

- Abstracts -

Towards a rights-based agenda in international forestry?

Berkeley, USA, 30-31 May 2009

Donald K. Anton

Elements of a Modern *Carta de Foresta*: Human Rights as Part of the Emerging International Norm of Sustainable Forest Management

This paper is situated within the seemingly intractable debates about the appropriate balance between a state's power to decide when and how to exploit the economic potential of its forest resources with the development of an international forest law to govern national decisions over forests in order to perpetuate them indefinitely. The international law that is emerging is still largely *lex feranda*, but it can be reasonably demonstrated that an international consensus now exists establishing sustainable forest management (SFM) as a major norm of international (and national) forest policy. While the contours of SFM remain problematic, I maintain here that human rights are and must be a part of the content of SFM.

The link between forests and individual rights has a long pedigree. Lord Coke, for instance, in the Fourth Institute refers to Magna Carta's sister, the 1217 Carta de Foresta, as "the Charter on which the lives and liberties of the woodland population depended". While feudal in character, including a conception of forests much broader than today, the Forest Charter nevertheless entrenched, through repeated confirmation, the rights of individuals to engage in forest activity previously outlawed – especially activity with economic bearing. As a result, and just as importantly, the *Carta de Foresta* and its history exposes a still persistent tension between the preservation of forests and their use -- sustainable or otherwise -- under the rubric of rights.

The tension between forest preservation and use sets up the central thesis of this paper; namely, that forest conservation is best (or at least effectively) achieved through sustainable forestry that incorporates a human rights basis. In particular, I exam how relevant civil, political, economic, social, cultural and environmental rights can assist in forest protection (and in equally important benefit-sharing from sustainable use) by forcing a shift from current legal and political frameworks driven by short-term economic gain. Drawing on the jurisprudence of international, regional and national human rights bodies and courts, I propose what I consider essential human rights elements of a modern Charter of the Forests.

Shaunna Barnhart

A Right to Resources, A Right to Dignity: Community Forestry and the Promotion of Human Rights

With well over 14,000 community forest users groups benefiting over 35% of the population, community forestry in Nepal is often cited as a successful example of

localized resource governance that empowers communities and fosters greater social and economic equity through providing local communities rights over local resources and its uses. Such an approach has been documented to alleviate poverty, foster both gender and class equity, and to ensure equitable access to resources. Building on their success in creating community governance in resource management, these groups are beginning to actively promote other programs such as building clean drinking water delivery systems, job training, micro-lending, alternative energy technologies, and building schools. This paper argues that through guaranteeing forest rights, the government has created a platform from which people can both exercise and demand other rights ranging from environmental to political to human. Community forest groups have organized rallies on issues such as global human rights and demanding national level democratic elections. However, it is not simply large rallies where we see community forestry groups promoting a wider rights agenda. Their community level work in health, education, and quality of life areas demonstrate both their commitment to and potential impact on a wide range of human rights. The central argument of this paper is that the success of a rights-based approach to community forestry has become a launching point for the promotion of a broader range of rights, including the right to health, education, and improved living conditions. This paper will explore both the potential and the current trends within Nepalese community forestry to become the launching point for promoting and securing a broader range of rights, specifically basic human rights to live with dignity, and the role that such groups across regions can play in creating inclusive futures.

Stefan Dorondel

Who Benefits from the Forest? National Park, Land Reform and the Clash of Property Rights in Postsocialism

The academia as well as international donors have spent much energy advocating a property rights approach with regards to forest. Advocating property rights meant often an implicit disdain of the state rights and motivations. The state was seen as a rapacious administrator of forest in contrast to local communities whose forest administration and exploitation was considered more sustainable. The paper analyzes the re-creation of a National Park in postsocialist Romania. The re-creation of the park took place in the early 1990s at the same time as forest restitution to the historical owners. The two events triggered a competition of claims over forest. The claims were based on two types of arguments. Villagers referred mainly to historical rights over forest while the National Park based its claims on actual rights over forest. The Park claimed property rights over forest for non-utilitarian purposes: for scientific research, recreation and biodiversity conservation. Villagers argued that forest is essential for their livelihoods. The state claimed that forest is a protection against air pollution. Villagers' argument was local; the National Park's arguments were national. The paper seeks to understand how different actors have built claims on forest. It analyzes the competing notions of rights over forest and different legitimacies. The paper analyzes the competition between the individual claims over forest property rights (villagers') and state's actual property rights over the same forest (the Park). The conflicts for competing rights largely opened the door for maneuvers by powerful local actors. The mayor of the village, for instance, has imposed his own agenda, which is uncontrolled forest exploitation through his own logging firm, by manipulating the tensions between the villagers and the Park. Without claiming property rights over forest he succeeded to get rich from both state and private forest (over)exploitation.

The paper demonstrates that an ethnographic approach and in-depth fieldwork bring insights into main actors' actions, motivations and agendas. It also suggests that careful attention should be paid to who actually benefits from forest since often those who gain mostly have no property rights over it.

Victoria Edwards

Multiple Uses and Associated Rights: key issues from a thousand years of institutional evolution in the New Forest, UK

Governments around the world have begun to give local people greater rights and responsibilities in relation to forests. It is hoped that by so doing bureaucracy will be reduced, decision making decentralised, benefits distributed more equitably, and forest utilisation regulated more effectively. However, simply assigning rights to local users without ascertaining the range of uses of the forest, diversity of interests among users and the capacity and characteristics of existing local institutions to take on additional responsibility, may well exacerbate rather than solve the problems associated with the appropriation of forest resources.

This paper explores such critical issues emerging in the rights based agenda and searches for possible solutions from a specific forest with a 1000 year documented history of institutional evolution.

So named in 1079, England's 'New Forest' is one of the most complex, multiple-use and multiple-rights forests in existence. It comprises state and privately owned forest and farmland with an extensive system of overlapping property rights to 'commoners'. It has national park status and is host to a plethora of international conservation designations. Situated in one of the most developed parts of the south of England, a particularly well educated resident population lives alongside practicing 'commoners'; and all compete to protect their private, communal and de facto property rights.

The story of this evolving forest has always been a dynamic and volatile one. Lessons learned include, inter alia: aligning international, national and local interests; reconciling present demands with future needs; gaining proper representation amongst participating stakeholders; adopting new technology to aid evidence-based decision making; formalising successful customary institutional arrangements; and furthering institutional evolution in a rapidly changing socio-economic context.

The New Forest cannot present definitive solutions to a global rights based approach to forestry, but can contribute to the identification and analysis of potential problems and provide an interesting exploration of possible solutions.

Maira Moeliono and Godwin Limberg

Putting a Park in the Right Place: A rights based approach to conservation in developing countries

Supported by international advocacy groups, the issue of rights and tenure has also emerged on Indonesia's agenda. However, as a case of the Kutai National Park demonstrates, the understanding of forest rights is very murky. In this 200,000 hectare national park, Bugis migrants claim about 23000 hectares. Local government wants to

excise this portion claiming autonomy and the right to develop its people, and several mining companies are waiting for the opportunity to start mining the coal underneath the park. More recently Dayak indigenous people used their 'indigenous rights' to protect the park but in fact clearing and occupying about 1,000 hectares.

All parties claim rights but what kind of rights? Do indigenous people have rights over the area because they are indigenous? Do migrants have rights because they cleared primary forest? Does the state have the rights to claim the area for protection of a public good with or without free prior informed consent? How will the local government carry out its duty to serve its people in the park without rights over the protected areas? And with all these rights who are the duty bearers and what kind of duty do they bear?

This paper will take on the question of rights and adherent duties within the context of decentralization, mobility of people and the consequent mixing of adat, the different international, national and local agendas and the pressure of privatization all over Indonesia. We will discuss the different understanding of rights over land, the need for security of rights and the rights to have these protected by the state. At the end we will try to conceptualize a more rights based approach to conservation applicable in developing countries such as Indonesia.

Fred Nelson

From 'CBNRM' to 'Rights-based' Forest Governance: Conceptual and Operational Challenges based on African Experiences

The central challenge facing rights-based approaches to forestry, and natural resource management more generally, is arguably how such approaches can be translated from rhetoric to practice. This paper will draw from a wide array of regional experiences with community-based natural resource management in east and southern Africa, based on an ongoing book project (involving about 15 co-authors) being carried out by the IUCN Southern Africa Sustainable Use Specialist Group which seeks to understand how and why key institutional reforms are adopted and resisted in different contexts across the region. This material will highlight several key points which may be central to the development of rights-based forestry in other parts of the world as well:

The barriers to rights-based approaches lie principally in the political economic interests that non-local actors, particularly governing elites and private commercial interests, possess for controlling and exploiting natural resources. However, it is important to understand that those external interests vary greatly according to macro-political context and the nature of forest resources in different places (e.g. relative commercial values), which is an important factor in the prospects for devolving rights to the local level.

In east and southern Africa, the difficulty of shifting rights to the local level is exacerbated by historic centralization of power in the hands of the state, the general weakness of civil society, and the importance of patronage networks based on valuable natural resources in reinforcing existing power relations.

As a result of these factors and in contrast to the way decentralization reform processes are often framed, it is often unrealistic to expect the main impetus for rights-based reforms to come from the political center, or from foreign donors who may wish to promote rights-based approaches but in practice are often closely tied to central governments through financial and diplomatic relationships.

Catalyzing rights-based approaches thus requires both a conceptual and an operational focus on capacity and agency at the local level in order to understand the factors that enable or hinder communities from advocating for their own resource interests, and for developing practical strategies that support this local agency.

Blake Ratner

Rights, conflict and forest governance in Cambodia

In Cambodia, where domestic legal mechanisms for resource allocation and dispute resolution have failed to resolve intense conflict over forest tenure and management, community claims are often framed in terms of more fundamental human rights. Based on a comparative analysis of efforts by domestic NGOs working to defend forest-dependent communities, this paper explores the practical efficacy of a range of rights-based approaches in securing equitable resource access and reducing conflict. Specifically, it compares approaches emphasizing resolution of competing tenure rights claims by appeal to the courts and local authorities, assertion of rights to decentralized management and local participation in decision-making, and advocacy of broader economic and social rights, including the rights of ethnic minorities to self-determination. Because the legal and judicial system is so flawed, the ability to align the actions of multiple stakeholders domestically and internationally is a key factor influencing the efficacy of these approaches. The paper discusses the implications of the Cambodia experience in international perspective, and concludes with recommendations for enhancing the value of human rights levers in improving forest governance and livelihood outcomes for forest-dependent communities.

Jesse Ribot

Rights and Stratification: Access Control and Maintenance in a Sahelian Forest

Rights are claims enforceable with the support of law, custom or convention. Those who have rights, then, should be able to successfully make claims—e.g. to enforce or impose their will so as to get what they want. But successful claims are made through more than just 'rights'. People also enforce claims through all kinds of shenanigans— theft, trickery, stealth, violence, capabilities, differential resources, or rights negation. This talk will build on Ribot and Peluso (2003) to put the role of laws, custom and convention in place among other factors by which people establish their 'rights'. Property is the right to the flow of benefits from a thing. Access is the ability to benefit from things—where ability is broader than right and is evidenced by the fact or act of benefiting. The talk will focus on the differences between rights to a flow of benefits and abilities to capture the flow of benefits from forests in the Tambacounda region of Senegal. In explaining this difference between rights and abilities, the talk will explore how social differentiation is shaped by or reflected in struggles over benefits—such as in the formation of relations among actors who 'control access' and who must 'maintain access' through those who control access. In this sense, the talk examines how relations of access replace relations of production and exchange in a manner that shows that class-based differentiation is inadequate to explain multi-stranded material- and identity-based differentiation.

Neera Singh

Democratic Spaces across Scales: Towards more inclusive community forestry

In the quest to democratize forest governance, practitioner and academics tend to focus more on altering power relations between the State and local communities or forest users; with relative neglect of challenges of altering power relations within communities. Often the most dependent forest users, for e.g. women, tend to be the most excluded from forest decision-making even within community forestry. Drawing on multi-scalar ethnographic research from Orissa, India, this paper shows that constraints to and possibilities for democratic participation for women are different across spatial scales. Further, spaces for participation and democratic action across scales are intermeshed and in dynamic interaction. In the Orissa case, marginalized women gained voice and visibility by organizing at a regional scale, and used democratic spaces at higher spatial scales to overcome constraints to their participation at the community level. The case demonstrates how closer attention to issues of scale and fostering cross-scale linkages can help in deepening democracy and addressing issues of social justice in and inclusion within community forestry. Studies indicate limited success of top-down approaches to solve complex social and political processes. While top-down approaches have limited success, bottom-up processes that challenge unequal power relations are unlikely to emerge from locales and spaces where these power relations are most strongly entrenched. This paper suggests ways to address this problem by focusing on meso-scales and locales where power relations are less strongly entrenched. My research encourages thinking beyond the dichotomy of bottom-up or top-down processes and consider meso-scales, locales and influences that draw from the spontaneity of bottom-up emergence, yet brings to it the intentionality of social change driven by ideas of social justice, equality, and rights that might be missing from the locales at which change needs to be effected.

Oliver Springate-Baginski, Madhu Sarin, Soumitra Ghosh, Purnamita Dasgupta, Indranil Bose, Ajit Banerjee, Kailas Sarap, Pradeep Misra, Sricharan Behera, M. Gopinath Reddy, and P. Trinadh Rao

Forest Rights Reform and the State: The political ecology of democratising forest governance in India

- As late as 1995, and despite the much hyped and heavily donor-funded participatory 'Joint Forest Management' programmes, Gadgil and Guha could justifiably lament that in India '[t]he structure of the administration of public (including forest) lands remains essentially colonial in nature'. A wide range of forest rights deprivation scenarios, caused by the composition and management of the national forest estate, continued to marginalise and oppress an estimated 200 million or more forest dependent people across the country.
- After years of intensive civil society mobilisation the so-called Forest Rights Act 2006 has dramatically broken this impasse, providing a strong legal basis for recognition of forest-dependent peoples' rights, both to privately cultivated land in forest landscapes, and to collective control, management, access and use of village forests.
- Yet although the legal provisions of the Act are radical, their implementation, since the Act came into force in January 2008, has so far been highly problematic.
- The paper assesses the implementation processes to date and their impacts, based on field evidence from 18 local sites reflecting the range of forest rights deprivation scenarios in three eastern states in India (West Bengal, Orissa and Andhra Pradesh), gathered during 2008

- There are two main areas of analytical focus. The prospects for poverty alleviation from tenure reform and progress to date are assessed. Secondly, the ways in which the implementation of the legal reform are in practice being diverted in order to perpetuate 'business as usual' for the forest bureaucracies are considered.

- The wider implications for international debates are drawn out, in particular the challenges of asserting democratic legislative oversight of forest bureaucracies accustomed to a high degree of autonomy.

-Three documentary films on these issues, produced within the research project in conjunction with leading regional activist directors, (and currently being completed) will also be available for broadcast.

William Sunderlin

The Evolution of Rights in the Forest: Three Critical Turning Points

This paper examines three historical turning points that have shaped the contemporary status of rights in the forested landscape. The first is imposition of state control over forest lands and resources centuries ago, involving the creation of statutory laws and regulations over and against a system of customary rights and management. The second is a trend, begun in many countries several decades ago, in which heavy-handed control of forest lands and resources has given way to forest sector decentralization and devolution, recognition of customary rights and management, increased statutory rights to access and ownership for indigenous peoples and other forest dwellers, and proliferation of community-based forest management. The third turning point is an incipient trend toward forest land and resource grabbing, carried out by the state and large-scale enterprises, propelled in part by an imminent energy revolution (related to peak oil and climate change) and by land shortages for various forms of industrial extraction and production. The three junctures are experienced unevenly among and within countries, and while largely sequential, can be experienced simultaneously. The paper examines the underlying causes for these turning points, and reflects on challenges and opportunities for strengthening local forest rights.

Peter Leigh Taylor

Market-based Forest Governance and Community Resource Rights

The emerging rights-based agenda in international forestry seeks to consolidate and deepen new resource rights produced by the dramatic global shift in tenure and governance from states to communities and indigenous groups. This paper brings together economic sociology perspectives on "embeddedness" with new agrarian movement research and draws on cases of community-based forest associations in Mexico and Guatemala to explore the relationship between market-based governance and broader resource rights claims, such as those based on identity or place. Market-based governance has been widely assumed to afford the best foundation for expanded and secure community rights to forest resources. Communities' external and internal legitimacy as resource managers has often rested on their effective participation in commercial timber, non-timber forest product and services markets, and in related market-oriented schemes such as environmental certification. Market-based governance clearly responds to local livelihoods' dependence on forest resources and has generated significant support for sustainable management within and without

communities. Yet similar to Taylor and Buttel's 1992 observation regarding social justice advocates' turn to environmental science for support of their agendas, market-based governance can also undermine community resource rights agendas. Market-based governance often essentializes communities as "community enterprises" while simultaneously individualizing participants and introducing new hierarchies and conflicts. It often overlooks how forest resource activities pursue social, symbolic, political and technical objectives in addition to economic imperatives of efficiency and competitiveness. An uncritical market orientation exposes communities and their organizations to logics and practices of a global economic system which may undermine the ability to embed resource practices within local historical contexts. "Inefficient" and uncompetitive market performance may also undermine legitimacy with diverse stakeholders. This paper aims to develop a preliminary framework that can contribute to critical analysis of the complex issues posed by market-based governance for broader rights claims at a key moment within the community forestry movement.

Phuc To Xuan

How Does Forest Devolution Contribute to Agrarian Differentiation in the Vietnamese Uplands?

The Vietnamese government implemented forest devolution in the mid-1990s. By doing so it transferred the management power over the large area of forestland from its hand to individual households. Local households now enjoy a bundle of rights to land including rights to exchange, transfer, lease, mortgage, and pass the land on to third parties. This paper examines how these rights are exercised on the ground and assesses the impacts of it on the local population. The findings show that the exercise of these rights is often conditioned by larger economic processes, particular by the commodity markets of softwood tree, cassava, and tea *and* the availability of household's resources such as labor and capital. In the study village, devolution provided the households that have knowledge and capital with ample opportunity to accumulate land and become landlords. By contrast, poorer households having limited labor force and capital were dispossessed and became landless. The process of agrarian differentiation experienced in the village is strongly driven by expansion of the commodity markets in the country. The paper highlights that individual rights granted to the landholders under the devolution legislation do not necessarily guarantee the landholder a material benefit. For some landholders, these rights are strongly associated with risks. This makes outcome of devolution unanticipated.

Paul Vantomme

Implementing rights-based forestry legislation in Central Africa: lessons from country experiences

In the Congo basin, subsistence use of the many non-timber forest products and wildlife resources have existed for centuries without causing major deforestation or threats for extinction of forest species. Informal rules and ancient old customary practices were sufficient to steward the overall 'management' of the forests among the many and diversified user groups. However, this century old traditional law and framework of regulating customary practices is no longer adequate to deal with the complexities of a fast increasing *commercial* use of these resources in the Central African region. A region that is at the same time facing a booming population growth and is becoming

increasingly accessible to inter-, national and regional trade thanks to an ever further reaching network of roads and logging tracks. Several studies by major organizations such as FAO, IUCN, CIFOR and many others draw global attention to the fast increasing and by far un-sustainable exploitation rates of major commercial forest-based timber- and non-timber species. The FAO implemented recently a regional project in the Congo Basin to elaborate in a fully participatory process with major forest stakeholders, and representatives of governments, private sector and local people associations an innovative model of a rights-based legislation governing the subsistence and commercial use of NTFPs, called "the Regional NTFP Directives". This model legislation was officially endorsed by the COMIFAC member countries (October 2008) for integration into their national-level forestry legislations and rules. This model legislation supplements relevant traditional customary rights with modern law and rules that aim to improve conservation of the forests while at the same time govern their commercial exploitation to the benefit of those people, whose livelihood depends on the forest. The paper describes the process of how this rights-based legislation model was elaborated and reports on lessons learned with their implementation and field testing by the countries in the region.