

Access to land: A human right?

Is access to land and its usage a human right? If so, how does this right fit into the international catalogue of basic rights? Is «equitable» access to land a precondition to attaining the Millennium Development Goals? Or is it merely of importance in states that are more dependent on agriculture? Is it not fair to say that the systematic integration of land access into programmes targeting democratization, good governance and economic reform already presupposes an acceptance of the «human right to land»?

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Most calls for recognition of land as a human right are geared to ways of ensuring fairer treatment of specific target groups, namely the landless and the land poor in rural areas, who are often at the centre of lobbying activities by non-governmental organizations (NGOs) and civil society coalitions. This discussion, however, often overlooks the fact that the importance of access to land in rural areas has changed substantially due to migration to more urban-oriented industries and services, as well as new off-farm income-earning opportunities in both downstream and upstream rural sectors. Another question thus arises here: In a more dynamic context, does not the acknowledged, albeit sometimes scarcely realizable, right to work include access to land as a production factor?

Restricting the debate to arable and pasture land often disregards the fact that the rural poor depend on a combination of many different rights of access to and use of the widest range of different natural resources in order to secure their livelihood and that therefore, a narrow definition of «right to land» generates new problems ultimately leading to new exclusion problems for the poor.

As with the formulation of other basic rights, hardly any proposals – apart from demands for land reforms – are put forward outlining how responsible political concepts could translate such a right to land into reality. And conflicts with equally important social targets, such as the efficient use of scarce resources to combat poverty, are only given marginal consideration. However, this initial, critical assessment of the call for land as a human right

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should not cloud the fundamental functional significance of secure access to land and its many and varied uses e.g. environmental conservation, material and human assets through lending, «homes», a basis for ethnic identity, and part of a recognized system of ownership that promotes democratization, civil participation and political stability.

This article looks in depth at some of these issues. Since law generation and enforcement is a dynamic process, increasingly being played out at the global level and incorporated in newly emerging international regimes, a final conclusion would be presumptuous, and an initial one is a daring venture. Rights in this context are understood as claims (along with the obligations they bring with them) legitimized through social structures, norms, informal and codified rules and regulations. The authors of this article have taken up the gauntlet and attempted to deduce some hypotheses, including some rather provocative ones.

Linking up with other basic rights

Since the debate on fundamental needs in the 1970s, appropriate shelter has counted as one of the attested international human rights. Given the fact that shelter, even in informal urban settlements, or in the housing blocks that are sprouting up everywhere the world over, cannot be separated from land, the claim to land is, in legal terms, on quite solid footing, at least indirectly. If we take account of the fact that in the years to come the world's population will develop from a rural society into a generally more urban one, the strategic issue is less one of access to land as a production factor for the landless or land-poor households in rural areas, but more one of how land in peri-urban and urban areas can also fulfil its multi-faceted direct and indirect functions for the poor.

Photo: Graefen



Securing sustainable rights of use and ownership effectively enhances investment behaviour.

Investment Increase due to Land Title Registration



Data: World Bank (2003)

For many urban households, it is the workplace and the attendant issues of transport, communication, education for children or an urban environment worth living in that are the decisive factors, and not whether the land supporting this urban life is managed centrally by the state, by the municipality or even privately. Having said this, when it comes to people's often hard-earned savings, legally secure ownership of private land is a key factor in private capital formation and investment, be it as a nest egg for someone's old age, to lend against so as to finance a child's education or for entrepreneurial initiatives and thus to dynamize overall economic development.

Hypothesis 1: Sustainable economic growth does not take place without sound, resilient and widespread ownership titles or long-term, secure rights of use. In the future, urban and peri-urban areas will function as pace-makers.

International development banks, UN organizations and bilateral donors are increasingly acting on this principle. The World Bank documented this trend in its pioneering paper on land policy (2003). One of the main sources of inspiration was Hernando de Soto, whose book «The Mystery of Capital» marked for many the start of a new ideological era. Hernando de Soto also underlines the fact that, before any dynamic impulse can be expected in the economy and society, the majority of households, and not just an elite social echelon, must have administratively straight-forward and legally undisputed access to land. Also, operations by the land-management authori-

ties, the banking system and the jurisdiction must be reliably efficient. True democratization will only come if broad sections of the population are actively involved in the design of economic processes. It is only with the citizen defined in the traditional sense, i.e. the one who owns land and participates in the political process, that a sense of responsibility for the state as a whole can develop – above and beyond a person's immediate family, clan or ethnic group. Even young democracies that are threatened by a corrupt elite are better protected against economic and political shocks if land ownership is widespread, e.g. Kenya, in contrast to those with dualistic, often post-colonial ownership structures, e.g. Zimbabwe.

Hypothesis 2: Widespread land and property ownership along with smooth transfer mechanisms through sale, leasing, gift-making and inheritance are key elements of a viable democracy and an indicator of good governance.

However, since around 70 percent of the 850 million poor worldwide still live in rural areas and are generally classed as landless or land poor, the (human) rights issue is of particular urgency here. In various conferences, initiated first and foremost by civil society and NGOs and then by bilateral donors (BMZ «Access to Land», Bonn 2001; DFID «Rural Livelihood» Approach as of 1998) and finally by multilateral organizations, the prevailing concept is that although access to land is not a universal human right, it should be embedded in the respective national constitution. This applies in particular to soci-

eties in which, in the distant future too, the fulfilment of human rights will be based on agricultural production capable of generating income, labour and food security. But what will happen in countries like Ethiopia, Rwanda or Indonesia, where farm size has already fallen below subsistence level or will soon do? Can the state establish a right to land for every member of the population in such places? This is highly unlikely, because consolidating current structures will not guarantee success in the fight against poverty, a process that goes hand in hand with high opportunity costs for society as a whole. Furthermore, the poverty analysis does not go far enough either, particularly in view of the importance of multiple employment and the use of common and/or (in formal terms) state resources to secure the livelihoods of the poor.

Hypothesis 3: Instead of merely stipulating a right to access agricultural areas, a more pro-poor approach would be to codify the more complex mass of legal rights pertaining to secured livelihoods.

A particular challenge deriving from the existing legal pluralism and the exclusion of indigenous rights is presented by the contradictions, past and present, between religiously-based and state-codified rights (family law, law of inheritance). A unidimensional, linear interpretation of land as a human right is not tenable.

Hypothesis 4: Complex systems characterized by indigenous rights need strengthening in institutional terms as well as greater legal security, in particular to enhance the status of women.

A one-sided focus on access to land will become increasingly obsolete the more countries succeed in boosting the level of agricultural intensity and diversification in rural areas, in dynamizing added-value chains in both downstream and upstream sectors and in stimulating public and private investment and, at the same time, exploiting the opportunities created by the liberalization of international markets, all by harking back to principles of successful rural development. Land will lose importance as a safety net as alternative social security systems are developed to offer effective protection in old age and in the event of sickness. The more these options establish themselves in the public debate, the more society and the economy will come to see the true costs of narrowly defined land reform programmes.

Hypothesis 5: Implementing a human right to land implies high social costs. It is therefore necessary to decide whether or not poverty could be better combated by channelling the scarce funds available into alternative policy approaches within the scope of a broad-scale rural development strategy.

Time and again, the demand for a right to land is culminating in redistributory land reforms in Latin America or southern Africa. However, even though the need to revise colonially-based, dualistic agricultural structures is broadly acknowledged, other key questions in this controversial discussion remain virtually ignored:

- What constitutes a viable farm size following redistribution, e.g. in semi-arid locations in southern Africa (Namibia);
- how large is the potential for redistribution;
- how strong is the impact in terms of poverty reduction – compared with alternative instruments;
- what future awaits the agricultural workers who were employed on the big farms?

Since the «farmers' liberation» in Prussian Germany in the early 19th century, land reform processes have required backing from complementary support institutions (cooperatives, pension banks), aid programmes for new farmers and other new institutions. The question is which private or state-run programmes can be launched quickly. And, further, to what extent do redistributory land reforms primarily serve to stabilize existing political systems and enrich certain political decision-makers?

Hypothesis 6: Dualistic ownership structures whose roots can be traced back to

colonial times can be modified substantially and quickly within the scope of the respective country's constitution, albeit via reforms based on the rule of law that secure social peace and political stability. A human right to land cannot be realized through redistributory land reform alone. It requires complementary (and expensive!) support programmes for the beneficiaries

Conclusion

General calls for the codification of a human right to land are to be rejected, because they focus on a narrowly defined target group, do not take sufficient account of social and economic processes of change, give a low rating to income-earning opportunities outside the agricultural sector and fail to address adequately the poverty issue. Nevertheless, it is acknowledged that widespread access to land, land holding and undisputed land ownership are key framework conditions for the realization of universal human rights, for democratization and civil participation in an increasingly urban society. This applies all the more when attempting to overcome the dualistic distribution of land assets by means of land and agricultural reforms whose complexity and preconditions for success are still underestimated.

Comprehensive Agrarian Reform Programme in the Philippines

In the course of 16 years, some 5.1 million hectares of land have been distributed to around 2.2 million landless households in the Philippines via the Comprehensive Agrarian Reform Programme (CARP). Thus, approximately 40 percent of the official utilizable agricultural area has been redistributed. This means that, for the first time, more than 40 percent of the agriculturally active population now has secure access to their own plots of land. Precursor programmes proved to be too restrictive and bureaucratic, the actual amount of state-owned land distributed to the small farmers was negligible, and the new farmers lacked start-up assistance. It was thanks to CARP and the strong political will of various Philippine governments that the foundations for this agrarian reform model could be laid, especially in the face of the great many financial and implementational problems, the ongoing inefficiency of the institutions involved, the difficulty in building up service systems in rural areas, and the delays in the expropriation of private land through processes based on the rule of law. The impacts at the household level are positive and particularly striking for the first one million or so households, averaging a 50 percent increase in income in comparison with the landless and a 100 percent increase in comparison with sharecroppers. The new, post-land reform farms are significantly better off in terms of social, education and health indicators too. Positive, verifiable spin-off effects include the investment of surplus funds in the education of their children along with increased output per unit area.

Source: S. Borras: *Die Bondoc-Strategie: Bodenreform auf den Philippinen – mit deutscher Unterstützung*, Papier 2003; K. Deininger: *Agrarian Reform in the Philippines – Past Impact and Future Challenges*, 2000, Institute of Agrarian and Urban Development Studies, Los Banos; *Assessment of the CARP on Rural Communities*, 2001, 2004.



Photo: Grafefen