
Why is it important to reflect about 'rights'?

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 (ADD LINK TO PDF)

(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://rightsandresources.org/en/blog/indonesia-land-allocation-policies-practices-favor-corporations-communities/?utm_source=People+and+Forests+E-News&utm_campaign=49bdb2aa89-People_and

(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/>