

RESEARCH BRIEF

THE RIGHT TO LAND AND OTHER NATURAL RESOURCES

KEY MESSAGES

- Peasants and other people working in rural areas, in particular people whose livelihoods include small scale and traditional agriculture, fishing, herding and hunting activities (such as small-scale farmers, fisherfolks, pastoralists, hunters and gatherers), have always used and managed land and other natural resources (water bodies, marine eco-systems, fisheries, pastures and forests) to ensure the sustainability of their livelihood systems and food supplies, to have a place to live in security, peace and dignity, and to develop their customs, traditions and cultural identities.
- These customary practices have been acknowledged as individual and collective rights by states. The right to land and other natural resources has been recognized to rural women and indigenous peoples in international human rights law. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Tenure Guidelines), and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (Small-Scale Fisheries Guidelines), adopted in 2012 and 2014 recognize similar freedoms and entitlements for all peasants, small-scale fishers and their communities, and other people working in rural areas.
- In the world today, 80 per cent of those suffering from hunger are peasants and other people working in rural areas, and members of their families. The majority of people experiencing violations of their right to food are women and girls living in rural areas. Threats to their right to land and other natural resources have been identified as some of the primary causes of hunger. It is estimated that in the last 20 years, 280 to 300 million people have lost access to land and other natural resources because of large development projects, and 60 million people are currently forcibly displaced due to armed conflicts and natural disasters. It is therefore urgent to better protect the right to land and other natural resources, including through the United Nations (UN) Declaration on the rights of peasants and other people working in rural areas (UN Declaration).
- In drafting the UN Declaration, negotiators should draw upon other international instruments to define the right of peasants and other people working in rural areas to land and other natural resources. This right entails physical and economic access to land and other natural resources, which are sufficient in quantity and adequate, so that peasants and other people working in rural areas can enjoy an adequate standard of living, have a place to live in security, peace and dignity, and develop their customs, traditions and cultural identities. This right may be exercised alone, in association with others, or as a community.
- Negotiators should also define states' obligations in relation to the right to land and other natural resources, including the obligations to respect, protect and fulfil this right. States must also ensure that the right to land and other natural resources is enjoyed without any discrimination, and that it is implemented in a sustainable way for both present and future generations. These core elements of the right to land and other natural resources and correlative states' obligations should be included in a specific article on the right to land and other natural resources as well as in other related articles of the UN Declaration.

MAY 2017 | CHRISTOPHE GOLAY AND ADRIANA BESSA

INTRODUCTION

Over the last twenty years, the right to land and other natural resources for peasants and other people working in rural areas has attracted the attention of international human rights (HR) experts and bodies, including the United Nations (UN) Special Rapporteurs on the rights to food and housing, and the Advisory Committee of the Human Rights Council. These bodies and others have noted that the existing catalogue of human rights is inadequate to address specific human rights abuses related to denials of land tenure and access to natural resources and that additional protection is needed in international law.

This research brief summarizes key issues linked to the recognition of the right to land and other natural resources in the UN Declaration on the rights of peasants and other people working in rural areas (UN Declaration). It presents the current protection of this right under international law, addresses its individual and collective dimensions, and describes its core elements.

THE RIGHT TO LAND AND OTHER NATURAL RESOURCES IN INTERNATIONAL LAW

The right to land and other natural resources has been recognized as a self-standing right in a number of international human rights instruments. In the context of the rights of rural women, article 14(2)(g) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention) provides that states must take all appropriate measures to eliminate discrimination against women in rural areas, including their right to equal treatment in land and agrarian reform as well as in land resettlement schemes. Moreover, in articles 10, 25 to 30, and 32 of the UN Declaration on the Rights of Indigenous Peoples – as well as in articles 13 to 19 of the International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples – states recognized indigenous peoples' rights to own, possess, use, develop and control the lands, territories and natural resources that they have traditionally owned, occupied or otherwise used or acquired, as well as their right not to be forcibly removed from their lands and territories, and the requirement of indigenous peoples' free, prior and informed consent in relation to activities that might affect their lands and livelihoods.

The right to land and other natural resources has also been recognized as an essential element of many other HR, including the rights to food, housing, health, cultural identity, and self-determination. The development or reform of agrarian systems is, for example, recognized in article 11(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as an important measure to secure the fundamental right to be free from hunger. Likewise, within the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines) adopted at the Food and Agricultural Organization (FAO) of the UN in 2004, states recognized their obligations to respect and protect the right of peasants and other people working in rural areas to resources such as land, water, forests, fisheries and livestock, without any discrimination (guideline 8).

FOR THE FORMER UN SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, OLIVIER DE SCHUTTER:

'[International law] requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil). For some of the groups that are the most vulnerable today, this means protecting existing access to land, water, grazing or fishing grounds, or forests, all of which may be productive resources essential for a decent livelihood.'

Other international instruments adopted outside the HR system also aim at better protecting the right of peasants and other people working in rural areas to land and other natural resources. The Tenure Guidelines adopted at the UN Committee on World Food Security in 2012 aim to foster secure tenure rights and equitable access to land, fisheries and forests for rural groups. They emphasize the importance of identifying, recording and respecting legitimate tenure rights, whether formally recorded or not, and protecting individuals and communities from

forced eviction (guideline 3.1). The Tenure Guidelines also affirm that smallholders and indigenous peoples and other communities with customary tenure systems should be entitled to special protection (guideline 7.3), and that publicly-owned lands, fisheries and forests that are collectively used and managed (such as communal land and ‘commons’) should be recognized and protected (guideline 8.3). Redistributive reforms have been indicated as a way to facilitate broad and equitable access to land and inclusive rural development (guideline 15.1). The guidelines also encourage international cooperation for resolving transboundary issues, including the preservation of rangelands, the seasonal migration routes of pastoralists, and the fishing grounds of small-scale fishers when these lie across international boundaries (guidelines 22).

Within the same lines, the Small-Scale Fisheries Guidelines adopted at the FAO in 2014 recognize that small-scale fishers and fish workers and their communities should have secure tenure rights to the resources that form the basis for their social and cultural well-being, their livelihoods and their sustainable development (guideline 5.1). The guidelines then define states’ obligations in relation to these rights. These include: the obligations to ensure that small-scale fishers, fish workers and their communities enjoy secure, equitable, and socially and culturally appropriate tenure rights to fishery resources (both marine and inland) and small-scale fishing areas and adjacent land, with a special attention paid to women (5.3); to identify, record and respect legitimate tenure right holders and their rights, including customary or otherwise preferential access to fishery resources and land (5.4); to adopt measures to facilitate equitable access to fishery resources for small-scale fishing communities, including, as appropriate, redistributive reform (5.8); to ensure that small-scale fishing communities are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed upon (5.9); to consider the social, economic and environmental impacts, prior to the implementation of large-scale development projects that might impact small-scale fishing communities, and to hold effective and meaningful consultations with these communities (5.10); to restore access to traditional fishing grounds and coastal lands to small-scale fishing communities that have been displaced by natural disasters and/or armed conflict, and to eliminate any form of discrimination against women in tenure practices in case of natural disasters and/or armed conflict (5.12); and, with respect to transboundary resources, to ensure that the tenure rights of small-scale fishing communities are protected (5.19).

UN HR experts and bodies have likewise developed guidelines and principles that are relevant for the protection of the right to land and other natural resources. The 1998 UN Guiding Principles on Internal Displacement state that ‘peasants, pastoralists and other groups [who have] a special dependency on and attachment to their lands’ must be protected against displacements, particularly ‘in cases of large-scale development projects, which are not justified by compelling and overriding public interests’ (Principle 9). Similar conclusions are found in the Minimum Human Rights Principles Applicable to Large-Scale Land Acquisitions or Leases drafted by the UN Special Rapporteur on the right to food in 2010, the Basic Principles and Guidelines on Development-Based Evictions and Displacement presented by the Special Rapporteur on the right to housing in 2007, and the Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles) adopted by the Sub-Commission on the Promotion and Protection of Human Rights in 2005.

INDIVIDUAL AND/OR COLLECTIVE ENTITLEMENTS?

There is a growing consensus in international HR law that certain HR have an inherent collective nature. These rights include, for instance, the right to self-determination and the right to profess one’s religion or speak one’s language. In recent decades, international HR bodies and experts have repeatedly affirmed that the right to land and other natural resources, particularly in the context of indigenous peoples and other rural communities, also holds a significant collective dimension.

In the context of the right to housing, the former UN Special Rapporteur on the right to housing, Miloon Kothari, has noted that ‘[w]ithout the adequate legal recognition of individual as well as collective land rights, the right to adequate housing, in many instances, cannot be effectively realized’.

FOR THE FORMER UN SPECIAL RAPPOREUR ON THE RIGHT TO FOOD, OLIVIER DE SCHUTTER:

‘States should (...) protect access to fishing grounds, grazing grounds and water points for fisherfolk, herders and pastoralists, for whom the protection of commons is vital. The recognition of communal rights should extend beyond indigenous communities, at least to certain communities that entertain a similar relationship with the land, centred on the community rather than on the individual.’

The individual and collective dimensions of the right to land and other natural resources have been acknowledged by states in a number of international instruments, including the UN Declaration on the Rights of Indigenous Peoples, the Tenure Guidelines, the Small-Scale Fisheries Guidelines. In the Tkarhwaí:ri Code of Ethical Conduct adopted by States Parties of the Convention on Biological Diversity in 2010, states underscored that right to land and other natural resources of indigenous peoples and traditional local communities is collective in nature, and that its protection is not only crucial for the sustainable use of biodiversity but also to the cultural survival of communities.

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CORE ELEMENTS OF THE RIGHT TO LAND AND OTHER NATURAL RESOURCES

The core elements of the right to land and other natural resources may be derived from the key features of other, closely related HR such as the rights to food, housing and water. The right to land and other natural resources for peasants and other people working in rural areas should be defined as the right to physical and economic access to land and other natural resources, which are sufficient in quantity and adequate, so that peasants and other people working in rural areas can enjoy an adequate standard of living, have a place to live in security, peace and dignity, and develop their customs, traditions and cultural identities. This right



may be exercised alone, in association with others, or as a community. It must be implemented in accordance with the principle of sustainable development, so that it can be enjoyed by present and future generations alike.

Negotiators drafting the UN Declaration should underline the obligation of states to ensure that the right to land and other natural resources is exercised without any discrimination, and on the basis of equality between men and women. This implies that states must take measures to eliminate discrimination in the law (*de jure*) and in practice (*de facto*).

Examples of *de jure* discrimination that must be eliminated include laws that impede women from accessing, using and managing land and other natural resources. In order to address *de facto* discrimination against women, states must engage in the collection of appropriately disaggregated data, and adopt specific laws, policies, and administrative measures so as to guarantee women's equal access to, use, and management of land and other natural resources.

In addition, states should identify vulnerable and marginalized rural groups and take steps to ensure that they have equal treatment in the implementation of measures aiming to fulfil the right to land and other natural resources. These groups may include small-scale farmers, fisherfolks, pastoralists, hunters and gatherers, landless peasants and rural workers, and other people using and managing land and other natural resources according to customary practices. These groups should be given priority in the allocation of public lands, water bodies, fisheries, and forests.

Negotiators must reaffirm and clarify states' obligations to respect, protect and fulfil the right to land and other natural resources. On the basis of the language of the international instruments cited above, the obligations to respect and protect could be defined as requiring states:

- to identify, record and secure tenure rights of peasants and other people working in rural areas (even those that have not been formally registered)
- to provide legal recognition and special protection to customary tenure systems
- to recognize and protect publicly-owned lands and other natural resources that are collectively used and managed (such as communal land and 'commons')
- to undertake social, economic and environmental impact assessments, prior to the implementation

of projects that might impact the land and other natural resources of peasants and other people working in rural areas, and to hold consultations in good faith with a view to obtain their free, prior and informed consent

- to ensure that peasants and other people working in rural areas are not forcibly evicted or displaced, including during armed conflicts or natural disasters

The obligation to fulfil entails that states must take measures to enhance the ability of peasants and other people working in rural areas to enjoy their right to land and other natural resources. These would include fostering agrarian and aquatic reforms to provide equal access to land, waters and other natural resources, to facilitate inclusive rural development, to restore access to land and natural resources to peasants and other people working in rural areas who have been displaced by natural disasters and/or armed conflicts, and to cooperate in resolving transboundary issues, particularly those involving the protection and management of rangelands, seasonal migration routes, and fishing grounds when these lie across international boundaries.

CONCLUSIONS AND RECOMMENDATIONS

It is hoped that the international system for the protection of HR developed since the adoption of the Universal Declaration of Human Rights in 1948 will soon be enhanced by a new instrument to protect the rights of peasants and other people working in rural areas, some of the most vulnerable and marginalized people in the world.

Within the negotiation on the adoption of the UN Declaration it is imperative that stakeholders recognize the right to land and other natural resources. The recognition of this right is of fundamental importance to billions of rural people worldwide.

RECOMMENDATIONS FOR THE RECOGNITION OF THE RIGHT TO LAND AND OTHER NATURAL RESOURCES IN THE UN DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

In defining the right to land and other natural resources in the UN Declaration, negotiators should include the following core elements of this right, possibly using agreed language found in other international instruments, including the CEDAW Convention, the UN Declaration on the rights of indigenous peoples, the Tenure Guidelines, and the Small-Scale Fisheries Guidelines:

- The right of peasants and other people working in rural areas to land and other natural resources is the right to physical and economic access to land and other natural resources, which are sufficient in quantity and adequate, so that peasants and other people working in rural areas can enjoy an adequate standard of living, have a place to live in security, peace and dignity, and develop their customs, traditions and cultural identities. This right may be exercised alone, in association with others, or as a community.
- States have the obligations to respect, protect and fulfil the right to land and other natural resources, to ensure that it will be exercised without any discrimination, and on the basis of equality between men and women, and to implement this right in accordance with the principle of sustainable development, so that it may be enjoyed by present and future generations alike.

These core elements of the right to land and other natural resources and of correlative states' obligations should be included in a specific article on the right to land and other natural resources as well as in related articles of the UN Declaration, including those defining states' obligations, equality and non-discrimination, freedom of movement, and the rights to natural resources, development, food sovereignty, food, participation, information, environment, housing, water and sanitation.

SELECTED REFERENCES ON THE RIGHT TO LAND AND OTHER NATURAL RESOURCES

[Negotiation of a UN Declaration on the Rights of Peasants and Other People Working in Rural Areas](#)

[Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests](#)

[Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication](#)

[Principles on Housing and Property Restitution for Refugees and Displaced Persons \(Pinheiro Principles\)](#)

[Reports on land rights presented by the former UN Special Rapporteur on the Right to Food, Olivier De Schutter](#)

[Reports on fisheries presented by the former UN Special Rapporteur on the Right to Food, Olivier De Schutter](#)

[OHCHR publications on land and human rights](#)

[International Land Coalition](#)

[FIAN International briefing on the right to land and other natural resources](#)

[CETIM brochure on the right to land](#)



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SUPPORTING THE NEGOTIATION OF A UN DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

In October 2012, the UN Human Rights Council decided to elaborate a UN Declaration on the rights of peasants and other people working in rural areas. Negotiations started in 2013. The Geneva Academy project on the rights of peasants aims to support these negotiations, by providing expert advice in relation to key challenges, such as the need to provide legal recognition for the rights to land and seeds. Support to this project by the Human Security Division of the Swiss Federal Department of Foreign Affairs is gratefully acknowledged.

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