

THE RIGHT TO LAND

A fundamental right
indispensable for the
fulfillment of recognized
human rights

Part of a series of the
Human Rights
Programme of the
Europe - Third World
Centre (CETIM)



CETIM

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The Right to Land

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Translated from the French by Robert James Parsons

Cover design: Régis Golay

CETIM

6 rue Amat, 1202 Genève, Suisse

Tél. +41 (0)22 731 59 63

Fax +41 (0)22 731 91 52

E-mail : contact@cetim.ch

Site internet : www.cetim.ch

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THE RIGHT TO LAND

Publication prepared by

Melik Özden, Director of the CETIM

**Part of a series of the Human Rights Programme of the
Europe-Third World Centre (CETIM)**

INTRODUCTION

Generally speaking, property rights relative to land are conceived of without taking into account human rights. However, these rights are an essential matter since property rights have a very real effect on the enjoyment of the right to food, to adequate housing, to health, to work, to a healthy environment, to development, and without access to land, many peoples and communities find themselves deprived of their means of subsistence, as can be seen just about everywhere throughout the world. It is no exaggeration to say that enjoyment of all human rights, including the right of peoples to decide their future, depends on policies and legislation concerning land.

The absence of agrarian reforms, and practices such as forced displacement, wide-scale land grabs, inequitable trade rules, commodity speculation on food products, environmental destruction, discrimination and exclusion exercised to the detriment of peasant families and other food producers are so many sources of serious and wide-scale human rights violations. It is in this context that one must analyze the demands of peasants regarding land and the importance of recognizing the right to land for them, but also for the right to food of everybody.

While the control of land is just as important in urban areas, if only for the right to adequate housing,¹ we shall concentrate our focus in this publication on the right to land in rural areas. Thus, before entering into the thick of the subject, it is appropriate to present what is at stake in matters related to land in rural areas, in particular as seen from the perspective of agriculture and the right to food (Chapter I).

The struggles of peasants for land are illustrated by four examples drawn from four continents, with analysis of state policies and practices of four countries, presented by peasant organizations in the field (Chapter II).

The right to land is recognized to varying degrees for certain groups considered vulnerable (indigenous peoples and women, most notably), and, while one can also interpret some provisions of international instruments along these lines, the right to land, per se, is not formally codified in international law. Yet the United Nations mechanisms for the implementation of human rights plead in favor of a recognition of the right to land for peasants and the urgent necessity of undertaking agrarian reform. Looking at the matter from the angle of human rights, the present publication does an overall assessment and analyzes in detail all the major instruments (international and regional) in force concerning, directly or indirectly, the right to land (Chapter III).

¹ The CETIM has devoted a publication to this subject: *The Right to Housing*, August 2007.

The specific examples of jurisprudence from the United Nations human rights protection bodies, regional instances and national courts make possible a grasp of the multiple facets and the complexity of the subject as well as the tendency toward a formal recognition of the right to land for the communities that depend on it (Chapter IV).

The combat for the social function of land (primacy of collective use and general interest as opposed to private property) and security of occupation are at the heart of peasant demands. The draft declaration on the rights of peasants and other people working in rural areas, negotiations for which are under way at the United Nations, is in line with this. Thus, it seemed to us equally necessary to analyze the history of land as private property and its link to human rights and to compare the legislation on the matter of several countries on different continents (Chapter V).

The present publication has a double objective: on the one hand, it aims to bring support to local and national struggles for land, and, on the other, it is conceived as a constructive contribution to the negotiations on the draft declaration under way at the United Nations Human Rights Council for which the right to land constitutes a major challenge.

I. WHAT'S AT STAKE REGARDING LAND

In a word, what is at stake regarding land – and agriculture in particular (in the broadest sense)² – is crucial, indeed vital, depending on the context, and it largely surpasses the concept of land as a simple “economic tool”. In fact, policies and legislation adopted at the national and international level, in this and related areas (food production processes, water and forest management, mining, “development” mega-projects, trade and investment agreements, among many others) have a decisive effect on economic, social, cultural and environmental development and, consequently, on the enjoyment of all human rights. They also have a decisive effect on the management of land – fertile land above all. Further, the importance of food has become vital (in the strict sense of the term), but food is being used to exercise power in relationships of domination. In this chapter, we shall examine briefly the major aspects of what is at stake.

A. Famine and Malnutrition in the World and Their Cause

The 2008 food crisis, which triggered “social unrest” in more than 40 countries,³ is due primarily to the rise in basic food prices (rice, wheat, corn and soya in particular), reaching an increase of 181% wheat.⁴ This crisis, which had the merit of awakening consciences,⁵ “had at least three main causes: increases in food prices, dependence of countries of the South on food imports, and the extreme poverty of families living in these countries, who, even before the crisis in Spring 2008, devoted on average 60%-80% of their income to the purchase of food. ... For the 40 worst affected countries, all of which depend on imports for at least 40% of their food needs, the food bill increased by 37% between 2006 and 2007 and by 56% between 2007 and 2008. For Africa, it increased by 74% between 2007 and 2008. ... Three other causes have had a much greater influence on price increases in food commodities at the end of 2007 and the beginning of 2008: production of agrefuels, speculation, and petrol price increases. ... Finally, the increase in food prices is also due to increases in the price of petrol.”⁶

² Land is also indispensable for herders, nomads and fishers (for access to steams) in their various activities.

³ United Nations General Assembly [hereafter General Assembly], *Report of the Special Rapporteur on the Right to Food*, A/63/278, 21 October 2008, § 4: <http://www.srfood.org/images/stories/pdf/officialreports/or-2-ungareporta63278en.pdf>

⁴ The price of food products are set in international markets and under the influence of market speculation. Thus, it is not the small producers who benefit from price increases but the intermediaries such as the transnational agribusiness corporations and the speculators (see below).

⁵ The “food crisis” did not begin in 2008, for in 1989 already there were some 880 million hungry. This figure consistently dropped somewhat (to reach 80 million) until 1997, whereupon it again rose “significantly”. See Jean Feyder, *La faim tue*, Paris: L'Harmattan Publications, 2011, p. 29.

⁶ Christophe Golay, *The Global Food Crisis and the Right to Food*, Critical Report N° 3, CETIM, December 2008, pp. 2-4: http://www.cetim.ch/en/publications_cahiers.php#crise

It is this situation that pushed several tens of millions of persons more into famine or malnutrition. Thus, in 2009, there were more than a billion persons malnourished or starving outright. According to the estimations of the FAO, in 2013, 868 million persons were still suffering from hunger or chronic malnutrition, and “an estimated 26 percent of the world’s children are stunted, 2 billion people suffer from one or more micronutrient deficiencies”.⁷ The great intolerable paradox is that the overwhelming majority of persons are food producers:

*“80 per cent of the world’s hungry live in rural areas” ... 50 percent of them “are smallholder farmers who depend mainly or partly on agriculture for their livelihoods ... Some 20 per cent of those suffering from hunger are landless families who survive as tenant farmers or poorly paid agricultural laborers. ... 10 per cent of the world’s hungry live from traditional fishing, hunting and herding activities in rural communities.”*⁸

1. The Effect of Structural Adjustment Programs on the Agricultural Sector and the Peasantry

The structural adjustment programs (SAPs)⁹ imposed on the indebted countries of the Global South starting in the 1970s were literally destructive for the agricultural sector and the peasantry of these countries. The conditions imposed by the SAPs in agriculture were in essence the opening of the markets of the Global South to international competition, the suppression of state aid to their peasantry and of price controls on agricultural products as well as the encouragement of monoculture production intended for exports to repay the foreign debt. With additional element of the privatization of public services (education, health care, water etc.), the peasantry found itself faced with pressure exerted by agribusiness transnational corporations, in particular on land, inputs and agricultural prices.

⁷ FAO, *The State of Food And Agriculture 2013: Food Systems for Better Nutrition*, Executive Summary, p. 1: <http://www.fao.org/docrep/018/i3301e/i3301e.pdf>

⁸ United Nations Human Rights Council [hereafter Human Rights Council] *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, A/HRC/19/75, 24 February 2012, § 9: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75_en.pdf

⁹ Imposed by the World Bank/IMF duo on the countries of the Global South since the 1970s, extended in recent years to the countries of the Global North, in order to “react to the inequalities of the economy and in particular to the deficit in the balance of payments of various countries” [Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, *Report of the Secretary General*, E/CN.4/Sub.2/1995/10, 4 July 1995, §11: <http://daccessdds.un.org/doc/UNDOC/GEN/G95/128/78/PDF/G9512878.pdf>], structural adjustment programs/policies (SAPs) are inextricably bound up with foreign debt. The content of SAPs has barely altered over the years and is very often indiscriminately applied to indebted countries regardless of their economic and social conditions: local currency devaluation, reduction of spending devoted to public services, suppression of price controls, imposition of wage controls, reduction of trade regulation and of exchange-rate-control measures, privatizations, restrictions on the domestic credit market, reduction of state intervention in the economy, expansion of the export sector and reduction of imports. For further information: *Debt and Human Rights*, CETIM, December 2007: http://www.cetim.ch/en/publications_dette.php?currentyear=&pid=

In parallel, international public aid intended for agriculture underwent a drastic drop: “The part devoted to agriculture in public development aid has diminished significantly in the past 25 years, from 19% in 1980 to 3,8% in 2004 before climbing back up to a mere 5%. It has also regressed in absolute terms, from \$8 billion in 1984 to \$3.4 billion in 2004.”¹⁰ Directly in line with unfair trade, food dependency of the countries of the Global South, previously self-sufficient for the most part, was inevitable.

2. The Effect of Agricultural Market Liberalization and Land Speculation on the Peasantry

“The promise of trade liberalization is that by creating incentives for producers from different States to specialize in the products or services in which they have a comparative advantage, it will benefit all the trading partners, since it will lead to efficiency gains within each country and to increased overall levels of world production.”¹¹

This postulate might be justified if all the partners were equal, in terms of abilities, means and political weight, as well as in the areas of wages and social rights, and if there were a real political willingness to collaborate at the international level (and not seek domination) in the search for solutions to global problems of food, the environment, technology, finance etc.

Moreover, one could ignore this postulate if trade in agricultural products, however modest they may be, did not influence national prices: “A relatively small proportion, estimated at 15 per cent, of the food produced globally, is traded internationally. The percentages are 6.5 for rice, 12 for corn, 18 for wheat and 35 for soybeans. Nevertheless, the prices fixed on international markets have an important impact on the ability of farmers in the world to make a decent living, since, as a result of trade liberalization, there is a tendency for domestic and world prices to converge, for instance because imported goods compete with domestically produced goods on local markets.”¹²

Free-trade agreements, multilateral or bilateral,¹³ have negative consequences for the agricultural sector and the peasantry. Deprived of all public support and unable to maneuver, faced with agribusiness transnational corporations, small-holders, very often in debt, have been forced to sell their land or simply leave the countryside, as has been the case in Mexico.¹⁴

As Marcel Mazoyer has rightly emphasized, the industrial producers and the peasant families are not on an equal footing:

¹⁰ Jean Feyder, op. cit., p. 55.

¹¹ General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/63/278, 21 October 2008, § 19: <http://www.srfood.org/images/stories/pdf/officialreports/or-2-ungareporta63278en.pdf>

¹² *Ibid.*, § 18.

¹³ Regarding the impact of free-trade agreements on the enjoyment of human rights, see Alejandro Teitelbaum, *International, Regional, Subregional and Bilateral Free Trade Agreements*, Critical Report N° 7, CETIM, July 2010: http://www.cetim.ch/en/publications_cahiers.php#traites

¹⁴ Since the entry into force of the North American Free Trade Agreement between Canada, the United States and Mexico (1994), Mexican national agriculture has been literally devastated, and the countryside has lost a quarter of its population (see CETIM, *The Right to Work*, 2008, p. 22: http://www.cetim.ch/en/publications_droitautravail.php?currentyear=&pid=).

For a total agricultural population of 2.8 billion persons and for a working agricultural population of 1.4 billion persons, or 40% of the world's working population, there are throughout the world only 28 million tractors and 400 million work animals. This means that more than 1 billion active farmers (or, with their families, more than 2 billion persons) use practically only manual tools and farm less than one hectare per worker. One billion, half of which – i.e. one half of the active workers – do not have the means to buy productive inputs, do not produce more than 1 ton of cereal or its equivalent per worker per year.¹⁵

This overall imbalance is reinforced by public subsidies granted to the most powerful. “In both the European Union and the United States, above all, they pay the richest and biggest farmers who often are not even farmers but businesses. ... Not only do these subsidies fail to compensate United States and European farmers, but, worse, they result in dumping in foreign country markets, especially in developing countries. A report by the Institute for Agricultural and Trade Policy (IATP) of Minneapolis has calculated the impact of this dumping for 2003: wheat is exported 40% below production cost, soy beans 25%, corn from 25% to 30%, cotton at 57% on average.”¹⁶

Thus, putting impoverished peasants in competition with exceedingly powerful entities motivated only by profit is not only absurd but “criminal”, as acknowledged by Jean-Claude Juncker, former Luxembourg Prime Minister and most recent President of the European Commission:

We have accepted – we have even contributed to – subjecting food, like any other consumer product, to the cold rules of the absolute market. We have even accepted that financial market manipulators, driven by greed alone, today make food prices sky-rocket with their perverse speculative operations and tomorrow, without the slightest compunction, trigger the collapse of developing country food product prices. With a few fast “clicks of the mouse” on a computer in a beautiful air-conditioned office, a small number of persons, in a few seconds, can deprive several million human beings of the basis of their existence. Accepting this as “collateral damage” is contrary to a market founded on ethical principles. This we must not only reject, this is downright criminal.¹⁷

The liberalization of agricultural markets not only has an effect on prices, but also “results in pressure to concentrate land in the hands of large agricultural producers”.¹⁸

¹⁵ <http://www.consulfrance-quebec.org/L-agriculture-talon-d-Achille-de> . See also *Via Campesina: une alternative paysanne à la mondialisation néolibérale*, CETIM, 2002.

¹⁶ Jean Feyder, op. cit., p. 212.

¹⁷ Jean Feyder, op. cit., Preface, pp. 10-11.

¹⁸ General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/63/278, 21 October 2008, § 34: <http://www.srfood.org/images/stories/pdf/officialreports/or-2-ungareporta63278en.pdf>

3. The Lack of Agrarian Reform, Wide-Scale Land Grabbing (Including the Seas) and the Production of Bio-Fuels

“The human right to food would be violated if people depending on land for their livelihoods, including pastoralists, were cut off from access to land, without suitable alternatives; if local incomes were insufficient to compensate for the price effects resulting from the shift towards the production of food for exports; or if the revenues of local smallholders were to fall following the arrival on domestic markets of cheaply priced food, produced on the more competitive large-scale plantations developed thanks to the arrival of the investor. In concluding agreements on large-scale land acquisitions or leases, States should take into account the rights of current land users in the areas where the investment is made, as well as the rights of workers employed on the farms. They should also be guided by the need to ensure the right to self-determination and the right to development of the local population.”¹⁹

The unequal distribution of fertile land is one of major causes of hunger and poverty throughout the world, particularly in rural areas. On the one hand, a small minority holds thousands – indeed millions – of hectares of land, whereas hundreds of millions of peasants are without land or must survive with less than one hectare, depending on the country.

The owners of the great landed estates (*latifundia*), very often the heritage of the colonial period, still prevail in many countries of the Global South and possess tens and even hundreds of millions hectares of fertile land: “In Brazil, for example, 2% of landowners own 56% of all private land.”²⁰

A new phenomenon, large-scale land-grabbing throughout the world (purchases or long-term leasing, generally for 99 years), by states and especially by transnational corporations, began in the years following the opening of the twenty-first century and has accelerated since the world food crisis (2008). Olivier de Schutter, United Nations Special Rapporteur on the Right to Food, attributes the development of this process to the following motives:

(i) the rush towards the production of agrofuels as an alternative to fossil fuels, a development encouraged by fiscal incentives and subsidies in developed countries; (ii) the growth of population and urbanization, combined with the exhaustion of natural resources, in certain countries, who therefore see large-scale land acquisitions as a means to achieve long-term food security; (iii) increased concerns of certain countries about the availability of freshwater, which in a number of regions is becoming a scarce commodity; (iv) increased demand for certain raw commodities

¹⁹ Human Rights Council, Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, A/HRC/13/33/Add.2, 28 December 2009, § 4: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-33-Add2.pdf>

²⁰ General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/57/356, 27 August 2002, § 24: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/546/54/IMG/N0254654.pdf?OpenElement>

*from tropical countries, particularly fiber and other wood products; (v) expected subsidies for carbon storage through plantation and avoided deforestation; (vi) particularly as far as private investors are concerned, speculation on future rises of the price of farmland.*²¹

Writing in 2009, the Special Rapporteur on the Right to Food estimated that “between 15 and 20 million hectares of farmland in developing countries have been the subject of transactions or negotiations involving foreign investors since 2006”,²² with sub-Saharan Africa reckoned to be the target of preference,²³ but this also involved countries of central Europe,²⁴ Asia and Latin America.²⁵

It is disturbing that a major part of this land is taken for the production of bio-fuels, which not only compete with the production of food staples (rice, wheat, corn, palm oil etc.) but also contribute greatly to environmental destruction (see below). According to a study by the World Bank, “389 large-scale acquisitions or long-term leases of land in 80 countries shows that, while 37 per cent of the so-called investment projects are intended to produce food (crops and livestock), **agrofuels represent 35 per cent of such projects** [emphasis added].”²⁶

Other studies confirm this tendency. In 2010, for example, 544,567 hectares of fertile land in Mali “were leased or were under negotiations. Taking into account the unofficial extension plans, the number reaches 819,567 hectares. **More than 40% of land leases concern crops for bio-fuels.**” [emphasis added].²⁷

In his speech before the United States Senate in June 2006 on bio-fuels, Lester Brown, from the Earth Policy Institute, stated that “the stage is now set for direct competition for grain between the 800 million people who own automobiles, and the world’s 2 billion poorest people.”²⁸ Moreover, this was the primary cause of the rise in price of food, which triggered the 2008 world food crisis: “According to a World Bank report long kept secret, the increase in the production of bio-fuels is

²¹ Human Rights Council, *Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge*, A/HRC/13/33/Add.2, 28 December 2009, § 12.

²² *Ibid.*, § 11.

²³ In this regard, the Special Rapporteur cites the examples of purchases or long-term leases (99 years) of fertile land, in, among other places, Madagascar, Mali, the Democratic Republic of Congo and Sudan by countries such as Saudi Arabia, China, South Korea, the United Arab Emirates, Libya, and also by corporations such as Varun International. *Ibid.*, notes 5 to 9.

²⁴ It should be noted that in the countries of central and eastern Europe that have made a transition from a state-directed collective system to privatizations of land, there is also a land grab on a large scale, as seen in Poland, Rumania and Ukraine.

²⁵ According to a study by the International Land Coalition (ILC), between 2000 and 2010, 203 million hectares throughout the world were acquired within the framework of major transactions. This study notes that, during the same period (2000-2010), 106 million hectares were acquired by foreign investors in developing countries. See *ILC Annual Report (2011)*:

<http://www.landcoalition.org/sites/default/files/publication/1282/ILC.Annual.Report.2011.pdf>

²⁶ General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/65/281, 11 August 2010, § 7: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/482/30/PDF/N1048230.pdf?OpenElement>

²⁷ According to a study by the Oakland Institute, cited by *Infos Acquisitions Terres Afrique*: <http://terres-copagen.inadesfo.net/Fiches-pays>

²⁸ Quoted in General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/62/289, 22 August 2007, § 23: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/546/54/IMG/N0254654.pdf?OpenElement>

responsible for 70% to 75% of the increase in food prices between 2002 and 2008, primarily because it has entailed a decrease in the offer of food products and a substitution of food crops by crops for the production of bio-fuels, in particular corn.”²⁹

Worse, the large-scale land grabs “are being facilitated by public financing policy incentives and by both ‘host’ country governments, as well as by investor ‘home’ country governments, donors and multilateral agencies” such as the World Bank and other such institutions, which “act as anchor investors in a range of international funds, and play a crucial role in enabling land grabs by private capital.”³⁰

The Global Ocean Grab

Building on the, “powered by capital and its desire for profit, the current wave of enclosures targeting the world’s fisheries and ocean and inland water resources is taking place within the same context as global land grabbing,” a recent publication drew attention to the global ocean grab by the fishing industry.

“Today we are witnessing a major process of enclosure of the world’s oceans and fisheries resources, including marine, coastal and inland fisheries. Ocean grabbing is occurring mainly through policies, laws, and practices that are (re)defining and (re)allocating access, use and control of fisheries resources away from small-scale fishers and their communities, and often with little concern for the adverse environmental consequences. Existing customary and communal fisheries’ tenure rights systems and use and management practices are being ignored and ultimately lost in the process. Ocean grabbing thus means the capturing of control by powerful economic actors of crucial decision-making around fisheries, including the power to decide how and for what purposes marine resources are used, conserved and managed now and in the future. As a result, these powerful actors, whose main concern is making profit, are steadily gaining control of both the fisheries’ resources and the benefits of their use. ...

“Ocean grabbing is not only about fisheries policy. It is unfolding worldwide across an array of contexts including marine and coastal seawaters, inland waters, rivers and lakes, deltas and wetlands, mangroves and coral reefs. The means by which fishing communities are dispossessed of the resources upon which they have traditionally depended is likewise taking many shapes and forms. It occurs through mechanisms as diverse as (inter)national fisheries governance and trade and investment policies, designated terrestrial, coastal and marine ‘no-take’ conservation areas, (eco)tourism and energy policies, finance speculation, and the expanding operations of the global food and fish industry, including large-scale aquaculture, among others. Meanwhile, ocean grabbing is entering a dramatically

²⁹ Christophe Golay, op. cit, p. 5.

³⁰ *The Great Land Heist: How the world is paving the way for corporate land grabs*, Action Aid International, May 2014, pp. 6 and 21: <http://www.actionaid.org/publications/great-land-heist> . See also *Hold-Up sur l'alimentation: Comment les sociétés transnationales contrôlent l'alimentation du monde, font main basse sur les terres et détraquent le climat*, Geneva: CETIM-GRAIN, 2012.

new and heightened phase with the emergence in 2012 of the Global Partnership for Oceans, a World Bank-led initiative seeking the privatization of property rights regimes to aquatic resources and top-down market-based conservation blueprints.”

In his report to the General Assembly in 2012, the Special Rapporteur on the Right to Food expressed his concern on this subject in these terms: “Global marine and inland fisheries provide food security to millions of people, supplying a vital source of high-quality dietary protein and supporting livelihoods and incomes. It is widely acknowledged, however, that the productivity of global fisheries as a source of food is declining, caused primarily by unsustainable and destructive fishing practices and distorting subsidies, and aggravated by climate change.”

Sources:

- TNI Agrarian Justice Program, Masifundise and Afrika Kontakt and the World Forum of Fisher Peoples (WFFP), *The Global Ocean Grab: A Primer*, September 2014: http://worldfishers.org/wp-content/uploads/2014/08/The_Global_Ocean_Grab-EN.pdf

- General Assembly, Report of the Special Rapporteur on the Right to Food, A/67/268, 8 August 2012: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/456/40/PDF/N1245640.pdf?OpenElement>

B. The Consequences of Currently Favored Industrial Agricultural Production

The industrial production model, just like the economic development policies currently under way, is based on profit, maximum and immediate. The mid- and long-term environmental – but also economic, social and cultural – consequences of the industrial-scale and production-oriented methods used are not taken into consideration in this model. Thus, enormous pressure is brought to bear not only on natural resources, including land and water, but also on the populations concerned, in particular the peasants.

“I am preoccupied by the uprootedness of so many of our farmer brothers who suffer because of this, and not because of wars or natural disasters. Land grabbing, deforestation, theft of water, inadequate pesticides are some of the evils that tear man from his native land. This painful separation is not only physical but also existential and spiritual, for there is a relation with the earth that makes the rural community and its way of life run the risk of obvious decline and even extinction.”³¹

1. Pressure on Land and Conflicts, Including Armed Conflict

Land – and natural resources in general – considered as a commodity and not as the source of life, is the object of colossal transactions as mentioned above. Its nourishing function is very often ignored deliberately, for the purchasers or long-

³¹ Speech of Pope Francis to the participants at the Global Meeting of Popular Movements, the Vatican, 28 October 2014.

term leasers do not acquire these spaces to produce food intended for human consumption but very often to produce bio-fuels and animal food or to transform agricultural land for use for “development” projects (dams, infrastructure, buildings, tourism etc.). For example, 19.5 million hectares of farmland are taken every year for industry and building.³²

Further, population increase has an effect on the size of family farms: “As rural populations grow, plots cultivated are becoming smaller per capita and per household. In India, the average landholding size fell from 2.6 hectares in 1960 to 1.4 hectares in 2000 and continues to decline; similar evolutions have been documented in Bangladesh, the Philippines and Thailand, where the decline in the average farm size is combined with an increase in landlessness. The trend is not limited to the Asian region. In Eastern and Southern Africa, the amount of cultivated land per capita declined by half over the past generation, and in a number of countries the average cultivated area now amounts to less than 0.3 hectare per capita.”³³

That “a quarter of the 1.1 billion poor persons in the world” are without land and that “almost 200 million do not have sufficient land to provide a decent standard of living”³⁴ is not unrelated to conflicts, included armed conflict. For example, two thirds of the communications received by the United Nations Special Rapporteur on the Right to Food and 70% of the cases dealt with by the tribunals of several African countries are related to conflicts related to land (see Chapter III). Although ethnic and confessional aspects are often mentioned, it is widely known that most armed conflicts throughout the world arise over the control of territory and access to natural resources.

2. Environmental Pollution and Destruction

In a remark on the current disastrous state of the environment, François Chatel exhorts humanity, asking it to “cease deporting itself as if nature belonged to it” and seek answers to the following questions: “Should we do with or without nature? Should we consider it, yes, but how? Should we ignore it by exploiting it until we have destroyed it – is such a thing conceivable? And will this choice be implemented in concert with other peoples – in a truly democratic way?”³⁵

While, for example, the high levels of chemical use in mechanized agriculture have increased the production of cereals up to 20,000 quintals (gross production) per agricultural worker (100 quintals/ha) as opposed to 50 quintals per worker (10

³² General Assembly, Report of the Special Rapporteur on the Right to Food, A/65/281, 11 August 2010, § 9: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/482/30/PDF/N1048230.pdf?OpenElement>

³³ *Ibid.*, § 6.

³⁴ IFAD, *Fact Sheet for ICARRD: Empowering the rural poor through access to land*: www.ifad.org/events/icarrd/factsheet_eng.pdf

³⁵ “L’heure du choix a sonné”, *La grande relève*, N° 1155, July 2014, and N° 1156, August-September 2014.

quintals/ha) for non-mechanized and non-“chemical” farming,³⁶ this has mostly served to reduce dramatically (especially in the West) the number of agricultural workers: “Thus, in our time, in industrialized countries, an active agricultural population reduced to 5% of the total work force suffices to feed better than ever the entire population.”³⁷ This mechanized production model has also made possible wealth accumulation in the hands of a small minority and the emergence of new entities – specifically, agribusiness transnational corporations (see below).

Billed as a “green revolution” yet heavily dependent on petroleum and petrochemicals, this model has produced irreversible “collateral” damage on the environment. Deforestation (very often in order to open the way to intensive mono-cultures for livestock raising and bio-fuels), the use of chemical products (pesticides, herbicides, insecticides, fungicides...) in industrial-scale agriculture and intensive livestock farming (cattle, aquaculture etc.) are not only sources of significant pollution (soil, water and air), but they are a threat to biodiversity and greatly influence climate change. This has been pointed out by Olivier de Schutter, the Special Rapporteur on the Right to Food, in his last report to the Human Rights Council:

*Regarding the environment, the “green revolution” of the twentieth century with its industrial agricultural production “led, however, to an extension of monocultures and thus to a significant loss of agrobiodiversity and to accelerated soil erosion. The overuse of chemical fertilizers polluted fresh water, increasing its phosphorus content and leading to a flow of phosphorus to the oceans... Increasing yields alone will not do. Any prescription to increase yields that ignores the need to transition to sustainable production and consumption, and to reduce rural poverty, will not only be incomplete; it may also have damaging impacts, worsening the ecological crisis and widening the gap between different categories of food producers.”*³⁸

In its report published in 2013, the UNCTAD sounded the alarm and recommended “a rapid and significant shift away from 'conventional, monoculture-based... industrial production' of food that depends heavily on external inputs such as fertilizer, agro-chemicals, and concentrate feed. Instead, it says that the goal should be 'mosaics of sustainable regenerative production systems that also considerably improve the productivity of small-scale farmers and foster rural development’.”³⁹

³⁶ Marcel Mazoyer and Laurence Roudart “Mondialisation, crise et conditions de développement durable des agricultures paysannes”, in *Via Campesina: une alternative paysanne à la mondialisation néolibérale*, Geneva: CETIM, October 2002, pp. 11-13.

³⁷ Marcel Mazoyer and Laurence Roudart, *Histoire des agricultures du monde: Du néolithique à la crise contemporaine*, Paris: Seuil, November 1997, p. 378.

³⁸ Human Rights Council, *Report of the Special Rapporteur on the Right to Food*, A/HCR/25/57, 24 January 2014, §§ 6, 7, 15: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/105/37/PDF/G1410537.pdf?OpenElement>

³⁹ See “Wake up before it is too late: Make agriculture truly sustainable now for food security in a changing climate”, in *Trade and Environment Report 2013*, prepared with contributions of more than 60 international experts, <http://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=154>

For Srilata Swaminathan, the purpose of the “green revolution”, in so far as Indian agriculture is concerned, “was precisely to make agriculture entirely dependent on the Western transnational corporations for every input in seeds, fertilizers, pesticides and irrigation.”⁴⁰

Worse, the production-oriented system with its high level of mechanization and its “chemicalization” of agriculture has, in our times, reached an absurd level that threatens food security throughout the world. The following figures need no comment:

- 5 to 10 million hectares of agricultural land disappear every year throughout the world owing to erosion and soil exhaustion;⁴¹
- worldwide, 15 million hectares of forest are being destroyed annually...; 50% of the tropical forest has already disappeared, producing some 20% of the world's carbon emissions the consequences of which are felt not only in the greenhouse effect but also locally in the soil that drains more readily thus favoring floods, evaporation and drought;⁴²
- each year, the world's mining sector dumps some 180,000 million tons of toxic waste into the rivers, lakes and oceans;⁴³
- 24,000 billion kilos of fertile soil disappear each year; it is estimated that about one-third of the earth's dry land, i.e. some 4 billion hectares, is threatened with desertification, which would place more than 250 million persons in serious difficulty;⁴⁴
- from 7 to 16 kilos of cereals or vegetable products are necessary to produce 1 kilo of meat, 15,000 liters of water for 1 kilo of beef and 800 liters of water for 1 kilo of wheat;⁴⁵ by the same token, it takes 280,000 liters of water to produce a ton of steel and 700 liters of water per kilo of paper.⁴⁶

If one takes into account the following facts, one can measure the magnitude of the damage to water: 1. pollution is the primary cause of the shortage of potable water; 2. only 3% of the planet's water is non-saline, 99% of which is in glaciers or buried in deep strata of the earth, with the result that humanity has access to only 1% of the non-saline water resources on the earth's surface; 3. the total quantity of water on the planet neither increases nor decreases, and water has its own natural uninterrupted cycle; 4. water is dispersed inequitably across the globe, abundant in some regions and extremely rare in arid areas.⁴⁷

⁴⁰ Srilata Swaminathan, “Défis et luttés dans l'agriculture indienne d'aujourd'hui”, in Samir Amin, ed., *Les luttés paysannes et ouvrières face aux défis du XXI^e siècle*, Paris: Les Indes Savantes, 2005, p. 32.

⁴¹ General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/65/281, 11 August 2010, § 6?: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/482/30/PDF/N1048230.pdf?OpenElement>

⁴² <http://www.encyclo-ecolo.com/D%C3%A9forestation>

⁴³ <http://www.planetoscope.com/environnement/Pollution>

⁴⁴ <http://www.planetoscope.com/environnement/sols>

⁴⁵ <http://terresacree.org/mediter.htm>

⁴⁶ *L'eau, patrimoine commun de l'humanité*, CETRI Alternative Sud, February 2002.

⁴⁷ *Ibid.*

In this regard, in France, which several decades ago was one of the first countries to introduce industrial-scale production into agriculture (mechanization and chemicals), the surface water and ground water are very polluted. According to samples taken between 2007 and 2009, 70% of ground water (and 75% of surface water) in continental France and 64% in the overseas departments contain “at least one pesticide”.⁴⁸ According to the French ecology ministry, “the water pollution by pesticides and nitrates entail an annual cost of 1.7 billion euros at a minimum in the form of distribution of potable water. If these pollutants were to be eliminated and the water brought back to the quality of “natural” water (and not just water corresponding to minimum drinking standards), the annual cost of the water treatment would be at least 54 billion euros.”⁴⁹

China is also an example worthy of study. Although China has succeeded in feeding its population (22% of the world's population) with only the 6% of the earth's arable land that it has,⁵⁰ it is today confronted with the pollution of some 20% of its arable land, owing to its “unbridled industrialization”.⁵¹ Worse, as in Europe and North America, bees are fast disappearing in China owing to the wide-scale use of insecticides, and pollination of crops is now being done by hand.⁵²

As for intensive livestock raising, it not only consumes huge quantities of food but also contributes to environmental pollution: “33 percent of croplands are used for livestock feed production. Livestock contribute to seven percent of the total greenhouse gas emissions through enteric fermentation and manure.”⁵³

If a radical change of orientation is not effected in the use of agricultural land, in the methods of production and consumption, and if an agrarian reform is not carried out, there will surely be a lack of arable land in the near future. In 2003 already, the FAO estimated that “an additional 120 million hectares... will be needed to support the growth in food production by 2030. ... This expansion will occur mainly in developing countries. Since about 95 per cent of the cropland in Asia has already been utilized, it is in Latin America and Africa that most of the demand for increased arable land will be concentrated. Indeed, it is in these regions... that most of the world's reserve agricultural land (up to 80 per cent) is located.”⁵⁴

⁴⁸ <http://www.eaufrance.fr/observer-et-evaluer/pressions-sur-les-milieux/rejets-et-pollution/>

⁴⁹ *After 2050: Un scénario soutenable pour l'agriculture et l'utilisation des terres en France à l'horizon 2050*, Solagro, January 2014, p. 15.

⁵⁰ Samir Amin, “Aspirations et résistances de la paysannerie chinoise” in Samir Amin, ed., *Les luttes paysannes et ouvrières face aux défis du XXI^e siècle*, Paris: Les Indes Savantes, 2005, p. 18.

⁵¹ Article by Philippe Grangereau, in the French daily *Libération*, 17 April 2014:

http://www.liberation.fr/monde/2014/04/17/en-chine-20-des-terres-arables-sont-polluees_999564

⁵² Article in the French daily *Le Monde*, “Dans le Sichuan, des 'hommes-abeilles' pollinisent à la main les vergers”, 23 April 2014: http://www.lemonde.fr/planete/article/2014/04/23/dans-les-vergers-dusichuan-les-hommes-font-le-travail-des-abeilles_4405686_3244.html

⁵³ FAO, *Livestock and Landscapes*, *Factsheet*, 2013:

<http://www.fao.org/documents/card/en/c/18055fac-a807-528e-8be2-d3146a095f7d/>

⁵⁴ Human Rights Council, *Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge*, A/HRC/13/33/Add.2, 28 December 2009, § 11: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-33-Add2.pdf>

3. *The Transnational Agribusiness Monopoly over the Food Chain*

“A third field in which States may have responsibilities beyond their national borders to protect the right to adequate food concerns the regulation of transnational corporations in the food production and distribution chain.”⁵⁵

In a little more than two decades, the agribusiness transnational corporations have taken control of the food chain, ranging from production to the marketing of food products:

*Today corporations set the global rules, with governments and public research centers following their lead. The fall-out of this transformation for the planet's biodiversity, and the people who look after it, has been devastating. Corporations have used their power to expand monoculture crop production, undermine farmers' seed systems and cut into local markets. They are making it much more difficult for small farmers to stay on the land and feed their families and communities. This is why social movements are increasingly pointing to food and agribusiness corporations as the problem in the global food system and the focus of their resistance.*⁵⁶

For example, “A third of the entire global seed market is in the hands of just 10 corporations, including Aventis, Monsanto, Pioneer and Syngenta. Monsanto alone controls 90 per cent of the global market in genetically modified seeds.”⁵⁷ The situation would not be so dramatic if, through multilateral and/or bilateral trade agreements (between the United States and Colombia, for example), the purchase of seeds from these transnational companies was not, de facto, imposed on peasants instead of allowing them to use traditional seed sources, which are prohibited by the ratification of such agreements.⁵⁸

It is similar for the monopoly in the purchase of agricultural products that eliminates the small producers or subjects them to the mercy of the transnationals of this sector: “For example, in the Brazilian soybean market there are roughly 200,000 farmers attempting to sell to five main commodity traders; three large transnational commodity buyers (ADM, Cargill, and Barry Callebaut) dominate the Ivorian cocoa industry. Food processors sometimes also achieve the same

⁵⁵ General Assembly, Report of the Special Rapporteur on the Right to Food, A/63/278, 21 October 2008, § 29: <http://www.srfood.org/images/stories/pdf/officialreports/or-2-ungareporta63278en.pdf>

⁵⁶ GRAIN, *The Great Food Robbery: How Corporations Control Food, Grab Land and Destroy the Climate*, 2012, p. 24: <http://www.grain.org/article/entries/4501-the-great-food-robbery-a-new-book-from-grain>

⁵⁷ United Nations Human Rights Council, *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, A/HRC/19/75, 24 February 2012, § 36: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75_en.pdf

⁵⁸ In this regard, see, inter alia, the CETIM's oral statement to the 24th session of the Human Rights Council (September 2013): <http://www.cetim.ch/fr/interventions/375/la-criminalisation-des-semences-ancestrales-dans-le-cadre-d-un-accord-de-libre-echange-avec-les-etats-unis-porte-atteinte-au-droit-a-la-vie-et-au-droit-a-l-alimentation-en-Colombia>

degree of concentration: in 1996, two transnational food and beverage companies, Nestlé and Parmalat, shared 53 per cent of the Brazilian dairy processing market, driving off a large number of cooperatives who were led to sell their facilities to these companies.⁵⁹

For Jan Douwe Van Der Ploeg, transnational agribusiness corporations, which he characterizes as “food empires”, are responsible for the agrarian crisis:

*“It is essentially the ascension of food empires as the defining principle exerting an increasing control over food production, transformation, distribution and consumption that is contributing to the progression of what seems to be an inevitable agrarian crisis.”*⁶⁰

4. Food Waste and its Effects on Food Quality

At first glance, linking the right to land, the question of waste and the quality of food does not appear obvious. However, there is a correlation, given that fertile land is more and more subjected to pressure from monoculture production and the heavy use of chemicals. As noted above, these are not only destructive of the environment, but they also consume non-renewable energy and correspond to a profit-based rather than a need-based logic.

Although nearly a billion persons are lacking food throughout the world, it is not because of a lack of food but because they do not have the means to obtain it, for there is over-production. In fact, a third of the world's food production is wasted each year.⁶¹ This waste is spread across the world in the following way: “while a consumer in sub-Saharan Africa or South and South-East Asia wastes from 6 to 11 kg per year, this amount is between 95 and 115 kg per year in Europe and North America”⁶²

Wasting food is not limited to consumers but also concerns intensive animal raising (see above) and aquaculture. The worst is that “frequently promoted on the promise that it will relieve pressure on wild fish stocks, improve food security and provide livelihoods for the poor”, aquaculture “does not, however, automatically relieve exploitation of marine stocks, given that many farmed fish are, paradoxically, fed with marine fish”.⁶³

Moreover, the disadvantages of industrial-scale production are not confined to environmental destruction and unemployment but also involve the quality of food. Poor food quality (high fat, high sugar etc.) is responsible for obesity and many

⁵⁹ Human Rights Council, *Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge*, A/HRC/13/33, 22 December 2009, note 14: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/177/76/PDF/G0917776.pdf?OpenElement>

⁶⁰ *Les paysans du XXI^e siècle*, Paris: Charles Léopold Mayer, 2014, p. 31.

⁶¹ <http://www.planetoscope.com/agriculture-alimentation/1556-le-gaspillage-alimentaire-dans-le-monde.html>

⁶² Human Rights Council, *Report of the Special Rapporteur on the Right to Food. Final report: The transformative potential of the right to food*, A/HRC/25/57, 24 January 2014, § 21.

⁶³ Human Rights Council *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, A/HRC/19/75, 24 February 2012, §19: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75_en.pdf

illnesses. According to FAO data, “1,4 billion persons are over-weight, of whom 500 million are obese”.⁶⁴ In its most recent report on the effects of the (poor) quality of food on health, the Special Rapporteur on the Right to Health⁶⁵ emphasized the link between unhealthy food and non-communicable diseases linked to food. Unhealthy foods have been identified as the cause of such non-communicable diseases as cardiovascular illness, various cancers, chronic respiratory illnesses and diabetes, responsible each year for some 36 million deaths. The Special Rapporteur also pointed out the negative role of agribusiness in the increase of the processed and excessively processed foods responsible for these illnesses. He also criticized the aggressive expansion strategies and systematic marketing of TNCs, which spend billions of dollars and push for the consuming of elements that are dangerous to health.

5. Discrimination and Exclusion of Peasants

“All societies before capitalism were peasant societies, and their agriculture obeyed logic that was certainly varied but entirely foreign to that of capitalism (maximum return on invested capital).”⁶⁶

Since the sedentarization of humans and the development of agriculture, peasants have been oppressed, treated with contempt and excluded from participation in the making of decisions concerning them. Depending on the periods, they have even been bought (or sold) by sovereigns or have changed masters following wars of conquest. In other words, they were never allowed to speak for themselves and were ignored by the powers that be (political, economic and religious), except to exploit their ability to work and their knowledge. Moreover, it is interesting to observe that, in the Latin-based languages, the word peasant has had a very negative connotation, implying “ignorant”, “stupid”, “dirty” or even “ill bred”.⁶⁷ It was only owing to revolutions (France, Mexico, China...) and the creation of the nation state engaged in the process of democratization that the peasantry obtained the formal status of citizen. However, this recognition has not always resulted in practical effect.

In many countries in our times, peasants continue to be subject to discrimination and excluded since, located in rural areas and far from urban centers where the political powers are based, they and their demands generally go “unheard”. When they find the means to assert themselves, most of the time they must face oppression in many forms (murder, arbitrary arrests, forced displacements, criminalization...). The United Nations Human Rights Council's

⁶⁴ FAO, *The State of Food and Agriculture* 2013.

⁶⁵ Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover: Unhealthy foods, non-communicable diseases and the right to health*, A/HRC/26/31, 1 April 2014.

⁶⁶ Samir Amin “Trois milliards de paysans menacés”, in Samir Amin, ed., *Les luttes paysannes et ouvrières face aux défis du XXI^e siècle*, Paris: Les Indes Savantes, 2005.

⁶⁷ Marc Edelman, *What is a Peasant? What are Peasantries? A Briefing Paper on Issues of Definition*, presented to the 1st session of the Human Rights Council Intergovernmental Working Group on the Rights of Peasants, Geneva, July 2013.

Advisory Committee lists the causes of discrimination to which peasants are subjects as follows:

*“The main causes of discrimination and vulnerability of peasants and other people working in rural areas are closely linked to human rights violations: (a) expropriation of land, forced evictions and displacement; (b) gender discrimination; (c) the absence of agrarian reform and rural development policies; (d) the lack of minimum wages and social protection; and (e) the criminalization of movements defending the rights of people.”*⁶⁸

In its above-cited study, the Advisory Committee also drew attention to discrimination, based on, among other things, sex. The Committee asserted: “Of the 1 billion people who suffer from extreme poverty in the world, 75 per cent live and work in rural areas.”⁶⁹ Although women grow more than 50% of all the food produced world wide, they “in particular often face discrimination in gaining secure access to and control over other productive resources, such as land, water and credit, because they are often not recognized as producers or juridical equals.”⁷⁰ Worse: “de jure discrimination against women remains for example institutionalized in Guatemala, where article 139 of the Labor Code describes rural women as 'helpers' of male agricultural workers rather than as workers entitled to receive their own salary. As a consequence, it is reported that many landowners do not even pay women for their work, since they are considered 'helpers' of their husbands.”⁷¹

6. Rural Population Displacement to Urban Centers

According to the estimates of the United Nations, 3 billion persons will be living in slums by 2050.⁷² There are several dozen cities throughout the world with more than 10 million inhabitants. Besides the lack of infrastructure (adequate housing, transportation, schools, hospitals etc.) and work to absorb these populations, there is the matter of supplying food to them and managing the resulting pollution.

In the present context, implementing the industrial-scale agricultural model (highly mechanized and heavily chemical dependent), on a global scale, with it concomitant rural exodus of millions every year to urban centers, is an irrefutably “genocidal” policy according to Samir Amin: “The pursuit of the logic of accumulation leads to tragic failures. This logic involves the dispossession of the peasants of the Third World which, today, has become genocidal: 3 billion peasants (half of humanity) are supposed to be

⁶⁸ Human Rights Council *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, A/HRC/19/75, 24 February 2012, pp. 9-14:

<http://www.cetim.ch/en/interventions/373/the-situation-of-farm-workers-in-guatemala>

⁶⁹ *Ibid.*, § 9.

⁷⁰ *Ibid.*, § 23.

⁷¹ *Ibid.*, § 29. In this regard, see the written statement of the CETIM, “Situation des travailleurs agricoles au Guatemala, submitted to the 24th session of the Human Rights Council, A/HRC/24/NGO/43:

<http://www.cetim.ch/fr/interventions/373/situation-des-travailleurs-agricoles-au-guatemala>

⁷² CETIM, *The Right to Housing*, August 2007.

replaced by some 50 million modern and efficient farmers; and no development of modern urban activities can absorb this gigantic reservoir of human beings in the process of becoming 'useless'.⁷³

It is in this context that has arisen the creation of the international family farmers movement La Via Campesina⁷⁴ as well as the peasant struggles for land and food sovereignty.

⁷³ “Trois milliards de paysans menacés”, in Samir Amin, ed., *Les luttes paysannes et ouvrières face aux défis du XXI^e siècle*, Paris: Les Indes Savantes, 2005.

⁷⁴ Created in 1993, *La Via Campesina* is an international movement gathering together millions of peasants, small and mid-size producers, the landless, women and youth of the rural world, indigenous, migrants and agricultural workers. It includes 164 local and national organizations in 73 countries of Africa, Asia, Europe and the Americas. In all, it represents some 200 million peasants: <http://viacampesina.org/fr/index.php/organisation-mainmenu-44>

II. PEASANT STRUGGLES FOR THE RIGHT TO LAND AND STATE PRACTICES IN LAND MANAGEMENT

Peasant struggles for land include, depending on the countries and regions, many situations and highly varying methods. In some countries, their rights have been recognized after long struggles, but their implementation is faulty and thwarted by many obstacles, procedural, for example, many of the them insurmountable. In other countries, peasants are fighting, very often at the price of their lives, to obtain such rights. To illustrate these struggles, we have chosen four countries on four continents: France (A), Indonesia (B), Zimbabwe (C) and Colombia (D). The discussions of these countries were written by peasant organizations in the field. But first the Movement of the Landless in Brazil merits examination, for it has a special place among the peasant fighting for land.

Landless Workers' Movement (MST-Brazil)

Among the peasant organizations struggling for land, the Landless Workers Movement in Brazil (MST from its Brazilian acronym) is the most emblematic and perhaps the best known at the international level. Founded in 1984 in a country with extreme inequality, the MST is carrying on a fight for agrarian reform. The movement's most common form of action is the occupation of unused land (private or state-owned) in order to force the political authorities to assume their constitutional responsibility regarding agrarian reform. In 2001, the MST had already succeeded in settling 350,000 families on such land.

One of the MST's innovative strategies is demanding the use and not the ownership of land. Thus, "if a family decides to leave the community [the MST favors a form of cooperative or agro-village in the organization of rural communities], it cannot sell its land. On the other hand, it can receive compensation for what it has invested: construction of a house or fences, purchases of equipment etc. Then, another family without land can settle on it, in accordance with a waiting list established by the MST and the INCRA (National Institute of Agrarian Settlement and Reform)".

Aware that the conquest of land is not enough, the MST is also fighting to create the necessary conditions for these families to be able to work the land and live from their labor (seeds, tools, credit, marketing of their products etc.), not to mention their training (not only in agricultural techniques but also generally). It is also fighting not only against the latifundia and privatization, but also against agribusiness, which seems to have gained ground in Brazil in recent years: "85% of agricultural land today is controlled by the agribusiness corporations and planted to monocultures – soy, corn, eucalyptus – for export."

As one might expect, from the outset, the fight by the MST for land – not to mention for life – has encountered numerous obstacles, especially repression by the powerful landowners, who constitute “one of the most reactionary social strata in the entire world”. This repression can take many forms: “attacks on workers and their leaders, evictions from land by hired assassins, killing of entire families (who were merely working the land peacefully), arrests, prison and torture, kidnappings and imprisonment in the form of slavery on the great estates, setting fire to union offices, accusation of murder (baseless, without the accused even having been present on the scene of the crime), right up to the physical eradication of workers, leaders, and agents of the Christian pastoral ministry committed to the fight for land.” Today, the MST must always face repression between January and August 2014, the Pastoral Land Commission reported the murder of 23 leaders in the camps and the indifference of the public authorities that could have prevented these murders.

In an open letter addressed to the candidates for the Brazilian presidency and to the governments of the states of Brazil in August 2014, the MST pleaded for the democratization and the social function of land. It also pleaded for the recovery of lands illegally acquired and the expropriation of the latifundia, as well as against “the powerful land owners, bank capital and transnational agribusiness corporations” that have invaded vacant land, so that the agrarian reform provided for in the constitution may be fully brought to fruition. Further, the MST is demanding “the immediate settlement of more than 120,000 families living in precarious conditions in hundreds of camps dispersed across the country”. For the MST, “the reinforcement, the reorganization and qualification of the INCRA” is necessary “as a body entrusted with agrarian reform and the conditions of its implementation”. The MST supports the struggles of the indigenous peoples, Afro-descendants (Quilombos), fishers and traditional communities for the immediate demarcation and the legalization of their lands. The MST also draws attention to the aggravation of social conflicts in rural areas owing to the non-implementation of the agrarian reform and demands “justice and the judgment of the sponsors and killers of campaign workers”.

Regarding agricultural and food policies, the MST proposes: “Brazilian agriculture must give priority to the production healthy food, as a human right and as a principle of food sovereignty. Food cannot be a commodity, a source of exploitation, of profit or of speculation. This is why we demand of the public authorities that they guarantee the conditions for agro-environmentally-friendly production, without agro-toxins, of high quality, diversified and at an accessible price for the entire Brazilian population. The federal government and the regional states must incite to and guarantee the production, the selection and the stocking of seeds by the peasant themselves, thus opposing transgenic seeds and the political and economic dependence on the transnationals that monopolize production and marketing. We are against patent law and privatization of seeds.”

Sources:

- Marta Hamecker, MST-Brésil: La construction d'un mouvement social, CETIM, September 2003
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<http://mouvementsansterre.wordpress.com/2014/02/20/un-congres-de-masse-et-combatif/>
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- Pastoral Land Commission press release, 26 August 2014: <http://www.mst.org.br/node/16441>
- Open letter from the MST, addressed to the candidates for the presidency of the republic and to the government of the state of Brazil, São Paulo, 30 August 2014 (French version, 4 September 2014)

A. France: Right to Land and land policies in France⁷⁵

Land policies in France have profoundly changed since the Second World War in order to make access to the land more secure for small farmers. The land management regime is firmly based on public intervention and until now has been able to maintain a fairly high level of rights for the farmers while keeping land prices relatively low in comparison with other European countries. However, access to land remains the main obstacle for the young who want to become farmers, especially in a context where almost half of new farmers are not from agricultural families. There are two main reasons for this: the concentration of land in the agricultural world and the loss of land due essentially to the artificialization⁷⁶ of land (see below).

The 15 September 1807 Finances Law created the French land registry, called the *Cadastré Napoléonien* or the *Ancien cadastré*, which is the basis of the current land system, a registry of arable plots. There is no longer any distinction among lands, except as to the how they are farmed, but the owners are taken into consideration in demarcating the plots. Before the Second World War, most peasants gained access to land through *fermage*⁷⁷ and through share-cropping.⁷⁸ The power of landowners, often nobles, was enormous for they could evict the peasant after the harvest. After the Second World War, a program was set up by the *Conseil national de la Résistance*,⁷⁹ comprising mostly progressive elements, in order to promote social justice. Accordingly, the 13 April 1946 law on *fermage* (Article L. 411-1 and following of the *Code rural*), was enacted, constituting a veritable agrarian reform for rural society. Thus, nearly three-quarters of the agricultural land in France is now *en fermage*, i.e. under lease: the person farming the land is not the person owning it. Share-cropping, judged too unfavorable to the

⁷⁵ This article was drafted specifically for this publication by Morgan Ody and Michel Appostolo, members of the Commission foncière de la Confédération paysanne (France).

⁷⁶ Artificialization is a complete change in the use of land resulting in the loss of agricultural capacity and biodiversity. It results from urbanization and infrastructure expansion. At the expense of natural land or cropland, these artificial areas comprise habitats and their associated green spaces, industrial and commercial areas, athletic and leisure facilities, roads and parking lots. The process of artificialization is most often irreversible (<http://www.natura-sciences.com/environnement/lartificialisation-des-sols-en-france-un-ravage-meconnu204.html>).

⁷⁷ *Fermage* is a lease according to which a landowner rents out land to be farmed for a period of 9 to 30 years in return for an agreed upon annual rent, to be paid in money but often expressed in kind, which constitutes an indexation of the prices of the harvested crops.

⁷⁸ Share-cropping is a sort of rural lease according to which a landowner rents out land to be farmed in return for a part of the harvest.

⁷⁹ The *Conseil national de la Résistance* (CNR) was the body that led and coordinated the various movements of the domestic resistance in France – the press, trade unions and members of political parties hostile to the Vichy government starting in mid-1943.

share-cropper, was abolished: in many cases the owner had gotten 50% of the harvest, while the owner possessed the means of production and, above all, retained right of oversight of the crops and the management of the farm. Strict *fermage* rules were established, still in force today. Thus, a contract rental system called rural lease was set up, securing the farmer's rights (as user of the land) while assigning the landowner a secondary role. The rural lease runs nine years, with the obligation for the landowner to renew it except if he or one of his children want to work this land. If no contract is signed and the farmer pays rent, this is considered an oral contract with all the guarantees of a written contract. Under this law, peasants were liberated from fear of the "landlord". For many farmers, this marked the end of what had been in essence serfdom under the arbitrary exercise of aristocratic power. In the event of the departure of the farmer, there is also a special compensation regime for payment by the landowner for improvements made by the farmer on the rented land and its buildings. Three types of improvements are eligible for compensation: to buildings; in the form of planting of crops; and those relative to the production potential of the land. If, in theory, a formal assessment of the land and the agreement of the landowner facilitates the estimation of the compensation that the landowner must pay, in practice, in the event of disagreement, the calculation of the compensation derives from a complex procedure carried out by rural lease tribunals. Further, if the leased property has suffered damage, the landowner may also demand compensation.

However, the rights and advantages granted to the peasant by current legislation are often contested by the land owners, who consider them contrary to their right to property. Some refuse to rent out their land or do so without contracts, requiring payment in cash. In the first case, the prefect can oblige the owner of uncultivated lands to rent them out. However, this is rare, for the prefects fear losing the support of the land owners, and the procedure involved can turn out to be long and complicated. In the second case, the rural leasing tribunal present in every district has the authority to deal with conflicts between owners and farmers. The parity rural leasing tribunal is presided over by the head of the district tribunal. He is assisted by four elected non-professional assessors: two owners and two farmers. The assessors are elected for six years from electoral lists drawn up by the prefecture.

Further, the rental price is set by prefecture directives. The farmer can thus contest an excessive price before the rural lease tribunal. All these elements are enormous obstacles to the formal right of property, entailed in order to guarantee the right to use. It is thus imperative that the current status of *fermage* be defended against those who want a greater margin of maneuver in the setting of prices, the recovery of control of land or the length of the contracts.

Two other types of regulation have been established since the Second World War. First, "structure monitoring" (*contrôle des structures*): a farmer tilling land must obtain an "authorization to farm" (*autorisation d'exploiter*), which is issued by the prefect. Whether the farmer is owner or tenant, without this authorization, he may not farm the land. But the authorization to farm is not enough: the authorization of the owner is also required. These authorizations are issued after

an examination of the case by a departmental commission (CDOA), comprising representatives of agricultural unions, a workers union, the MSA⁸⁰, the agribusiness sector, suppliers, owners, farmers, nature protection associations, consumers, experts, the national park administration, local communities, cooperatives, banks etc. They are under obligation to follow a list of criteria giving priority to persons wanting to settle on the land and to those whose farm is too small to provide an adequate living income. This regulation is very important, but proper implementation is not always easy. For example, if, during the meeting of the commission, a farmer who already has 200 hectares requests an authorization for 50 more, opposition to the request requires that the name of a person with greater property rights be proposed. If this succeeds, at the next meeting, a month later, it must be proven that that this other person really intends to settle on the land. The Departmental Management Scheme for Structures (*Schéma directeur départemental des structures*) presents the orientations and the priorities behind the administrative decisions of authorization or refusal. In the latter case a competing candidate must be proposed so that the commission can establish a priority. The monitoring of the structures is also threatened, for more and more farms use a business format: instead of buying or selling land, shares in the business are sold, thus land transfers escape from administrative control.

Regarding the transfer agricultural land, another protective tool was established in France in 1960 called *Société pour l'Aménagement Foncier et l'Établissement Rural* (association for land development and rural settlement – SAFER). There is a SAFER in each region. This administrative body has a right of first refusal on the sale of agricultural land – which is exceptional. This right allows it to intervene between the buyer and seller of agricultural land. The SAFER can thus place a peasant candidate that it considers having priority for the acquisition of the property up for sale by the owner. Owing to its right of intervention in the sale of agricultural land, the SAFERs also have a land price-control mission. However, in spite of an obvious and applied willingness to reconquer food autonomy and thus a strong protection of agricultural production instead of favoring income from land, the SAFERs have limits. First, the farmer has only three months to raise the financing to complete his application file and convince the bank, which is not impossible but difficult to do. The other big problem with the SAFERs is that they are semi-public/semi-private establishments where only “shareholders” – those entities owning shares – participate in the decision-making. And there is a considerable lack of transparency in this: information on the farms for sale is given only shareholders and the majority union in most regions, with the result that many young persons who are not in these networks are often excluded from these processes. Thus, the *Confédération paysanne* farm union has filed complaints against several departmental SAFERs and is little by little winning the right to transparency.

In view of the preceding, one can only note that the agricultural organizations play an important role in the administration of land registries. This phenomenon, called co-management, is highly criticized because the majority union, the

⁸⁰ The agricultural sector's social protection agency.

FNSEA,⁸¹ monopolizes all the powers while the other social actors concerned by agriculture are excluded from the discussion and decision-making. Further, the decision-making instances are mainly in the hands of this same FNSEA. This favors land-holding concentration to the detriment of small-holder settlements in large numbers as well as agricultural jobs, whose numbers are in free-fall. For all these reasons, one of the main combats is to open these procedures to other actors: other agricultural unions,⁸² environmental organizations, consumers etc. Thus, in practice, if one wants to become a small-holder farmer and does not inherit a farm, first one must get a degree in agriculture, for, without this degree, there is no public support. Then, the search for farms to lease or buy is complex because the land market is not transparent.

As mentioned above, there are two reasons explaining why access to land has become so difficult in France. First, the phenomenon of artificialization of land, which has reduced the total amount available for agriculture. More than 80,000 hectares of agricultural land are lost each year to the construction of roads, supermarkets and golf courses. Most of the time, the land grab is concentrated near cities, where the land is the most fertile. This means that an enormous part of the most fertile land is removed from agriculture. In some regions (particularly along the Mediterranean coast), only 20% of agricultural land remains. This process is encouraged because the transformation of agricultural land into urban land creates an enormous increase in value: one hectare of agricultural land is worth, on average, € 5,000, whereas one hectare of urbanizable land can sell for 100 times that. The decision to change the status of land is taken at the local level, where cronyism is at its worst. It is not unusual for the mayor of a commune to change the urbanization plan just before elections in order to get votes. Even if in the long term jobs and wealth related to agriculture are lost, in the short term, urbanizing land is a simple way to create monetary value, artificial growth and jobs in construction. These explanations demonstrate that, in spite of a solid consensus in the speeches of politicians on the necessity of preserving agricultural land, in practice, nothing is done. For the landowner, the mere possibility of obtaining a change of status of land (which would make the landowner a millionaire) often leads to a refusal to lease it.

Moreover, a significant concentration of land has come about through an increase in farm size. Those who want to undertake agricultural activity will have to face severe competition to obtain a few hectares of the land still available. In 1955, 80% of farms were less than 20 hectares, but today the average is almost 80 hectares.⁸³ For example, a farm of less than 50 hectares and whose farmer retires

⁸¹ The *Fédération nationale des syndicats d'exploitants agricoles* (FNSEA), founded in 1946, is the major professional trade union in the agricultural sector in France polling 54.9% in the elections for the Chambers of Agriculture in 2007. It is one of the French employers organizations and professional agricultural organizations.

⁸² There are four agricultural trade unions in France, including the *Confédération paysanne*, which is not represented in any SAFER and had only very few representatives in the CDOA, even though it got the vote of 25% of French farmers during the trade union elections.

⁸³ In 1955, "there were still more than 2 million farms. In the course of recent years, the pace of disappearance has been 3% per year. Today, there are 500,000 farms, of which 326,000 are

will be taken by a neighbor who already has a 60-hectare farm, to the detriment of replacing the retiring farmer by a new farmer. The Common Agricultural Policy (CAP)⁸⁴ encourages the concentration of land, for the subsidies are linked to the number of hectares farmed. Another reason for the concentration of land is speculation: the price of land keeps rising, and some farmers buy land as an investment, not to till the land but to resell it when they retire and thus benefit from the increased value. The young who want to farm rarely have as much capital to buy land as a farmer who has been working his land for 20 years and who has already paid for his means of production. Further, some environmental laws push farmers to increase their holdings in order to observe the rules on nitrates: industrial-scale farms must prove that they have enough land to absorb the liquified manure that their farm animals produce. In livestock-raising regions, instead of encouraging the raisers to reduce their production, one sees a race to buy or lease land, not in order to produce but just to have a place to spread the manure.

Currently, there are struggles under way resulting in a convergence of very different interests (peasants, politically militant persons and, simply, a population seeking to change a development model based on economic growth and waste of natural resources), which are demonstrating that there is a veritable awakening regarding the loss of agricultural land and the food crisis. Most of the combats carried on today for the right and access to land in France concern infrastructure projects that will destroy agricultural land. As an example, one can cite the planned Notre Dame des Landes airport,⁸⁵ near Nantes, which, if built, would lead to paving over some 2,000 hectares of land and the eviction of a considerable number peasants. Demonstrations have been organized in the field: besides peasants, other persons have set up camp there demanding access to land and thus the right to food self-sufficiency as well as access to adequate housing. Centers of resistance have developed in France, for there is a huge number of consumer projects proposed that would devour agricultural land. However, in spite of the efforts deployed and the combats carried on, the current economic and judicial system favors and thus tends to reinforce private prosperity, which poses a multitude of problems. Thus, the challenge is to adopt tools that reinforce the right to use land as opposed to the right to property, for the entire population and not only for farmers. Crop land must be protected, in both rural and urban settings, for life-sustaining projects that are often alternative production projects.

considered industrial-scale.” See <http://www.lafranceagricole.fr/l-agriculture/panorama-de-l-agriculture/exploitations-agricoles-19836.html>

⁸⁴ The (CAP) is one of the oldest and, until recently, one of the biggest common policies of the European Union budget (some 35% of the overall budget, 45% if one includes Rural Development), but currently it is dropping. Set up by the Rome Treaty in 1957, it was first implemented in 1962.

⁸⁵ “The prefecture directives authorizing infrastructure work (laws dealing with water, protected species) were challenged before the administrative tribunal whose ruling is expected anytime in the beginning of 2015.” See the article from *Ouest France*, “Notre-Dame-des-Landes. Ségolène Royal 'ignore' si l'aéroport se fera” [Notre-Dame-des-Landes, Ségolène Royal 'doesn't know' if the airport will be built"], 29 September 2014, <http://www.ouest-france.fr/notre-dame-des-landes-la-ministre-ignore-si-laeroport-se-fera-2863450>

What are the solutions for facilitating access to land for future small-holder farmers?

- ◆ Stop or limit drastically the artificialization of land and land speculation linked to changes in land use. Urban policies must stop considering agricultural land as open space to be colonized and plan for urban development within urban areas, making maximum use of the land already available there.
- ◆ Change those policies that incite to increasing the size of farms, such as direct payments per hectare (to be replaced by payments linked to the number of persons working the land or limited to the initial hectares) and the environmental regulations regarding nitrates, for example by limiting the number of animals.
- ◆ Reform the institutions administering land transfers to make them transparent and open to all members of society.
- ◆ Allow the creation of land reserves for settlement, or land banks, either by endowing existing institutions (SAFER) with the authority to do it or by creating some other institution.
- ◆ Reinforce the control of agricultural structures to guarantee a better sharing of land as defined by the general interest and not by financial power.

The Fight for Access to Land in Andalusia⁸⁶

In the European Union, legislation concerning access to land by small-holder farmers can be subject to very different regulations, depending upon the country. Thus, it seems important to discuss briefly, below, the case of Andalusia (Spain), which contrasts markedly with the situation in France, discussed above.

The question of land remains entirely relevant in Andalusia, a region where the rural populations have for centuries been subjected to the crushing weight of an extreme concentration of land in very few hands. This inequitable agrarian structure is the fruit of a long historical process that early on and progressively brought into being a latifundian (industrial.-scale) system and its concomitant commercial single crop system.

Today in Andalusia, 60% of the arable land is concentrated in the hands of 3 % of landowners. The Common Agricultural Policy (CAP) in Spain has contributed to a reinforcement of Andalusian latifundism, for the criteria set to accede to land ownership favors the concentration of subsidies in the hand of the great landowners and the agribusiness corporations. Andalusia is currently the region receiving the most subsidies under the CAP, which are unequally distributed: “In Spain, only 16% of the beneficiaries get 75% of the subsidies.”⁸⁷ These PAC support payments that Spain receives benefit above all the food

⁸⁶ This article is based on the dissertation of Coline Sauzion, “Access to Land as a Means of Making Agricultural Workers Autonomous: The Case of Jódar”, June 2013.

⁸⁷ Veterinarios Sin Fronteras y Plataforma Rural. Una injusticia llamada PAC (on line), 2011, p 5: http://www.plataformarural.org/pdf/injusticia_llamada_PAC.pdf.

industry and transnational corporations. Thus, in 2011, the major food distribution companies received considerable sums from the CAP, such as Mercadona SA with € 2,599,483, Lidl supermercados SA with € 691,655 and Carrefour SA with € 126,679.⁸⁸ Moreover, it is important to note that the introduction, in 2003 of the decoupling of support payments from the level of production has accentuated the tendency to land concentration and to the decrease in area tilled. This measure allows landowners to receive support payments independently of whether they till the land, produce food and employ persons. Through this provision, the CAP introduced a change in land use, ownership of land being converted into a means of obtaining subsidies independent of its agricultural use. There is also, today, an entire Spanish agricultural sector that produces nothing and employs nobody.

It should be noted that the Andalusian rural community is marked by a high level of basic (proletarian) agricultural workers representing some 43% of the total of Spanish agricultural wage-earners. The proletarianization of the countryside is compounded by chronic underemployment and unemployment throughout the region. This excess available agricultural workforce allows the landowners to set low wages. In such conditions, landless day-workers are subjected to the arbitrariness of the landowners of Andalusia or elsewhere, to whom they attempt, as well as they can, to sell their labor.

There is a special social support system for the agricultural sector in Andalusia. Initially the Empleo comunitario,⁸⁹ it was replaced by the Plan de empleo rural⁹⁰ and the Subsidio agrario.⁹¹ These measures were a means of maintaining the existence of the small Andalusian farming towns full of day-workers, lost in the immense estates. By assuring the subsistence of the day-workers by a combination of aid measures, the governments guarantee the landowners a permanent workforce at their disposal during the harvests. This seasonal labor force, for some of the major estates at certain times of the year, explains the maintenance of this mass of underemployed workers in the Andalusian countryside.

Faced with this situation, the resistance of the day-workers has been vehement, perpetuating the long tradition of peasant struggles across Andalusia since the nineteenth century and the first occupations of land. In this regard, during the 1980s there were many experiences of occupations of estates led by the Sindicato de Obreros del Campo (SOC),⁹² the first union to demand agrarian reform toward the end of the Franco period. Thus, after several years of occupying a property belonging to the Duke del Infantado, in 1985 the workers of Marinaleda succeeded in obtaining

⁸⁸ Ibid.

⁸⁹ Community Employment Plan. To fight the seasonal unemployment of more than 200,000 day-workers, the Tardo-Franco administration, in 1971, set up the Plan de Empleo Comunitario. Consisting of funds paid to every mayor, its main objective was to employ the excess agricultural workforce in works in the public interest.

⁹⁰ Rural Employment Plan, it replaced the Plan de Empleo Comunitario in 1984.

⁹¹ The Agrarian Subsidy, set up in 1984, is an unemployment compensation program for agricultural workers in Andalusia and Extremadura. To receive the modest benefits (€ 426 per month for six months), the worker must have worked a minimum number of days during the previous year. (In January 2013, the required number of days worked was lowered from 35 to 20.)

⁹² The Agricultural Workers Union (SOC) was founded in 1978.

1,200 hectares of land on which they set up an agricultural cooperative. Although the SOC has traditionally been active in the Andalusian provinces dominated by the latifundias, in the first decade of this century it also became involved in support actions for immigrant workers in the province of Almería. The other face of extensive Andalusian agriculture is that of an ultra-intensive agriculture for which an essentially migrant African labor force works in intolerable conditions.⁹³

Today, the “economic crisis” is driving the unemployed workers from other sectors back to their villages, who thus swell the ranks of the agricultural workers looking for work. The SOC, absorbed into the Sindicato Andaluz de Trabajadores (SAT)⁹⁴ since 2007, continues to demand the use and not the ownership of the land, which the union wants treated as a public common in service to the community working it. The SOC contests an ownership regime guaranteeing that a single person can be owner of an infinite quantity of land without even using it, confiscating it thus for the community. Further, it declares that the future of land should be decided collectively, since land is the basis of life. To affirm the importance of social and collective use of land, the SOC regularly conducts various actions, oriented to attract the attention of the media and institutions, such as collective hunger strikes, demonstrations before seats of power, road blocks on highways and railroad lines, marches lasting several days to a political decision-making center, blockading themselves in public buildings, land occupations etc.

Currently, the SOC-SAT of Jódar – a typical agricultural village of 12,000 inhabitants situated in the province de Jaén – is organizing the occupation of an agricultural estate within the commune, Abandoned for more than two years, this 580-hectare farm provided work for more than 600 persons of the village during the olive harvest, before being repossessed by a bank. Today, the village has the highest level of unemployment in Andalusia, almost 80 %. The Jódar SOC is thus demanding access to this land for the unemployed and has drafted a plan for an organic agriculture cooperative which could be set up on this property. The project, developed by and for the agricultural workers, would support more than 500 families in the village if it comes into being. It thus appears to be a solution for reducing unemployment in Jódar. The reconquest of their tool of production that is the land is envisaged as the means for the day-workers to emancipate themselves from the landowners. The occupation of this land, in order to set up their own agricultural cooperative, demonstrates clearly the willingness of the Jódar agricultural workers to endow the land with a social utility and to set in motion a process for their independence. The Jódar SOC-SAT agricultural workers' combat reveals the community consensus that prevails among the Andalusia day-workers regarding the legitimate reconquest of the land by those who work it.

Thus it is that the Andalusian agricultural workers, in Jódar as elsewhere, are asking, today, and have been asking for centuries, for the sharing of land and for its collective use. This would open another way for Andalusia than the current one, where workers have no value and where agriculture exists only to serve European and world markets.

⁹³ Further information at: <http://www.sindicatoandaluz.org/>

⁹⁴ Andalusia Workers Union.

B. Right to Land in Indonesia: A Long Struggle for Genuine Agrarian Reform⁹⁵

“Landlessness and land-poor status continued to be the norm (in Indonesia). In 1983 the percentage of peasants controlling (owning or tenancing from other parties) land of less than 0.5 hectares was 40.8 %. In the next ten years, this percentage increased to 48.5 %, and the Agriculture Census in 2003 showed that the number of peasants with these micro farms grew to 56.5 % of the total of farm families in Indonesia. Today, 87% of the farmland is in the hand of large scale commercial agriculture while peasants only survive in 13% of the farmland. Not unrelated to the agrarian problem is the growth of unemployment, now reaching 41 million of unemployed and underemployed people.”⁹⁶

1. From Colonization to “Reformasi”

When Indonesia achieved its independence in 1945, the agrarian structure in Indonesia was greatly imbalanced. Most of land was in the hand of a few people while the vast majority of Indonesian people dominated and owned only a small number of farms. This phenomenon was the consequence of Dutch colonization (1602-1942), most notably the *cultuurstelsel* practice: Indonesian people were forced to plant export commodities, and plantations were dominated by the Dutch through their local king cronies.

At the time, only the Dutch owned land as private property, for it was impossible for other citizens to own land. Meanwhile, under indigenous peoples’ law, land is owned primarily by the community (or the people). Thus, even if one has secure tenure, one still cannot sell the land. When the land is no longer used, it goes back to community – who will then decide if the right to manage the land should be given to another member of community in need of it.

Furthermore, as an attempt to solve the agrarian imbalance in Indonesia, in 1960, the administration of Soekarno (Sukarno, Indonesia’s first president) enacted an agrarian reform policy. Peasants and peasant organizations, such as the BTI (Peasant Front of Indonesia), were very active in pushing for that reform. The phenomenal Basic Agrarian Law N° 5 of 1960 (known by its abbreviation UUPA) was enacted with wide-scale public approval. However, the effort did not bring meaningful results, for its implementation was suspended when the New Order regime took over the country in 1967. Soekarno had very little time before being succeeded by the totalitarian Soeharto (Suharto) – who froze agrarian reform for 33 years.

In 1998, political reform (*reformasi*) finally occurred. Soeharto was toppled from the throne: students and civil society flourished – and Indonesia entered the transition to democracy. Nonetheless, the economy faced a great crisis, and this

⁹⁵ This article was written for this publication by Heri Purwanto and Mohammed Ikhwan, members of the Indonesian Peasant Union Serikat Petani Indonesia (SPI), which hosted the International Operative Secretariat of La Via Campesina from 2006 to 2013.

⁹⁶ Serikat Petani Indonesia’s speech at the International Conference on Agrarian Reform and Rural Development, 2006.

had great consequence for Indonesian peasants, indigenous peoples and fishers. Although we had *reformasi*, the government of Indonesia was still not able to implement the agrarian reform swiftly.

At the same time, international financial institutions such as the World Bank, the International Monetary Fund (IMF), and the World Trade Organization (WTO) continued to interfere with Indonesia's policies. 1998's *reformasi* marked the era where liberalization, deregulation and privatization were pushed by these institutions, resulting in various changes and chaos in agrarian policies. These extended the agrarian reform freeze, entailing a number of bylaws which in principle have contradicted the people's right to land. Among others, we should mention the Forestry Law of 1999, Oil and Gas Law of 2001, Water Resource Law of 2004, Plantation Law of 2004, Presidential Decree N°35 of 2005 on Land Provision for Development, Investment Law of 2007, Coastal Management Law of 2007 and Land Provision for Development Law of 2012.

According to Henry Saragih, the chairperson of Serikat Petani Indonesia (SPI), *reformasi* has still not answered the fundamental right to land questions. For instance, land redistribution is not implemented: of 9 million hectares of abandoned land,⁹⁷ the Indonesian people still have no access to it as land reform beneficiaries (while the average ownership of land for agriculture is only around 0.3 hectare per household). Agrarian conflict is on the rise, especially with the increase of land grabbing and plantation expansion. Criminalization of human rights defenders, especially those who fight for their right to land, is also increasing.

2. Growing Agrarian Conflict and Violence toward Peasants

The SPI has analyzed as follows some of the Indonesian government's policies that have been perpetuating agrarian conflict and worsening recognition and protection of people's right to land.⁹⁸

In an attempt to achieve food security, the New Order regime under Soeharto implemented the green revolution program to modernize agriculture by introducing machinery and agrochemicals. Soeharto also introduced the term "agribusiness" and gave leeway to large farmers. This practice not only perpetuated the agrarian structure imbalance inherited from the colonial era, it made it more complex by adding conglomerates and big capital. This policy has caused the green revolution program to benefit only large landowners, big capital and corporations. This is continues, and plantations held by large-scale farmers keep expanding, mainly for export-oriented commodities such as palm oil and rubber.

The government has used security forces (army and police), organized groups (even paramilitary), and bureaucracy to force people to hand over their farmland, ancestral land, and peoples' forests for the profit of the large-scale investors. The military has also acquired a large amount of land for their activities and for their

⁹⁷ "Abandoned" generally refers to state land leased then returned to the state after expiration of the lease.

⁹⁸ Round Table discussion and FSPI Position Paper on Agrarian Reform in Indonesia, Congress II, Malang-East Java, February 2003.

economic expansion. (The Indonesian military is well known for investing in plantations and mining, and for having close ties to mining companies.)⁹⁹

Reformasi has created a new problem, i.e. regional autonomy, as a further obstacle to the implementation of agrarian reform. The regional governments, in both provinces and regencies, have become aggressive in seeking regional income sources (PAD, *Pendapatan Asli Daerah*) by opening the door to investment. This, along with residual regional feudalism, has created corrupt and irregular practices for mining permits, plantation openings etc.

However, with *reformasi*, Indonesia can finally enjoy a vibrant civil society, and peasants and farmers can finally have their formal organizations. Before 1998, only one farmer organization was legal, but now we have at least seven national peasant organizations – most struggling for peasants' right to land, including the SPI. Nonetheless, capacity building, education, campaigning, legal reform and even direct actions to reclaim land still not enough to counter the plantations, mining and land conversion.

From the latest SPI report in 2012, we see the trend for growing agrarian conflict in Indonesia since 2007 – thus hindering the right to land. Out of 195 cases, most are related to extractive industries – with 97 cases in plantation-related cases, 42 in forestry, 23 in mining, and 33 in other sectors.

Table 1. Agrarian conflict cases in Indonesia 2007-2013¹⁰⁰

Year	Number of cases	Land involved (hectares)	Criminalization (persons)	Evictions (households)	Dead (persons)
2007	76	196.179	166	24.257	8
2008	63	49.000	312	31.267	6
2009	24	328.497	84	5.835	4
2010	22	77.015	106	21.367	5
2011	144	342.360	35	273.888	18
2012	195	818.814	76	116.435	3
2013	369	1.281.660	239	N/a	21

Moreover, palm oil plantation expansion is growing at an annual expansion rate of about 8.6%. The immediate problem is that this vast area is devoted to monoculture, consumes a lot of water, is export-oriented and environmentally unsound.

The use and commercialization of vast amounts of land take advantage of Indonesia's erratic legal system, weak grassroots commitments, rural poverty, and the absence of political will to address the problem in the long-term. On the other hand, the conversion of forest into lucrative agribusiness seems to promise

⁹⁹ See for example www.theguardian.com/world/2005/dec/30/indonesia.johnaglionby and also www.smh.com.au/national/indonesian-officials-paid-to-guard-mines-20140328-35onj.html

¹⁰⁰ Based on SPI report in 2008, 2009, 2010, 2011, 2012, and from joint report of SPI and KPA (Agrarian Reform Consortium) in 2013.

Indonesia's emergence as a regional economic power. All these these factors in combination contribute to the increase in land grabbing.

This process has also created a normative and legal battle of rights in rural and forest areas concerning land, biodiversity, property rights and seeds, among other things. Big business has leeway in establishing and modifying governing norms and legitimate categories of rights to such an extent that they can transform bylaws into major legislation. It is therefore only natural that interpretation of property rights is so centered on individual rights, the market and closed ownership, while the concepts “commons”, “social functions” and “social and indigenous rights” are increasingly rejected by legal establishment.

3. Agrarian Reform Law

The UUPA is still the legal basis of agrarian law today in the country. It has become the banner of peoples and groups who are struggling for agrarian reform, especially peasants and indigenous peoples. An important aspect of the UUPA is that it recognizes both collective and private rights to land. Articles 1, 2 and 4 recognize collective rights to land, while recalling that all land should be used for the maximum prosperity of the people, individually as well as collectively.

The role of indigenous peoples is explicitly recognized, as is the right to control land. Water may be delegated to autonomous regions and customary law or communities (if deemed necessary and not in conflict with national interest – and in accordance with government regulation). In Article 2.2b, the UUPA also recognizes the existence of private ownership with the state having the right to regulate. Under private rights, there are articles about the right to property, lease and use in Articles 20 to 43.

The UUPA is best known as a good law to the common people. The majority of the movements in Indonesia, including the SPI, have been in favor of the law, especially since *reformasi*. The law stipulates the social function of land (Article 6). This means that society overall shall enjoy the benefits of the land, and land use should not be contrary to the interests of society. The owner and the community shall also be in charge of maintaining the fertility, sustainability, and the use of the land. The social function of land is regulated in Articles 14, 18 and 49.

The spirit of the UUPA is to break the structural injustice – most notably in the agrarian sector – especially the injustice suffered by peasants and indigenous peoples. The overall goal is to achieve a just and prosperous Indonesia through the completion of agrarian reform. One way to achieve this is stipulated in Articles 7 and 17, which establish restrictions on land ownership and control by individuals or groups, in order to protect the public interest. Furthermore, Article 13 states that the government should regulate agrarian fields in such a way as to increase production and people's prosperity and to guarantee every citizen a living standard suitable to human dignity (Point 1); to prevent agrarian sector monopoly (Point 2); and to promote social security, including in the field of labor in the agrarian sector (Point 4).

We can see in above explanation that the UUPA lays the groundwork for agrarian reform and social justice. That is why Soekarno's administration stated

that the UUPA should be the “umbrella” for laws concerning the agrarian sector: land, water, natural resources, air. We can also understand that Soekarno wanted to initiate genuine agrarian reform – a national project in which the UUPA and its bylaws can govern the right to land for the people, especially the poor.

4. Land Reform as the First Step to Genuine Agrarian Reform

To implement the UUPA, Soekarno adopted what is known as the “Five Agrarian Reform Programs in Indonesia”. Intriguingly, the fourth program is to “reshuffle the ownership and control of land and legal relations concerned with the cultivation of land in realizing equity, prosperity, and justice”. This has been known as the “land reform”.

The UUPA is the judicial foundation for the implementation of agrarian reform in Indonesia. After a dormant 32 years under Soeharto, peasant movements now have a voice. They have been pushing for the realization of land reform as mentioned above. The UUPA stipulates “land for the tiller” – the core message that is also the movement’s main demand, and this is to be done through expropriation of colonial concessions, redistribution of abandoned land, spatial planning including restructuring forest and plantation areas. Once the land is actively cultivated by peasants, it is only logical that the program should be followed by an increase in the peasant’s capacity with a variety of educational programs, credit, appropriate agricultural technologies, local seeds, a fair trade system, and growth of peasants’ cooperatives and rural infrastructure projects. These are the follow-ups that yet need to be elaborated and implemented, as they are not included in the UUPA.

Since 2009, the Indonesian Peasant Union (SPI) has managed to encourage the birth of some laws to ensure the implementation of land reform and also to recognize and further protect peasant rights. Among them are Law N° 18/2012 on Food Security, Law N° 41/2009 on Protection of Sustainable Agricultural Land for Food Production, and the recent Law N° 19/2013 on Protection and Empowerment of Farmers. However, conflicts of interest in the formulation of these policies cannot be avoided. The SPI and other movements know that the laws – as derivatives of the UUPA – are still not enough. Furthermore, the question of effective implementation is still the favorite subject among peasants and people working in rural areas.

However, we will see some aspects of the right to land that are being fought hard for by the movements. In Law N° 18/2012 on Food Security for example: the central government and local governments are obliged to protect and empower farmers (Article 17) especially regarding allocation of land and water resources, counseling and mentoring, as well as budget allocations (Article 18). The law goes even further, stipulating food sovereignty. And to achieve food sovereignty, land allocation, secure tenure and right to land are necessary to protect and empower farmers.

There is an implementation aspect of land reform in Article 29 of Law N° 41/2009 on Protection of Sustainable Agricultural Land. This article specifies the distribution of abandoned and former forest land to farmers for sustainable agricultural development land. Further, Law N° 19/2013 allows for the distribution of

agricultural land to landless and small farmers (Articles 7, 12 and 57). The law also stipulates state obligations to ensure the means of production, price guarantees, and access to market and agricultural insurance to protect farmers. In a dialogue with the SPI, the Indonesian government has recognized the law as “a way to protect the rights of peasants in the country that is still agrarian with many people still dependent on agriculture and living in rural areas”. Law N° 19/2013 also helps to recognize and further protect the rights of peasants. The House of Representatives is considering inputs from peasant movements including the SPI, especially the Declaration on the Rights of Peasants – Women and Men. It is also worth mentioning that the process also took inputs from La Via Campesina’s initiative on the rights of peasants in the UN Human Rights Council.¹⁰¹

Some might say that the “basic ingredients” for a successful agrarian reform are already in some of the laws – thus ready to be implemented. Right to land should not be a problem in Indonesia. However, some problems persist, and a genuine agrarian reform effort is still young after 1998’s *reformasi*. We shall see what the barriers and threats to this effort are.

5. Barriers and Threats to Agrarian Reform

In the shift from Indonesia's Old to New Order, the land reform program and the entire agenda of genuine agrarian reform was immediately terminated. Soon after it was established, in 1967, the New Order issued legislation contradicting the UUPA, including Basic Forestry Law N° 5/1967, Law N° 11/1967 on Mining, and most notably Law N° 1/1967 on Investment. These laws marked the surge of foreign investment and free-for-all taking of the country's natural resources. The poor suffered, and only Soeharto cronies enjoyed rights to manage Indonesia's land and water.

“Domein Verklaring”¹⁰² – abolished by the UUPA – is still in force in forest areas. Consequently, 70 percent of forests are owned by the Department of Forestry. Customary forest land tenure and indigenous peoples' right to land suffered and continue to suffer a huge blow under this 30-year practice.

Further, oil, gas and mining are worsening the situation. Foreign investment, usually as a condition of loans from international financial institutions and corporations, exploit Indonesia's natural resources, undermining the rights of people in the surrounding areas. In fact, unfair contracts for mining are still in force in many areas in the country. We still witness bad practices, such as those of Freeport McMoran in Papua,¹⁰³ and as we see further in the SPI and KPA report in 2013, the mining sector is still a big contributor to Indonesia's growing agrarian conflict.

¹⁰¹ Editor's note. See Chapter V.

¹⁰² Domein Verklaring was a Dutch law that stipulated the colonial as the sole owner of the land and the only one authorized to transfer the rights (generally to the highest bidder).

¹⁰³ A huge mining company linked to many human rights violations, which have included blocking the area off from the local indigenous people and taking huge profits from it. See for example: www.theguardian.com/commentisfree/2011/oct/12/west-papua-striking-miners-indonesia

Moreover, we can see some policies still contradict the UUPA. Civil society organizations and people's movements including the SPI are still working on a legal reform effort to annul or revise, among others, these laws:

- ◆ Law N° 41/1999 on Forestry

The Law on Forestry limits rights to land of indigenous peoples, peasants and forest dwellers. It is a routine basis of criminalization for people who want to reclaim their rights to forestry areas.

- ◆ Law N° 7/2004 on Water

Water privatization linked to World Bank program, the Water Structural Adjustment Loan (WATSAL), hinders people's right to water as a basic human right. Consequently, it is harder to access water – especially for peasants.

- ◆ Law N° 18/2004 on Plantations

Some rights and privileges granted to plantation investors that limit the rights to land for the people. A routine basis of criminalization for people who want to reclaim their rights to land in plantation areas.

- ◆ Law N° 4/2006 on the Protection and Use of Genetic Resources

Genetic resources are considered as commodities. Seeds are commodified and patented making it difficult for peasants difficult to run their businesses – most become dependent on commercial seeds from corporations.

- ◆ Law N° 25/2007 on Investment

The Law stipulates that the investor's right to use land is valid for 95 years without exceptions in all areas of the Republic of Indonesia.

- ◆ Law N° 27/ 2007 on Management of Coastal Areas and Small Islands

The rights to use coastal areas (HP3) become threats of land grabbing for indigenous people and those who live in coastal areas. The rights are valid for investors, both national and international, for 60 years.

- ◆ Law N° 2/2012 on Land Acquisition for Development Based on Public Interest

The law was enacted to facilitate land acquisitions by investors. The government can acquire land directly and by force, for the benefit of the investors. The law can be the basis for expulsion, forced eviction and criminalization.

There are very few implementations on the ground, if any, by the government of Indonesia. The National Program for Agrarian Reform, launched in 2007, redistributed only a minuscule 214 hectares for some 4,000 beneficiaries in 2010 (although the government claimed some 142,159 hectares were available for the year). Other efforts, including limited certification on land titles, have very little

effect in the agrarian reform context. In a nutshell, peasants and indigenous people in Indonesia have not seen a breakthrough on agrarian reform implementation since *reformasi*. The situation is not getting better as land grabbing, palm oil and other plantation expansion and growing agrarian conflicts occur – with a business-as-usual attitude on the side of the government.

Since its inception in 1998, the SPI has led a concerted agrarian reform-from-below process, involving almost 200,000 hectares of land across Indonesia. It was carried out under the principles stipulated in the UUPA. Although sometimes the rights to land in those areas are still not secure owing to missing papers and legalities, there are many success stories. In the future, the SPI – along with other movements – is looking forward to linking the agrarian reform to the government's program, especially the implementations of the many good laws mentioned above.

Conclusion

Indonesia has a constitutional mandate and legal framework to carry on a genuine agrarian reform. Nonetheless, history has proven that the struggle for this is not easy. After a brief spell by Soekarno, the right to land for the people had to wait 32 years and is still facing challenges, barriers and threats since the 1998 reform. Among other things, conflicting bylaws to the UUPA and weak implementation are two major aspects that need to be addressed.

A strong people's movement will be key to obtaining a genuine implementation of the agrarian reform based on the UUPA. Good practices, such as successful land reclaiming experiences in various areas of Indonesia, can inspire the government and accelerate the national process. This must be done with the objective of providing immediate solutions to the increasing number of agrarian conflicts as well as ensuring people's right to land, water and natural resources.

Indonesia still has a good chance to implement the right to land that the people demand. The new president, Joko Widodo, elected in August 2014, also has plans to redistribute 9 million hectares of land and to develop rural areas. With current supporting laws, strong political will, immediate implementation, and support from the people's movements, the people's right to land has the opportunity to succeed.

The SPI, as one of the movements acting in favor of a genuine implementation of agrarian reform in Indonesia, will continue to pursue a fairer agrarian structure for peasants. We aim to secure the peasants' right to land, and on the other hand to keep pressuring the Indonesian government so that it meaningfully implements the UUPA and the good laws mentioned above. Between 1998 to 2013, the SPI has reclaimed the rights to around 200,000 hectares of land all across Indonesia. This shows that, working hard, the people can assert their basic rights even when the political will of the state is lacking.

In the near future, it will be important to recognize the right to land at the international level. This would work hand in hand with the existing good laws in Indonesia, thus putting more pressure on the national government so that it really

implements important rights. Since 2001, the SPI has been working at the national, regional and international level with La Via Campesina, the international peasant movement, to pursue an international human rights instrument for peasants. In 2008, this initiative finally found its way into United Nations, when a proposal for a new United Nations declaration on the rights of peasants and other people working in rural areas was presented. This initiative is now gaining momentum at the Human Rights Council and getting substantial support from countries in Asia, Africa, and Latin America. One of the key elements of the draft declaration is, of course, the right to land.¹⁰⁴

C. Zimbabwe: The Success of Peasant Struggles for the Right to Land¹⁰⁵

Peasant struggles for land and the related rights are commonplace in the history of agrarian revolution. Such struggles have been critical in reshaping the agrarian landscape particularly in the Global South, where there is an indelible colonial footprint of 19th century land dispossessions. Since then, Africa has experienced extreme forms of natural resource exploitation, some of which still continue. Zimbabwe, a former British settler colony, is one such country where land was forcefully expropriated from the natives and given to the minority white settler population. The natives were resettled on marginal lands, with low rainfall and land use laws enacted to limit livestock numbers and cropping practices. Various other repressive legislation was enacted to exclude blacks from all spheres of national wealth. What the natives were deprived of was the right to land, in the broadest sense, i.e. their right to their ancestral lands rich in natural resources such as forests and wildlife, all intricately intertwined with their cultural practices, in particular, diet, religion and health. Their right to self-determination was repressed. This led to protracted struggles by the natives for both political and economic emancipation. The initial struggles for land restitution led mainly by traditional leaders and spirit mediums were unsuccessful in reversing land expropriations but gave birth to the national liberation war which yielded independence in 1980.

Independence renewed peasant energies to struggle for broader based land and wealth redistribution. The economic and political situation of the late 1990s provided an unprecedented force to redress colonial land injustices in Zimbabwe. The peasants and other landless groups asserted their right to land through occupying white settler farms, which led to the well known radical land reform, the Fast Track Land Reform Program (FTLRP) implemented formally in 2000. This article attempts to assess whether the right to land is a reality in Zimbabwe following the land reform initiated by the landless and land-hungry peasants.

¹⁰⁴ Editor's note. See Chapter V.A).

¹⁰⁵ This article has been written for this publication by Ndabezihle Nyoni and Nelson Mudzingwa, farmers that work for the Zimbabwe Smallholder Organic Farmers' Forum (ZIMSOFF), which hosts the LVC International Operative Secretariat (IOS) in Harare since 2014.

1. Land Inequalities: Constraints to Land Access

The struggle for independence was mainly a struggle for land lost by the natives through colonial conquest by British in the 19th century and against subsequent racist segregation policies. The majority black people was dispossessed of their mostly fertile land and resettled in marginal lands in Tribal Trust Lands (TTL). Most of them still reside in these areas, so-called communal lands under customary land tenure regimes administered by traditional leadership. At independence, granted through a negotiated settlement with the British government at Lancaster House, land redistribution was constrained. The constitutional provisions on land did not permit expropriation of land for resettlement purposes except through the market, based on willing seller willing buyer (WSWB) with limited financial support from United Kingdom. Thus, most of the 6,000 white farmers kept nearly all their 15.5 million hectares of land. The natives continued to subsist on their 16.4 million hectares of poor, marginal land. Landless and land-hungry people resorted to illegal occupation of white farms but such efforts to gain access to land were met with brute force by the government working together with the white farmers until 1997, when mass land occupations led by liberation war veterans started the move to the FTLRP.

2. Land Legislation: Constraints and Opportunity to the Right to Land

It is important for one to understand the key legislation which affected the various land rights of the natives and later, how such legislation hamstrung the state's efforts to compulsorily acquire land to redress colonial land injustices. During the pre-colonial period, land in Zimbabwe was not owned by individuals but by communities under the custodianship of traditional chiefs. However, with the onset of colonialism in 1890, land was expropriated from the native blacks, and a racial division of land ensued. The natives were resettled and crowded in TTLs, under traditional authority within a customary tenure regime prescribed by the colonial government. The whites were allocated land under freehold and leasehold tenures with very minimum state interference and supervision. The land rights of the natives were curtailed by the colonial government through the enactment of the three Land Acts: the Land Apportionment, Native Land Husbandry and Land Tenure Acts. These impinged on both the land use and ownership rights of the native population. The Land Apportionment Act provided for restricted rights to land ownership by the natives, who could own land individually only in Native Purchase Areas. The Native Land Husbandry Act contained land use regulations governing the local native peoples, as prescribed by the whites. They circumscribed cropping practices, imposed compulsory destocking (reduction of the number of animals kept per unit area) and conservation practices for native held lands. The Land Tenure Acts divided land between blacks and whites, allocating about 16 million hectares to each.

From 1979 to 1990, land ownership rights of the natives improved somewhat, for they were allowed to purchase land in white commercial farming areas. However, owing to constrained wealth accumulation by natives during the

colonial period, only a few people managed to gain access to and control over land through the market. The land rights of the black majority remained governed by the repressive colonial legislation, particularly the Land Husbandry Act. The state could not redistribute land outside of what came on the market, as prescribed in the 1979 Lancaster House constitution, despite attempts to reform the law in 1981-4 and 1985-1990 to introduce compulsory land acquisition. All attempts at compulsory land acquisition with compensation were unsuccessful, for court rulings, based on colonial laws, thwarted them, leaving the growing landless population to subsist on rapidly degrading communal lands. From 1990 to 2005, the state, frustrated by various legal bottlenecks to compulsory land acquisition, amended the constitution and the Acquisition Act to expedite the land redistribution process. These amendments abolished the Right of First Refusal¹⁰⁶ and blocked the judiciary from presiding over land issues, and also protected the land occupiers from legal evictions. After the constitutional amendment of 2005, the government was able to redistribute land in a speedy and efficient manner, while legal challenges to land acquisitions became difficult. This allowed the majority of land seekers to acquire land and the various related natural resource endowments in the former white farms. The new 2012 constitution converted all expropriated land from freehold to state property. We now turn to discuss the overall outcomes of the land redistribution process and its challenges in terms of granting land rights to people.

3. Overall Outcome of Land Redistribution Exercise

The land redistribution exercise opened and increased access to former commercial farming areas. If one considers the land redistribution exercise from independence until now (2014), a total of 13.5 million hectares (about 90%) of former white farm lands have been redistributed to over 241,000 natives of different groups, some of which are members of ZIMSOFF who participated in the process.

The bulk of this land was redistributed in 2000 under the FTLRP, initiated through land occupations of white farms by the various landless and land-hungry people, some of whom were led by the liberation war veterans. Under FTLRP, about 170,000 families, comprising mainly the rural poor and their urban counterparts, were resettled on over 9.2 million hectares of acquired land, of which 70 per cent was allocated under A1 schemes¹⁰⁷ to over 148,000 families. For instance, in Shashe, ZIMSOFF members benefited under this scheme. The remainder benefited over 22,000 small, medium, and large-scale farmers under the A2 scheme.¹⁰⁸ The plot sizes varied according to agro-ecological regions in various provinces. When the land redistribution exercise was declared complete by the

¹⁰⁶ The Right of First Refusal meant that if a farmer wanted to sell land, (s)he had to offer it first to the government to buy before putting it on the private land market. Its result was that government land reform was slow, as it depended on the government having money to buy lands and on white farmers' willingness to sell lands.

¹⁰⁷ Scheme for resettling the landless and decongesting the communal areas. Land sizes, which averaged 20 hectares, varied, with 5 arable hectares allocated in the good regions and 10 arable hectares in the dry regions, while the grazing land varied between 7 and 60 hectares in the former, and 20 to 200 hectares in the latter.

government of Zimbabwe in the late 2000s, only about 300 of the 6,000 white commercial farmers remained, while most agro-estates and conservancies were least affected.

4. Differentiated Access to Land

Access to Land by Women

The land redistribution exercise, particularly the FTLRP, opened up opportunities for women to acquire and have control over land. The government, in response to various women's lobbies, reformed its policy to allow women to apply for land in their own right and also set aside a 20% quota of acquired land for women, less than the 50% lobbied for by some women's groups. Affirmative action was also used to enhance women's access to more land in the A2 scheme. At the starting line, female applicants under this scheme were credited a certain number of points more than their male counterparts.

Some women gained access to land through participating in the land occupations. However, owing to poor and harsh conditions on the occupied farms, only a few women gained access to land this way. By 2010, women constituted between 18 and 20 per cent of the total land beneficiaries. This could be higher, as some married women, who applied for and were granted land, did not register it in their name but in their husband's. Generally, most women's lobbies report that many women still lack access to and control over land.

Access to Land by Youth

The dire economic conditions which obtained in Zimbabwe under the austerity of the economic Structural Adjustment Program prescribed by the World Bank in 1990 led to increased joblessness. Most youth, despite being educated and having professional skills, could not obtain formal employment. When the land occupations began in late 1990s, most of them saw an opportunity to enhance their livelihoods through farming. This age group constitute the bulk of economic active population aged between 20-35 years. Even though data on access to land by youth are not readily available, youth constitute the bulk of the former landless people who gained access to A1 land and some in the A2 scheme, which had stringent application requirements (among other things, a farm business plan, income sources, educational qualifications).

Access to Land by Vulnerable Persons: Disabled, Widows and Orphans

Owing to the nature of the FTLRP, first implemented through land occupations and later formalized by the government, only a few disabled people, orphans and elderly folk were allocated land. The few who benefited used their kinship relations, networks and membership in associations such as the war veterans associations and lobby groups to gain access to land. In some cases, vulnerable groups such as the HIV/AIDS affected persons (orphans and widows), working with and through their pressure groups, managed to negotiate land quotas in their

¹⁰⁸ Scheme for commercial farming and targeted individuals with proven capacity (own resources etc.) to farm. The plot sizes averaged about 100 hectares but varied in size according to the agro-ecological potential of the regions, and were generally bigger than the A1 plots.

respective localities. Since such groups are not widespread nationally, it meant that most vulnerable persons were excluded from land allocation. And not all land allocating authorities gave ear to voices from such pressure groups.

The case of orphans of land beneficiaries is precarious. In Zimbabwe, male relatives usually assume custody of the property of their deceased relatives and hold such property, including land, in trust until the deceased's children attain majority age. However, most relatives tend to hold on to such land, thus depriving the heirs of their right to land, both use and ownership. Thus, the land rights of the orphans are still insecure.

Access to Land by Farm Workers

When FTLRP commenced in 2000, about 300,000 farm worker households resided and worked on white farms. Many of them did not participate in the initial phase of land occupations but sided with their white employers and fought against the land occupiers, whom they perceived as a threat to their livelihood. However, their attitude gradually changed when they saw the process as irreversible and joined the occupations. Most land occupiers did not accept them for various reasons. The farm workers, first, were considered foreigners, descendents of laborers from countries such as Malawi and Mozambique during the colonial period. Second, the animosity fomented between land occupiers and farm workers during the initial phase of land occupations did not dissipate easily. Therefore, only a few of them (10% of land beneficiaries) gained access to land through land occupations and some through family ties elsewhere. Most of them remained on the farm compounds despite their tenure being insecure and some of them provide labor to the new land owners. Others are involved in various livelihood activities, some illegal such as gold panning and natural resource poaching, and are perceived by some land beneficiaries as thieves, given high levels of stock theft. Cases of eviction and regular conflicts between farm workers and new land owners are commonplace.

5. Land Tenure Issues

The FTLRP extinguished most private property rights in expropriated agricultural land, which now the state owns, controlling the land allocation process, which falls under two statutory tenure regimes: leasehold for A2 and permit for A1. The A2 beneficiaries will receive a 99-year lease contract providing them with legal land use rights. Again, the lease requires beneficiaries to institute basic farm development and minimum land use, among other conditions. The lease documents must be registered with the Deeds Office and are subject to Zimbabwe's contract laws and courts.

The A1 beneficiaries receive statutory permits to occupy and use land in perpetuity as a family land right, registered with the local government registry. This right is similar to the right provided under the 'customary tenure' system in communal areas, but their legal status differs as the state directly owns A1 scheme land. Thus, A1 land tenure relationship is a vertical legal and social relationship between the state and the families, which is complemented by elements of

customary land administration practice, including empowering traditional leaders to enforce compliance with recommended land use and the management of natural resources and adjudication over land disputes, such as inheritance.

Do the New Land Beneficiaries Perceive Their Right to Land as Secure?

Generally, most A1 land beneficiaries, despite having only offer letters received during the FTLR process, perceive their right to land as secure. A few A1 farmers received permits this year (2014). However, persistent tension over local level land administration exists. There is competition for authority over newly redistributed lands between traditional leaders and local government. Some A1 farmers do not want to be under the traditional leaders. Therefore, they demand a formal type of permit tenure, which better specifies their land rights and reduces the scope of influence of local traditional leaders. Another problem is that permits cannot be used as collateral to obtain credit.

The A2 land beneficiaries, however, perceive their right to land as precarious and are engaged in a protracted struggle for a freehold type of tenure for credit access purposes. The government has yet to issue a majority of the A2 land beneficiaries with 99-year leases owing to capacity limitations (surveying etc.). About 1,000 A2 farmers were issued lease documents, whose contents and conditions specified therein have been the subject of a protracted debate since 2005, particularly the issue of transferability, which can be done only with consent of the land minister.

Most financial institutions do not recognize the lease as collateral for credit to procure agro-inputs and make investments, hindering agricultural production. Some fear that the government would repossess their farms because of underuse. A precedent has been set by the High Court, which reversed a land allocation to a black farmer for this reason. The land was given to the previous white farmers who had lodged a complaint with the High Court. The government is considering various proposals (regulated land lease market etc.) on how to assist farmers to secure credit while guarding against land concentration through dispossession of the poor who default.

Are Women's Land Rights Recognized and Adequate?

Women's land rights, particularly ownership, inheritance and rights upon divorce are generally affected by the predominant customary and patriarchal relations, which also are reflected in the state institutions. These tend to favor the men whom they consider "farmers" and "heads of household", while women are considered "helping hands". However, the A1 permit and A2 leasehold propose to strengthen women's land tenure rights and security. These now provide for joint 'spouse ownership' registration.

Despite these notable positive efforts to address gendered land tenure inequities, most women who sought land through formal channels faced bureaucratic bottlenecks, male dominated land selection procedures, lack of requisite information, and poor mobilization. Moreover, some women, particularly the married ones, used their husbands' physical address and names in applying for land, thus tacitly ceding their right to own land. Some land officials were reported

to have turned down female applicants, while those who submitted applications in their own names were told to seek first their husbands' consent for their to access land. However, such reports were denied by the government, which argued that its policy is non-coercive on such matters and does not insist on joint registration in cases where it's not indicated.

The historical exclusion of women from education disadvantaged them from acquiring land under the A2 scheme. As highlighted before, the applicants were expected to have the "means" to farm, and submit a farm project proposal. The women lacked both the requisite "means" and the information to prepare such proposals, since girl children have been subject to discrimination by patriarchy. Thus, women's land rights, in spite of being spelled out in the legislation, are still not adequate for all that they are to some extent secure.

Are There Any Land Exclusion and Evictions?

Cases of exclusion from access to land abound, some on political and ethnic grounds. The reports have not been denied by the government, which continues to explore ways to accommodate such people. Recently in March 2014, the government reported that the demand for land for resettlement continues to rise, with the waiting list registering more than 500,000 people for both A1 and A2 models. These include political opposition supporters and urbanites that did not participate in the land occupations and the subsequent FTLRP owing to uncertainty over the stance the government would take after elections in early 2000s. Some joined the land seekers later when it became clear that the process was irreversible. Other excluded people are the farm workers and vulnerable persons such as widows and orphans. Generally, various categories of people continue to seek land for various reasons. Some are likely to get land after the Land Audit by the government. The Land Audit seeks to verify the uptake of the land allocated during the FTLRP and the use of such land. The exercise also seeks to identify irregularities in the land allocation process, such as double and multiple land allocations, which will be repossessed and allocated to landless people. The repossessions will also be extended to underused allocated lands.

By 2008, the government had about half a million hectares of unallocated land, some of which was on state owned farms. However, some of this land may have been allocated to the landless by now.

The media have reported cases of land beneficiaries being evicted for one reason or another by the government and elites with political connections. Elite capture of land from the landless has been reported in cases where government removed initial land occupiers, particularly under A1 schemes, to make way for A2 schemes. This entailed moving many A1 landowners and replacing them with only a few A2 farmers. In some cases, evictions of land beneficiaries have been carried out to make way for large scale projects such as the Tokwe-Mukorsi dam construction and the Chisumbanje ethanol project, which involve a foreign investor of British origin. Instances of land grabbing are not common but have been reported, for example in the communal areas adjacent to the Chisumbanje ethanol project.

Evictions with no provision of alternate land for resettlement, though limited, show that some people are being denied the right to land. In some cases where alternate land for resettlement is provided, the land is marginal, with limited agro-ecological potential. The relocated people are thus forced in such situations to abandon their cultural agricultural systems and adapt to new ones. The right to land goes beyond just access to the freedom to choose what to grow, when and how, thus tying in closely to food sovereignty.

Conclusion

The resilience of the peasant struggle for land rights yielded democratic land redistribution in Zimbabwe. The success of such a protracted peasant struggle has opened up new livelihood opportunities to enhance social reproduction and broader wealth accumulation for the majority black population. Women's control over land has also improved, and their rights are now protected and recognized. However, granting of such rights is constrained by the administrative and capacity bottlenecks facing most state institutions.

The right to land in a broader sense is, however, only partially recognized in Zimbabwe despite the recent land redistribution exercise to redress colonial land injustices and the existence of good land legislation on access, use and regulation. These laws are critical components of the right to land as spelled out in the La Via Campesina Rights of Peasants Declaration. The existence of a high number of people on the government waiting list signifies to some extent that despite the land reform of 2000, many are yet to have access to land. This also points to cases of exclusion.

The National Land Audit should speedily be implemented to weed out land allocation irregularities and make available more land through repossession of multiple allocations and underused land. This land must be allocated to the excluded persons, if Zimbabwe is to be considered a country that truly recognizes the right to land.

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D. Colombia: Structural Problems and Normative Framework of the Colombian Agrarian Sector¹⁰⁹

1. Marginal Policies

For already several decades, Colombia has been in search of solutions to the serious structural problems in its agrarian sector, in particular regarding land ownership. The situation, for the time being, is stalled, making impossible the emergence of new dynamics originating within Colombian rural society, which is essentially based on a peasant economy.

Although the current constitution, drafted by the 1991 National Constituent Assembly, does not enshrine an explicit recognition of the peasantry, it has nonetheless incorporated into some of its articles norms intended to guarantee the fundamental rights of the rural population. Thus, Article 64, declares: “the duty of the State to promote progressive access to ownership of land for agricultural workers [peasants], individually and through associations as well as access to education, health care, adequate housing, social security, leisure, credit, communications, product marketing, technical and business assistance, this with a view to improving their income and the quality of life of peasants”.

However, more than 20 years after the adoption of this constitutional principle, the situation of the rural population of Colombia has drastically deteriorated, with extreme poverty, forced displacement and the criminalization of peasant struggles and organizations.

A very brief history of agrarian legislation in our country shows several aborted attempts to realize the demands of the peasant movement regarding an agrarian reform that would make possible a resolution of the old conflict between the great landowners (latifundists) and those dispossessed of land. The first norm regarding agrarian reform dates from 1936, with the enactment of Law 200, whose main objective was the resolution of the serious conflicts generated by the great landowners. The 2003 national development plan, under the Alvaro Uribe Vélez government, eliminated in one fell swoop this law that had been obtained through major struggles by the peasantry.

Law 100 of 1944 provided for the regulation of share-cropping contracts and land-leasing, forms of *de facto* slavery that allowed the landowners to maintain their land owing to the free exploitation of landless peasants.

The confiscation of uncultivated public land was regulated starting in 1940 until 1950, when a series of norms were adopted in order to allow the adjudication of public lands. At present, there is a major national debate, triggered by the offensive of businessmen and transnational corporations, such as Cargill, which has illegally appropriated fallow land through the intermediary of straw men.

¹⁰⁹ This article was written for this publication by Eberto Díaz Montes, president of Fensuagro.

In 1961, Law 135 was adopted, giving birth to the Agrarian Reform Institute, Incora, whose budget for agrarian reform programs was tripled in 1968. In spite of these advances, this law had only marginal effect, never threatening the structure of land concentration throughout the country. This law responds rather to the orientation of the United States as expressed in the Alliance for Progress set up at Punta del Este in Uruguay, whose purpose was to neutralize the peasantry's discontent and the impact of the Cuban revolution.

In 1973, the Chicoral Agreement, compassing the great landowners, the business community and the government, repealed Law 135 of 1961. The result was the adoption of Laws 4, 5 and 6 of 1973. The implementation of these new norms made impossible any agrarian reform in the country.

The beginning of peace talks between the government and the FARC guerillas in the department of Meta in 1985 and the increase in social struggles, as well as the mobilization of peasants at the same time, made it possible to launch a new political phase. The government at the time (1988) submitted a draft law on land to the Congress.

At the same time, the peasant organizations were regrouping within the National Agrarian Coordination. In spite of the arguments of the opposition, which supported the peasant project, in the end, Law 30 of 1988 was adopted. The spirit of this controversial legislation consists of following the World Bank's recommendations regarding the land market. The law was reinforced by the national rehabilitation plan, which aimed to develop several projects in marginal regions affected by armed conflict.

Faced with the failure of Law 30 and the necessity of modernizing commercial agriculture as well as creating a greater land market dynamic in conformity with the demands of economic opening (1992), Law 160 of 1994, based on free-market principles and supply and demand, was adopted. The peasant project which had been presented was swept aside by the latifundist majority ensconced in the Colombian legislature. The only positive point of Law 160 is the article that creates the Peasant Reservation Zones, which was added to the law after considerable wrangling.¹¹⁰

2. Land: A Right Denied the Peasantry

According to a study carried out by an official body (*Contraloría general de la Nación*), the mafia sectors linked to drug trafficking, in 2000, took over more than 4.4 million hectares of land. They benefited from factors arising from the destabilization of security in many regions of the country abandoned by the state.

On the other hand, it is estimated that from 1980 to 2010, according to some studies, from 8 to 10 million hectares of land were taken from peasant families by major landowners linked to the paramilitaries.

It should be noted that this violent expropriation is the result of the forced displacement of more than 6 million persons, mainly in the rural areas of Colombia.

¹¹⁰ See law 160 (in Spanish): http://www.secretariassenado.gov.co/senado/basedoc/ley_0160_1994.html

The 2010-2014 development plan had as its primary objective favoring development and economic growth in sectors such as energy, petroleum and mines, called the “the mining-energy locomotive”.

Also, there was the government's signing of free-trade agreements with the United States, Canada, Switzerland, the European Union, Israel, South Korea and others, to which can be added the negative effects of the Pacific Agreement which Colombia decided to join. Without a doubt, these moves reinforced the policy of land dispossession arising from the arrival in the country of transnational investment capital whose only interest has been access to natural resources in the lands inhabited by peasant, indigenous and Afro-descendant communities.

The same thing happened for fallow land for which the government insisted on forcing the enactment of a law to allow the legal transfer of land owned by the nation to major business interest.

In 2011, the government of Juan Manuel Santos enacted Law 1448, intended to return to families dispossessed since 1991 some 2,500,000 hectares of land, which corresponds to only a quarter of the land stolen from the peasantry.

3. Environmental Conflicts and Their Effect on the Right to Land

The right and access to land ownership for peasant communities are further limited by the advances and control of land by transnational and local corporations, in addition to illegal businesses, which have benefited from the sale of titles or licenses granting them concessions of more than 5.5 million hectares of land in the Andean region for mining. Further, the hydrocarbon production contracts currently surpass 25 million hectares.

It appears clear that the dynamic of change in the use of land is more and more directed in favor of the major mining and petroleum interests, to the detriment of food production. Several researchers have denounced the existence of a “crusade” by the major transnationals in favor of land control through energy and agribusiness conglomerates.

As well, financialization and the listing of food products on the commodity exchanges has harmed the population, which is affected by the food crisis that translates into greater poverty. Indigenous peoples in the department of Guajira have denounced that an indeterminate number of children have died of malnutrition over the past five years.

It is estimated that currently, the government has granted more than 8,800 mining concessions. Recently the inhabitants of the border area Puerto Vega-Teteye in the department of Meta went on strike against the petroleum companies and the environmental licenses, which will raise the number of new production sites from 48 to 138, which would create a new source of population displacement in this region.

4. Proposals by Colombian Peasant, Afro-Descendant and Indigenous Organizations

The national peoples' ethnic agrarian summit, comprising the country's major agrarian organizations that were the main protagonists in the 2013 peasant strike,

presented a series of demands to the government following a major mobilization in their struggle for the right to land, to territory and to a “decent life”. These demands are expressed in eight points, including the following in particular.

a. Land, Collective Territory and Planning

It is requested that the peasant communities themselves define land use, that all land planning and development be subjected to a consultation and a dialogue with the indigenous, peasant and Afro-descendant communities and that their forms of collective self-government and defense of the their territory be recognized and respected, with emphasis on:

- ◆ indigenous reserves and ancestral territory;
- ◆ the Afro-Colombian collective territories;
- ◆ food producing areas;
- ◆ biodiversity areas;
- ◆ inter-ethnic territories.

b. Development of a Peasant Economy in Opposition to the Dispossession

Model

- ◆ A move to a productive and agro-ecological economy
- ◆ A move toward a reconversion process from chemical agriculture to an organic model
- ◆ Cancellation of peasant debts to the financial sector
- ◆ Renunciation of all free-trade agreements contrary to national interests
- ◆ Creation of a system of direct support for the peasant economy
- ◆ Creation of a plan to encourage domestic food production

c. Mines, Energy and Rural Life

- ◆ A general discussion of a new national mine and energy policy
- ◆ Reformulation of the current model of distribution of petroleum, mines and energy income
- ◆ Cancellation of mining licenses and concessions given without prior consultation with the communities whose land is involved.

d. Growing Coca, Marihuana and Amapola

- ◆ Development of a gradual substitution program in coordination with the communities (...)
- ◆ Creation of a substitution program based on the stabilization of sustainable productive systems with six guidelines for action: access to land, sustainable productive systems, infrastructure improvement, transformation, technical and technological assistance and access to markets

e. Political Rights, Truth, Justice and Compensation

- ◆ Truth, justice and complete compensation to victims of the conflict
- ◆ Dismantlement of paramilitary structures
- ◆ Recognition of the right to prior consultation and informed consent (...)

- ◆ Restitution of all stolen and expropriated land to the peasant, indigenous and Afro-descendant communities

Finally, the agrarian and peasant organizations demand a political solution to the conflict and the demilitarization of indigenous, rural and Afro-descendant lands. These organizations are working together to draft an agrarian reform and rural development law to protect the historic rights of the peasantry and the indigenous peoples and to allow them to live with dignity on their lands, to work the land, to produce their own food and to build their own food sovereignty.

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III. RIGHT TO LAND IN INTERNATIONAL AND REGIONAL NORMS

A. At the International Level

Several international instruments enshrine, explicitly or implicitly, the right to land: the work and the positions taken by the United Nations human rights mechanisms all support a formal recognition of this right. Further, the United Nations draft *Declaration on the Rights of Peasants and Other Persons Working in Rural Areas*, currently under discussion at the Human Rights Council, also stipulates it in very interesting dimensions (see Chapter V.A).

1. ILO

The 1989 ILO *Convention 169 on the rights of indigenous and tribal peoples*¹¹¹ is a key instrument in the evolution of the concept of right to land in international law. In particular, its Articles 13 to 17 enshrine **the rights of indigenous peoples to their lands and their territories and their right to participate in the use, the management and the conservation of their resources**. These articles also enshrine the rights of indigenous peoples to be consulted before any use of the resources on their lands and **the prohibition of displacing them from their lands and territories**.

This convention recognizes the privileged relation that indigenous peoples have with their land; it requires states to adopt special protection measures in their favor; it provides guarantees against indigenous population displacements outside their traditional territory with procedural guarantees; and it includes other provisions relative to the transmission of property rights and the observance of customary procedures.

One of the greatest problems that indigenous peoples face today concerns the demarcation of their territories. This is the formal process that makes it possible to identify the location and boundaries of indigenous lands and territories and to materially mark this perimeter on the ground. The purely theoretical or legal recognition of indigenous land, territories and resources can be almost entirely devoid of value if the material identification has not been established and marked. In this regard, one can cite Article 14.2 of *Convention 169*, which imposes on states the general obligation to “take steps as necessary to identify the lands which the [indigenous] peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession”. The implementation of this general obligation involves, for the states parties, the identification and demarcation of indigenous lands and the sanctioning of any

¹¹¹ Adopted 27 June 1989 at the 76th International Labor Conference; entered into force 5 September 1991.

unauthorized intrusion in them. In line with this, Article 18 provides: “Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offenses.”

Another ILO Convention making specific reference to land is the 1962 *Convention C117 – Social Policy (Basic Aims and Standards)*¹¹². Its Article 4 lists measures to be taken “for the promotion of productive capacity and the improvement of standards of living of agricultural producers”, among others, requiring states to assure “control of the alienation of agricultural land to non-agriculturalists; ... the control, by the enforcement of adequate laws or regulations, of the ownership and use of land resources to ensure that they are used, with due regard to customary rights, in the best interests of the inhabitants of the country; the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and laborers the highest practicable standards of living and an equitable share in any advantages which may result from improvements in productivity or in price levels”.

2. *United Nations*

The *United Nations Declaration on the Rights of Indigenous Peoples*¹¹³ accords a predominant place to the right of indigenous peoples to their lands and resources. It protects customary rights of the indigenous to their lands and resources and imposes on states the obligation to legally recognize these rights.

Its preamble recognizes that the dispossession of the indigenous of their lands, territories and resources has prevented them from exercising their right to development in function of their needs and interests and affirms **“the urgent need to respect and promote the inherent rights of indigenous peoples ... especially their rights to their lands, territories and resources”** (emphasis added). Article 25 recognizes “their distinctive spiritual relationship” which they entertain with their lands, and by virtue of Article 26, the state must grant recognition and legal protection of “these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” Regarding legal protection, it includes the **“the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired”** (emphasis added).

Further, Article 8 protects indigenous peoples from forced assimilation and imposes on states the obligation to create effective prevention and compensation mechanisms regarding “any action which has the aim or effect of dispossessing them of their lands, territories or resources”.

Another major element in the Declaration is the protection of the right of indigenous peoples to free, prior and informed consent. Article 10 thus stipulates: **“Indigenous peoples shall not be forcibly removed from their lands or**

¹¹² Adopted 22 June 1962; entered into force 23 April 1964.

¹¹³ Adopted by the General Assembly in September 2007.

territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return” (emphasis added).

Article 28 states: “Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.”

Finally, Article 32 provides: “Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”

The *Convention on the Elimination of All Forms of Discrimination against Women*¹¹⁴ emphasizes women living in rural areas, mentioning particularly land rights in Article 14. Requesting states parties to take all appropriate measures to eliminate discrimination against women in rural areas, the article requires them, inter alia, to assure that women have the right to **“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”** (Article 14.2.g; emphasis added). By emphasizing the elimination of discrimination within the family, it requires states to take all necessary measures to assure that both spouses have equal rights “in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration” (Article 16.h).

Common Article 1 in the two conventions on human rights (civil, political, economic, social and cultural)¹¹⁵ enshrines the right of peoples to self-determination, and this has a direct link with land and natural resources, which allow peoples to enjoy their human rights.¹¹⁶ Thus, it is worth mentioning here not

¹¹⁴ Adopted 18 December 1979 by the General Assembly.

¹¹⁵ *International Covenant on Civil and Political Rights*, adopted 16 December 1966; entered into force 23 March 1976; ratified by 168 states (as of 2 September 2014). *International Covenant on Economic, Social and Cultural Rights*, adopted 16 December 1966; entered into force 3 January 1976; ratified 162 states (as of 2 September 2014).

¹¹⁶ See also: *The right of peoples to self-determination and to permanent sovereignty over their natural resources seen from a human rights perspective*, Geneva: CETIM, 2010: http://www.cetim.ch/en/publications_autodetermination.php

only this article but particularly the last sentence of its second paragraph: “In no case may a people be deprived of its own means of subsistence.”

In the same vein, several articles of the *International Covenant on Economic, Social and Cultural Rights* are directly linked to land and natural resources. In particular, there is Article 11 enshrining “the right of everyone to an adequate standard of living for himself and his family” which covers the **right to food**¹¹⁷ and the **right to adequate housing**.¹¹⁸ This article requires states parties to the Covenant, among other things, to undertake **agrarian reforms** (Article 11.2.a) in order to assure the right to food and to fight hunger. One can also mention in this context Article 12 regarding the **right to health**¹¹⁹ and Article 15 regarding **cultural rights**.¹²⁰ These articles are important in that, for indigenous peoples and the communities depending on forests, their observance depends necessarily on respect for their right to land. In fact, forests contain resources essential for the food and health of forest communities.¹²¹ Preventing their access to land entails violation of Articles 11 and 12 of the *International Covenant on Economic, Social and Cultural Rights*. It is the same for their right to participate in cultural life, the respect of which, for indigenous peoples, depends on access to their ancestral lands. Thus, the violation of the right to land often entails the violation of several economic, social and cultural rights, such as the right to food, to health and to adequate housing.

In several of its general comments, the **Committee on Economic, Social and Cultural Rights**¹²² has emphasized access to natural resources, including land. For the Committee, the interpretation of the right to take part in cultural life includes **the protection of the traditional means of subsistence and natural resources** in order to pursue a way of life associated with the use of cultural property and natural resources **such as land, water and biodiversity**.¹²³ In its general comment on the right to food, the Committee stated that “**any discrimination in access to food, as well as to means and entitlements for its procurement, ... constitutes a violation of the Covenant**” (emphasis added).¹²⁴ In its general comment on the right to water, the Committee insisted on the protection of access to traditional

¹¹⁷ See also: *The Right to Food*, Geneva: CETIM, Geneva, 2005: http://www.cetim.ch/en/publications_alimentation.php

¹¹⁸ See also: *The Right to Housing*, Geneva: CETIM, 2007: http://www.cetim.ch/en/publications_logement.php?currentyear=&pid=

¹¹⁹ See also: *The Right to Health*, Geneva: CETIM, 2006: http://www.cetim.ch/en/publications_sante-bro4.php

¹²⁰ See also: *Cultural Rights*, Geneva: CETIM, 2013: http://www.cetim.ch/en/publications_brochure_culture.php

¹²¹ For example, in 2009, the Committee on Economic, Social and Cultural Rights exhorted the government of the DRC to assure that future forest concessions not deprive indigenous peoples of the effective enjoyment of rights to their ancestral lands and resources, but that they contribute to the reduction of poverty. See E/C.12/COD/CO/4, 16 December 2009, § 14.

¹²² Entrusted with overseeing compliance with the *International Covenant on Economic, Social and Cultural Rights*.

¹²³ Committee on Economic, Social and Cultural Rights, *General Comment N° 21: Right of Everyone to Take Part in Cultural Life*, E/C.12/GC/21, 21 December 2009, §§ 15.b and 50.c.

¹²⁴ Committee on Economic, Social and Cultural Rights, *General Comment N° 12: The Right to Adequate Food*, E/C.12/1999/5, 12 May 1999, § 18.

water sources in rural areas, including for nomads. Further, it called upon the state to assure that access by indigenous peoples to water resources on their ancestral land be protected from pollution and illegal use and that the state “provide resources for indigenous peoples to design, deliver and control their access to water”.¹²⁵

In its *General Comment N° 4* on the right adequate housing,¹²⁶ the Committee, among other things, emphasized the situation of landless persons, stating that the failure of access to land fundamentally harms the fulfillment of their right to adequate housing. For the Committee, “discernible governmental obligations need to be developed aiming to substantiate **the right of all to a secure place to live in peace and dignity, including access to land as an entitlement**” (emphasis added; see also Chapter V.C.1 on security of tenure).

The *Human Rights Committee*¹²⁷ has also had it say. Following in the same vein as the Committee on Economic, Social and Cultural Rights in its interpretation of cultural rights, the Human Rights Committee observed that “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”¹²⁸

Anticipating the adoption by the General Assembly of the *Declaration of the Rights of Indigenous Peoples* (2007), the **Committee for the Elimination of Racial Discrimination** requested that states “recognize and protect **the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources** and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories” (emphasis added).¹²⁹

¹²⁵ Committee on Economic, Social and Cultural Rights, *General Comment N° 15: The Right to Water*, E/C.12/2002/11, 20 January 2003, § 16.d.

¹²⁶ Committee on Economic, Social and Cultural Rights, *General Comment N° 4: The Right to Adequate Housing*, 13 December 1991, § 8(a) on legal security of tenure and § 8(e) regarding accessibility.

¹²⁷ Entrusted with overseeing compliance with the *International Covenant on Civil and Political Rights*.

¹²⁸ Human Rights Committee, *General Comment N° 23 (50)*, CCPR/C/21/Rev.1/Add.5, 26 April 1994, § 7.

¹²⁹ Committee on the Elimination of Racial Discrimination, *General Recommendation N° 23 on the rights of indigenous peoples*, adopted 18 August 1997, § 5.

In its study on the rights of peasants and other persons working in rural areas, the Human Rights Council's **Advisory Committee**¹³⁰ noted, as major causes of violations of the human rights of these persons, among other things, “expropriation of land, forced evictions and displacement” and “the absence of agrarian reform and rural development policies”.¹³¹ In its draft *Declaration on the Rights of Peasants and Other Persons Working in Rural Areas* submitted to the Human Rights Council for adoption, the Advisory Committee suggested, among the new rights to be codified at the international level, “**the right to land and territory**” (emphasis added).¹³²

The **Special Rapporteur on the Right to Food** has affirmed over and over again the importance of the right and of access to land to guarantee the right to food. In his 2010 report,¹³³ Olivier de Schutter explained how access to land and security of tenure are indispensable to the enjoyment of the right to food. He pleaded for a **recognition of land as a human right**. This report also emphasized the importance of the redistribution of land (agrarian reform) for the fulfillment of the right to food. His predecessor, Jean Ziegler, in 2002, had already emphasized that “**access to land is an essential element of the right to food**” (emphasis added) and that “many rural people suffer from hunger because either they are landless, they do not hold secure tenure or their properties are so small that they cannot grow enough food to feed themselves”.¹³⁴ Several of his reports have demonstrated how discrimination in access to property rights can have a direct effect on the fulfillment of the right to food.

For Miloon Kothari, the first **Special Rapporteur on the Right to Adequate Housing**, “land is a critical element of the human right to housing. ... **The right to land, however, is not just linked to the right to adequate housing** but is integrally related to the human rights to food, livelihood, work, self-determination, and security of the person and home and the sustenance of common property resources. **The guarantee of the right to land is thus critical for the majority of the world’s population who depend on land and land-based resources for their lives and livelihoods.**”¹³⁵ The Special Rapporteur recommended that the

¹³⁰ The Human Rights Council's expert body. See Critical Report N° 1 *The Human Rights Council and its Mechanisms*, Geneva: CETIM, February 2008:

http://www.cetim.ch/en/publications_cahiers.php#council

¹³¹ United Nations Human Rights Council, *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, A/HRC/19/75, 24 February 2012, § 24:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75_en.pdf.

¹³² *Ibid.*, § 72. See also Chapter V.A).

¹³³ General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/65/281, 11 August 2010, § 4: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/482/30/PDF/N1048230.pdf?OpenElement>

¹³⁴ General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/57/356, 27 August 2002, §§ 41, 23: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/546/54/IMG/N0254654.pdf?OpenElement>

¹³⁵ Human Rights Council, *Report of the Special Rapporteur on the Right to Adequate Housing*, A/HRC/4/18, 5 February 2007, §§ 26, 29; emphasis added.

Human Rights Council “**recognize the right to land as a human right and strengthen its protection in international human rights law**”¹³⁶

The interdependence of peace, development and human rights being generally admitted, it is appropriate here to mention paragraph 2 of the Preamble of the *Declaration on the Right to Development*,¹³⁷ which resumes succinctly the spirit of this important instrument and the definition of development: “Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”¹³⁸

3. FAO

In its Guideline N° 8.1 on access to resources and to means of productions, the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*¹³⁹ enjoins states to respect and protect “the rights of individuals with respect to resources such as **land, water, forests, fisheries and livestock**” (emphasis added).

These guidelines also require that “states should pursue **inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land-use**, and, as appropriate, **land-reform policies**, all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labor, capital and management, and encourage **conservation and sustainable management of natural resources, including in marginal areas**” (Guideline N° 2.5; emphasis added).

4. International Humanitarian Law

The first two protocols to the Geneva Conventions prohibit the deprivation of food as a combat method and promote the protection of agricultural areas in similar terms. By virtue of its Article 54.2, which provides for the protection of property indispensable to survival of the civilian population, *Protocol Additional I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977¹⁴⁰ states that it is prohibited “to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population ... whatever the motive...”.

¹³⁶ Ibid., § 33.e; emphasis added.

¹³⁷ General Assembly, Resolution 41/128, 4 December 1986.

¹³⁸ For further information: *The Right to Development*, Geneva: CETIM, 2007:
http://www.cetim.ch/fr/publications_ddevelep.php

¹³⁹ Adopted in Rome (Italy), November 2004: <ftp://ftp.fao.org/docrep/fao/009/y7937e/y7937e00.pdf>

¹⁴⁰ Adopted 8 June 1977.

*Protocol Additional II relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II), 8 June 1977*¹⁴¹ states in Article 14 that it is prohibited “to attack, destroy, remove or render useless ... objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”.

B. At The Regional Level

In the major regional instruments,¹⁴² the right to land per se is not codified. On the other hand, the right to property, which can include the right to land, is enshrined by its being subordinated to the general, social and public interest. The only regional instrument explicitly enshrining not the right to land but access to land is the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*¹⁴³ which protects women in particular regarding their access in all legality to land and natural resources. Its Article 15.a on the right to food security stipulates that states must “provide women with **access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food**” (emphasis added). Further, Article 19.c states that states must take all appropriate measures to “promote women’s access to and control over productive resources such as land and guarantee their right to property”. The women’s-right-to-land approach is related to access to land, not only through non-discrimination but also through poverty reduction and economic independence.

¹⁴¹ Adopted 8 June 1977.

¹⁴² *African Charter of Human and Peoples' Rights*; *American Convention on Human Rights* and the *European Convention on Human Rights*.

¹⁴³ Adopted in Addis Ababa (Ethiopia), June 2005.

IV. EXAMPLES OF JURISPRUDENCE REGARDING THE CONFLICTS RELATED TO LAND AND TERRITORY¹⁴⁴

A. At the International Level

The United Nations human rights protection mechanisms are more and more called upon to deal with conflicts linked to land. For example, two-thirds of the communications received by the Special Rapporteur on the Right to Food deal with conflicts linked to land, and the bulk of the work of the Special Rapporteur on the Rights of Indigenous Peoples and the communications that he receives are related to violations due to the exploitation of their natural resources (including mines), in particular land, which these people depend on for their subsistence.¹⁴⁵ The positions taken by the United Nations mechanisms (following the review of states parties' reports, in response to individual and collective communications or in opinions requested by member states) constitute a rich jurisprudence on the subject.

The cases analyzed here demonstrate that all the regions of the world experience these conflicts, which can present multiple aspects. Many examples concern indigenous peoples, dealing with various aspects of their right to land (collective rights, cultural rights or right to give free, prior and informed consent), given that indigenous people's right to land is recognized explicitly in international law. That said, the United Nations human rights instances have also dealt with other rural communities, peasants in particular but also nomads, the effect of “development” projects (mining, dam construction, monocultures, inter alia) and the rights of women and of peasants to subsistence under military occupation. Thus, the examples of jurisprudence chosen cover a broad spectrum of violations related to land.

¹⁴⁴ Some of the examples cited in this part were also published in *The right of peoples to self-determination and to permanent sovereignty over their natural resources seen from a human rights perspective*, Geneva: CETIM, 2010: http://www.cetim.ch/en/publications_autodetermination.php.

While these three subjects (sovereignty over natural resources; cultural rights; and right to land) are linked, some examples cited in this text are dealt with from the angle of right to land since the instances under discussion treat this aspect specifically in their rulings.

¹⁴⁵ Many communications addressed to governments by the Special Rapporteur have been joint communications drafted with the collaboration of the Special Rapporteur on the Right to Food, given the close relation between the two mandates concerning the use of natural resources such as land.

1. Indigenous People's Right to Land

The Non-Respect of the Right to Free, Informed and Prior Consent

The **Committee on Economic, Social and Cultural Rights** has several times recalled the obligation of states to respect **the right of indigenous peoples and communities to free, prior and informed consent** in matters affecting their lands. In 2006, noting that “the construction of the La Parota would cause the flooding of 17,000 hectares of land inhabited or cultivated by indigenous and local farming communities, that it would lead to environmental depletion and reportedly displace 25,000 people,” the Committee called on **Mexico** to “ensure that the indigenous and local communities affected by the La Parota hydroelectric dam project or other large-scale projects on the lands and territories which they own or traditionally occupy or use are duly consulted, and that their prior informed consent is sought, in any decision-making processes related to these projects affecting their rights and interests under the Covenant”.¹⁴⁶

In the same vein, the Human Right Committee, in its ruling on the Angela Poma Poma case (water catchment for irrigation of indigenous lands), the **Human Rights Committee** recognized that **Peru** must respect the right to free, prior and informed consent before undertaking activities likely to affect **the lands and resources of indigenous peoples** constituting a minority, and noted a violation of Article 27 (cultural and minority rights) of the International Covenant on Civil and Political Rights.¹⁴⁷

In another similar case concerning **Finland**, the Human Rights Committee ruled that mining activities, if undertaken without consultation with the indigenous peoples and if they destroy their way of life or their means of subsistence, constitute a violation of the rights enshrined in Article 27 of the *Covenant*.¹⁴⁸

Deforestation of Indigenous Lands for an Industrial Agricultural Development Project

In their joint communication of 1 February 2012 addressed to the government of **Indonesia**, the **Special Rapporteur on the Rights of Indigenous Peoples** and the Special Rapporteur on the Right to Food drew attention to allegations concerning negative effects on the enjoyment of human rights from the *Meruake Integrated Food and Energy Estate* project by the local population of *Malind* and other indigenous Papua communities in the *Meruake* region of Western Papua. According to these allegations, this agricultural development project had led to the loss and the deforestation of huge areas of land inhabited and used by the indigenous peoples of the *Meruake* region for their subsistence, and new concessions planned in the context of this project would only aggravate the situation. Further, it was alleged that the provincial Papua police and national military intelligence police had used intimidation tactics to dissuade the members of the local communities from expressing their concerns on the subject. In its response of

¹⁴⁶ E/C.12/MEX/CO/4, 9 June 2006, §§10, 28.

¹⁴⁷ *Angela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, § 7.

¹⁴⁸ *Länsman et al v. Finland*, CCPR/C/52D/511/1992, 8 November 1994, § 9.5.

2 May 2013 to the Special Rapporteurs, the Indonesian government claimed that the notion indigenous peoples and rights enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* did not apply in the context of Indonesia and provided the following information on the project: the objective of the project was to allow the local communities to benefit from its realization, and, the rights of these communities and their right to land being protected by laws, the investors who wished to undertake such projects were constrained to act in conformity with applicable rights and regulations. It also pointed out that the investors must, among other things, obtain the consent of the local communities and compensate them for the use of their lands. It also claimed that the water and food sources of the local communities would not be affected by the project. Further, according to the Indonesian government, 20% of the land used for the project was reserved for farming by the local community with the aid of the project's investors.¹⁴⁹

Non-Protection of Indigenous Lands from Mining Activities

In another communication concerning the Wayana indigenous community in the southeast of **Suriname**, the **Special Rapporteur on the Rights of Indigenous Peoples** presented the problems related to the presence of mining activities on the traditional lands of this community, affecting its ability to pursue its subsistence activities (hunting and fishing in particular, following the contamination of lands and streams with mercury). The Special Rapporteur deplored the lack of legal recognition and protection of the lands of the indigenous communities as a major factor in the violations and reminded the government of its obligation to recognize and protect the ancestral lands and resources of the indigenous peoples of Suriname.¹⁵⁰

The Cultural/Confessional Rights of the Indigenous to Land

In an urgent communication dated 21 August 2012, the **Special Rapporteur on the Rights of Indigenous Peoples** drew the attention of the government of the **United States** to allegations concerning the imminent sale of lands situated in the Black Hills of South Dakota, in the ancestral territory of the Great Sioux Nations and having a profound spiritual significance.¹⁵¹ The Special Rapporteur requested that the government take measures to protect the rights of the indigenous and encourage all parties to open a dialogue. For him, this situation is representative of the difficulties indigenous peoples encounter in protecting culturally and spiritually the areas that are not under their control or are not their exclusive property. In its 2 January 2013 response, the United States government announced the purchase of the sacred land by several tribes and thanked the Special Rapporteur for his “defense in the name of indigenous cultural heritage protection”. The Special Rapporteur was pleased with the positive outcome of the situation but regretted that the protection of sacred sites occurred only when the indigenous peoples, who are the traditional owners, launched a request to purchase. The

¹⁴⁹ A/HRC/24/41/Add.4, 2 September 2013, §§ 96-100.

¹⁵⁰ *Ibid.*, §§ 144-145.

¹⁵¹ A/HRC/24/41/Add.4, 2 September 2013, §§ 158-160.

Special Rapporteur recalled his appeal to the United States government to protect the sacred places adequately and in a spirit of reconciliation, including in the South Dakota Black Hills, an area “taken illegally from the indigenous peoples”.

In another similar case concerning the same country, (the desecration and imminent destruction of the funerary site of Sogorea Te/Glen Cove, in the city of Vallejo, California), the intervention of the Special Rapporteur was rewarded by an arrangement negotiated between the indigenous community in question and the city of Vallejo.¹⁵² On the other hand, all attempted intervention (at the national level and through the Special Rapporteur) were vain in the case concerning the development of commercial ski activities on the sacred site of the indigenous peoples in the Peaks area of San Francisco. The United States government limited itself to saying that the United Nations declaration on the rights of indigenous peoples is non-binding, in spite of the remarks of the Special Rapporteur regarding the violations of the rights of the indigenous in this matter, recalling that the right to non-discrimination, to religious freedom and to self-determination are enshrined in the legally binding international instruments ratified by the United States.¹⁵³

The Collective Rights of Indigenous Peoples over Land in Cambodia

In their many reports, several of the United Nations human rights protection mechanisms have considered the legislation of **Cambodia** and the practices of the Cambodian government regarding property rights. These reports examine, inter alia, **the collective rights of indigenous peoples over land, the problematic attribution of individual ownership titles and the harmful role of international cooperation.** There follows a brief summary.

In his analysis on the Cambodian government's law/decreed adopted in 2008¹⁵⁴, the **Special Rapporteur on the Rights of Indigenous Peoples** expressed his concern about the collective right to indigenous land in this country. The law/decreed allowed an individual member of the community to sell her/his land, which could threaten the integrity of the communal land and could go against the community's traditional decision-making structure. Although there is often an individual use of specific lots within the indigenous communities in Cambodia, this does not necessarily mean that the right to private property is independent of the collective right. This does not correspond to the 2001 Land Law, which recognizes collective ownership of indigenous land (Article 26) and that no authority outside the community may acquire a right over land belonging to an indigenous community (Article 28). Moreover, the law/decreed does not include protection of indigenous lands prior to the registration of the collective ownership. According the Special Rapporteur, the law/decreed makes the lands vulnerable during this transitional period, for it contains provisions that extend

¹⁵² A/HRC/21/47/Add.3, 7 September 2012, §§ 82-85

¹⁵³ Ibid., §§ 75-81.

¹⁵⁴ A/HRC/12/34/Add.1, 18 September 2009, §§ 12-24.

the obtaining of a title to the land, such as the requirement that all indigenous communities be registered as legal entities before being able to request a collective title (Article 3) and that all litigation related to land be resolved before the collective title can be granted (Articles 3 and 7). These requirements are not in conformity with Cambodian land law, which requires only that the community be registered as a legal entity before obtaining an ownership title and not before requesting it. The Special Rapporteur also expressed concern about a provision of the law/decreed that requires indigenous individuals wanting to join an indigenous community to abandon her/his individual land and be integrated into the community land system (Article 10) and that the members who leave their community have the right to obtain individual lots (Article 11). These two articles are contrary to the indigenous community rights, to develop plans and priorities regarding the administration of lands and resources of the village and could interfere with the authority of the traditional leaders. These articles could discourage individuals from forming an indigenous community or from remaining in one. The Special Rapporteur also expressed concern that this law/decreed might weaken the significant advances made by Cambodia in the promotion of indigenous peoples' right and recommended that the government grant full legal protection of collective ownership rights, with the same status as other ownership rights. The Special Rapporteur was concerned by the economic land concessions, which represent a major threat to the survival of many indigenous communities, which become victims of forced displacement. According to the allegations, powerful individuals and private companies could use bribes and various subterfuges to acquire indigenous lands, forcing their owners to sell. These practices threaten the integrity of communal lands and expose them to privatization. For the Special Rapporteur, these types of acquisition are also incompatible with the concept of communal lands and contrary to the rights of indigenous peoples as established by the 2001 Land Law and by pertinent international norms.

Regarding the Cambodian indigenous peoples' collective land titles, the **Committee on Economic, Social and Cultural Rights** has noted that, since the enactment of the 2001 Land Law, no indigenous community has obtained a land title. Worse, in addition to deploring the destruction of 29% of Cambodia's virgin tropical forests from 2004 to 2009, the Committee deplored that “the rapid increase in economic land concessions in the last several years even within the protected zones, is the major factor for the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival”.¹⁵⁵

Further regarding the granting of land titles in Cambodia, development cooperation seems to be particularly harmful. During the review of **Germany's** report, the Committee expressed its concern about Germany's support, in the context of its aid to development, of a project for granting land titles in

¹⁵⁵ E/C.12/KHM/CO/1, 12 June 2009, §§ 15, 16.

Cambodia, which was said to result in economic, social and cultural rights violations.¹⁵⁶

The **Special Rapporteur on the Situation of Human Rights in Cambodia**, Surya P. Subedi, who in several reports has expounded in detail on the land questions in this country, reckoned that, in the matter of granting individual land titles to members of indigenous communities: “Parceling land traditionally used by indigenous peoples into separate pieces of private land could undermine the creation and maintenance of communal lands (which are crucial to protecting collective land areas such as burial grounds and spiritual forests), and may possibly instigate the selling of indigenous land into small plots.”¹⁵⁷ Referring to the 2001 Land Law, which prohibits “interference with indigenous land”, the Special Rapporteur recommended that the Cambodian government “accelerate the pace of land registration for indigenous peoples to obtain collective title”.¹⁵⁸ Further, while deploring that “the judiciary has not been effective in upholding the rights of many people affected by a lack of land title” nor “the rights of small holders”, he specified that the granting of land titles “often lacks transparency regarding economic land concessions”.¹⁵⁹ He also deplored “a trend characterized by the convergence of the State apparatus with private business interest”.¹⁶⁰ In this regard, he mentioned the complaint filed with the **European Trade Commission** regarding the implication of sugar companies in land grabbing and human rights violations in a country that was previously entitled to preferential trade terms in the context of the European initiative *Everything But Arms*.¹⁶¹ For this sort of situation, the Special Rapporteur recommended: “When engaging in land deals either with the Government of Cambodia or other land owners, foreign Governments and international business organizations should bear in mind that they have a responsibility under international law to respect the human rights of the people of Cambodia. Sponsorship of the use of armed law enforcement officials to carry out an unlawful eviction is illegal under international law and should be made illegal in Cambodia as well.”¹⁶²

2. The Right of Women to Non-Discrimination and Inheritance

In analyzing the recent concluding observations of the **Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)** regarding review of the reports of states parties to the Convention, one can identify several key questions related to women's right to land. One of them is **the guarantee of non-discrimination in access to land within customary judicial systems, as well as in formal judicial systems**. In its 2012 concluding observations

¹⁵⁶ E/C.12/DEU/CO/5, 12 July 2011, § 11.

¹⁵⁷ Human Rights Council, *A human rights analysis of economic and other land concessions in Cambodia*, A/HRC/21/63/Add.1/Rev.1, 11 October 2012, § 126.

¹⁵⁸ Human Rights Council, A/HRC/18/46, 2 August 2011, § 92.

¹⁵⁹ *Ibid.*, §§ 9, 11.

¹⁶⁰ *Ibid.*, § 13.

¹⁶¹ A/HRC/21/63/Add.1/Rev.1, § 194.

¹⁶² A/HRC/18/46, 2 August 2011, § 93.

regarding **Zimbabwe**, for example, the CEDAW expressed its concern regarding “the prevalence of discriminatory customs and traditional practices, which particularly prevent rural women from inheriting or acquiring ownership of land and other property”.¹⁶³ This is not unique to Zimbabwe; the CEDAW has made similar observations in recent reports on **Jordan**¹⁶⁴ and **Chad**.¹⁶⁵ Generally, the CEDAW emphasizes that governments have a positive obligation to guarantee that informal judicial systems and family practices not discriminate against women in access to land. The CEDAW has also identified inequality in that formal land registry systems constitute a sort of recognition of customary systems, thus, directly or indirectly supporting practices that favor men and putting women at a disadvantage through the perpetuation of land regimes based on a theoretical household and unity of the community.

3. Nomads' Right to Land

The Special Rapporteur on the Rights of Indigenous Peoples has expressed his concerns about the eviction of Bedouins from their traditional land by **Israel**.¹⁶⁶ According to information received by the Special Rapporteur, Israel's land policy does not recognize the right of Bedouins to their traditional lands in the Negev. Roughly half of the Negev's Bedouins live in what are called “unrecognized villages”, which lack basic services such as running water, electricity, trash collection, health care facilities, schools, roads etc. The housing of the Bedouins living in these villages has been demolished by the Israeli authorities, who refuse to grant building permits, which forces the Bedouins to build illegally and makes them liable to further demolitions. The government has created seven urban zones to which it has transferred Bedouins from the “unrecognized villages”. Those living in these urban settlements are at the bottom of all economic and social indicator scales and suffer from the highest unemployment level and lowest earnings level of all of Israel. The Special Rapporteur has pointed out that the Bedouins cannot pursue their traditional way of life in these settlements, noting that states have the duty to establish procedures to identify and protect indigenous land rights. He has also raised the matter of demolitions without the Bedouins' free, prior and informed consent, without land or monetary compensation as well as forced displacement. In view of these points, the Special Rapporteur, recommended that the Israeli government assure that all laws regarding land be in conformity with international norms for indigenous peoples' land, that it not recur to demolitions, that it establish a mechanism to identify and protect the lands of the Negev where the Bedouins have legitimate rights, a mechanism to allow the Bedouins affected by government actions to appeal restrictions on their land rights (reparations should include similar alternative lands and monetary compensations lands and resources lost). In its 15 August 2011 response, the Israeli government declared that it does not recognize the Bedouins as an indigenous people. Some

¹⁶³ CEDAW/C/ZWE/CO/2-5, 23 March 2012, § 35.

¹⁶⁴ CEDAW/C/JOR/CO/5, 23 March 2012, § 41.

¹⁶⁵ CEDAW/C/TCD/CO/1-4, 4 November 2011, § 38.

¹⁶⁶ A/HRC/18/35/Add.1, 22 August 2011, VI., §§ 1-28.

Bedouin families claim private property rights over vast lands, basing their claims on Bedouin customs. Israeli land laws, however, do not recognize Bedouin custom as a source of private land rights. The areas in question according to Ottoman law, belong to the state. The government has made known its efforts to offer to the Bedouins compensation and alternative land after their expulsion, even though there is, it claims, no legal documentation supporting their claims. This policy has forced the transition of Bedouin society from a form of semi-nomad life to sedentarization. Such as way of life, continued the government, was practiced during the previous century, but it has now disappeared and, in any event, does not seem to suit the Bedouin community's current needs. The Special Rapporteur contested Israel's claim that the Bedouins have no customary rights over the Negev lands. According to the Special Rapporteur, such a position, based on the laws of the Ottoman and British colonial period as well as on provisions that do not recognize Bedouin custom as a source of property rights, should be revised. Further, such provisions are incompatible with international human rights norms in force.

4. Lack of Agrarian Reform and Inequitable Sharing of Land

In its 2003 concluding observations to **Guatemala**, the **Committee on Economic, Social and Cultural Rights** (CODESC) “continues to be deeply concerned that the **uneven distribution of wealth and land and the high level of social exclusion, in particular among indigenous and rural populations**, hinder the full enjoyment of economic, social and cultural rights” and “urges the State party to implement the measures contained in the Peace Agreements of 1996, in particular those related to the **agrarian reform and the devolution of communal indigenous lands**” (emphasis added).¹⁶⁷

Non-Protection of the Beneficiaries after an Agrarian Reform

In 1995 and 1996, the Comprehensive Agrarian Reform Program in the **Philippines** redistributed to local farmers in San Adres (Quezon) land previously held by the Uy family. The Uys had filed a complaint against the farmers who had acquired this land, accusing them of theft, among other things. Some farmers were arrested and detained but released on bail. The Special Rapporteur on the Right to Food reckoned that the Philippine government had violated its obligations, for it has not protected the farmers from the threats and harassment of third parties seeking to deprive them of access to their lands and their means subsistence, whereas they had official authorization. In its response, the Philippine government sounded annoyed, for it limited itself to pointing out that the theft accusations against the farmers were before the courts.¹⁶⁸

¹⁶⁷ E/C.12/1/Add.93, 12 December 2003, §§ 24, 42.

¹⁶⁸ A/HRC/4/30/Add.1, 18 May 2007, §§ 54, 55.

5. Wide-Scale Land Grabbing

In its 2009 concluding observations to **Madagascar**, the **Committee on Economic, Social and Cultural Rights** criticized the enactment of a new law allowing foreign corporations to acquire immense tracts of land to the detriment of the right, enshrined in Article 1 of the *International Covenant on Economic, Social and Cultural Rights*, of local peasant communities to freely use their natural resources. “The Committee is concerned that Law No. 2007-037 of 14 January 2008, relating to investment law which allows land **acquisition by foreign investors, including for agricultural purposes, has an adverse impact on the access of peasants and people living in rural areas to cultivable lands, as well as to their natural resources**. The Committee is also concerned that such land acquisition leads to a negative impact on the realization by the Malagasy population of the right to food (art. 1). The Committee recommends that the State party revise Law No. 2007-037 and **facilitate the acquisition of land by peasants and persons living in rural areas, as well as their access to natural resources**. It also recommends that the State party carry out a national debate on investment in agriculture and seek, prior to any contracts with foreign companies, the free and informed consent of the persons concerned” (emphasis added).¹⁶⁹

6. Privatization of Land in Order to Organize Safaris

According to allegations received by the Special Rapporteur on the Right to Food, *Wildlife Division of the Ministry of Natural Resources and Tourism in Tanzania*, in charge of the management of natural areas outside the national parks, had granted to private companies hunting preserves that include villages belonging to the *Hadzabe* community, without respecting their rights and without consulting them. This community depends on its traditional lands and surrounding resources for its daily subsistence and survival, especially on traditional hunting and gathering (wild fruits, roots and honey). In 1993, the Tanzanian parliament launched an official inquiry into the situation, which led to rescinding all licenses in 1995, based on the finding that the licenses made no positive contribution to local communities. The Special Rapporteur drew attention to a recent project in Tanzania undertaken by the members of the royal family of **United Arab Emirates** and emphasized the risks for the *Hadzabe* community following the implementation of this project, which caused the displacement of several thousand persons, depriving the community of vital hunting and gathering. He also mentioned the arrest of the *Hadzabe* community leader. In its response to the Special Rapporteur, the Tanzanian government “confirmed that Tanzania UAE Safaris Ltd was allocated a hunting block, but the license was issued by a competent authority, in accordance with the laws and regulations governing wildlife utilization in the country, and under certain conditions”.¹⁷⁰

¹⁶⁹ E/C.12/MDG/CO/2, 16 December 2009, § 12.

¹⁷⁰ A/HRC/7/5/Add.1, 5 March 2008, §§ 101-102.

7. Land Confiscation for Supposed Development Projects

Land Confiscation for Mining with Neither Consultation nor Adequate Compensation for the Communities Concerned

The communication concerning **Angola** dealt with the confiscation of peasant lands by *Sociedade Mineira do Cuango*, a mining corporation, to undertake diamond mining activities. Most of the confiscations took place without the population having received any prior notice, thus, without its agreement, without adequate compensation, indeed without any compensation at all and without respect of the laws in force (the law regulating diamonds, the land law, Article 30 of the general regulations on land concessions etc.). In its response to the Special Rapporteur, the Angolan government declared that it was taking note of the Special Rapporteur's communication, that it was transmitting it to the Attorney General and that it would inform the Special Rapporteur as soon as further information was available.¹⁷¹

Agricultural Land Confiscation for Industrial Projects

Another communication received by the Special Rapporteur claimed that the government of East Bengal (**India**) had required the peasants of Singur and Hooghly to immediately stop all planting, to accept the government's decision regarding land acquisition by the *Tata* company for the construction of an automobile factory and to leave their lands, which some 15,000 persons depend on, directly or indirectly, for their subsistence. The compensation offered was judged insufficient, and the whole procedure lacking in any transparency, given that the affected population had not been duly consulted. Further, women, having no land titles, were the most affected. For the Special Rapporteur, the alleged facts could constitute a violation of the obligation to respect the right to food if the competent authorities did not desist from expelling the peasants and their families from their lands, thus interfering with their means of subsistence access to sufficient and adequate food.¹⁷²

Land Confiscation for Dam Construction

Following a request to the **Swiss** government for an export credit guarantee of € 100 million by a group of companies (Alstom Schweiz, Va Tech Schweiz, Stucki and Colenco) implicated in the construction Ilisu dam on the Tigris River in southeast **Turkey**, the Special Rapporteur, in a letter addressed to the Swiss government on 8 October 2006, expressed his concerns about the right to food, to water and to adequate housing of 50,000 to 80,000 persons, Kurds for the most part, who risked being displaced. In parallel, the Special Rapporteur also addressed a letter to the Turkish government, noting an unemployment rate in the region's cities of more than 50% and agrarian reform measures never effectively implemented to allow the poor to accede to productive resources. Almost 80% of the population lived on small land holdings, which allowed them only to feed themselves, or had no lands at all. The lands were mostly owned by major

¹⁷¹ A/HRC/10/5/Add.1, 17 February 2009, §§ 7-11.

¹⁷² A/HRC/4/30/Add.1, 18 May 2007, § 32.

landowners who would be the primary beneficiaries of the compensation for expropriated land under the dam project. In its 1 December 2006 response, the Swiss government affirmed that the environmental risks and displacements had been studied and the forced resettlements were in conformity with the World Bank's norms. The Swiss government also claimed that the project, if completed according to the appropriate norms, would make a significant contribution to employment in the three exporting countries (Austria, Germany and Switzerland) as well as economic and social development in the project's region in Turkey.¹⁷³ In spite of the opposition of the affected populations (Kurds and Arabs, as much on the Turkish side as on the Iraqi side) and an international campaign about the harmful consequences, the construction of the dam continues, and its completion is planned for 2015.¹⁷⁴

8. Peasants' Right to Subsistence under Foreign Military Occupation

In its *Advisory Opinion* concerning the ***Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory***,¹⁷⁵ the **International Court of Justice** considered the expropriation and expulsion of Palestinian peasants. Through Resolution A/RES/ES-10/14, of 8 December 2003, the General Assembly had requested the International Court to give an opinion on the following question: “What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem...”

In its response of 9 July 2004, building on and often quoting reports of the various United Nations bodies, the International Court took into account the **repercussions of the construction of the wall on agricultural production, access to water and means of existence of the Palestinian peasants**: “An estimated 100,000 dunums [approximately 10,000 hectares] of the West Bank's most fertile agricultural land, confiscated by the Israeli Occupation Forces, have been destroyed during the first phase of the wall construction, which involves the disappearance of vast amounts of property, notably private agricultural land and olive trees, wells, citrus grows and hothouses upon which tens of thousands of Palestinians rely for their survival.' ... Construction of the wall 'cuts off Palestinians from their agricultural lands, wells and means of subsistence'. In relation specifically to water resources.... 'by constructing the fence Israel will also effectively annex most of the western aquifer system (which provides 51 per cent of the West Bank's water resources)' ... 'With the fence/wall cutting communities off from their land and water without other means of subsistence, many of the Palestinians living in these areas will be forced to leave.’” (§ 133)

In concluding its opinion, the Court affirmed: “The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including

¹⁷³ *Ibid.*, §§ 64-66.

¹⁷⁴ See, *inter alia*: <http://newswatch.nationalgeographic.com/2013/08/22/rare-footage-of-ilisu-the-dam-that-will-flood-homes-and-history-across-southern-turkey/>, http://www.lemonde.fr/planete/article/2012/05/22/forte-mobilisation-regionale-contre-le-barrage-turc-d-illisu_1705250_3244.html, <http://ilisuprojesi.com>

¹⁷⁵ <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4&lang=en>

in and around East Jerusalem, and its associated régime, are contrary to international law.” (§ 163.A) In view of this affirmation, the Court declared: “Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction.” (§ 153)

Further, “Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto.” (§ 163.B) And “Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem.” (163.C)

The Court did not limited itself to condemning Israel, but added: “All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.” (§ 163,D)

B. At the Regional Level

Numerous conflicts linked to land have been brought before the regional human rights instances. Although the right to land is not recognized in the regional instruments (with the exception of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*; see Chapter III.B), the rulings handed down by these instances deal nonetheless with conflicts linked to land but from the angle of the right to property.

Thus, Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights have considered that the traditional possession of land by indigenous peoples has effects equal to those of full property title granted by the state. Accordingly, when members of indigenous peoples' communities have involuntarily lost possession of lands after a legal transfer to another party, they have the right to restitution of their lands or to other lands of equal area and quality. The European Court of Human Rights has also ruled on several cases concerning peasants and/or owners. The following are several selected examples.

1. *The African Commission on Human and Peoples' Rights*

The African Commission on Human and Peoples' Rights is the body entrusted with overseeing implementation of the *African Charter of Human and Peoples' Rights*. The *Charter* contains several articles protecting peoples' rights. Article 19 deals with equality of peoples, and Article 20 enshrines peoples' right to existence and to self-determination. Article 21 provides for the right of peoples to freely dispose of their natural resources and to the recovery of their possession or to compensation in case of loss. Article 17 concerns cultural rights. These articles also protect indigenous peoples and, if need be, local communities, as reflected in the rulings handed down by this body.

Cultural Rights of Indigenous Peoples and Land

The African Commission on Human and Peoples' Rights has interpreted some of the provisions of Article 17 of the *Charter* as protecting the right to individual and collective property and has specified, in a 4 February 2010 ruling concerning the Endorois people in **Kenya**, that the possession of lands by an indigenous people or the existence of a property title is not a necessary condition for a people's right to property.¹⁷⁶ A complaint had been filed with Commission (in 2003) noting violations resulting from the displacement of members of the Endorois community, an indigenous people, from their ancestral land, the lack of compensation for the loss, the disruption of their communal pastoral activities and violations of the right to practice their religion and culture, as well as the disorder introduced into the overall development of the community. In this case, the Endorois claimed that the Kenyan government, in violation of the *African Charter of Human and Peoples' Rights*, of the Kenyan constitution and of international law, had expelled them from their ancestral lands located in the Lake Bogoria region, because of the creation a nature preserve, without appropriate consultation or adequate compensation, and this in violation of several rights guaranteed by the *African Charter*, including the right to culture, recognized in Article 17.2 and 17.3. In its November 2009 ruling, the Commission considered that “by restricting access to Lake Bogoria, it has denied the community access to an integrated system of beliefs, values, norms, mores, traditions and artifacts closely linked to access to the Lake”.¹⁷⁷ It concluded that to force this community to live on semi-arid lands without access to medicinal plants and without resources vital to the health of their cattle “created a major threat to the Endorois pastoralist way of life” and to their cultural rights.¹⁷⁸

¹⁷⁶ 276/03: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya: <http://caselaw.ihdrda.org/en/doc/276.03/view>

¹⁷⁷ *Ibid.*, § 250.

¹⁷⁸ *Ibid.*, § 251.

Sovereignty of Peoples over their Natural Resources, Including Land

In 2001, The African Commission handed down an important ruling concerning the Ogoni people of **Nigeria**. By participating in the production of petroleum, the Nigerian government was accused of destroying the Ogoni people's resources, notably by being party to the poisoning of the ground and water on which the Ogoni depend for agriculture and fishing. The Nigerian security forces were also accused of having spread terror, in attacking the Ogoni villages, and of destroying their crops, thus creating a climate of insecurity making it impossible for the Ogoni to return to their villages and cattle, which led to malnutrition and famine within some communities. In its ruling, the Commission recalled that the obligations to respect, protect and fulfill the human rights of the local populations applied universally to all rights. And it concluded that the Nigerian government, involved in petroleum exploration on Ogoni land, had, among other things, violated Article 21 of the *African Charter*, which enshrines the right of people to freely dispose of their resources, for the Ogoni had not been involved in the decision making concerning the petroleum exploration on their lands.¹⁷⁹

2. The Inter-American Court of Human Rights

Property, such as it is protect under Article 21 of the *American Convention on Human Rights* is considered a collective right of indigenous peoples, since the ownership of land is often centered not on the individual but on the group and its community. The The Inter-American Court of Human Rights has several times confirmed in its rulings **the collective right to land of indigenous peoples**. Given the complementarity of its rulings, we have chosen the three following examples.

In a ruling on the **Nicaragua** regarding Mayagna Sumo d'Awes Tingni community, threatened by a concession granted by the government to a Korean company, the Court affirmed that "it is the opinion of this Court that article 21 of the Convention protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property." It added: "Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations." The Court also pointed out that the state must take measures to delineate, demarcate and recognize the ownership titles of these communities, with their full participation in conformity with their values and customary law.¹⁸⁰

¹⁷⁹ Nigeria: *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001), <http://www.chr.up.ac.za/index.php/browse-by-subject/410-nigeria-social-and-economic-rights-action-centre-serac-and-another-v-ni>

¹⁸⁰ Inter-American Court of Human Rights, *The Mayagna (Sumo) Awes Tingni Community v. Nicaragua, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001)*, §§ 148, 149,

In the Sawhoyamaya indigenous community case in **Paraguay**,¹⁸¹ the members of this community lived in deplorable conditions because they had lost access to their traditional means of subsistence, in particular their land, and 31 members of the community had died from 1991 to 2003 from illnesses due to their living conditions. According to the Court, the non-respect by the state of customary land regimes and of historic control of land by the indigenous denied the principle of equality enshrined in Article 1(1) of the *Convention* according to which the rights inherent in traditional indigenous land regimes merit the same respect as the Western concept of individualist property. In this regard, the Court specified that: "... this Court considers that indigenous communities might have a collective understanding of the concepts of property and possession, in the sense that ownership of the land 'is not centered on an individual but rather on the group and its community'. This notion of ownership and possession of land does not necessarily conform to the classic concept of property, but deserves equal protection under Article 21 of the American Convention. Disregard for specific versions of use and enjoyment of property, springing from the culture, uses, customs, and beliefs of each people, would be tantamount to holding that there is only one way of using and disposing of property, which, in turn, would render protection under Article 21 of the Convention illusory for millions of persons."¹⁸²

Through its 28 November 2007 ruling on the Saramaka community of **Suriname**¹⁸³ the **Inter-American Court of Human Right** extended to tribal populations the property rights enshrined in Article 21 of the *Convention*. It thus completed the jurisprudence recognizing indigenous and tribal peoples' right to ownership of their territory. The Court noted that the close relationships that these indigenous communities established with land made necessary a protection of their right to ownership "to safeguard the physical and cultural survival of the group" (§ 85). The Court then analyzed the question of the respect of the state's positive obligations from the angle of the *Convention's* Article 2, which requires the enactment of domestic legislation giving effect to the rights recognized in the *Convention* (§ 107). In this case, the state alleged that each member of the community could assert her/his rights before a national court (§ 162). However, the Court affirmed that the possibility of having such rights recognized in the context of a concrete legal procedure cannot replace the existence of adequate laws (§§ 176, 185). Neither can the protection of "certain interests" of the indigenous communities such as the regulation by law of the "privilege" of using land, as was usual in Surinam, replace an overall protection of the collective right to ownership of lands and to use of natural resources in conformity with their traditions (§ 116). The Court further recognized that the state may develop some of these resources, but it stipulated that the state must respect three conditions, specifically: the right of members of the Saramaka community to use and benefit

153, 164, 173.4, <http://www1.umn.edu/humanrts/iachr/AwasTingnicase.html>

¹⁸¹ Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, Judgment of 29 March 2006, § 120, www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf

¹⁸² This opinion is shared by the national courts (see below).

¹⁸³ *Comunidad Saramaka c. Suriname*, <https://www.buscatdh.bjdh.org.mx/Paginas/results.aspx?k=saramaka%20c.%20surinam>

from the natural resources on the territory traditionally belonging to them and necessary to their survival; the state must assure the effective participation of the Saramaka community in any development activity, and the community must receive the profits derived from the development; the carrying out or supervision of prior social and environmental impact studies before any work is undertaken (§ 158). It was merely a practical application of the precautionary principle that led the Court to conclude that there had been a violation of Article 21 *Convention* owing to the sale of wood and the development of existing gold mines on the Saramaka territory (§ 214).

3. European Court of Human Rights

Forced Displacement of Peasants

In its 29 June 2004 ruling on the Doğan case (**Turkey**), the European Court of Human Rights ruled in favor of forcefully displaced Kurdish peasants who had lost their property (houses, cattle and farmlands). In response to the request of 15 Kurdish families, the Court examined their case in light of, among other things, the right to property (Article 1, *Protocol N° 1 of the European Convention on Human Rights*). The inhabitants of Boydaş (Hozat-Tunceli in eastern Turkey), at the time under a military state of emergency, were expelled (between 1994 and 2001) by security forces, which destroyed their houses to force them to leave. They fled and settled with their families in safe areas, Elazığ and Istanbul, where they were living in abject poverty. They requested an authorization to return to Boydaş and recover use of their property, for, like the other inhabitants of the village, they had derived their income from agriculture, especially livestock, farming and forestry (the sale of wood). In the end, the Court concluded unanimously that there had been a violation of Article 1 of *Protocol N° 1 of the European Convention on Human Rights*, characterizing as “property” the income drawn from economic activities (agricultural products, livestock and forestry) and this in spite of the absence of titles to the land. The Court based its ruling on the following argument: “The Court notes that it is not called to decide if yes or no the plaintiffs have, with regard to domestic law, property rights, notwithstanding the absence of title. The question in this regard is whether the economic activities carried on generally by the interested parties can be considered as “property” entering into the field of application of the guarantee accorded under Article 1 of Protocol N° 1. The Court notes in this regard that there is no controversy that the plaintiffs all lived in Boydaş until 1994. Even if they had no official title to the property in litigation, they had either had their own houses built on lands belonging to their ascendants or lived in their parents' houses and tilled land that their parents owned. The Court observes additionally that the plaintiffs had uncontested rights to the communal lands of the village – such as grazing land, rangelands and forest holdings – and that they earned their living from livestock and logging. The Court reckons thus that the total of those economic resources and

the incomes that the plaintiffs derived from them can be characterized as “property” for purposes of Article 1 of Protocol N° 1.”¹⁸⁴

Foreign Military Occupation and Dispossession of Housing and Land

In another case concerning military occupation (*Loizidou v. Turquie*)¹⁸⁵, the Court ruled on the dispossession of a landowner of her land and family homestead. A Cypriot national, Titina Loizidou owned several lots in Kyrenia (Northern Cyprus). Before the Turkish invasion of the region, 20 July 1974, construction of apartments, one of which was to be the home of the plaintiff's family, had been undertaken on one of the lots. According to the plaintiff, the Turkish forces have prevented her from returning and having use of her property. The Court advanced primarily two arguments to find against Turkey in this case. First, based, inter alia, on Resolution 541 (1983) of the United Nations Security Council, declaring legally invalid the proclamation of the “Turkish Republic of Northern Cyprus” (TRNC), the Court reckoned invalid all decisions made by this entity, thus “the plaintiff cannot claim to have lost her right to her property under Article 159 of the 1985 constitution of the ‘TRNC’,” which was the basis of her expropriation. Second, depriving the plaintiff of the use and enjoyment of her property: “However, as she has been refused access to her property since 1974, the plaintiff has, in practice, lost all mastery over it as well as any possibility of use and enjoyment. The continued denial of access must thus be considered interference in her rights guaranteed by Article 1 of Protocol N° 1.”

C. At the National Level

For over a decade there has been a formal recognition of the rights of indigenous peoples, including their right to land, in the national legislation of several countries of Latin America (Bolivia, Ecuador, Venezuela). Yet conflicts linked to land are more and more numerous throughout the world. National courts are more and more inclined to rule on disputes over land. As an example, “more than 70% of the disputes pending before the courts and mediation instances in many African countries concern land conflicts.”¹⁸⁶ In this regard, it is interesting to note the evolution of national jurisprudence concerning the right to land, in particular that of indigenous peoples but also that of other communities such as fishers. The following are several examples.

For several years British and Canadian courts have been seeking to define the nature of the legal basis of the claims of the indigenous peoples of **Canada** to their lands. Following the general principles long established by jurisprudence, the

¹⁸⁴ *Doğan et autres c. Turquie*, 10 November 2004, §§ 139, 168, http://www.juricaf.org/arret/CONSEILDELEUROPE-COUREUROPEENNEDESROITSDELHOMME-20040629-880302-880402-880502_-

¹⁸⁵ *Loizidou c. Turquie* (Requête N°15318/89), 18 December 1996, §§ 11, 12, 42, 46, 63: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-62566#{%22itemid%22:\[%22001-62566%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-62566#{%22itemid%22:[%22001-62566%22]})

¹⁸⁶ Aymar Nyenyezi Bisoka, “Burundi: résistances paysannes à l'accapement des terres”, in *État des résistances dans le Sud: Les mouvements paysans*, CETRI-Syllepse Publications, 2013, p. 36.

right of indigenous peoples to land can be ceded to, or alienated by, only the federal Crown, after which it can be transmitted to the provincial Crown (supposing a cession outside of the territories) as a title of the Crown free from all charges. In December 1997, the Canadian Supreme Court handed down an innovative ruling containing its first decisive declaration on the content of the aboriginal title to the land of Canada. In its *Delgamuukw v. British Columbia*¹⁸⁷ ruling, the court described the scope of the protection accorded to the aboriginal land title by paragraph 35(1) of the *Constitution Act, 1982*, defined the way the aboriginal title can be established and presented the criteria justifying any attack on the aboriginal title. Paragraph 35(1) recognized that the indigenous peoples occupied North America before colonization and conciliated their prior presence with the affirmation of the sovereignty of the Crown. In paragraph 194 of the ruling, it was stated that an indigenous claim must be attached to the traditional way of life of the indigenous society concerned. If it is a question of land use by the indigenous peoples to establish villages, to work, to go to work, to fish, to carry on their religious ceremonies or for other purposes, these uses of the land can be exercised contemporaneously and in a timeless manner. Moreover, it is specified in Paragraph 199 that “if aboriginal peoples continue to occupy and use the land as part of their traditional way of life, it necessarily follows that the land is of central significance to them.” Thus, the *Delgamuukw* ruling remains a major affirmation of the existence of the aboriginal title to Canada and of its protection under the Canadian constitution.

In *Alexkor Ltd and Another v Richtersveld Community and Others (CCT19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003)*,¹⁸⁸ the Constitutional Court of **South Africa** ruled in favor of the restitution ancestral lands to the Richtersveld community, and judged that “it is important to bear in mind that, unlike common law, indigenous law is not written. It is a system of law that was known to the community, practiced and passed on from generation to generation. It is a system of law that has its own values and norms.” (§ 53). The court concluded that “the real character of the title that the Richtersveld Community possessed in the subject land was a right of communal ownership under indigenous law. The content of that right included the right to exclusive occupation and use of the subject land by members of the Community. The Community had the right to use its water, to use its land for grazing and hunting and to exploit its natural resources, above and beneath the surface. It follows therefore that prior to annexation the Richtersveld Community had a right of ownership in the subject land under indigenous law.” (§ 62).

In *Samatha Vs. State of Andhra Pradesh and Ors (1997)*, the Supreme Court of **India** ruled in favor of the rights of tribal populations to their natural resources and against mining concessions granted by the state to private companies.

Given the importance of rights to land, to territory and to water, in access to natural resources for traditional fishers and farmers, it is appropriate here to cite two judgments that are favorable to them. In its ruling on *S. Jagannath Vs. Union*

¹⁸⁷ <http://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/1569/index.do>

¹⁸⁸ <http://www.saflii.org/za/cases/ZACC/2003/18.html>

of *India and Ors* (1996), the Supreme Court of **India** affirmed the rights of traditional fishers to accede to the sea and the rights of local farmers to land and water, in opposition to the activities of the shrimp industry. In the case of Kenneth George (2007), the High Court of the Province of Cape of Good Hope (**South Africa**) forced the government to revise its legislation on marine resources and assure that their use benefited the local communities of traditional fishers and not the fish export industry.¹⁸⁹

¹⁸⁹ For further information: *The right of peoples to self-determination and to permanent sovereignty over their natural resources seen from a human rights perspective*, Geneva: CETIM, 2010, pp. 46-47: http://www.cetim.ch/en/publications_autodetermination.php .

V. TOWARD A RECOGNITION OF THE RIGHT TO LAND FOR PEASANTS

As discussed above (Chapter III.A), the right to land is recognized for some groups considered vulnerable: explicitly for indigenous peoples; for women from the angle of equality with men. The Committee on Economic, Social and Cultural Rights as well as the Special Rapporteurs on the Right to Food and on the Right to Adequate Housing have insisted repeatedly on the necessity of a recognition of the right to land (Chapter III.A). Although one can interpret some provisions of the international instruments along these lines, the right to land per se is not formally codified in international law. However, it is vital for peasants. Thus, faced with serious and wide-scale violations of their human rights, the primary international family peasant movement, *La Via Campesina*, has committed itself to a process of definition of peasants' rights.¹⁹⁰ In June 2008, after seven years of internal discussion, it adopted its own declaration of the rights of peasant

This process has driven a dynamic within the Human Rights Council, which has taken up the subject and currently is drafting a declaration on the rights of peasants (see below). The process is supported by a broad coalition of peasant organizations represented by La Via Campesina (LVC) and by other movements such as the International Federation of Rural Adult Catholic Movements (FIMARC from its French acronym)¹⁹¹.

A. Draft United Nations Declaration on the Rights of Peasants

Following two studies¹⁹² requested by the Human Rights Council¹⁹³ from its expert body (the Advisory Committee), the Council undertook to draft the *United Nations Declaration on the Rights of Peasants*.¹⁹⁴ Noting the wide-scale violations to which peasants are subjected and the lacunae in international law, the Advisory Committee recommended that the Rights Council adopt “a new international

¹⁹⁰ For further information: Christophe Golay, *The Rights of Peasants*, Geneva: CETIM, September 2009, http://www.cetim.ch/en/documents/report_5.pdf

¹⁹¹ Founded in 1964 and represented in 60 countries with 500,000 members, the FIMARC is an international organization comprising farmers and inhabitants of rural areas who have gathered together in movements or organizations, involved in social and political issues as well as training and education in sustainable rural development activities: <http://www.fimarc.org/>

¹⁹² Dealing with, respectively “discrimination in the context of the right to food” and “on ways and means to further advance the rights of people working in rural areas, including women, in particular smallholders engaged in the production of food and/or other agricultural products, including from directly working the land, traditional fishing, hunting and herding activities”, the final studies on these two subjects were presented, respectively to the 16th and the 19th session of the Human Rights Council (A/HRC/16/40 and A/HRC/19/75).

¹⁹³ For further information: *The Human Rights Council and Its Mechanisms*, Geneva: CETIM, February 2008, http://www.cetim.ch/en/publications_cahiers.php#conseil

¹⁹⁴ See § 44, Human Rights Council, Resolution 13/4, 24 March 2010, adopted without a vote.

human rights instrument on the rights of peasants and other people working in rural areas” to better protect them, annexing a draft declaration.¹⁹⁵ Responding favorably to this recommendation, the Human Rights Council set up an open-ended intergovernmental working group to consider the draft declaration.¹⁹⁶ Article 4 of the draft deals specifically with the right to land and to territory. In this chapter, we shall focus exclusively on this article.

First, the article in question of the draft *Declaration on the rights of peasants and other people working in rural areas*¹⁹⁷ declares: “Peasants have the right to own land, individually or collectively, for their housing and farming” (Article 4.1). It also states: “Peasants and their families have the right to toil on their own land, and to produce agricultural products, to rear livestock, to hunt and gather, and to fish in their territories” (Article 4.2).

Paragraph 3 of the article enshrines “the right to toil and own unused land on which they depend for their livelihood”. This is an essential demand of peasants who are hundreds of millions strong across the world. If their wish is granted, they could then devote themselves to an economic activity not only to feed themselves and provide for their own needs but also to supply food for others.

Paragraph 4 emphasizes the right of peasants “to manage, conserve, and benefit from the forests and fishing grounds”. Besides food production, one must also take into account the indispensable role played by peasants in the protection of the environment.

One of the original and important aspects of the draft declaration is that it advocates the social function of land and prohibits *latifundia*¹⁹⁸: “Peasants have the right to benefit from **land reform**. *Latifundia* must not be allowed. **Land has to fulfill its social function**. Land ceilings to land ownership should be introduced whenever necessary in order to ensure an equitable access to land” (Article 4.6; emphasis added). The agrarian reform (or the sharing of fertile land) is a universal demand of all peasants of the world. It is already provided for in the *International Covenant on Economic, Social and Cultural Rights* (Article 11.2.a). Although the *Covenant*, in force since 1976, is legally binding and the states parties to it have declared solemn commitments in keeping with it during world summit conferences, the agrarian reform is still not reality in many countries. The recognition of the social function of land would make possible reining in speculation and preventing land-grabbing on a wide-scale. Thus, this paragraph is of capital importance for peasants.

¹⁹⁵ Human Rights Council *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, A/HRC/19/75, 24 February 2012, Summary: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75_en.pdf.

¹⁹⁶ Human Rights Council Resolution 21/19, adopted by a vote of 23 for, 9 against and 15 abstentions. The first session of the Working Group was held in July 2013, and its mandate was extended by the Human Rights Council during its 26th session (Resolution 26/26, adopted by 29 for, 5 against and 13 abstentions).

¹⁹⁷ Open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas, 1st session, 15-19 July 2013.

¹⁹⁸ Vast properties for agriculture that may be planted or not, depending on the wishes of the owner(s).

Security of tenure constitutes another elementary demand of the peasants and is mentioned in Paragraph 5: “Peasants have the right to security of tenure and not to be forcibly evicted from their lands and territories. No relocation should take place without free, prior and informed consent of the peasants concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

This draft declaration also emphasizes: Peasants have the right to participate in the policy design, decision making, implementation, and monitoring of any project, program or policy affecting their land and territories” (Article 2.4). The right to participate in decision-making is already enshrined in many legally binding international instruments such as the two international human rights covenants. The exercise of the right to self-determination, which involved more than just the creation of states, is a national aspect that is often neglected. It is a right of every citizen to take part in the conduct of public affairs at all levels.¹⁹⁹

As just discussed, although the right to individual ownership is mentioned, the accent is on the social function and collective use of land as well as security of tenure. These two aspects are at the heart of peasant demands. The elevation of private property to an absolute norm without limit being highly problematic in this context, we shall consider in some detail these two aspects in the following chapters.

B. From Private Property to the Social Function of Land

As a place to live (dwelling, economic, social, cultural, religious activities...), dry land is an irreplaceable component in the landscape of human existence. Thus, it is the object of all desires. This phenomenon is reinforced by the multiplication by seven of the world's population in little more than a century. Since the neolithic age, the conquest of land (especially fertile land) has been the primary objective of sovereigns (emperors, kings, princes...) to amass wealth and extend the territories over which they hold sway. In such a context, villages, indeed entire countries, with their population, could be the property of a sovereign and, thus, could be sold or could change sovereign at the whim of alliances and conquests.

1. Origins of Private Ownership of Land

Depending on the period, the location and the social organization of the peoples, the care and use of land has taken various forms and has always been an important element for the human community.²⁰⁰ It is not easy to establish an inventory of the forms of this management, for it is linked to the history of each people/community and can be extremely complex.²⁰¹ But to simplify, some

¹⁹⁹ *The right of peoples to self-determination and to permanent sovereignty over their natural resources seen from a human rights perspective*, Geneva: CETIM, 2010: http://www.cetim.ch/en/publications_autodetermination.php p. 22.

²⁰⁰ In some regions of the world there are persons/communities living on water (rivers, lakes or the sea), but they are not totally disconnected from land.

²⁰¹ The administration of land has a history of some ten thousand years, and has evolved differently depending on the region. See Marcel Mazoyer and Laurence Roudart, *Histoire des agricultures du*

communities has have favored collective use of land and continue to do so (indigenous peoples for example); for them, the selling of “mother earth” is unimaginable.²⁰² Others (Western Europeans, among others) have progressively introduced private property as the prevailing norm then exported it to their colonies.²⁰³ “The invocation of the ‘right of occupancy’ or *jus nulius*, granting a right to the first occupant of a ‘no man’s land’” has served as “legal justification ... to legalize the colonial appropriation of lands declared ‘virgin’”.²⁰⁴

The origin of land ownership is attributed “to the neolithic period, with the construction of the first permanent dwellings and the closing in of the first private home gardens.”²⁰⁵ In Europe, the private ownership of land was institutionalized in ancient Greece, with the beginning of the city-states, and spread “through conquest to the major part of Europe and north Africa”.²⁰⁶

Since the Roman period, numerous forms of complex legislations dealing with various legal aspects of property – such as the right to gather the fruit from the property (*fructus*), the right to use it (*usus*) or the right to dispose of it, to wit to destroy all or part of it or modify it, or to cede it to another (*abusus*)²⁰⁷ – have been developed.²⁰⁸

The Roman conception of the right of private ownership was not universal throughout the Roman Empire (the indigenous cultural strata resisted), and it collapsed with the decline of the empire in the West. Germanic communal law again became the norm over much of European territory (from the fifth century).

If one considers human history over a long period and on all the continents, anti-individualistic conceptions (hostile to the Roman conception of the right to private ownership) certainly dominate. Private property according to Roman law must probably be seen as a parentheses in human history, progressively resuscitated in western Europe by the emergence of capitalist social relations, which triumphed starting in the nineteenth century. It remains that this conception seems today to be spreading across the entire planet to become a universal norm. This phenomenon has accelerated since the collapse of the Soviet block (1989-1990).

According to Jean-Jacques Rousseau, property was born “from the instant that a man needed the help of another: as soon as one sees that it is useful for a single

monde, op. cit., p. 22

²⁰² See, *inter alia*, the famous 1854 speech of Chief Seattle to the government of the United States, expressing his refusal to sell Amerindian lands; <http://www.barefootsworld.net/seattle.html>

²⁰³ In Europe, there are still collective properties (state and communal), but the tendency is consistently in the direction of ever greater privatization of land.

²⁰⁴ Daniel Bensaïd, *Les dépossédés, Karl Marx, les voleurs de bois et le droit des pauvres*, Paris: La Fabrique, 2007, p. 22.

²⁰⁵ Marcel Mazoyer and Laurence Roudart, *Histoire des agricultures du monde*, p. 336.

²⁰⁶ *Ibid.* But this process would have affected less the Celtic, Germanic, Scandinavian and Slavic communities.

²⁰⁷ <http://en.wikipedia.org/wiki/Property>

²⁰⁸ Given the link between land and natural resources in our times, patents on life (protected by intellectual property) have taken on an absurd dimension, “breaking outright with the schema of ownership”, as the “tempered liberal economist” Daniel Cohen worries. (See Daniel Bensaïd, op. cit., p. 68). See also the CETIM human rights publications, exploring the subject from the angle of human rights, *Right to Health* (2006) and *Cultural Rights* (2013): http://www.cetim.ch/en/publications_brochures.php

person to have provisions for two, equality disappears, property enters on the scene, work becomes necessary and vast forests are transformed into laughing countrysides that must be watered with the sweat of men's brows, and in which one soon sees slavery and misery taking root and growing with the harvests.”²⁰⁹ For him, private property is the root of all inequality:

*If we follow the progress of inequality in these various revolutions, we find that the establishment of the Law and of Rights of property was its first phase; the institution of the judiciary the second; that the third and last was the transformation of legitimate power into arbitrary power; so that the state of being rich and poor was authorized by the first phase, that of being powerful and weak by the second, and by the third that of being master and slave, which is the last degree of inequality, and the point at which all the others end, until new revolutions thoroughly dissolve the government or bring it back in line with legitimate institution.*²¹⁰

In a series of articles published in the *Rheinische Zeitung* in 1842 on a draft law on forest ownership under discussion in the Rhenish Diet (Germany), Karl Marx railed against the dispossession of the poor and opposed the right of use of private property: “certain objects of property cannot, by their nature, acquire, in any case, the character of private property ... and belong, through their elementary contingent essence to the right of occupancy; these objects belong, accordingly, to the right of occupancy of the class that, excluded by this right from all other property, occupies in civil society the same position as these objects in nature.”²¹¹ In other words, the acknowledgment of an absolute right to private property is in contradiction with the inalienable right of the poor to common property given by nature.

The manifesto of the Communist Party²¹² established as a political program “the abolition of private property” not “the abolition of property in general, but the abolition of bourgeois property”.

The reflections of Marx-Engels emerged in the industrial era, when, in England, for example, the peasantry was being massively dispossessed of its land for the benefit of the great landlords, “2000 of them owned vast properties of from 100,000 to 400,000 hectares, which covered in total a third of the country” and was reduced “to hired-hand wages, begging, the exodus to the cities, industrial wages or emigration to the settler colonies”.²¹³

The French Revolution (1789), directed against the absolute power of the nobility and the clergy, was also a revolt of the peasantry. Although this revolution allowed the dismantlement of “the great feudal property of the lay and ecclesiastic lords”,²¹⁴ it above all benefited and reinforced the property of the

²⁰⁹ J.-J. Rousseau, *Discours sur l'origine et les fondements de l'inégalité parmi les hommes*, B.

Bachofen et B. Bernardi, Paris: Flammarion, G-F, 2008, p. 118; translated by the CETIM translator.

²¹⁰ *Ibid.*, p. 140.

²¹¹ Quoted by Daniel Bensaïd, *op. cit.*, p. 22.

²¹² Written by Karl Marx and Friedrich Engels and published in Londres, February 1848.

²¹³ The period of peasant dispossession in England ran from the sixteenth to the nineteenth century. See

Marcel Mazoyer and Laurence Roudart, *Histoire des agricultures du monde*, p. 342.

²¹⁴ *Ibid.*, p. 344.

bourgeoisie, this rising class demanding “a better position”²¹⁵ in the power structure.

In our times, it is the promotion (or non-questioning) of absolute private ownership of land (as much in the rural as in the urban areas) that poses numerous problems and endangers the enjoyment of human rights for hundreds of millions – indeed, billions – of human beings. Some observe with a kind eye the canonization of the right to private property and its elevation to the rank of a fundamental right (see below).

2. *Private Property and Human Rights*

Law and the rules established in any given society are the products of power play and compromise among the members of that society. As already discussed above, depending on the location, the era and the social organization, private property can be the norm or not. Historically, “the notion of the right to private property goes back to the first philosophical writings, which led to the *Declaration of the Rights of Man and the Citizen*, drafted during the French Revolution as well as the *United States Bill of Rights*. Today, after the emergence of this notion in the eighteenth century, the classification of the right to property as a human rights still raises controversy.”²¹⁶

From the point of view of human rights, the right to property is recognized in Article 17 of the *Universal Declaration of Human Rights*:²¹⁷ “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.” This general provision of the right to property can of course involve the right to land. As discussed above, this text was influenced by the *Declaration of the Rights of Man and the Citizen* (1789), which ranks property among “the natural and inalienable rights of man” (Article 2).²¹⁸ Yet this conception, “absolutist, of the right of property, which was elaborated during the French Revolution in reaction to the *Ancien régime* (which had, it is true, expanded the constraints regarding land, in particular for the benefit of the Church and the nobility) needs to be revisited in light current social demands”.²¹⁹

Again, from the point of view of human rights, the right to property must not be discriminatory²²⁰ nor absolute. The *International Convention on the*

²¹⁵ Cf. http://www.larousse.fr/encyclopedie/divers/R/%C3%A9volution_fran%C3%A7aise/140733

²¹⁶ Christophe Golay and Ioana Cismas, *Avis juridique: Le droit à la propriété sous l'angle des droits humains*, published by the Geneva Academy of International Humanitarian Law and Human Rights and International Centre for Human Rights and Democratic Development (Rights & Democracy), Canada.

²¹⁷ Adopted by the General Assembly 10 December 1948.

²¹⁸ http://www.larousse.fr/encyclopedie/divers/D/%C3%A9claration_des_droits_de_l'homme_et_du_citoyen/117119

²¹⁹ See, inter alia, Nicolas Bernard and Pascale Thys, “Socialiser’ le foncier en le soustrayant au jeu de la spéculation”, in *La terre est à nous! Pour la fonction sociale du logement et du foncier, résistances et alternatives*, Paris: AITEC-COREDEM-RITIMO, March 2014, p. 22.

²²⁰ The international human rights instruments prohibit any distinction, restriction or other differentiating treatment within a given community – but also between communities – which is unjustified and which compromises the enjoyment of human rights by all on the basis of equality. See *Right to Non-Discrimination*, Geneva: CETIM, June 2011: http://www.cetim.ch/en/publications_non-discrimination.php

Elimination of All Forms of Racial Discrimination²²¹ confers “the right to own property alone as well as in association with others” without discrimination (Article 5.d.v). If one applies this principle literally in the context of some persons or private entities disposing of thousands, indeed millions, of hectares of land, it would require several planets to satisfy the need for land of everybody. In his last article, the late Albert Jacquard expressed this paradox with clarity:

*It is thus not surprising that most constitutions inscribe the right to property on the list of human rights. It is a matter of assuring the stability of the framework within which persons grow up and mature. Initially, the property invoked by this right was that of goods useful to daily life or to the maintenance of social cohesion. The field of appropriation progressively widened and became remote to what legitimated it. Many societies have complemented the right of use by the right of transmission in the form of inheritance; the appropriation was thus extended beyond the succession of generations. Carried to its logical conclusion in a finite world, this process can only lead to general paralysis by the exhaustion of those goods still available.*²²²

The right to property cannot be absolute if one takes into account the general welfare. This is what explains the position of states seeking to limit the possession land in order to leave an appreciable margin of maneuver to public agencies for the building of infrastructure such as roads, schools, hospitals etc. as well as housing and agricultural cooperatives. For example, in **Cuba**, after the agrarian reforms of 1959 and 1963, ownership of land was limited to 65 hectares and distributed “to those who work”.²²³ Accordingly, the regional human rights treaties imposed a limit on this right. Thus, Article 21 of the **American Convention on Human Rights**²²⁴ states: “Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.” Article 1 of the **Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms**²²⁵ states: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” The **African Charter of**

²²¹ Adopted by the General Assembly 21 December 1965; entered into force 4 January 1969.

²²² Quoted by Charlotte Mathivet, *La terre est à nous! Pour la fonction sociale du logement et du foncier, résistances et alternatives*, Paris: AITEC-COREDEM-RITIMO, March 2014, pp. 11-12.

²²³ *Report of the Special Rapporteur on the right to food*, Jean Ziegler, Addendum. Mission to Cuba, A/HRC/7/5/Add.3, 3 March 2008, § 32.

²²⁴ Adopted in San José (Costa Rica) 22 November 1969.

²²⁵ Adopted in Paris, 20 March 1952; entered into force 1 November 1998 (as amended by Protocol N° 11).

Human and Peoples' Rights²²⁶ is in line with this: “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws” (Article 14).

Generally speaking, national legislation is also in line with this, even if in practice some government leaders arrogate to themselves public lands and/or turn them over to transnational corporations²²⁷ on the pretext of economic development (mining concessions, dam construction, tourism projects...). Better, some states have enshrined in the national legislation the social function of land (see below).

3. *The Social Function of Land*

The social function of land is based on the premiss of the necessity of putting limits on private property, which cannot be absolute. From Aristotle to Léon Duguit, through Saint Thomas and Auguste Comte, each in his way and according to the context of his time emphasized this necessity.²²⁸

In recent history, a peasant revolt made possible, for the first time, the inscription of the social function of land in the **Mexican constitution** in 1917. Although it is still in force, its Article 27 – which provides for “the collective organization and exploitation within communities and other organized entities, in the form of *ejido*, to wit a special land régime”²²⁹ – was amended several times with the elimination of references to “the agrarian reform and the endowment or restitution of land for the benefit of the indigenous populations”.²³⁰

Since then, several Latin American countries such as Brazil, Colombia and Peru have inscribed this principle in their constitution, although the practice in these countries is not always in conformity with the legislative provisions. As an example, the 1998 **Brazilian constitution** is worth noting.²³¹ It stipulates: “property must fill a social function” (Article 5. XXIII). This refers to property in both rural and urban areas: “The urban development policy carried out by the municipal government, according to general guidelines set forth in the law, is aimed at supporting the full development of the social functions of the city and ensuring the well-being of its inhabitants. ... The social function is met when the rural property complies simultaneously with, according to the criteria and standards prescribed by law, the following requirements: 1. rational and adequate

²²⁶ Adopted 27 June 1981 in Nairobi (Kenya) the 18th Conference the Organization for African Unity; entered into force 21 October 1986.

²²⁷ For example, from 2003 to 2010, the royal family Al Khalifa of Bahrain arrogated to themselves or transferred to private interests, “65 km² of public land (worth over \$ 40 billion, without any corresponding payment to the public treasury)” (Joseph Schecla. “Les terres du Printemps arabes”, in *La terre est à nous! Pour la fonction sociale du logement et du foncier, résistances et alternatives*, Paris: AITEC-COREDEM-RITIMO, March 2014, p. 76).

²²⁸ For further details, see Nicolas Bernard and Pascale Thys, “Socialiser’ le foncier en le soustrayant au jeu de la spéculation”, in *La terre est à nous! Pour la fonction sociale du logement et du foncier, résistances et alternatives*, Paris: AITEC-COREDEM-RITIMO, March 2014, p. 23.

²²⁹ <http://web.mit.edu/12.000/www/m2006/teams/willr3/const.htm>

²³⁰ Akuavi Adonon, “Le droit étatique mexicain et les populations indigènes: fonction de reconnaissance ou fonction d’intégration”: <http://droitcultures.revues.org/187>

²³¹ From the WIPO translation: http://www.wipo.int/wipolex/en/text.jsp?file_id=218270

use; 2. adequate use of available natural resources and preservation of the environment; 3. compliance with the provisions that regulate labor relations; 4. development that favors the well-being of the owners and workers” (Articles 182, 186). Further, the constitution prohibits the confiscation of lands of small farmers for repayment of debt: “The small rural property, as defined by law, provided that it is exploited by the family, shall not be subject to attachment for the payment of debts incurred by reason of its productive activities, and the law shall establish the means to finance its development” (Article 5. XXVI).

In Europe, the current **Italian constitution**²³² limits private ownership of land: “For the purpose of ensuring the rational use of land and equitable social relationships, the law imposes obligations and constraints on private ownership of land; it sets limitations to the size of property according to the region and the agricultural area; encourages and imposes land reclamation, the conversion of latifundia and the reorganization of farm units; and assists small and medium-sized properties” (Article 44). It also emphasizes the social function of private property: “Private property is recognized and guaranteed by the law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to all” (Article 42).

The **German constitution** currently in force²³³ advocates not only collective ownership of land and natural resources but also of the means of production: “Land, natural resources and means of production may for the purpose of socialization be transferred to public ownership or other forms of public enterprise by a law that determines the nature and extent of compensation” (Article 15).

In Asia, the Chinese and Vietnamese revolutions made possible agrarian reforms with the expropriation of the great landed estates, the collectivization of land and the creation of cooperatives,²³⁴ while still allowing individual property for the peasantry of both countries. For example, while land remained the property of the state in **Vietnam**,²³⁵ “peasants were given the right to inherit, transfer, lease, and mortgage their land use rights. By 1999, more than 10 million households had received their land-use certificates, representing 87% of households and 78% of agricultural land in Vietnam” – keeping in mind that the average area of these landholdings was only 2.5 hectares in the 1960s.²³⁶

²³² *Constitution of the Italian Republic*; adopted 27 December 1947:

https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

²³³ Basic Law for the Federal Republic of Germany: <https://www.btg-bestellservice.de/pdf/80201000.pdf>

²³⁴ Antonio B. Quizon, *Land Governance in Asia: Understanding the Debates on Land Tenure Rights and Land Reforms in the Asian Context*, International Land Coalition, 2013, p. 10: <http://www.landcoalition.org/en/publications/land-governance-asia>

²³⁵ According to Article 53 of the Vietnamese constitution, revised version, 28 November 2013, “Land, water resources, mineral resources, resources in the sea and airspace, other natural resources, and property managed or invested in by the State are public property, owned by all the people, and represented and uniformly managed by the State: <http://en.vietnamplus.vn/Home/The-Constitution-of-the-Socialist-Republic-of-Vietnam/20141/45126.vnplus>

²³⁶ Antonio B. Quizon, *Land Governance in Asia: Understanding the Debates on Land Tenure Rights and Land Reforms in the Asian Context*, International Land Coalition, 2013, p. 28.

The constitution of **China**²³⁷ enshrines “the socialist economy of the collective property of the laboring masses”, including on those laboring on the land: “Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and private plots of cropland and hilly land are also owned by collectives” (Article 10).

In Africa, two legal system (customary and modern) exist side by side: “In some nations, over 90 percent of land transactions are still governed by customary legal paradigms, and the decisions and rules established under customary systems are recognized as legally valid and binding by their users. The result has been a wide gap between nations' formal legal systems and the rules that govern the lived realities of the majority of those nations' citizens.”²³⁸ The law regulating lands in **Mozambique** (Lei de Terras, 1997) stipulates that “anyone living or working on land for ten years in good faith has an automatic de jure 'right of use and benefit' over that land, and allows for community lands to be registered as a whole, thus formalizing communal customary rights. Communities may continue to administer and manage their lands according to custom, with the caveat that such practices should not contravene the national constitution.”²³⁹ Regarding the constitution of this country, its Article 109 stipulates: “All ownership of land shall vest in the State. Land may not be sold or otherwise disposed of, nor may it be mortgaged or subject to attachment. As a universal means for the creation of wealth and of social well being, the use and enjoyment of land shall be the right of all the Mozambican people.” It is also the state that sets “the conditions under which land may be used and enjoyed. The right to use and benefit from land shall be granted to individual or corporate persons, taking into account its social or economic purpose” (Article 110).²⁴⁰

At the international level, the *Declaration on Social Progress and Development*²⁴¹ recognizes the social function of property, including land, and calls for forms of land ownership that will assure equal property rights for all. Thus, its Article 6 declares: “*Social progress and development require the participation of all members of society in productive and socially useful labor and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people.*”

In conclusion to this chapter, one can say that, although the title of private ownership to land can protect individual and collective rights of communities and/or indigenous peoples in some contexts and countries, as discussed above

²³⁷ The Constitution of the People's Republic of China, 1982, and its amendments up to 2004: <http://en.people.cn/constitution/constitution.html>

²³⁸ *Statutory recognition of customary land rights in Africa: An investigation into best practices for lawmaking and implementation*, by Rachael S. Knight for the Development Law Service FAO Legal Office, FAO, Rome, 2010, p. 3: <http://www.fao.org/docrep/013/i1945e/i1945e01.pdf>

²³⁹ *Ibid.*, Executive Summary, p. x.

²⁴⁰ WIPO translation: http://www.wipo.int/wipolex/en/text.jsp?file_id=206607#LinkTarget_3055

²⁴¹ Proclaimed by the General Assembly 11 December 1969 [Resolution 2542 (XXIV)].

(Chapter IV.B), in other contexts, it can make these same communities and peoples vulnerable, indeed, fragile, as in the case of the indigenous peoples of Cambodia (see above). As the Special Rapporteur on the Right to Food has remarked, the question has many facets and depends on many factors. “In fact, the creation of a land rights market can cause land to be taken out of production in order to be held as an investment by speculators, resulting both in decreased productivity and in increased landlessness among the rural poor”.²⁴² In line with this, the attribution of ownership titles can result in effects that are undesirable when not downright problematic “unless it is transparent and carefully monitored, ... if it is based on the recognition of formal ownership, rather than on land users’ rights, the titling process may confirm the unequal distribution of land, resulting in practice in a counter-agrarian reform.”²⁴³ Thus, the Special Rapporteur urges rather the limitation of land sales in order to “protect smallholders from pressure to cede their land ... [and] use rights regarding communal land and preserve communal forms of land management”.²⁴⁴ In this context, measures in favor of secure tenure and the recognition of land use rights seem to be a viable alternative in contexts where individual ownership title does not constitute a better solution.

C. Secure Tenure

Although it can never entirely replace an agrarian reform worthy of the name, and depending on the context, secure tenure constitutes an essential condition for peasants, not only for their right to food or to work but also for their right to adequate housing. It is also essential in urban areas given real estate speculation and evictions. Thus, the United Nations human rights bodies have developed a rich jurisprudence from the angle of the right to adequate housing but also referring often to land since control of land is indispensable for the respect of the right to adequate housing. In this chapter, we present measures proposed by the United Nations human rights bodies and by the FAO.

1. *The United Nations*

For the **Committee on Economic, Social and Cultural Rights**, housing is in conformity with international law if, inter alia, legal secure tenure – including legal protection against eviction – is guaranteed at all times.²⁴⁵ In its *General Comment N° 4* on the right to adequate housing,²⁴⁶ the Committee identified several common factors, the first being legally secure tenure. While secure tenure take various forms including renting (public and private), lodging, lease, occu-

²⁴² General Assembly, *Report of the Special Rapporteur on the Right to Food*, A/65/281, 11 August 2010, § 19.

²⁴³ *Ibid.*, § 17.

²⁴⁴ *Ibid.*, § 20.

²⁴⁵ Cited in *The Right to Housing*, Geneva: CETIM, August 2007, p. 6: http://www.cetim.ch/en/publications_logement.php

²⁴⁶ Committee on Economic, Social and Cultural Rights, *General Comment N° 4: The Right to Adequate Housing*, 13 December 1991, § 8(a) on legal security of tenure and § 8(e) regarding accessibility.

pation by the owner, priority housing and irregular settlements, it also refers to security of rights over land. The Committee has notably emphasized the situation of landless persons, noting that the failure of access to land fundamentally harms the fulfillment of their right to adequate housing. The Committee has noted that “discernible governmental obligations need to be developed aiming to substantiate **the right of all to a secure place to live in peace and dignity, including access to land as an entitlement**” (emphasis added). The Committee added that “within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal.” This approach highlights the way the fulfillment of the right to adequate housing necessarily involves the guarantee by the state of access to land and also land security for landless peasants. Beyond its General Comment N° 4, the Committee, in its General Comment N° 7, speaks in favor of legal protection against forced evictions **whatever be the form of occupation**: “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”.²⁴⁷

Raquel Rolnik, the former **Special Rapporteur on the Right to Adequate Housing**, in the *Guiding principles on security of tenure for the urban poor* which she published in her last report,²⁴⁸ emphasized the importance of security of tenure, to wit “a set of relationships with respect to **housing and land**, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one’s home in security, peace and dignity. It is an integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights. All persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats” (§ 5). For the Special Rapporteur, “the concept of legitimate tenure rights extends beyond mainstream notions of private ownership and includes multiple tenure forms deriving from a variety of tenure systems” (§ 5). While advocating the promotion of the social function property, she exhorts states to act against speculation and underutilization of land: “In particular, States, including relevant authorities, should promote access to secure and well-located housing for the urban poor... adopt measures to combat speculation and underutilization of private land, housing and buildings” (Guideline 4). Limits should be imposed on the right to private property “for the purpose of promoting social interests and the general welfare” and states should “recognize the social function of land through, inter alia, the collection of property taxes, the exercise of expropriation powers for the public good, adverse possession laws, and urban planning that designates spaces for public use and environmental protection” (§ 42).

²⁴⁷ Committee on Economic, Social and Cultural Rights, *General Comment N° 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions*, 20 May 1997, § 1.

²⁴⁸ Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, A/HRC/25/54, 30 December 2013.

The *Basic Principles and Guidelines on Development-based Evictions and Displacement*²⁴⁹ contain protective measures regarding the right of access to land: “In order to secure a maximum degree of effective legal protection against the practice of forced evictions for all persons under their jurisdiction, States should take immediate measures aimed at conferring **legal security of tenure** upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land” (§ 25; emphasis added). It is further noted: “Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare” (§ 40). Moreover, the Guidelines stipulate: “Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary” (§ 41). Finally, paragraph 46 recommends: “Neutral observers, including regional and international observers should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.”

Principle N° 2 of the *Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons*²⁵⁰, provide that: “All refugees and displaced persons have the right to have restored to them **any housing and/or property** of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that it is factually impossible to restore as determined by an independent, impartial tribunal” (emphasis added). By virtue of Principle N° 2, “States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, **land** and property restitution” (emphasis added).

In line with this, the *Guiding Principles on Internal Displacement*²⁵¹, in Principle 21, stipulate: “No one shall be arbitrarily deprived of property and possessions.” Thus, it is more accurate to say that the property and possessions left

²⁴⁹ Drafted by the first Special Rapporteur on the Right to Adequate Housing, Miloon Kothari. See Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Annexe 1, A/HRC/4/18, 11 June 2007: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement>

²⁵⁰ Adopted by the former Sub-Commission on the Protection and Promotion of Human Rights, August 2005.

²⁵¹ E/CN.4/1998/53/Add.2, 11 February 1998: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>. Based on international humanitarian law and international human rights law, these Guidelines were drafted by the Special Rapporteur on the Human Rights of Internally Displaced Persons (see also: *Internally Displaced Persons*, Geneva: CETIM, April 2007, http://www.cetim.ch/en/publications_depl-bro5.php).

behind by displaced persons must be protected against destruction, confiscation, occupation or arbitrary and illegal use. Principle 29(2) stipulates: “Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”

2. The FAO

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*²⁵² aim to bring land security and fair access to land, to fisheries and to forests, in order to eliminate hunger and poverty, to support sustainable development and to improve the management of the environment²⁵³. Their specific objectives can be given as follows:

“1. improve tenure governance by providing guidance and information on internationally accepted practices for systems that deal with the rights to use, manage and control land, fisheries and forests;

“2. contribute to the improvement and development of the policy, legal and organizational frameworks regulating the range of tenure rights that exist over these resources;

“3. enhance the transparency and improve the functioning of tenure systems;

“4. strengthen the capacities and operations of implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned with tenure governance as well as to promote the cooperation between the actors mentioned.”

Principle N° 3.1 of these *Guidelines* requests that states “recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.” Building on this, the *Guidelines* then specify that “States should safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law” (Principle N° 3.2).

²⁵² Approved by the Committee on World Food Security 11 May 2012 during its 38th session (extraordinary). These *Guidelines* should be completed by “another series of guidelines on responsible agricultural investments in the context of food security and food, which are currently being reviewed and discussed by the Committee”. Olivier de Schutter and Raquel Rolnik in and editorial in support of *La terre est à nous! Pour la fonction sociale du logement et du foncier, résistances et alternatives*, Paris: AITEC-COREDEM-RITIMO, March 2014, p. 16.

²⁵³ <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

The FAO's *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*²⁵⁴ advocate the protection of land, the right to inherit, and agrarian reform. Thus, Guideline N° 8.10 on “Land” stipulates: “States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.”²⁵⁵

CONCLUSION

In view of the analysis in this publications, the international recognition of the right to land for peasants is imperative, for the peasants are the guarantors of food security and of the fulfillment of the right to food, in particular in developing countries, where they supply up to 80% of locally consumed food. However, at the same time, and paradoxically, 80% of nearly a billion persons suffering from mal-nutrition live in rural areas, of whom half are small family farmers. These persons are victims of violations their fundamental rights, such as the right to food and to life, to cite only two. This threatens world food security and concerns everybody. In other words, this is literally of vital concern to humanity.

The United Nations instances (the Human Rights council, the Special Rapporteur on the Right to Food, the Special Rapporteur on the Right to Food, the FAO, the General Assembly etc.) have repeatedly emphasized the necessity of reinforcing the protection and the fulfillment of the rights of peasants and other persons working in rural areas. As discussed above, the United Nations monitoring mechanisms regarding economic, social and cultural rights (Committee on Economic, Social and Cultural Rights, the Special Rapporteur on the Right to Feed and the Special Rapporteur on the Right to Adequate Housing) have advocated a recognition of the right to land as an urgent necessity to proceed with agrarian reform. Jurisprudence (at the national, regional and international levels) cited above is in line with this. The United Nations General Assembly proclaimed 2014 the International Year of Family Farming.

Moreover, when one takes into account that peasants play a determining role in the fight against climate disruption and the conservation of biodiversity, one can better take the measure their contribution in these areas, too. Yet, without land, the peasants are defenseless.

Further, it has become obvious today that the agribusiness productive logic has failed in its claim to “feed humanity”, for it is largely responsible not only for

²⁵⁴ Guidelines adopted at the 127th session of the FAO Council, November 2004:

<http://www.fao.org/docrep/009/y7937e/y7937e00.htm>

²⁵⁵ <http://www.fao.org/docrep/009/y7937e/Y7937E03.htm#ch2.8>

overproduction of food (of poor quality, moreover), of waste (natural resources, energy and food), sickness caused by inhuman treatment of animals (not to mention epidemics happening regularly in intensive animal raising), but also for environmental pollution and destruction. Humanity has already surpassed its environmental footprint,²⁵⁶ for the day when it occurs has been steadily occurring earlier and earlier every year, with the result that we are now living on borrowed time.²⁵⁷

For Jan Douwe Van Der Ploeg, given the current food, agricultural and environmental crises, it is clear that the solution is to be found in *repeasantization*. Drawing on empirical studies carried out irrefutably in the course of 40 years in several European countries, he describes, in figures, the viability of peasant agriculture and the repeasantization in Europe. For him, agribusiness has no future, given that it ignores the “nature” factor in the production process and that its organization, in spite of appearances, remains very fragile:

*Industrialization requires the destruction of environmental, social and cultural capital. Moreover, the business production processes that have been introduced have turned out to be extremely fragile. ... Since agricultural production is disconnected from local ecosystems, industrialization involves the imposition upon nature of artificial growth factors and, accordingly, the marginalization of nature, indeed, in the long run its probable elimination.*²⁵⁸

This is obviously not the case with peasant agriculture for it “allows forms of co-production between humans and living nature which interact with the market, making survival possible and leading to future perspectives”.²⁵⁹ For J. D. Van Der Ploeg the peasantry cannot survive without autonomy. The right to land is an indispensable condition for attaining this autonomy.

The right to land, in particular, must comprise the redistribution of land (agrarian reforms), must be based on the social function of land as opposed to absolutist private property, while encouraging the right to collective use, and guaranteeing security of occupation of the land.

The international recognition of the right to land for peasants would represent a significant contribution of the United Nations to the world-wide tendency that is aiming to better validate the role and potential of peasants and to support them more firmly. This recognition will contribute greatly to the fulfillment and promotion of the human rights of peasant, but will also play a preventive role against violations of these rights.

²⁵⁶ “The ecological footprint is a measure of human demand on the Earth's ecosystems. It is a standardized measure of demand for natural capital that may be contrasted with the planet's ecological capacity to regenerate. It represents the amount of biologically productive land and sea area necessary to supply the resources a human population consumes, and to assimilate associated waste. Using this assessment, it is possible to estimate how much of the Earth (or how many planet Earths) it would take to support humanity if everybody followed a given lifestyle.”
http://en.wikipedia.org/wiki/Ecological_footprint

²⁵⁷ http://www.footprintnetwork.org/en/index.php/GFN/page/earth_overshoot_day/

²⁵⁸ J. D. Van Der Ploeg, *Les paysans du XXI^e siècle*, op., cit., pp. 31 and 25.

²⁵⁹ *Ibid.*, p. 51.