

able to make claims, even where there is an enforceable legal system

Those in struggle seek:

- to move beyond these formal mechanisms of protection
- to engage in a broader struggle.

This involves

- a process of confronting and transforming unequal power ideologies, relationships and structures that deny rights.

Some key tools are to:


- recognise and accept the oppressed as the central actors in the process of change;
- engage in protest and resistance wherever the abuse of power affects peoples’ capacity to sustain their daily livelihoods;

- negotiate responsibilities with authorities at different levels to change the adverse power equation;

- confront not just the state, but also other actors whose action impinges on people’s basic rights, including corporations, businesses, traditional leaders and development agencies;

- run creative judicial interventions to challenge and expose the system and the legal edifice that perpetuates the system;

- move beyond the traditional ineffective and often dubious protest-oriented and monitoring approach to human rights strategies;

- present concrete alternatives grounded in people’s needs and mobilisation towards sustainable solutions, to recharacterise the state and other duty-bearers, and renegotiate their engagement with the people. 



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EVA ROBLES

What is the problem with the concept of rights, what is it that allows it to be co-opted?

That’s a complicated question. It’s linked to the question of what’s happening to the legal system. We used to be able to use the legal system as a weapon in our defence, but today we see it being used more and more to destroy collective rights and the rights of communities.

An example is what has happened in Mexico. The 1917 Constitution, adopted after the Revolution, responded to the concerns of the people and enshrined their right to their land, to their wish to have land seen as social property, whether in the form of the *ejido* [land held in common] or as an indigenous reserve. In the case of the indigenous communities, their right to hold communal goods

was recognised. This allowed the communities for many years to breathe freely and to work their land. But in 1992, Article 27 of the Constitution was amended, with important changes in the articles referring to land, forests and mining. Out of this amendment the New Agrarian Law was born, which in its turn led to the Programme for the Certification of *Ejido* Rights (PROCEDE). The official objective of this programme is to give “legal certainty” to members of the *ejidos* so that they have “full possession” of the land. In other words, it permits individual ownership of land. Later the Programme for the Certification of Communal Rights (PROCECOM), which applies the same mentality to indigenous land, was created. At the same time, the government changed laws governing the environment, water and mining, all in the sense of permitting greater private ownership.



The main decision-making power in both an *ejido* and an indigenous community lies with the assembly, which decides how land, water and forest should be used. But now, after the introduction of “full possession”, an individual can decide to sell or rent land or forest. This weakens the assembly, because it seriously erodes its powers. After a few years there is an increase in migration towards the urban areas or the United States, and a crisis erupts.

Why did people accept PROCEDA and PROCECOM?

People were deceived because the attorney-general in charge of agrarian matters told them that PROCEDA was a mechanism for resolving conflicts. They were told that it would bring security to their families, to the *ejido*, that it was nothing to do with selling land. They took at face value the government’s commitment to recognise their rights. They thought that, with the strengthening of their rights over their territories, they were going to be in a better position to resolve land conflicts and territorial disputes with neighbouring communities. But there are two parts to PROCEDA: the first part allows for the marking out of communal land; and the second permits individuals to have full property rights over their land. In other words, private property is permitted, individuals can sell their plots, and the assembly loses a lot of its power.

Afterwards, the government said the same thing about PROCECOM and people believed it. For instance, indigenous communities hadn’t managed to get the boundaries to their lands properly marked out and they thought that they would achieve this through PROCECOM. Even though many people warned them that it was a trick for privatising their land, the communities didn’t believe it. They put their trust in the strength of their assemblies. And the *ejidos*, some of which were already weakened, thought that they could use the new programme to regularise their situation and emerge stronger. But nothing worked out as they had hoped.

The pressure intensifies

Over the last few years, the effects have become very clear. For example, the communities have gone on holding assemblies, but today very few people attend them because they have lost so much of their power. In contrast, PROCEDA and PROCECOM have become far more efficient and work more quickly than in the past, because they have new instruments, like Global Positioning

System. At the same time, because of the free trade agreement with the USA, foreigners are showing more interest in investing in Mexico. So the World Bank is demanding “legal certainty”, saying that investors have to know who they are dealing with. If you negotiate with an assembly, they say, who is going to guarantee that the contract or agreement is honoured?

With all this, the pressure on the land and on the communities has intensified. The first phase of PROCEDA has ended and the government has begun a new campaign, trying to bring on board all those communities that so far refused to accept the programme. For example, even though it is supposed to be a voluntary programme, I know a community which government officials have visited eight times to try and get the assembly to accept PROCEDA. The officials insist and insist, promising to adapt the programme to the community’s needs and take out those aspects that the community dislikes. But when you look at the programmes later, you see that they haven’t been adapted and the promises were no more than lies to win people over. And little by little we see that what we were told was a “right” has become an obligation that is used against the community.

What role did the assemblies play in developing the capacity to say no?

The assemblies played a leading role. The *ejidos* and the communities that resisted were those that had the strongest assemblies, which met frequently and discussed the issues. It was these assemblies that showed most interest in discovering what PROCEDA was really about and publicised the idea that PROCEDA was about selling land and told people not to go into it.

What lessons can be learnt from this, particularly about strengthening future processes for recovering indigenous and peasant land?

The assemblies need to be strengthened and we need to develop and share tools for helping people to understand what is happening. In the old days we could use laws, if they were accompanied by social and political tools. But today that is not enough. Today laws are pushing everyone and everything into the market. They are even talking about the right of the community to sell everything – its culture, its territory, everything! It’s important that people become aware of what is happening. This means that people must meet a lot, study a lot and exchange ideas. Communities must also develop clear strategies. We must combat the divisions



that the authorities are creating by bribing us with money and powerful positions. So the people who still believe that we can live in a different way, in communities, need to get stronger. We have a big challenge ahead and we need to face it with imagination. We also need to show courage because the state institutions have been developing strategies to destroy communities, and they have dealt us heavy blows. We must create more collective bodies and be less trusting. We must also show more secrecy in developing our strategies, so that they are less vulnerable, and strengthen our collective processes until they become irreversible.


In the beginning, you said that the legal system doesn't recognise the rights of the people, especially their collective rights. What is the difference between collective rights and individual rights?

Individual rights can be rights that everyone has, such as human rights. Collective rights are those that a group of people has to decide how it wants to live, how it wants people to relate to each other. For example, a person can have the right to a piece of land on which to work and to live, but only a collective body, a community or a people, has the right to own that land and to decide what kind of life or civilisation should be practised on it.

Individual rights have no meaning if they don't have a collective expression. For example, the right to education doesn't make sense unless a people decides what kind of education it wants.

The right to territory isn't a property right, but the only way of getting legal recognition for territory is

by turning it into property. For many indigenous communities, the relationship they have with their territory goes far beyond legal recognition. This becomes obvious when you look at areas that are sacred for indigenous people but lie outside their legally recognised territory. If the Indians' ownership over these lands isn't recognised, these areas create permanent conflict: they are areas over which the indigenous people have no formal decision-making power, even though they hold them sacred. For capitalism, the only kind of relationship that is possible is through property rights. It is capitalism that converts people's rights and their relationship with territory into property rights, even though indigenous people have a far broader relationship with their territory.

For communities, territory can only be seen as a whole – what you do with respect to one aspect of it is going to have repercussions for the other aspects. Everything is related – the people, the plants, the forests, everything. Territory is the place where you can still decide how to live, what to do. And there you can't separate the forest from the water, the land from the rainfall, and none of this from the customs of the communities. For example, a Huichol Indian cannot spend more than two months away from his home because he has to practise certain ceremonies in sacred places and, if he is not at home, he can't do this and so he can't carry on with his life. It is clear that rights are linked to obligations. For the Wixaritari Indians the very purpose of their life is to care for the world, this is their obligation. And only after this will come rights and benefits, but always linked to more obligations. 



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If rights are badly defined, this will have serious consequences for mankind's relationship with fellow human beings and the environment, and, indeed, for everything that makes up society. Duties and responsibilities are intimately linked, but very often people from all sectors of society give undue emphasis to the “rights” side of the equation. This is particularly true with jurists, governments and regional intergovernmental organisations and

international organisations, such as the African Intellectual Property Organisation and the World Intellectual Property Organisation.

Moreover, all over the world, including Africa, the concept of rights has been assimilated within the concept of private property. This is serious, for African culture says that collective rights should take precedence over private and individual rights. Unfortunately, the political authorities do