

## THE HUMAN RIGHT TO PROPERTY AND SUSTAINABLE DEVELOPMENT

### Panel Participants:

- Thomas T. Ankersen & Thomas Ruppert  
The Human Right to Communal Property: Its Origins and Recent Development Under the Inter-American System
- Rosemary Coombe  
Protecting Traditional Knowledge: Property, Intellectual Property, Indigenous Heritage or Cultural Right?
- Carmen Diana Deere  
Married Women's Property Rights in Latin America as Human Rights: A Comparative Perspective
- Berta Hernandez-Truyol  
The Local and the Global: Using Regional Systems to Obtain Women's Rights
- Jeffrey Wade  
Land Invasions, Land Reform and Sustainability in Brazil
- Luis Ricardo Zeledón

This conference workshop focused on issues related to real, personal, and intellectual property in the context of international law and sustainable development. The panel workshop took place at the Instituto Inter-Americano de Derechos Humanos (IIDH)(Inter-American Institute for Human Rights). We received an introduction to the IIDH and its work from Victor Rodriguez, IIDH attorney.

All of the papers in the workshop addressed property issues from a human rights perspective and agreed that through a human rights lens, property is not merely an individual right of possession (a civil right), but a social, economic, and cultural right. The ways in which property is recognized and allocated shape the possibilities for social development and whether societies can develop sustainably.

Thomas Ankersen, Director of the Conservation Clinic at the University of Florida, along with Thomas Ruppert, research assistant at the Conservation Clinic, gave the first presentation. The presentation traced the development of the treatment of communal property in the western legal tradition and, more specifically, the genesis of protections for communal property in the Inter-American human rights system. The presentation put property protections in an historical context beginning with Roman law to the split between the common law (Magna Carta in 1215) and civil law (Siete Partidas also during the 13<sup>th</sup> century) through the Enlightenment period. The presentation noted the legal and philosophical rationales used to dispossess indigenous peoples of their communal properties before tracing domestic and international precedents that began to discredit the notion that communal lands of indigenous peoples could qualify for inclusion under the *terra nullius* doctrine of international law (stating that a nation could claim land that was "unoccupied").

Rosemary Coombe then addressed issues of the use by modern, western corporations and governments of the knowledge, art, and other products of indigenous cultures. While this typically falls under the rubric of intellectual property law in the western legal system, Coombe used examples of difference in cultural make up and organization to demonstrate how even the terminology of western intellectual property law does not fit appropriately with most indigenous group's own conception of their rights regarding their cultural art and images and knowledge. Coombe then pointed out that protection of cultural knowledge of indigenous peoples is essentially *sui generis* in nature and requires the western legal system to consider fundamentally different concepts and methods for protecting the rights and integrity of indigenous cultures to the images, knowledge, and culture that they have developed.

Carmen Diane Deere presented intensively data-driven research on Latin-America laws regarding women, property, and marriage. The research demonstrated the abysmal discrimination that women faced under the laws of Latin America in the past and then, through more recent laws, allowed Deere to trace for the audience the different progress of various countries laws and their strengths and weaknesses. The research impressed the panel with the richness of the analysis available through such exhaustive investigation of women's property rights across both countries and time. Many agreed that this serves as a model for further comparative law research.

Berta Hernandez-Truyol then addressed possible avenues for pursuing human rights claims, especially claims of violations of the human rights of women and sexual minorities. Ms. Hernandez identified three distinct at levels at which human rights claims can typically be pursued: the local, national, and international levels.

Jeffrey Wade first gave some context to the importance of property rights as a critical tool in the struggle to move towards sustainable development. Mr. Wade used Brazil's situation as an example of how insecure land tenure and inequitable land ownership patterns maintain destructive social patterns such as poverty and environmental degradation. He then discussed the possibility for land reform as a way to overcome these problems in Brazil. Operating on the assumption that effective land reform would improve the situation, Mr. Wade then outlined the history of land reform in Brazil. Unfortunately the outlook for effective, equitable, and efficient land reform is not good in Brazil; after many years of effort and a recent push to attempt a new reform paradigm that includes market forces, land distribution statistics have improved little in Brazil.

Finally, Luis Ricardo Zeledón brought the issues discussed and the crucial role that legal and cultural views of property home to Costa Rica. Mr. Zeledón explained how property and its ownership have reflexive effects on culture by tracing the history of property ownership patterns in Costa Rica from early European settlement to the present while outlining the effects that such ownership and changes have had on Costa Rica. Costa Rica made an excellent case study for this as its property ownership history is unique in Central America because of the preponderance of small land owners during even early times of European settlement.

The panel concluded that equality of access to property must be a fundamental priority to promote the participation of all individual and groups in sustainable development. The panel further concluded on three points meriting further research: 1) the need to attend to the ways in which specific groups of individuals are deprived of access to property—for example, the institution of marriage may be used to deprive married women and sexual minorities of property; 2) the state must provide means to enable property to be used both productively and sustainably for present and future generations (this may involve limiting what can be done with property to prevent environmental harm and activities dangerous to human health; 3) the need to recognize and affirm alternative forms of holding and valuing property that have been devalued, marginalized, or denigrated by modern western legal traditions—especially communal property and collective property holding traditions such as the subsistence economies of Afro-Colombians and the distinctive collective rights and obligations of indigenous peoples with respect to territories.