Property in land as a human right

Presentation at the
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and at the
First South Asian Regional Conference of the International Academic Association on Planning, Law, and Property Rights (PLPR) at the National Law School of India University at Bengaluru (India) in September 2015

FLOOR is an interdisciplinary research group, partly funded by Deutsche Forschungsgemeinschaft.

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Property in land as a human right

Ben Davy
FLOOR as context of my research

- the FLOOR group (B. Davy / U. Davy / L. Leisering as principal investigators)

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FLOOR is short for Financial Assistance (Social Cash Transfers), Land Policy, and Global Social Rights

FLOOR is an interdisciplinary research group, partly funded by Deutsche Forschungsgemeinschaft (= German Research Council). FLOOR is associated with a cooperation group funded by the Zentrum für interdisziplinäre Forschung (ZfI) in Bielefeld.

The overarching goal of FLOOR is to examine social security as a human right.

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- the FLOOR group on global social citizenship, funded by ZiF
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Property Rights, Land Values, and Planning

Property rights are linked to spatial planning in many ways:

- Property in land can be considered an economic asset. In this case, landowners expect from the state to preserve the exchange value of their properties and increase real estate prices.
- Property in land is often held as the right to use land for individual purposes, yet in many jurisdictions, the general public demand that the state must reclaim land with its...
Human rights as natural rights
Human rights as natural rights

»I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. «

M.K. Gandhi

I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.

Yours sincerely,

M. K. GANDHI
Human rights as international law

- **Charter of the United Nations (1945):** »faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small«
- **Universal Declaration of Human Rights (1948)**
- **International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR; both 1966, in force: 1976)**
- several UN-sponsored human rights conventions (e.g., CEDAW)
Why human rights?

- human rights are a normative framework
- presenting a global consensus on common values
- are open to interpretation and negotiation
- which is a weakness (low justiability) and a strength (constant need to re/de-construct the polyrational meaning of human rights)
Polyrational meaning of human rights

The Human Rights Triangle
Is the right to **property** in land a **human right** protected by UN-sponsored international treaty law?

1. EVERYONE HAS THE RIGHT TO OWN PROPERTY ALONE AS WELL AS IN ASSOCIATION WITH OTHERS.
2. NO ONE SHALL BE ARBITRARILY DEPRIVED OF HIS PROPERTY.

Article 17 Universal Declaration of Human Rights (UDHR), 1948
The right not to be owned

Octavio Roth

Article 4 Universal Declaration of Human Rights (UDHR), 1948
No forced marriage!
Nobody must sell a daughter or own a wife!

Octavio Roth

Article 16 Universal Declaration of Human Rights (UDHR), 1948
The right to work and the right to just and favorable remuneration.

Octavio Roth

Article 23 Universal Declaration of Human Rights (UDHR), 1948
Octavio Roth

The right to an adequate standard of living

Article 25 Universal Declaration of Human Rights (UDHR), 1948

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Octavio Roth
The »Golden Rule« of property and human rights

Octavio Roth
The right not to be owned

»If chattel slavery be unjust, then is private property in land unjust. For, let the circumstances be what they may—the ownership of land will always give the ownership of men […].«

Henry George (1879) Progress and Poverty Book VII, chapter II
The Universal Declaration of Human Rights (UDHR) is the most important component of the International Bill of Human Rights adopted on 10 December 1948 by the United Nations General Assembly.
UDHR rights become binding international law only through adoption as binding treaty law. The most relevant UN-sponsored human rights treaties are

- the **International Covenant on Civil and Political Rights** (ICCPR) 1966 (entered into force 1976) and
International Covenant on Civil and Political Rights

CCPR States Parties

- before 1976
- 1976 - 1992
- 1993 - 2009
- after 2009
- no ratification

Data: ESRI ArcGIS; FLOOR A (2014)
Authors: B. Davy & U. Davy
Map Design: B. Davy, H. Kobs & N. Preuß
Principal Investigators: B. Davy, U. Davy & L. Leitnering
International Covenant on Economic, Social and Cultural Rights

CESCR States Parties

Data: ESRI ArcGIS; FLOOR A (2014)
Authors: B. Davy & U. Davy
Map Design: B. Davy, H. Kobs & N. Preuß
Principal Investigators: B. Davy, U. Davy & L. Leisering
Universal Declaration of Human Rights (UDHR), 1948

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 16

1. Marriage shall be entered into only with the free and full consent of the intending spouses.
2. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
Article 17 UDHR was transformed neither by ICCPR nor by ICESCR into binding human rights treaty law. The Commission on Human Rights (1954), before abandoning the proposal of a right to property, considered property in the context of economic, social, or cultural rights.
Octavio Roth

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 17 Universal Declaration of Human Rights (UDHR), 1948
Although neither ICCPR nor ICESCR have implemented Article 17 UDHR, the right to property has been implemented by several human right treaties. For example by ...
International Convention on the Elimination of all Forms of Racial Discrimination

CERD States Parties

- before 1989
- 1969 - 1990
- 1991 - 2012
- after 2012
- no ratification

Data: ESRI ArcGIS; FLOOR A (2014)

Authors: B. Davy & U. Davy

Map Design: B. Davy, H. Kobs & N. Preuß

Principal Investigators: B. Davy, U. Davy & L. Leisinger
Convention on the Elimination of All Forms of Discrimination against Women

CEDAW States Parties

- before 1985
- 1985 - 1997
- 1998 - 2010
- after 2010
- no ratification

Data: ESRI ArcGIS; FLOOR A (2014)
Authors: B. Davy & U. Davy
Map Design: B. Davy, H. Kobs & N. Pruss
Principal Investigators: B. Davy, U. Davy & L. Leisering
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

CRMW States Parties

- before 2003
- 2003 - 2007
- 2008 - 2012
- after 2012
- no ratification

Data: ESRI ArcGIS, FLOOR A (2014)
Authors: B. Davy & U. Davy
Map Design: B. Davy, H. Kobs & N. Preuß
Principal Investigators: B. Davy, U. Davy & L. Leisering
International Convention on the Rights of Persons with Disabilities

CRPD States Parties
- before 2008
- 2008 - 2010
- 2011 - 2013
- after 2013
- no ratification

Data: ESRI ArcGIS; FLOOR A (2014)
Authors: B. Davy & U. Davy
Map Design: B. Davy, H. Kobs & N. Proud
Principal Investigators: B. Davy, U. Davy, & L. Leisering
The human right to property protects …

- … against racial discrimination,
- … rural women,
- … migrant workers and their families,
- … persons with disabilities,
- … and other vulnerable and marginalized individuals and groups.

Above all, the human right to property protects humans!
The right to an adequate standard of living

«The States Parties to the present Covenant recognize 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 States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.«

Article 11, para. 1, ICESCR
The right to an adequate standard of living

»The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.«

Committee on Economic, Social and Cultural Rights (1991) General Comment No. 4: para. 7
Conclusions

- Property is a human right.

- Property as a human right is different from most constitutional property clauses.

- The human rights concept of »property« is broader than most domestic concepts of property. It includes the right not to be owned, the prohibition of forced marriage, the right to work, and the right to an adequate standard of living.

- Property as a human right imposes on States the obligation to respect, protect and fulfill minimal property rights, in particular minimal land rights (e.g., housing rights).
Land Policy
Planning and the Spatial Consequences of Property

BENJAMIN DAVY