correctly realised by the Constitution makers that the Adivasis and their areas should be treated differently by the law and thus the *Fifth* and *Sixth Schedule* were introduced.

Art. 244(1) provides for the Fifth Schedule, i.e. the establishment of "Scheduled Areas" in any State other than those of North-East India. SAs are regions outside the influence of the normal legislative and political procedures and their main objects are, inter alia, "to impose total prohibition of transfer of immovable property to any person other than to a tribal" and "to protect the possession, rights, titles, and interests" of STs (Ravi Raman 2004: 132). The process of scheduling involves the recommendation of eligible regions (for instance, according to the Adivasi numbers) by the State government and the governor to the central government, which has to endorse the proposal. The recommendation is then forwarded to the Indian Parliament for its approval and in the end the President of India has to sign and declare an SA by order (ibid., 6. semi-structured interview 2007). So far SAs are to be found in ten Union States: Andhra Pradesh, Chhattisghar, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. It becomes evident from this list that some Adivasi areas were omitted or insufficiently covered during the process of scheduling and the absence of the southern-most States of Karnataka, Kerala and Tamil Nadu is particularly conspicuous.[23] Adivasi organisations in the South have been fighting for the recognition of their areas as SAs since the mid-1970s when the last area was scheduled in Andhra Pradesh in 1972 (Ravi Raman 2004: 132, 6. semi-structured interview 2007).

Art. 244(2) sets up the Sixth Schedule, applying exclusively to the States of Assam, Maghalaya, Mizoram and Tripura in North-East India. This awkward division stems from British legislation dat-

[22] Following the proposal of the Indian government in 1990, then under the leadership of Mr V.P. Singh, to increase the official quotas for STs Adivasis faced wide-spread violence and rioting from high-caste Hindus (Bates 1995: 116f.).
[23] Other States of India that do have Adivasi populations, but have not been scheduled yet are Bihar, Goa, Jammu and Kashmir, Sikkim, Uttar Pradesh, West Bengal, the Andaman and Nicobar Islands, Dadra and Nagar Haweli, Daman and Diu and Lakshdweep (see Overseas Development Institute 2007).

ing back to 1919, the Government of India Act. This act divided the so-called “backward areas” into two categories, the “wholly excluded” areas and the “modified or partially excluded” areas, and provided for modified laws in these areas. This divide was incorporated into the Indian Constitution after independence with only a few changes and became the Fifth and Sixth Schedules (Sawaiyan 2002a).

So what do the provisions under these schedules provide for?

Under the Fifth Schedule, the governor of a State with SAs is given extensive powers to amend or exclude SAs from any State legislation that could harm the Adivasis’ interests and to decree legislation pertaining exclusively to SAs, such as the protection of these areas from outside interventions. Additionally, *Tribal Advisory Councils* (TACs) are to be established and consulted if the governor plans to frame new laws prohibiting or restricting the transfer of land by or among members of STs. What makes this procedure ineffective and curtails the powers of the TACs, however, is the fact that laws additionally have to be submitted to the President of India for agreement. Under the Sixth Schedule, *Autonomous District Councils* (ADCs) are set up with executive, judicial and legislative powers, thereby granting these regions virtual self-government (for a more detailed study of the Sixth Schedule see Bhengra et al. 1998: 12). Today many feel that the process of scheduling is too cumbersome (which also explains the scheduling stop since the 1970s) and that the schedules are too vague, circuitous and have failed on the overall (see 5.2 The Concept of Land Alienation).

However, there is a positive example from the State of Andhra Pradesh, seen by many as the “Indian Mabo” case (Gilbert 2005: 277). Violations of the constitutional rights under the Fifth Schedule in SAs led to a court case and a historic judgement in 1997, the Samatha Judgement (Samatha v. State of Andhra Pradesh 1997). The case was filed by Samatha, an NGO working in the SAs, on behalf of the Adivasis, against the government of Andhra Pradesh on the grounds of leasing out Adivasi lands to private mining companies in SAs. The High Court at first dismissed the case, but, on appeal, the Supreme Court held that all agreements concerning the lease of Adivasi lands in the SAs between the Government of Andhra Pradesh and the private mining companies were null and void.

4.1.2. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The SCST Act’s purpose is to prevent crimes against members of SCs and STs and to provide relief and rehabilitation for the victims of such offences (see Commonwealth Human Rights Initiative [date n.a.]). It also provides for the creation of special courts exclusively dealing with offences that fall under this act. The act includes a long list of offences, inter alia, the wrongful deprivation of Adivasis’ rights over their land, premises or water (for instance depriving Adivasis of the cultivation of their land).

The SCST Act has sadly suffered a fate similar to all the other protective laws concerning Adivasis: ineffective enforcement and implementation, insufficient dissemination of the law to the affected and hence a lack of knowledge about the act on the ground (ACHR 2004a; 2004b).

4.1.3. The Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996

> *The Act specifically empowers the Gram Sabha and the Panchayat to "prevent alienation of land in the Scheduled Areas and to an appropriate action* [sic] *to restore any unlawfully alienated land of scheduled tribes". Further, the Act also provides that the Gram Sabha or the Panchayats shall be consulted before making the acquisition of the land in the Scheduled Areas for various public purposes.*
> (Upadhyay, Videh 2003, citing from the PESA Act)

Art. 40 of the Constitution originally, i.e. in 1950, specified the establishment of so-called *Panchayats* (local governments)[24] and M.K. Ghandi envisaged the Panchayati Raj system as a decentralised form of rural governance where each village would be responsible for its own affairs (Gilbert 2004: 356). The Constitution makers wanted it to be the keystone of India's post-independence political system and in the words of the Constitution (Art. 40) "[t]he State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government". The fulfilment of these obligations was left to the central and respective State governments, however, the following four decades saw major shortcomings in the implementation of this article. The preambulatory "Statement of Objects and Reasons" of the 73 rd Amendment Act of the Constitution of India reads:

> Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

Thus, in 1992 the 73rd Amendment Act was passed and Part IX (Arts. 243A-O) and the Eleventh Schedule (Art. 243G) were included in the Constitution in order to endow the Panchayati Raj system with a firmer standing and specific powers. These new provisions envisaged the formation of *Gram Sabhas*[25] (village councils), which would represent the village level, and Panchayats – based on a three-tier system – on the village, intermediate (block or *Taluk* in South India) and district level. The dilemma for Adivasis was that the SAs under the Fifth Schedule and the States under the Sixth Schedule (Art. 243M) were excluded from the scope of the new law (Faschingeder 2001: 113), against which the Adivasis asserted that their exclusion from the self-rule provisions of the new Panchayat regulations was a violation of their rights they have as indigenous peoples and minorities. Following major protests by Adivasi platforms such as the National Front for Tribal Self-Rule (see 5.3.2 The National Front for Tribal Self-Rule (NFTS)) the Indian Parliament instated the Bhuria Committee to look into the shortcomings of the 73rd Amendment Act (Gilbert 2005: 283).

Finally, in 1996, based on the recommendations of the Bhuria Committee, the Provisions of the Panchayat (Extension to the Scheduled Areas) Act (PESA Act) was passed, which, as its title suggests, extends the provisions of the 73rd Amendment Act of 1992 to the SAs. The Gram Sabhas in Adivasi areas now have the same powers as in other regions, which are, inter alia, to preserve the

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[24] "Panchayat" literally means "the council of the five wise village elders", but in the constitutional and governmental context "an institution […] of self-government for the rural areas" (Article 243[d] of the Constitution of India).

[25] "'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat [sic] at the village level" (Art. 243[b] of the Constitution of India).

cultural identity, traditions and customs of Adivasis, to manage the community resources and to resolve disputes through the customary mode of dispute resolution, to decide on development matters in the village and the ownership of minor forest produce, to control the money lending to Adivasis and to supervise all other social institutions (see Bhengra et al. 1998: 12). Most importantly, in the case of State acquisitions of land under the 1894 Land Acquisition Act (see 5.2.1 Discriminatory Legislation and the Extinguishment of Adivasi Land Rights), the act (under para 4.[i]) requires the government to **consult** the Adivasi Gram Sabha or Panchayat before any acquisitions are made, for instance for development projects and the resettling of Adivasis. The emphasis on "consult" already hints at one of the shortcomings of the act, as the ultimate decision powers of the Gram Sabha concerning the acquisition of land are left unclear, i.e. whether it has any effective power to prevent land acquisition. Several examples since the act's adoption in 1996 have already uncovered that local district administrations simply overrule the Gram Sabha, which shows

> one of the weaknesses in the granting of a local form of institutional autonomy and indigenous peoples' self-governance at the village level, as the power of such institutions remains clearly subordinated to the authority of regional or State institutions that ultimately decide on issues affecting indigenous peoples' land rights, and particularly land alienation. (Gilbert 2004: 357)

The PESA Act made it obligatory for States with SAs to enact appropriate State legislation, but again, in reality, State legislation is at variance with the act. States are reluctant to fulfil the constitutional obligations of the act because this would delegate power from the State centre to the grassroots level and provide a possible element of autonomy to Adivasis. Nevertheless, the act also provides legitimacy to many Adivasi activities previously considered criminal by different State laws (Bhengra et al. 1998: 11). Furthermore, according to Art. 254 of the Indian Constitution State law that is not consistent with central is – to the extent of its inconsistency – void, which leaves a small legal room for Adivasis to move in (Gilbert 2005: 285).

4.1.4. The Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or Forest Rights Act for short, is without doubt the single most important piece of legislation to be passed in favour of Adivasi forest rights in post-independence India. It is the first piece of legislation that offers tangible and accessible, albeit still overly bureaucratic tools for forest dwellers to reclaim their rights to forest land. This new law was first introduced and discussed as the Scheduled Tribes (Recognition of Forest Rights) Bill in 2005 and was – after a two-year stalemate of lengthy debates and amendments – passed by both the *Rajya Sabha* ("Council of States", Upper House of the Indian Parliament comprised of representatives of the States elected by the members of the legislatures of the States) and the Lok Sabha (Lower House) as the Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act in December 2006.

Fire in the Forest Battlegrounds

The introduction of the draft bill in 2005 sparked one of the fiercest legal and political debates of post-independence India in connection with the passing of a new law, with the so-called "environmentalists" fiercely advocating the forest-without-human-beings ideology pitted against the Adivasis and other forest dwellers championing their ancestral rights to the forest and their role as the (rightful) preservers of India's forests. The misconceptions and myths that were spread most often about the act by the different conservationist lobbies ranging from the tiger to the biodiversity lobbies were:

- that the granting of forest rights to Adivasis still living inside the forest would mean handing over a majority of India's forests to the "tribals" (specifically that every tribal family would receive 4 hectares of land) (Campaign for Survival and Dignity 2008). Instead, the act only gives legal recognition to land that members of Scheduled Tribes, on the one hand, have already been farming since prior to 13 December 2005, and other "traditional forest dwellers", on the other, for the past three generations (75 years). Most importantly, it does not grant rights to new forest land.
- that the act would be conducive to land grabbing. Compared to the extant system "where encroachment on forest land requires a bribe to the forest guard and nothing more" (Campaign for Survival and Dignity 2008) the four-tier screening system for determining forest rights envisaged in the act appears convincingly transparent.
- that the act would remove all legal protection from India's forests. What it does instead is devolve power to communities for protecting their forests, which is in addition and not instead of the absolute power wielded by the Forest Department26 which took over from the British administration as India's largest zamindar (landlord) and in fact poses the greatest threat to forests owing to corruption and its unlawful connivance with poachers and loggers (ibid.).
- that the Adivasis would further endanger the wildlife species that are already on the brink of extinction in protected areas. Next to the ecological counter-argument of the Adivasi subsistence economy's protective nature27 there is another line of reasoning that exposes this allegation as untenable. In Art. 4, para. 2, the act provides for a detailed, scientifically founded, and above all, non-coercive procedure (akin to the famed "tiger amendment" in the Wild Life (Protection) Act, 1972) for resettling people out of national parks and wildlife sanctuaries, which can still be done even after people's rights have been settled (ibid.).

The matter was further complicated by the existence of two different drafts of the bill, by the Ministry of Tribal Affairs, which had originally drafted it, and the Ministry of Environment and Forests, leading to a stand-off between the two ministries only terminated by an intervention of the Prime Minister in October 2005 (Infochange India Human Rights 2006).

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[26] A particularly poignant example of this is the fact that it is illegal for anyone to plant a tree in a reserved forest, however, it is legal for the Forest Department to fell an entire forest with the Central government's permission (Campaign for Survival and Dignity 2008).

[27] If anything Adivasis enable the forest and its species to thrive, not to perish (Down to Earth Opinion 2005).

In the run-up to the act's passing in December 2006 Adivasis from all over the country staged demonstrations, sit-ins and strikes in India's major cities (5. semi-structured interview 2007) such as, for instance, the Adivasi Forest Rights Rally in Delhi on 29 November 2006:

Figure 1 Adivasi Forest Rights Bill rally in Delhi on 29/11/2006

Around 10 000 Adivasi participants gathered near the Parliament of India.

Figure 2 Demonstrating Adivasis march through Delhi.

Figure 3 The police are omnipresent at the rally.

Figure 4 Protesting Adivasis with their bows and arrows, the sign of Adivasi identity

Figure 5 Adivasi women assert their rights at the rally.

Figure 6 Adivasi women at the Delhi rally

Photos: Unknown. Source for Figure 1 to Figure 6: http://picasaweb.google.com/EthicalBlog/IndiaAdivasiCampaign [06/06/2007]

Legal Intent

> *It is a truism to say that tribals have existed long before the Forest Department came into being and formation of Reserve Forests is obviously subsequent to tribal settlement.*
> (Thangaraju 1990: 103)

The 2006 act's aim, as put forth in its statement of objects and reasons in the preamble, is to

> recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

It acknowledges that

> […] the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;
> […] it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

Such a move became necessary because for most lands declared government forests under the Indian Forest Act 1927 the process of enquiring into and settling rights to the forest held by local people had either never or only incompletely taken place (Campaign for Survival and Dignity 2008). It was and is this "legal twilight zone" that has for decades exposed forest-dwelling Adivasis "at any time to extortion, assault, jail, or eviction" (Gopalkrishnan 2007).

Following is an overview of the act's most significant provisions:

Adivasis who have been occupying forest land since prior to 13 December 2005 and other traditional forest dwellers who have been living inside the forest for at least three generations (75 years)[28] (Art. 2.[o]), and who can prove that they "primarily reside in forests" (Art. 2[c] and 2[o]) and are "dependent on forest land or forests for bona fide livelihood needs" (ibid.) are now entitled to four hectares of land (Art. 4.[6]), which they are allowed to cultivate (Art. 3.[1][a]). The act also grants Adivasis access to (any non-timber) minor forest produce and its ownership (Art. 3.[1][c]) and it regulates the grazing rights of both settled and nomadic peoples (Art. 3.[1][d]). Art. 4.(4) stipulates that land cannot be sold or transferred to anyone except by inheritance. Most importantly, in Art. 3.(8) the act includes provisions on Adivasis who have already been displaced from the forest and on how they can benefit from the act if they fulfil certain criteria.

These important provisions can be found in the following articles:

> 2. Definitions. In this Act, unless the context otherwise requires:
> …
> (o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.
> Explanation. For the purpose of this clause, "generation" means a period comprising of twenty-five years;
>
> 3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.
> (1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:
> (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other tradi-

[28] The requirement is that the person must have resided in the forest continually from that time, and not that he or she must have resided on the same piece of land since then.

tional forest dwellers;
(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
(8) The forest rights recognised and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

4. Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.
…
(6) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

Table 14 Forest rights in the STRFR Act, 2006

A New Democracy in the Forests

Regarding implementation the act envisages the Gram Sabha to "initiate the process of determining the nature and extent of individual or community forest rights", to take over the responsibility for "receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim" and, finally, to pass a resolution on the findings and forward it to the *Sub-Divisional Level Committee* (Art. 6.[1]). The Sub-Divisional Level Committee is created by the State government and has the task of preparing forest rights records on the basis of the Gram Sabha resolutions and forwarding these records to the *District Level Committee* for their final and binding decision (Art. 6.[3], [5] and [6]). A right to petition for individuals is included in all these instances. Furthermore, the State government has to establish a *State Level Monitoring Committee*, which supervises the recognition and vesting of forest rights (Art. 6.[7]). These three institutions are composed of one representative each from the Revenue, Forest and Tribal Affairs departments and the State government and three members from the Panchayati Raj institutions, two of which have to be Adivasis and one at least a woman (Art. 6.[8]).

Shortcomings and Ongoing Teething Problems

While this system is well-devised and relatively balanced, the major deficiency are the many levels involved until a final decision about an Adivasi group's forest rights is taken. It would, for instance, be advisable to skip the intermediate level of the Sub-Divisional Level Committee in order to avoid hold-ups in the process and to limit the possibility for bribery and meddling by individuals seeking to bar Adivasis from achieving their forest rights. The latter point has been addressed by organisations working for Adivasi land rights such as *CORD* in Kodagu (Coorg) District, Karnataka. Their fear is that, again, too many revenue and forest officials will be brought into the process via the manifold decision levels envisaged in the act (4. semi-structured interview 2007). A further important point of criticism pertains to the downgrading of the Gram Sabha to a mere recommending body in the act, in comparison to the PESA Act where the Gram Sabha holds the position of a sup-

reme decision body, which not even Parliament can overrule in theory (ibid.). Finally, there is the realistic danger that with the help of the STRFR Act forest depletion caused by the timer lobby in conjunction with the Forest Department will be blamed on the Adivasis (ibid.). According to the legal advice organisation *Neethi Vedi* ("Justice for All") in Wayanad, Kerala, the act will have a greater effect in the North than in the South (1. semi-structured interview 2007), owing, inter alia, to the more powerful Adivasi pressure groups in the North.

Given these serious misgivings it remains to be seen whether this act can really bring about positive changes for the present and future land rights situation of the Adivasis or whether it eventually takes its place among the long list of protective laws that have remained mere "paper tigers" (Upadhyay, Videh 2003). Nevertheless, Adivasis across the country are at present preparing land claims through the Forest Rights Committees formed within their Gram Sabhas, even if several setbacks have already highlighted the act's limitations (Campaign for Survival and Dignity 2008). Throughout 2007 the country continued to see widespread Adivasi protests[29] demanding the actual notification of the act (which finally took place on 31 December 2007 with a one-year delay) and a halt to the evictions (ibid.). The following key teething problems have occurred in almost every state with a Scheduled Tribes population:

- As predicted the Forest Department has been meddling with the implementation process, for instance, in Rajasthan, Gujarat, and West Bengal, by insisting that its approval is required for every on-spot verification of forest rights and by vetoing decisions; FD officials have continued with their harassment of Adivasis, burning crops, illegally planting Adivasi land, bulldozing villages, and molesting Adivasi women.
- Gram Sabhas being called at the Panchayat-level where their size makes the whole process less democratic than on the revenue village and hamlet level, where G.S. should be called in Scheduled Areas
- Setting up of Forest Rights Committees in the villages
- Problems in obtaining Scheduled Tribes certificates
- Severe shortages of claims forms
- Devaluation of community rights in favour of individual land claims by state governments
- Court cases filed against the implementation of the act in various high courts by forest officials and conservationists; distribution of pattas (land titles) stayed by Tamil Nadu and Orissa High Courts
- Ignorance or denial on the part of district collectors or other government personnel: A prime example is that of Uttarakhand where
- "the Chief Minister had stated that there is no need for this Act in Uttarakhand, as all forest rights are already settled (which is untrue). However, recently the Nainital High Court had is-

[29] And governmental/forest department counter-attacks and police reprisals, which were meticulously recorded by the Campaign for Survival and Dignity, a coalition of Adivasi and forest dwellers' organisations from eleven States (Campaign for Survival and Dignity 2008).

sued a contempt notice to the director of the Rajaji National Park for attempting to forcibly relocate the Van Gujjar communities in the park, in violation of the earlier orders of the High Court directing the government to comply with the Forest Rights Act" (Campaign for Survival and Dignity 2008)

- Setting of deadlines by governments for filing claims and imposing additional requirements on claimants
- The sudden surge in notifications of so-called critical wildlife or tiger habitats in the country's tiger reserves at the end of 2007, which took place without the mandatory public consultations and are thus illegal.

4.2. Conclusion: Racial Discrimination of "Tribals" in Reality

What is on paper a comprehensive minority protection system for India's STs including affirmative action with the intent of redressing past discrimination is in reality a situation where the implementation and operationalisation of these protective laws has either been neglected or openly impeded and the racial discrimination of Adivasis is still rife. Gilbert (2005: 274) describes the politics of Adivasi rights in India as resembling "one step forward, two steps back" and Upadhyay (2003, emphasis in original) draws the conclusion from this situation

> that legislating protective laws for tribals [sic] is not the end but a beginning. The law can work for tribals only if we work on the law. […] The new law and rules need to be taken out of the books and on to the ground. If, unlike legal action, legal *education* can reach the tribals, the very law that is a bludgeon against them today could be an instrument of justice for them tomorrow.

Apart from the fundamental rights pertaining to all Indians that are enshrined in the Indian Constitution the only two acts from the pool of laws created for India's STs that also apply to Karnataka's, Kerala's and Tamil Nadu's Adivasis are the SCST Act of 1989 and the STRFR Act of 2006. It becomes apparent from this fact that South India's Adivasis have been particularly neglected, however, not so much by the lawmakers who incorporated the Fifth Schedule into the Indian Constitution, but by the State governments whose responsibility it is to recommend areas within their State for scheduling and by the central government, which has to approve the recommendations. S.M.A. Viennie (6. semi-structured interview 2007), for instance, highlights the fact that only the dissemination of the PESA Act in 1996 (which only applies to SAs) triggered the Fifth Schedule campaign in South India, which saw, for instance, the founding of the South Indian Adivasi Action Committee for Fifth Schedule (ibid.).

Having discussed the legal framework on the national level for the protection of Adivasi land rights I will now shift the focus towards the situation on the ground and elaborate on an issue that has already been broached several times in this research, i.e. the (vital) importance of land and forest for the Adivasis. Secondly, land alienation, its causes (for instance discriminatory legislation) and its types (for instance forced evictions) and the gender aspect of land alienation will be examined in greater detail, followed by a brief discussion about the most important Adivasi movements and campaigns across India intended as a framework of reference for Part III Case Studies.

5. The Adivasi Land Rights Struggle

[W]e can destroy culture within no time, but building up a new culture takes time, years and years.
G. Thenadikulam (2. semi-structured interview 2007)

5.1. Adivasis and Their Relationship to Their Lands and Forests

The special relationship of indigenous peoples to their land and territory has been recognised in various international legal documents and fora. In 2001 a working paper on "Indigenous Peoples and Their Relationship to Land", commissioned by the Sub-Commission on the Promotion and Protection of Human Rights, was presented by the then Special Rapporteur on Indigenous Peoples, Erica-Irene A. Daes (2001). She emphasises "that it is difficult to separate the concept of indigenous peoples' relationship with their lands, territories and resources from that of their cultural differences and values" and that "[t]he collective dimension of this relationship is significant; and the intergenerational aspect of such a relationship is also crucial to indigenous peoples' identity, survival and cultural viability". A further aspect is that "[t]heir land is not a commodity which can be acquired, but a material element to be enjoyed freely" (cited in Daes 2001: 8; Martínez Cobo 1987). Unlike the definition of land one would find in most dictionaries and laws today indigenous peoples defy any dissection of their land and perceive of it in its totality, that is including land, water, air, forest, etc.

As indigenous peoples Adivasis maintain a special symbiotic relationship to their land (see Thekaekara and Thekaekara 2000a), which they regard, inter alia, as the seat of their gods and spirits and as the residence of their ancestors. Particular emphasis has been put on this intergenerational aspect of indigenous peoples' attachment to their lands. In Jharkhand many Adivasi religions are village-based because the power of the spirits and gods is confined to the village and the members of these communities cannot worship at another village (Bhengra et al. 1998: 20). The Adivasis of Alanthatta Colony, Wayanad District, Kerala, for instance, have already been resettled four times, which means that they now do not have any burial grounds any more because they are not allowed to use the forest land surrounding their village and are persecuted by the Forest Department if they do so (3. focus group interview 2007).

The Adivasis' lands have a spiritual, social, cultural, economic and political significance for them and they are intrinsically tied to their land, which reflects their holistic cosmology. "The balance is reflected in the non-appropriative, non-accumulative subsistence economy, a relationship with the land and forests that seeks not to own, but to belong, not to extract, but to access, not to aggress on, but to share equitably" (Prabhu 2004b). From this relationship also stems a special indigenous knowledge about sustainable land and forest use, which is clearly endangered in India. According to S. Kanjur (quoted in Sharma, Supriya 2006), an Adivasi consultant in Jharkhand, "People don't fully understand the feelings of Adivasis towards their land. It has come down from generations. Losing it is like losing a piece of one's own identity". Adivasis mutually depend on their land and especially forest as the very source of their economic livelihood and social well-being. The so-

called “minor forest produce”, such as honey, gooseberries, medicinal and ayurvedic plants, bamboo rice and canes, sticks, grass, and branches for producing baskets, brooms, mats, etc. used to be the dietary and economic backbone, but now the Adivasis are denied access to their land and forest and are persecuted by Forest Department officials or the police for “trespassing” (1.-6.,10.-13. focus group interviews 2007, 15., 16. focus group interviews 2003, 2., 4. semi-structured interviews 2007).

For Adivasis their territory is an extension of the collective Adivasi consciousness and identity, which also enables the elders to manage the community. Adivasis see territory in terms of family, community and regional ties, and also as an affirmation of their identity vis-à-vis the dominant ideology of the nation State (Bhengra et al. 1998: 29). The traditional Adivasi management of resources is fundamentally different from the mere allocation of land to individual families, let alone individuals (Bhengra et al. 1998: 4), although this is changing in the face of the growing pressures from mainstream society (see 5.2.3 Land Alienation and Gender). For more information on Adivasi economic systems and traditional systems of land tenure and inheritance see Chaudhuri (1992a).

5.2. The Concept of Land Alienation

The quintessence of the tribal issue is their human right to live with dignity in their lands.
(People's Judicial Enquiry Commission 2003)

Vyas and Mehta (1994: 9) identify a series of crucial variables which play a historical or structural role in the process or absence of land alienation. The list includes:

- Whether an area is affected by dams or their construction
- Proximity to urban areas
- Closeness to industrial areas
- Neighbourhood to non-Adivasi communities
- Remoteness of Adivasi settlements, i.e. the absence of roads, the means of transport available, the absence/presence of traders and commodity markets, etc.
- Status of land rehabilitation after expropriation or submergence of Adivasi lands under dams.

The alienation of Adivasi lands is principally caused by

1. Encroachment through outsiders (mostly settlers vying for Adivasi land) and the subsequent expropriation of Adivasi lands
2. Depletion of Adivasi land, for instance through the massive logging of their forests, and adverse economic and climatic circumstances (failed harvests, droughts, barrenness of Adivasi lands, etc.), which often result in the abandonment of the land and the move into urban areas such as Mumbai, or which force Adivasis to sell their land and/or borrow funds (land or crop mortgages) from money lenders or banks, causing indebtedness and dependence
3. Appropriation of Adivasi land by State governments (mostly through discriminative legislation and the Forest Department) or corporate groups and the subsequent displacement of Adivasis

because of industrial and/or hydro-electrical, tourism, agricultural, etc. development in Adivasi areas.

Historically, i.e. within the colonial context, the colonisation of areas by foreign settlers, even though these areas might have been inhabited by original settlers at the time, was a prerequisite for the advancement of "civilisation" and the declared aim of colonialism. Guided by the European values of the time the sedentary lifestyle of the settlers, whose aim it was to cultivate land as opposed to the nomadic lifestyle of the mostly hunter and gatherer indigenous societies, was seen as a marker of civilisation and as establishing a "greater right" to that land (Anaya 2004: 23, emphasis added). Vattel (1916 edition), for instance, argued that those nations who still occupied more than their share of land, i.e. because of the requirement of vast tracks of land for nomadism, should let colonising nations, who were too confined at home, occupy their land. These ideas formed and form the basis for depriving the "natives" of their land at the time and, up until today, for the expropriation of the modern-day indigenous peoples, not so much by foreign settlers any more, but by local, "native" settlers. India is no exception in this context and the precepts for land dispossession detailed above are inherent in both the activities of settlers in India and the Indian government's policies supporting the settlers. For a detailed discussion about an example of Adivasi land alienation caused by settlers refer to 6.2 Kerala: Wayanad District.

5.2.1. Discriminatory Legislation and the Extinguishment of Adivasi Land Rights

Until the rise of British power in India and the subsequent British Raj no organized intrusions into Adivasi spheres are recorded, apart from the general pressure emanating from the various invading societies who over centuries gradually pushed the Adivasis into the more remote and inaccessible regions of India. The British regarded India's forests as a major resource for the expansion of their trade and rule. Hence, the first law to be passed by the British in this context was the *Forest Act of 1864*, empowering the British government to declare any land covered with trees, brush wood or jungle as government forest by notification, thereby legally declaring Adivasi lands as government lands and turning Adivasis into illegal occupants or "encroachers" (Bhengra et al. 1998: 10). The *Forest Act of 1878* further classified forest land into "protected", "reserved" and "village" forest. The final blow under British rule for the Adivasis was the *1927 Indian Forest Act*, which assimilated the previous laws and today still remains the main legal basis for the Indian government for depriving Adivasis of their forest land. The implementation of this act has caused and is still causing intense conflict and confrontation between Adivasis and forest officials throughout the 20th and into the 21st century. Most Adivasis justifiably believe that they are being directly targeted by these laws and that the continued repercussions of these acts are aggravated by the government's reluctance to amend them. This view was confirmed by the passing of the *Wild Life Protection Act of 1972* and the *Forest Conservation Act of 1980*. The first severely restricts Adivasi rights in wildlife sanctuaries and abolishes their rights in India's national parks, which are one of their main settlement areas even today. The second act places all forests which are already under

State governments under the control of the central government. A precursor of these two acts was independent India's first *National Forest Policy of 1952*, which "declared forest as national asset and imposition of restrictions as right [sic] of the nation" (Kulirani 2002: 120).

As with India's forests the opening up of Adivasi areas and the transfer of Adivasi lands to non-Adivasis began under the British and with the *Land Acquisition Act of 1894*, which is unfortunately still extant today and whose use has even been intensified since independence. Except for North-East India (where indigenous communities are relatively strong, legislation prohibiting the transfer of lands has been implemented relatively well and a travel ban has been imposed) the entering and settlement of non-Adivasis on Adivasi land has consciously been facilitated by State governments, who profit from the taxes exacted from settlers. Before 1978, under the previous Art. 31(A) of the Constitution, the Indian government even had the power to acquire any land, whether occupied or unoccupied, however, this article was finally repealed by the 44th Amendment Act in 1978. Another piece of legislation that has proved detrimental to Adivasis is the *Coal Bearing Area Act of 1957*, which allows land acquisition for "national interest" or "public purpose" and consequently the displacement of Adivasis in mining areas (at the same time, however, they are not entitled to any of the mining profits off their land).

Under the Fifth Schedule State governors can bring appropriate modifications to acts like the 1927 Indian Forest Act, the Indian Penal Code and the Criminal Procedure Code and can exclude SAs from the scope of mining and land acquisition laws for the benefit of the Adivasis. In reality, neither of this is happening, nor are laws negatively affecting Adivasis prevented from being extended to the SAs. As previously mentioned Adivasi land loss is an especially acute problem in Southern and Western India, where the Fifth Schedule cannot even be applied due to the lack or absence of SAs and where Adivasi communities are more dispersed and less present as pressure groups.

5.2.2. Forced Evictions, Displacement and the Lack of a Uniform Resettlement Policy in India

Affirms that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing;
(Commission on Human Rights Resolution 1993/77)

Approximately 90% of Adivasis depend on agriculture and minor forest produce for their livelihood and their displacement from arable lands and the forest is therefore a threat to their very existence. By the mid-1990s a total of 18.5 million Adivasis, i.e. 50% of all those displaced by "development projects" to date, had already been displaced in the decades prior to 1995 (Bhengra et al. 1998: 8). Despite this fact the Indian government still has no uniform resettlement and rehabilitation policy to date. For an extensive coverage of the issue of Adivasi displacement in connection with development projects see Chaudhuri (1992b) and Mehta (1992).

When it comes to the forced evictions of Adivasis India's Forest Department (FD), which now owns most of the forest land appropriated from Adivasis during British rule and from independence up to the present, has been one of the most destructive forces to date. Guha (cited in Bhengra et al.

1998: 10; 1994) asserts that "[n]ot only is the Forest Department India's biggest landlord, it has the power to affect the life of every citizen". The frequent reports of atrocities against Adivasis perpetrated by the FD show that it does not even stop at the most brutal of methods for evicting Adivasis out of "FD" forest land, for instance the use of arms, elephants or bulldozers, the burning of Adivasi villages and the destroying of Adivasi crops, etc. (see, for instance, Dreze 2005; Prabhu 2004b). Cheria et al. (1997: j) describe the process by which the FD renders the lives of Adivasis inside the forest unviable as "slow strangulation" and divide it into four stages: 1) the Adivasis are prohibited to grow and harvest fruit trees, 2) the Adivasis are barred from general cultivation and are made dependent either on work provided by the FD or outside the forest, which is mostly daily wage work, 3) the space around the village is even further curtailed, with most Adivasi villages now only consisting of the houses, and 4) the Adivasis are forced to leave the forest, on the promise of compensation land elsewhere, and those who decide to remain in the forest face daily intimidation and harassment.

The following three examples demonstrate the extent of state-organised forced evictions:
In the first case a circular of the *Union Ministry of Environment and Forests* (MoEF), issued on 3rd May 2002, decreed the immediate eviction of "illegal forest encroachers" all over India (see Gossner Mission [date n.a.]: 10; Kaur 2002; Prabhu 2004b). The State governments were ordered to remove all illegal forest "encroachments" which were ineligible for regularisation at the time, thus threatening the eviction of 10 million Adivasis from their forest homes. MoEF framed the circular without consulting the Ministry of Tribal Affairs, the National Commission on Scheduled Castes and Scheduled Tribes or the *State Tribal Commissions* and in most States the eviction of Adivasis began without the respective governments having devised appropriate rehabilitation packages for the displaced. Furthermore, with this circular MoEF went against its own policy of 1990, which proposed to restore and grant land titles to Adivasi claimants after State governments had reviewed and settled the claims (Bhengra et al. 1998: 11). In a statement before the UN Permanent Forum on Indigenous Issues in May 2003 the ICITP (Indian Council of Indigenous and Tribal Peoples; see below) highlighted the negative effects MoEF's course of action had by referring to the fate of the Bodo (Boro) in Assam, who – following this circular – were forcibly evicted from their lands with elephants and bulldozers (Gossner Mission [date n.a.]: 13).

The second case is from Maharashtra and was reported by the INGO Minority Rights Group International (MRGI 2003). In July 2003 members of an Adivasi community from Maharashtra began a hunger strike to protest against the eviction of 200 of their families from their land and against its appropriation by the *Maharashtra State Farming Corporation*. This measure was to take place despite the fact that the Adivasis had lodged a court appeal (demanding the right to ownership of the land) and despite a Supreme Court ruling barring any eviction until the case was settled. The Adivasis maintained that the land was confiscated by force and that their huts and crops were destroyed with support from the police (MRGI 2003).

Incomplete rehabilitation measures are also to be found in South India, for instance the Karnataka, Kerala and Tamil Nadu governments have erected houses for Adivasis which are located outside the forest without access to minor forest produce. Moreover, these government houses are completely unsuitable for tropic climates – with tin roofs that leak, are too cold in winter and are too hot in summer, in contrast to the thatched roofs Adivasis used to produce themselves from minor forest produce (see Chapter 6). The Adivasis are allowed to live within the restricted space of these artificial villages (which are called *colonies* in Kerala), but the respective governments have not allotted them any land to cultivate around these villages, thus forcing the Adivasis to either depend on seasonal agricultural labour in the surrounding plantations for their income and survival or to occupy land (2. focus group interview 2007).

5.2.3. Land Alienation and Gender

In the course of the 20th century Adivasis have witnessed a trend towards the commercialisation of their lands and the prevalence of individual land ownership. For instance, within the Urali community in Wayanad District (who have small land holdings) the land used to be given patrilineally from generation to generation to one male descendant and was not divided among the potential heirs (in case there were no direct male descendants the land was handed over to the deceased's brothers or his next male relative) (2. focus group interview 2007). Whereas the female members of the family were not considered in this system, it ensured that the land was not fragmented and thus could not be sold off or leased out separately. However, as the trend is going towards individualising land ownership in many Adivasi communities, the Urali community's land inheritance system is changing as well and the land is now partitioned among both daughters and sons (ibid.). This, on the one hand, ensures daughters or female descendants/relatives their share of the land in an otherwise patrilineal society, on the other hand the land is more vulnerable to being lost through segmentation. This trend, can again negatively affect Adivasi women in previously matrilineal communities. According to Walter Fernandes (1995; cited in Sawaiyan 2002b), speaking about the situation in North-East India, institutions such as matrilineal land inheritance and the agricultural practice of shifting cultivation are transformed in this process, often in such a manner that patriarchal rules are strengthened and the Adivasi women's status deteriorates. Adivasi women, their land rights and the changing gender roles in Jharkhand, caused by external economic pressures, are comprehensively dealt with in Kelkar and Nathan (1991).

Adivasi women in Kerala, for instance, are facing considerable economic pressures due to the loss of markets for their traditional products, such as mud vessels, mats and woven baskets. Many are forced to take on daily wage work on plantations, such as in the ginger cultivation in Karnataka, thus being exposed to sexual abuse and exploitation (mostly by co-workers, superiors and the police) and the social stigma of (forcibly) having illegitimate children before marriage (2. focus group interview 2007). The problem of unsupported, "unwed" mothers of Adivasi origin with children born out of rape is largely denied by the Keralan government, the official figure for Wayanad District

being 500, whereas the actual figure is approx. 3 000, according to K. Ammini (ibid.). At the same time as the fathers of these children are either unknown, are denying their fatherhood or bail themselves out of a marriage with an Adivasi woman by means of money, the single Adivasi mothers are often ostracised by their own communities and are, inter alia, forced to take on prostitution for their and their children's survival (Basheer 2002). The number of cases of Adivasi women dying on the abortionist's table and of mysterious infant deaths has risen steadily in the past years in Wayanad. Any enquiries into such cases, however, are suspended after a time because the police act in collusion with the perpetrators and/or have to cover up their own crimes (ibid.). The organisation *Neethi Vedi* in Wayanad, which offers legal advice to Adivasis, emphasises the importance of "bypassing the police and filing a complaint before the perpetrators can bribe the police" (1. semi-structured interview 2007). C.K. Janu (quoted in Basheer 2002) argues that

> [t]he settlers have taken over our lands, turned our men folk into drunkards and desecrated tribal women. We have to declare self-rule for our self-protection, to prevent more fatherless children from being born. An Adivasi colony is not a brothel for outsiders to come and go.

Next to the land problem and that of sexual exploitation and related to them, another major factor that is destabilising Adivasi communities from within is the problem of alcoholism. Again, especially Adivasi women are affected by this "social evil" (N. Velliangiri, 8. focus group interview 2007) and have to bear the brunt of often being the only income generators left to keep the family (2. focus group interview 2007). The land loss (and the subsequent income loss) together with the problem of alcoholism cause the traditional family structures to break apart, thus depriving Adivasi women and their children of the social security net the family used to provide. K. Ammini expresses her concern about this in saying that "during children, they cannot give proper food for these children, proper education, all these things are being affected" (ibid.).

5.3. A Brief History of Adivasi Organisations and (Resistance) Movements

The British colonisation and exploitation of indigenous lands led to unrest among Adivasis, which was the starting point of more than 75 Adivasi uprisings, rebellions, revolts, insurrections, riots and movements during colonial rule.[30] Among the major ones are the *Mal Paharia Uprising* of 1772, the *Bhil Revolt* of 1809, the *Naik Revolt* of 1838 in Gujarat, the *Santal Hul* (1855-57) and the *Birsa Munda Movement* (1874-1901) (see Bijoy 2003a).[31] For a detailed analysis of these uprisings under British rule see Hardiman (1995).

Today the Adivasis are internationally linked[32] with institutions such as the UN Permanent Forum on Indigenous Issues (see UNPFII 2007), with NGOs like the Adivasi-Koordination in Germany (see Adivasi Koordination in Deutschland e.V. 2007), the Asian Indigenous and Tribal Peoples

[30] The labelling of these movements varies from source to source.
[31] The force of the "tribal" resistance movements and their widespread impact compelled the British administration to negotiate workable peace in the "tribal" areas, leading to the concept of partially or wholly excluded areas of administration in British India, which today still provide the basis for the Fifth and the Sixth Schedule in the Indian Constitution (see 4.1.1 Constitutional Provisions).
[32] S.M.A. Viennie (6. semi-structured interview 2007) calls this "high-tech campaigning".

Network (see AITPN 2006), the Society for Threatened Peoples/Gesellschaft für bedrohte Völker (see GfbV 1993; 2005; Society for Threatened Peoples 1999), and INGOs like Minority Rights Group International (see MRGI 1998), The International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (see IAITPTF 2006) and the International Work Group for Indigenous Affairs (IWGIA), to name but a few. This was, for instance, highlighted by the third international conference of the IAITPTF, which was held in India (Maharashtra) in 1997 (see Sarini 2001: 117). In a resolution passed by the conference the urge to act against the continuous expropriation of Adivasi lands by non-Adivasis was recognised (ibid.).

A major role in both the formation and the demise of Adivasi movements is played by NGOs (of different hues and ideologies[33]) in India. They have influence both on the mobilisation and self-directed development of Adivasi communities as well as on the quelling of unwanted Adivasi resistance and the suppression of their interests and of counter-current Adivasi activities. Particularly in South India NGOs are a mainstay of the development landscape, although some merely exist on paper in order to be able to vie for the restricted funds available on the (inter)national level (Bijoy 2007: 4. personal communication, 1. focus group interview 2007). Bijoy (2006: 2. personal communication) also criticises that – unlike Kerala and to some extent in Karnataka – the Adivasis in Tamil Nadu have not yet developed a national Adivasi identity or have not organised on the State-wide level because

> the space has been fragmented and occupied by NGOs for whom the Adivasi organisations are instruments for carrying out their projects and therefore not autonomous or self directed.

For further information on the relationship between the State, NGOs and Adivasis consult Saringi (2003).

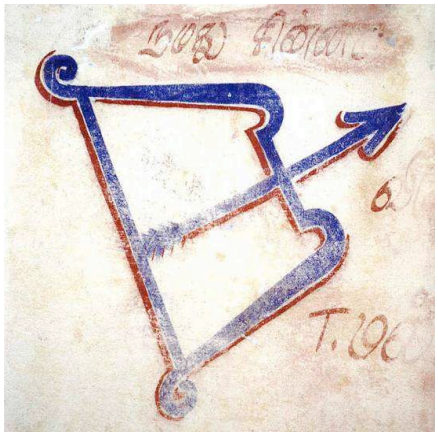

Figure 7 Adivasi sign in the village of Mavanatham, Erode District, Tamil Nadu
Photo: C.C. Aufschnaiter

[33] Bijoy (2007: 4. personal communication) points out the difficulties and the need for differentiation when discussing "Adivasi" organisations (see also Terminology). He emphasises that these organisations have to be examined, for instance, according to their type, functions, activities and politics. At the same time as most political parties from right to left have their Adivasi organisation, religious groups of varying creed have their Adivasi sub-divisions, Adivasis have their own political parties (such as in Jharkhand and Madhya Pradesh) involved in electoral politics or not and other purportedly "Adivasi" organisations are "involved in functioning as brokers/middle men for Adivasis indulging in exploiting the Adivasis" (ibid.).

In general there are too many examples of Adivasi movements fighting for land rights in India to be able to deal with them comprehensively in this work. For more information on Adivasi movements consult Bates (1995), Centre for World Environmental History (2005), Chaudhuri (1992c: 289-421), Hardiman (1995), Kapoor (2003), Mittal and Sharma (1998a), Prasad (2005), Ramagundam (2001) and Singh, B. (2004). In the following I would nevertheless like to give an overview of the most important national and regional movements in the whole of India in order to provide a context for the South Indian case studies dealt with extensively in Part III.

5.3.1. Bharat Jan Andolan (BJA)

The BJA (Indian Peoples' Movement) is a political platform consisting for the most part of Adivasi organisations. The BJA initiated and led the NFTS (see below) and the Campaign for Survival and Dignity, an organisation formed in 2002, which, inter alia, campaigned for the passage of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 (Bijoy 2007: 4. personal communication).

5.3.2. The National Front for Tribal Self-Rule (NFTS)

The NFTS (see Faschingeder 2001: 116f., Bijoy 2007: 4. personal communication) was founded in 1993, following a national mobilisation process, and since then it has been fighting for the legal recognition of the traditional forms of Adivasi self-government. It was also instrumental in the passing of the PESA Act in 1996.

5.3.3. The All India Coordinating Forum of the Adivasi/Indigenous Peoples (AICFIAP)

The AICFIAP was formed in the wake of the third International Conference of the IAITPTF in Nagpur in order to create a hitherto non-existent informal dialogue forum for the indigenous peoples of India on the national level (Bijoy 2007: 4. personal communication). Its purpose is to identify key issues for debate and to further the relations and linkages between Adivasis, however, it does not act as a movement and hence its scope is somewhat limited (ibid.).

5.3.4. The Indian Council of Indigenous and Tribal Peoples (ICITP)

The ICITP was formed in 1987 by those activists campaigning for a separate State of Jharkhand, inter alia, Ram Dayal Munda, and has since been affiliated with the World Council of Indigenous Peoples (WCIP) and has in the past participated in several sessions of the UNWGIP (Kulirani 2002: 117). According to Bijoy (2007: 4. personal communication), however, the ICITP hardly has any political significance and is only marginally involved in Adivasi struggles. This view is shared by S.M.A. Viennie (6. semi-structured interview 2007).

5.3.5. The Adivasi Sangamams

The first *Adivasi Sangamam* ("council", "coming together") was held at Mananthawady, Wayanad District in Kerala between 12-29 October 1992 and was attended by approx. 1 200 Adivasi dele-

gates from over 40 communities from eleven States and an additional 5 000 Adivasis who attended the accompanying cultural festival (Kulirani 2002: 118). It presented an affirmation of Adivasi cultural identity and viability on a previously unprecedented scale. The Sangamam also saw the formation of the important nation-wide Adivasi council *Bharatiya Adivasi Sangamam* (Adivasi Council of India), which passed a resolution on the Adivasis' demands. Among the points in the resolution are (Sarini 2001: 118-23):

- **Cultural identity:** Adivasis can only survive if their special cultural identity is intact.
- **Forest:** Adivasis and the forest inseparably belong together.
- **Land:** The idea of private ownership of land is alien to Adivasi culture.
- **Development:** The planning and implementation of development projects has to be left to the Adivasis.
- **Working environment:** The right to use forest produce would create tremendous employment possibilities.
- **Politics and administration:** Special courts have to be set up in Adivasi areas in order to prosecute breaches of the law against Adivasis.

The second Sangamam was held in Kushalnagar in Kodagu District, Karnataka in 1993 (Kulirani 2002: 118, 4. semi-structured interview 2007). The resolution spells out the Adivasis' concerns (Cheria et al. 1997: annexure iii, abbr.):

- **Non-recognition:** The government has not recognised the persistent demands and representations of the Adivasi organisations.
- **Law:** The social and customary laws of Adivasis should be given statutory recognition, with the Adivasi Sabha administering the affairs of the Adivasi community.
- **Unity:** These goals can only be achieved if all Adivasi organisations unite.

5.3.6. North-East India

Examples of indigenous movements in North-East India are (Bhengra et al. 1998: 30ff.):

- The *National Socialist Council of Nagaland*, who has been engaged in a struggle for Naga independence and sovereign statehood since India's own independence
- The *Mizo National Front*, demanding the unification of the contiguous areas inhabited by Mizos
- The Bodo (Boro) struggle for autonomy and the fight against Hinduisation, one of the most effective weapons for eradicating a community's distinct cultural identity.

The indigenous peoples of North-East India[34] are fighting against the imposition of the Armed Forces Special Powers Act, 1958 and 1972, which empowers the central government to declare an area as "disturbed" for an indefinite period and to move in the military, thus introducing martial law

[34] The indigenous peoples of North-East India do not see themselves as Adivasis or as belonging to India and understand their struggle for independence to be different from and more far-reaching than the land rights struggle of the Adivasis (6. semi-structured interview).

through the back door (Bhengra et al. 1998: 29f.). The HRC found in 1991 that this act violates Arts. 6 (the right to life is considered a non-derogable right), 9 (the right to liberty and to security of person) and 14 (right to equality before the law) of the ICCPR.

Further information on the (land rights) situation of indigenous peoples in North-East India can be found in ACHR (2005), Bhaumik (2005), Das (2002), Rebello (2005), Sharma, C. K. (2001), Singh, R. (1996a) and Threatened Indigenous People's Society Manipur (2002).

5.3.7. North India: the Jharkhand Movement

The idea and the movement to set up a separate Adivasi State, Jharkhand, around Chota Nagpur in the south of Bihar and touching on the neighbouring States of Madhya Pradesh, Orissa and West Bengal, reflects the decades-old struggle of the Adivasis in the region, the Hos, Kharias, Mundas, Oraons and Santhals, for self-determination and self-government. Before the eventual formation of the new Union State in 2000 the Jharkhandi Adivasis were already granted a type of theoretical autonomy in the form of the *Jharkhand Area Autonomous Council* (JAAC) (Bhengra et al. 1998: 15). It has to be conceded, however, that this autonomy remained theoretical because the surrounding States were more than reluctant to grant territorial autonomy to the region, with Jharkhand being India's main storehouse of industrial minerals. One of the movement's most prominent figures is the anthropologist and chief advisor of the ICITP, Ram Dayal Munda (see GfbV 1993: 15, 23).

The region looks back on a long history of Adivasi struggles for freedom – from British rule to the Jharkhandi national hero Birsa Munda (see above) to the formation of the *Jharkhand Party* in 1950 and strikes and blockades in the 1970s and 1980s. The creation of the new Union State was welcomed with enthusiasm and euphoria by Adivasis, but at the same time it was affirmed that the struggle for self-determination and self-rule had only just started with this development. The Adivasis in the comparatively rich State of Jharkhand are among the poorest in the nation and industrial development has already led to their displacement and uprooting (see Gossner Mission [date n.a.]: 3). The Adivasis' fear of becoming alienated in their own State through the already existing exclusion from the development process is all too realistic.

For additional information on Jharkhand consult Devalle (1992), EPW Editorial (2002), Herbert and Lahiri-Dutt (2004), Kelkar and Nathan (1991), Sharan (2005), Sharma, S. (2006), Singh, R. (1996a), Sundar (2005), Upadhya (2005), Upadhyay (2005) and Vasan (2005).

5.3.8. Central India: Narmada Bachao Andolan (NBA)

The NBA (*Friends of the River Narmada*) is a national and non-governmental coalition of environmental and human rights activists, scientists, academics, and project-affected people (among them Adivasis), working to stop several gigantic dam projects in the Narmada Valley, which covers the States of Gujarat and Madhya Pradesh. Among its most prominent activists are, inter alia, Medha Patkar and Arundhati Roy. As with China's Three Gorges mega-dam project along the Yangtze River, the Narmada project has – from its inception onwards – attracted unfavourable

international attention because of its indisputable status as India's most controversial hydro-electric and irrigation project to date and the undoubted negative environmental impact it has and will have. Originally, the project was financed, inter alia, by the World Bank, but after a highly critical report commissioned by the Bank it withdrew from the project in 1992. The Narmada project currently comprises of over 30 planned large dams, including the highest and highly criticised *Sardar Sarovar Dam*. Since the late 1980s the project has engendered one of the fiercest land rights struggles in India with, inter alia, the involvement of Adivasis fighting for the right to their natural environment, the right not to be displaced without adequate compensation and against submergence under the floods. For further information and more thorough analyses of the case see Baviskar (1995), Colchester (2000), Dietrich (2000), Hörig (1990), Kalteis (2004), NBA (2007), Mehta (1992), Sarini (2001), Patkar (1992), Society for Threatened Peoples (1999), Stavenhagen (2005: 16ff.), Thukral (1992) and Vaswani (1992).

5.4. Conclusion

If one looks at the place land (and forest) has in Adivasi culture, it becomes clear why Adivasis are inextricably connected with their land and why it is so vital for their survival, both physically and culturally. Ironically, they as the people who preserve(d) the forest are being punished precisely for having preserved it by those who make millions on the clearing of the forests (Prabhu 2004a).
Adivasis are faced with a whole array of different forms of land alienation, which could lead to the legitimate question how they have in fact managed to retain any of their land in the face of such adverse circumstances. The argument that some of their land has not been touched or discovered yet does not hold in today's India and simple neglect on the part of those interested in Adivasi land is not feasible as an explanation either. The latter two scenarios would in fact require the Adivasis to have been passive and to have resigned themselves to being victims of events outside the reach of their influence. On the very contrary, the reason they have been able to hold on to their land lies in their agency, their active campaigning, their development of strategies against expropriation and their formation of rights-based movements across community boundaries in the whole of India. Their strategies are as diverse as their communities and range from the armed struggle in the North-East of India to classical civil obedience, political lobbying, demonstrations and strikes, land occupation and hunger strikes. Adivasi societies are or have been no less fraught with internal community divisions, dissent or social problems than other societies, nevertheless the Adivasis have mobilised on a large scale and are fighting for their land rights as a people. As Cheria et al. (1997: 15) assert, "The struggle for land is an integral part of the struggle of the indigenous peoples to regain their identity, their culture and social institutions".

After discussing why Adivasis are having to fight for their land and after broaching several resistance movements outside South India I would now like to turn the attention in Part III to two case studies of Adivasi land rights struggles in Southern India (for the scope of the term in this research see Terminology). South India being a region often neglected in debates on Adivasi land rights

because of its relatively low number of Adivasis[35] and its not having any SAs, I have decided to specifically focus on the land rights situation of Adivasis in Karnataka and Kerala.

The first case study is an analysis of the victorious struggle of the Adivasi peoples in Nagarhole National Park, Coorg (Kodagu) and Mysore Districts, Karnataka, against their eviction from their forest land through the World Bank's eco-development project and eco-tourism. In this context the question is posed whether this victory has entailed any long-lasting positive changes for their land rights situation..

The second case deals with the situation of Adivasis in Wayanad District, Kerala after their land rights victory in 2001 and in the disastrous aftermath of the land occupation in Muthanga Wildlife Sanctuary in 2003 up until today.

The two Adivasi areas discussed in the case studies are concentrated at the trijuncture of the States of Karnataka, Kerala and Tamil Nadu and form one geographically and anthropologically contiguous region, which is, however, divided by three different State administrations and language regimes (Kerala/Malayalam, Karnataka/Kannada, Tamil Nadu/Tamil) (Singh, Raajen 1996b: 78). The region is inhabited by a multitude of Adivasi peoples and communities by the same name can be totally different groups in socio-cultural terms in another State.

[35] Singh (1996: 78) sets the percentage in South India incl. Andhra Pradesh at 0.15% of the total Adivasi population in India.

PART III
CASE STUDIES

6. The Adivasi Land Rights Picture in South India

6.1. Karnataka: Nagarhole National Park

The whole forest belonged to us in the sense that we belonged to the forest.
Village elder, Thiddahalli, Kodagu (Coorg) District, Karnataka (15. focus group interview 2003)

This case study is a haunting example of the Adivasi land rights situation in South India and at the same time one of the most significant victories in recent times for South Indian Adivasis. The data for this case study is largely drawn from literature on the case, for instance Assadi (2004), Bhengra et al. (1998: 23-4), Cheria et al. (1997), Citizens' Global Platform (2005), Devullu et al. (2005), Haribabu (1998), IDA (1998), Janu (2003a), Maan Ystävät (date n.a.), NBJHS (1998; 2000), Patil (1988), Raja (2001), Samy (2004), The Hindu (2006) and from fieldwork data and interviews (7.-9. focus group interviews 2007, 15., 16. focus group interviews 2003, 4., 5. semi-structured interviews 2007).

6.1.1. The Displacement of Adivasis from the Forest

Nagarhole (snake river) *National Park* forms part of the *Nilgiri Biosphere Reserve*, which was constituted as a sanctuary in 1955 and covers the southern region of the Western Ghats mountain range called *Nilgiri Hills* or "Blue Mountains", with the Union States of Karnataka, Kerala and Tamil Nadu forming the component States. Upon attaining the status of national park Nagarhole was renamed *Rajiv Gandhi National Park* in 1992. The park is divided into four areas self-explanatorily named core, buffer, tourism and restoration zones, all of which have already been extensively logged and partly substituted by teak, eucalyptus and rosewood plantations (which now make up approx. 15% of the forest area) (Janu, C. K. 2003a; NBJHS 1998). The approx. 32 000 Adivasis living in 138 *Haadis* (hamlets) in and around Nagarhole National Park (approx. 7 200 of which live in 58 Haadis in the core area of the park) are the *Betta Kuruba* (hill dwellers)*, Jenu Kuruba* (honey collectors)*, Paniya, Solaga, Yerava, Malai Kudiya* and Asula (NBJHS 2000). The Betta Kuruba originally were food gatherers and specialists in the bamboo craft, the Jenu Kuruba hunter-gatherers and expert honey collectors and the Yerava fishers and subsistence agriculturalists (ibid.). As per the Madras Census Report of 1891 these Adivasis have been living in the Nagarhole forest since the 7th century AD, and were only turned into wage labourers by the Forest Department, while non-Adivasis managed to get title deeds on about 250 acres of their land. In the words of a Jenu Kuruba (15. focus group interview 2003) from the village of Thiddahalli:

> We could live anywhere. Then the Forest Department came and told us where to live, not to disturb the animals, and so on. Many restrictions where imposed on us whereas outsiders came and could grow trees and build bungalows. Only then the forest got depleted. Now we have to purchase cement from shops because the Forest Department says so. They maintain that we didn't know the principle of ownership. The whole forest was our house. Only because the Adivasis are there the

> animals are alive. The forest was maintained by us. Now the government says we are thieves. Boja [a village elder] is outraged because the Adivasis are accused of such things.

S.M.A. Viennie (15. focus group interview 2003) explains that

> [t]he situation started twenty years back. The government said they shouldn't have chicken, etc. Then came the multi-national corporations and globalisation. But the problem actually started in the 1870s when the British introduced the principle of ownership and said they owned the land for their own purposes.

Bijoy (2003a) pointedly expresses the crux of the matter, "[W]ith globalisation, the hitherto expropriation of rights as an outcome of development has developed into expropriation of rights as a precondition for development".

The imposition of the Wild Life Protection Act in 1972 coupled with the Forest Act of 1980 had the consequence that all rights of forest inhabitants were extinguished and habitation in the national park was prohibited. As a result over 6 000 Adivasis were evicted, largely without any compensation land or only makeshift tents to live in. In those cases where the Karnataka State government did construct new villages, they do not follow traditional Adivasi housing patterns and are situated from one to twelve kilometres outside the forest. Comparison of the pictures below shows the stark contrast between traditional villages inside the national park and resettled villages outside.

Figure 8 Forest village of Thiddahalli, Kodagu (Coorg) District, Karnataka
(15. focus group interview 2003)
Photo: C.C. Aufschnaiter

Figure 9 Resettled village of Nagapura, Kodagu (Coorg) District, Karnataka
Photo: S. Magedler

The Karnataka government is denying the Adivasis access to the forest, thereby forcibly assimilating its indigenous population into the mainstream society by depriving them of their main source of livelihood, forest produce, which they used to collect and which they are now banned from using. The land they have been given is mostly waterless and barren, thus making cultivation near to impossible and forcing the Adivasis to take up daily agricultural or other seasonal labour for their survival. The Adivasis in the Nagarhole area are denied their cultural identity and are forced to renounce their traditional way of life by having to abandon the seats of their gods and goddesses and their burial grounds inside the forest. At the same time the Forest Department has replanted large tracts of Nagarhole National Park with teak, hence most of the former Adivasi lands inside are now government-owned teak plantations (Cheria et al. 1997: j). The remaining Adivasis in the forest are

seen as illegal encroachers by the government and have been beaten, molested, arrested and are constantly harassed. In July 2003, for instance, a Jenu Kuruba youth was shot by forest guards because he was collecting honey for his starving family inside the forest (15. focus group interview 2003). Those Adivasis who have already been displaced have partly become bonded labourers. According to Jenu Kuruba (15. focus group interview 2003) in the village Thiddahalli:

> The government is giving trouble in very subtle ways. They follow different strategies, e.g. they try to coax us away on grounds of ecology. Our main strategy is to remain in the forest, to hold awareness sessions to build up the community, i.e. festivals, culture programmes. Two years back we held day fasts, i.e. hunger strikes.

In recent years the Adivasis in and around Nagarhole National Park have also come under pressure from Hindu nationalist groups such as the RSS (Rashtriya Swayamsevak Sangh) (4. semi-structured interview 2007).

6.1.2. The Involvement of Outside Actors: The Role of the World Bank and the Taj Group of Hotels

The Karnataka government's ongoing displacement of the Adivasis from Nagarhole National Park found another pretext in the World Bank's scheme to designate the Nagarhole area as one of the seven sites of its "eco-development project" at the beginning of the 1990s, with the somewhat ambivalent aim of protecting India's fragile and endangered biodiversity, while at the same time promoting eco-tourism (5. semi-structured interview 2007). The US $67 million project was to be co-funded by the International Development Association (IDA) and the Global Environment Facility (GEF), among others, who signed the agreement in 1996, and it promised to bring in millions of dollars to the region.

In the end, however, the eco-development project went against the World Bank's own guidelines, as laid down in the WB Operational Directive 4.20 Indigenous Peoples and the WB OD 4.30 on Involuntary Resettlement. It violated the principles of ensuring that 1) indigenous peoples do not suffer adverse effects from a WB project, particularly with regard to involuntary resettlement, 2) that there is informed participation before and throughout the project implementation, 3) that the project has a beneficial aspect for the indigenous peoples involved, and 4) that adequate relocation and compensation measures are taken. Since 1994, however, the Karnataka government has not initiated any measures whatsoever reviewed and/or approved by the WB and those rehabilitation measures that were put into operation were from the start fraught with deficiencies, such as the defective solar lamps and cooking appliances handed out to Adivasi families (Devullu et al. 2005: 38). J.P. Raju, the Nagarhole Adivasi leader and head of BKS, details the first step of the campaign with which the Adivasis responded to the WB's plans, "[T]he first kind of activity was writing postcards to different personalities in the government and officials, departments, ministers, parliament, Prime Minister, etc." (5. semi-structured interview).

Thus, in a letter to the Inspection Panel of the World Bank the NBJHS (Nagarhole Budakattu Hakku Sthapana Samithi [Nagarhole Adivasi Rights Restoration Forum])[36] (1998) lists the human rights violations against the Adivasis in Nagarhole National Park caused by the WB project: 1) forced evictions, 2) violations of Arts. 3, 12, 13 and 14 of ILO Convention No. 107, which India has ratified and is bound by, and 3) the breach of the PESA Act, 1996. In the letter the NBJHS goes on to criticise the WB for favouring the views of the Forest Department over those of the Adivasis during the planning phase and for neglecting to translate the project papers into any of the local languages in order to conceal the adverse project effects from the project-affected (ibid.).

J.P. Raju (5. semi-structured interview) is particularly critical of the WB, asserting that it is not his people who are benefiting from the bank's development packages, but government officials and environmentalists. Taking the example of housing, he explains that as much as 50% of WB funds intended for the construction of new houses for the Adivasis is siphoned off by government officials with the help of contractors through spending less on construction, for instance by using lesser-quality materials. He goes on to say that even though the WB is aware of this kind of corruption they do not launch an enquiry into the matter as long as their records are straight. Naturally, it is not the malnourished indigenous peoples who are showcased by the government to WB representatives during official visits, but "developed" people (ibid.). Having visited both the WB and UN the Adivasi leader appreciates the opportunities that are given to indigenous peoples to voice their opinion, but at the same time he regrets the general lack of understanding and empathy he perceived there (ibid.).

The pressure on the Adivasis still living inside the national park by the Karnataka government was further intensified when the latter commissioned the lease of a protected core area of the forest at Murkal to the *Taj Group of Hotels* in 1994, which intended to construct a "jungle lodge" on the site in the spirit of "eco-tourism". In response to these threats Adivasi resistance began to form and the commencement of hotel construction was immediately followed by campaigns and protests. The Nagarhole Adivasis argued that their eviction from the forest by the government was irreconcilable with letting the Taj Group and eventually the tourists into the forest. In the words of R. David (4. semi-structured interview) of CORD (Coorg [Kodagu] Organisation for Rural Development), Kushalnagar,

> So our argument was that you are throwing out the Adivasis who have been living there in harmony with the nature since ages and at the same time you are allowing a hotel to come and establish. 'Ah, no, no, it is a small canteen-like, railway canteen', they said. We said, 'railway canteen? Where do you want to spend two crores?' So much of money and so much of building.

On independence day (15 August) 1995 the Adivasis launched an "Enter the Forest" campaign, which was followed by the blocking of the hotel development from August 1996 onwards (Janu, C. K. 2003a). This led to mass arrests of Adivasis, but also the temporary suspension of construction

[36] Spellings vary from source to source; see Janu (2003), NBJHS (1998, 2000).

works. However, they were revived in late December of that year, to which the Adivasis responded with a general strike, with all the six entrance roads to the park successfully blocked. Subsequently, a public interest litigation was filed by the Adivasis and several affiliated NGOs in the High Court at Bangalore. In its judgement of 20th January 1997 the court declared the assignment of a portion of forest land to the Taj Group a gross violation of Section 20 read with Section 35 (3) of the Wild Life Protection Act, 1972, and Section 2 (3) of the Forest Conservation Act, 1980. Hence both the government and the Taj Group, which was ordered to immediately stop all its activities within the forest and hand over the land, had violated the law. Taj appealed to the Supreme Court of India, but the latter's verdict supported the Karnataka High Court decision. The unfinished hotel structures now remain abandoned in the forest and are proudly showcased by the local Adivasis as a sign of their victory.

Figure 10 Unfinished structures of the Taj Hotel, Murkal, Nagarhole National Park
Photo: S. Magedler

Notwithstanding this land rights victory the struggle of the Nagarhole Adivasis continues, as displacement from inside the forest is still rife and those already living outside the forest are only slowly returning (4. semi-structured interview 2007).. The Adivasis' demands include, first of all, to "have free movement again inside the forest and access to the minor forest produce" (J.P. Raju, quoted in Maan Ystävät: date n.a.), second, one to five acres of land for cultivation (5. semi-structured interview 2007) and, third, the declaration of their lands as SAs under the Fifth Schedule of the Indian Constitution (ibid.). Under the PESA Act of 1996 this would enable them to set up "Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government" (PESA Act, 1996, para. 4 [m]). In this spirit the Nagarhole Adivasis declared self-rule in their Haadis (NBJHS 1998) in the wake of the act's passing in December 1996 and erected boards prohibiting the entering of their villages without permission (5. semi-structured interview 2007). So far, however, the Karnataka government has not made any moves to schedule Adivasi areas in the State and to implement the PESA Act, nor are there any official recommendations (Bijoy 2006: 2. personal communication), despite the fact

that organisations such as CORD have submitted scheduling proposals in the past (4. semi-structured interview 2007).

During a district-level meeting of Jenu Kuruba in Balegundi, Kodagu (Coorg) District, on 13 February 2007, headed by J.P. Raju, at which the newly-passed STRFR Act and the government's Joint Forest Management Plan (JFM) were debated, the following resolutions were passed (8. focus group interview 2007):

- Send children to school regularly
- Erect boards outside Adivasi villages with information on the Adivasi community
- Ban the leasing of land to others than Adivasis
- Ban alcohol, especially Arrack (sugarcane or coconut liquor)
- Improve the health facilities and the Adivasis' access to them.

The confidence built up by the Nagarhole Adivasis through more than a decade of mobilisation found another expression in their participation in the Delhi Adivasi forest rights rallies in 2006 (5. semi-structures interview 2007). In July of that year J.P. Raju went for a meeting with government officials in Delhi. Should their demands not be met he vowed that the Adivasis would observe Independence Day on 15 August as a black day because they were not independent yet and could not fully enjoy their rights (ibid.). The news of the planned national-level events in Delhi in November and December of that year was spread through Sangam meetings on the village, Taluk and district level and over the radio, resulting in a Nagarhole Adivasi delegation of 250 participating in the Delhi rallies (ibid.).

The new World Bank Procedures and Operational Policies 4.10 on indigenous peoples of 2005 contain a revised definition of the relationship of indigenous peoples to national parks and wildlife protection areas in para. 21, which now reads:

> In many countries, the lands set aside as legally designated parks and protected areas may overlap with lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied. The Bank recognizes the significance of these rights of ownership, occupation, or usage, as well as the need for long-term sustainable management of critical ecosystems. Therefore, involuntary restrictions on Indigenous Peoples' access to legally designated parks and protected areas, in particular access to their sacred sites, should be avoided. In exceptional circumstances, where it is not feasible to avoid restricting access, the borrower prepares, with the free, prior, and informed consultation of the affected Indigenous Peoples' communities, a process framework in accordance with the provisions of OP 4.12. The process framework provides guidelines for preparation, during project implementation, of an individual park's and protected areas' **management plan**, and ensures that the Indigenous Peoples participate in the design, implementation, monitoring, and evaluation of the management plan, and share equitably in the benefits of the parks and protected areas. The management plan should give priority to collaborative arrangements that enable the Indigenous Peoples, as the custodians of the resources, to continue to use them in an ecologically sustainable manner. (emphasis added)

In light of the fact that the WB has withdrawn its eco-development project from the Nagarhole forest the central and the Karnataka State governments would be well advised to use elements of the management plan detailed above as a role model for their future conduct towards the Adivasis of Nagarhole. Most importantly, the WB OP 4.10 recognise that indigenous peoples are the (true) "custodians of the resources". In fact, those who have lived inside the forest for generations ensure

its protection and consequently a national park's integrity and biodiversity, owing to their use of ecologically sustainable methods. This is an important lesson to learn for India's government and those "environmentalists" who have been campaigning for a "Nature without People" (Janu, C. K. 2003a), i.e. animals-only national parks and protection areas, and hence the eviction of forest-dwellers. Indigenous peoples are not only equal partners in the conservation of nature, but more than that, they are key players (ibid.).

Figure 11 CORD Kushalnagar, Kodagu (Coorg) District, Karnataka
An organisation for Adivasis (7. focus group interview 2007; 4., 5., 6. semi-structured interviews 2007)
Photo: C.C. Aufschnaiter

Figure 12 District-level meeting of Adivasis (Jenu Kuruba) Balegundi village, Kodagu (Coorg) District, Karnataka (8. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 13 Adivasi leader J.P. Raju (centre)
Speaking about the STRFR Act, 2006 at the district-level meeting (8. focus group interview 2007)
Photo: C.C. Aufschnaiter

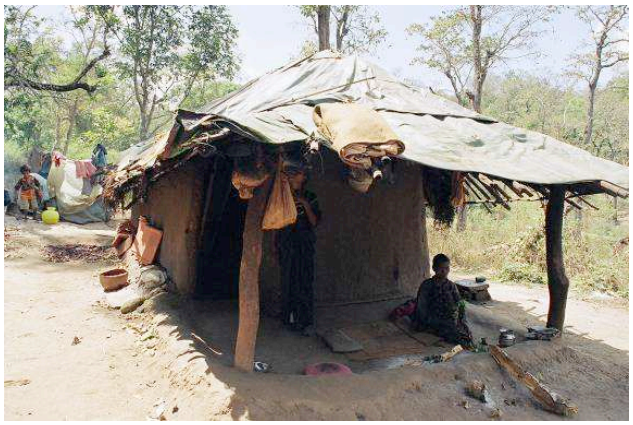

Figure 14 Makeshift Adivasi house in Balegundi village
The Jenu Kuruba are prohibited to erect permanent housing because they do not hold the legal title to their land (8. focus group interview 2007).
Photo: C.C. Aufschnaiter

Figure 15 Fencing
Adivasis are asserting their land rights by putting up fences around the land they occupy (8. focus group interview 2007).
Photo: C.C. Aufschnaiter

Figure 16 Jenu Kuruba women with their children participating in the district-level meeting (8. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 17 Jenu Kuruba woman with her child (8. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 18 Traditional thatched Adivasi house Eruru village, Kodagu (Coorg) District, Karnataka (9. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 19 Adivasi houses constructed by the government, Eruru village
The corrugated iron roofing of these houses is completely unsuitable for (semi)tropical climates (9. focus group interview 2007).
Photo: C.C. Aufschnaiter

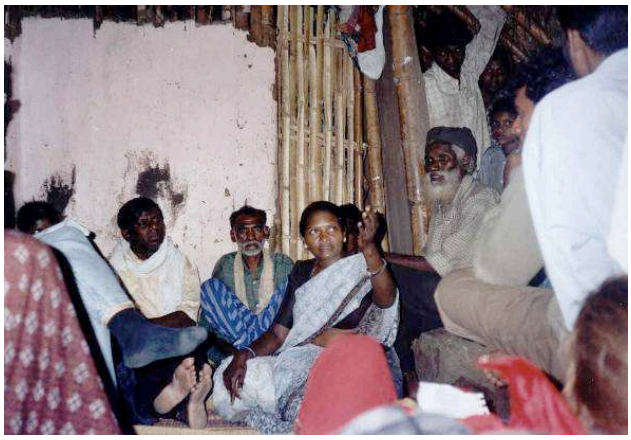

Figure 20 The Adivasi leader J.P. Mutamma
With Jenu Kuruba in the village of Thiddahalli, Kodagu (Coorg) District, Karnataka (15. focus group interview 2003).
Photo: C.C. Aufschnaiter

Figure 21 Meeting in Alladakatte village, Kodagu (Coorg) District, Karnataka
The village leader Mutamma (centre) and J.P. Mutamma (right) (16. focus group interview 2003)
Photo: C.C. Aufschnaiter

6.2. Kerala: Wayanad District

So in Kerala Adivasis are not respected. Kerala is supposed to be a land of fertility and people, the literacy is high, the development is high, but the Adivasi situation is bad. Kerala is a land of contradictions.
S.M.A. Viennie (6. focus group interview 2007)

This case study deals with the land rights situation of Adivasis in the northern-most district of Kerala, Wayanad District. Among the general public of South India Wayanad and its Adivasi peoples have become synonymous with the "firebrand" Adivasi leader C.K. (Chekkottu Kariyan) Janu, an Adiyan Adivasi woman, and the occupation of a former eucalyptus plantation in Muthanga Wildlife Sanctuary to the South-East of the district by a group of landless Adivasis, led by C.K. Janu and the Dalit leader M. Geethanandan, in 2003. This led to the attacks on the peacefully occupying Adivasis by police officials in February of that year (Bijoy 2003b; Gossner Mission:12 [date n.a.]). The Adivasi movement in Wayanad has received extensive media coverage in India, but – unlike other indigenous movements such as the Zapatista movement in Mexico – has received only little media attention outside India, despite its lasting impact.
The data for this case study is drawn from fieldwork data and interviews (1.-6. focus group interviews 2007, 1., 2. semi-structured interviews 2007) and literature on the case, for instance Bijoy (1999; 2002), Cheria et al. (1997), CHRO (2003), Gatade (2005), Janu (2003b), Janu and Geethanandan (2003), Lukose (2003), Manoj (2003), Praxis and Patabhedam (2003).

6.2.1. Overview

Wayanad is the second least populated district in Kerala after Idukki District (its population of 786 627 forms only 2.47% of Kerala's total population of 31 838 619, as per the census of 2001), but has, with 17.3%, the highest proportion of Adivasis among Kerala's districts (Nampoothiri 2006: 25). With a population of 136 062 the Adivasis of Wayanad make up 37.36% of Kerala's total Adivasi population (364 189) (ibid.), who, however, only constitute 1.14% of Kerala's population. The main six Adivasi communities who live in Wayanad District are the *Paniyan* (44.77%), *Adiyan* (7.10%), *Kattunaickan* (9.93%), *Mullu Kuruman* (17.51%), *Urali Kuruman* (2.69%) and *Kurichian* (17.38%) communities (ibid., 1. focus group interview 2007). The main source of income for most Adivasis in Wayanad is agricultural labour. The Kurichian and Kuruman (Mullu and Urali Kuruman) communities are the only ones who have viable land holdings, whereas the Paniyan and Adiyan (this exonym literally translates as "slave") were mostly bonded labourers up until only 20 years ago (1. focus group interview 2007). The temple *Valliyoorkavu* to the North-East of Wayanad, for instance, used to be a place where Adivasis would be auctioned off to future masters, the irony being that it initially was an Adivasi temple (ibid.). The Paniyan's creation myth involves their ancestors, a couple similar to Adam and Eve, being captured while collecting food and enslaved by a landlord (2. semi-structured interview 2007). The Kattunaickan and Adiyan peoples, on the other hand, have been attached and associated with the forest and hunting/gathering. What the last two have in common is that their living patterns were marked by migration and frequent shifts of resi-

dence, hence it is very difficult for them to prove any claims to land holdings nowadays. According to S. Mathew (1. focus group interview 2007) of the Adivasi human rights organisation *Neethi Vedi*,

> [o]riginally the whole area belonged to them, they have got their traditional lore, nothing is written, no written studies regarding their early period and so on, but one thing is true that they never had any particular registered, measured property. Land is considered as their mother land.

The concept of ownership (as the British imposed it and the Indian legal system incorporated it) was an alien notion for the Adivasis and it was only the influx of settlers into Wayanad from the 1940s onwards and the Adivasis' eviction from their lands that compelled them to adopt "this idea of demarcation, measurement, registration, deeds" (ibid.). Today nearly 50% of Adivasi land in Wayanad is held under joint title (*Koottupatta* in Malayalam) (1. semi-structured interview 2007).

According to Kulirani (2002: 114ff.) the Wayanad Adivasis' migration to their present living environment in the mountains and mountain forests was either a result of 1) the pressure exerted on them by settlers from the plains or 2) of subjugation and conquest during war times or the result of 3) the colonisation of lands previously belonging to and inhabited by Adivasis. This third factor can be divided into two phases, the first phase being the medieval phase which saw the rise of the *Nayars* as *Janmis* or *Zamindars* (landowners), who subsequently ruled over the Adivasi lands with the use of force. In an act of religious and cultural marginalisation they appropriated the Adivasi gods and goddesses into the Hindu pantheon (a prominent example is the Adivasi hero of Travancore turned into Lord Aiyappa) and monopolised the worship of these now hinduised deities.[37] In addition, this first phase saw the beginning of the international spice trade and it is believed that large amounts of pepper exported at the time were in fact Adivasi forest produce collected by local chieftains as tribute or fief (cited in Kulirani 2002: 115; Menon 1996). The second phase of colonisation came with the British rule over Kerala:

> The consequences of British policy were far reaching. […] The forest policies of the British curtailed the age old rights of the tribes by reserving the forest. The Second World War affected the people of Kerala as rice imports to Kerala from Burma were completely cut off creating an acute shortage of the staple diet. To compact the situation British administration promoted "Grow more Food" campaign [sic] and encouraged the optimum utilization of land resources. The result was the migration of farmers from the central and southern parts of Kerala to the plateau regions of Wayanad […]. The tribal ethos of non-proprietory relationship to land helped the "colonizers" to emerge as the land holders and the tribes in many places became landless labourers, and even worse, slave labourers. (Kulirani 1996, emphases in original; cited in Kulirani 2002: 116)

The British first started cutting down large tracts of Adivasi forest in the Malabar and Travancore areas over the course of the 19th century, initially for their navy and subsequently for the colonial railways (Ravi Raman 2004: 126). By the end of the 19th century and into the 20th century the Adivasis were further displaced by the appropriation of their lands for plantations and various industrial development projects (ibid.). At this time settlers from outside Wayanad District, for instance many Christian communities, started moving into the district's Adivasi areas (1. focus group

[37] From the beginning of the 20th century onwards Kerala's Adivasis additionally came under the influence of Christianity, mostly initiated by Euro-American missionaries. Kulirani (2002: 121) criticises that the "egalitarian idealism" preached by the missionaries was not achieved for the Adivasis and that some Christians in Kerala were/are as much influenced by the caste system as the Hindus.

interview 2007). According to K. Kesavan, an Adivasi leader from the Kurnma community, the British started to lease out the land they had summarily declared as government land to these settlers, irrespective of prior Adivasi land ownership, use or settlements (ibid.). He goes on to say that through this development the Adivasis in Wayanad were turned into wage labourers dependant on the new land owners (Janmis) for their wages and for the land that had previously belonged to them, which was now being leased back to them (ibid.). In most instances, however, the Adivasis were not able to settle the lease with money and instead had to pay with the paddy cultivated on the leased land, thus further aggravating poverty and starvation. In addition to this the Janmis demanded extortionate lease rates from the Adivasis and were pressurising them into paying the lease (ibid.). By the 1930s and 1940s the repercussions of the worldwide capitalist depression and the two World Wars had begun to take its toll on the Adivasis who were now being displaced by the waves of impoverished peasants and settlers from Kerala's Southern plains pushing into the fertile Adivasi forests in the highlands, supported by the Keralan government with generous packages (Ravi Raman 2004: 126). After independence large tracts of land owned by Janmis were resold, often at disproportionately cheap rates,[38] to commercial companies, who in turn evicted the Adivasis who had been able to remain on and cultivate the Janmis' lands before that (K. Kesavan, 1. focus group interview 2007). Furthermore, the settlers threatened the "illiterate" and "uneducated" Adivasis and cheated them out of their lands by obtaining counterfeit *Pattas* (land titles) through the bribery of government officials. The settlers began to sell alcohol to the Adivasis, which would eventually have a detrimental effect on Adivasi communities (1., 6. focus group interviews 2007). Alcohol addiction and poverty led to rising debts with money lenders and land owners, most often resulting in the relinquishment of Adivasi land and land rights (without proper documentation) or the lease of Adivasi land to settlers, who would never return it and would "prove" their ownership of the land by forging tax declarations and land titles (6. focus group interview 2007). Given these adverse circumstances the Adivasis in Wayanad retreated further and further into the forest in order to make a living from minor forest produce, but the Wild Life Protection Act, 1972, and the Forest Act, 1980, again jeopardised their livelihoods and their survival.

The present exploitation and discrimination of Adivasis in Wayanad District is multi-faceted. A prevailing feeling among most of the Adivasi communities is that they are being exploited from all sides (1. focus group interview 2007). For instance, politically the Adivasis are highly fragmented in Wayanad because the different political parties (from left-wing to right-wing) have all recruited "their" Adivasis into their ranks, hence there are not many "independent" Adivasis who are not under the control of a party (ibid.). Most of these parties do not encourage the Adivasis to mobilise and to fight for their land rights, rather they are "pacified" with the distribution of TVs and other consumer goods because, as S. Mathews details, "They [the political parties] are also afraid that if

[38] K. Kesavan quotes an example from the 1950s where 12 000 acres of former Adivasi land were sold for a mere 12 000 Rupees (1. focus group interview 2007).

they [the Adivasis] get land and get settled they will not have sufficient followers in their parties" (ibid.). Particularly in the run-up to elections Kerala's political parties are adamant to include promises to the Adivasis in their election campaigns, which, however, never take shape afterwards (3. focus group interview 2007). The high drop-out rate of Adivasi children from State schools is explained by the discrimination of Adivasi children in these schools. They are confronted with a lack of sensitivity towards Adivasi issues and a lack of awareness of the special needs of Adivasi children, let alone support structures (for instance for homework and learning) and special Adivasi schools (3. focus group interview 2007).

Adivasis also criticise that – given the number of academic and journalistic researchers and research Wayanad has already seen – surprisingly little has come back to them in general and even less that would be of benefit for their land rights struggles (1. focus group interview 2007).

Governmental "development" initiatives have by and large failed, as is the case with regard to most other indigenous peoples worldwide, because these programmes did not respect and "calculate" the Adivasis' cultural "differences" and hence the need for culturally adaptive projects. As a result Wayanad's Adivasis are calling for a rights-based approach when it comes to **their** development and for the strengthening of their own decision-making bodies such as the *Oorukoottam* (village meeting/council) (1. semi-structured interview 2007). Kulirani (2002: 121) points out the core of the dilemma in commenting that "[t]he STs are reduced to objects of sympathy and charity creating a sense of dependency rather than improved self-respect and efforts for self-growth". At the same time "ordinary" members of society harbour contempt against the Adivasis because the latter purportedly only depend on government benefits in the eyes of the former (ibid.).

The introduction of the monetary system and later of alcohol in the course of the 20th century and the Adivasis' move into the agricultural labour force ultimately had the consequence of providing Adivasis with relatively large amounts of money at irregular times of the year,[39] whereas before most had lived on a day-to-day basis on what the forest provided them with. Owing to the crash in cash crop prices such as coffee and tea caused by the opening of the Indian market to the vicissitudes of the neo-liberal market system many plantations have had to lay off their workers. In this context it is mostly the Adivasis who are made redundant, hence they are even losing their source of income from agricultural labour. Their situation is further exacerbated by tourism's move into Wayanad District and the fact that most land (especially state-owned land) is leased out on a long-term basis, hence the chance that Adivasi lands will be rehabilitated soon is dwindling steadily (Ravi Raman 2004: 128).

An example to the contrary of this trend is the Adivasi organisation *TUDI* (Tribal Unity for Development Initiative) in Panamaram, Wayanad, which runs several culturally sensitive programmes according to the needs and wishes of the Adivasis, for instance the retrieval of land with the help of

[39] According to the crop seasons Adivasi women only have approx. 40 days of work in Wayanad, for which they receive 60-100 Rupees/day, and Adivasi men have approx. 50 days at a daily rate of 80-100 Rupees (3. focus group interview).

loan and mortgage assistance and the revival of indigenous, "organic" farming methods on the basis of cooperatives (2. semi-structured interview 2007). G. Thenadikulam (ibid.) elaborates:

> [W]e approach this whole problem from a cultural perspective, we say. Unless we affirm our culture and right and language, we won't live. We have to say by ourselves at least, ours is good. Our colour is good, our language is good, our art is good, our way of living is good. If we can respect your religion and your practices, why can't you respect ours?

Along with this goes a perceptual shift from being landless coolies to becoming masters and owners of the land again and partners in the paddy cultivation business.

6.2.2. The Legal and the Political Perspective

Following the historical background I am going to discuss the legal context framing the Adivasis plight in Wayanad District and also take into consideration the political perspective. Like in most parts of India the British were (in the region that is Kerala today) the first to introduce laws governing the use of forests and consequently of land the Adivasis had lived on for centuries. The scope of different regional forest legislation during the Raj is too extensive to be dealt with systematically here and I will instead focus on the post-independence period, but an extensive discussion of the various British forest laws in Kerala can be found in Kulirani (2002: 120).

Unlike the other two States dealt with in Part III Kerala has already passed ST-specific legislation (concerning the protection of Adivasi land and the mitigation of Adivasi land alienation, but also counter-amendments):

- Kerala Land Reforms Act, 1965
- Kerala Private Forest (Vesting and Assignment) Act, 1972
- Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975
- Kerala Scheduled Tribes (Restriction on Transfer of Land and Restoration of Alienated Lands) Amendment Bill, 1996, which includes provisions for amending the 1975 Act and "virtually legalising all land transfers from tribals to non-tribals" (Viswanath 1997)
- Kerala Scheduled Tribes (Restriction on Transfer of Land and Restoration of Alienated Lands) Amendment Bill, 1999

The first land reform after independence came with the beginning of Kerala's Marxist administrations in the late 1950s that were to govern Kerala for most of the time in the next 50 years (1. focus group interview 2007). The 1965 Act was initiated by the first of these communist governments and was intended 1) for granting land rights to people who were the tillers of certain lands, but did not have land titles for them, and 2) for restricting land holdings and for redistributing surplus land (Kulirani 2002: 119). In the end Adivasis did not benefit from this piece of legislation because they had already started to lose control over their lands before (see above).

The 1975 Act sought to redress this imbalance in "declar[ing] that all transactions of the adivasi [sic] lands during the period of 1962-82 had become invalid and that the lands should be given back to the original owner" (Viswanath 1997). This however, did not include the decade before

1962 when Adivasi land alienation had already been rampant. From 1982 onwards he transfer of lands from Adivasis to non-Adivasis would be restricted, however, one of the important prerequisites of the act was for expropriated STs to have the necessary records to prove their prior ownership (ibid.). This was a major impediment for Adivasis seeking to regain their land because they had never been issued any land documents and hence could not provide the authorities with the necessary documentation (the system of title deeds and land documentation previously being a foreign system for Adivasis, as discussed above). In addition, as with most central laws created for Adivasis, the 1975 Act completely lacked implementation, many of the lands for which the Keralan government issued the Adivasis *pattayan* (land titles) were never physically handed over to them (1. focus group interview 2007) and the act became another one of those laws intended for the benefit of the Adivasis that only existed on paper. It was only in 1986 that the act started to be in operation,[40] after eleven years of discussions about its implementation (Kulirani 2002: 119). However, another obstacle stalled the rehabilitation of Adivasi lands as Adivasis were now required to pay compensation for the land to be restored, which was provided by the Kerala government in the form of loans, thus creating another form of dependency (Ravi Raman 2004: 127). By the time of the act's implementation the situation of Adivasis in Kerala had completely changed in terms of their population size – for instance, Wayanad recorded a decline from 21% in 1961 to 17% in 1991 (Kulirani 2002: 119). Now the settlers from the plains outnumbered the Adivasis in Wayanad and from the beginning of the act's implementation onwards the former lobbied with those political parties supporting the act in order to achieve a majority against the act. The settlers did not restrain from resorting to physical violence in order to enforce their claims to Adivasi lands, thus thwarting the feeble attempts by the government to restore land with communal violence. Adivasi activists have criticised that, on many occasions, the government did not even try to prevent the violence (Ravi Raman 2004: 128). In contrast, when the Adivasis tried to assert their human and in particular land rights, as in Cheegiri 1995, Panavally 1997, Muthanga 2003 (see below) and recently as part of the anti-CocaCola struggle in Plachimada, their resistance was repressed – often with police violence (ibid.). In this context Viswanath (1997) accuses the Keralan government of an "anti-adivasi [sic] stand". This was further confirmed when the then right-wing *United Democratic Front* (UDF) government under A.K. Antony issued an amendment to the 1975 Act in 1996 going against the provisions of that very act, which was, however, not approved by the President of India (Prabhakaran 2003). In 1999 another amendment was passed by the State Assembly that even included provisions to protect the land the encroachers had taken away from the Adivasis, going as far as to put "all the alienated land with retrospective effect from 1986 [under] the protection of the law" (Kulirani 2002: 119). At the same time this amendment promised 11 000 Adivasi families one acre of land each without, however, any regulations as to which type of land they were to receive (ibid.).

[40] The total estimate for the applications received for land restoration in 2001 was 8553, amounting to 10 177 acres of land (2221 applications of which were from Wayanad) (Kulirani 2002: 119).

Both of these amendments were ultimately struck down by the High Court of Kerala, but the State government of Kerala filed writ petitions against the High Court's verdict in 2000 and 2001 before the Supreme Court (Prabhakaran 2003) and the status quo at the time of writing is that the case is still pending in the Supreme Court (1., 6. focus group interviews 2007). For a detailed roadmap of the developments surrounding the 1975 Act refer to Prabhakaran (2003).

In the political realm Kerala's Adivasis unfortunately do not have important voting powers due to their small numbers and there is only one seat reserved for STs in the 140 member State Assembly, that of Sultan Bathery in Wayanad (Kulirani 2002: 122). Nevertheless, Kerala's Adivasis have exerted considerable pressure on the government in the past, which is dealt with below.

6.2.3. Muthanga

> *If this is a wildlife sanctuary, there should be a forest. Where is the forest? Where have all the trees gone? And, are we not a part of the environment? Do only the wild animals need a habitat? How long can we remain without our own habitat?*
> (C.K Janu, quoted in Suchitra 2003)

> *Instead of respecting the basic human rights of indigenous people, the state, unable to provide access to land and work, violently crushes their resistance.*
> (Ravi Raman 2004: 131)

Adivasi political activism in Kerala was already incipient in the 1990s when (inter)national events sparked off their struggle for self-rule and the recognition of their land rights (see above and 3.3 Adivasis as Indigenous Peoples). For instance, the 1996 amendment to the 1975 Act triggered widespread Adivasi protests with non-Adivasis being refused entry into Adivasi areas, the document being publicly burned and a group of Adivasis under the leadership of C.K. Janu attempting to force entry into the Legislative Assembly (Ravi Raman 2004: 127).

Figure 22 C.K. Janu
Front cover of her autobiography "The Life Story of C.K. Janu" (see Janu, C. K. 2004)
Photo: Unknown. Source: http://www.tehelka.com/channels/news/2004/Sep/11/images/mother.jpg [06/06/2007]

By the beginning of the 21st century Kerala's Adivasis were suffering from widespread unemployment (due to the politics elaborated above) and consequently starvation (more than a dozen star-

vation deaths were reported for the period 2001-02) (Ravi Raman 2004: 128). With the implementation of the 1975 Act becoming less and less likely the Adivasis gradually turned to everyday and "counter-hegemonic" or "anti-systemic" forms of resistance (Arrighi et al. 1989; cited in Ravi Raman 2004: 128), such as the interception and distribution of food transports. The Adivasis' mobilisation on a large scale and across community divisions (together with Dalits) finally took place in 2001 with the formation of the *Adivasi Gotra* (or *Gothra*) *Mahasabha* (Grand Assembly of Indigenous Peoples) (AGM), which emerged out of the *Adivasi-Dalit Samara Samithy* (Action Council) (ADSS), under the leadership of the Adivasi C.K. Janu and the Dalit M. Geethanandan (Bijoy 2007: 4. personal communication, Kulirani 2002: 122).

The organisation was conceptualised as the continuation of the Adivasi Sangamams and C.K. Janu, who had mobilised and united Kerala's Adivasis throughout the 1990s, soon emerged as the Adivasi voice representative for the whole of Adivasi South India. Under the aegis of AGM she managed to bring together leaders from 35 Adivasi communities, who resolved to focus on land (rights) as their primary issue and demanded the designation of Kerala's Adivasi areas as SAs from the government. Their first action was to stage a 48-day *Dharna* (sit-in) beginning on 30 August 2001, Kerala's harvest festival day, *Onam* (intended to display prosperity in front of the Chief Minister's residence and the offices of the State secretariat in Kerala's capital Thiruvananthapuram (Ravi Raman 2004: 129). Approx. 300 Adivasi families erected "refugee huts" and demanded their rights to livelihood and land (ibid.). The struggle only ended when the then Chief Minister A.K Antony from the UDF government agreed to the Adivasis' demands, i.e. that the alienated lands would be restored and the 1975 Act implemented (specifically that the promise of one to five acre(s) per Adivasi family would finally be realised) (ibid., Kulirani 2002: 122). Especially Wayanad would receive special attention because it has the most landless Adivasi families. Furthermore, Kerala's Adivasi areas would finally be brought under the Fifth Schedule and the government promised to implement the Supreme Court's verdict as soon as it came (see above). This makes Kerala the only South Indian State with a formal written pledge by its government to declare Adivasi areas as SAs (Bijoy 2006: 2. personal communication).

The redistribution of lands to Adivasis was scheduled to start in January 2002 and the government's official figure for land being transferred to Adivasis per year was set at 1500 acres (Bijoy 2006: 2. personal communication). However, in reality neither of the promises made by the government were fully kept, even worse, some of the lands handed over intentionally had false title deeds issued (Ravi Raman 2004: 127). As a reaction to this the Adivasis under the leadership of C.K. Janu instituted a "Tribal Court" (Ravi Raman 2004: 129), deciding in a democratic fashion that their next step would be to occupy land. Eventually, an area of degraded land in Muthanga Wildlife Sanctuary[41] was peacefully occupied on 3 and 4 January 2003, the occupying Adivasis symboli-

[41] The occupied area had previously been cleared for a eucalyptus plantation that provided raw material for a rayon pulp factory owned by Birlas, an Indian multi-national company (Ravi Raman 2004: 129).

cally declared self-rule, a Gram Sabha was established and a check post was erected at Tharakappady (Suchitra 2003). The area later proved to be their ancestor's land with the discovery of traditional Adivasi shrines on the site (Ravi Raman 2004: 129).

What ultimately followed can be described as State retaliation directed at its own people in one of its most merciless forms, especially in light of the fact that the speaker of the Kerala State Assembly even "considered gun fire a fitting retribution to the *adivasis*' [sic] attempt 'at self-rule'" (Ravi Raman 2004: 130, emphases in original). The attack took place on 19 February when police moved into the area, forcibly drove out the approx. 1 000 Adivasi families who were occupying the degraded land (killing one woman who put up resistance against the police brutalities) and burned down the approx. 400 huts of the Adivasi families (ALRC 2004; Ravi Raman 2004: 126). The reported numbers of those killed and seriously injured in the event on both sides diverge and the number of those Adivasis who were reported missing after the event is still unclear, chiefly because many Adivasis from the neighbouring States of Karnataka and Tamil Nadu co-participated in the occupation, due to poor identification documents and because the police and the authorities subsequently hushed up the details of their hideous conduct (1. semi-structured interview 2007). Immediately after the killings the police arrested Adivasi men, women and even children and those children whose parents were kept in custody were left in the forest (ALRC 2004; Ravi Raman 2004: 126). The detainees were tortured on the way to the police station by being beaten and being forced to beat each other and Adivasi women were molested by the police while in detention (ibid.). In the aftermath of the Muthanga atrocities the police staged an unrelenting clampdown on Adivasis in the whole of Kerala, threatening Adivasis who had not even been involved in the incident and torturing them for information. Adivasis were also subjected to random attacks by the public (1. semi-structured interview 2007).

What remains is the disturbing fact that the Adivasis were not warned about the move planned against them, that the police started shooting at point-blank range without warning and that the government did not even attempt to seek mediation or negotiations beforehand. The opposing voices after the Muthanga assault mirror the rift that splits Kerala along the lines government/establishment and Adivasis/Dalits/landless people, although one has to be extremely careful with dichotomisation in the case of Kerala's highly politicised landscape and has to consider the multiple shades of grey between these two ends of the spectrum.

Chief Minister A.K. Antony promptly accused the Adivasis of an "armed uprising", despite the fact that there were no arms involved on the part of the Adivasis. The Keralan government grossly overreacted in associating the Adivasis' strategies with those of the *Tamil Tigers* (LTTE) and the communist *Peoples' War Group* (or *Naxalites*,[42] as they are often summarily called) "in an attempt

[42] The Maoist Peoples' War Group formed in 1980 in Andhra Pradesh and is meanwhile active in several Indian States, including Kerala. It was named the *Naxalite* movement after the peasant uprising at *Naxalbari* in the Darjeeling District of

to legitimize its own objectionable actions and to gain popular approval" (Ravi Raman 2004: 130, 3). The People's Judicial Enquiry Commission, a commission formed by the former Supreme Court judge V.R. Krishna Iyer in order to throw light on the circumstances of the Muthanga incident, countered by saying that the police had resorted to firing without prior warning (Ravi Raman 2004: 130). Social, human rights and Adivasi activists like Arundhati Roy, Vandana Shiva and Medha Patkar condemned the police's and government's actions and the Catholic Priests Conference demanded the government's resignation because it was penalising those who had never done any harm to the forest and protecting those who were raiding the forest (ibid.).

Since 2003 the struggle has continued and still continues. Meanwhile Adivasis have occupied thousands of hectares all over Kerala that are either still formally held by the government or were owned by private persons and have now been declared surplus land, for which formal recognition is slowly being granted (Bijoy 2006: 2., 3. personal communication). At the same time the Adivasis in Wayanad are still in the process of coming to terms with the collective trauma caused by the Muthanga assault and with the present leadership vacuum after C.K. Janu's departure from Wayanad into State and national politics (1. semi-structured interview 2007, S.M.A. Viennie 2007: 5. personal communication).[43] At present Kerala's Adivasis clearly lack the leadership C.K. Janu represented in 2003 and they have not mobilised again since then, partly due to the repressive influence of the police and the powerful political parties present in Kerala.

The Muthanga case is an example of Adivasis having exhausted all means at their disposal on the national and State level: first Kerala's Adivasis took the legalistic path in demanding the implementation of provisions contained in an already existing piece of legislation intended for their benefit. Having realised that they would most likely never see the benefits of this act due to the massive obstacles put in its way by settler lobbies and like-minded politicians they strove for a settlement of their land rights issue outside the 1975 Act, effecting the 2001 agreement, which again, however, proved to be a futile spark of hope. Their final resort was to take matters into their own hands and occupy the lands their ancestors were displaced from. This again "abysmally failed", as Ravi Raman (2004: 129) poignantly puts it. The government of Kerala's politics of procrastination are concisely summed up by the People's Judicial Enquiry Commission (2003):

> When in militant despair adivasis [sic] ask for what is due to them, dubious agreements are entered into and procrastination in implementation is a common consequence. Kerala is no exception to the scenario of deception. Several tantalizing stratagems and evasive legislations have put out tribal hopes. And political parties of all hues and pretenses [sic] have victimized these unfortunates by legal devices and sloganeering contrivances.

The Muthanga atrocities also drew international attention and action, mostly by NGOs and human rights activists condemning the government's actions and protesting against the human rights vio-

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West Bengal following the attack on a young man, who was ploughing his land, by landlords in 1967 (Ravi Raman 2004: 133).

[43] C.K. Janu launched the Adivasi-Dalit party *Rashtriya Mahasabha* in Kochin on 19 February 2004, the first anniversary of the Muthanga attack, and she also contested in the Lok Sabha elections in May 2004 (The Hindu 2004a; 2004b).

lations inflicted on the Adivasis. One such example is the statement submitted by the Asian Legal Resource Centre (ALRC 2004) to the then Commission on Human Rights with the title "Racism, Racial Discrimination, Xenophobia and all Forms of Discrimination".

Since its formation as a State in 1956 Kerala has followed a policy of modernisation, including land reforms intended for the benefit of the marginalised and excluded, the so-called and frequently emulated "Kerala model". In the long run, however, this model has only benefited a few and achieved the exact opposite for sections of the population like the Adivasis, Dalits and the impoverished fishers: i.e. their further marginalisation and deprivation. Especially the successive Communist governments Kerala has seen have flagrant discrepancies in their social policy records and paradoxically they played a major role in moving Kerala from a welfare state to a state directed by the rules of the neo-liberal market. The plight of Kerala's and especially Wayanad's Adivasis is by no means a unique case, but a haunting demonstration of how contemporary global processes can perpetuate and even extend historical injustices created during colonial times on the local level.
In contrast to the Nagarhole case and various other cases in Northern and Middle India where Adivasis have lost their lands to industrial and tourism projects the Adivasi land losses in Kerala were and are mostly caused by settlers and the government's pro-settler politics. Regarding the Adivasis' tactics and their anti-regime strategies the Muthanga case displays similarities to Adivasi struggles in other parts of India, such as the ransacking of the World Bank Building in Delhi in 2003[44] and the "Enter the Forest" campaign in Nagarhole in 1996/97 (see 6.1 Karnataka: Nagarhole National Park). The occupation of space (land) that previously belonged to Adivasis and that now belongs to those who indirectly or directly displaced the Adivasis from it appears to be the most effective, but at the same time the most hazardous strategy for the recovery of land. In this context the notion of space plays a major role, symbolically and psychologically as well as physically. When Adivasi land is appropriated by others Adivasis are not only deprived of their living space, but also of their mental space, hence the retrieval of their lands or comparable lands equals or becomes the redemption of their spiritual and mental space. Space is also a prerequisite for the existence and the thriving of people, which can most clearly be seen where people are forced to live within a confined space, such as the Palestinian people on their ever diminishing land or the Adivasis in their ever dwindling forests.

[44] By blocking the World Bank building, covering it with cow dung and pro-Adivasi slogans, approx. 300 Adivasis from the State of Madhya Pradesh were protesting against the various outlets of the World Bank's eco-development project in their State, which are wreaking more havoc than they are doing good all over India (Ravi Raman 2004: 130).

Figure 23 Neethi Vedi ("Justice for All") office Kalpetta, Wayanad District, Kerala (2., 6. focus group interviews 2007; 1. semi-structured interview 2007)
Photo: C.C. Aufschnaiter

Figure 24 Mural about Adivasi life, Neethi Vedi office
Photo: C.C. Aufschnaiter

Figure 25 The Tudi, the Adivasi drum (3. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 26 An interview at the Neethi Vedi office (2. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 27 Bamboo forest around Muthanga Wildlife Sanctuary
Photo: C.C. Aufschnaiter

Figure 28 Coffee
It is grown as a cash crop in many forests that used to belong to Adivasis (3. focus group interview 2007).
Photo: C.C. Aufschnaiter

Figure 29 Government houses
Adivasi village of Alanthatta Colony, Wayanad District, Kerala
(3. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 30 Paniyar community, Alanthatta Colony
This community is not allowed to collect minor forest produce or to cultivate outside the village, hence they are forced to take on seasonal agricultural labour (3. focus group interview 2007).
Photo: C.C. Aufschnaiter

Figure 31 Paniyar community, Alanthatta Colony
(3. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 32 The Paniyar village of Tetubari, Wayanad District, Kerala
(4. focus group interview 2007)
Photo: S.M.A Viennie

Figure 33 Paniyar in the village of Madakunnu, Wayanad District, Kerala
(5. focus group interview 2007)
Photo: C.C. Aufschnaiter

Figure 34 An Adivasi assembly house
TUDI (Tribal Unity for Development Initiative), Panamaram, Wayanad District, Kerala (2. semi-structured interview 2007)
Photo: C.C. Aufschnaiter

7. Conclusion, Recommendations and Outlook

The central research question that guided my enquiry into the land rights problems of Adivasis in South India was why Adivasis – the indigenous peoples of India – are being deprived of their land and whether international human rights law can provide viable solutions in this context.

As with many cases where international law could provide viable solutions, it has so far largely failed with regard to indigenous peoples because of its own limitations of being determined by the will of its creators and (non-)adherents (i.e. the sovereign States), their continued resort to the principle of non-intervention in internal affairs and international law's lack of a uniform judicial and penal system to enforce the law. With regard to India the applicability of international human rights instruments directed at indigenous peoples is very limited and for the Adivasis to rely on India's fulfilment of its positive obligations under ILO Convention No. 107 is almost futile. Those "enforcement" mechanisms of international human rights law that do apply to India are mainly of a passive nature, i.e. the monitoring by treaty-monitoring bodies, and almost all of the procedures of a more active nature requiring the agency of those concerned, i.e. mainly the complaint procedures, are not applicable to India. Nevertheless, in the past the ICCPR and the ICERD have proven to be effective instruments for the protection of indigenous peoples' rights and this is also partly true for the Indian case. Next to the HRC and the CERD, the CESCR, the CEDAW and the CRC have criticised India's State reports and have issued recommendations. These treaty-monitoring bodies, when considering a State report, also take into account reports by NGOs and other independent human rights organisation, thus – in theory – providing a small possibility for Adivasi organisations to contribute. The ICCPR and the ICERD include the inter-state complaint procedure, which is, however, unlikely to be of any particular use to the Adivasis in the future as no State has made use of it against another State so far. What could be of use is the early-warning procedure developed by the CERD. Under any ILO convention, including of course Convention No. 107 and No. 169, worker and employer organisations can lodge a representation under Art. 24 of the ILO Convention, which results in an investigation of the allegations by the ILO Governing Body and – if the allegations are found to be substantiated – a report, thus applying pressure on governments to stop violating an ILO convention. Additionally, complaints can be filed under Art. 26 of the ILO Constitution by an ILO member State that is a party to the same treaty or by a delegate to the annual Labour Conference or the complaint procedure can be initiated by the ILO Governing Body itself. In order for indigenous peoples to be able to make use of this procedure the delegate lodging the complaint can be a representative for the indigenous community in question. Neither of these ILO mechanisms have so far been employed by India or Adivasi representatives/delegates, hence the effectiveness or the possible impact cannot be gauged.

Overall one can surmise that India has so far steered clear of any commitments under international human rights law that would provide a possibility to influence its internal affairs and it has successfully evaded the scrutiny of its policies on indigenous peoples by the international community.

Although the possibilities and the legal instruments on the national and State level in India have so far not been very promising they still have more potential for Adivasis for positive change because they are closer and more accessible to Adivasis than some of the international mechanisms described in this work. The local government and administrative levels are after all the institutions directly responsible for implementing the laws on Adivasis (1. focus group interview 2007). What is needed above all on the national level is culturally sensitive affirmative action directed by Adivasis for Adivasis, which does not further discriminate the Adivasis and which has a realistic potential for being implemented. The reservations and the positive discrimination regarding schooling and public sector employment envisaged in the Constitution have not had any positive impact because they were imposed on the Adivasis from atop and devised without the consultation or participation of Adivasis and at a time when the integrationist approach still dominated the discussion on how to alleviate the plight of discriminated and disadvantaged minorities (not indigenous yet) within a State. Rather, these reservations even exacerbated the existing discrimination against Adivasis because, for instance, Adivasi children were now being schooled in languages foreign to them and alongside other children irrespective of their different culture, which led to further discrimination by other children and a high drop-out rate, and Adivasis in the public service were bribed out of their reserved work places. Additionally, these measures soon sunk into oblivion due to a lack of dissemination of information on the reservations and, as with many procedures in India, turned out to be too bureaucratic to be of any real benefit for the Adivasis.

Ideally, the affirmative action that is needed should see 1) the creation of SAs all over India where Adivasis live, 2) negotiations between Adivasis and the central and State governments on the extent of the autonomy to be granted, 3) the central government and the State governments granting greater degrees of institutional and territorial autonomy to the Adivasis in the SAs in addition to the legal benefits already implied in the creation of SAs, for instance by strengthening the Panchayats and Gram Sabhas and vesting them with more decision powers in matters such as land, schooling, conflict resolution, development, environment or health, 4) the Adivasis taking up virtual self-government (naturally with the exception of foreign affairs, defence and possibly other departments that would remain with the central government, open to negotiation). At the same time as this picture is unrealistic in today's India[45] it is only one scenario of the many possible ones and Adivasis have called for very differing solutions to their problems in the past. Some of their basic demands are summed up below.

[45] Only two of the many reasons for this are that most Adivasi areas today constitute national parks or wildlife sanctuaries and are often rich in natural resources, which is, inter alia, the reason why Jharkhand's Adivasis are still disempowered in their own State.

7.1. Recommendations to the Indian Government

The following recommendations were taken from Bhengra et al. (1998: 34f.) and updated and expanded:

- **International human rights standards:** The Indian government should meet all the standards according to its already existing commitments under international human rights law (see 3.4.1 Ratification Status of Principal International Human Rights Treaties in India). In addition it should ratify the 1st OP of ICCPR and the OP of the CEDAW and sign the declaration under Art. 14 of the ICERD in order to enable individuals to claim redress from the treaty monitoring bodies of these instruments for human rights violations.
- **Implementation of existing laws:** The judiciary, executive and legislature should work together to finally put into operation the already existing laws for the protection of the rights of STs. For instance, the SCST Act of 1989 and the PESA Act of 1996 should be implemented effectively and the STRFR Act of 2006 should see a speedy and effective implementation.
- **Recognition of the Adivasis' (STs') status as indigenous peoples:** In addition to this the Indian government should comply with its obligations under ILO Convention No. 107 and ratify ILO Convention No. 169. It should heed the principles in the Declaration on the Rights of Indigenous Peoples in all matters concerning Adivasis.
- **Scheduling of Adivasi areas in Karnataka, Kerala and Tamil Nadu:** The scheduling process that stopped in the 1970s should be resumed and the State governments should recommend those areas for scheduling named by Adivasis.
- **Strengthening existing human rights and specialised institutions**: The National and State Human Rights Commissions and Human Rights Courts at the district level should be strengthened and vested with independent investigative powers. The National Commission for the Scheduled Tribes should be strengthened by making the necessary budgetary and staff allocations (ACHR 2004a; 2004b).
- **Land rights:** The Draft National Tribal Policy (see Ministry of Tribal Affairs 2006) should be passed and implemented and, in addition to this, a national land policy recognising Adivasi territorial rights and the special relationship of Adivasis to their land should be formulated and passed in order to ensure a consistent and fair implementation of the already existing protective laws. State and national legislation concerning Adivasis that is either outdated and/or negatively affecting Adivasis, such as the Forest Act of 1927 or the Wild Life Protection Act of 1972 (see 5.2.1 Discriminatory Legislation and the Extinguishment of Adivasi Land Rights), should be reviewed and amended. Land acquisition should only be allowed to take place with the full and informed consultation and consent of the Adivasis and adequate restitution and rehabilitation. The consultation of the Adivasis in all other development matters affecting them should be made a paramount goal by the Indian government.
- **Land rehabilitation:** Adivasis who have been displaced from their land or who have lost their land holdings should be compensated with adequate replacement land of the same value by

the respective States, ideally amounting to 1-5 acres per landless Adivasi, as Kerala's Adivasis have demanded in the past.

- Repeal of the Armed Forces (Special Powers) Act in North-East India.

7.2. The Future of Adivasi Land Rights

The Adivasis have been subjected to the same fate as indigenous peoples worldwide, i.e. that of erroneously being classified along the polarising lines of either "noble" or "barbaric savages". Translated into Indian terms this signifies either the attitude of Elvin (see 1963) and other like-minded people who maintain that the "uncorrupted tribals" should be allowed to live in peace and isolation in national parks, or the equally patronising opinion of large parts of the Indian society who hold that the Adivasis are in reality "backward Hindus" who have so far carelessly rejected the generous development packages designed for them and have – incomprehensibly – refused to give up their "primitive" lives in the forest (Cheria et al. 1997: d; Singh, Raajen 1996b: 68).

It remains to be seen whether – in view of the massive natural resources available in Adivasi areas – the different Adivasi peoples will be able to withstand the onslaught of those who merely see the "tribals" as obstacles on the way to unimpeded development, indiscriminate economic growth and progress. A prerequisite for this is whether the Adivasis will continue to be able to resist the process of their assimilation into mainstream Indian society and whether they will be able to assert their cultural distinctiveness vis-à-vis the other more dominant segments of that society. Given that the discriminatory social hierarchy that is the caste system is still deeply engrained in most parts of the Indian society, the integration of the Adivasis as equal members of society and on the basis of respect for their socio-cultural identity will be extremely difficult. Cheria et al. (1997: f, emphasis in original) pose the crucial question, "If the idea is to integrate them into the 'mainstream' then the question is integrate them at what levels…the lowest…slightly better than that…or as equals?" Cheria et al. (ibid.) also correctly realise that "[m]ainstreaming, contrary to popular perception, is actually a process of exclusion" because the mainstreaming process per se is an absorption process that excludes marginalised sections of the population from becoming equal partners with mainstream society.

Still, India's progressive and open-minded generation of young people (the under 25-year olds after all make up more than 50% of India's population today) have been heralded as the change-makers of the 21st century who will do away with the social barriers of the "old India" with its caste system and will open up India to the virtues of the neo-liberal economic system. The first question that poses itself in this context is whether the Adivasis will be able to participate in this boom, i.e. whether this new wind of social change will reach them or whether they will again be marginalised and be the "waste-absorbers" of this new elite (Cheria et al. 1997: e). The second question is whether the Adivasis will continue to be disempowered and denied access to their resources and whether the crux of the problem, which is not the lack of natural resources available on Adivasi lands, but the lack of control by Adivasis over them (ibid.), will be addressed more holistically by

politicians and policy-/lawmakers alike in the decades to come. The third question is whether the Adivasis will be able to achieve and will be granted more autonomy, i.e. the exercise of their right to self-determination, in the whole of India in the future. The US has adopted a policy of speaking of “internal self-determination” when referring to indigenous peoples, in order to avoid the confusion created by the different uses of the contested term (Anaya 2004: 111). However, the term “internal self-determination” is not just an evasion of full “self-determination”, but a form of minority protection. If the State has failed to provide protection for its minorities (whether they are indigenous, religious or other minorities) and to guarantee the fulfilment of their human (and especially land) rights, which India has clearly failed with regard to the Adivasis, then the State has neglected its obligation to protect its minorities and has – at least in theory – lost its legitimacy to protect them. The consequence would be for minorities to be granted a greater degree of institutional as well as territorial autonomy and it can only be hoped that the future of Adivasi land rights will see a move towards this development.

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List of Interviews and Personal Communications

Focus Group Interviews

1. Focus Group Interview
05/02/2007 Nazareth Convent, Kakavayal, Wayanad, Kerala. Audio record in Malayalam/English.
2. Focus Group Interview
06/02/2007 Neethi Vedi office, Kalpetta, Wayanad District, Kerala. Audio record in Malayalam/English.
3. Focus Group Interview
06/02/2007 Alanthatta Colony, Kalpetta, Wayanad District, Kerala. Written record in English.
4. Focus Group Interview
07/02/2007 Tetubari village, Kalpetta, Wayanad District, Kerala. Audio record in Malayalam/English.
5. Focus Group Interview
07/02/2007 Madakunnu village, Kalpetta, Wayanad District, Kerala. Audio record in Malayalam/English.
6. Focus Group Interview
07/02/2007 Neethi Vedi office, Kalpetta, Wayanad District, Kerala. Audio record in Malayalam/English.
7. Focus Group Interview
12/02/2007 CORD office, Kushalnagar, Kodagu (Coorg) District, Karnataka. Audio record in Kannada/English.
8. Focus Group Interview
13/02/2007 Balegundi village, Kodagu (Coorg) District, Karnataka. Audio record in Kannada/English.
9. Focus Group Interview
14/02/2007 Eruru village, Kodagu (Coorg) District, Karnataka. Written record in English.
10. Focus Group Interview
19/02/2007 TAMS office, Asenur, Erode District, Tamil Nadu. Audio record in Tamil/English.
11. Focus Group Interview
21/02/2007 Kottakudi village, Bodi Taluk, Theni District, Tamil Nadu. Audio record in Tamil/English.
12. Focus Group Interview
22/02/2007 Manathevu village, Kodaikanal Taluk, Dindigul District, Tamil Nadu. Audio record in Tamil/English.
13. Focus Group Interview
22/02/2007 Poolathur village, Kodaikanal Taluk, Dindigul District, Tamil Nadu. Audio record in Tamil/English
14. Focus Group Interview
23/02/2007 Kadamandravu village, Kodaikanal Taluk, Dindigul District, Tamil Nadu. Audio record in Tamil/English.
15. Focus Group Interview
01/08/2003 Thiddahalli village, Kodagu (Coorg) District, Karnataka, India. Written record in English.
16. Focus Group Interview
02/08/2003 Alladakatte village, Kodagu (Coorg) District, Karnataka, India. Written record in English.

Semi-Structured Interviews

1. Semi-Structured Interview
07/02/2007 Neethi Vedi office, Kalpetta, Wayanad District, Kerala. Written record in English.
2. Semi-Structured Interview
08/02/2007 TUDI office, Panamaram, Wayanad District, Kerala. Audio record in English.
3. Semi-Structured Interview
10/02/2007 ACCORD/AMS office, Gudalur, Nilgiris District, Tamil Nadu. Written and audio record in English.
4. Semi-Structured Interview
12/02/2007 CORD office, Kushalnagar, Kodagu (Coorg) District, Karnataka. Audio record in English.
5. Semi-Structured Interview
12/02/2007 CORD office, Kushalnagar, Kodagu (Coorg) District, Karnataka. Audio record in Kannada/English.
6. Semi-Structured Interview
12/02/2007 CORD office, Kushalnagar, Kodagu (Coorg) District, Karnataka. Audio record in English.

Personal Communications

1. Personal Communication

18/06/2006 E-mail.
2. Personal Communication
10/12/2006 E-mail.
3. Personal Communication
12/12/2006 E-mail.
4. Personal Communication
18/01/2007 E-mail.
5. Personal Communication
04/02/2007 Informal interview.

Appendix

Interview Guides[46]

Semi-Structured Interview

LAND RIGHTS, COMPENSATION AND REHABILITATION

Which relationship do Adivasis have to their land?
Is the concept of "land ownership" known or used in any form in Adivasi communities, or is it a concept alien to their perception of land? How do different Adivasi communities manage their land(s)?

- If the term is used, who has the right to "own" land?
- Can/Is land individually or collectively owned in Adivasi communities or are both forms of land tenure present?
- How is land divided in the community?
- How is land transferred from generation to generation?
- Do the different land management systems have certain elements in common?

What are men's and women's roles regarding the cultivation of land in Adivasi communities?

What are the main reasons for Adivasi land alienation? Why are Adivasis being deprived of their land?
Which laws dating from colonial times as well as recent laws endanger Adivasi land or their right to live on their land(s)?
What is your opinion on the involvement of the Forest Department in illegal logging and encroachment of the forest?

Which constitutional and other civil rights (especially regarding to land) do Adivasis have as "Scheduled Tribes" in India?
Where do Adivasi land rights concepts and national laws governing Adivasi lands contradict each other and how does this contribute to their land rights problems?
What are the existing legal remedies in India concerning Adivasi land alienation?
Are these laws being effectively implemented and enforced on the ground and if no, where are the loop-holes?
Do rehabilitation policies work and is Adivasi land being restored?
What can/should the Indian government and the respective State governments do?
What have they done wrong?
Do you see the new Scheduled Tribes and Forest Dwellers (Rights) Act, 2006, former Scheduled Tribes (Recognition of Land Rights) Bill, 2005, as a means of protecting Adivasi land and do you think they will benefit from this new law?

Which status do Adivasis have as the internationally, but not nationally recognised indigenous peoples of India, in the Indian nation state?
How is international human rights law transformed into municipal law in India?
Do you think international law concerning indigenous peoples' land rights can provide solutions in the context of Adivasi land alienation?

DISCRIMINATION

What is your opinion on the use of the word "tribals", which connotations does this word have for you, what do you associate with it?

QUESTIONS REGARDING RESEARCH HYPOTHESES

For this research I have come up with the following research hypotheses that should guide my research. Could you tell me whether you agree with them or where I should correct them?

- India has a comprehensive legal protection system for its "Scheduled Tribes" and their land rights, which, however, is virtually ineffective because it lacks implementation and enforcement on the ground.

[46] Additions or modifications made during fieldwork are underlined.

- Adivasis have a special relationship to their land and their survival depends on the protection of their lands.
- Adivasis are additionally disadvantaged and discriminated against with regard to their land rights because they are not recognised as indigenous peoples in India.
- Indigenous peoples' land rights can be addressed more holistically and be protected more effectively under a human rights approach.

Central to this research is thus the thesis that Adivasis and their land rights struggles could benefit from the fact that indigenous peoples are being awarded more and more positive recognition in international (human rights) law. Do you agree with this, if yes, in which aspects, if no, why?

FINAL QUESTIONS

Can I mention your name in my research, or do you prefer to remain anonymous?
Would you like the audio file and a paper copy of the transcribed interview?

Focus Group Interview

LAND RIGHTS PROBLEMS

What are your problems concerning your land at the moment, that is land rights problems?
Who is encroaching on/illegally occupying your lands?
To which extent have you lost land in the past?
    Why?
How is this affecting your life/livelihood?
What are your reactions to outside threats?
    Which strategies do you have against land alienation?
    Can you tell me an example?
Which laws do you know of that are a danger to your land?
Do you know of any other Adivasi communities who have to fight for their lands?
What is the value of Panchayat Raj institutions?

MEANING OF LAND

Which meaning does your land have to you?
What is your relationship to your land?
Which foods does the forest provide?
    What else do you get from the forest?
How do you manage your lands?
How is land divided in the community?
How is land transferred from generation to generation?
Who has the right to "own" land?
Do individuals in your community own land or does everybody own the land collectively?
What are men's and women's roles regarding the cultivation of land?
How do you feel when people from outside, like myself, come to your land and forest?

COMPENSATION AND REHABILITATION

How, in your view, could your land rights situation be improved?
Is land being restored to you?
If yes, is it adequate or is it not as good as the land you had before?
What are the problems with rehabilitation?
Do you still have access to the forest and forest produce?
Which successes have you had so far in your struggle for land rights?
    How did you achieve them?
What can/should the government do?
What has the government done wrong?
Which laws do you know of that protect your land?

Do you see the new Scheduled Tribes and Forest Dwellers (Rights) Act, 2006, formerly Scheduled Tribes (Recognition of Land Rights) Bill, 2005, as a means of protecting your land and do you think you will benefit from this new law?

FINAL QUESTIONS

Can I mention the name of your community, your names and the name of the place where you live in my research, or do you prefer that I do not mention them?
Would you like a tape copy of this discussion (provided a tape recorder is available in the community?
@ NGO participant: Would you like the audio file and a paper copy in English of the transcribed interview?