



‘Land Rights are Human Rights’: The case for a Specific Right to Land?

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Law, Land Rights, & Human Rights

- Complex legal ‘categorization’ of **land rights**:
 - Legal Framework(s): land laws, land tenure agreements, planning regulations, constitutional protection of property rights, forest, agricultural, mining codes, etc.
 - Content: rights to use, control, transfer, occupy, enjoy and use land and resources; restrict or exclude others from land; sell, purchase, grant or loan; inherit; develop or improve; rent or sublet; and benefit from improved land values or rental income.
- A human rights to land?
 - Civil society: “land rights are human rights”
 - Soft law initiatives pushing a human rights based approach to land rights

(some) Recent 'soft law' initiatives

- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries in the Context of National Security
- African Union Land Policy Framework and Guidelines
- “Guidelines on Business, Land Acquisition and Land Use: A Human Rights Approach” (Institute for Human Rights and Business)
- *Draft Declaration on the rights of peasants*

Human Rights Treaties & Land Rights

- No specific instrument on land rights, no specific article on land rights
 - CEDAW article 14: States Parties shall take into account the particular problems faced by rural women...2 (g): To have access to agricultural credit and loans, marketing facilities, appropriate technology and **equal treatment in land and agrarian reform** as well as in land resettlement schemes (...)
- But recognized as part of: (1) property rights; (2) cultural rights & indigenous peoples; (3) gender equality; (4) adequate standards of living (right to food and right to housing)

Property Rights & Land Rights

- Origins of *Property Rights* as a human rights issue
 - Western individualism and the ‘agricultural argument’
- Controversial place under human rights law:
 - UDHR: “own property alone as well as in association with others” and not to be “arbitrarily deprived” of this property (UDHR 17)
 - **Nothing in the two Covenants**
 - CEDAW and ICERD: non-discrimination (nothing specific on property in land)
- Mainly about protecting land encroachment by public authorities: protecting the landed?

Land Rights as Cultural Rights

- Approach based on minority rights as defined in article 27 of the International Covenant on Civil and Political Rights:
 - Rationale: **“culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples.”**
- Inter-American Commission/Court of HR have developed notion of **‘cultural integrity’** for indigenous peoples: **right to property, the right to life, and right to health.**
- African Commission: **religion (Article 8), right to culture (Article 17), and access to natural resources (Article 21)** of the African Charter.
- United Nations Declaration on the Rights of Indigenous Peoples: **recognition (own, use), protection, mechanisms and consent**
- Only indigenous peoples, issue of demarcation, relationship with natural resources?; place of mobile/nomadic communities?

Land Rights & Women' Rights

- CEDAW proactive approach to land rights:
 - One of the central focuses of the Committee has been in inviting governments to ensure that women are not discriminated against in their access to land under both formal and informal (or customary) legal systems.
 - “In countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.” (GR. 21, Equality in marriage and family relations, para. 27)
- Protocol on the Rights of Women in Africa (food and development)
- A side-issue? Equality in marriage, ‘production’ approach (food, development)

Land Rights as access to Food

- **Article 11 of ICESCR:** the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
 - the right of everyone to an adequate standard of living “including adequate food”, requires States “to improve methods of production, conservation and distribution of food”, in particular **reforming agrarian systems to achieve the most efficient use of natural resources.**
- **General Comment 12 (food): availability:** “refers to the possibilities either for feeding oneself directly from productive land or other natural resources”.
 - Ensuring access to “food or resources for food” requires States to implement full and equal access to economic resources, including the right to **inheritance and ownership of land, for all people, and particularly for women.**
- UN Special Rapporteur(s) on the Right to Food
- Clear references to land rights but lacking clear layout of content, about food **production**

Land Rights as Housing

- Legal security of tenure is seen by the CESCR as a key element of the right to 'adequate' housing.
- Two aspects:
 - positive aspect: land rights are considered to be an essential element for the achievement of the right to adequate housing;
 - negative aspect: land dispossession could qualify as forced eviction in direct violation of the right to housing.
- The focus on security of tenure and access to land as essential elements of the right to adequate housing is also a central feature in the work of the UN Special Rapporteur on adequate housing.
- Housing and Land Rights Network

Conclusion: Way forward?

- Overall:

- Land rights as an ‘**accessory right**’ to the realisation of other human rights
- Proclaimed as a ‘soft-law’ principle but lacking clear legal grounding
- Lack of a ‘Human Rights to land’ revived during ‘land grabbing’ and context of **business and human rights framework**

- Way Forward?

- Call from former Special Rapporteur on Housing and Food for recognition of stand-alone right to land:
 - a feasible/desirable road?
 - What content? What form?
- Specific UN Special Rapporteur or other special mechanism?
- Public Interest Litigation strategy?