

RESEARCH BRIEF

THE RIGHT TO LAND AND OTHER NATURAL RESOURCES

KEY MESSAGES

- The United Nations (UN) General Assembly adopted the UN Declaration on the rights of peasants and other people working in rural areas (UNDROP) in 2018, after almost 20 years of mobilization by La Via Campesina and its allies. The UNDROP is based on several binding international human rights instruments, and has been elaborated in a way that is complementary to these and other international instruments protecting the right to land and other natural resources.
- The UNDROP recognizes the right to land and other natural resources for non-indigenous people and communities for the first time in international human rights law. Its articles 5 and 17 provide that this right can be exercised individually and/or collectively, and that it includes freedoms and entitlements: freedom from discrimination, protection against forced eviction, displacement and land exploitation, and entitlements to agrarian reform and to conservation and sustainable use of land and other natural resources. They also provide that landless peasants, young people, small-scale fishers and other rural workers should be given priority in the allocation of public lands, fisheries and forests. Combined with article 4, these articles define the right to land and other natural resources of rural women, who shall be empowered and enjoy all rights without discrimination.
- The right to land and other natural resources includes the right of peasants and other people working in rural areas to have access to, sustainably use and manage land and other natural resources to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures. Other rights which are essential to the protection of this right have been enshrined in the UNDROP, including the rights to food, food sovereignty, water, housing, participation, information, freedom of expression, access to justice, and environment.
- The UNDROP provides that all states, UN agencies, international and regional organizations shall contribute to its implementation. Civil society organizations and social movements, including peasant organizations, should also support UNDROP's implementation. Activities that these actors shall undertake to promote the UNDROP and protect the right to land and other natural resources include raising awareness about the UNDROP, fighting forced evictions and displacements, protecting land rights defenders, pushing for agrarian reform, pushing for the recognition of peasants and their communities as rights holders, pushing for the recognition of states and regional and international organizations as duty bearers, and calling for more accountability mechanisms while using existing ones.
- In 2019 and 2020, the UN Human Rights Committee and the Interamerican Court on Human Rights referred to the UNDROP to protect the right to land in two important cases. In December 2019, several UN human rights experts called the Human Rights Council to create a new special procedure to monitor the UNDROP, and they committed to protect the rights enshrined in the UNDROP, to integrate UNDROP's implementation in the exercise of their mandates, and to provide guidance to states on how they can implement the UNDROP. All national, regional and international human rights mechanisms should follow these examples and include the right to land and other natural resources and the UNDROP systematically in their work.

NOVEMBER 2020 | CHRISTOPHE GOLAY

INTRODUCTION

The right to land and other natural resources has been recognized in UNDROP's articles 5 and 17. To define this right, the UNDROP has built on a number of human rights instruments as well as on other international instruments, including the International Labour Organization Convention 169 on Indigenous and Tribal Peoples, the Committee on World Food Security (CFS) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, and the CFS Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication.

UNDROP'S ARTICLES 5 AND 17

Articles 5 and 17 of the UNDROP define the right to land and other natural resources and states obligations. Article 5 enshrines the right of peasants and other people working in rural areas – alone, or in association with others or as a community (art. 1.1) – to have access to and to use in a sustainable manner the natural resources present in their communities that are required to enjoy adequate living conditions, including land, and their right to participate in the management of these resources (art. 5.1). Article 17 recognizes the right to land and other natural resources of peasants and other people living in rural areas, and it provides that this right can be exercised individually and/or collectively (art. 17.1).

UNDROP' article 17 provides that the right to land and other natural resources includes the right of peasants and other people working in rural areas 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 (art. 17.1). This right includes freedoms and entitlements that states shall respect, protect and fulfil: freedom from discrimination, protection against forced eviction, displacement and land exploitation, and entitlements to agrarian reform and to conservation and sustainable use of land and other natural resources.

The right to land and other natural resources can be exercised alone, or in association with others or as a community

FREEDOM FROM DISCRIMINATION AND RURAL WOMEN'S RIGHTS

Peasants and other people working in rural areas have the right to the full enjoyment of the right to land and other natural resources, free from any kind of discrimination (art. 3.1 and 17.1). To guarantee that right, the UNDROP provides that states shall take appropriate measures to eliminate conditions that cause or help to perpetuate discrimination, including multiple and intersecting forms of discrimination, against peasants and other people working in rural areas (art. 3.3). States shall also remove and prohibit all forms of discrimination relating to the right to land and other natural resources, including those resulting from change of marital status, lack of legal capacity or lack of access to economic resources (art. 17.2).

Peasant women play a key role in local and global food security – producing food crops worldwide and earning incomes to feed their families. Yet women and girls represent the majority of the world's hungry, and are subject to multiple discrimination in access to land and other natural resources.

The rights of rural women have been recognized in article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women and, in a very similar way, in UNDROP's article 4.

This article provides that states shall take all appropriate measures to eliminate all forms of discrimination against peasant women and other women working in rural areas, to promote their empowerment, and to ensure that they enjoy without discrimination all the human rights and fundamental freedoms set out in the UNDROP, including the right to equal access to, use of and management of land and other natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes (art. 4.1 and 4.2).

PROTECTION AGAINST FORCED EVICTION, DISPLACEMENT AND LAND EXPLOITATION

To protect peasants and other people working in rural areas against the negative effects of land and other natural resources exploitation, UNDROP's article 5 provides that states shall take measures to ensure that any exploitation affecting the natural resources that they traditionally hold or use is permitted based on, but not limited to: a duly

conducted social and environmental impact assessment; consultations in good faith, in accordance with article 2.3 of the UNDROP; and 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 (art. 5.2).

Peasants and other people working in rural areas have the right to be free from forced eviction and displacement (art. 17.3 and 17.4). To guarantee the exercise of this right, states shall provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems. States shall protect legitimate tenure and ensure that peasants and other people working in rural areas are not arbitrarily or unlawfully evicted and that their rights are not otherwise extinguished or infringed. States shall also recognize and protect the natural commons and their related systems of collective use and management (art. 17.3).

To protect peasants and other people working in rural areas against arbitrary and unlawful displacement from their land and other natural resources, states shall incorporate protections against displacement into domestic legislation that are consistent with international human rights and humanitarian law. 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 (art. 17.4).

The UNDROP also provides that those who have been arbitrarily or unlawfully deprived of their lands have the right to return to these lands, including in cases of natural disasters and/or armed conflict, and to have restored their access to the natural resources used in their activities and necessary for the enjoyment of adequate living conditions, whenever possible, or to receive just, fair and lawful compensation when their return is not possible (art. 17.5).

UNDROP's article 24 on the right to housing, also provides that states shall not, arbitrarily or unlawfully, either temporarily or permanently, remove peasants or other people working in rural areas against their will from the homes or land that they occupy without providing or affording access to appropriate forms of legal or other protection (art. 24.3). When eviction is unavoidable, the state must provide or ensure fair and just compensation for

any material or other losses (art. 24.3).

ENTITLEMENTS TO AGRARIAN REFORM

The UNDROP recognizes the need to conduct agrarian reform to fulfil the right to land and other natural resources. Its article 17 provides that 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” (art. 17.6). It also provides that landless peasants, young people, small-scale fishers and other rural workers should be given priority in the allocation of public lands, fisheries and forests (art. 17.6).

CONSERVATION AND SUSTAINABLE USE OF LAND AND OTHER NATURAL RESOURCES

UNDROP's article 18 on the right to environment recognizes the right of peasants and other people working in rural areas to the conservation and protection of the environment and the productive capacity of their lands, and of the resources that they use and manage (art. 18.1).

To protect that right, it provides that states shall take effective measures to ensure that no hazardous material, substance or waste is stored or disposed of on the land of peasants and other people working in rural areas, and that they shall cooperate to address the threats to the enjoyment of their rights that result from transboundary environmental harm (art. 18.4). They shall also protect peasants and other people working in rural areas against abuses by non-State actors, including by enforcing environmental laws (art. 18.5). And they shall protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, from overuse and contamination by harmful substances, in particular by industrial effluent and concentrated minerals and chemicals that result in slow and fast poisoning (art. 21.4).

To fulfil that right, the UNDROP provides that states shall take measures aimed at the conservation and sustainable use of land and other natural resources used

in their production, including through agroecology, and ensure the conditions for the regeneration of biological and other natural capacities and cycles (art. 17.7).

ACCOUNTABILITY MECHANISMS

The UNDROP will never be properly implemented, if strong monitoring mechanisms do not exist at national, regional and international levels to make duty bearers accountable. CSOs and lawyers can be instrumental in supporting peasants and other people working in rural areas who are victims

of human rights violations, and in convincing national, regional and international human rights institutions to take steps to protect the rights enshrined in the UNDROP.

On 17 December 2019, nine UN special procedures and four members of UN treaty bodies called for more accountability mechanisms to ensure UNDROP implementation. They committed to protect the rights enshrined in the UNDROP, to integrate UNDROP's implementation in the exercise of their mandates, and to provide guidance to states on how they can implement the UNDROP. They also called the Human Rights Council to create a new special procedure to monitor the UNDROP. And they underlined that special measures shall be taken by states and other stakeholders to protect human rights defenders of land, environment and natural resources – who are the first victims of criminalization, intimidation and attacks against their physical integrity and life – and that their safety must be prioritized and protected via all available mechanisms.

In 2019, the Human Rights Committee was the first UN treaty body to refer to the UNDROP in an individual case, in its decision in *Portillo Cáceres and Others v. Paraguay*. Portillo Cáceres and members of his family are peasants engaged in family farming in Paraguay. They live in a community that received land under the agrarian reform programme in 1991. They sent a communication to the UN Human Rights Committee in 2016, claiming that massive use of agrochemicals (pesticides and insecticides) in nearby large plantations had poisoned several of them, led to the death of their relative, Ruben Portillo Cáceres, and polluted their land and other natural resources.

In its decision in this case, the Human Rights Committee found violations of Cáceres family members' rights to life,

to privacy, family, and home, and to an effective remedy, because of the failure of the state to enforce environmental regulations and to redress the resulting harms. The Human Rights Committee explained that Portillo Cáceres and members of his family depend on their crops, fruit trees, livestock, fishing and water resources for their livelihoods. It added that they have a special attachment to and dependency on the land, using the words of, and referring

to UNDROP's article 1.

For the Committee, these elements can therefore be considered to fall under the scope of "home", i.e. the place where a person resides or carries out his or her usual occupation.

As the pollution have had direct repercussions on Cáceres family's crops, fruit trees, livestock, fishing and water resources, their right to privacy, family and home had been violated.

In February 2020, in the case *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, in which it recognized for the first-time autonomous violations of the rights to a healthy environment, adequate food, water, and cultural identity, the Interamerican Court on Human Rights was the first regional human rights body to refer to the UNDROP to protect the right to land and other natural resources. The indigenous communities, composed of over 10'000 persons and united under the association Lhaka Honhat ("our land"), started to fight for their ancestral lands in 1984. The Interamerican Court received eight amici curiae from indigenous organizations, NGOs, an international expert and universities in relation to this case. In its decision, it ordered Argentina, inter alia, to grant titles to the indigenous communities, to refrain from doing anything on indigenous property that might affect the property's value or use without prior consultation, to create a fund for community development, and to prepare a study on actions to be taken for water conservation and to remedy contamination, and to avoid loss of forest resources and recover lost food sources.

THE EXAMPLE OF COLOMBIA

Colombia is one of the countries with the highest inequality in rural property in Latin America and the world. This extreme land concentration has been aggravated by the armed conflict which started in the 1980's, leading to resistance by peasant organizations, and

to the criminalisation of peasant leaders. To respond to this situation, peasant organisations decided to fight for agrarian reform and for the inclusion of peasants as rights holders in national laws and policies.

During UNDROP's negotiation, the peace agreements were concluded in Colombia, with point 1 of the Accord on comprehensive rural development focusing on peasants' right to land. Several elements of the draft UNDROP were debated during the peace agreements' negotiation, and then during the drafting and adoption of Resolution 464 of 2017, which established the public policy guidelines for peasant, family and ethnic community agriculture.

In 2018, peasant organisations chose the Tutela (legal action) as a strategy to call for the inclusion of peasantry as a category in national laws and policies. The outcome of this strategy was the Supreme Court of Justice's sentence 2028 of 2018, which ordered the relevant ministries to define the concept of peasantry and include it in their plans, programs and projects. During the same year, an administrative act created the office of peasant affairs in the Ministry of the Interior, as a national space for dialogue and negotiation.

On 4 April 2019, La Via Campesina, the Red Nacional de Agricultura Familiar, the Agrarian, Ethnic and Popular Summit, the Alliance for Agrobiodiversity, the National Federation of Agricultural Unions and FIAN Colombia organized a Forum on "The UN Declaration on the Rights of Peasants: Proposals and Challenges". At the end of this forum, participating organizations issued a statement in which they committed to disseminate and implement the UNDROP, and to push the national government to implement the Peace Agreements in accordance with the UNDROP. They also called for the inclusion of peasants in the National Development Plan, in recognition of their contributions to the right to food and the country's economy, for the full respect, protection and fulfilment of the rights of rural women, and for the defence of the peasants' lands and territories.

Few months later, peasantry was included in the National Development Plan, the National Department of Statistics included peasantry in the political culture survey, and the Office of the Attorney-General of the Nation issued Directive 007 on guidelines for the recognition, promotion and defence of the rights of the peasantry.

CONCLUSION

The UNDROP has been adopted to rebalance power relations in rural areas and to guarantee that states respect, protect and fulfil the rights of peasants and other people working in rural areas. In its mission to strengthen these rights, the UNDROP addressed a number of fundamental questions, including the right to land and other natural resources, a right that is central for billions of people. This right must now be implemented at national, regional and international levels.

RECOMMENDATIONS

In accordance with the UNDROP, and with the binding international treaties on which it is based:

- States and international and regional organizations shall disseminate the UNDROP and promote understanding of and respect for its provisions, including those protecting the right to land and other natural resources.
- States shall respect, protect and fulfil the right to land and other natural resources, and shall promptly take legislative, administrative and other appropriate steps to achieve progressively the full realization of the elements of this right that cannot be immediately guaranteed. They shall recognize the importance of international cooperation in support of national efforts aimed at implementing the right to land and other natural resources.
- States shall take all appropriate measures to eliminate all forms of discrimination against peasant women and other women working in rural areas, to promote their empowerment, and to ensure that they enjoy without discrimination the right to land and other natural resources.
- States should integrate the whole UNDROP or the right to land and other natural resources in domestic law, by revising their Constitutions or developing new national laws.
- States shall ensure the consistency of their national laws and policies, and international agreements and standards to which they are parties with the right to land and other natural resources.
- States shall strengthen the role of national human rights institutions in promoting and protecting the right to land and other natural resources.
- States shall protect human rights defenders of land and other natural resources, who are the first victims of criminalization, intimidation and attacks against their physical integrity and life, via all available mechanisms.
- States shall take all necessary measures to ensure that non-State actors that they are in a position to regulate, such as private individuals and organizations, and transnational corporations and other business enterprises, respect and strengthen the right to land and other natural resources.
- Domestic courts should protect the right to land and other natural resources, by directly applying the UNDROP, or using it to interpret rights recognized in domestic law or other international instruments.
- National human rights institutions should include the monitoring of the right to land and other natural resources in their work, including through awareness raising activities, training for various stakeholders, the analysis of the compatibility of laws with the UNDROP, the possibility to receive complaints about violations of the rights enshrined in the UNDROP, and the production of annual reports on UNDROP's implementation for national, regional and international bodies.
- Regional human rights bodies should use the UNDROP to protect the right to land and other natural resources. At regional level, parliamentary groups should be created on the rights of peasants and other people working in rural areas, and regional / sub-regional institutions should support the implementation of the right to land and other natural resources.

- The UN Human Rights Council should create a new special procedure on the rights of peasants and other people working in rural areas. It should also include explicit references to the right to land and other natural resources and to the UNDROP in all its relevant resolutions, in the mandates that it gives to subsidiary bodies and special procedures, and in the reports that it requests from the UN Secretary-General and the Office of the UN High Commissioner for Human Rights.
- States should use the Universal Periodic Review of the Human Rights Council to push for the implementation of the right to land and other natural resources in other States.
- UN special procedures should include the monitoring of the right to land and other natural resources in their thematic and country visit reports, and in their communications to states and other stakeholders.
- UN treaty bodies should include the monitoring of the right to land and other natural resources in their examination of state parties' periodic reports, in their concluding observations, in their general comments or recommendations in which they define the rights and states obligations in their respective treaties, and in their examination of communications.
- The Committee on World Food Security, the Food and Agriculture Organization of the UN (FAO), the International Fund for Agricultural Development (IFAD) and other UN specialized agencies, funds and programmes shall contribute to the full realization of the right to land and other natural resources, including through the mobilization of development assistance and cooperation. They shall also take measures to promote respect for and the full application of the right to land and other natural resources and follow up on its effectiveness.
- The right to land and other natural resources should be mainstreamed into the strategies aimed at achieving the Sustainable Development Goals and at implementing the UN Decade for Family Farming.
- The World Bank, the International Monetary Fund, the World Trade Organization and other intergovernmental organizations, including international and regional financial organizations, should take the right to land and other natural resources into account in their work.
- Civil society organizations and social movements, including peasant organizations, should use the UNDROP to protect the right to land and other natural resources. They should, inter alia, raise awareness, produce manuals and organize training about the right to land and other natural resources. They should also use the UNDROP to fight discrimination, forced evictions and displacements, to protect land rights defenders, and to push for agrarian reform, for the recognition of peasants as rights holders, and for the recognition of states and regional and international organizations as duty bearers.
- Civil society organizations and lawyers should support peasants and other people working in rural areas who are victims of human rights violations, by using the possibilities that national, regional and international human rights mechanisms offer in terms of monitoring, accountability and remedy. Among other activities, they should send information to these mechanisms, and support victims' claims based on the right to land and other natural resources.

SELECTED REFERENCES ON THE RIGHT TO LAND AND OTHER NATURAL RESOURCES

The Right to Land and the UNDROP: How Can We Use the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas to Protect the Right to Land? (full study)

The Implementation of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas

The Role of Human Rights Mechanisms in Monitoring the UN Declaration on the Rights of Peasants

Statement at the Occasion of the First Anniversary of the Adoption of the UNDROP – The Need to Take Steps to Implement the UNDROP

Agricultural and Land Commercialisation: Do They Foster Gender Equality and the Right to Food?

CEDAW General Recommendation No. 34 on the Rights of Rural Women

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests

Governing Tenure Rights to Commons

Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication

Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles)

Basic Principles and Guidelines on Development-Based Evictions and Displacement

Reports on Land Rights Presented by the Former UN Special Rapporteur on the Right to Food, Olivier De Schutter

Reports on Fisheries Presented by the Former UN Special Rapporteur on the Right to Food, Olivier De Schutter

OHCHR Publications on Land and Human Rights

FIAN International Briefing on the Right to Land and Other Natural Resources

CETIM Brochure on The Right to Land

Haki Zetu. ESC Rights in Practice. Land and Human Rights

Your Land, My Land, Our Land: Grassroots Strategies to Preserve Farmland and Access to Land for Peasant Farming and Agroecology

International Land Coalition

Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina

Portillo Cáceres and Others v. Paraguay

Forum in Colombia on the UN Declaration on the Rights of Peasants: Proposals and Challenges

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SUPPORTING THE IMPLEMENTATION OF THE UNDROP

In 2018, the UN Human Rights Council and General Assembly adopted the UNDROP. After having provided academic support to UNDROP's negotiation for ten years, the Geneva Academy project on the rights of peasants promotes UNDROP's implementation, through publications, conferences, expert seminars, and training courses.

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