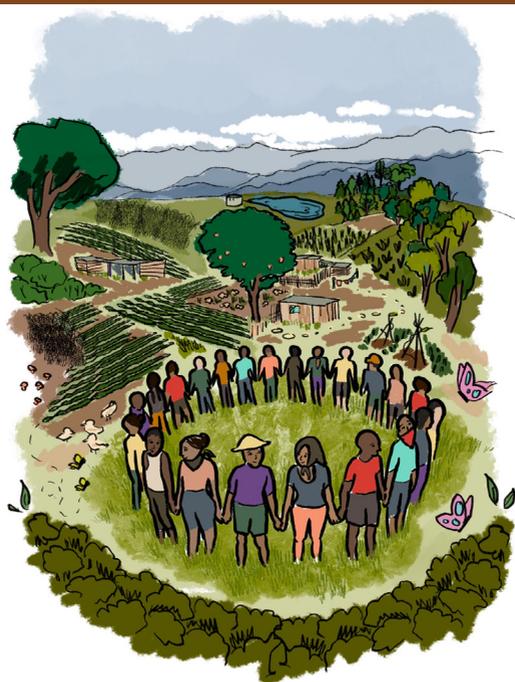


**UNITED NATIONS DECLARATION
ON THE RIGHTS OF PEASANTS
AND OTHER PEOPLE WORKING IN RURAL AREAS**

**Right to land and
natural resources**

(art. 17)

Training sheet No. 2



*“There is not one developed world and one underdeveloped world
just one maldeveloped world”*

Rue J.-C. Amat 6
1202 Geneva
Switzerland
Tel.: +41(0)22 731 59 63

www.cetim.ch
contact@cetim.ch
 cetimGeneve
 @CETIM_CETIM

THE RIGHT TO LAND AND NATURAL RESOURCES

The right to land is established in article 17 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. The cornerstone of the Declaration, it was one of the rights most eagerly awaited by peasants. It was the subject of bitter discussions with States during the negotiations at the United Nations.

The land is peasants' most basic "tool"; above all they see it as the place where they live their life. The seven paragraphs of article 17 establish a right that is comprehensive and robust, one that meets the demands of peasants and other rural workers.

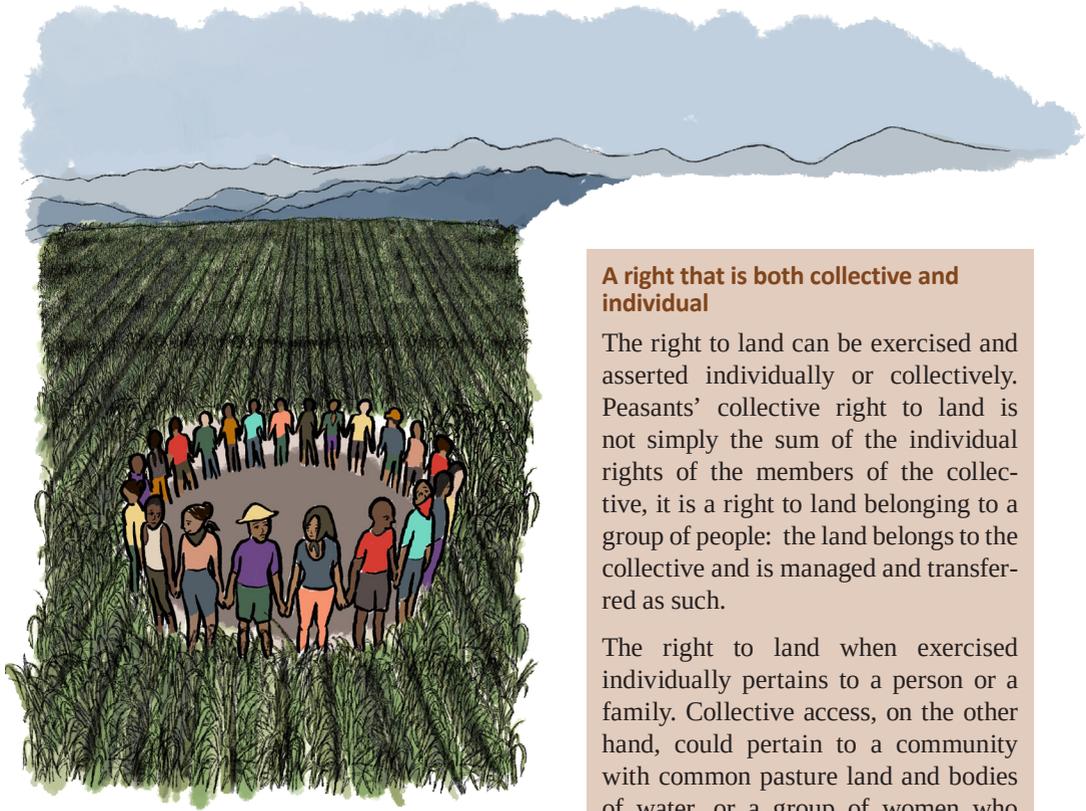
The right to land and natural resources must be read in conjunction particularly with articles 2 (general obligations of States), 5 (exploitation of natural resources), 21 (right to water) and 24 (right to housing) of the Declaration, all of which strengthen it further.

Access to land and other natural resources is essential to peasants, for their work and for their existence. It is also an indispensable prerequisite for the exercise of other human rights. Thus, paragraph 1 of article 17 provides that access to land and other natural resources must enable peasants *"to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures."*

What access to land guarantees, in other words, is the right to life and to dignity, but also to food, housing and culture, and it underpins the implementation of all other peasants' rights. The Declaration thus establishes land and natural resources as the foundation stone of peasant rights. To that end, this article guarantees access to land and resources and safe use of that land and those resources.

We will now present the key components of article 17, in order of importance, and also one section of article 5, because the two are closely linked.





Article 17 is unambiguous: “Peasants and other people living in rural areas have the right to land, individually and/or collectively [...]”. This right includes the right of access to land and other natural resources. This principle is elaborated in subsequent paragraphs. Access can be individual or collective; it can take any legal or non-legal form whatsoever, as long as it permits a high enough standard of living for the realization of peasants’ other human rights.

A right that is both collective and individual

The right to land can be exercised and asserted individually or collectively. Peasants’ collective right to land is not simply the sum of the individual rights of the members of the collective, it is a right to land belonging to a group of people: the land belongs to the collective and is managed and transferred as such.

The right to land when exercised individually pertains to a person or a family. Collective access, on the other hand, could pertain to a community with common pasture land and bodies of water, or a group of women who work a plot together. It is also a right that may be claimed from the State by all peasants individually, whether they own land or not.

Sustainable use and management of land and other natural resources

Paragraph 1 also establishes peasants’ right to use and manage land and other natural resources in a sustainable manner. This means they can decide, for example, what to use the land and other natural resources for and what methods to use. The issue here is peasants’ sustainable use of land and other natural resources. This is not the same as the use made of the land in industrial agriculture, which is highly mechanized and chemicalized, and based on the short-term profit of agribusiness, which depletes natural resources.

The list in article 17, paragraph 1, is not exhaustive; there may be other resources that are also covered by that right. In order to establish which they are the question to ask is whether peasants and other workers can do their work without a given resource. If not, then they are entitled to that resource.

Art. 17.1

“Peasants and other people living in rural areas have “the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.”

This paragraph means that States must take steps to preserve land not only as a productive resource but also as part of an ecosystem. It also means promoting the use of agroecology. Over and above the preservation of land and other natural resources, gratifying though that is, this obligation also ensures that the right to land benefits peasants who are able take care of the land and natural resources in the long term, rather than companies that use intensive agriculture and destroy ecosystems. In addition, States must refrain from forcing nomads to settle.

AGRARIAN REFORM AND THE SOCIAL FUNCTION OF LAND (ART. 17.6)

Inclusion of a reference to agrarian reform in the context of the right to land in the Declaration was a non-negotiable demand from peasants’ organizations. So the fact that it appears there, and figures so prominently, represents a victory. It is mentioned in article 17, paragraph 6, as an obligation on States. On that basis it can be considered a right of peasants.

Based on this article, peasants can require the State to take steps to have land redistributed so that their right to land is realized. That is to say, States must not only ensure that peasants are not prevented from accessing land, but must actively help them to access it.

This obligation on States has two purposes: to facilitate access to land and to prevent land being concentrated in the hands of a minority of owners and/or agribusinesses, in recognition of the social function of land.

The **social function of land** is the principle that land is not a mere commodity but exists for the benefit of society as a whole. Land use must be subject to democratic debate; States must be held accountable for its use and cannot shirk their responsibility by invoking private property rights or “market forces.” Note that, by affirming the social function of land, the Declaration makes it possible to demand that land is distributed in such a way as to always meet social needs, and to meet them first.

Art. 17.6

“Where appropriate, States shall take appropriate measures to carry out agrarian reforms in order to facilitate the broad and equitable access to land and other natural resources necessary to ensure that peasants and other people working in rural areas enjoy adequate living conditions, and to limit excessive concentration and control of land, taking into account its social function. Landless peasants, young people, small-scale fishers and other rural workers should be given priority in the allocation of public lands, fisheries and forests.”

The inclusion in one and the same paragraph of not only the obligation to take measures to carry out land reforms, but also the recognition of the social function of land, should prompt States to launch compulsory reforms, i.e. not just encouraging but requiring the redistribution of land.

SECURITY OF TENURE (ART. 17.3)

To be effective, the right to land cannot be simply the right to access land. For peasants, the loss of land is a violation of this right. Paragraph 3 sets forth States' obligation to recognize land tenure. The main violation of the right to land in many countries, after lack of access to land, is the lack of security of tenure.

This paragraph covers all the forms of tenure that States must recognize: customary land tenure rights not currently protected by law – the right of tenure being not a right of ownership but of use – and all other forms of legitimate tenure. States are also required to recognize systems and models that are different from those they have instituted. The purpose of this paragraph is to compel States to protect all peasants' rights over the land. The inclusion of a reference to legitimate rights means that rights that are not yet recognized by any authority are nevertheless valid and must be protected.

Legal certainty means that the State recognizes peasants' use of land and guarantees the continuity of such use. That is to say, once the State has recognized the right to use the land, a person or community may assert that right before a court or other authority in the event of a dispute. Peasants can therefore demand that their State establish a system for the recognition of land rights of all kinds.

States can in no case convert these rights into private property rights for the benefit of transnational agribusiness corporations. On the contrary, they must defend these rights where they are challenged by such companies or when peasants are evicted.

Transboundary tenure issues (art. 7.3)

Article 7, paragraph 3, of the Declaration provides that States must cooperate "with a view to addressing transboundary tenure issues affecting peasants and other people working in rural areas [...]".

States must also recognize collective systems of land use and land management. Also under this paragraph, "*States shall recognize and protect the natural commons and their related systems of collective use and management.*"



NON-DISCRIMINATION (ART. 17.2)

Paragraph 2 requires States to ensure that access to land is not hindered by discrimination of any kind. Under this provision, then, all persons have the right to access land on an equal basis.

This paragraph points up several kinds of discrimination regularly encountered in access to land, resulting in particular from “change of marital status, lack of legal capacity or lack of access to economic resources”. However, this does not mean that these three types of discrimination are the only ones that need to be eliminated, or that peasants should not be protected from other forms of discrimination, such as those based on ethnicity, religious belief, gender, etc.

PROTECTION FROM EVICTION AND FORCED DISPLACEMENT (ART. 17.4)

Paragraph 4 refers to international human rights and humanitarian law and to existing legislation in that area, which would include the Geneva Conventions, and in particular article 17 of Protocol II.^[1]

The right not to be arbitrarily or illegally evicted, already recognized in international law as part of the right to housing, is here extended to peasants and their access to land. Just as eviction violates the right to housing, so the expulsion of peasants violates their right to land. This protection from eviction is one of the central pillars of the right to land.

Paragraph 4 also provides for protection from forced displacement. Forced displacement can be distinguished from eviction by the fact that it is collective in nature, often affecting a community or group, while eviction affects individuals or families.

Art. 17.4, excerpt

“States shall prohibit arbitrary and unlawful forced eviction, the destruction of agricultural areas and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as a means or method of war.”



¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. Entry into force, 7 December 1978. Article 17. Prohibition of forced movement: “1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. [...] 2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.”

RIGHT TO RETURN (ART. 17.5)

Paragraph 5 addresses a very specific situation, namely that of peasants who have been deprived of their land by force. It establishes the right of peasants to return to their land, provided they were evicted or displaced from that land illegally or arbitrarily. Illegality or arbitrariness exists when the law is not observed, or when a decision taken by an authority has no legal basis.

The right to return applies to land that peasants have been deprived of, regardless of the circumstances (war, land grabbing, natural disaster), as long as it was done illegally or arbitrarily. The right of return also applies to peasants who have had to leave their land “voluntarily”, for example populations displaced by armed clashes. Guaranteeing the right to return to the same land is a means of indirectly recognizing peasants’ ties to a particular territory.



PROTECTION AGAINST THIRD PARTIES (ART. 5.2)

As regards third parties, States have an obligation not only to have laws that clearly define the circumstances in which land can be taken back from a peasant or a community, but also to monitor cases to make certain that there is no abuse. Land reclamation cannot be completely prohibited; it would make agrarian reform impossible, for example.

If there is nevertheless an overriding general interest that justifies reclamation, that interest must be extremely narrowly defined; above all, all other avenues must be explored and adequate compensation must always be offered. In that regard, we should mention article 5.2, which states that:

“States shall take measures to ensure that any exploitation affecting the natural resources that peasants and other people working in rural areas traditionally hold or use is permitted based on, but not limited to:

- (a) A duly conducted social and environmental impact assessment;*
- (b) Consultations in good faith, in accordance with article 2 (3) of the present Declaration;*
- (c) Modalities for the fair and equitable sharing of the benefits of such exploitation that have been established on mutually agreed terms between those exploiting the natural resources and the peasants and other people working in rural areas.”*

SUMMARY

Key points on article 17

- The right to land provides a solid basis for agrarian reform and establishes the social function of land.
- It is a collective right and an individual right, which should be exercised without discrimination.
- Access to land and other natural resources for peasants is an essential precondition of their work, and also an essential prerequisite for the enjoyment of the other rights contained in the Declaration.
- This article recognizes various forms of tenure: customary rights not currently protected by law – the right of tenure being not a right of ownership but of use – and all other forms of legitimate tenure.
- It also recognizes systems of collective use and management of natural resources;
- Forced eviction and displacement are prohibited and peasants have the right to return in the event of arbitrary eviction or displacement.
- Peasants are also protected from the actions of third parties.



For more information, go to
www.cetim.ch/factsheets-on-peasants-rights

See also *The right to land*, Melik Özden, Human rights series,
CETIM, Geneva, 2014.

See also the text of the United Nations Declaration on the Rights of Peasants
and Other People Working in Rural Areas on the UN website,
<https://undocs.org/en/A/RES/73/165>



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