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# Traps, dilemmas and contradictions of the rights discourse in the forest

**Recommended**



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## Our Viewpoint

## Why is it important to reflect about ‘rights’?


*Photo: OFRANEH*

Rights - land and territorial rights, human rights, women rights, peoples’ rights, rights of nature, etc.- have long played a role in the struggles of local resistance, social movements, support organizations and groups in one way or another. So, why did we feel it important now to focus a WRM bulletin on this topic?

In the capitalist system we live in, “the very concept of rights is being used to impose and expand neoliberalism” (1). This is, because today, not only can communities claim rights, but companies have also been given and are claiming their own rights. Most of the time, corporate actors ‘win the rights battle’, because they operate in a world with very unequal power relations between communities and companies and within the institutional arrangements of ‘justice’ (laws, lawyers, courts, etc.) The dilemma is not new: “the fight for rights – a component common to struggles of people around the world – is being used by states, corporations and international organizations to worsen the condition of people involved” (idem, 1). We have seen how private property regimes have

further expanded massively over forests, territories, cultures, knowledge systems and even functions such as carbon storage or water filtration that air, soil and forests provide. Often, this current expansion of property rights is being advanced with the argument that these novel forms of property rights respect or even strengthen the ‘rights’ of local communities.

More and more international institutions, organizations and even governments are using discourses of “respecting rights” (even collective rights or indigenous peoples' rights) in programs, initiatives or projects that seek to enclose forested land. Yet, in a context of increasing interests (mainly economic) in land, and an extractivist system that continues to expand - which rights are truly being respected? And which and whose rights tend to be weakened, pushed aside or forgotten in the implementation of such programs, initiatives or projects?

A 2012 report from the consulting firm The Munden Project (now TMP Systems) (2) outlines the economic argument for businesses to resolve land tenure issues before they begin implementation of new activities: resolving tenure issues avoids ‘social conflicts’ and therefore, avoids extra costs, financial risks and even risk to have to close operations. To confront these possible “huge financial risks for companies”, the recommendation given in this report is that companies should promote “together with governments and other investors a land tenure reform” in order to prevent these investment risks. The report frames ‘social conflicts’ and 'tenure issues' as avoidable or manageable to the satisfaction of both corporation and community. In reality, such 'win-win' situations are improbable. Where companies have agreed or been forced to acknowledge community rights they disputed at the outset, communities in the end tend to still end up with the short end of the stick. For example, communities or families get land title only over much less land than they hold customary rights to, used or controlled before. Or, economic conditions and corporate pressure are such that individual families lose the land they just received title rights to, in transactions that appear as ‘willingly’ selling their individualized or collective titled land to companies that can then affirm they did not invade but acquired the lands in a legal and legitimate way. At the end of the day, communities tend to lose from such deals, not only their land but also many other social, cultural and spiritual values that connect them to their territory.

Omitting fundamental underlying problems such as relations of power and economic interests easily leads to land tenure reform proposals that leave local communities engaging in such land tenure reform attempts worse off than before. What are the implications for communities of such tenure reform attempts promoted in the context of profound unequal power imbalances between multinational corporations and communities as well as the unjust capitalist market that is systematically violent and racist, especially towards those opposing programs, initiatives or projects that are aiming to enclose forested lands? The Munden Project report, and a growing number of 'win-win' land reform proposals, says nothing about the prospects of their proposals in the context of existing violence and power relations that push communities off their land.

This lack of reflection on a defining characteristic of conflict over land points to a big trap in the 'rights' discourse: How to ensure that by granting certain rights to certain groups, historic power imbalances (3), bias and injustice are not entrenched? How to prevent de-politicizing the struggles for legitimate 'rights'? In other words, how to avoid that the rights discourse serves dominant economic and political ends? If we understand 'rights' as processes that come together with and are embedded in long struggles and understandings over rights as well as responsibilities, with many different dimensions and layers to each, then 'rights' cannot be reduced to a tick-box exercise in due diligence reports and/or a project's promotional campaigns. It is fundamental to stay alert and avert rights discourses and practices that are void of politics, that is, of recognizing and accounting for historic power injustices.

A recent study on the Indonesian land tenure regime revealed one aspect of such power imbalances. (4) It exposes key patterns of discrimination in the legislation and bias in the implementation when comparing the procedures valid for companies with those for communities in terms of getting permits and rights recognition in forest areas. The key findings include: (a) while communities holding customary rights have to go through a long and highly political legislative process to get a legal status (pre-condition for granting any legal right), companies only need a standard administrative registration to be legally recognized; (b) there is evidence of unofficial fees or bribes, with hidden costs reaching as high as 600 US dollars per hectare, as one corruption case brought to court of an oil palm plantation revealed; (c) companies only have to deal with agencies at the district and provincial levels while communities always have to deal with agencies at the district, provincial, and central government levels. It has become almost impossible for communities to start their application process without NGO support; (d) by law, permits delivered to industrial plantations are valid for 60 years while the validity of permits available for communities is limited to 35 years, with the possibility of extension under certain conditions.

Meanwhile, in Honduras, indigenous Garifuna communities are being pressured by lawyers from the Ministry of Education to separate the land where their schools are located from the communal property titles. The pretext is the supposed requirement from donors willing to support the reconstruction of crumbling public schools, on the condition of the community presenting an individual property title for the school terrain. Besides violating the Interamerican Convention of Human Rights, this pressure is also inducing divisiveness inside the community. Although communities understand the importance of always affirming their communal property, so important to their survival as indigenous peoples with a differentiated culture, the big necessity that exists in terms of good school and health infrastructure leads some of its members to accept such bribes. (5)

But not only the tendency of promoting individual property titles is problematic. Many forest-related programs, such as REDD+, heavily advertise their use of Free, Prior and Informed Consent (FPIC). However, what WRM has learned from communities living with REDD+ projects is that FPIC has seldom happened (6). In many cases, communities are not provided with information in a way that allows them to become fully informed and aware about the context of

carbon offsets and how the credits generated from their forest will allow companies or governments to pollute and destroy territories elsewhere, and the climate globally.

The role of FPIC in the REDD+ debate points to another trap in the 'rights' discourse: the persistent promotion of FPIC to include it in as many documents and guidelines as possible, or as part of safeguards of policies, private investments, certification schemes, etc. But what happens when FPIC is inserted as a requirement in initiatives that by design constitute a violation of traditional 'rights', or the rights of Mother Earth? The application of FPIC in REDD+ is indicative: FPIC on the ground is no more than a mere bureaucratic process that has shown incapable of securing forest peoples' rights and has tended to benefit those promoting land grabbing over community territories.

REDD+ programs, certification schemes, ‘reforestation/restoration’ initiatives (that is, mainly the expansion of industrial monoculture plantations), conservation parks, biodiversity offset schemes, agrofuels, carbon sinks, etc. are policies, initiatives or projects implemented in theory for ‘improving’ the situation of forests and halting deforestation. But, which and whose rights are being exercised and/or prevail in those programs, policies and initiatives? Who is really benefiting?

In contrast to the neoliberal property rights regime, many communities keep fighting the destruction of their territories while persisting to maintain and nurture their many different ways of organizing and claiming their land, territory, culture, knowledges and livelihoods. A settlement in Paraná, Brazil, is a case in point.

During the community’s arduous struggle against the pressures of ranch owners and an NGO pursuing a forest carbon project, a series of environmental crimes committed by the ranch owner were reported to the authorities, but went completely ignored. The territorial rights of the community were continuously violated by both the ranch owner and the forest carbon project. Nevertheless, people’s unity and mobilization prevailed. With the support of the Landless Rural Workers Movement (MST), they occupied the land in 2003 with a camp and collectively organized the use of the common territory. Different areas were established for collective and individual use, thinking of the communal well being above all. Today, this camp has received the Juliana Santilli award for successfully recuperating local forest while sustainably producing food without the use of agrotoxics. See more information in the Action Alert of this Bulletin.

Enjoy the reading!

(1) GRAIN newsletter on rights, 2007 https://www.grain.org/es/article/entries/628-what-s-wrong-with-rights
(2) The Munden Project, The Financial Risks of Insecure Land Tenure: An Investment View, December 2012, http://rightsandresources.org/wp-content/uploads/2014/01/doc_5715.pdf
(3) Roots of inequity: How the implementation of REDD+ reinforces past injustices http://www.redd-monitor.org/2016/01/14/roots-of-inequity-in-wildlife-works-kasigau-corridor-redd-project/

(4) Rights and Resources, In Indonesia, land allocation policies and practices favour corporations over communities, October 2017, http://bit.ly/2hMdAXa
(5) OFRANEH, *Insólita presión del Ministerio de Educación para desmembrar títulos comunitarios Garifunas*, August 2017, https://ofraneh.wordpress.com/2017/08/29/insolita-presion-del-ministerio-de-educacion-para-desmembrar-titulos-comunitarios-garifunas/
(6) See more information on REDD+: http://wrm.org.uy/browse-by-subject/mercantilization-of-nature/redd/

## What are rights? Some lessons from struggle

In August 1838, a young man called Frederick Bailey escaped from slavery in Baltimore on the east coast of the United States (US). Less than three weeks later, walking through his new home city of New Bedford, Massachusetts, he spotted a pile of coal that had been delivered to the street in front of a house. Bailey offered his services to carry it safely away into storage. Once the job was done, the lady of the house put into his hand two silver half-dollars.

More than four decades later, Bailey (who by then had become internationally famous as the orator, writer and antislavery activist Frederick Douglass) was still barely able to express the exhilaration that he had felt as he received the money. Suddenly, he had fully understood "that I had no master who could take it from me – that it was mine – *that my hands were my own,* and could earn more of the precious coin." (1)

In October 2016, a young indigenous Kichwa leader from the Ecuadorian Amazon stood up in a crowded auditorium in the country's capital, Quito, with a seemingly different message.

Patiently, the young man repeated to the audience (who were discussing anticapitalist strategy) something his indigenous brothers and sisters had been trying to explain for years. Indigenous peoples not only did not see themselves as owning land, trees, and rivers. They also did not see individual humans as owning what they did in everyday life. People's hands were *not* their own. They were part of *pachamama*. (2)

More than 175 years, many thousands of kilometres, and almost unimaginably different heritages separate these two warriors for liberation in the Americas. What also separates them are the rights they strove for. For Douglass,

acquiring a right to sell his own labour was an unambiguous step toward justice. For the Kichwa activist, it was more urgent to affirm the right to defend his people against the expansion of precisely that kind of private property.

But are these two activists really so different? If they could meet, would they not be able to understand each other?

One thing they might agree on is what rights actually are. For both Douglass and the Kichwa activist, rights are not a single, harmonious heritage that all human beings are born with or are waiting to achieve. Different rights prevail at different times and in different places. Fighting for one right often means fighting against another. And the fights are always just one part of bigger political struggles.

To acquire the property right to his own work and cancel out the right of his former owner to it, Douglass had to flee from Maryland to Massachusetts. To help others get that right took decades of hard political campaigning and a civil war. Even today it is not secure, as the US increasingly turns to using its enormous, disproportionately black prison population as slave labour, while new forms of slavery are on the rise elsewhere as well. (3)

The Kichwa leader's efforts to keep more of his own community's life activities from being turned into private property in the first place meanwhile puts him at the cutting edge of contemporary political opposition to capitalism itself, which is founded on unending attempts to divide the earth into humanless nature (resources, ecosystem services, protected areas) and natureless humans whose labour time is available for sale.

Unavoidably, the fate of the struggle that the Kichwa leader spoke for is tied to that of nonindigenous urban dwellers who are today trying to reconstruct working-class defences against efforts to make them more and more dependent on business. To contest the conversion of human activity into private property is also to contest private control over the extra-human nature that sustains it. In the end, forest issues are always labour issues. Labour issues are often forest issues as well. It is no coincidence that Karl Marx, the great modern critic of the creation of wage labour, began his activist career defending German forest commons where villagers collected berries and firewood against enclosure by the state. (4) (5)

Frederick Douglass would have understood that too. Prior to the slavery that cleared North and South American forests to make way for an emerging world of factory workers and housewives – a slavery that the slaves so often tried to escape, often into the forests themselves – were the commons and territories co-crafted by indigenous peoples from which those forests emerged. (6)

No wonder, then, that when intellectuals show up in today’s rural communities in Benin, India or Samoa to urge them to assert theoretical “human rights” recognized by some state or UN body, many local activists prefer to change the subject to the defence and rebuilding of concrete commons practices: communal land, communal seed sharing, communal sharing of work. (7) They

know that the best defence of the rights they need against the encroachment of hostile rights lies in the rough ground of living “customary” practices that involve land, work and forest preservation alike. Talk about rights means nothing without the cultivation of spaces needed to defend life and livelihood.

Private companies know this too. For more than a century, their advocates have played dirty politics in order to make sure that a US constitutional amendment that was intended to grant equal rights to freed slaves after the US Civil War is interpreted in practice as giving the same rights to corporations. Now private firms are moving to guarantee themselves even more such rights. They invest millions in international campaigns and treaty negotiations and deploy limitless violence to replace existing commons with regimes that give them legal rights to agricultural seeds, forest carbon, intellectual property, and hypothetical “future profits”. Even Facebook is now mobilizing technology and the law to try to give itself private rights to our personal information that will trump any previous rights we might have thought we had over it.

Whether fortunately or unfortunately, however, no rights are ever won or lost for good. Many social movements are currently agitating to roll back private property rights invented during earlier eras of capitalism. At the same time, they are looking with a more critical eye at some rights that they themselves fought for previously.

Twenty years ago, for example, it might have made sense for activists to try to institutionalize a right to “free prior informed consent” (FPIC) that would allow communities to block unwanted encroachments on their lands by development projects. But times have changed. Having lost their battle to stop FPIC outright, corporations coopted it instead. Today, FPIC has largely morphed into what Alexander Dunlap calls “a bureaucratic trap” that companies and governments use to deflect calls for democratic decision-making. (8) It may be time for activists to shift tack too.

It is important, then, not to fetishize rights or allow rights talk to distract from broader issues. In December 2016, an indigenous Karen leader in Mae Chaem district in Northern Thailand recalled that when government proponents of a project to measure and conserve forest carbon arrived in his village, they said nothing at all about what the project was for: creating rights to pollute that the Forest Department might someday be able to sell to industrial corporations abroad. Instead, the talk was all about what the officials described – in incomprehensible English – as “safeguards” for local residents. In such an atmosphere, it becomes impossible to discuss what really matters.

All of which suggests that before welcoming with open arms the white (or brown) expert who comes into your forest community telling you that the key to a successful struggle is to “secure your rights” (9) or adopt a “rights-based approach”, it might be prudent to ask a few questions first – as politely as possible, of course.

Questions like: “Which rights?” “How are these rights going to change things?” And: “What else are you selling?”

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(4) Peter Linebaugh, *Stop, Thief! The Commons, Enclosures, and Resistance*, Oakland, 2014, available free at https://libcom.org/library/stop-thief-commons-enclosures-resistance.
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(9) The World Bank, *Land Tenure Policy: Securing Rights to Reduce Poverty and Promote Rural Growth*, Washington, 2011, http://documents.worldbank.org/curated/en/437601468331908360/pdf/831990WP0LandT00Box379886B00PUBLIC0.pdf ; The Munden Project, "IAN: Managing Tenure Risk", 2016, http://rightsandresources.org/wp-content/uploads/RRI_IAN_Managing-Tenure-Risk.pdf , and "The Financial Risks of Insecure Land Tenure: An Investment View", December 2012, http://rightsandresources.org/wp-content/uploads/2014/01/doc_5715.pdf (recommending that extractive and other corporations support policies "to secure the land rights of historic occupants" as a better way of minimizing financial risk than classic strategies of coercion or payoffs).

# REDD and Rights: The Good, the Bad and the Ugly


*The foundation of critical thinking, then, is in the dissent of the existing state of things and the search for alternatives, drawing from characterizations of the present situation, whose causes can obviously be located in the past" (1)*
*in memoriam* Hector Alimonda

The proposal to include forests in the UN climate negotiations is now 10 years old. Since the 2007 climate conference in Bali, Indonesia—within the framework

of moving forward with the REDD+ mechanism—the issue of human rights and the rights of indigenous peoples, women, local communities, and others, has been an interplay of actors, scripts, stages, casts and comedies. But above all, special effects and makeup have prevailed (2).

## THE GOOD

We must recognize that it is a good thing that there have been efforts in recent years to address the issue of peoples' rights in the face of a problem as serious as climate change. Those of us who have been raising our voices for twenty years, demanding real solutions to global warming—such as leaving fossil fuels in the ground—always invoke the rights of people where these resources are extracted, the rights of communities where projects have been applied under the Clean Development Mechanism (CDM) or other carbon offset mechanisms, and also the rights of nature.

Thus, since REDD+ began to be discussed in climate negotiations, many organizations—especially at the international level—pushed to include the rights of indigenous peoples. This pressure eventually led to the proposal “No Rights, No REDD+,” in December 2008. However, these just demands took another course in the following years.

One example is the right to territory—a collective right that people have been demanding for decades—and in particular the one on land and territorial titling. Although the latter is a right that is foreign to the customary practices of demarcating and organizing their territories, it has been necessary to demand it in front of the forceful incursion of States. In this context, the REDD+ mechanism and REDD+ programs at the national level are clearly distorting this essential right of peoples. Because for carbon trading to work, collective property must be assigned a private use; since it must be clear who owns what, how much, where and to what extent. The buyers will own a property title to the carbon found in a certain amount of land covered by forests, which is demarcated and titled. In this case, land titling is thus being promoted and used by carbon traders to give buyers a guarantee of ownership of the carbon contained.

Hence, the good news that human rights and the rights of peoples have been included in the basis of measures addressing climate change has been corrupted.

## THE BAD

Those who have dominated climate negotiations—from corporate actors, financiers and even conservation NGOs and hegemonic government representatives—understand and take on the issue of rights in a totally different way than indigenous peoples and other local communities. Human rights and the rights of nature have been subjugated to capital and to so-called business and financial *rights*. The lobbying and business deals that coopt climate change summits have ensured that corporate interests prevail over common sense, under the narrative that they are the superheroes saving the planet. This raises

a clear conflict about rights, as money—in the form of capital—has become a subject with rights, above humans and all forms of life.

The Paris Agreement, signed in the COP21 climate negotiations in 2016, features a new scenography but with the same protagonists. Among other drawbacks, it ratifies the inclusion of forests "to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases." (Article 5) These will deepen the loss of peoples' rights at the local level, and—with the possibility of offsetting emissions through REDD+ projects—will increase the extraction and burning of oil, gas and coal, thus deepening climate change. In the best style of *Comedie-Française,* with its permanent troupe of actors, the Paris Agreement perpetuates the distribution of pollution quotas amongst those who pollute most; and it also perpetuates the possibility of conducting a global business, not only among companies but also among States.

Under the Paris Agreement, the logic of using forests to offset pollution has a planetary impact. Although REDD+ includes forest plantations, agriculture and soils—that is, any vegetation or soil that may contain carbon—it focuses mainly on the forests in Africa, Asia and Latin America, which are mostly under indigenous peoples' collective ownership systems, and for this very reason, are the largest and best cared for forests.

REDD+ turns indigenous peoples and nature into permanent providers of *environmental or ecosystems services*. So we can say that REDD+ not only contributes to further loss of peoples' rights and worsens climate change, but it also violates the rights of nature. REDD+ subjects nature to processes of slavery, servitude and appropriation of its work (in the same way that happens with peoples), by converting its biological cycles, functions and the recreation of life and reproductive cycles into work and goods that can be bought and sold.

## THE UGLY

One of the objectives of REDD+ promoters is to try to reduce resistance to project implementation in mainly indigenous territories; and they try to win over local organizations so that the REDD+ mechanism is well looked upon and accepted.

Thus, as if by a special cinematic effect, human and peoples' rights in climate negotiations have been vanishing or undergoing metamorphosis. Rights became *standards.* The rights of women became *voluntary safeguards*; other rights became *"participation and involvement in reporting and monitoring"*; collective and territorial rights became *"forest governance"*; and the protection and enforcement of rights became merely promoted or something that *"will be taken into account."* Rights became *"establishing operational models to comply with safeguards and consolidate the co-benefits,"* that is to say, *"non-carbon benefits,"* as stated by Indigenous REDD+, an international initiative managed by the Coordinator of Indigenous Organizations of the Amazon Basin (COICA) (3).

In essence, the inclusion of human rights in REDD+ is nothing more than makeup so that it looks pretty—to try to stop peoples' rebellion and hide the truth behind these projects.

In light of this, we must protect peoples' rights to resist, to say NO to carbon offset projects, to not be displaced, to not have restrictions on their access and traditional use of their territories, to not be used so that oil or mining companies can violate another community's rights in another part of the planet and to not be manipulated so that the machinery keeps working.

## EPILOGUE

To conclude, we must further define what we mean when we say *rights*.

Even though rights are inherent to subjects—human and non-human—they are not static. Rights are a process: in historical, political, social and natural terms. They are a matter of dignity and they emerge as a reaction to oppression, discrimination, or the loss of livelihood. They are an ideal to attain, and they are not granted by the United Nations, let alone by the World Bank or transnational conservation organizations.

REDD+ assumes that rights are a reality that has already been achieved, conferred by the operators of this kind of project, and it distorts them by considering them to be a matter of governance, bureaucracy or institutional engineering. It also perverts rights because it "universalizes" them within a framework of Western capitalist modernity. Today, due to historical and political circumstances, rights are imbued with cultural and natural pluriversality.

When the concept of rights is part of climate negotiations, as in the REDD-rights pairing, it prioritizes benefiting the free market, meanwhile nullifying the cultural and political contexts of the villages and peoples where these kinds of projects or programs are carried out.

The proposal to include rights in REDD+ should have demanded the real practice of collective rights. These rights, according to Mexican Enrique Leff, are nourished by the "rights of the cultural being to build diverse worlds of life," by the "rights to reinvent their cultural identities," or by the rights "to reconstruct worlds of life and design possible futures." (4) REDD+ clearly prevents the exercise of these rights.

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# Honduras and the Consultation Law: A Trap that Seeks to Advance Capitalism onto Indigenous Territories


*Photo: OFRANEH*

Since ILO Convention 169 was ratified in 1995, indigenous peoples in Honduras have demanded the creation of a consultation mechanism to obtain Free, Prior Informed Consent (FPIC). This is in light of the avalanche of "development" projects and programs that endanger the survival of our peoples as differentiated cultures.

With the approval of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, indigenous peoples' claims on the continent have received a greater push, given that UNDRIP is more precise than Convention 169 on consultation, and it also recognizes the self-determination of peoples.

Since 2010, Latin American nation states have resumed implementation of Convention 169. However, they distort its spirit by turning prior consultation into a mere formality for companies and projects. Meanwhile, the state's obligation to review administrative measures that could affect indigenous peoples has been diluted. Peru and its version of a consultation law have become the model to follow, according to international financiers. For a decade, they have applauded what indigenous peoples of Peru have defined as a huge fiasco.

It wasn't until 2012 that the Honduran State took the first steps toward passing a consultation law. This action was instigated by the REDD Programme (Reducing Emissions from Deforestation and Degradation) and the Voluntary Partnership Agreement (VPA) between Honduras and the European Union, which is part of the European Union's FLEGT Action Plan (Forest Law Enforcement, Governance and Trade). This was seen as a step toward creating

REDD safeguards and thus being able to proceed with implementing REDD in Honduras.

Something similar happened in the rest of Latin America regarding Convention 169. In spite of the amazement and euphoria that its approval caused in many countries, enormous contradictions in nation states' recognition of the right to prior consultation have surfaced, from the beginning of the new millennium until recent years, when the Convention began to be implemented.

**Why is Prior Consultation Important?**

Given the increasing plunder and dispossession of the 21st century, having a consultation mechanism is a tool of survival for indigenous peoples.

In Honduras in 2014, governmental bodies such as the Confederation of Autochthonous Peoples of Honduras (CONPAH, by its Spanish acronym) and the Directorate of Indigenous and Afro-Honduran Peoples (DINAFROH, by its Spanish acronym) made their own versions of the Consultation Law. This was in addition to the one drawn up by the Observatory of Human Rights of Indigenous Peoples of Honduras (ODHPINH, by its Spanish acronym), which comprises COPINH, OFRANEH and other organizations.

By 2015, CONPAH's and DINAFROH's versions of the consultation law on FPIC were replaced by a new draft of the consultation law drawn up by the United Nations Development Programme in Honduras (UNDP). For this task, the UNDP contracted a group of Peruvian lawyers, including Ivan Lanegra. Lanegra's version deliberately omitted mention of the term "consent," resulting in the distortion of consultation into mere procedure.

The questionable role that the UNDP played leads us to believe that its positioning is directly related to the intentions of the UN REDD Programme, which has had devastating consequences worldwide, such as the displacement of indigenous groups in Africa—especially in Kenya, Uganda and Tanzania.

**Consent and the Self-determination of Peoples**

For indigenous peoples in Honduras, consultation to obtain consent is essential. However, not only does the State intend to distort it, but the ILO itself has repeatedly stated that consultation does not grant the right to veto. In meetings held over the course of the year between the ILO Central America and the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF, by its Spanish acronym), and the Honduran Council of Private Enterprise (COHEP, by its Spanish acronym), ILO officials have garnered applause from the most recalcitrant business associations on the continent, by reaffirming that article 6 of Convention 169 does not mention the possibility of a veto.

OFRANEH is emphatic in stressing that we do not demand a veto, but simply respect for self-determination, which is included in the International Covenant on Civil and Political Rights, and in article 3 of the United Nations Declaration

on the Rights of Indigenous Peoples (UNDRIP). We also point out how the Honduran state has, on several occasions, stated before the Inter-American Court of Human Rights that UNDRIP is not binding.

**Honduras After the Coup: A Setback in Rights Issues**

In 2009 Honduras became a political-economic laboratory. With the coup d'état, it took a huge step back in terms of human rights. The United States' counteroffensive to the so-called "socialism of the 21st century," led by the so-called progressive governments of Latin America, took shape through military intervention and the legislative branch's coup, which ended up removing then president Manuel Zelaya. After installing the "democratic" façade in 2010 through the call for general elections, common goods began to be handed over at an accelerated rate. This is how 50 river basins were handed over to the political elite to build hydroelectric dams. Some of these dams are even part of the Clean Development Mechanism of the United Nations Carbon Fund, which helps generate more profit for those who set up and and trade these projects. The legislative branch subsequently approved the "model cities"—a governance experiment driven by US ultra right-wing libertarians (1).

Affected indigenous peoples were not consulted about the "model cities," or the hydroelectric dams, or the handing over of the offshore oil platform. The disregard of prior consultation reached an extreme, when the UN REDD Programme and UNDP promoted a distortion in the draft consultation law they tried to impose in 2015. This draft law was temporarily suspended due to severe criticism from Mrs. Victoria Tauli-Corpuz, United Nations Special Rapporteur on the Rights of Indigenous Peoples. Mrs. Tauli-Corpuz visited Honduras exclusively to review the State and UNDP's actions.

The current version of the consultation law is the one drafted by Peruvian lawyer, Lanegra, after having been "doctored up" in response to issues that several indigenous organizations and Mrs. Victoria Tauli-Corpuz pointed out. OFRANEH believes that the State's rush to pass Lanegra's consultation law is supported by the FLEGT Facility and VPA of the European Union, the UN REDD Programme and the World Bank—institutions which boast their respect for human rights and indigenous peoples, but which have been implicated in the forced displacement of people. (2)

The Honduran National Congress recently passed a Tourism Incentive Law, prepared by international consulting firm, McKinsey, which is also involved in the REDD Programme. In addition to granting tax exemptions to investors, this law precisely details what will be expropriated. The Garífuna people were never consulted about this Law; however, they will be one of the groups most affected by the auction of their ancestral territory for tourism projects that this law will entail. The law is thus a threat to the indigenous peoples that inhabit areas considered to have tourism potential. (3)

This is how Honduras has become a failed state, where the last two administrations have conspired with organized crime, leading to the collapse of the judicial system and security agencies. In spite of this and the strong social

repression in the country, popular and indigenous resistance continues to fight the advance of capitalism onto our territories.

*Black Fraternal Organization of Honduras (OFRANEH, by its Spanish acronym), https://ofraneh.wordpress.com/*

(1) See more information about this in the article from the September-October 2016 WRM newsletter, http://wrm.org.uy/articles-from-the-wrm-bulletin/neocolonialism-and-plantations-on-the-garifuna-coast-of-central-america/
(2) OFRANEH, *Honduras: Consulta previa y la urgencia del Estado en la aprobación de una Ley Espuria, Septiembre 2017,* https://ofraneh.wordpress.com/2017/09/07/honduras-consulta-previa-y-la-urgencia-del-estado-en-la-aprobacion-de-una-ley-espuria/ OFRANEH,
(3) OFRANEH, *Honduras 2020, La inconsulta Ley y la consultora Mckinsey, Agosto 2017*, https://ofraneh.wordpress.com/2017/08/03/honduras2020-la-inconsulta-ley-de-turismo-y-la-consultora-mckinsey/ OFRANEH, Honduras 2020.

## Reflections on climate change, the rights of Indigenous Peoples and the right of Free, Prior and Informed Consent


Western colonialists and imperialists have for centuries pillaged and taken the lands, territories and natural resources of Indigenous Peoples (and the rest of the world) with impunity. This impunity extends to the pillage of people themselves through forced labor and slavery. Successor States as they gained independence continued the practice with the same impunity on Indigenous Peoples living within their borders.

Faced with the reality of unresponsive neo-colonialist States, Indigenous Peoples approached the international community to seek relief, first to the League of Nations where they were ignored. Later, in 1974 the American Indian Movement (AIM) set up an office in New York UN Headquarters. And when the International Court as well as the United Nations General Assembly in New York proved equally unresponsive AIM went to Geneva and the then Commission on Human Rights.

There the Sub-Commission on the Prevention of Discrimination and Protection of Minorities was responsive. After two World Conferences on Indigenous populations, the Sub-Commission created the Working Group on Indigenous Populations in 1982 that began to examine annually the condition and plight of Indigenous Peoples and to draft the United Nations Declaration on the rights of indigenous peoples. We approach colonialism in all its forms as subjects of human rights because it is an important option open to us, then as now. But we would prefer a more affirmative and definitive response.

As it is, the human rights arena has proved responsive and brought some much needed attention to the condition and plight of Indigenous Peoples. From less than 10 indigenous representatives to the first Working Group meeting in 1982, attendance grew to thousands and created a global network raising a great deal of consciousness amongst ourselves and the rest of the world. Now that we know our rights they are truly ours and justify our struggle. But it continues to be a struggle.

Human rights, given the millennial history of humankind, are relatively new. It has been only since 1946 that the international community adopted standards of behaviour applicable to all States and governments, on the just and proper treatment of their populations. Given the continuing reality of genocide, racism, extreme poverty, human trafficking, mega-destructive mega-extraction, perpetual war, the prevalence of torture, the inferior social status of women in many countries, and a great many other ills, international human rights, like the Geneva Conventions may be more aspirational than they are tools to achieve justice and curb arbitrary State power. For Indigenous Peoples they are not merely tools, but given the reality of their situations, respect and observance of indigenous rights in many respects is not merely the tool but the desired end.

International human rights as described and defined by the United Nations are a western construct. This Western construct bases human rights on the “equal dignity and rights” of all of humanity by virtue of their birth. This construct does not recognize collective rights as human rights. To this day, the European Union (EU), United States (US), United Kingdom (UK) and other western States fight any reference to Indigenous rights as human rights even to the names given to the Special Rapporteur on the rights of Indigenous Peoples, as opposed to the Special Rapporteur on the “human rights” of indigenous peoples. Nonetheless, they do recognize that collective rights are rights, but not human rights. It is this Western construct that Indigenous Peoples have had to contend with as they seek some form of relief from neo-colonialism.

This is reflected in the name of the Working Group on Indigenous Populations. For decades we were referred to as “populations” or “people.” We struggled for decades to add the “s” on people, because the word “Peoples” internationally implies the rights of Self Determination, a fixed territory and sovereignty over natural resources, among other important political rights. This struggle for the “s” was won when the General Assembly adopted the United Nations Declaration on the rights of indigenous *peoples*.

The vocabulary of human rights uses words in a Western context and it is up to us to translate them to indigenous concepts. The word “development,” as an example, means the exploitation of land and natural resources purely for economic gain in the Western sense, many times regardless of the toll such activity may take on the environment and the fabric of affected communities. In the Indigenous view, “development” means economic and material use of lands, territories and natural resources but consistent with our world views, spiritual lives, cultures and traditions, keeping a balance between the needs of the community and the needs of the environment. Our development is based on a *relationship* to the land and environment, not merely their exploitation. The goal of development for us is not the acquisition of material goods but “*Buen Vivir*” or living well, as it is called by Indigenous Peoples from the Andes. In this regard, the word “rights” does not exist in many indigenous languages. It is most closely translated as “responsibilities.”

The right of Free, Prior and Informed Consent (FPIC) is derived from the right of Self-Determination, which encompasses collective indigenous rights. We believe its respect and observance by States will help cure the persistent malady of hundreds of years of oppression and exploitation. The development of Indigenous Peoples’ right to Self-Determination has taken place within international law and jurisprudence. FPIC, as an internationally recognized indigenous right first appeared in the International Labour Organization (ILO) Convention 107 (1957), article 12, prohibiting States parties from forcibly removing Indigenous Peoples from their ancestral territories without their free consent. Later ILO Convention 107’s assimilationist policy was universally rejected, and ILO Convention 169 on Indigenous and tribal Peoples (1989) was adopted by the ILO. Its article 6 requires “consultations undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent” to, “proposed legislative or administrative measures which may affect them directly.”

Moreover, the UN Declaration on the rights of indigenous peoples (2007) was negotiated directly with Indigenous Peoples’ representatives for 25 years. It requires the Free, Prior and Informed Consent in 6 of its articles, including article 32, which recognizes Indigenous Peoples’ own right to development and requires FPIC “prior to the approval of any project affecting their lands or territories and other resources…” Indigenous Peoples have struggled against colonialism and oppression for 525 years. The articulation of FPIC is part and parcel of that struggle. Before they can take, they now have to ask. And more importantly, we can say NO.

But human rights violations, including gross and massive violations occur daily, all over the world. It is as though what happens at the Palace of Nations in Geneva, Switzerland, the United Nations headquarters for international human rights, stays in Geneva. There is the world as it should be and the world as it really is.

FPIC is now firmly established in UN human rights jurisprudence. This jurisprudence lends credence and credibility to the just demands of communities in struggle. It is not merely a right of participation. It is meant to be

dispositive. But it is Indigenous communities who must implement their rights locally. FPIC is our right and it is up to us to make it real in each and every indigenous community.

When we were negotiating the Draft Declaration we believed that the right of Self Determination would be the major battle. It turns out that States appear content with the autonomy of Indigenous Peoples where their lands have been demarcated and titled. It is the right of Free, Prior and Informed Consent, an aspect of Self Determination, that is the major battleground where lands and territories have not been recognized as indigenous. Indeed, some of us believe States are delaying demarcation and titling all over the world in order that FPIC not apply to their plans for their development.

The elements of FPIC are:
• “Free” means that there is no coercion, intimidation or manipulation in the acquisition of consent.
• “Prior” means that consent is to be acquired in advance of any authorization or commencement of activities. It also calls for respect for the time requirements of Indigenous Peoples’ and their own internal traditional decision making processes.
• “Informed” means that the information provided is understood, and where required, in the appropriate indigenous language; that the information covers the full range of proposed activity, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impacts, including detrimental impacts and potential risks; the personnel likely to be involved in the execution of the project; and the procedures the project may entail.
• Good faith consultation and full and effective participation by Indigenous Peoples *directly affected,* and their use of *traditional decision-making process* are crucial components of the consent process.
• “Consent” may be withheld without penalty or prejudice.

There are some, many non-indigenous, who consider FPIC a “failed” right” that leads to perverse consequences. FPIC is not a “failed right.” In the mind of many, there is no such thing as a “failed right.” If that were so, the right to life, freedom from torture or hunger, the entire panoply of human rights are failed rights. The perverse results of the respect and observance of any human right, including FPIC, are due to the perversity of bad faith on the part of States that pretend to implement human rights with a corrupt and insidious intent to undermine rights and human dignity for their own ends, usually economic, usually to maintain and/or enhance their power.

The corruption of the consultation process required by FPIC is a frequent State response to FPIC. Under the pretence of compliance, some states have one or two day “consultations” not directly with the affected Indigenous Peoples but with Indigenous Peoples, unions, investors and non-indigenous communities, and a host of State agencies and employees, all in the same room, all in consultation together. Indigenous Peoples and their communities are out-

numbered and out-voiced by those whose economic interests would be served by the proposed project.

These same or other States call for “consultations” that are not consultations at all but briefings on what the State and their corporate clients will be doing. In many of these “consultations” there is no opportunity for the indigenous community primarily affected to consent or not. In others, the State cites merely “broad community support” for the project.

Worse, through their State agencies and Governmental Non-Governmental Organizations (GONGOs), they employ indigenous persons to agitate within communities promising benefits, such as employment and land titling, creating divisions and conflict between and within indigenous communities themselves, shattering the fabric of the community and then sadistically announce that the project will continue as the community “cannot make up its mind” and/or “broad community support” for the project.

There are a great many artifices such as these that States are known to use to avoid the true intent and purpose of FPIC. These and other artifices are known and practiced in climate change policies and the imposition of false solutions for the climate crisis such as the mechanism called Reducing Emissions from Deforestation and forest Degradation (REDD+).

In the international arena it is up to States to implement (or not) human rights standards. The Security Council, except for the most exceptional of circumstances is not about to send an army to force a State to comply with its human rights obligations. Failure to observe and respect indigenous rights unfortunately has not been an exceptional circumstance. One major artifice to avoid indigenous rights is simply not recognizing Indigenous Peoples as indigenous and consider us “ethnicities” or “minorities” under their system of laws. This avoids the application of indigenous rights including the Right of Self Determination, the right to territory and sovereignty over lands and natural resources to Indigenous Peoples within their borders. Internationally, minorities do not possess these rights of “Peoples.”

Since 2007, the REDD+ program has been proposed and implemented by UN climate negotiations. The UN-REDD programme together with the World Bank Group’ Forest Carbon Partnership Facility have been major actors in the promotion, implementation and funding of REDD+ among developing countries. REDD+ advertises discourses of “informed and meaningful” involvement of all stakeholders, including indigenous and other forest-dependent communities as well as respect to indigenous rights. It does not promise but merely “recommends” FPIC.

However, REDD+'s unabashed purpose has been to include the carbon sequestration properties of forests and standing trees into carbon markets to offset industrial pollution. This has resulted in more and more Indigenous land being targeted for this purpose. Primarily through funding from Norway, Indigenous Peoples’ organizations have received millions of dollars ostensibly for capacity building on REDD+ on and in Indigenous territory.

Communities are pushed to “participate” in mapping activities in order to further the titling to their lands under REDD+ coordinates. The logic employed is that if the land has not been demarcated and titled, it is not indigenous land and Indigenous Peoples’ rights do not apply. Many communities are presented with a choice between two unique and perverse options:
1—losing their forest and territories, and dealing with the absence of public policies recognizing Indigenous Peoples and/or their rights; or,
2—forest management projects, “green grants” or REDD+.

The fault of REDD+ lies not only with a purposeful avoidance of the right of FPIC but artifices employed in order to avoid its true implementation. Such artifices include the creation of conservation areas or national parks, with title held by the States, obviating the rights of the indigenous ancestral inhabitants, allowing the State to do what it wants to do with its “own” land.

Even assuming good faith consultations leading to consent questions also remain such as the settling of disputes between the owners of carbon credits, the State and Indigenous Peoples denied the fair use of their forests. Will Indigenous Peoples be able to get out of legally enforceable but unforeseen or unwanted interference with their traditional way of life? In this context, who owns the trees? What happens when the carbon market busts as has been the case? National courts as the arbitrator cannot be counted on to deal fairly with Indigenous Peoples.

**Conclusion**

It is not FPIC that is a tool to the grabbing of indigenous lands and territories. It is the bad faith, corruption and economic interests of the economic elites of States and corporate clients. It is the same old colonialism and its immoral and deceitful age old practices that Indigenous Peoples have faced for 525 years. It is new wine in old bottles of greed and corruption and the racism necessary to justify their impunity and the dehumanization of Indigenous Peoples.

Colonialism continues to divide Peoples and communities to achieve its ends. But in spite of many losses colonialism will never conquer. Colonialist political, economic and military power and economic interests, the States and their elites, never has been a level playing field for Indigenous Peoples. Yet we continue the struggle of over 525 years.

From Standing Rock, North Dakota, US, in our defense of Sacred Water against oil development and infrastructure, to indigenous Lenca Territory in Honduras in defense of their Sacred Water against mega hydroelectric dams, to indigenous Mapuche Territory in Argentina and their struggle in defense of their Sacred Water and against fracking, all over the world, Indigenous Peoples are owning their right to Self Determination and demanding the definitive right to say NO. By their demands they contribute directly to the struggle against global warming.

We invite all peoples of good faith to join us in defending our Mother Earth, our Sacred Water, our environment, our forests, and our continued existence as Peoples.

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* See the recent report from IEN, WECAN y Movement Right *"Rights of Nature and Mother Earth, rights-based law for systemic change"* in http://www.ienearth.org/wp-content/uploads/2017/11/RONME-RightsBasedLaw-final-1.pdf?utm_medium=email&utm_source=MyNewsletterBuilder&utm_content=216342215&utm_campaign=Rights+of+Nature+Emerges+as+Strong+Alternative+to+Climate+Mitigation+and+Adaptation+Framework+1413227906&utm_term=Click+here+to+Read+and+Download+Report

# Brazil and land rights: A historical struggle that continues and intensifies

*Photo: CIMI*

**Interview with Roberto Liebgott, coordinator of the Regional South of the Conselho Indigenista Missionário (CIMI) of Brazil.**

***WRM: Brazil's recognition of indigenous rights in the law has been an example for other countries in the world, and has served as inspiration for indigenous peoples and their struggles in other countries. What would you highlight about this?***

In 1537, Portugal needed the Church to take a position on the possibility of subjecting "discovered" individuals to slavery. Pope Paul III issued the bula *Sublimus Dei*, in which he recognized that the "Indians" were people capable of receiving the Catholic faith.

I dare refer to this document from the sixteenth century to show how the "Indian issue" was already on the table from the beginning of the European invasion. The Pope's response confirms that the Church was anxious to convert them

into "Christians," and at the same time affirms the need to ensure their freedom and ownership of their property. The three central concerns expressed by the Church/State (converted souls, freedom and property) clash with the colonial expectations over the centuries, which were mainly characterized by enslavement, exploitation, conquest, dominance and extermination. Those processes are linked to the domination of native peoples and their lands. Territorial disputes have been ongoing for more than five centuries, through different means and strategies, with devastating effects on communities and indigenous peoples.

At the turn of the twentieth century we see how the indigenist policy was based on identifying "indigenous groups" to promote their displacement and confinement into reservations created by the State. The objective of this displacement policy was twofold: to integrate the Indians into the national society, and to use their lands for economic expansion projects—to build roads, railways and hydroelectric dams, to install mining and timber companies, and to promote agriculture and livestock production. It was noted that "said Indians," per Pope Paul III's words in 1537, had not been extinguished, and that by remaining on their lands, they presented an obstacle to exploitation of these lands.

The 1988 Federal Constitution overturned this assimilationist policy. The rights guaranteed in Chapter VIII and articles 231 and 232 were victories for indigenous peoples, and they were the result of mobilizations that preceded that period, even while the National Constituent Assembly was working.

Chapter VIII of the Constitution, entitled "About the Indians," explicitly recognizes the specific and differentiated cultural identity of indigenous peoples in articles 231 and 232. It also recognizes their native rights to the lands they traditionally occupy, making the State responsible for demarcating them. Note that, even though these rights do not appear as fundamental rights and guarantees, they are understood as such, and therefore should be applied immediately. Therefore, **the current Federal Constitution redefines the State's relationship to indigenous peoples: from being wards of the state, they become subjects with individual and collective rights. The Constitution also recognizes ethnic and cultural pluralism and ensures the Indians native rights over the lands they traditionally occupy, with the State being responsible for demarcating them.**

However, is should be noted that despite the constitutional improvements, in recent decades governments have ignored and negotiated with indigenous rights. The current policy is rooted in genocidal concepts and conceptions.

Among the anti-indigenous strategies that the current Brazilian government has adopted is the time frame from the 1988 Constitution, which aims to demand that peoples and communities be in possession of their land by October 5, 1988, or else, be legally demanding or physically competing for it. The peoples that do not comply with these conditions would lose the right to demarcate the area they claim.

This leads to at least two questions. First: How could some indigenous peoples be on their lands in 1988, when they had been expelled from them some time before—with the consent, participation or oversight of the State? Furthermore, these peoples never lost their relationship with their traditional lands, and if they did not recover them before, it was because they were unable to do so. Second: How could indigenous peoples be litigating their lands in 1988, if until then they were still considered to be wards of the state, and not subjects with rights?

We trust that, in the case of judgments on actions related to the demarcation of indigenous lands, the Federal Supreme Court will adopt—as its interpretative axis—the constitutional precepts and not political and economic interests. But if the thesis of the temporal framework were eventually to be consolidated, the rights of indigenous and quilombola peoples would be annihilated (1); and as a result, the lands—even those that have been demarcated over the last decades—could suffer setbacks due to economic interests, and therefore be subject to review.

Thus, the government seeks to impose the will and interests of exploiters over the rights of indigenous and quilombola peoples, which in practice means a step backwards in the law. This is the strategy. Worse yet, it negotiates benefits and favors with administrative public officials, placing rights in a vulnerable condition. Such favors apply only to those who hold positions, or who are selected or embraced by hegemonic economic interests, transforming rights into a privilege. It is as if we were living in a regime of exceptions. Unfortunately, this is what seems to be happening in the current political and legal context in Brazil.

***WRM: What does Brazilian legislation say about other rights, for example the rights of companies and large landowners who are interested in indigenous lands in order to develop mining activities, large dams, monocultures, etc.—rights which are often imposed over indigenous rights?***

The text of the Constitution establishes that the Brazilian State must promote the demarcation of lands, recognizing the Indians' native and indefeasible rights to the permanent possession and exclusive usufruct of the existing natural riches in the soil, rivers and lakes of traditionally occupied areas. Furthermore, the Union (State) is required to protect, oversee and make sure that all assets are respected, including intangible ones such as the cultures, beliefs, and traditions of each people.

I also refer to Article 20, section XI of the Constitution, which establishes that traditional indigenous lands are property of the Union, and therefore not indigenous property. This norm protects not only the physical occupation of the land but also the right to traditional occupation. It follows from this content, combined with Article 231, that land use is not restricted to economic and social aspects, because these aspects inherently imply a future wherein peoples are able to express themselves in their different ethnicities (socially, politically and economically). And it is the State's obligation to ensure the protection of

environmental areas, sacred spaces and those of a symbolic nature, using the peoples' future as a reference.

The right to own property is specified as an native right, and therefore does not depend on titling, and precedes all other rights (Article 231, first paragraph). That is why paragraph 6 of this Article expressly states that titles that affect an indigenous land are declared null and void, without any legal effect.

Paragraph 2 of Article 231 establishes that the lands traditionally occupied by the Indians are designated for their permanent possession, and to the exclusive usufruct of the riches that are not found in the subsoil. Meanwhile, it should be noted that the possibility of exploiting natural resources will only be allowed if the Union has a relevant public interest; and this will depend on a complementary law (which was not approved yet). With regard to good-faith occupations of land, the same article states that the Union must compensate for any improvements occupants have built—for example buildings or perennial plantations—but no compensation for the land is provided.

***WRM: The Brazilian constitution established a period of five years (from its enactment in 1988) to demarcate indigenous lands throughout the country. However, that did not happen, but rather the opposite. How many indigenous lands are still awaiting demarcation, and what are the main forces and strategies that have prevented fulfillment of this point of the Constitution?***

Regarding the consolidation of land rights—that is, their possession and usufruct—the Transitory Constitutional Dispositions Act (Article 67) established that the Brazilian State would have a five-year timeframe to complete the demarcations of indigenous lands, a timeframe which would have expired on October 5, 1993. According to data from the Indigenous Missionary Council (CIMI, by its Portuguese acronym), today there are still 1296 lands in Brazil, 640 of which have been legalized. The remaining lands are in stalled processes, or perhaps the demarcation procedures were not yet initiated by the relevant indigenous organization.

I believe that the failure to comply with the Federal Constitution in the demarcations is due to economic interests, in particular to agribusiness, mining, energy and timber companies. At the heart of these disputes are three arguments that try to convince the population, politicians, legislators and justice officials to oppose the demarcations.

The first argument is that there might be some kind of foreign plot against the nation involved in movements to defend demarcations of indigenous lands. It is important to remember that indigenous lands are property of the Union, which must be protected and safeguarded for the exclusive use of indigenous peoples. This legal device is sufficient to demonstrate that if there are foreign interests in Brazilian lands, indigenous areas would certainly be the least susceptible, as any investment in them that does not have the National Congress's authorization would be considered illegal.

The second argument is based on the idea that "it is a lot of land for a few Indians," which is linked to the concept that lands are resources that are necessary for national development, and should therefore be productive. In this vein, the idea that the Indians want "so much land" is probed; this triggers a racist logic by which all peoples' and cultures' lifestyles and livelihoods are evaluated using western criteria and a neoliberal rationale considered to be universal. According to this racist perspective, only those who effectively "produce" from the land are working and taking advantage of their potential. Meanwhile, those who develop a more respectful relationship with the ecosystem—as well as an attitude aimed at preservation—are seen as subjects who do not work, who do not have ambition, or who do not know how to give (economic) value to the land.

The third argument is the popular idea that, under the pretext of demarcating lands for the Indians, injustices could be committed against the farmers who produce food for the population. To understand this matter, it is necessary to reopen some historical aspects that have led us to the current situation, in which Indians and farmers are litigating for the same lands.

In the first decades of the twentieth century, governments promoted the territorial occupation and colonization of spaces considered to be "empty." There are records from that time period of innumerable "ethnic cleansing" practices, by which entire villages were exterminated. Hundreds of other communities were expelled; these forced removals throughout history gave rise to contemporary conflicts. It is those lands—lotted and sold by governments in previous decades—which are now in litigation for demarcation. In indigenous and quilombola villages, as well as farming communities currently residing on these lands, there are many men and women who lived through that period and relate the events. They say there is material evidence of indigenous and quilombola presence—such as cemeteries, ruins of old houses, remains of artefacts used for hunting, among others—in the lands in dispute for demarcation today.

***WRM: Today, about 11 per cent of the national territory is demarcated indigenous land. Aside from their rights enshrined in the Constitution, what was really crucial in this victory for indigenous peoples?***

In my opinion, the coordination of indigenous peoples that began with the large Peoples Assemblies put up resistance to the frontiers of economic expansion in the late 1960s. They denounced the reality of genocide and promoted the discussion on the need for specific legislation for the peoples—which later became Chapter VIII of the Federal Constitution. Added to this was the strong participation of entities and organizations in Brazil and abroad, which worked for the indigenous cause. Some of these include CIMI, Operation Native Amazon (OPAN, by its Portuguese acronym), the National Association of Indigenous Action (ANAI, by its Portuguese acronym), and international cooperation agencies and entities. Later in 1985, there were indigenous organizations, the national and regional UNI (Union of Indigenous Nations), indigenous student movements, indigenous women's movements and many other movements that were also, in my opinion, the result of coordination and mobilizations previously

initiated by the large assemblies. And so the road was made in the 1990s and after 2000, when there was already a defined legal structure through the Federal Constitution. And the peoples started appropriating and realizing their rights, although never without challenges, and never without the State's failure, and constantly having to remind governments that indigenous peoples are subjects with rights.

***WRM: The indigenous struggle in Brazil is currently facing one of its most difficult moments, with a big threat of setbacks, including related to rights guaranteed in the Constitution. What are the main attacks on indigenous rights and who instigates them? How do indigenous peoples and their allies resist them?***

Undeniably, we are living in a period of restriction and denial of rights. The Federal Constitution is being circumscribed, through interpretations and alterations favouring economic and political sectors. The highest law is systematically ignored as it relates to indigenous peoples, and especially the scope of their right to land, which is now restricted by the logic of private property. In dubious interpretations of the law, the native right to land that peoples traditionally occupy is being contested, as well as the effects of constitutional devices that define these rights as inalienable, unassailable, and —in the case of the right to lands—indefeasible.

In analysing the current situation, we must refer to the policies established at the beginning of the twentieth century, which promoted the identification of "indigenous groups" with the intention of displacing them to reservations where populations of different peoples were lumped together. I refer to this because, apparently, this policy is being resumed. Today, using the argument of creating reservations instead of demarcation, there are efforts to once again displace indigenous peoples from their lands, which are being contested for the implementation of development projects and the expansion of agribusiness.

That said, the removal of the indigenous population from their lands, or the negligence around demarcation, are proof that economic interests are eyeing indigenous rights and seek to incorporate them as resources.

We are already seeing brutality in these processes. In the state of Maranhão, loggers are actually promoting hunting down indigenous people who oppose deforestation and logging, which intensified this year with the invasion of indigenous lands. Eight Guajajara people were killed. The murderers tore off and exposed body parts of some of the victims (2). In Bahia, Tupinambá leaders are criminalized, assaulted, threatened and killed (3). A similar situation occurs against the Xakriabá People in Minas Gerais. In Río Grande del Sur, Santa Catarina and Paraná, attacks on indigenous rights are added to the persecution, criminalization and imprisonment of leaders who fight for land. In Mato Grosso del Sur, there have been recurring attacks against the Guarani-Kaiowá and Terena Peoples, but in 2016 especially, federal judges ruled an interdiction on territorial rights in areas that were already demarcated, or in others whose processes were underway but ended up being obstructed. Concomitantly, they evict communities through the use of police forces.

***WRM: What would you say to indigenous peoples and indigenous organizations from other countries that seek to follow Brazil's example? What is really essential to guarantee the protagonism and autonomy of indigenous peoples within their territories, and what is the role of the struggle for rights? And how to deal with the pressure of Big Capital, which seeks to impose its rights over indigenous rights?***

We cannot make suggestions about indigenous matters if we are not inserted in them, even indirectly. The specificities of struggles, of peoples and cultures and the way of being and living, in general, provide direction and meaning to the political, legal and legislative battles. Each people ends up making their path in the struggle against the injustices to which they are subjected. However, what seems to be common amongst all the different peoples and cultures, is the need to think of ways to identify what brings people closer together, as well as what distinguishes them from each other. By identifying what unites them, they can establish joint mechanisms, mobilizations and struggles. Oppressors generally design their joint strategies considering the exploitation of other peoples, their lands and their resources. In regards to indigenous peoples and other exploited and criminalized social groups, we must fight by joining and combining hopes, interests, expectations and spiritual forces.

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*CIMI, http://www.cimi.org.br/*

*(1) Quilombolas: communities formed by people subjected to slavery who managed to escape captivity*
*(2) See: http://www.cimi.org.br/site/pt-br/?system=publicacoes&cid=30*
*(3)See:http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/brazil-the-struggle-of-the-tupinamba-indigenous-people-to-protect-their-territory-and-the-conservation-of-forests/*

# Traditional land “rights” in West and Central Africa

In West and Central Africa, the many radically different ways in time and space of how people relate to and manage land reflects the many forms of customary tenure that interact and overlap between themselves as well as with statutory law. This article highlights the reflections of four activists from West and Central Africa.

“On the one hand, communities claim they own the lands they have traditionally used and acquired through custom. On the other, states claim ownership over all lands located within their respective territories and simply grant usage rights to communities, when these communities need to control and own especially the land they have used for generations”, explains Nina Kiyindou on the situation in the Republic of Congo, in Central Africa. Nina also remarks that the Republic of Congo is one of the few countries that recognizes customary ownership and this has thus created the possibility for communities to assert their customary land tenure rights.

Customary land tenure generally refers to the systems established by communities which usually have passed from one generation to the other. These systems seek to express ownership, management, inter-connections among human and non-human beings, use and access towards land and commons. Unlike externally imposed land tenure regimes, customary tenure derives from and is sustained by the community itself. It is therefore a social system rather than a legal one and acquires an enormous capacity to persist and be flexible.

In order to reflect deeper on these issues, the WRM Secretariat contacted four activists from West and Central Africa to reflect on some questions: Nina Kiyindou from the Republic of Congo and Abass Kamara from Sierra Leone in West Africa, and Michele Ongbassomben and Biyoa Léon from Cameroon in Central Africa.

We could not include their replies in full due to space constraints, but full interviews can be found on the WRM website, under the post of this article.

***WRM: Could you please explain, according to your experience, how customary laws in relation to land and forests use are mostly enforced among communities, and please tell us why you think that such customary systems are so important***

**Biyoa Léon about the situation in Cameroon**

Customary law is a right based on the practices of our ancestors. Custom is a rule that is not prescribed as a command of the public powers, but rather originates from its general and extended use, together with believing in the existence of a punishment if this use is not followed. It is a source of law.

Customary land tenure law is applied in the communities in different ways according to their customs, since no two communities have exactly the same customs. There are two general types of customary land management: dependent land management and independent land management.

In dependent land management, the community chief or land chief has control over all the land, and the owners' land rights are limited. For example, they cannot sell or transfer their land to someone who is not from the community without first obtaining the chief's authorization. Also, when logging and industrial plantation companies settle in a location, it is the chief who grants them his authorization. If the chief refuses to do so, no activity can be carried out on the site.

In the case of independent land management, the owner is not required to ask for an authorization to use his land. He can cultivate as much land as he wants, except for undivided plots, since everyone needs to know what activities are carried out on these plots. While subsistence crops aren't a source of problems, cash crops might cause some, mainly because of the duration of their cycle. In other words, the management system is far more collective than individual. Everything is important. The simple fact of having been born in a family gives one access to land. Land use is monitored not only by the family chief, but also by the community chief.

Customary land tenure laws organized in this way necessarily involve responsibilities. This is why the land chief is responsible for the community's land. No plot of land can be transferred without informing the chief. Next to the land chief, there are also lineage chiefs, insofar as the land belongs to each lineage with a common ancestor. It is therefore their chief who must respond for everything related to the land.

**Nina Kiyindou about the situation in Republic of Congo**

Customary tenure rights are prerogatives held by local communities, especially indigenous populations. One cannot talk about local communities and indigenous populations without also making the link with land access, control and ownership. Access is more and more guaranteed through use or "usufruct" rights. Indeed, these communities and populations enjoy the land through numerous activities.

The laws and regulations currently in force [in the Republic of Congo] assign the ownership of land to the State (rural and urban land domain). However, rural inhabitants who had established constructions, installations or developments that have permanently increased the value of such land, before these laws entered into force, have the right to request the registration of this land in their name.

An opening has thus been made for individuals, local communities and indigenous populations to acquire land that has undergone increases in value through their work. Indeed, this is an opportunity for communities to obtain title for land they have traditionally used for a long time with their buildings, through the planting of fruit trees, and the maintenance of sacred sites. This is an acquisitive prescription that can be achieved only through a registration process. The law requires that all persons and groups that fulfil the criteria register their land in order for that land not to be considered any longer directly on the domain of the State.

It should be noted that this process poses problems especially for indigenous populations whose notion of development is quite different from that of the land tenure law. Indeed, **the type of development described in the law is practically inapplicable in the case of indigenous peoples because they don't build the long lasting structures [as described in the law].** They use short-lived forest materials; they are nomadic/semi-nomadic; they maintain beehives, medicinal plants and caterpillar trees. But "development" is a key component of the statement and recognition of customary land rights, according to Article 7 of Decree 2006-256 of June 28, 2006, on the establishment, attribution, composition, and operation of an ad hoc customary land rights documentation entity. Specific measures need to be taken regarding indigenous populations as provided by Article 32 of the Law on the promotion and protection of the indigenous populations of the Republic of the Congo: "The state facilitates the delimitation of these lands based on their customary land tenure rights in order to ensure their recognition. In the absence of land titles, indigenous populations keep their pre-existing customary land tenure rights."

**Michele Ongbassomben about the situation in Cameroon**

Collective ownership is the main feature of customary land tenure systems. In customary law, access to land has been secured through its occupation since generations. It is an ancient mode of occupation based on the right to fell its trees. Furthermore, in customary law, land is distributed by lineage, the members of a given lineage have common spaces that are later divided between families. Everyone in the village knows and accepts the areas' boundaries. The village community and the family community are therefore the two axes of customary land management. The traditional system is important because it helps protect the community's heritage. Indeed, since land tenure is collective in customary law, land is inalienable.

***WRM: Can you please describe how the communities you are familiar with organize the "right" to use land under customary law? Does this right come with certain responsibilities?***

**Abass Kamara about the situation in Sierra Leone**

Under customary law regarding land use, no person in the community has the right to allocate his family land to a stranger for farming purposes without informing the chief of the village. Though the land in question might not belong to him (chief) yet, he should be informed about it because all land disputes are first sent to the traditional leaders before taking them to the formal courts. This is because, in the event that the land user wants to claim the said land given to him as his, the traditional leader would be a very key witness and arbitrator to pass judgement in such matters at his own level.

It is important for both, the landowner and user, to understand the need for each other's right to the land at any point in time. Sometimes, the land user is required to pay rent on an annual basis to the owner in order for the user to be informed about the ownership right being in someone else's hands. It is also true that some landowners do not ask for a single cent from land users with the view that it is a Godly thing to do. It is also the responsibility of the land user to take care of the said land while it is in his custody.

**Biyoa Léon on the situation in Cameroon**

The application of customary law has several characteristics and involves different methods of acquiring land. There are several customary land tenure law systems:

- The private system, which takes into consideration groups of individuals and family units created by couples. Thus, within a community, different families can have exclusive rights over plots. For example, a catechist settles with his family outside of his village and becomes the owner of a plot of land in his host village;
- The community system, in which each member of the group has the right to independently use the goods held by the community;
- The open access system, in which no specific right is assigned to anyone and no one can be excluded. The difference between open access and a community system is that in the latter case, individuals who don't belong to the community are not allowed to use the common land;
- The public system, in which property rights, for example rights to use community pastures, community forests, sacred forests or agricultural lands, are assigned to a public sector entity. This arrangement is justified by the concentration of cash crop plantations, such as cocoa, in a single area. Such areas are held by the chief on behalf of all citizens.

In addition to these different systems, the other major feature of customary land tenure law is that of the person empowered to manage the land. This is why a distinction is made between the religious role and the legal role. Others prefer to talk of the animist spiritual concept of the world and the social requirement of solidarity between all men.

The religious role and the animist spiritual role have the same goal and are played by the same person, i.e. the land chief, because there is a divine relationship between the land and men. It is therefore this land chief who is in charge of the prayers and sacrifices in order that the gods of the land grant a bountiful production.

The village chief plays the legal role and/or ensures the social existence of solidarity and is responsible for resolving all conflicts within his community and care for the well being of all of his men. He ensures peace between the men. However, sometimes the same person, the village chief, plays both the religious and legal roles. This is determined by the customary land tenure law.

What about the acquisition of land? To hold land, that is to become its owner, one must acquire it. There are two main ways of acquiring land, the violent appropriation of land and the non-violent appropriation of land. The non-violent appropriation of land is expressed by the right to fell trees or right of the axe and the right to slash and burn. This right is given to the first person to clear a plot of undeveloped forest. The stronger a peasant is, the larger the area he can clear. The right to slash and burn is an agricultural corollary of the felling right, since agriculture is practiced on land that has been slashed and burned. All one needs to do to become the owner of a plot of land is to cultivate it. However, physical strength can also be used not in order to become the first to develop a plot of land but to seize land that is already developed. This is violent appropriation. In violent appropriation, a group, a village, a clan or a tribe attacks another group or community in order to evict them and take over their land. This is land conquest. The land becomes a war trophy.

**Michele Ongbassomben about the situation in Cameroon**

Land is sacred in customary societies. The main way to access land remains customary inheritance. Customary law also recognizes individual rights as a mode of land appropriation. It also recognizes the collective ownership of property at the village level. Here, the village chief manages the land, but he does not control it. In some regions, land is sometimes divided in agricultural and pastoral areas.

***WRM: According to you, what are the main benefits and problems of using customary law? Why do you think there are so many differences between the "rights" of men and women for accessing land under the customary system?***

**Nina Kiyindou about the situation in Republic of Congo**

[The Republic of Congo is one of the few countries that legally recognizes customary ownership] The main benefit of the law on customary tenure rights is the recognition that this type of right represents an undeniable guarantee. The law has created entities in charge of documenting and recognizing these rights in every department. This phase makes it possible for communities to go from a situation in which their land rights are non-existent to a situation with rights. Indeed, documentation and recognition already confer a legal status to customary land rights.

The current issue is that of informing local communities and Indigenous populations and raising their awareness. Communities are unaware of the existence of entities whose task it is to document and recognize customary land tenure rights and carry out all of the processes. They are using less and less this mechanism, which is nevertheless guaranteed. The process to convert

customary lands into legal lands involves expenses that are often beyond the reach of communities.

The law does not make any distinction between human rights and women's rights in customary tenure rights because the principle of legal equality between genders is promoted. But in practice, the weight of many traditional social norms maintains women in the position of victim with respect to customary tenure rights. These include:

- The culture of masculinity that results in the exclusion of women;
- Beliefs; and
- Stereotypes.

**Abass Kamara about the situation in Sierra Leone:**

The main benefit for keeping customary law is that, until now, land is still in the hands of local community people and not in those of wealthy foreigners who have all it takes to purchase the land from poor people in the provinces of Sierra Leone.

On the other hand, customary law has been used to deny women of their right to access, control and own land. Men had fears that land ownership by women could be transferred to their husband's families in the future. This is a very bad practice that could be changed without any negative repercussions. It is all about men being greedy in the east and northern provinces of Sierra Leone where this is prevalent.

***WRM: Currently, many state agencies, NGOs and international agencies programmes attempt to replace customary law with the "official" western legal system (mostly by providing individual land tenures). How could this affect community organization?***

**Michele Ongbassomben about the situation in Cameroon**

If land tenure became an individual right, the number of land title sales in local communities would explode. Investors would benefit the most from this.

**Nina Kiyindou about the situation in Republic of Congo**

I think that when communities remain under a traditional system that does not provide any legal guarantee, they continue in a well-known state of land tenure insecurity. Today, we are witnessing numerous cases of land-grabbing related to current economic challenges in which multinationals are relentlessly pursuing the development of rubber, oil palm, corn, soya, among other monoculture plantations. More and more communities are surprised by the establishment of large plantations on land they have traditionally held for generations without having been informed or consulted. They are robbed and have no available recourse. To ensure land security, all customary tenure rights should be documented and recognized. A report would be proof and the registration would give access to the land title, which is definite and unassailable according to Article 13 of Law n°17/2000 of December 30, 2000 on the land tenure system. This law stipulates: "The land title is definitive and unassailable except for the cases set out in Articles 15 and 32 hereunder. Before Congolese courts, it constitutes the sole starting point of all real rights and existing property

easements, and developments or investments at the time of registration, including all other non-registered rights." The major challenge here remains the exorbitant cost of land registration operations. Incentive measures need to be taken in order to encourage the effective enjoyment of customary tenure rights by local communities and indigenous populations.

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** To read further about the situation of women in relation to land and customary laws in Cameroon, you can read an article written by Michèle Ongbassomben for WRM Bulletin 224, May/June 2016, titled "Women and Property in Cameroon: Laws and Reality".

EN: http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/women-and-property-in-cameroon-laws-and-reality/
FR: https://wrm.org.uy/fr/les-articles-du-bulletin-wrm/section1/femme-et-foncier-au-cameroun-entre-lois-et-realite/
PO: https://wrm.org.uy/pt/artigos-do-boletim-do-wrm/secao1/a-mulher-e-a-propriedade-em-camaroes-entre-o-direito-e-a-realidade/
ES: https://wrm.org.uy/es/articulos-del-boletin-wrm/seccion1/la-mujer-y-la-propiedad-en-camerun-entre-las-leyes-y-la-realidad/

# The Right to Common

*Photo: Focus on the Global South*

*Enclosures have appropriately been called a revolution of the rich against the poor. (1)*

*Commons are not just a "third way" beyond state and market failures; they are a vehicle for claiming ownership in the conditions needed for life and its reproduction. (2)*

## Commons and Commoning

In the broadest sense, commons are different kinds of wealth, resources, spaces, values, systems, processes and activities that 'belong' to groups or collectivities, and that are actively claimed, created, recreated, protected and restored for collective good and purpose, for present and future generations.

The best-known examples of commons are in nature: air, water, land, forests, and biodiversity. Commons can also be social, intellectual and cultural: for example, health and education systems, knowledge, technology, the internet, literature and music. As widely accepted moral and political claims to protection from abuses of power, and of access to resources and conditions essential to life, human rights can also be viewed as global commons. (3) However, the discourse of human rights has become trapped in the language of neoliberalism and individualism, which contradict the underlying values in notions of commons.

Commons can be linked and networked: a thing, space, system can be commons and enable other commons, for example, internet is commons and internet technology has enabled virtual knowledge commons. Similarly, ancestral domains of indigenous peoples enable the development of local knowledge, science, and resource use and conservation systems.

Commons can be inherited by a community or group from previous generations and passed on to future generations. They can be invented, created, adapted,

protected, and replenished through collectively agreed rules. Many credit unions started as commons initiatives. Some retained their commons identities while others became co-opted by capitalism to become microfinance institutions. Communities in many rural areas across Asia share labour, produce and income to maintain collective food reserves. Most villages in Southeast Asia have community forests, common water sources (wells, ponds, lakes, streams, etc.) and common lands for grazing and foraging. Seed saving and sharing among peasants is one of the most enduring kind of commons, crucial in strengthening community resilience and food sovereignty, generating a shared sense of place and interdependence, and highlighting the vital role of women.

Commons evolve in practice and there are no commons without commoning. (4) Commoning are continuing, dynamic processes by which commons are created, adapted and strengthened to last over generations and across varying, often conflicting interests. For something—whether a resource, space, knowledge, facility or even a concept--to become commons, it must be identified and delimited as commons. Its boundaries, users, rules of access, use, control, inclusions-exclusions and system of governance must be developed by the participants of that commons, and recognized by broader society.

Commons offer creative life and survival options amidst the recurring crises triggered by capitalism and neoliberalism. Equally, they enable people to effectively resist extractivism, destructive development and capitalist expansion.

**Ownership and Governance**

Commons are not governed through private property, market or state regimes, but by one or many groups of people, who can be socially, economically and culturally diverse. For example, a geographical territory may include a forest, river and coastal area that is shared, used and protected by peasant, fishing and pastoral communities through a collectively developed system of governance with rules, responsibilities, obligations and penalties for over-use, wrongful use, damage, etc. Food and agricultural cooperatives can involve producers, processors and consumers operating with collectively developed rules and regulations for quality, storage, safety and pricing.

Commons problematize notions of property: many commons are not completely open for everyone to use and exploit as they wish, but they are not private property either. In private property regimes, individuals hold legal ownership of specific properties, can legally exclude others from uses and benefits of that property, and have the right to dispose of the property as they wish. Individual, private property forms the basis of market based exchange; expressing such transactions as ‘rights’ conveys that human rights are necessarily individual, and that in a market, all actors have the same ‘rights.’ Commons on the other hand, are about collective ‘property’ and ownership (for want of better terms), where groups of people exercise collective rights to use, benefit from and make decisions about a shared thing, space, resource, etc. In contrast to private property regimes, power asymmetries among people and communities, and the potential for power abuses are factored into commons governance.

Agency in the commons is autonomous from state and market institutions. At the same time, the creation and practice of a commons involve negotiations of social and political relationships among people who are participants in the commons, as well as between them and actors outside the commons. For example, village residents who form a community forest need to negotiate with state authorities and/or neighboring villages, all of who may want control over the forest. In urban vegetable gardens, participants need to negotiate land lease, rules of use, management, etc. with relevant municipal authorities.

Although collectivity is at the heart of commons, they do not negate individual agency and responsibility; on the contrary, protecting and managing collective resources/wealth require a collectivity of individual actors working together towards shared goals. In many upland areas in Asia, swidden fields are claimed by individual families but the broader hillside is protected by the entire community. The lives and livelihoods of fisher folk are greatly dependent on rivers, lakes and oceans as commons, and their cultures and traditions define practices, rules and limits for harvesting from and protecting these commons. In some rural communities, crop and grazing lands are communally identified, although the tenure rights of families to cultivate specific parcels of land are recognised and respected.

Thus, the relationships that individuals and groups build to create, use, protect and strengthen commons are particularly important. The very concept of commons refers to a shared ownership relationship, which entails shared responsibility and shared beneficiary relationships. These relationships are expressed as social conventions, norms, informal customary laws and behavioral patterns. The commons demand conscious, deliberate participation and involve rights as well as obligations. People agree to be part of a commons, to enter into the system of rules (however informal or customary) of a commons. Commons governance is fundamentally about social/political relationships, and cannot be disassociated from the unique relationship that participating communities build. Well-functioning commons governance promotes personal responsibility, social cohesion, plurality, sustainable use of often-endangered resources and revival of positive traditional practices.

**Threats of Enclosures**

The most direct threats to commons come from enclosures that bring existing commons into private property and free market regimes and prevent new commons from being formed. The infrastructure of neoliberalism--trade and investment liberalisation, privatization, corporate and market friendly regulation, commodification and financialization—undermines collective governance and responsibility by increasing focus on individualized benefits and property rights. States have tended to adopt governance policies and systems that favour the interests of corporations and markets over those of peoples, local communities and nature. Public interest—a concept of collectivity that goes beyond the sum of individual interests-- is being rearticulated in terms of individualized benefits and rights best served by neoliberal market transactions.

Lands, forests, rivers and other water sources are captured for logging, industrial agriculture and plantations, extractive industry, property/real estate

development, energy production, tourism, etc. Industrial agriculture spurs the concentration of productive resources, land and labour in the hands of corporations and elites. Global value chains undermine the abilities of workers to organize, form unions and negotiate collectively for living wages and dignified work.

Free trade-investment deals enable corporations to win access to agricultural and natural biodiversity and traditional knowledge, and claim intellectual property rights (IPR) over products derived from them. Profits from these patents accrue to the prospecting corporations and institutions, not to the people who have nurtured these commons for generations. Bio-piracy is a persistent danger to indigenous peoples and other rural communities. Women, who are the savers of seed in most peasant farming communities, are generally the first to be displaced from new agricultural production packages based on “improved” seeds. Financial markets are penetrating deeper into our lives and economies and seek to capture nature itself, as with the Green Economy. New financial assets are being created from land, water, soil, carbon, oceans and biodiversity, whereby natural resources can be traded as commodities. (5)

The commons are also endangered by policy conditions attached to development financing from International Financial Institutions (IFIs) and bilateral and multilateral donors, who favour neoliberal approaches to development. The World Bank is firmly committed to private property regimes, individualised ‘marketable’ land rights and establishing land, carbon and water markets. The International Finance Corporation (IFC) provides financing for private investment projects that result in the destruction of nature and displacement of local populations from their territories. The Asian Development Bank (ADB) promotes rapid economic growth through private sector operations, which have repeatedly resulted in air and water pollution, land degradation and depletion of natural resources. In all operations advanced by International Financial Institutions, client governments are required to provide private companies unfettered access to land, water and other natural resources, and enact 'market-friendly' (rather than community, society and nature friendly) policies and regulations.

The privatization and commodification of the commons have profound, long-term impacts on communities and societies. Time tested practices of sharing, using and managing resources, capabilities, infrastructure and labour within and among communities and different user-groups are dismantled, increasing the potential for conflicts, weakening social cohesion, and diminishing the quality of eco-systems and lives.

In rural areas, local people are cut off from crucial, life-sustaining spaces and resources, and the natural environment is degraded by deforestation, land conversions, chemical contamination, diversion of water flows and over-exploitation, which negatively affect the availability and quality of wild, foraged and gathered foods. Women are especially disempowered since they are responsible for most foraging activities and rely (more than men) on their immediate environment to ensure the sustenance of their families.

Enclosures shift ownership, stewardship and control over natural and productive resources from small-scale producers, workers, communities and society to corporations and elites, who seek to maximize profits as quickly as possible and endanger the future availability and quality of natural wealth and resources. Local populations are robbed of political agency and of their rights to make decisions about how they produce, consume, live and work.

Communities across Asia report that their traditional, informal systems of using and managing natural resources and territories were far more effective in conserving and regenerating lands, soils, forests, water and biodiversity than the modern, formal systems introduced by states. However, actions by communities to defend their commons from expropriation, privatization, commodification and financialization are increasingly criminalised and violently repressed by governments.

**Commons and Commoning as Resistance**

Commons have always been terrains of struggle between different societal, political and economic actors; but at the current conjuncture of recurring crises, commons are spaces where the fiercest and most enduring resistances to capitalist development, neoliberalism and economic growth are being waged. At the heart of these struggles are core values of collective human rights and responsibilities; nature's rights; gender, social and ecological justice; sustainability; democracy; self-determination and; inter-generational equity.

Commons are non-commodified systems of production and thus a direct challenge to capitalism. They provide a framework for living, producing, consuming and exchange in which individual benefit is inextricably tied to collectivity and long-term security is not sacrificed for short-term gain. The very act of commoning is political in that it challenges established power hierarchies whereby the interests of a few are not permitted to undermine the needs of the majority.

It is crucial that we not only defend existing commons from enclosures and cooptation, but also, shape new commons to respond to challenges and crises, and to give expression to the regenerative capabilities of people and nature.

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*Focus on the Global South,*
*October 23, 2017*

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# What does Rights of Rivers Mean?

*Photo: Ganga at Bhagalpur, Bihar @ Ashish Kothari*

In July 2017, on the banks of mighty River Narmada in central India, the sight of people performing rituals on the river bank, fishermen in remote corners quietly angling, pied kingfishers hovering over us and the slowly descending sun provoked a subtle awe in me. I wondered that even though the law in India doesn't recognise non-human entities to have rights, yet the river's self-possession is an accepted part of culture, its physical form is merely one aspect of its divinity as its divinity is considered transcendental by communities living around it. And even though the sacred river is destroyed and polluted, its existence demands inevitable and necessary expansion of rights to it.

Rivers are revered like mothers in India but there is hardly anything left undone to desecrate the mother. The River Ganga passes through five states; covers 26 per cent of the land mass of the country but is heavily dammed in upper reaches and excessively polluted in the plains. The River Yamuna, one of the largest tributaries of the Ganga, is nothing more than a drain in most part of the upper reaches. Excessive pollution and damming have brutally hampered the flora and fauna of the rivers as well as its entire ecological balance, putting at risk not only the sacred rivers' balance but also any reasonable use.

Signalling a radical shift from the extractive mindset, on 30th March 2017, the Uttarakhand High Court ruled that the Rivers Ganga and Yamuna, their tributaries and the glaciers and catchment feeding these rivers have rights as a legal person. A petition was filed complaining that the state of Uttarakhand and neighbouring Uttar Pradesh were not collating efforts with the central government to curb pollution and riverbank encroachment. This judgment came a week after the passage of the Te Awa Tupua bill in the New Zealand parliament, which gives Whanganui River and ecosystem a legal personality. In modern jurisprudence, the inclusion is for two reasons: first, to create mindfulness in society about nature's rights and second to establish legal standing against depletion of nature.

Currently, the order has got a stay after the state of Uttarakhand filed a petition against the State High Court's decision at the Supreme Court of India. Uttarakhand's state government argued that the order is legally unsustainable and simply not 'practical'. Nonetheless, the decision offers the opportunity to reflect on an interesting set of complex concerns. What does it mean for a river to have rights or to be recognised as a legal person? What does it mean to extend it to all of nature? How do we re-think law and governance for the necessary wellbeing of nature? How can our institutions reflect nature's intrinsic value?

The rights of Nature have become a central concern for academics, thinkers, and activists across a range of disciplines worldwide. The idea pre-supposes radical changes in ways of knowing and relating to the natural, non-human world and in our mode of social and political life, and poses a fundamental challenge to the contemporary world over norms and practices that govern our social and political world. The idea of recognising the rights of nature, of course not in the language of statutory law, has for long been part of the worldview of various indigenous peoples and is part of their being. For example, Andean indigenous worldview believes that there is no division between the living and non-living. *Pachamama* or Mother Earth is a larger living organism that interacts with the sun and the cosmos and humans are just one component of the Earth community.

However, the important contention has been about Western law and its anthropocentric limitation, which regards humankind as the central or most important element of existence. The language of rights is limiting yet extending rights to nature is challenging the legitimacy of the system that believes in surpassing all the ecological limits to satisfy one species' unlimited "wants". For a river to have rights in the eye of Western law would mean that a lawsuit could be brought in the name of the river, injury can be recognised, the polluter can be held liable for harming, and compensation will be paid to benefit the river. What would that mean? Can the river have a right to unimpeded flow which could be equivalent to a person's fundamental right to speech? Would it mean that it can flow maintaining its unique biodiversity and habitat? Will it also mean that there is a possibility of reversing the violations (damming, interlinking, polluting etc.) done to the river? All of this would require challenging government agencies, international "development" views pushed by developmental banks like the World Bank and private firms who indulge in these violations. It would also eventually require re-thinking the basic ethics of the societies that we live in.

But contemplation is required in respect to implementation of the rights. Since the river cannot fight on its own, it would need custodians and guardians. Social movements and civil society groups here will have to push for the involvement of multiple sets of actors from different backgrounds. The decision-making process has to be decentralised and traditional/customary rights of local inhabitants (who stand to be affected the most if the health of the river is disturbed) have to be the priority of any such processes. The New-Zealand law has a greater democratic participation (involving multiple set of actors) than the

Uttarakhand High Court order. Under the Whanganui law, the parenthood is shared by the indigenous Iwi people and the government. Also, they have appointed an advisory team and a strategy team comprising of Whanganui Iwi, relevant local authorities, department of state, commercial and recreational users and environment groups. The Uttarakhand High Court order's custodian composition on the other hand is heavily inclined towards the state, although it mentions the possibility of community involvement, it is still weighted much on government official's discretion. It is assumed that the state has a duty to protect "natural resources" and determine its reasonable usage and that it will accomplish this, if it is mandated through court's ruling. However, given the past record where the state governments have not gone beyond offering technical solutions, leaving this problem to state departments is problematic.

Along with the implementation comes the restitution and compensation. Could restitution mean restoring the river as far as possible to its original form as it was prior to its violation e.g. by decommissioning dams? Who will receive the compensation? Could the communities most affected by the damage to the river be the recipients? How will they be identified and who will identify them? And crucially, what will be the form of compensation? These are questions with no easy answers; civil society will have to be intrepid and imaginative in offering solutions to the above.

Although the High Court order right now is on hold, the argument can still be extended to call for legal enforcement of such rights. For the rights of the river to achieve stronger footing, a national level law or constitutional provision is required. It is reported that a draft National Ganga River Right Act, prepared by the organisation -Ganga Action Parivar, is actively under consideration by the central government, but given the exclusive focus on Hinduism, it can be misused by right-wing forces to hijack the process and promote their own cynical agendas.

However, steadily we have to move beyond the inclusion of legal texts on rights of nature. The idea is to bring out the contradictions of the current system, question the ever-increasing human "wants" that underlie the current milieu, and eventually move beyond legal rights. Moving beyond legal rights would mean moving to a society whose moral consideration is not limited to humans but extends to entire earth community, and the rights of nature are not guaranteed but inherent in the way our societies, economies and policies are organised as well as our attitudes, our lifestyles, and our ways of being.

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# The Rights of Nature: A Balance, 10 Years After its Constitutional Recognition in Ecuador


*Photo: grafiti en el Aromo, costa ecuatoriana*

Is it really possible to shift the dominant, colonial, Western paradigm—which sees nature and spaces as resources to be exploited, dominated and controlled—using a tool from a legal or judicial system that is intrinsically linked to thinking from the same paradigm?

The answer is NO. But legal tools do, in fact, open cracks in the dominant system and its legal apparatus—cracks through which social movements, which promote critical thinking or uphold libertarian praxis, can navigate. Moreover, the rights of nature challenge the legal world, which obviously is and has been anthropocentric; and they enable us confront a dominant system and dominant policies. (1)

When the rights of nature were recognized in Ecuador in 2008, there was a parallel debate about *sumak kawsay* [“buen vivir,” or "living well"] and plurinationality, two complementary themes that help us understand and apply these new rights. The objective of the debate was to question a model based on the destruction of nature, which is profoundly colonial and ignores our indigenous fabric—hence, the use of indigenous Kichwa terms to help shift the vision.

*Sumak kawsay*, besides critiquing the idea of development, proposes organizing life under two central premises: harmony with nature, and community as a way to exercise social and political life.

The rights of nature articulated in the National Constitution are: the right to exist and be defended (Art. 71); the right to restoration, without ignoring the rights of communities to integral reparations (Art. 72); the right to precaution and the application of restrictions (Art. 73); the right not to be commodified and to allow human and community activities within the framework of *sumak kawsay* (Art. 74).

Article 71 says: *Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its evolutionary processes...*
These rights afford a broad degree of reflection and utility within the current context of the ecosystem destruction: they support the anti-mining and anti-oil struggle, wherein the structure of nature and the bio-geo metabolic processes of the earth are altered; and they enable debates against transgenics and mega-dams, which affect evolutionary processes and a river's right to flow, respectively.

In Ecuador, as in most countries in the region and probably the world, people who defend the earth, nature and territories are increasingly repressed and criminalized.

The rights of nature open up new areas of territorial defense, recognize the role of defenders and allow us to reflect on the activities that destroy nature. It is one thing to be a victim of criminalization; is is another to be a defender of rights. In fact, within the framework of recognizing the rights of nature, the Ecuadorian National Constituent Assembly of 2008 granted amnesty to 600 people who had been criminalized—recognizing that those leaders and communities who had been accused of terrorism and sabotage for resisting exploitative projects, were actually defending nature and their communities.

Capitalism managed to solidify the idea that economic projects of plunder were in the "general interest," and that those who opposed them were not only selfish, but terrorists. Nature with rights—including the right to be defended—helps change this idea of general interest, and cultivates citizens' consciousness that nature is, precisely, in our "general interest."

Despite Ecuador's magnificent Constitution, since its drafting, all the laws passed at the institutional level have curtailed the rights of nature: the Mining Law of 2009, which allows large-scale mining even in fragile areas; the Organic Law on Water Resources, Uses y Exploitation of 2014, which allows a kind of water privatization and does not respect the ecological flow of rivers; the Organic Law on Rural Lands and Ancestral Territories of 2016, which reduces nature to mere environmental services; the Seed Law of 2017, which opens the door to transgenics; and the Organic Environmental Code of 2017, which weakens protected areas and is quite lax with companies.

The judicial panorama is not good either. Generally speaking, the cases that appeal to the rights of nature and challenge activities that destroy it have not been accepted, due to a combination of judges' ignorance and a lack of judicial independence.

One of the few cases accepted was in defense of the Vilcabamba River in southern Ecuador, which has been affected by stone extraction to build a highway. In this case the judge said that, "given the undeniable, elemental and essential importance of nature, and taking into account the evident process of degradation, protecting nature is the only suitable and effective way to end and immediately remedy the environmental damage." (2)

Beyond the outcomes of courtroom lawsuits that demand respect for the rights of nature, the actions of society are important—as these actions propose new horizons and even new geographies. For example, when there was an oil spill and fire in the Gulf of Mexico, a lawsuit was filed in Ecuador against the responsible company—even though it does not operate in Ecuador, and the event did not take place within Ecuador's borders. Nevertheless, the argument presented was that all of nature is connected, that it has rights, and that it must be protected. (3)

The rights of nature have rapidly permeated social processes, and have become incorporated into the agendas of many movements, several academic analyses and society in general.

The "Path of Truth and Justice for Nature and Peoples," a process currently underway in Ecuador, seeks precisely to recover memory about nature and territories; and to analyze both what has happened over the past ten years, and measures that have not been taken to remediate earlier activities. (4) This process is already encouraging, as it is building bridges, weaving networks, and examining different territories' problems with a greater degree of complexity regarding the rights of humans and nature.

The Path's preliminary assessment is that nature is now more visible. Slowly, it is being incorporated into school programs and into the discourse of public administrations; it is more frequently expressed in art and in social networks; and most of all, it is very present in social movements. The mental shift caused by recognizing the rights of nature has had something to do with this.

In the stories peoples tell, it is clear that harmonious relationships with nature inspire and give breath to their struggles; and even though capitalism invades every corner of life, people still live, resist and reorganize. Therefore, the State should strengthen, protect and recognize these expressions of resistance and people's recovery of relationships with nature.

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(1) Anthropocentric: That which places human beings at the center, ignoring everything else and thus justifying the destruction of nature
(2) File Number: Judgment No. 11121-2011-0010
(3) Protection Action No. 0523-201/17111-2013-00002
(4) www.verdadparalavida.org

# Corporations as Subjects with Rights: An Architecture of Impunity


When we speak of rights, we almost always refer to the rights of individuals, peoples, and minorities who are fighting for a dignified, more equitable and just life. However, we cannot ignore that corporations, especially large transnationals, also use the rhetoric of rights. Along with States and many international organizations, corporations promote certain rights that trample over people. Rights such as "free trade" or "free competition" help guarantee them access to and control of more and more areas of life. Lands, water sources, forests and mountains on which countless peoples and communities depend are handed over within the framework of large transnational corporations' "commercial rights."

*Many people think that a river is just water and fish, but for us it was the source of our survival and a matter of culture. From the dawn of our ancestors, the Dulce River sustained our people. It is a matter of religion, it is sacred. But now it is dead" (1).*
Chief Leomir Cecilio de Souza, Krenak Peoples, Brazil

*"What Shell and Chevron have done to the Ogoni people, to their lands and rivers, streams and air, reaches the level of genocide. The soul of the Ogoni people is dying and I am its witness" (2).*
Ken Saro-Wiwa, Ogoni People, Nigeria

*"Throughout my life I have seen how our rivers, rainforest and air have been affected. In what was a paradise of natural beauty where we could fish and collect medicine from the forest in order to live a life of dignity, the oil company arrived, with no respect for the lives of people or nature" (3).*
Humberto Piaguaje, Siekopai People, Ecuador

*"We dream of our land. Everything we see, walk on, or feel with our bodies belongs to our land. We need the land to be able to understand ourselves, to know who we are. We are not a people without our land. The government*

*should understand this. What is happening to us is not negotiable. It is not possible to compensate the land" (4).*
Gregory Bahla, Orissa, India

*"We call this a green desert because this eucalyptus plantation causes a lot of contamination, it causes a lot of problems for us and our children. This green desert does not bring us health, it does not bring us education, it does not bring us food; the birds don't even have the freedom to live in this plantation. It only brings wealth to people from outside; it brings nothing to us. And I feel outraged to be here, under a green desert within indigenous territory" (5).*
Chief Jurandir, Pataxo people, Brazil

These accounts give us an idea of the destructive potential of transnational corporations on the lives of traditional peoples. That which cannot be sold from iron mining, oil and charcoal extraction and pulp production is distributed in communities that have less political and economic power, thus enshrining a relationship of environmental injustice (6). The profits obtained from exploiting natural resources are privatized and transferred to the countries where companies are based, or to local elites. The effluents, pollution and destruction of territories remain in these villages, whose social existence and cultural identity are completely intertwined with the natural environment.

Transnational corporations are complex economic and legal structures, composed of different limited liability companies that operate in different jurisdictions. The fragmentation and intended independence of these companies end up exempting transnationals from the damages their subsidiaries cause. The current international regulatory framework protects transnational corporations and ignores the victims of their harmful operations, creating what has been called the "architecture of impunity" (7).

“The structural logic of these societies makes it difficult to attribute direct responsibility of these groups. Each commercial society has an autonomous architecture and its own active and passive legal sphere, making it impossible to indict its partners for their respective social liabilities (limited liability)” (8).

Existing international standards—by not addressing these issues and because they are of a voluntary nature—are incapable of promoting actions to get companies to take responsibility when they violate human or collective rights. They do not discuss or create mechanisms to reduce the great inequality in access to justice. In addition to sheltering themselves behind this intricate business structure, transnational corporations have the support of the judicial power's oligarchic structure in the countries in which they operate, as well as the best law firms in the world. One may ask whether “justice”—thought of as legal norms and the legal system—is really created and implemented to penalize those who commit injustices.

**Who is at Risk?**

Neither the latest initiatives within the UN Working Group on business and human rights, nor John Ruggie's publication of the Guiding Principles on

Business and Human Rights, have established any direct obligations for States or corporations responsible for violations. These voluntary initiatives do not even suggest that corporations should worry about the risks and costs of conflicts caused by the human rights violations that their operations cause. Let's see two paragraphs from the aforementioned document (9):

"Where these agencies [the entities officially or unofficially linked to the State that can provide support or services to business activities] do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms—[...]."

[States should] "ensure that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses."

In other words, according to this perspective, those at risk are not the communities whose territories are destroyed, but rather the transnational corporations themselves. According to John Ruggie, "social risk occurs when an empowered stakeholder takes up a social issue area and applies pressure on a corporation (exploiting a vulnerability in the earnings drivers – e.g., reputation, corporate image) [...]" (10). Transnational companies are the ones that are vulnerable and fragile in the face of traditional peoples' denunciations. Such peoples "have erected a wall of protection around their food cultures and specific territorialities, with which they ensure their physical and social reproduction. They do so not only by demanding compliance with the constitutional devices and the new laws of federal states, but also through direct actions" (11).

In this way, corporations must be alert to these complaints and develop corporate strategies to promote "better relations with local governments, NGOs and communities that can help ease approvals processes for project development, expansion and closure and help resolve disputes and avoid situations in which local groups might hinder or even prevent mining from taking place (...)." It is necessary to facilitate "access to [natural] resources, such as ore bodies, in environments that are increasingly challenging or remote" (12).

It is not a matter of modifying the business practices that traditional peoples point out violate their rights, but rather mitigating, moderating or neutralizing them through a number of strategies such as, for example, "social responsibility" initiatives.

**What to do in the face of an intrinsically violent economy?**

In order to confront this structure that exempts transnational corporations from responsibility, various social actors from different countries of the world (such as academics, traditional peoples, non-governmental organizations or unions) have discussed the creation of a binding instrument that would hold them responsible for human rights violations. A "Binding Treaty on Human Rights and Companies" whose signatory States "establish civil and criminal liability for

corporations and their directors. [...] They must be held responsible, regardless of whether they have acted as perpetrators of the crimes or as accomplices; and this responsibility must be extended to all links of the productive chain of the corporation in question" and they must incorporate the obligations of the treaty in multilateral investment agreements, "in order to link the financial and arbitration institutions to human rights standards" (13). In addition to other devices, it is suggested that human rights obligations "be incorporated into the statutes and commercial contracts of companies, so that their violations constitute an infraction of international law and of their contractual obligations" (14).

To confront the violations of transnational capitalism it is necessary to transnationalize social struggles, joining people that suffer but that also resist violations. In this regard, an initiative like the International Coordination of People Affected by Vale is exemplary. (Vale is a Brazilian multinational mining company and one of the largest logistical operators in the country.) This coordination brings together indigenous peoples, quilombolas (communities formed by slaves who managed to escape captivity), peasants, union members and mine workers from various countries where Vale operates. "We work together to develop tools and common strategies to expose the true Vale, challenge its absolute power and strengthen the workers and all populations affected by its actions" (15).

It is important then to ask: Is it possible to have a capitalist production model without the innumerable damages and violations to peoples and forests and other devastating consequences? Which populations have their rights trampled when the rights to "free trade" or "free competition" are placed above them? The reality is that environmental and social injustice is a key piece of the capitalist economic system.

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(2) *Shell en África,* Eduardo Galeano. Available at: http://www.voltairenet.org/article124705.html
(3) *Atingidos pela Chevron no Equador cobram reparação de danos ambientais, sociais e culturais na Justiça brasileira*. Available at: **https://fase.org.br/pt/informe-**se/noticias/atingidos-pela-chevron-no-equador-cobram-reparacao-de-danos-ambientais-sociais-e-culturais-na-justica-brasileira/
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(6) Environmental injustices are a set of "mechanisms through which unequal societies, from an economic and social standpoint, unload the greatest burden of the environmental damage of development onto low-income populations, discriminated racial groups, traditional ethnic peoples, working-class neighborhoods, and marginalized and vulnerable populations." Manifesto of the Rede Brasileira de Justiça Ambiental (Brazilian Environmental Justice Network), 2001.

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(13) HOMA, 2017, p.8
(14) HOMA, 2017, p.9
(15) International Coordination of People Affected by Vale https://atingidospelavale.wordpress.com/quem-somos/

# Action Alerts

### Brazil: Land occupation wins award for producing food free of agrochemicals while restoring the forest

Since 2003, the camp that bears the name of environmentalist, José Lutzenberger, has reconciled the production of foods free of agrochemicals with the recovery of native "Mata Atlantica" forest. For this reason, it was chosen for the Juliana Santilli award, in the category of increasing and conserving agro-biodiversity. The area, which for decades was degraded by landowners' cattle ranching activities, has been slowly recovering. In addition to the recovery and preservation of the native forest, around 90 per cent of what the peasants produce goes to regional schools through the National School Food Program. Read the article at:
https://www.brasildefato.com.br/2017/10/28/ocupacao-do-mst-no-parana-ganha-premio-por-recuperacao-da-mata-atlantica/

An article in the 2011 WRM newsletter warned about one of the first carbon projects in forest areas, its impacts on communities, and the local struggle, which included the occupation of lands in 2003 at the José Lutzenberger camp. Read the article at:
http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/forest-carbon-project-in-parana-brazil-reduction-of-deforestation-and-persecution-of-local-communities/

In 2012, WRM produced a video about this struggle:
AT: http://wrm.org.uy/videos/disputed-territory-the-green-economy-versus-community-based-economies/

### Widespread abuse and rights violations funded by big conservation organizations

A new Survival International report documents serious instances of widespread and systematic human rights abuses between 1989 and the present day in Cameroon, the Republic of Congo, and the Central African Republic (CAR) by wildlife guards funded and equipped by the World Wildlife Fund (WWF) and the Wildlife Conservation Society (WCS), the parent organization of New York's Bronx zoo. Documented abuses and harassment are likely just a small fraction of the full picture of systematic and on-going violence, beatings, torture and even death. Indigenous people are accused of "poaching" because they hunt to feed their families. And they face arrest and beatings, torture and death, while big game trophy hunters are encouraged. Which 'rights' are then protected under conservationist projects? Access an article and the report here:
https://www.survivalinternational.org/news/11828

### Treaty on Transnational Corporations and Human Rights

In October, the Inter-governmental Working Group of the United Nations Human Rights Council met in Geneva to develop an "an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises." The Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity presented its draft Treaty on Transnational Corporations and Human Rights, which was the result of a broad collaborative process among affected communities, social movements and civil society organizations. The struggle for survival, and the strategies deployed by people and communities affected by the companies, inspired the proposals for this Treaty. The process began with the construction of a "Peoples Treaty" in 2014, the presentation of "8 points" before the first session of the Working Group in 2015, and six presentations on specific topics in the second session in 2016. See more information on the Campaign here:
https://www.stopcorporateimpunity.org/call-to-international-action/

See the Treaty on Transnational Corporations and Human Rights here:
https://www.stopcorporateimpunity.org/wp-content/uploads/2017/10/Treaty_draft-EN1.pdf

## Recommended

### Why Russia's indigenous people are wary of national parks

Russia's Numto Nature Reserve in western Siberia contains a sacred lake, endangered cranes and valuable wetlands for the indigenous Nenet and Khanty peoples. Last year, the nature reserve's borders were redrawn by the regional government to make way for new drilling operations for the Russian oil company Surgutneftegas, forcing out indigenous groups. While Natural resources minister Sergei Donskoi recently projected a 22 per cent increase of

protected areas, particularly national parks, by 2025, Indigenous Peoples worry about possible prohibitions to continue their hunting and fishing traditions.
Read more (in English) here:
https://www.upi.com/Top_News/Voices/2017/05/10/Why-Russias-indigenous-people-are-wary-of-national-parks/1881494417651/

**"The struggle for land is essentially feminist"**

An interview with University of Ghana professor, Dzodzi Tsikata, makes it clear how "anyone who declares himself/herself to be a feminist cannot fail to recognize the connection between women's rights and the right to land." Therefore, she adds that "women's rights affect many interconnected spheres that cannot be separated. If one focuses only on one aspect and ignores the rest, women's rights are not realized." Read the full interview in Spanish at:
https://www.brasildefato.com.br/2017/10/26/la-lucha-por-la-tierra-es-esencialmente-feminista-dice-investigadora-de-ghana/

**Indonesia: Oil palm, money and power**

The commercial power of the oil palm industry in Indonesia is intertwined with politicians and government authorities at the highest level, which leads to violent grabbing of land from peasant and traditional communities. This article, part of the series “Indonesia for sale”, is the story of money, politics and power in Seruyan, Borneo, Indonesia, one of the main focal areas of the oil palm industry in the country.
Access the article in English here: https://thegeckoproject.org/the-making-of-a-palm-oil-fiefdom-7e1014e8c342

**The sin of being a woman and ecologist in Latin America**

The current wave of murders directly aimed at environmental and feminist activists demands a reflection that includes a gender perspective. The many community projects based on the cooperative model of self-management are being led by women: women who know and want to be free of exploitation—be it work-related, material, cultural or patriarchal—and who understand they are not free as long as their sisters are not.
Read the article in Spanish at:
https://cantovivo.wordpress.com/2017/05/11/9418/

*A recent investigation into the 2016 assassination of leader Berta Cáceres concludes that the crime was not an isolated incident, but part of a plan involving the company Desa, security companies and sectors of the Honduran State. Read the report (in Spanish) here:* http://wrm.org.uy/actions-and-campaigns/un-informe-revela-que-el-asesinato-de-berta-caceres-no-fue-un-hecho-aislado/

**“Biodiversity offsetting: A threat for Life”**

This new briefing, published by the NGOs Re:Common and Counter Balance, exposes the absurd logic behind biodiversity offsets and explains how it is deployed by private companies – with the support of governments and the legitimization of some conservation organizations and academics – to greenwash their reputation and continue with business-as-usual.
Access the briefing on English here: http://www.counter-balance.org/nature-destruction-cannot-be-compensated-for-say-ngos-warning-communities-against-biodiversity-offsetting/

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