



Land and property rights in a complex world

Prof Han van Dijk – Professor Sociology of Development and Change

Position paper for round table 'land and property rights', 15 juni 2022

Introduction

- Land rights in Low and Middle Income Countries (LMICs) are a complex mix of customary rights, modern land right systems derived from colonial rule, and international conventions and treaties. This complexity opens the door for politics and manipulation. In many instances imbalances in access to land and property and the non-respect of claims to land and other natural resources of ethnic minorities and indigenous people are at the basis (long-term) conflicts and political instability. Reforms and certifications system have only limited influence as they work better for the rich and powerful. The scope for action lies primarily in harmonization between trade policies and social justice, concentrated efforts to promote rural development, empower women and ethnic minorities and concentrated effort on (post-)conflict situations and the protection of minorities.

Land and property rights in LMICs

- Nowhere in the world land and property rights are absolute. They are vested in legal and political systems that ultimately determine the modalities of use of the land and its resources. In the Netherlands land rights and the freedom to use it according to the wishes of the owner are curtailed by countless regulations from national, local and EU origin for example with respect to the use of pesticides or the emission of Nitrogen, because what the owners do on the land has consequences for society at large. As a result, land and property rights and the ways owners invest in land use are (increasingly) subject to processes of political negotiation and regulation.
- In LMICs the situation with respect to land and property rights is even more complex and contentious, because land rights (and the rights to other resources on the land (trees, grasses, fruits)) derive from different legal sources, a situation we call legal pluralism. As a result, different legal systems may pertain over the same land and resources and produce contradicting and overlapping claims on land and other resources. This complexity is increased by myriad international conventions for example with respect to nature conservation and the position of indigenous people, who have ultimately a bearing on land and property rights.
- To a large extent this complexity in LMICs is a colonial heritage. Colonial states were too weak to suppress customary land and property rights. However, they proclaimed overall sovereignty over land and territory, hereby legally disowning indigenous populations and making their customary rights dependent on recognition by the colonial state. Especially for mobile people such as nomadic pastoralists, forest people and hunter-gatherers, this was problematic. Their customary rights were not even recognized as they could not claim fixed rights in the

that we knew in Europe. In this way forest dependent people became illegal occupants on their own land as the colonial state claimed ownership of forest land and nomadic pastoralists could not claim territory for pasturing their animals, because fluid pasture rights was not part of the legal repertoire of colonial state. They were (and are) also falsely accused of environmentally destructive land use practices. Subsequently pastoralists were limited in their mobility, and forest people were no longer allowed to make free use of forest resources. Rights of women were neglected as men were registered as family heads and custodians of customary land. At most women were secondary right holders as daughter, sister or wife of their male family members.

- After independence countless reforms were implemented, however, the sovereignty over land and natural resources was maintained and even reinforced by post-colonial states, which relegated minorities, and in many cases women to an extremely weak position. Most land reforms do little to help these minorities as they generally strengthen the rights of those who were already in a better position under customary law, such as men and sedentary farmers. A well-meant land titling project in Uganda, distributed land titles to those who were considered the primary right holders under customary law, the men, which further weakened the position of women who had certain rights under customary law. Ethnic minorities in India refuse land titles, because it would entail a de facto recognition of their historical dispossession by the colonial state and the right of the state to hand out land titles to them.

Land rights and conflict

- The complex and often unclear nature of land and property rights and rights over other resources (water, forest), is at the roots of many long-term conflicts and rebellions. The way in which indigenous people and minority groups were marginalized on their own land amounted in many cases to ethnocide or genocidal practices by governments (in tandem with those who occupied their land). For example, ethnic minorities in Asia (India, Myanmar, Thailand) are in perpetual struggle with their respective governments to stop encroachment on their land for mining, large-scale agriculture and forest exploitation. Large parts of India are controlled by the so-called Naxalites, a Maoist movement that recruits among ethnic minorities who feel threatened. The North of Myanmar and Thailand reject the legitimacy of their central governments and are outside government control.
- In other instances, corrupt customary elites contributed to the marginalization of their own constituencies by covertly privatizing land for their own benefit or selling common lands to outside investors. Large-scale production of palm oil and soy is





lands to outside investors. Large-scale production of palm oil and soy is an example of this. Despite efforts to curb land grabbing through certification of sustainable palm oil and soy, cultivation of these crops is still expanding, because certification does not cover all the areas and markets for these crops. As long as large investors are still able to obtain land and large consumer countries accept palm oil and soy from non-certified sources certification systems will remain ineffective. In addition, certification systems tend to discriminate against small-scale producers because of the entry and transaction costs, which are unaffordable for most small producers.

- Even where large-scale agriculture is not an issue, the rights of ethnic minorities are in danger. For example, in the Sahel, population growth and the expansion of farming has led to the decrease of pastureland for nomadic pastoralists, who are in a minority position. Increasing conflict between farmers and herders is degrading into ethnic conflicts and contribute to the recruitment of pastoralists by Jihadist movements present in the region. Solutions for these conflicts require not only military interventions, but also a transformation of land use systems and reforms of legislation, so that farming becomes more productive and can leave more space for pastoralists. However, farmers lack the means to do so and need outside assistance. As the Netherlands invests considerable effort in the region, more efforts in this direction should be undertaken in order to contribute to economic development, food and economic security and political stability.
- To resolve these conflicts, much more is needed than laws to create land tenure security and peace building initiatives. In order to guarantee the viability of livelihoods of these minorities transformations of land use are needed that provide them with sufficient land, productive employment and sufficient revenues from markets. Economic inequality should be reduced. Unfortunately, most governments are neither interested in small-scale (female) farmers, pastoralists and other minorities nor in protecting their territorial claims. They are often considered as obstacles for economic development. Agricultural research is not tailored to their needs, and the crops they grow get much less attention from agricultural research.

What can The Netherlands do?

- Simple solutions such as land titling or certification systems are only a small part of the solution. A much broader approach is needed to ensure that pressure on the rights of ethnic minorities, women and vulnerable people in general is decreased and that they are empowered. This means that land rights reforms should be part of a wider process of economic development and political reform to promote the interests of vulnerable groups. Yet specific domains require attention.

International level

- The Netherlands is and has been an active proponent of the rights of indigenous communities and women. However, this should be harmonized with (EU) trade policies to ensure that the production and trade in for example minerals, agricultural products do not harm the rights of indigenous people and other vulnerable groups. This does not only entail land titling and

- legal reform, but also looking for other legal and political trajectories to ensure better political representation and empowerment of vulnerable groups and taking their interests into account.

Policy level

- Embrace complexity in policy development. Each situation is unique to a certain extent. There are sufficient analytical tools to assess the complexity of land and property rights and the consequences of development and trade policies. However, this should be systematically addressed in policy formulation and would require creating more expertise within the Ministry of Foreign Affairs itself.
- Targeted investments in small-scale productive agriculture and livestock production to ensure that population increase does not automatically lead to more land occupation, so that space is made available for minorities and their rights are not jeopardized further.

Women and gender relations

- Legal reform in itself will only indirectly contribute to the empowerment of women, as long as gender relations in society do not change. Therefore, legal reform should be accompanied by increasing the education level of women and female empowerment.

Conflict and social and economic justice

- Address issues with respect to land and property rights in conflict and post-conflict situations. The level of grievances among vulnerable populations is increasing by the day. Radical Islam, Maoist ideology, rejection of the authority of the state provide alternative pathways of political mobilization, as long as there is no perceived trajectory to social and economic justice.
- These grievances often center on the way people are closed off from the land and resources they perceived as theirs. Land and natural resources are more than economic assets. They also have social and cultural value and are at the basis of what people feel is their identity. In promoting economic development, we should be much more careful in respecting these social and cultural values

