

# Protecting Injustice:

*How a reformed resource property regime maintains inequality*

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PAGE 23: Caracol Producciones & IDEAR (invoice for communal land regularization fee. Fray Bartolomé de las Casas, Guatemala, 2010).

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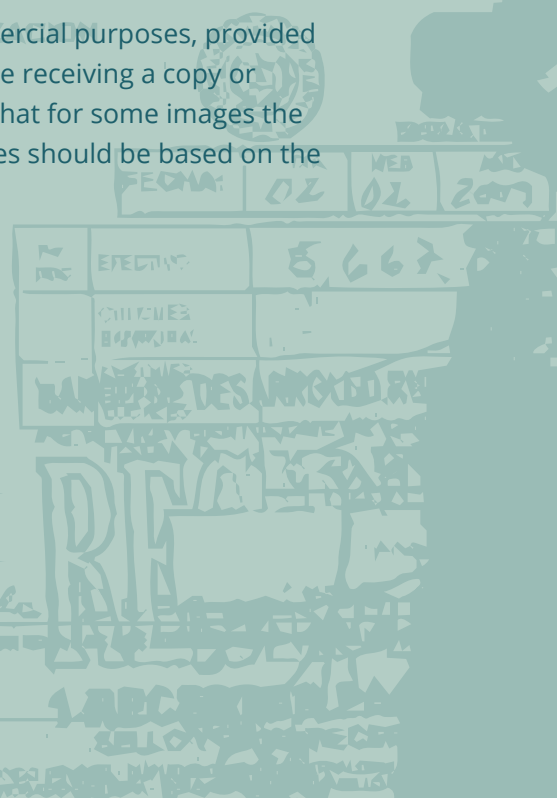
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# Introduction

In 2008 the climate, environmental, energy, food and financial crises which had been decades in the making took centre stage. These are referred to here as the “convergent global crises” because of the far reaching, complex, and synergistic interactions between them. The effects of these convergent crises continue to unfold today. One significant outcome has been the beginning of a global re-shaping of the concept and practice of property in relation to natural resources. This paper explores how property is understood, claimed, enforced, governed and legitimised; how this is evolving as a result of social and ecological dynamics emerging from the ongoing 2008 crises; who is driving these changes in the mainstream resource property system; and who ultimately stands to lose and to gain.

The research and writing for this paper was completed before the 2020 Coronavirus crisis, which is therefore not treated here. However many of the dynamics noted and explored here have shaped global responses to the crisis, and will continue to have major and ongoing impacts throughout the pandemic crisis and beyond.

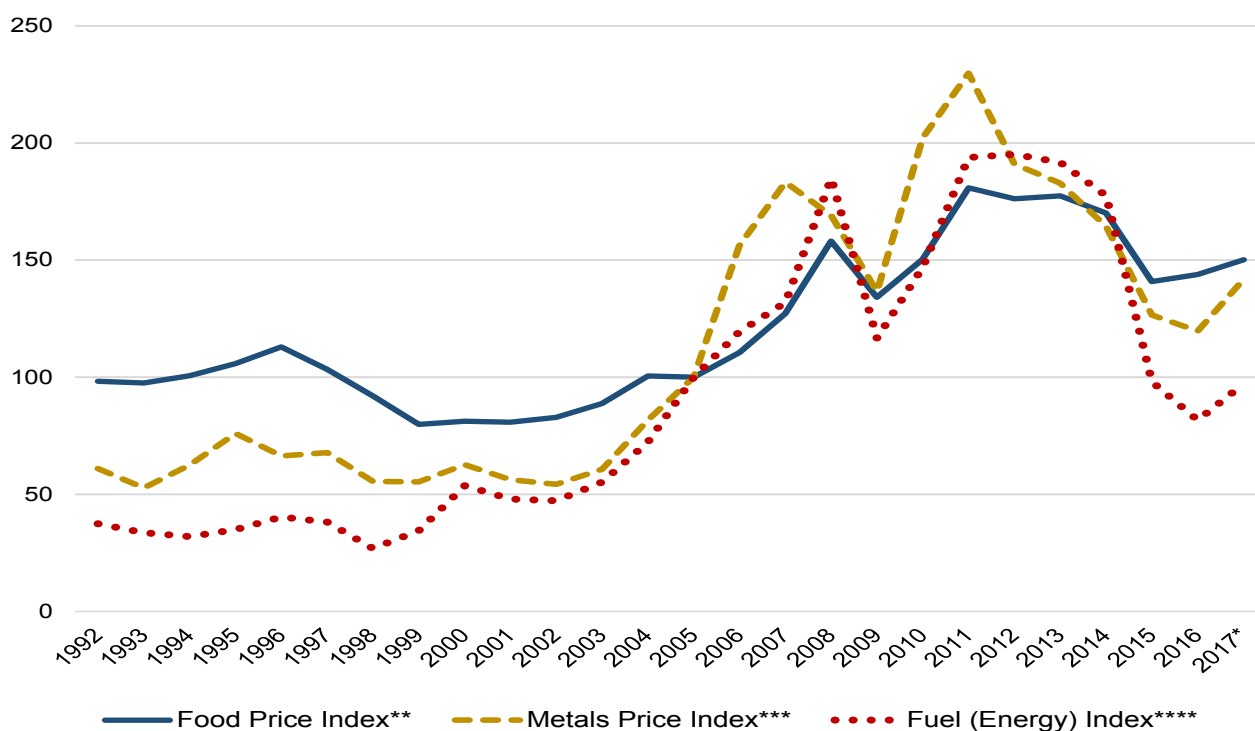
In examining the 2008 crises, two effects are especially noticeable: the emergence of new “transition” discourses, and the higher, but more volatile, prices of commodities. A variety of transition proposals for addressing the crises have been put forward by state, corporate, and social actors and have persisted beyond the 2010s. These include proposals to take steps towards green energy production, feeding a growing world population, addressing climate change and biodiversity loss and – although these have gained much less traction – regulating global financial systems. Regarding commodity prices, figure 1 shows the sharp spike of commodity prices during the crises. Although these collapsed around 2014, prices for especially metals and food remain significantly higher than before 2008.

These two booms – in transition discourses and commodity prices – have been interacting to produce a new global resource rush. On one hand, there has been a global, but uneven,<sup>1</sup> resurgence of natural resource extractivism. At the same time, there has been an increasing commodification of nature, facilitated

by the framing of natural landscapes, ecosystems and processes in terms of “environmental services” – the diverse benefits which humans derive from ecosystems. Enhanced and/or new forms of resource extraction and enclosures of nature are being presented as climate change mitigation and adaptation strategies,<sup>2</sup> and transition discourses are opening up new frontiers for accumulation.

This new global resource rush entails important and far-reaching changes in how access to resources is controlled, and by whom. It is transforming economic, socio-ecological, and cultural relations around the world. Different actors have responded to these trends in different ways, and a clear understanding of the positioning of different actors is important for understanding the possible outcomes and beneficiaries of different interventions. In 2013, Borras *et al.* identified ‘three competing political tendencies among state and non-state actors with regard to global governance of land grabbing’: regulating to *facilitate* land grabbing, to *roll it back*, or *mitigate* harms associated with grabbing.<sup>3</sup> Building on this schema, three main competing political standpoints can be identified with regard to the current global resource rush and the changes in resource control associated with it. According to their political approaches, actors can be characterised as *supporters*, *challengers* or *accommodators* of the new global resource rush.

**FIGURE 1**  
**Food, fuel (energy) and metals commodity price indexes 1992–2017**  
**(2005=100)**



\* Only January to June 2017 average (latest data available on 17/01/2019)

\*\* Includes cereals, vegetable oils, meat, seafood, sugar, bananas, and oranges price indices

\*\*\* Includes copper, aluminium, iron ore, tin, nickel, zinc, lead, and uranium price indices

\*\*\*\* Includes crude oil (petroleum), natural gas, and coal price indices

Source: Author elaboration with data from IMF (2018).<sup>4</sup>

Supporters actively promote the current changes in resource control. As the Director of the Agricultural and Rural Development Department of the World Bank argues

'[W]hen *done right*, larger-scale farming can provide *opportunities for poor countries* with large agricultural sectors and ample endowments of land. To make the most of these opportunities, however, countries will need to *better secure local land rights and improve land governance*. Adopting an open and proactive approach to dealing with investors is also needed to ensure that *investment contributes to broader development objectives*'.<sup>5</sup>

Pushing in the opposite direction, *challengers* turn their objections to the global resource rush into

active resistance, and struggle for a just, transformative project. For instance, for the human rights organisation

FIAN, 'the human right to land aims at social and environmental justice, transforming power relations and addressing social and economic inequalities'.<sup>6</sup> At the Transnational Institute, Borras and Franco link FIAN's understanding of the right to land and other resources to the food sovereignty alternative popularised by transnational agrarian movement La Via Campesina. As a result, they come up with the 'land sovereignty' alternative, or 'the right of working peoples to have effective access to, use of, and control over land and the benefits of its use and occupation, where land is understood as resource, territory, and landscape'.<sup>7</sup>

However, at the global scale many, perhaps most, actors take an accommodative political standpoint,

regardless of their disapproval of or sympathy with the political agenda of the resource rush supporters or challengers. While they may favour one or the other extreme, they seek to pragmatically adapt their actions and claims to what they see as the current political reality. The political agency of these actors, characterised here as *accommodators*, should not be understated. They play an active political role through their efforts to mould themselves, or those who they claim to represent, to better fit their changing circumstances.

Ultimately, the complex and messy politics behind the current global resource rush are reshaping the understandings, institutions and governance of resource property which became mainstream with the onset of neoliberal globalisation. In fact, the reform examined here is the outcome of the consolidation, deepening and/or mainstreaming of a series of resource property dynamics which took place under neoliberalism, from the 1970s to the mid-2000s. For those seeking an emancipatory and transformative change in how resources are owned, managed, accessed and controlled in the future, a more comprehensive and relational understanding of the changes which are occurring, and the implications for and responses by different actors, is critical. This report will argue that, while the reform in question is sometimes represented as part of a progressive shift that could improve the lives of resource-dependent ‘working people,’<sup>8</sup> its potential has been overstated and it is more likely to reinforce existing inequalities in wealth and power, unless it is more strongly linked to a broader transformative project.

## Reforming the Neoliberal Resource Property Regime

The current resource rush is not only reshaping who has access to and control over resources. It is also actively transforming the way in which property and rights to resources are governed and understood. The overarching legal, technical, moral, and political framework which informs the understanding of property rights in relation to natural resources is referred to here as ‘the resource property regime’. In the broadest sense, a regime is a set of social institutions and practices which link together actors in certain relatively stable patterns. The resource property

regime, specifically, refers to the actors and institutions that shape how natural resources are used, governed, and understood.

Since 2008, a range of (activist) scholars and affected communities have developed analyses of agrarian and environmental change in the context of the global crises from 2008 onwards, and the politics behind them.<sup>9</sup> But the ways in which the dominant resource property regime and the global resource rush mutually shape each other have received less attention,<sup>10</sup> or have been restricted to technical analyses of resource property rights. However, who has the abilities and power to effectively control the planet’s natural resources, to what extent, how, and for what purposes, are not just technical matters. Rather, these are highly political questions involving power relations among individuals and groups.

Resource property relations play a critical role in shaping how resources are used, who benefits, and who pays the price or bears the burden of cultural, social, or ecological destruction often associated with resource extraction, especially for commercial purposes. Hence, the resource property regime can be understood from a variety of different standpoints. From the economic perspective, resource property relations are rent distribution relations (for instance, who is entitled to charge rent for the use of land or to receive payments for ecosystem services). Ecologically, resource property relations determine who has the ability to control access to so-called environmental resources and services, and to transfer the burden of waste and contamination to others.<sup>11</sup> Culturally, resource property relations are ideologically rooted, expressing ‘whose norms and meaning-making practices define the terms and values that regulate social life’.<sup>12</sup> As a social institution, property expresses existing enforceable claims [i.e. “legal” rights] to ‘some use or benefit of something, whether it is a right to a share in some common resource or an individual right in some particular things’.<sup>13</sup> Different individuals and groups expect the institution of property to serve different purposes. These different *purposes* vary along class, ethnic, gender, religious, and other socio-cultural attributes, which also overlap and intersect.

The following three purposes of natural resource property stand out in the world today: i) as *resources*,



meaning a natural (i.e. not manufactured) and immobile<sup>14</sup> means for producing goods; ii) as *external nature*, that is, as non-human sources and deposits of nature's flows of energy and materials, and/or; iii) as *territory*, referring to 'the relationship between land and identity, and the existence of (or aspirations for) political authority over land'.<sup>15</sup> In pursuing different purposes of resource property, different actors contest or defend different dimensions of a property rights regime.

For the purpose of understanding resource property regimes in a comprehensive and relational fashion, six key dimensions can be identified: *the object, subject, form, enforcing authority, policy structure and justification* of or for property. Put another way, six distinct questions inform property relations among individuals and groups, as well as among humans and non-human nature, and all are currently being transformed. These six questions are:

## 1 What is property?

Relatedly, what is the object of property? In general, objects of property include consumables (e.g. a carrot) as well as means of production (e.g. tools or machinery). In the current regime, the object of property might also include other forms of 'commodified nature' (e.g. seeds or ocean spaces containing fish), as well as information, knowledge and its applications (i.e. technology). What can be an object of property shifts over time and is not a product of the innate qualities of the thing.

## 2 Who can own property?

(i.e. the subject of property) This might include a question of whether certain categories of person can own property (e.g. women), but can also extend to the question of whether property can only be owned by individuals. Can groups, communities, families, or corporations also own property?

## 3 What form does property take?

Forms of property today include open access, state property, common private property and individual private property.<sup>16</sup> The first three forms are sometimes all referred to as 'the commons,' conflating these potentially different phenomena. In fact, these three forms are distinct from each other. Open access is property 'belonging to no-one' - the atmosphere, for example. Common private property, on the other hand, involves the rights of the co-owners to benefit from - and not be excluded from - co-owned property (e.g. specific people may have rights to hunt or gather firewood in a commonly owned forest). Finally, state property, like the private property of non-natural persons (e.g. a corporation or NGO), entails 'a corporate right to exclude,' where the owner can set conditions regarding who can access the property and why.<sup>17</sup>

## 4 Who controls the property regime?

Where is the authority to enforce property rights, and sanction changes in the property regime, located (i.e. in state or non-state actors)?

## 5 How are policies relating to property structured?

Is property governed primarily by state law, or by community conventions and/or traditions? This refers to the specific mechanisms through which property relations are governed, including through conventional, customary or statutory policy and regulation, and;

## 6 Why is a property regime legitimate?

This refers to the ideological and moral justifications behind a particular property rights regime. On what moral grounds do the people, communities, or institutions who control resource property justify that control?

This report explores the broad directions of change in the dominant resource property regime today, following the global resource rush under convergent crises. It details the drivers, protagonists, and political implications of this change. While examples from the (sub-)national scales are employed, the focus is on the transnational and international levels of governance of land, fisheries, forests, seeds, underground and seabed resources (e.g. hydrocarbons and minerals), natural processes and systems often conceptualised as environmental services (e.g. carbon sinks, natural water filtration by forest ecosystems), and the information and knowledges that enable individuals and groups to benefit from a resource.

This reform effort was sparked by the failure of the post-World War II multilateral governance system, and of neoliberal capitalism, to respond to the convergent global crises, and to manage their negative impacts on resource-dependent working people. In brief, this report argues that an alliance, made up of visionary global resource rush supporters and influential accommodators, have taken firm steps to reform the natural resource property regime which was dominant since the 1970s, under neoliberalism. Despite its far reaching social and ecological implications, the rationale behind this alliance is simple. Trailblazing investors in a supportive political stance seek to reduce resource tenure risks at the grassroots level and reputational risks worldwide. Influential NGOs in an accommodative political stance seize this as a political opportunity, trying to get the most out of the current wave of land and other resource deals for local communities. Specifically, large watchdog NGOs in an accommodative stance use the media “stick” to name and shame bad investors,<sup>18</sup> and reward good investors with sustainability seals and positive assessments of corporate performance through the pro-social branding “carrot”.<sup>19</sup>

This reform alliance works through highly influential multistakeholder initiatives and involves a series of distinct shifts in each of the six dimensions of the resource property regime. The resulting change is more than the sum of its parts. This synergistic outcome is called here the *resource property reform under convergent global crises*. The reform essentially involves: i) consolidating and advancing the boundaries of the commodification of nature, including through digitalisation and financialisation, thereby creating new *objects* of property; ii) advancing the legal personhood of charities and corporations as *subjects* of resource property rights, including making the case for corporations as both duty bearers and rights holders in relation to human rights; iii) mainstreaming the communal *form* of private resource property, while also providing new ways for actors to profit from resources that they do not own; iv & v) expanding the non-binding, but state-sanctioned, voluntary institutional and regulatory *policy structure* that gives more freedom for self-governance by the private sector as a mode of *creating* and *enforcing* resource governance rules, and; vi) *justifying* all of these dynamics as efficient, pragmatic and rightful cornerstones in the transition toward global sustainability and well-being.

Thus, the resource property reform under convergent global crises is transforming the dominant resource property regime, including through changes in the object, subject, dominant form, enforcing authority, policy structure and justification of natural resource property. These transformations will have profound effects on the lives of resource-dependent working people, on the profits of those who stand to benefit from the emerging regime, and on the health of planet Earth.





# The resource property reform: What does it involve?

Before exploring the changes to the resource property regime in depth, three points should be clarified. Firstly, the resource property reform under convergent global crises involves gradual and cumulative changes. The current transformation has its origins in older dynamics, particularly the transformations which took place under neoliberal capitalism between the 1970s and the mid-2000s. Those dynamics serve as an important measuring stick for the analysis of resource property dynamics today. Secondly, the resource property reform is best read as a global-yet-uneven trend across geographies, industries and sectors of activity. Thirdly and finally, the resource property reform is an ongoing and contingent process, which is shaped by the political responses from state, corporate and social actors.

## Changes in the object of resource property

The global resource rush is pushing the boundaries of the commodification of nature, bringing ever more new categories of things and organisms under the property regime as possible objects of property. The concepts and institutions of resource property are being broadened to include not only (more) land, forests, water, seeds, germplasm, hydrocarbons and minerals, but also fisheries (inland, coastal

and maritime), other aquatic and seabed resources, a growing diversity of “environmental services” (now including amelioration or remediation of waste and pollutants) and the information and knowledges necessary to benefit from these resources.

Two main factors are driving this transformation: firstly, the rise of so-called “blue and green economies”, and the related expansion of the bioeconomy and the knowledge-based economy; secondly, heightened financialisation of the world economy.

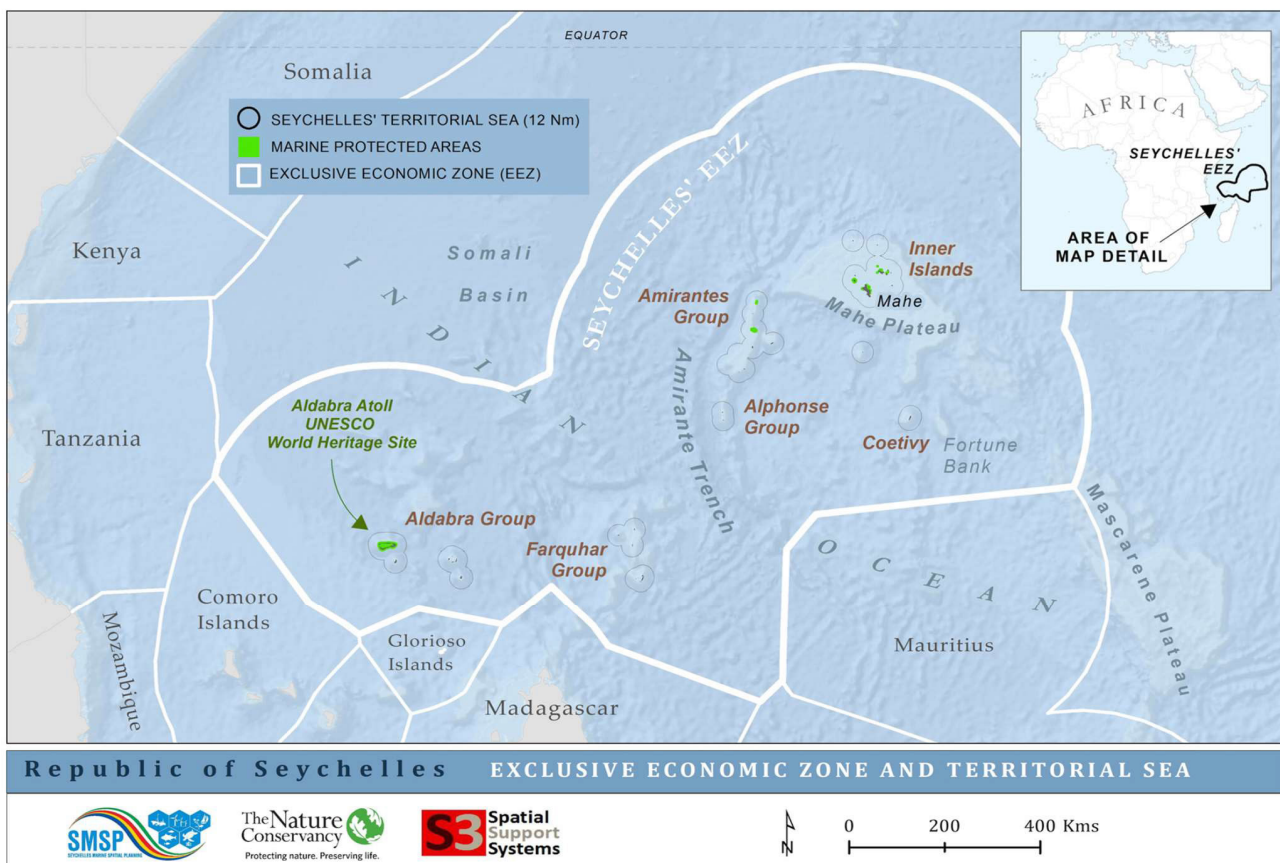
## Blue and Green Economies

The commodification of nature, which involves pricing natural resources and services and exchanging them in the market as if they were (manufactured) commodities, is a centuries-old process. However, it reached new heights under the convergent global crises from 2008 onward. Neoliberal capitalism between the 1970s and the early 2000s originated the framework of ‘selling nature to save it’,<sup>20</sup> presenting commodification as a key method of nature conservation. Proponents appealed to concepts like “full cost accounting” to argue that putting resources on the market would allow them to be valued by the economy, rather than being “externalised” and therefore over-exploited.

Today the commodification of natural resources, services, and knowledges is also considered a means of tackling the climate, energy, environmental, food and economic crises. This is especially visible in the rise of ‘blue’ and ‘green’ economies, which the International Union for the Conservation of Nature refer to as ‘a new paradigm for doing business while ensuring the maintenance of biodiversity and its values’.<sup>21</sup> Hence, the blue and green economies

are characterised by capital- and technology-intensive solutions whose promoters promise a “triple-win” for “people, planet, and profit”.

The green economy paradigm rests on the maxim that ‘growth in income and employment are driven by public and private investments that reduce carbon emissions and pollution, enhance energy and resource efficiency, and prevent the loss of biodiversity and ecosystem services’.<sup>22</sup> The emerging blue economy paradigm includes ‘established traditional ocean industries such as fisheries, tourism, and maritime transport, but also *new and emerging activities*, such as offshore renewable energy, aquaculture, seabed extractive activities, and marine biotechnology and bioprospecting’, as well as ‘a number of services provided by ocean ecosystems, and for which markets do not exist [...] such as carbon sequestration, coastal protection, waste disposal and the existence of biodiversity’.<sup>23</sup> As discussed at the UN Framework Convention on Climate Change - 23rd Conference of the Parties (UNFCCC - COP23) in 2017,<sup>24</sup> carbon markets are venturing into previously uncharted waters like ‘blue carbon’, referring to carbon stored in marine and coastal ecosystems.<sup>25</sup>



Source: SMSP, 2015, p. 2.



The rising blue and green economies are revitalising the older frameworks of bioeconomy and knowledge-based economies. The bioeconomy is commonly understood 'as the knowledge-based production and utilization of biological resources, innovative biological processes and principles to sustainably provide goods and services across all economic sectors'.<sup>26</sup> It aims to use new technologies, such as agrofuels, to replace certain fossil inputs while maintaining high rates of industrial and economic growth. The resurgence of the bioeconomy can be seen, for example, in the increasing significance of 'flex crops and commodities' since 2008. These are 'crops and commodities that have multiple uses (food, feed, fuel, industrial material) that can be, or are thought to be, flexibly inter-changed'.<sup>27</sup> Developments around the global political economy of flex crops and commodities illustrate how the framework and projects of the 'bioeconomy' model are transforming commodity chains and social relations, creating new markets, and new opportunities for both profit and resource extractivism.

Finally, the blue and green economies and bioeconomy are all described as, and associated with, 'knowledge-based' economies. This term 'results from a fuller recognition of the role of knowledge and technology in economic growth'.<sup>28</sup> But the commodification of knowledge<sup>29</sup> has major implications for society and nature, and mirrors the enclosure of other open access resources. In the same way as property rights over farmland or fisheries entail the ability to charge rents to users, 'intellectual property rights—codified in copyrights, patents and trademarks—entitle owners of knowledge to license it in exchange for an agreed payment (i.e. a fee or royalty)'.<sup>30</sup> Amid a thriving bioeconomy, and with the green and blue economies gradually on the rise, an increasing range of seeds, plants, germplasm, biomass fractions and materials, and biochemical transformation processes are becoming the object of intellectual property rights.

## Financialisation

At the same time, the heightened financialisation of the world economy is opening new avenues for investors to benefit from resources, even where they do not directly or formally own them. The current interest of (trans)national financiers in the bio-blue-green and knowledge-based economies is producing

a range of new financial instruments to fund the global resource rush. These are either recently developed or previously existing but restructured financial tools, presented under the guise of 'green finance'<sup>31</sup> and 'blue finance',<sup>32</sup> and offered by both public and private financiers.<sup>33</sup> All of these financial instruments require of clear and effective resource property rights.

At the same time, corporations are creating and exploiting new tools that allow them to squeeze profits from natural resources over which they do not have absolute or exclusive individual property rights. Two examples include the adaptation of the 'debt-for-nature' swap model<sup>34</sup> to marine conservation and climate change adaptation, and the securitisation of land's ground-rent. The first example can be seen in the Republic of Seychelles' Debt Restructuring for Marine Conservation and Climate Adaptation Program:

Convened by the "NatureVest" division of The Nature Conservancy (TNC) in collaboration with the Government of the Republic of Seychelles, the Swap [...] is designed to purchase, restructure, and ultimately relieve the Government of US\$21.6 million in debt held by the Paris Club of Creditors (NatureVest 2018). In promoting the Swap, TNC claims two novel debt-for nature innovations. First, the Swap incorporates private capital; US\$15.2 million is said to have been raised from "impact investors". Second, the Swap is unique in its specific focus on ocean spaces and ecosystems. For its part, the Government of Seychelles has committed to marine spatial planning throughout the full extent of its 1.37 million Km<sup>2</sup> Exclusive Economic zone and, among various uses, to managing 30 per cent for conservation. Of this, 15 per cent (around 200,000 km<sup>2</sup>) will be designated as a "no-take" Large Marine Protected Area (IISD 2015; NatureVest 2018).<sup>35</sup>

The second example, the securitisation of anticipated revenue flows from land's ground-rent, is illustrated by a case in Guatemala. The financial term "securitisation" refers to the process of bundling together contractual rights to future payments, which can then be sold or traded like any other financial

instrument. Land securitisation is favoured by investors because it not only provides a source of funding, but also transforms soaring land prices from a threat to an opportunity.

The Guatemalan flex cane<sup>36</sup> company *Corporación San Diego y Trinidad (CSDT)* was involved in a prominent case of land securitisation.<sup>37</sup> In 2014, *Servicios Agropecuarios San Diego (SASD)* was created as a property management firm under the umbrella of the Panama-registered (but Guatemalan-owned) *Santa Luisa International Group Inc.* The company that controls *Santa Luisa International Group Inc.* also owns the *CSDT* flex cane company. *CSDT* controls 14,000 hectares of cane plantations of which 951 hectares are allocated to *SASD*. The 951 hectares are worth \$ 10.85 million (US dollars), and this price is expected to increase over time. Additionally, the 951 hectares generate annual rental payments of nearly \$600 thousand (US dollars). The anticipated rental payments by the *CSDT* flex cane company to real estate management firm *SASD* for the use of the 951 hectares in cane cultivation are used to back the issuance of preference shares by *SASD*, amounting to \$3.84 million (US dollars). Since both companies are part of the same business group, these funds can be easily transferred from one firm to the other. Furthermore, the cost of this funding operation is lowered even further because the real estate management firm performing as the “special purpose vehicle” (i.e. *SASD*) is registered in Panama, which is a recognised tax haven with negligible rates of corporate taxation. In this way, the *CSDT* flex cane company can squeeze considerable financial benefits out of land it does not formally own.

The increasing role of digital financial technologies, or “fintech”, also enhances the abilities of investors to profit while diversifying their risk. This is the case, for instance, with ‘fractional ownership’. This is a form of co-ownership which allows several different actors to share ownership of an asset. Increasingly, fractional ownership is administered through ‘distributed ledger technology’ (DLT).<sup>38</sup> This involves issuing a ‘digital asset on a blockchain<sup>39</sup> network that stands in as the [material] thing’s digital counterpart’.<sup>40</sup> This digital asset is then divided into fractions which amount to a part of the value of the co-owned thing (e.g. farmland or entitlements to payments for environmental

services). These fractions or percentage shares of the total asset can be exchanged in the financial market like bonds, shares, or any other financial asset. This, for example, is what fintech startup *FarmTogether* does in the U.S. In their words:

‘Technology’s impact on underwriting efficiency and the ability to crowdfund capital have changed the scope and scale of alternative investments that are available to investors [...] Using data-focused underwriting principles, *FarmTogether* provides investors fractional ownership of agricultural land that’s then leased out to farmers’.<sup>41</sup> As an investor in *FarmTogether* ‘you become a fractional owner of the farmland and are entitled to returns from its operation’.<sup>42</sup>

These twin trends – heightened commodification of nature and increasing financialisation - are uneven across geographies and especially sectors of activity. This is particularly the case with the nascent blue economy. ‘Blue growth solutions to conservation and climate change issues’, *Barbesgaard* argues, ‘fail on their own terms through lacking appeal to the “right” (so-called) sustainable capital’.<sup>43</sup> And some of the newly envisaged financial vehicles relying on blockchain digital technologies ‘will only become possible if and when blockchain technology scales up and enjoys widespread adoption’.<sup>44</sup> In fact, some commentators raise serious doubts about the success of ‘selling nature to save it’<sup>45</sup> as a conservation strategy. ‘Enterprising nature’, *Dempsey* explains, ‘is best conceptualized as promissory, a socioecological-economic utopia whose realization is always *just around the corner*’.<sup>46</sup> Indeed, there might be more hype than actual investments for biodiversity conservation purposes, as *Dempsey* suggests.

However, understood in broader terms, it is too early to declare the blue and green economies defunct. The bio-blue-green hype is still growing. This can be seen, for instance, in the discussions and resolutions at the UN Climate Change Conferences between 2015 (COP 21) and 2019 (COP 24),<sup>47</sup> and at the World Economic Forum’s Annual Meetings between 2015 and 2019.<sup>48</sup> This can also be seen in the growing relevance of renewable energy projects and green finance plans worldwide.<sup>49</sup> According to BP’s 2018

Energy Outlook, renewable energy<sup>50</sup> is forecasted to grow by 404% between 2016 and 2040. This means that renewables might move from supplying 4% of global energy use in 2016, to 14% in 2040.<sup>51</sup>

A global survey undertaken by HSBC in 2017 about corporate issuers and institutional investors' attitudes to 'sustainable finance' also suggests growing enthusiasm: '68% of investors [...] plan to increase their climate related, or low carbon investments. In Europe and the US the picture is even more conclusive, with 97% of European, and 85% of US investors responding that they will increase investment'.<sup>52</sup> And similarly, investors in the thriving flex crops and commodities complexes increasingly frame, promote and fund their businesses as 'bioeconomy and green economy flagships'.<sup>53</sup> For example, in his inaugural address to the First Latin American Congress of Oil Palm Growers in 2013, the President of the Guatemalan Oil Palm Growers' Guild claimed that 'supporting the palm eco-industry means contributing to the real development, prosperity and well-being of rural families'.<sup>54</sup>

Thus, regardless of their actual impacts on the environment and the lives of resource-dependent people, green-blue-bio economies seem likely to continue attracting investment. And, in order to enable this, their proponents will continue re-shaping the property regime so as to create new objects of property, which bring with them new opportunities for profit.

## Changes in the subject of resource property

Visionary investors' pro-social branding strategies, and their self-representation as vital actors in addressing the convergent global crises, have led to a major push to promote non-natural private persons as subjects of resource property rights. That is to say, businesses, non-profits, and other kinds of organisations are increasingly being presented as "persons" who can have resource property rights. In fact, some advocates go a step further than this, arguing that corporations in particular have a role to play both as duty bearers and as rights holders in relation to human rights, including the human rights to land, water, and other resources. While corporations have

long been able to hold property rights over natural resources, it is only recently that anyone has thought to propose that corporate entities should be considered to hold *human* rights in relation to resource property, or that they should be regarded as being 'duty bearers,' responsible for protecting and promoting human rights.

The case for private non-natural persons as subjects of resource property rights involves both businesses and non-profit organisations. Non-profits, in particular, have been at the forefront of the privatisation of state and open access nature at least since the 1980s, when private conservation trusts began purchasing land for conservation purposes. With the blue economy on the rise, conservation NGOs and philanthropists are now extending their reach to encompass ever more shoreline and ocean resources. This is especially significant in the case of marine protected areas in Small Island Developing States (SIDS). As mentioned above, The Nature Conservancy, a large US NGO, was granted the right to manage almost one third of the Republic of Seychelle's marine exclusive economic zone. Similarly, in the Republic of Kiribati, Conservation International Foundation and the New England Aquarium Corporation have proposed the Phoenix Islands Protected Area (PIPA):

'the establishment of the PIPA Conservation Trust [in 2009] as a tax-exempt public charity formalised the envisaged legal and financial architecture [...] Crucially, the trust is set up in a way that the non-governmental side always holds the majority of seats on the board, and by means of a special majority voting clause, also a controlling vote on all financial, procedural, and technical matters'.<sup>55</sup>

As a result, 'control power over ocean-space gravitates away from the governmental side towards that of US-based institutions and individuals'.<sup>56</sup> For many SIDS, the PIPA model has become the rule rather than the exception. From 2011 onward 'new protected areas have mushroomed across the Pacific under the guidance and seeming control of US-based foundations'.<sup>57</sup>

For their part, however, businesses are taking firm steps towards a fully-fledged corporate personhood

which enables them to be subjects of resource property rights on the same footing as individuals and communities.<sup>58</sup> An iconic example stems from the challenge The Coca Cola Company (TCCC), PepsiCo, and Associated British Foods received from Oxfam's 'Behind the Brands' campaign. In 2013, Oxfam published a report entitled 'Sugar Rush: Land rights and the supply chains of the biggest food and beverage companies'.<sup>59</sup> As a result, TCCC and then PepsiCo came up with their own corporate land policies, including a commitment to 'zero-tolerance for land grabs' in their supply chains.<sup>60</sup> Oxfam's achievements notwithstanding, the PepsiCo Land Policy remains highly controversial. On one side, it acknowledges that community land and resource rights can be legitimate regardless of whether they are sanctioned by state powers. But on the other side, PepsiCo assumes that businesses enjoy the same rights to land and resources that individuals and communities do: 'a legitimate land tenure holder for purposes of this document is defined as a person, family, community, or *business with rights to the land or associated natural resources*, whether based on indigenous rights, custom, informality, or occupation, regardless of whether the right is currently protected by law or formally recorded...'.<sup>61</sup>

Other influential actors have gone even further, suggesting that corporations not only have property rights on the same footing as natural persons but that they may also have a role to play in protecting or guaranteeing human rights, a role traditionally reserved exclusively for states, as signatories of human rights treaties. The co-chairs of the UN Commission on the Legal Empowerment of the Poor, former U.S. Secretary of State Madeleine Albright and economist Hernando de Soto (a long-time champion of private property rights) identify four main pillars for the legal empowerment of the poor: 'access to justice and the rule of law [...] property rights, labour rights, and business rights'.<sup>62</sup> Hence, they recommend that 'a more comprehensive human rights framework on legal empowerment be initiated', because 'while labour rights have been relatively clearly enshrined in international agreements and conventions through the ILO [International Labour Organization], *property and business rights* and principles of access to justice, have never been elaborated beyond general references or principles'.<sup>63</sup>

Even more clearly, and in the context of the current global resource rush, USAID argues that:

'in areas with weak land governance, there is both an opportunity and a need for the *private sector* to play a proactive role to *protect* the *legitimate land rights of communities and individuals* involved in or affected by land based investments. The opportunity is found in a strengthened local license to operate and positive engagement as a development partner with affected communities. The *need* is to *play the role of advocate with governments* that may be otherwise unresponsive to help secure the rights of communities and individuals where companies operate'.<sup>64</sup>

This proposed obligation for businesses to *protect* human rights is radically different from the traditionally understood requirement that businesses *respect* human rights, and proposes a profoundly different relationship between businesses and people/communities than is currently enshrined in international law. This is clearly stated in the 2008 UN Human Rights Council's framework on business and human rights, proposed by UN Special Representative John Ruggie.<sup>65</sup> This framework stresses the corporate responsibility to **respect** human rights, while reiterating that the duty to *protect* natural persons against human rights abuses by third parties, including businesses, is exclusively a state duty.<sup>66</sup>

Moreover, in a 2015 article in the *Journal of Human Rights*, Hsie explains that there are two main issues with assigning human rights obligations to businesses. The first involves concerns about granting them 'a status that is not fitting with their role as economic actors. It is to ask them to adopt a perspective of impartiality and equal treatment that seems not only overly demanding but in many ways incompatible with what is permitted or required in the sphere of economic activity'.<sup>67</sup> The second issue has to do with the fact that 'human rights obligations embody an important ideal about the equal standing of citizens that cannot be realized by assigning human rights obligations to business enterprises and their managers'.<sup>68</sup> This debate illustrates the important ways in which changes in the resource property regime are related to broader processes of big business legitimation.



## Changes in the dominant form of resource property

Communal ownership of land and resources was regarded for many decades as a backward relic, standing in the way of modern development. However, customary forms of communal resource ownership have slowly gained more visibility and recognition, initially through post-independence land tenure reforms in many African countries from the 1960s, and especially the 1990s onward,<sup>69</sup> and with the first UN International Decade of the World's Indigenous Peoples (1995-2004). These forms have even achieved international statutory recognition (e.g. with the 1989 ILO Convention 169). But now, during the global resource rush, the communal form of resource property has become fully embedded within the mainstream resource property regime, with potentially problematic results.

To be clear, the communal form is not taking over from individual private property as the preferred form of resource ownership today. Quite to the contrary, as will be discussed below, individual resource ownership remains the ideal form of resource property for influential intergovernmental organisations like the World Bank.<sup>70</sup> However, the “right not to be excluded,” introduced as a critical feature of communal resource property, has gained currency among both states and corporations in respect to resource governance. This is a response by trailblazing global resource rush supporters and accommodators to working people's unrest in the face of land and resource dispossession or loss of control. The World Bank was among the first to welcome and push for this broadening in the dominant form of resource property. In its iconic 2008 World Development Report, the Bank pleaded guilty and argued that:

‘earlier interventions to improve tenure security focused almost exclusively on individual titling, but this can weaken or leave out communal, secondary, or women's rights. Moreover, the process of titling can be used for land-grabbing by local elites and bureaucrats. So, although individual titling is still appropriate in many cases, it needs to be complemented by new approaches to securing tenure [including] recognizing customary tenure’.<sup>71</sup>

Similarly, in a 2009 assessment of the ‘risks and opportunities for developing countries’ from the global resource rush, the International Food Policy Research Institute (IFPRI) argued that land deals should include ‘respect for existing land rights, including customary and common property rights’.<sup>72</sup>

This shift in the perspective of intergovernmental institutions both drives and echoes the growing endorsement of communal resource property by individual states. In a recent review of land and other resource legislation in 100 countries, Wily concludes that ‘socially-based collective property is fast becoming an accepted part of property relations guided and protected by statutes’.<sup>73</sup> She explains that, by 2018, 73 out of these 100 countries recognised and protected, to varying degrees, common property in relation to land and other resources. Furthermore, ‘perhaps more indicative of continuing new recognition of community property is that nearly one quarter of key laws (17 of 73) have been enacted in the last decade’, and that

‘draft laws also exist quite widely, such as in Nepal, India, Myanmar, and Indonesia, and more concretely, in Ghana, South Africa, Liberia, and the Central African Republic. In addition, commissions of inquiry are sitting in 13 other African states in 2018, charged with drafting new land policies and laws, all of which must address the status of customarily held but untitled lands [...] New laws are also under consideration in an unknown number of Latin American economies’.<sup>74</sup>

A broader range of legally -endorsed resource property forms goes hand-in-hand with new ways of doing business, conserving biodiversity, and fighting climate change. In making the business case for the communal form of resource property, Oxfam, the International Land Coalition (ILC), and the Rights and Resources Initiative (RRI) explain that:

‘to many people, the idea of community lands is archaic. They are seen as barriers to progress and environmental protection, doomed to disappear. But this is wrong; there is no contradiction between a healthy economy and the recognition of land rights’.<sup>75</sup>



Respect for communal resource tenure is portrayed as a concession to marginalised communities from national and transnational investors, intended to mitigate risks related to land and resource tenure at the grassroots level, which is discussed further below. The increasing popularity of communal ownership models with investors themselves can be seen in the rise of new arrangements like “fractional ownership”, as discussed above, as well as in the current hype surrounding so called “inclusive” or “collaborative” business models. These models involve both novel agreements and re-branding of older structures of resource ownership and control. They frequently include agreements between a buyer or processor, on one hand, and land or resource owners (including owners of communal property), on the other hand. A variety of outgrowing schemes and land lease arrangements may be presented in this way. Their ‘common defining feature is not necessarily production by smallholders but the *use of smallholders’ land for contracted production*’.<sup>76</sup> Thus, these new business forms are, in a sense, making older forms of individualised privatisation obsolete. It is increasingly feasible for investors to profit from a resource without first securing exclusive property rights to it, and sometimes without securing any property rights whatsoever.

At the same time, in addition to defending its viability for business, key protagonists of the resource property reform are defending the statutory recognition of communal resource ownership as the most successful means to conserve biodiversity and tackle climate

change. The World Resources Institute (WRI) and RRI explain that, ‘legal forest rights for communities and government protection of their rights tend to lower carbon dioxide emissions and deforestation’.<sup>77</sup> For instance, in Brazil:

‘...deforestation in indigenous community forests from 2000 to 2012 was less than 1 percent, compared with 7 percent outside them. The higher deforestation outside indigenous community forests led to 27 times more carbon dioxide emissions than were produced from deforestation on indigenous community forests. And indigenous community forests contain 36 percent more carbon per hectare than other areas of the Brazilian Amazon’.<sup>78</sup>

The legal recognition of forest communities’ property rights also facilitate these communities’ involvement in markets for ecosystem services. An iconic case is that of the Paiteer-Suruí indigenous people in Acre, in the Brazilian Amazon. In 2013 the Paiteer-Suruí became ‘the first indigenous people in the world to generate REDD+ credits’.<sup>79</sup> They started receiving REDD+ payments through the Suruí Forest Carbon Project in 2014, after Latin America’s largest cosmetics firm, Brazilian giant Natura Cosméticos, purchased 120,000 tonnes of carbon offsets from them. In orchestrating the Suruí Forest Carbon Project, Paiteer-Suruí people’s Chief Almir joined forces with the large U.S. conservation NGO Forest Trends. Forest Trends

immediately commissioned 'the law firm of Baker & McKenzie to see if the Suruí actually owned the rights to carbon in their trees'.<sup>80</sup> This case clearly illustrates the decisive role that property rights – to lands, forests, or other resources – play in determining who is entitled to benefit from market-led conservation and climate stewardship projects.

## Changes in the resource property enforcing authority

Formally, the state is always the ultimate authority in making and enforcing rules around (resource) property. But powerful private actors with limited public accountability or social legitimacy are playing ever-greater roles as creators and enforcers of regulations informing natural resource property relations. The focus here is on these private actors in the context of the rise of the multistakeholder paradigm, from the local to the international sphere of (resource) governance.

Multistakeholderism is a form of governance which gives an important structural role in decision-making and development of regulation to private subjects, especially transnational corporations. Civil society organisations, affected communities, and other non-state actors may also be given "a seat at the table" in discussions taking place within multistakeholder frameworks. However, there are generally few or no structures in place to address the differences in power between these different kinds of actors, or the divergent legitimacy of their claims. Anyone with a "stake" is considered a legitimate participant, whether the stake in question pertains to their fundamental human rights, their livelihoods and territories, or their interest in profiting from an investment. Multistakeholderism is contrasted with multilateralism, the system of governance which emphasises the primacy of states, as representatives of their citizens and their citizens' interests, in international governance.

The UN Commission on Global Governance helped to lay the groundwork for multistakeholderism in its 1995 report *Our Global Neighbourhood*. But, while the vision presented in this report was seen as compatible with the primacy of states, multistakeholderism gained ground under the convergent crises of the early 21st century, and diverged more

dramatically from multilateralism. The efforts of the World Economic Forum (WEF) to 'formulate a new system of global governance' played a key role in this.<sup>81</sup> The fundamentals of the new system were laid out in a 2010 report from WEF's Global Redesign Initiative (GRI) entitled *Everybody's Business: Strengthening International Cooperation in a more Interdependent World*. 'In the wake of the global economic crisis,' WEF explains in the GRI report, 'we need to rethink our values, redesign our systems and rebuild our institutions'.<sup>82</sup> To this end, WEF's GRI makes a call to 'redefine the international system as constituting a wider, multifaceted system of global cooperation in which intergovernmental legal frameworks and institutions are embedded as a core, but *not the sole* and *sometimes not the most crucial*, component'.<sup>83</sup>

In theory multistakeholder governance allows any non-state actors that can claim a "stake" in resource property relations to influence deliberations about whose resource rights count, and are therefore enforceable through law. But, as alluded to above, there are important differences in the powers of different stakeholders. As McKeon explains, there is a big difference between "*multi-actor*" in civil society circles—and [...] "*multistakeholderism*" in which everyone enters the room on the same footing, ignoring differences in interests, roles, and responsibilities among the parties, and negating power imbalances'.<sup>84</sup> The difference between the two models is far from just a matter of semantics. As Gleckman explains, 'a *multiconstituency consultative* arrangement works under the authority of nation-states and takes its frame of reference from a governmental or UN system body. On the other hand, a *multistakeholder governance* arrangement (claims that it) acts in a manner that is largely independent of a public governance system'.<sup>85</sup>

There are more transnational multistakeholder groups (MSGs) influencing resource property relations worldwide than can be mentioned here. Key MSGs behind the resource property reform under discussion include: i) biodiversity conservation MSGs like The International Union for Conservation of Nature (IUCN) ii) MSGs around land, like the International Land Coalition (ILC) iii) MSGs focusing on climate change adaptation and mitigation such as The Global Alliance for Climate Smart Agriculture (GACSA) iv) MSGs around oil, gas, and mineral resources, like The Extractive Industries Transparency

Initiative (EITI), and iv) MSGs focused on biomass commodity chains like the Forest Stewardship Council (FSC), the Marine Stewardship Council (MSC), or the Roundtables on Sustainable Palm Oil, Responsible Soy, and Sustainable Biomaterials (RSPO, RTRS and RSB). Despite, or because of, the flurry of multistakeholder initiatives there are many membership overlaps between them. For instance, the FAO is a member of the RSB and the ILC; the World Wildlife Fund (WWF) is a member of the FSC, RTRS, RSPO, RSB and the ILC; and Oxfam is part of the RSPO, the ILC, and holds a representative seat at the multi-stakeholder initiative of the Interlaken Group, which will be discussed further below.<sup>86</sup>

Although it is often contrasted with it, multistakeholderism also remains embedded within the multilateral governance system. While MSGs play an increasingly important role as creators and especially enforcers of resource property-related regulations, they often do so with the encouragement and support of governments and intergovernmental organisations. The state-led multilateral governance system's reliance on MSGs as enforcing authorities of multilateral agreements, and of norms shaping resource property relations, can be seen in cases including: the UN 2015-2030 Sustainable Development Goals (SDGs); the report of the Conference of the Parties to the Framework Convention on Climate Change held in Paris in 2015 (UNFCCC COP 21); and the World Council on Food Security's 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs or Tenure Guidelines). SDG target 17.16, for instance, aims to 'enhance the Global Partnership for Sustainable Development, complemented by multi-stakeholder partnerships that mobilise and share knowledge, expertise, technology and financial resources, to support the achievement of the SDGs'.<sup>87</sup> The COP 21 report includes a whole section (V) on 'non-Party stakeholders', and 'welcomes the efforts of all non-Party stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other subnational authorities'.<sup>88</sup> And in the Tenure Guidelines (VGGTs) 'states are encouraged to set up multi-stakeholder platforms and frameworks at local, national and regional levels or use such existing platforms and frameworks to collaborate on the implementation of these Guidelines'.<sup>89</sup>

Thus, with the increasing legitimacy of multistakeholderism there is an important shift in the enforcers of the global resource property regime. While states formally retain the ultimate authority, they are increasingly ceding this responsibility to MSGs in which private actors with vested interests are disproportionately represented, and disproportionately powerful.

## Changes in the resource property policy structure

The state everywhere plays an important role in resource property claims. Hence, changes in the ways that corporations and non-profits can engage with public governance systems, and their perceived legitimacy as actors in those spaces, are an important feature of the resource property reform. Corporations and non-profits both play a major role as 'sponsors and inhibitors' of government policies.<sup>90</sup> As discussed earlier, in the last decade multilateral spaces like the UN have offered new opportunities for these non-state actors to engage, and a variety of new international bodies and mechanisms addressing resource governance have emerged. While this process has opened opportunities for communities of working people and their organisations and movements to shape national and international public policies, and to draw attention to violations of their rights, it has also provided new spaces and mechanisms for corporations to gain influence and assert their own legitimacy as "stakeholders" in policy-making spaces.

For instance, responding to the convergent global crises, the World Bank argues that the 'first step' towards more sustainable agricultural systems is 'to get the incentives right by strengthening property rights'.<sup>91</sup> Similarly, Campling and Havice explain that 'the World Bank has identified "weak" fisheries management and the lack of private property rights as key causes of the fisheries crisis; it has spearheaded projects and regulatory guidelines to rectify such "poor governance"' (World Bank 2009).<sup>92</sup>

Transnational investors in natural resources are also increasingly protected through international trade, investment and intellectual property law.<sup>93</sup> In addition to protecting transnational investors' resource property rights, free trade and investment protection agreements tighten the corporate grip



over environmental information and knowledge. Intellectual property rights (IPR) provisions in many trade and investment agreements, especially those signed with the U.S., the EU and Japan, have gone beyond even the already-stringent prescriptions stemming from the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). For instance, besides expanding IPR protection periods beyond those set forth in TRIPs, the free trade agreement between the U.S., Central America and Dominican Republic (DR-CAFTA) compels all parties to ratify the contentious 1991 revision of the International Union for the Protection of New Varieties of Plants (UPOV), which guarantees new and stronger intellectual property rights related to seeds.<sup>94</sup>

## New human rights instruments

The advocacy of the World Bank, and the enhanced legal protection for transnational corporations, are consistent with developments under neoliberalism and can be seen as deepening policy trends that were already well established in the 1990s. But since 2008 the convergent crises has also called forth new and more transformative responses. Decades-long struggles by social justice movements and their allies have borne fruit in the new political context, and resulted in two major breakthroughs relating to the potential democratisation of resource rights.

In 2010, the UN recognised the human right to water and sanitation, illustrating the growing strength of human rights claims related to resources. In 2018, another remarkable achievement further entrenched working people's rights to the resources on which they depend for their livelihoods: after years of mobilisation and advocacy by the transnational agrarian movement La Via Campesina, together with human rights organisations FIAN and CETIM, the UN passed the Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). This Declaration recognises the right to land (and other resources) as a substantive human right for rural working people. Specifically, article 17 states that these subjects<sup>95</sup> 'have the right to land, individually and/or collectively [...], including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of

living, to have a place to live in security, peace and dignity and to develop their cultures'.<sup>96</sup>

Similarly, the growing recognition of the communal form of resource property in statutory law is mentioned above. Wily explains that the 'legal provision for collective property is expanding its focus from indigenous peoples to all rural communities, including forest and pastoral communities, and potentially to urban communities, although not so much to water resources'.<sup>97</sup> Moreover, 'it also follows that statutes generally admit customary law as the main source of rules and norms by which communities govern their properties, subject to limitations established in constitutional and other statutes'.<sup>98</sup> UNDROP has further consolidated this trend, with strong language about communal rights.

While it is a non-binding legal instrument, UNDROP nonetheless represents a source of human rights principles, and can have an important role to play in laying the groundwork for new obligations under customary international law, as well as providing a tool for advocacy for rural working people. Other similar resource governance instruments put forward by states in consultation with affected communities of working people draw heavily on human rights language and concepts. These include, for example, the 2014 Committee on World Food Security Principles on Responsible Investment in Agriculture and Food Systems;<sup>99</sup> the 2012 CFS Tenure Guidelines (VGGTs) mentioned earlier;<sup>100</sup> or the 2014 FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (the SSF Guidelines).<sup>101</sup> Moreover, all of these non-binding yet human rights-based instruments complement and expand each other. For example, a social justice-oriented human right to land and other resources in UNDROP is also a means towards the progressive interpretation and use of the VGGTs and SSF guidelines.<sup>102</sup>

## Voluntary resource governance tools

However, non-binding resource governance instruments are a double-edged sword. In addition to instruments in the development of which challengers of the global resource rush have had a voice, like UNDROP or the VGGTs, there has been also an

unprecedented surge in voluntary resource governance tools at the international level which strongly resonate with the interests of the global resource rush supporters. These take diverse forms.

On the one hand, there are myriad resource governance standard-setting rules crafted by international multistakeholder groups. For instance, the Roundtable on Sustainable Biomaterials (RSB) claims to offer “trusted, credible tools and solutions for sustainability and biomaterials certification that mitigate business risk, fuel the bioeconomy, and contribute to the UN Sustainable Development Goals that enable the protection of ecosystems and the promotion of food security”.<sup>103</sup>

On the other hand, there are also many voluntary resource governance instruments developed by international governmental organisations, like the 2010 Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources which were put forward by the World Bank in collaboration with FAO, IFAD and UNCTAD, or The International Finance Corporation’s Performance Standards-based Equator Principles for Responsible Financing.

Whether their origins are public, private, or in public-private partnerships, voluntary resource governance tools can steer state and corporate policy. For example, Germany, Austria, Switzerland, Norway, Denmark, Belgium, France, UK, Sweden and the Netherlands committed to use 100% RSPO-certified sustainable palm oil by 2015.<sup>104</sup> And, through the advocacy of Dutch NGO Solidaridad and under the supervision of The Netherlands’ Minister of Agriculture, the Colombian National Federation of Oil Palm Growers (FEDEPALMA), The Netherlands’ Oils and Fats Industry (MVO), Solidaridad, and the Sustainable Trade Initiative signed in 2018 the first-ever joint declaration to increase the production and trade between Colombia and the Netherlands of RSPO-certified sustainable palm oil.<sup>105</sup>

These voluntary resource governance tools also shape corporate policies. The Coca-Cola Company (TCCC) and PepsiCo have both made public commitments to the principle of free, prior and informed consent (FPIC), and more generally to the Tenure Guidelines (VGGTs).<sup>106</sup> Additionally, TCCC has

committed to supplying its manufacturing only from BONSUCRO or equivalent certified sugar by 2020.<sup>107</sup> Indeed, a 2017 USAID investor survey on land rights shows that ‘about 70 percent of respondent organizations abide by some voluntary, sector-specific standard [...] The IFC Performance Standards were commonly reported as paired with the VGGTs and a sector specific certification standard such as FSC’.<sup>108</sup>

However, transnational corporate giants like Unilever, AHOLD, and Nutreco have questioned the effectiveness of commodity certification schemes if only ‘Western companies’ call on suppliers to certify while large agribusiness firms, in China and India, for example, do not.<sup>109</sup> This issue was addressed in the first Interlaken Group (IG) meeting in 2013 as the need to:

‘expand the use of scorecards (e.g. Oxfam, Behind the Brands initiative) to [...] build the business case for integrating land rights issues in supply chain management with companies from less transparent but important countries dependent on external supply of commodities (China, Korea) through: (i) the sustainability of supply argument, and (ii) the “country brand” argument. Use the Embassies and other politically important “entry points” for influence’.<sup>110</sup>

A year later the Interlaken Group, which is introduced in greater detail below, agreed on the need to enforce ‘mechanisms to engage with Chinese and other South-to-South investors: Developing ways to motivate Chinese and other similar countries to adopt investment and supply chain management policies that pay attention to land tenure’.<sup>111</sup>

## Digitalisation

Finally, new policies to digitalise the administration and records of resource rights and uses are deeply restructuring the resource policy structure in many jurisdictions. According to senior World Bank land economist Klaus Deininger, ‘satellite imagery, drones, cloud computing and blockchain are among technologies with the potential to help many of the world’s more than 1 billion people estimated to lack secure property rights’.<sup>112</sup> For instance, ‘governments



including Honduras, Georgia and Rwanda have signed deals to build blockchain-based land-titling systems, where information is stored in immutable digital registries and cross-checked by a network of computer users'.<sup>113</sup> 'Such technology advances,' Deininger explains, 'are making it possible to comprehensively secure land rights in participatory and cost-effective ways that were unimaginable even a decade ago'.<sup>114</sup>

For investors, the digitalisation of resource rights and land use is key to reducing investment risk. Hence, to 'provide the data and analysis that businesses need to reduce land conflict and improve land governance through better informed investment decisions', the Overseas Development Institute (ODI) and asset management and investment consultancy firm TMP Systems have developed the 'Quantifying Tenure Risk (QTR) initiative'. The QTR 'financial model blends verified company data with detailed case research to accurately assess tenure risk and provide tailored support to investors and businesses'.<sup>115</sup>

The combination of changing economic, political, and technological circumstances in the context of the current global crises is impacting the resource property policy structure in complex ways. On one side, corporations have gained new powers and legitimacy, through trade and investment instruments, and through the creation of new spaces and opportunities for them to influence multilateral governance spaces. At the same time, however, new governance instruments and spaces have also emerged which give more voice to affected communities and transnational social movements. These dynamics are interacting in complex ways, but collectively amount to a reduction of the role of states, and increased powers for non-state actors in shaping resource property regimes. This presents both risks and opportunities, for corporate and social actors alike.

## Changes in the justification of resource property

The protagonists of the resource property reform justify it as an efficient, pragmatic, and rightful cornerstone in the transition toward global sustainability and well-being. For centuries, and especially since

the rise of liberalism in the 17th century, the imposition of property rights over open access natural resources has been justified as an efficient means towards heightened individual freedom and wealth.<sup>116</sup> This sort of justification still resonates today. For instance, the Omidyar Network, the UK's Department for International Development, Land Alliance, the Overseas Development Institute, and Gallup argue that 'property rights provide the necessary foundation for people to build better lives for themselves and their families, ultimately driving sustainable economic growth in their countries'.<sup>117</sup> And despite meaningful changes like the endorsement of the communal form of resource property, the World Bank keeps repeating the (neo)liberal mantra that 'in many countries, insecure property rights, poor contract enforcement, and stringent legal restrictions limit the performance of land markets, creating large inefficiencies in both land and labor reallocation and reinforcing existing inequalities in access to land'.<sup>118</sup> Hence, the Bank recommends 'new mechanisms' which 'can increase the security of property rights, facilitate land reallocation as rural households adjust their livelihood strategies or leave for the city, and facilitate access to land for the landless'.<sup>119</sup>

Today, a strong resource property regime, particularly one reformed along the lines described above, is also justified as an essential condition for climate stewardship and environmental sustainability. Furthermore, the idea that resource property rights are human rights, and, more specifically, strategic human rights which allow for the realisation of other human rights, is an ideological tenet of the resource property reform. These two core claims benefit from more detailed exploration.

## Resource property rights for sustainable development

First, the protagonists of the resource property reform present it as a "quadruple-win": they argue that it will provide an efficient and pragmatic way of governing the global resource rush to the benefit of people, polity, planet, and profit. For Oxfam, ILC, and RRI, for example, 'indigenous and community land rights are a *precondition for sustainable development*. Their recognition makes nations more stable, reduces *risks*

for investment in economic development and spreads the benefits from natural resources more widely and fairly'.<sup>120</sup> Regarding the resource property reform's climate and environmental benefits, RRI explains that:

'the success of policies to mitigate climate change and promote forest restoration also hinge on secure community tenure [...] Initiatives such as REDD+ and the Bonn Challenge can make significant progress towards reducing carbon emissions from forests by promoting the formal recognition of community-based forest rights'.<sup>121</sup>

The ILC, meanwhile, articulates the governance perspective behind the resource property reform through its notion of 'people centred land governance'. In its words this is:

'land governance that recognises people's dignity and human rights and places women, men, youth, communities, and Indigenous Peoples who live on and from the land - current and future generations - at the centre of decision-making, including about their food systems. Land governance centred on people supports them in adapting to climate change and caring for ecosystems that sustain life, opens up opportunities for all, and allows vibrant and sustainable economies to develop'.<sup>122</sup>

These influential NGOs and MSGs bring their perspectives to the Interlaken Group which argues that 'today, securing the rights and livelihoods of communities [...] in order to support sustainable resource use, enable responsible investment, and prevent illegal land use, constitutes one of the most pressing and necessary steps to achieving global progress toward sustainable and equitable development'.<sup>123</sup>

## Property rights and human rights

Second, the champions of the resource property reform frame human rights to land and natural resources as property rights. As part of its commitment to 'make the business case for companies to respect and invest in systematically addressing local/community land rights' issues, the Interlaken Group agrees 'to work with the investment community to frame land rights as "property rights" which is more understandable to the investment community and risk analysts'.<sup>124</sup> As a result, perhaps unintended, of this compromise, those pushing for the property reform also legitimise the inverse claim, namely that 'property rights are human rights'.<sup>125</sup>

The simplification of the human right to land and other resources into forms of property rights obscures other purposes of natural resource property, including but not limited to ideas of territory, sovereignty, and relationships to land and resources that are central in many indigenous and traditional communities. Furthermore, many advocates of the human right to land and other resources argue that this right is essential for the realisation of other human rights like those to food, housing, culture or water. This would appear, at first glance, to undermine a conflation of a human right to land with property rights. And, in fact, this has been the main argument for the recognition of a human right to land and other resources put forth by global resource rush accommodators and challengers alike.<sup>126</sup> Paradoxically, however, it is precisely along these lines that the need for a global right to *property* is currently justified as a 'strategic human right, a right that protects other rights'.<sup>127</sup> 'A human right to own property', Howard-Hassmann argues, 'protects the economic human rights to adequate food and freedom from hunger, [because it is] crucial to the economic development necessary to ensure that human beings can supply themselves with food and otherwise support themselves'.<sup>128</sup>



## Reform drivers, protagonists, and conditions of possibility

Thus far this report has shown that a major reform of the dominant resource property regime is underway, involving changes in the object, subject, form, enforcing authorities, policy structure, and justification of resource property. But how did this reform come about? What broader socioeconomic and political dynamics have triggered or driven the reform along its current path? Who has pushed to bring it about? And what have been the concrete conditions that made it possible? Some of the major elements have been touched upon above, but will now be explored in detail.

### Why is there a reform of the resource property regime?

The transformations of the dominant natural resource property regime highlighted here are gradual and cumulative, not radical and sudden. Rather than representing completely new dynamics which emerged on the global scene after 2008, these changes represent a deepening, consolidation, or mainstreaming of dynamics which were already

visible under neoliberalism. These dynamics can be observed as early as the 1970s, and were in full force by the turn of the century. The resource property reform is built on the bedrock of neoliberal policy that went before it. This previous stage of neoliberal globalisation played a role in triggering both the convergent crises and the reforms which have emerged as one dominant response to them.

Two key dynamics underpin the resource property reform under convergent global crises. Firstly, the



post-World War II multilateral governance system, and the neoliberal capitalist regime that followed it since the 1970s, have shown limited capacity to effectively respond to the convergent global crises from 2008 onward. This is seen, for instance, in the failure to implement the (already weak) 2015 Paris Climate Agreement, in spite of catastrophic consequences forecast as a result of failing to limit global warming to within 1.5°C above pre-industrial levels.<sup>129</sup> Secondly, and more specifically, the resource property reform is both an outcome and a driver of the current global resource rush. The flurry of natural resource deals following the convergent crises triggered immediate unrest and turmoil among resource-dependent working people. Farmers, fishers, pastoralists, forest communities, and even rural workers worldwide found their livelihoods and living territories adversely affected or threatened by a flood of (trans)national land and resource deals. Working people suffering directly from resource dispossession or loss of control were among the first to protest, especially when they were confronted with projects which offered them neither a (fair) compensation nor any possibility of incorporation. Soon, others who had initially consented to resource deals also realised that promises of compensation, jobs, and well-being were, more often than not, much exaggerated.

Grassroots negative responses to resource deals poured in, both from “challengers” - who resist the deals and push for their own life projects - and from “accommodators” - who struggle for better terms of incorporation into (trans)national investors’ projects (e.g. as workers in mines or plantations, contract farmers, or recipients of payments for environmental services). Working people’s grievances and disputes at the grassroots level were picked-up by transnational NGOs, social movements, journalists, scholars and intergovernmental institutions in supportive, challenging and accommodative standpoints with regard to the global resource rush.

In this context, so-called “tenure risks” become of paramount relevance for (trans)national investors in natural resources. The USAID defines resource tenure risks ‘as the likelihood that disputes between local people and project proponents over land and natural resource rights would have negative impacts on the operations of the project’.<sup>130</sup> A 2012 report prepared for the Rights and Resources Initiative (RRI) by

asset management and investment consultancy firm TMP Systems entitled *The Financial Risks of Insecure Land Tenure: An Investment View* clarifies these risks: ‘the potential for bottom-line financial damage range from massively increased operating costs – as much as 29 times over a normal baseline scenario, according to our modeling – to outright abandonment of an up-and-running operation’.<sup>131</sup> To better understand investors’ perceptions on resource tenure risks, USAID conducted in 2017 the global survey referred to above. According to survey outcomes, ‘about two-thirds of respondents reported that the importance of land and/or resource rights has increased or significantly increased in the past five years, while the remaining third report no change. There was no substantial difference observed between respondents that operated or invested domestically versus regionally or internationally’.<sup>132</sup> The survey suggested, in contrast to earlier periods, that (trans)national investors today are more worried about unrest and resistance to resource deals at the local level than about challenges from host states.<sup>133</sup> This illustrates the growing importance of non-state actors in governing access to resources, following the disempowerment of states under neoliberalism.

## Who are the protagonists of the resource property reform?

Investors in natural resources are looking for ways to deal with direct threats to their control of resources from the grassroots, and with the reputational risks associated with these conflicts. Influential (trans)national NGOs have seized this opportunity to try to turn it to the advantage of local communities, helping them to get the most out of the current wave of land and resource deals. These visionary investors, together with prominent NGOs, in supportive and accommodative stances, respectively, in relation to the global resource rush, are the main actors behind the resource property reform discussed here. This is not to say that other state and social actors in supportive, accommodative, or challenging stances have no impact on the reform or resource property politics more generally. They do, as discussed earlier. But it is an accommodator-supporter alliance that is spearheading the resource property reform.

This alliance works through influential multistakeholder initiatives. Four interesting examples include the Interlaken Group, the Natural Capital Coalition, the Food and Land Use Coalition, and the (now defunct) Global Partnership for Oceans.

The Interlaken Group (IG), mentioned several times in the preceding, works to help corporations and financiers ‘understand the business case for respecting land rights’.<sup>134</sup> Hence a fundamental question driving the Interlaken Group is ‘what are the main land tenure related risks and opportunities for creating shared value, increased yields and growth?’.<sup>135</sup> Assuming that ‘private investors (corporations and financiers) are both a part of the problem and solution’,<sup>136</sup> the IG adopts an ‘accommodative’ discourse which frames land and resource deals as necessary-yet-risky businesses which involve ‘good’ and ‘bad’ deals and investors:

‘the volume of investments in land-based resources in developing and emerging countries has been increasing rapidly in the last decade. Some of these investments have been associated with “land grabbing”, with various negative impacts on the livelihoods of local people and communities and even human rights. At the same time, it is understood that more foreign and local investments are needed to introduce better technologies, bring existing resources under more efficient and sustainable use, and increase both production and productivity of various land-resource based production systems including those relying on smallholders and communities’.<sup>137</sup>

The Natural Capital<sup>138</sup> Coalition (NCC) involves ‘almost 300 organizations [which] fall into seven broad stakeholder groups: business, finance, conservation and civil society, government and policy, science and academia, standard setters & disclosure and membership organizations’.<sup>139</sup> It was launched in 2012, ‘to focus on embedding natural capital thinking and assessments in the private sector’.<sup>140</sup> Since 2016, the NCC also works ‘to develop and encourage an

international “enabling environment” for natural capital approaches [to] support the transition to a society in which the natural capital approach is an integral part of public and private decision-making’.<sup>141</sup> The NCC engages ‘the business, finance, government and policy-making communities’,<sup>142</sup> ‘under a common vision of a world where business conserves and enhances natural capital’.<sup>143</sup> In so doing, it brings together all of these actors to reflect on ‘how dependent is my business model on the health of the natural world, and how are my actions impacting on nature’s ability to provide what I am dependent on?’<sup>144</sup>

The Food and Land Use Coalition (FOLU) was established in 2017 as an outcome of the work of the Business & Sustainable Development Commission (BSDC) which stems from the World Economic Forum’s annual meeting in Davos in 2016. The FOLU also brings multiple actors from the governmental and civil society realms, in the belief that:

business has a critical role to play in achieving the outcomes for climate, biodiversity, public health and prosperous livelihoods that the world needs. The World Business Council for Sustainable Development (WBCSD), a FOLU core partner, convenes business leaders to support them in this role. FOLU acknowledges the invaluable contribution of Unilever, Yara International and the Business & Sustainable Development Commission in nurturing our initial development.<sup>145</sup>

Finally, between 2012 and 2015 the World Bank convened the now defunct, yet highly influential, Global Partnership for Oceans (GPO). The GPO gathered ‘over 150 partners representing governments, international organizations, civil society groups, and private sector interests committed to addressing the threats to the health, productivity and resilience of the ocean’.<sup>146</sup> To these ends, GPO members committed to ‘feed the planet’s growing population, support millions of livelihoods, contribute hundreds of billions of dollars annually to the global economy, and to provide essential environmental services, including climate regulation’.<sup>147</sup>

These are all key examples of the kinds of new alliances driving the resource property reform under convergent crises. Multistakeholder initiatives like these assert that there is no fundamental antagonism between the interests of transnational corporations and local communities of working people, and argue that the support of NGOs – sometimes acting as self-appointed representatives or interpreters of grassroots communities and movements – can help to ensure that corporations offer communities fair compensation or favourable terms of incorporation into business or conservation projects. A range of such initiatives have emerged at the national and international level, and different mechanisms of multistakeholder consultation are playing an increasingly pivotal role in traditionally multilateral spaces, including the UN, as illustrated earlier.

## What conditions have made the reform possible?

The resource property reform is the ongoing outcome of a political deal between global resource rush trailblazing supporters and influential accommodators. The latter include governments, intergovernmental organisations, and especially large watchdog NGOs that take an accommodative stance in multistakeholder initiatives, name and shame “bad” investors, and reward “good” investors with sustainability seals and positive assessments of corporate performance. These are fundamental for corporate “pro-social branding” strategies. As flagged earlier, pro-social branding has gained momentum as a corporate political strategy under convergent global crises.<sup>148</sup> This goes beyond the ‘corporate social responsibility’ discourse and practice of the 1980s and the 1990s. Pro-social brands ‘are more politically disruptive and inspiring than basic sustainable brands. Instead of focusing on what a brand has done internally to drive a better world, pro-social brands look outward to take a stand on key moral issues’.<sup>149</sup>

This evolving corporate political agenda relies on re-casting natural resource businesses as a phenomenon capable of tackling vital planetary threats, rather than merely another accumulation project. This is so regardless of the geographical scale at which, or sector in which, the pro-social business operates. For

instance, transnational consumer goods giant and IG, NCC, and FOLU member Unilever, welcomes you to its website with this political statement: ‘Brands with purpose [...] We make some of the world’s best-known brands – all are in a journey to reducing their environmental footprint and increasing their positive social impact [...] Right here, right now, we need you and millions of others to come together and create a movement for change. Let’s change the world for the better – together’.<sup>150</sup>

Similarly, the organisers of the Latin American Congress of Oil Palm Growers, held in October 2013 in Antigua Guatemala, chose the slogan “Oil Palm is the Answer”. What did they mean by this? The President of the Colombian Federation of Oil Palm Growers (FEDEPALMA) argued during the Congress that ‘the life environment created by a *palm forest* is very positive for climate change mitigation’.<sup>151</sup> His peer from the Guatemalan GREPALMA claimed that ‘to produce the extra 150 million tons of edible oil to feed the world by 2050, it is necessary to plant 333 million hectares with soy or 217 million hectares with rapeseed, but only 36.5 million hectares with oil palm; *oil palm is more oil on less land*’.<sup>152</sup>

Political demands for solutions to the climate and environmental crises have been building over the last decade. These have incorporated the calls for social justice and less exploitative business practices that helped to fuel responses ranging from fair trade branding and ethical consumption to the Battle of Seattle and the alter-globalisation movement in the 1980s and 1990s. In this context, corporations and investors are cognisant of both threats and opportunities, and strive, with the help of NGOs who can legitimate their efforts, to cast themselves as possible architects of “win-win-win” scenarios in which (trans)national corporate investment is fundamental to improve peoples’ lives and save the planet, while also providing a high return on investment. Both growing awareness of the climate, environmental, economic, and social crises and the growing power and legitimacy of social movements and NGOs in transnational governance spaces have, paradoxically, helped to create the conditions for this alliance between the resource rush supporters and accommodators to emerge and succeed.





## Political implications of the resource property reform

A series of key shifts in the dominant resource property regime have been identified here. Taken together, they stand for a restructuring of the dominant resource property regime under neoliberal globalisation as a whole. This synergistic outcome has been characterised as “the resource property reform under convergent global crises”. To reiterate, this essentially involves: i) consolidating and advancing the commodification of nature, including through digitalisation and financialisation, and thereby creating new *objects* of property; ii) advancing the legal personhood of NGOs and corporations as *subjects* of resource property rights, including making the case for corporations as human rights duty bearers and rights holders; iii) mainstreaming the communal *form* of private resource property, while also providing ways to profit from communal resources without owning them; iv & v) bolstering all of this through a growing state-sanctioned voluntary institutional and regulatory *policy structure* that gives more freedom for private sector self-governance as a means of *creating* and *enforcing* resource governance rules, and; vi) *justifying* all of these dynamics as efficient, pragmatic and rightful cornerstones in the transition toward global sustainability and well-being.

What are the political implications of the resource property reform? This is an interrogation that deserves much more empirical research across world regions, countries, and sectors of activity than this exploratory report can offer. Yet, some preliminary reflections are possible. Two main types of political implications can be discerned. Firstly, there are aspects of the reform which reshape the role of NGOs and corporations in natural resource governance, and thereby transform the terrain for political advocacy regarding natural resource control, ownership, and governance. Secondly, there are reform implications which reinforce, and may potentially deepen, the class divides between the 'haves' and 'have-nots' of the world.

## Changing roles and grounds for political advocacy

Regarding the first type, the resource property reform involves some actual and meaningful concessions to resource-dependent working people by visionary supporters of the global resource rush, in order to reduce the latter's local resource tenure risks.<sup>153</sup> Among these, two concessions are particularly significant.

In the first place, many states involved in the global resource rush have consented to important regulatory innovations which can potentially improve working people's control over resources. These especially include mainstreaming the communal form of private resource property in national and international statutes, and recognising the right to land and other resources as a substantive human right. Hence, at least legally speaking, the right not to be excluded from a resource has gained currency against the dominant perspective on resource property rights as absolute and exclusive individual private rights.

In the second place, trailblazing corporations and state actors behind the reform now condemn resource deals that involve especially egregious environmental depletion and/or the forceful dispossession of local communities. For instance, since 2017 consumer goods giant Unilever has included among the 'mandatory requirements to do business with Unilever' the condition that 'the rights and title to property and land of the individual, indigenous

people and local communities are respected'.<sup>154</sup> As a result, frontrunner corporations and financiers that are part of multistakeholder initiatives achieve greater license from local working people to operate at the grassroots, as well as the ability to project themselves as pro-social businesses capable of tackling the global crises of today. For pro-social businesses to be recognised as actors with the ability to respond to the crises, however, they first need to consent to the demands posed by a series of 'response-ability gatekeepers',<sup>155</sup> including global corporate performance evaluators and commodity certifiers in multistakeholder platforms. While intergovernmental organisations play an important role, the leading role is increasingly played by large international conservation and development NGOs acting as private response-ability gatekeepers.

Therefore, the resource property reform is restructuring the playing field of political advocacy around natural resource governance in at least two major ways. On one hand, as a result of visionary companies switching to a pro-social branding strategy, corporations are increasingly lobbying NGOs. The cases of The Coca Cola Company, PepsiCo, and others discussed earlier are good examples of this shift. Moreover, governments and intergovernmental organisations are increasingly lobbying private actors within multistakeholder initiatives that actively create and enforce resource property rules. A major case in point is the Strategic Partnership Framework signed between the World Economic Forum and the United Nations in June 2019, 'to deepen institutional engagement and jointly accelerate the implementation of the 2030 Agenda for Sustainable Development'.<sup>156</sup>

On the other hand, the supporter-accommodator alliance that enables the resource property reform is dividing the ranks of those opposed to the global resource rush. It undermines the possibility of challenger-accommodator alliances that could push for an alternative and transformative resource property system. Working people-led transnational agrarian and fisherfolk movements in a challenging stance regarding the resource rush, like La Via Campesina, the World Forum of Fisher People, and the World Forum of Fish Harvesters and Fish Workers, openly reject corporate-led blue and green economy solutions to the convergent crises.<sup>157</sup>



At the same time pro-social firms increasingly employ the language of human rights and sustainable development. There are even cases in which pro-social branding as a political strategy involves the co-option of discourses and alternatives that originated with the most adamant challengers of the global resource rush. For example, the Guatemalan Oil Palm Growers Guild (GREPALMA) has historically tried to counter accusations of land-grabbing by arguing that the oil palm complex strengthens the Guatemalan edible oil industry and thus ‘contributes to food sovereignty’.<sup>158</sup>

## Reinforcing the class divides between the world’s “haves” and “have-nots”

In pressuring (trans)national investors to respect community resource rights, accommodators have often consented to frame the bundle of rights included in the human right to land and other resources in a narrow fashion, as simply property rights. This has enhanced the legitimacy of the idea that property rights are, themselves, human rights. This has major political implications for resource property relations and the class divides among natural resource owners and non-owners.

First, the idea that property rights are human rights serves the purposes of libertarian ideologues advocating for the further development and enforcement of a universal human right to own property. For instance, Mchangama sees this as an opportunity

‘to remedy the fatal flaw of the ICCPR [International Covenant on Civil and Political Rights] by adopting an optional protocol with a robust protection of the right to property against arbitrary expropriation and regulatory takings’.<sup>159</sup> It is in this way, according to Mchangama, that the right to property can be ‘promoted as a human right’ to counter the hostility of ‘mainstream human-rights thinking to the protection of private property’, and its affinity with ‘the ideas of ESC [economic, social and cultural] rights that often conflict with the right to property’.<sup>160</sup>

Second, framing human rights to natural resources as property rights, and instrumentally approaching land and natural resources as means to realise other rights rather than as substantial human rights on their own, echo the influential argument on property and citizenship put forth by Marshall after World War II. For him, the ‘right to own property’ stands out among the fundamental ‘rights necessary for individual freedom’ and the ‘civil element of citizenship (the others being the political and social elements)’.<sup>161</sup> This resonates with Albright and de Soto’s call under convergent global crises for ‘the reinforcement of property rights’ as a key strategy to ‘enable the fruition of citizenship’.<sup>162</sup> As a result, the resource property reform might end by reinforcing the libertarian idea that not owning property is akin to not being a subject of social, economic, and cultural human rights. This suggests a return to the visions of bounded citizenship that preceded universal suffrage in Europe and the Americas.

# Conclusion: Changing everything so everything stays the same?

The political deal that enables the resource property reform under convergent global crises from 2008 onwards is ultimately its Achilles heel as well. Despite the actual concessions to resource-dependent working people by global resource rush supporters, the resource property reform primarily serves investors' interests by reducing local resource tenure risks and reputational risks. For instance, the growing recognition and respect for communal resource ownership by states, corporations, financiers, and conservationists means that communal property is not necessarily a safeguard against the abilities of powerful private actors to benefit from those resources.

On the whole, and in light of the new dynamics of resource appropriation and control that it opened, it would seem that the resource property reform is about changing everything so everything stays the same. In other words, it is just a 'reformist reform',<sup>163</sup> with limited potential to democratise natural resource control, ownership, and governance, and thereby the distribution of economic, ecological, and cultural resource benefits.

However, the ongoing resource property reform is also highly contested. This is especially the case amongst those global resource rush supporters and challengers who are unwilling to abide by the political deal between frontrunner supporters and influential accommodators which drives the reform along its

current path. Paradoxically, resistance to the reform emerges, on the one hand, from (trans)national corporations, financiers, and conservationists pushing for business as usual, and thereby absolute and exclusive individual property over a growing range of natural resources, services, and knowledges. On the other hand, however, it is also opposed by many resource-dependent working people at the grassroots, including farmers, fishers, pastoralists, forest communities, and workers —particularly those who aim to democratise resource control, ownership, governance, and distribution of benefits. This makes the resource property reform highly contingent on an unstable middle-ground, a political compromise the future trajectory of which remains to be seen.



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