

European Parliament, Committee on Development
Public hearing on property rights, property ownership and land
grab in developing countries

Brussels, 2 June 2010

The rush for agricultural land: A human rights approach

Greetings!

Thank you for opportunity

Who is 3D? Swiss non-profit association based in Geneva. Our mission is to promote an equitable economy in which all people can enjoy their human rights. We build awareness and raise the profile of critical human rights issues in international economic and trade policy making. We develop new information and capacity-building tools to engage the public, the media and decision makers, bringing to light the links between international policies and their human rights impacts on the ground.

My agenda:

Previous speaker talked about the reality of large-scale land acquisitions. I will talk about:

1. What are the main concerns from a human rights perspective and what value can a human rights approach to the issue bring?
2. What should be done to ensure “responsible investment in agriculture”?

Result of past failures

According to Olivier De Schutter, the UN Special Rapporteur on the Right to Food, today’s rush towards farmland in developing countries is the result of past regulatory failures.

(Citation from latest report to Human Rights Council in March 2010)

Value of a HR approach:

- All States have ratified at least one of the existing international human rights covenants and therefore voluntarily agreed to be bound by human rights standards
- Human rights provide mechanisms for accountability – including of economic actors – which can be claimed by individuals or groups

HR addresses what happens within countries as well as between countries (international obligations, international solidarity) – for the latter, states have to ensure that their actions or lack of action do not undermine the HR of people in other countries. This also includes the obligation to regulate the conduct of non-state actors, such as transnational corporations (UN Charter 1, 55, 56; ICESCR 2, 11, 15)

- Strategically: A human rights approach does not defend or attack any particular form of government, political or economic system; does not provide policy prescriptions for how to approach investments in land or mandate a specific type of agricultural model, but focuses on the rights themselves. If a policy is found to negatively affect the enjoyment of human rights, human rights law requires action from the government to rectify the situation.

[Thus, steps should be taken to strengthen the realisation of existing human rights obligations more than adding additional tools to the international legal architecture.]

Land rush – key concerns

Nobody is saying that investment in agriculture is not needed. Most, if not all developing countries affected by the land rush are in need for better seeds and inputs, improved extension services, education on conservation techniques, regional integration and investment to build local capacity. However, investment in agriculture, including from foreign sources, pose a number of challenges in human rights terms. HR are violated if

- people depending on land for their livelihoods are evicted and cut off from access to land, without being consulted, without adequate compensation and without suitable alternatives
- local incomes are insufficient to compensate for the price effects resulting from the shift towards production for exports
- revenues of local smallholders fall following the arrival on domestic markets of cheaply priced food produced on more competitive large-scale plantations
- Workers' rights may also be affected, as well as the right to self-determination, the right to participate in cultural life, the right to development as well as the right to participate in public affairs and the right to receive information

[Also, asymmetry of international investment law: investors enjoy a much higher level of protection than local people: When a host government accepts a foreign investment, the investor can expect his legitimate expectations to be fulfilled, and this expectation is protected by international law. It would be legitimate, for example, for the investor to expect to be able to use water for an agricultural project. But this could very well conflict with the needs of the local community for the same water. As things stand, when there is a dispute, it is normally investors who are the plaintiffs, and the host state has to defend itself.]

Example: right to food

Human right to adequate food is recognised in several instruments under international law. The most comprehensive is the ICESCR, interpreted in General Comment 12.

The right to food is the right of every person to have continuous access to the resources necessary to produce, earn or purchase enough food not only to prevent hunger, but also to ensure health and well-being.

Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food, which is sufficient, nutritionally adequate and safe to ensure their freedom from hunger.

The obligations of the State are threefold: to respect, protect and fulfil the human right to food. The State is

1. obliged to refrain from infringing on the ability of individuals and groups to feed themselves where such an ability exists (respect)
2. obliged to prevent others – in particular private actors such as firms – from encroaching on that ability (protect)
3. called upon to actively strengthen the ability of individuals to feed themselves (fulfil).

Obligations also exist with respect to decision making and implementation processes, namely non-discrimination, adequate progress, participation and the provision of effective remedies. For example, to be consistent with the realisation of human rights, all potentially affected communities must be able to participate in the structuring of investments in agricultural land (principle of free, prior and informed consent could provide benchmark for the structuring of such participation)

So, this is a framework that should and can guide the design and implementation of policies and initiatives related to investments in agricultural land and for holding governments and economic actors to account.

The way forward

- Promote a human rights approach to investments in agriculture (and natural resources)
 - Respect 11 human rights principles (and 7 principles for responsible investment in agriculture) as a minimum
 - Define mandatory operational guidelines, toolkits, model contracts, best practices and finance their implementation (e.g. US\$ 900 million Global Agriculture and Food Security Programme, but also investment arms of World Bank, etc.)
 - Protect the legal entitlements of the poor (including access to independent grievance mechanisms)
- Address broader issues influencing FDI in agriculture (not an end in itself)
 - Integrate investment in agriculture into national development strategies (strategy for the realisation of the right to food), focus on rural development and increase of incomes instead of boosting productivity
 - Explore and develop incentive systems for more inclusive business models linking investors to producers (biz models that ensure stable supply for buyers and improve access to markets and better revenues for farmers, where no transfers of land user rights are involved)
 - Regulate global markets for agricultural commodities, trade in agricultural goods (subsidies!) → responsible trade regime
- Mandatory participatory human rights impact assessments to ensure equal sharing of benefits, before, during and after an investment in agricultural land
 - [FAO, UNEP, OHCHR, EC all have impact assessment models that can be used]

Conclusion

Paraphrasing Howard G. Buffet (Berkshire Hathaway Inc.), developing countries need policies that benefit their own populations, in particular the already vulnerable and marginalised. They do not need policies that enable foreign investors to grow and export food for their own people or to speculate on rising prices of land and food. Such policies will hurt these countries, fuelling conflict over land and water. Conflict results in horrific crimes – genocide, displacement, infectious diseases, famine, sexual and gender based violence, human trafficking and recruitment of children in armed activities.

Soil and water are the essence of life. If we do not address these issues today and ensure affected people the legal protection needed to guarantee their rights to land, water and food, we will have planted the seeds for future, more violent conflicts in the future.