



LAND AND HUMAN RIGHTS

Standards and Applications



UNITED NATIONS



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CONTENTS

HOW TO USE THIS PUBLICATION	iv
INTRODUCTION	1
I. STATUS OF LAND UNDER INTERNATIONAL LAW	3
II. TERMINOLOGY AND CONCEPTS RELATED TO LAND ISSUES	6
III. SUMMARY SHEETS	9
A. Non-discrimination and equality	10
B. Rule of law	16
C. Right to adequate food	19
D. Right to adequate housing	23
E. Right to an effective remedy	27
F. Rights to freedom of movement and residence	31
G. Rights to freedom of opinion, expression, assembly and association	34
H. Right to freedom of religion	37
I. Right to information	40
J. Right to life	44
K. Right to participation	47
L. Right to property	53
M. Right to self-determination	57
N. Right to take part in cultural life	60
O. Rights to water and sanitation	65
P. Rights of indigenous peoples to their traditional lands, territories and resources, including water	68
Q. Rights of human rights defenders working on land issues	73
R. Safeguards against limitation of human rights for public interest	77
S. Responsibilities of business enterprises and State duties	81
T. International Humanitarian and Criminal Law	85
IV. SELECTED BIBLIOGRAPHY AND GUIDANCE	93

HOW TO USE THIS PUBLICATION

This basic legal reference publication has been prepared as part of the OHCHR output on land and human rights. It aims to provide a concise and user-friendly guide on key international legal standards, including international human rights, humanitarian and criminal law, to those working on land issues so as to make them aware that such standards may be applicable to their work.

It begins with a brief overview of the main international law standards relevant to land and human rights. The introductory section is followed by “summary sheets” illustrating the links between international human rights standards and land issues, along with examples of the concrete application of the standard by human rights mechanisms. Each sheet can be read independently, as well as in combination with other sheets. Applicable standards may differ depending on the specific context.

Each summary sheet is composed of:

- Introductory paragraphs that illustrate situations where the standard is relevant;
- Key international standards that can be applied to land-related situations;
- Examples of how the standards have been applied and interpreted by United Nations and regional human rights mechanisms;
- Examples of international, regional and national human rights jurisprudence;
- References to relevant international standards and guidelines developed by United Nations human rights mechanisms or adopted by the governing bodies of United Nations agencies.

The present publication is based on research into the relevant international and regional legal instruments, and the interpretation and application of these standards by the United Nations human rights mechanisms, as well as the jurisprudence of international and regional human rights bodies.

This publication remains a work in progress. The list of applicable standards in the summary sheets is not exclusive and additional standards may be included as further analysis is developed.

This publication should be read in conjunction with other publications, guidance and tools produced by OHCHR, available at: www.ohchr.org.

To offer feedback on this publication, or for enquiries, please contact Bghazi@ohchr.org.

INTRODUCTION

Land is not a mere commodity, but an essential element for the realization of many human rights.

Access to, use of and control over land directly affect the enjoyment of a wide range of human rights. Disputes over land are also often the cause of human rights violations, conflicts and violence. Importantly, the human rights dimensions of land management are directly linked to most aspects of social development, peacebuilding and humanitarian assistance, as well as disaster prevention and recovery.

An increasing number of people are forcibly evicted or displaced every year to make way for large-scale development or business projects, such as dams, mines, oil and gas installations or ports. In many countries the shift to large-scale farming has resulted in forced evictions, displacements and local food insecurity, which in turn has contributed to an increase in rural to urban migration and consequently further pressure on access to urban land and housing. A considerable portion of this displacement is carried out in a manner that violates the human rights of the affected communities, thus further aggravating their already precarious situation. Urban development projects have led to socioeconomic polarization in cities owing to escalating costs of land and housing and depletion of low-income housing. Measures taken to protect the environment are also at times in conflict with the interests and human rights of populations that depend on land for subsistence and survival. At the same time, failure to effectively prevent and mitigate environmental degradation and the negative impact of climate change could drastically reduce access to land, especially for marginalized groups. In addition, land remains a crucial element in conflict and post-conflict contexts. Disputes over land are often the cause of conflicts and, once the conflict is over, the restitution of housing, land and property rights for returning refugees and internally displaced persons constitutes a fundamental part of peacebuilding.

Growing global concerns about food security, climate change, rapid urbanization and the unsustainable use of natural resources have all contributed to renewed attention to how land is being used, controlled and managed. Yet, up to now, a systematic analysis has not been conducted to unpack the application of international human rights standards to the management of land in order to protect and promote human rights. This publication, together with other publications and tools on land and human rights produced by the Office of the United Nations High Commissioner for Human Rights (OHCHR), aims to promote understanding of land issues from a human rights perspective.



I. STATUS OF LAND UNDER INTERNATIONAL LAW

National laws, policies and customs usually determine how land is used, controlled and transferred. Statutory recognition of individual land titles may strengthen security of tenure. However, when statutory law fails to recognize tenure rights exercised as customary or subsidiary tenure (e.g., tenure rights exercised by indigenous peoples, or seasonal use of land by nomadic communities), individual titling may undermine access and control over land by people whose livelihood depends on it. In the private sphere, discriminatory inheritance laws, including customary rules, often undermine equitable access to land for women and girls.¹

In some countries, national law recognizes various forms of a “right to land”, such as a right to a plot of land or adverse possession (the acquisition of rights through possession for a prescribed period of time and under certain conditions). In national jurisdictions individuals and groups of individuals may enjoy various land rights and property rights to access, use, control and transfer land and property. Most countries have some form or other of land registration systems for that purpose. On a national and local level, land tenure systems are made up of multiple layers of rules, laws, customs, traditions, perceptions and regulations. However, these “land rights” do not necessarily entail a human right, or a right to enjoy one’s property.

While there is currently no explicit reference to a general human right to land under international human rights law, several international human rights instruments link land issues to the enjoyment of specific substantive human rights. References to land are made in relation to the right to food, equality between women and men, and the protection and assistance of internally displaced persons, as well as the rights of indigenous peoples and their relationship with their ancestral lands or territories. United Nations human rights treaty monitoring bodies and special procedure mandate holders have addressed land issues in relation to various rights, including non-discrimination and the rights to adequate housing, food, water, health, work, freedom of opinion and expression, and self-determination, as well as the right to participate in public affairs and cultural life.²

On the basis of regional human rights instruments, regional mechanisms, including the African Commission on Human and Peoples’ Rights, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, and the European Court of Human Rights, as well as the European Committee of Social Rights, have addressed land issues in relation to a number of civil, cultural, economic, political and social rights, including the rights of minorities and indigenous peoples.

¹ Report of the Special Rapporteur on the right to food (A/65/281).

² See chap. IV below.

International humanitarian law may also be relevant to land issues, for example, through its prohibition of attacks on and the destruction of objects indispensable to the survival of the civilian population and the responsibilities of occupying powers within occupied territories. The extensive destruction and appropriation of property may also amount to war crimes.

Standards relevant to refugees and displaced persons recognize their housing, land and property rights, underlining that securing these rights is essential to long-term peace, stability, economic development and justice. For example, the 1951 Convention relating to the Status of Refugees includes provisions on the rights of refugees to residence, property, housing and freedom of movement.

While there are limited references to the relationship between land and human rights in international environmental law, there is growing awareness that a safe, clean, healthy and sustainable environment, including land as one of its elements, is a prerequisite for the enjoyment of human rights. Discussions on environmental law also acknowledge that certain human rights and principles, especially access to information, participation in decision-making and access to justice in environmental matters, are essential to good environmental decision-making. Discussions are ongoing regarding a right to a safe and healthy environment as a self-standing human right. The Human Rights Council has also started exploring the impact of climate change on the enjoyment of human rights.

In sum, regardless of the absence of a stand-alone human right to land, existing international human rights standards and other relevant international law address a wide range of land issues.

The present publication refers to both legally binding and non-binding human rights instruments. Treaties, some of which are called covenants, conventions or charters, are legally binding on the States that have ratified them. In addition, there are numerous soft law sources of international law, such as declarations, guiding principles and standard rules adopted by international organizations. While not legally binding per se, soft law instruments offer valuable guidance about the interpretation of binding instruments or are considered to reflect existing or developing legally binding norms, including those established under customary international law. They may also represent existing consensus among States and other stakeholders. This publication includes some of the most widely accepted soft law instruments, such as the Declaration on Human Rights Defenders (1998), the United Nations Declaration on the Rights of Indigenous Peoples (2007) and the Guiding Principles on Business and Human Rights (2011).



II. TERMINOLOGY AND CONCEPTS RELATED TO LAND ISSUES

In the majority of situations, human rights concerns arise largely in the context of governance of tenure. “Land issues” impacting upon human rights may go beyond the governance of land tenure to include environmental protection and access to natural resources linked to land (such as water, minerals, fossil fuels, forests and fisheries). However, while reference is made as much as possible to these broader aspects, a full and in-depth analysis of these issues is beyond the scope of the present publication.

Governance of land tenure is complex and depends on a number of national and contextual factors. National and local land tenure systems are made up of multiple layers of laws, rules, customs, traditions, perceptions and regulations, which sometimes overlap and/or contradict each other. How people access, use, control and transfer land has significant implications for respecting, protecting and fulfilling human rights.

There are no commonly accepted definitions or terminology in the context of land tenure. For the purpose of this publication, the following definitions and terms are used:

- **Land tenure** can be understood as the *relationship, whether legally or customarily defined, among individuals, groups of individuals or peoples with respect to land*. In broad terms, land tenure systems determine *who can use what resources for how long and under what conditions*.

Examples of categories of land use:

Various uses of land can be broadly divided into three, often overlapping, categories:

1. Land use for **collective** purposes:
 - Residential land use: for housing and human settlements;
 - Traditional, religious and cultural land use: for traditional and cultural use (such as ancestral lands and territories of indigenous peoples, sacred areas, religious institutions, cemeteries, etc.);
 - Institutional land use: for State-related activities (town halls, police stations, army facilities);
 - Service-provision land use (private and/or public): for schools, hospitals and health centres, transport infrastructure (roads, railways), electricity, water and sanitation facilities, etc.;
 - Recreational land use: for leisure and entertainment (parks, sports centres, etc.);
 - Environmental land use: conservation areas, natural parks, etc.

2. Land use for **productive** purposes:
 - Commercial land use: for shops, banks, private companies, etc.;
 - Industrial land use: for factories, plants, mining, etc.;
 - Agricultural land use: farmland, grazing land, etc.

3. Land use for **individual/private** purposes:
 - Private property and residence;
 - Financial use (asset, collateral, etc.).

Formal ownership/land title recognized under statutory law is not the only form of land tenure. The concept of land tenure encompasses a wide range of other forms of tenure, including rental, occupation, use of land as “commons”, indigenous tenure, seasonal use (e.g., as grazing land by mobile pastoralists), or use of land for gathering resources (e.g., water, firewood, fruits).

- **Access to, use of and control over land** refer to various aspects of land tenure. **Access to and use of land** represent *the opportunities for temporary or permanent use and/or occupation of land for housing, productive activities, use of land-based resources, or use of land for the enjoyment of cultural, religious and other activities.* **Control over land** refers to *the ability to effectively decide how the land should be used, by whom, and how the benefits generated should be allocated.*
- **“Security of tenure** is understood as a set of relationships with respect to housing and land, established through statutory or customary law or informal and hybrid arrangements, that enables one to live in one’s home in security, peace and dignity.”³
- Therefore, **land tenure security** can be understood as certainty for the recognition and protection of a person’s right to land, especially in the event of specific challenges.⁴ At a minimum, land tenure security should *protect occupants/users against forced eviction,⁵ harassment and other threats related to land regardless of the type of tenure.* In this context, land tenure security can be viewed as the degree of confidence individuals and groups enjoy in maintaining access to, use of and control over land. This is a prerequisite for their full enjoyment of human rights by:
 - (a.) Their not being arbitrarily deprived of access to, use of and control over land without due process in conformity with national and international standards;
 - (b.) Having their land tenure recognized as legitimate, including in cases where these entitlements are not stipulated in statutory law but may arise from indigenous, customary and other forms of tenure rights; and
 - (c.) There being effective dispute resolution mechanisms in the event of disputes and competing claims, and effective recourse mechanisms and remedies where there is violation of tenure rights.

It should be noted that informality of tenure (such as tenure rights exercised in informal settlements) is not a justification in itself for the denial of security of tenure.

³ Guiding principles on security of tenure for the urban poor in the report of the Special Rapporteur on adequate housing (A/HRC/25/54, chaps. II and III).

⁴ Food and Agriculture Organization of the United Nations (FAO), “Land tenure and rural development”, FAO Land Tenure Studies, No. 3, para. 3.31.

⁵ Forced evictions can be broadly defined as “the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions).



III. SUMMARY SHEETS

The following section provides summary sheets on relevant standards illustrating the links between human rights and other legal standards and land issues, along with examples of the concrete application of such standards to land issues.

Each sheet is composed of:

- Introductory paragraphs that illustrate situations where the standard is relevant;
- A summary of key provisions of international instruments, which may be legally or non-legally binding, with reference to the original sources;
- Examples of how the standards have been applied and interpreted by the United Nations and regional human rights mechanisms;⁶
- Examples of case law from international, regional and national human rights jurisprudence;⁷
- References to relevant international standards and guidelines developed by United Nations human rights mechanisms or adopted by the governing bodies of other United Nations agencies.⁸

Note: The summaries of key provisions of international instruments capture the key elements of relevant provisions and articles of international instruments for easy reference. However, the exact text of each provision, as well as the specific limitation or conditions attached to it, may vary instrument by instrument. Readers are strongly encouraged to consult the original text of the instruments when applying them.

Additional resources

- Official United Nations documents cited throughout the summary sheets, such as reports of special rapporteurs or concluding observations of treaty bodies, can be accessed through the Official Document System of the United Nations (<http://documents.un.org>).
- General comments or general recommendations of treaty bodies can be accessed at www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx.

Other useful resources

- Universal Human Rights Index: <http://uhri.ohchr.org/>
- Treaty bodies jurisprudence: <http://juris.ohchr.org/>
- Treaty bodies search: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en

⁶ The United Nations human rights mechanisms include:

- The Human Rights Council and the mandates it has established, including:
 - Special procedure mandate holders (such as special rapporteurs, independent experts, working groups on specific issues or on countries);
 - The Advisory Committee;
 - The universal periodic review;
- Treaty bodies established under United Nations human rights treaties.

For more information on these human rights bodies, refer to: www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx.

⁷ *Land and Human Rights: Annotated Compilation of Case Law* (United Nations publication, HR/PUB/15/5) provides more comprehensive references to these and other cases relevant to land and human rights.

⁸ See chap. IV below.

Summary Sheet

A. Non-discrimination and equality

Introduction

In many situations, access to, use of and control over land are denied on discriminatory grounds.

For numerous women worldwide, discrimination in marriage, inheritance, legal capacity or access to financial and other resources is the main obstacle to access, use and control of land. Poor rural women, for instance, are among the most marginalized. Their lack of secure tenure owing to discrimination based on gender has an impact on their own survival as well as on the well-being of their families and children, particularly following a divorce, death or remarriage of the spouse. Studies indicate, for example, that women who own land or a home are better placed to decide on their employment or access to a health facility, than those who do not own land or a home.⁹

Deep-rooted discrimination, such as caste-based discrimination, has denied discriminated groups access to the benefits of land reform.¹⁰ Lack of recognition of tenure rights is itself sometimes used as a ground for discrimination and excludes landless people from social services and entitlements. For example, residents of informal settlements are denied access

“In Cameroon there is no legal provision for women to own property. Following traditional laws, a woman does not inherit land since she will marry and then be provided for by her husband outside her community. When her husband dies, again she will not inherit as the land returns to the husband’s family.”

Source: Report of the Special Rapporteur on violence against women (E/CN.4/2000/68/Add.5), para. 14.

“The Committee expresses concern that access to certain rights set forth in the [International Covenant on Civil and Political Rights] may be hindered by the decisions taken by the community authorities in Flanders, concerning issues such as the purchase of communal land, access to services and housing, requiring that persons speak or learn Dutch, which leads to discrimination against certain groups within the population.”

Source: Concluding observations of the Human Rights Committee on Belgium (CCPR/C/BEL/CO/5), para. 10.

“Massive population movements and multiple displacements may create conflicts over land, ... several interlocutors shared their fears that land reallocation by traditional tribal leaders, particularly if conducted through less transparent processes, could result in discrimination against certain groups with potentially weak negotiation positions within communities, such as returning women and orphans.”

Source: Report of the Representative of the Secretary-General on the human rights of internally displaced persons: Mission to the Sudan (E/CN.4/2006/71/Add.6), para. 47.

⁹ See Hema Swaminathan, Rahul Lahoti and Suchitra J. Y., “Women’s property, mobility, and decisionmaking: Evidence from rural Karnataka, India”, Discussion Paper, No. 01188 (Washington, D.C., International Food Policy Research Institute, June 2012). Available from www.ifpri.org/sites/default/files/publications/ifpridp01188.pdf.

¹⁰ Jeetendra P. Aryal and Stein T. Holden, “Caste discrimination, land reforms and land market performance in Nepal”, Centre for Land Tenure Studies Working Paper, No. 01/11 (Ås, Norwegian University of Life Sciences, June 2011). Available from: www.umb.no/statisk/clts/papers/CLTS_WP1_2011.pdf.

to social security, health care and education because they are unable to register as citizens.¹¹

As stated by the Special Rapporteur on adequate housing, “Social security is critical to guaranteeing human dignity and the enjoyment of human rights when people are faced with circumstances that deprive them of their capacity to otherwise realize them. Sometimes homeless persons or individuals without a registered address are unable to access social security either owing to eligibility criteria or indirect bureaucratic obstacles. These obstacles amount to discrimination on the basis of tenure status. States should take all necessary steps to remove barriers faced by persons who are homeless or have an ambiguous tenure status in receiving social security, including by ensuring that a registered address and other residence requirements are not a de jure or de facto prerequisite to receiving benefits.”¹²

International standards as applicable to land

No one can be subjected to de jure or de facto discrimination in the recognition, enjoyment or exercise of their human rights based on grounds of race, colour, descent, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(Universal Declaration of Human Rights, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2; International Covenant on Civil and Political Rights, arts. 2 (1) and 3; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1 (1); Convention on the Rights of Persons with Disabilities, art. 5 (2))

All are equal before the law and are entitled without any discrimination to equal protection of the law.

(Universal Declaration of Human Rights, art. 7; International Covenant on Civil and Political Rights, art. 26; Convention on the Elimination of All Forms of Discrimination against Women, art. 15)

Equality between women and men

Women and men have an equal right to the enjoyment of all human rights.

(International Covenant on Economic, Social and Cultural Rights, art. 3; International Covenant on Civil and Political Rights, art. 3; Convention on the Elimination of All Forms of Discrimination against Women, art. 2 (a))

States shall take steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

(International Covenant on Civil and Political Rights, art. 23 (4))

States shall take all appropriate measures to eliminate discrimination against women in rural areas. In this context, States shall ensure to such women the right to equal treatment as men in land and agrarian reform as well as in land resettlement schemes.

¹¹ Amnesty International, “Serbia urged to stop forced evictions of Roma”, press release, 7 April 2011. Available from: www.amnesty.org/en/press-releases/2011/04/serbia-urged-stop-forced-evictions-roma/.

¹² A/HRC/25/54, para. 53.

(Convention on the Elimination of All Forms of Discrimination against Women, art. 14 (2) (g))

States shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. States shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. In this context, States shall ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

(Convention on the Elimination of All Forms of Discrimination against Women, arts. 15 (2) and 16 (1) (c) and (h))

Prohibition of racial discrimination

States undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law, in the enjoyment of the right to own property alone as well as in association with others, the right to inherit and the right to housing.

(International Convention on the Elimination of All Forms of Racial Discrimination, arts. 5 (d) (v) and (vi), and (e) (iii))

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

(United Nations Declaration on the Rights of Indigenous Peoples, art. 2; Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, of the International Labour Organization (ILO), art. 3)

Examples of application

The principles of non-discrimination and equality are fundamental to the exercise and enjoyment of human rights, including those related to access to, use of and control over land.

Discrimination under international human rights law is understood as any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights.¹³

Attention must be paid both to formal (de jure) and to substantive (de facto) discrimination. Formal discrimination occurs when a State's constitution, laws and official policies discriminate against individuals or groups on prohibited grounds. In its general comment No. 20 (2009), the Committee on Economic, Social and Cultural Rights refers to property status

¹³ See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 7.

– such as landownership or tenure, or lack thereof – as one of the prohibited grounds of discrimination (para. 25). The Committee also commented, in its general comment No. 15 (2002) on the right to water, that the enjoyment of economic, social and cultural rights, such as access to water services and protection from forced evictions, should not be made conditional on a person's land tenure status, including on living in informal settlement (para. 16 (c)).

However, preventing or eliminating formal discrimination may in itself neither change the situation of the persons and groups affected nor ensure substantive equality in practice. In its general comment No. 20 (2009), the Committee observes that tackling substantive discrimination requires “paying sufficient attention to groups of individuals who suffer historical and persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. This requires States to take necessary steps to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas” (para. 8).

Equality between women and men

The United Nations human rights treaty bodies have repeatedly affirmed women's equal rights in relation to access to, use of and control over land. In its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights states that implementing the right to an adequate standard of living based on equality between women and men “requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so” (para. 28). In its general recommendation No. 21 (1994) on equality in marriage and family relations, the Committee on the Elimination of Discrimination against Women further underlines that, with regard to property, “in countries that are undergoing a programme of agrarian reform or redistribution of land amongst groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed” (para. 27).

Denial of legal autonomy is often an obstacle to women's control over land. In its general recommendation No. 21 (1994), the Committee affirms that “when a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or male relative's concurrence or guarantee, she is denied legal autonomy” (para. 7). Based on this observation, the Committee required that “all States parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation” on relevant articles of the Convention (para. 43) and enact and enforce legislation necessary to comply with the Convention (para. 49). In a similar vein, the Human Rights Committee in its general comment No. 28 (2000) on equality of rights between men and women, states that “the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground” (para. 19).

In order to implement these standards, the Committee on the Elimination of Discrimination against Women has consistently issued recommendations to States parties. For instance, in its concluding observations on Sri Lanka (2011), it recommended “to speedily amend the Land Development Ordinance in order to ensure that joint or co-ownership be granted to both spouses when the State allocates land to married couples”.¹⁴ Likewise, the Committee emphasized the importance of women’s economic empowerment to overcome existing discrimination. In its concluding observations on Chad (2011), the Committee urged Chad “to make the promotion of gender equality an explicit component of its national, State and local development plans and programmes”, and encouraged the Government “to strengthen its efforts to promote the economic empowerment of women through easier access to employment, credit, land and other resources taking into account their social realities”.¹⁵

Regarding equality between men and women in relation to the right to property, see also the summary sheet on the right to property.

Indigenous peoples and minorities

Regarding indigenous peoples and minority communities, in its concluding observations on Kenya (2008), the Committee on Economic, Social and Cultural Rights drew attention to disparities in access to land affecting minorities and indigenous peoples in rural areas and asked the State party to address these by, for example, adopting the Draft National Land Policy and establishing land inspectorates to monitor discriminatory allocation of land.¹⁶ The Human Rights Committee, in its concluding observations on Sweden (2009), expressed concern over the de facto discrimination against the Sami, an indigenous people in Scandinavia, in legal disputes, since the burden of proof for landownership has been placed wholly on Sami claimants and legal aid is not made available for Sami villages, which are the only legal entities empowered to act as litigants in land disputes with respect to Sami land and grazing rights. In this context, the Committee recommended that Sweden “grant adequate legal aid to Sami villages in court disputes concerning land and grazing rights and introduce legislation providing for a flexible burden of proof in cases regarding Sami land and grazing rights, especially where other parties possess relevant information”.¹⁷

For more on indigenous peoples, see the summary sheet on the rights of indigenous peoples to their traditional lands, territories and resources, including water.

Additional resources

The United Nations human rights mechanisms have also addressed discrimination in specific countries against other groups in relation to their land tenure. Their recommendations can be searched through the Universal Human Rights Index (<http://uhri.ohchr.org/>).

¹⁴ CEDAW/C/LKA/CO/7, para. 39 (e).

¹⁵ CEDAW/C/TCD/CO/1-4, para. 37.

¹⁶ E/C.12/KEN/CO/1, para. 12.

¹⁷ CCPR/C/SWE/CO/6, para. 21.

Case law

Kenya, Court of Appeal at Eldoret: *Mary Rono v. Jane and William Rono*, Civil Appeal No. 66 of 2002 (29 April 2005). In this case relating to inheritance of land and customary law and practices resulting in daughters receiving less land than sons based expressly on their gender, the Court held that fundamental human rights, specifically article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, to which Kenya is a State party, trumped customary law.¹⁸

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guiding principle 3B, guidelines 4.6, 5.3, 5.4, 6.1, 11.2, 15.3, 15.6, 17.3, 21.6, 25.3, 25.5, 25.7.
- [*Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*](#) (Rome, FAO, 2005), guidelines 2.5, 3.5, 4.2, 4.7, 8, 9, 10.8, 13.2, 14.3.

¹⁸ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

B. Rule of law

Introduction

States and other duty bearers are accountable for compliance with law that is consistent with international human rights standards. In the event of violation of the law, rights holders should be able to seek redress before an independent and competent court or appropriate and impartial mechanism. In respect of land management, issues relevant to the principle of the rule of law arise in various contexts.

It is noted that corruption and lack of transparency in decision-making (e.g., on expropriation, urban and special planning, or investments in land), as well as in implementation of laws, policies and programmes, undermine the principle of the rule of law. Forced evictions without legal justification in line with international human rights standards also contradict the principle.

The coexistence of statutory law and customary law on land tenure without coordination poses serious challenges to the rule of law. For example, land used by pastoralists may be considered “waste land” and rendered available for expropriation or land concession for third parties, despite the pastoralists’ tenure rights being recognized under customary law.

“Access to land in a rural country is of vital importance. I sensed a disconnect between national law that recognizes people’s rights to own land and establishes clear property safeguards, and what appears to be widespread land grabbing and alienation, in both urban and rural areas. In the current context of economic growth, which has given rise to escalating land values and land speculation, evictions of communities which have been living for years in informal settlements appear to be commonplace, and mostly without fair compensation, to make way for high-end development. I am concerned that this trend undermines the rule of law and jeopardizes people’s livelihoods.”

Source: Report of the Special Representative of the Secretary-General for human rights in Cambodia (A/HRC/12/40), para. 17.

International standards as applicable to land

Each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized, without distinction of any kind, and to adopt such legislative and other measures as may be necessary to give effect to the rights recognized.

(International Covenant on Civil and Political Rights, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2)

Commentary

The principle of the rule of law requires that all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.¹⁹

Several of the treaty monitoring bodies have issued concluding recommendations to States parties on the principle of the rule of law in relation to land. These include measures to:

- Ratify and comply with relevant international human rights treaties;²⁰
- Implement existing national legislation²¹ or enact legislation or mechanisms²² relevant to land, which are in line with the State's obligation under international human rights law, including the obligation of the elimination of discrimination;²³
- Amend existing national legislation, which is contradictory to the State's obligations under international human rights law;²⁴
- Ensure legal acknowledgement of customary laws on the land tenure system, including collective rights over land (e.g., by indigenous peoples);²⁵
- Apply moratoria on concessions until appropriate studies and consultations are conducted to protect the rights of affected communities;²⁶
- Provide for domestic remedies in the event of violations of human rights in relation to land,²⁷ and take measures to protect claimants of remedies from retaliation and other violence;²⁸
- Streamline procedures to claim entitlements and remedies by reducing the administrative burden,²⁹ by granting legal aid and reducing the burden of proof,³⁰ or through consultation with indigenous communities regarding projects on ancestral or disputed land;³¹
- Comply with the decisions of international human rights mechanisms, including regional human rights mechanisms and the ILO monitoring mechanism.³²

¹⁹ The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 6.

²⁰ Concluding observations of the Committee on Social, Economic and Cultural Rights on the Democratic Republic of the Congo (E/C.12/COD/CO/4) and of the Committee on the Elimination of Racial Discrimination on Argentina (CERD/C/ARG/CO/19-20), Chile (CERD/C/CHL/CO/15-18) and Finland (CERD/C/FIN/CO/19).

²¹ Concluding observations of the Committee on Social, Economic and Cultural Rights on Cambodia (E/C.12/KHM/CO/1) and of the Committee on the Elimination of Racial Discrimination on the Philippines (CERD/C/PHL/CO/20).

²² Concluding observations of the Committee on Economic, Social and Cultural Rights on the Democratic Republic of the Congo (E/C.12/COD/CO/4), of the Committee on the Elimination of Discrimination against Women on the United Republic of Tanzania (CEDAW/C/TZA/CO/6) and of the Committee on the Elimination of Racial Discrimination on Chile (CERD/C/CHL/CO/15-18), the Congo (CERD/C/COG/CO/9), Finland (CERD/C/FIN/CO/19) and Suriname (CERD/C/SUR/CO/12).

²³ Concluding observations of the Committee on the Elimination of Racial Discrimination on Colombia (CERD/C/COL/CO/14).

²⁴ Concluding observations of the Committee on the Elimination of Racial Discrimination on the Democratic Republic of the Congo (E/C.12/COD/CO/4) and Madagascar (E/C.12/MDG/CO/2).

²⁵ CERD/C/SUR/CO/12.

²⁶ E/C.12/COD/CO/4.

²⁷ CERD/C/COG/CO/9.

²⁸ CERD/C/PHL/CO/20.

²⁹ CERD/C/COL/CO/14 and CERD/C/PHL/CO/20.

³⁰ CCPR/C/SWE/CO/6.

³¹ Concluding observations of the Human Rights Committee on the United Republic of Tanzania (CCPR/C/TZA/CO/4).

³² CERD/C/COL/CO/14.

Case law

South Africa, Constitutional Court: *Abahlali BaseMjondolo Movement SA and Others v. Premier of the Province of Kwazulu-Natal and Others*, Case CCT 12/09 [2009] ZACC 31 (14 October 2009). This abstract review dealt with the constitutionality of legislation allowing provincial government officials to mandate eviction proceedings on informal settlements. The Abahlali BaseMjondolo Movement, which represents the interests of many thousands of occupiers of informal dwellings, argued that the concerned legislation (“the Slums Act”) was unconstitutional. The Court held that section 16 of the Slums Act was indeed inconsistent with the Constitution and also undermined other domestic laws passed with the purpose of protecting the rights of people with insecure land tenure.³³

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guiding principle 3B (7) and (9), guidelines 6.9, 12.12, 15.4.
- [*Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge*](#),³⁴ principles 1, 2, 3, 7, 10, 11.
- [*Basic principles and guidelines on development-based evictions and displacement*](#),³⁵ paras. 6, 10, 11, 12, 21, 22, 24, 29.
- [*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*](#), sects. I and II.³⁶
- [*Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*](#) (Rome, FAO, 2005), guidelines 1.2, 8.1, 8.6, 8.10.

³³ See *Land and Human Rights: Annotated Compilation of Case Law*.

³⁴ Report of the Special Rapporteur on the right to food (A/HRC/13/33/Add.2), annex.

³⁵ Report of the Special Rapporteur on adequate housing (A/HRC/4/18), annex I.

³⁶ General Assembly resolution 60/147.

Summary sheet

C. Right to adequate food

Introduction

The vast majority of people facing hunger in the world are smallholders, landless agricultural workers, herders, artisanal fishers, forest-dwelling populations and members of indigenous communities. For them, farming and grazing lands, forests, water, fisheries and surface minerals are productive resources indispensable to their livelihoods. Access to, use of and control over these lands and resources are essential for the enjoyment of their right to an adequate standard of living, including the right to adequate food.

In the context of large-scale land acquisitions and leases, “States would be acting in violation of the human right to food if, by leasing or selling land to investors (whether domestic or foreign), they were depriving the local population of access to productive resources indispensable to their livelihoods.”

Source: Report of the Special Rapporteur on the right to food (A/HRC/13/33/Add.2), para. 15.

The pressures on land are increasing dramatically. Population growth, loss of arable land due to degradation, policies favouring export-oriented agriculture, large-scale industrial models of agriculture for the production of cash crops and biofuels, the ever-increasing interests of national and foreign investors in minerals, fossil fuels, timbers and food commodities, and measures adopted for climate change mitigation or environmental conservation are all contributing to intensified competition over land. Collectively, these developments are leading to the undermining of access to, use of and control over land by poor, vulnerable or marginalized groups and consequently compromising the enjoyment of their right to food.

International standards as applicable to land

Everyone has the right to an adequate standard of living for himself and his family, including food.

(Universal Declaration of Human Rights, art. 25; International Covenant on Economic, Social and Cultural Rights, art. 11.1; Convention on the Rights of Persons with Disabilities, art. 28.1)

Everyone has the fundamental right to be free from hunger. In order to enable everyone the full enjoyment of this right, States shall take, individually and through international cooperation, the measures needed to improve methods of production, conservation and distribution of food, including by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.

(International Covenant on Economic, Social and Cultural Rights, art. 11.2)

Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. In order to promote the exercise of this right and eradicate malnutrition, States undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

(Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", art. 12)³⁷

In the context of women's right to nutritious and adequate food, States shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.

(Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 15 (a))

Examples of application

In its general comment No. 12 (1999) on the right to adequate food, the Committee on Economic, Social and Cultural Rights underlines *availability* as an element of the right to adequate food, as it refers to the possibilities either for people to feed themselves directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand (para. 12).

In the same general comment, the Committee further recalls that the right to food is "inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all" (para. 4). It is therefore important that laws and policies on land management take full account of obligations related to the right to food.

In his report focusing on large-scale land acquisitions and leases, the Special Rapporteur on the right to food articulated State obligations regarding the right to food in the context of land tenure insofar as "the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources" (such as land) "on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil)."³⁸

The Special Rapporteur further elaborated that "for some of the groups that are the most vulnerable today, this means protecting existing access to land, water, grazing or fishing grounds, or forests, all of which may be productive resources essential for a decent livelihood. In such cases, ... the right to food may complement the protection of the right to

³⁷ The right to nutrition is also recognized under the Convention on the Elimination of All Forms of Discrimination against Women (art. 12.2), the Convention on the Rights of the Child (arts. 24.2 (c) and (e), and 27.3), the Convention on the Rights of Persons with Disabilities (art. 25 (f)), the African Charter on the Rights and Welfare of the Child (art. 14.2 (c), (d) and (h)) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (art. 14.2 (b)).

³⁸ A/65/281, para. 2.

property or of indigenous peoples' relationship with their lands, territories, and resources. In other cases, because landlessness is a cause of particular vulnerability, the obligation of the State goes further: it is to strengthen such access or make it possible – for example, through redistributive programmes that may in turn result in restrictions on others' right to property. This obligation of States is especially clear in cases in which the members of such groups have no alternative means of producing food or gaining sufficient income to purchase food that is sufficient, adequate and culturally acceptable".³⁹

In order to protect and promote the right to food in the context of land management, the United Nations human rights mechanisms have issued concrete recommendations in specific country contexts. For example, in its concluding observations on Cameroon (2012), the Committee on Economic, Social and Cultural Rights notes with concern price rises and the recurring or occasional shortage of certain foodstuffs, and called on the State to tackle structural problems related to food insecurity, including the security of land tenure for small-scale producers.⁴⁰ In its concluding observations on Burkina Faso (2010), the Committee on the Rights of the Child recommended concrete action to ensure access to land for families repatriated from Côte d'Ivoire, so as to safeguard their right to adequate food.⁴¹ In his report on his mission to Brazil (2009), the Special Rapporteur on the right to food addressed the phenomenon of "grilagem", "the fraudulent appropriation of public lands by private persons", and invited the Government "to pursue all necessary measures to ensure that land registration throughout the country produces a single, clear and consolidated land-ownership framework, under which landownership is accompanied by the responsibility to fulfil the social function of property, pay corresponding taxes and preserve the 'legal reserve' within each establishment". The Special Rapporteur also recommended that "the Government should accelerate the constitutionally mandated land demarcations for the indigenous, Quilombola and other traditional communities and, in the interim, better protect these communities from *grilagem*".⁴²

Additional resources

More recommendations issued by the United Nations human rights mechanisms on specific countries can be searched through the Universal Human Rights Index (<http://uhri.ohchr.org/>).

³⁹ Ibid., para. 3.

⁴⁰ E/C.12/CMR/CO/2-3, para. 26.

⁴¹ CRC/C/BFA/CO/3-4, para. 67.

⁴² A/HRC/13/33/Add.6, paras. 20 and 51 (d).

Case law

African Commission on Human and Peoples' Rights: *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Communication No. 155/96 (27 October 2001). This case dealt with the forced eviction and destruction of land of the Ogoni people in the Niger Delta region by State (security forces and State oil company) and non-State actors (transnational companies). The African Commission found that the destruction of individual and communal farmland by acts and omissions of the State amounted to violations of the obligations to respect and to protect the implicit rights to food and adequate housing.⁴³

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012).
- [*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).
- [*Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*](#) (Rome, FAO, 2005), guideline 8, in particular 8B and 8C.

⁴³ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

D. Right to adequate housing

Introduction

Land is also a key component of the right to adequate housing. Access to land and security of land tenure are the means by which the right to housing can be realized, in both rural and urban areas.

Increasing pressures on land and property, urbanization and commodification of natural resources, impact heavily on the right of the rural and urban poor to adequate housing.

In the urban context, rising land prices, owing to intensive market speculation and privatization, redevelopment, poor spatial/urban planning and so-called city beautification lead to gentrification, unaffordability of housing and violations of legal security of tenure. Many people are pushed to live in slums and informal settlements, in inadequate and overcrowded housing, lacking basic services, privacy, dignity and a culturally appropriate living environment. In this respect, poor and low-income residents and groups, including women, migrants and indigenous peoples, often face multiple discrimination and are deprived of their right to adequate housing.

In the rural context, peasants, pastoralists, artisanal fishers, indigenous peoples and many others are displaced and forcibly evicted from their land and therefore their homes. The main drivers of these evictions are large-scale land acquisitions, development and infrastructure projects, such as the construction of dams, roads and resort areas for tourism, extractive and industrial activities, unsettled land claims and armed conflict.

The Special Rapporteur on adequate housing has stressed that “land, as a housing resource, is a critical element of the human right to housing. Inadequate housing of the poor is often the consequence of being barred from access to land, credit, and materials with which to build. When access is granted, tenure generally is not. The lack of legal provisions to enable communities to inhabit or own land and to make productive use of natural or common resources should also be noted as creating an obstacle to the implementation of the right to adequate housing.”

Source: Report of the Special Rapporteur on adequate housing (A/HRC/7/16), para. 66.

International standards as applicable to land

Everyone has the right to an adequate standard of living for himself and his family, including food, housing and water, and to the continuous improvement of living conditions.

(Universal Declaration of Human Rights, art. 25; International Covenant on Economic, Social and Cultural Rights, art. 11.1)

In the context of women's right to nutritious and adequate food, women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States shall grant to women, whatever their marital status, access to adequate housing.

(Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 16, read in conjunction with art. 15)

Everyone has the right not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

(International Covenant on Civil and Political Rights, art. 17.1)

Everyone has the right not to be forcibly evicted from his or her housing, land and property and shall be protected against arbitrary displacement.

(African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), art. 4)

States shall provide all displaced persons with adequate humanitarian assistance. Regarding housing, the State shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

(African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), art. 9.2; Convention relating to the Status of Refugees, art. 21)

Examples of application

As pointed out by the Special Rapporteur on adequate housing, “land as an entitlement is often an essential element necessary to understand the degree of violation and the extent of realization of the right to adequate housing”.⁴⁴

In its general comment No. 4 (1991) on the right to adequate housing, the Committee on Economic, Social and Cultural Rights refers to *legal security of tenure* as one of the main elements of the right to adequate housing. According to the Committee, tenure takes a variety of forms, including “rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property”. Regardless of the type of tenure, “all persons should

⁴⁴ A/HRC/4/18, para. 25.

possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.” It is important to note that security of tenure is not linked to ownership or to a particular form of tenancy. The Committee further notes that States “should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups” (para. 8 (a)).

Land has an influence on many other elements of the right to adequate housing. It is a crucial element when it comes to *affordability* of housing. The poor often settle on land that has lower market value because of its proximity to polluted sites or hazard-prone areas, or other negative factors. Land is also central to urban and spatial planning, which in turn affects *location* of housing in relation to access to basic services, including schools and health facilities. As to the *accessibility* of housing, the Committee states in its general comment No. 4 (1991) that “within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal” and 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” (para. 8 (e)).

Standards on the prohibition of forced eviction have been developed in relation to the right to adequate housing. The Commission on Human Rights has specified that “the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing”.⁴⁵ The Committee on Economic, Social and Cultural Rights, in its general comment No. 7 (1997), notes that, “whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected” (para. 11). The *Basic principles and guidelines on development-based evictions and displacement* elaborate State obligations before, during and after an eviction when such an event is unavoidable.

It should be noted, however, that forced evictions affect not only the right to adequate housing but also a wide range of human rights. In its general comment No. 7 (1997), the Committee on Economic, Social and Cultural Rights observed that “owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions” (para. 4). It further notes that evictions should not render individuals homeless or vulnerable to the violation of other human rights (para. 16).

See also the summary sheet on the right to property.

In its concluding observations on various States, the Committee on Economic, Social and Cultural Rights has recommended those States adopt specific measures and appropriate

⁴⁵ Resolution 1993/77, para. 1.

legislation to end unlawful practices in relation to forced evictions, and ensure access to adequate housing for disadvantaged and marginalized communities.⁴⁶ The Committee on the Elimination of Discrimination against Women, in its concluding observations on India (2010)⁴⁷ and Kenya (2011),⁴⁸ addressed the right to equal access to adequate housing for women. The Committee on the Elimination of Racial Discrimination, in its concluding observations on France (2010),⁴⁹ recommended that the State party step up efforts to ensure equal access for indigenous communities to education, work, housing and public health in overseas territories.

Case law

European Committee of Social Rights: *European Roma Rights Centre v. Greece, Communication No. 15/2003 (8 December 2004)*. This case involved the forced eviction of nomadic Roma communities from land used for temporary housing, where the legal questions included whether the right of the family to social, legal and economic protection under the European Social Charter afforded protection related to land and housing. The Committee held that adequate land necessary for stopping places should be provided and that forced eviction from such land should be prohibited.⁵⁰

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012) in particular sections 3.1.2; 4.4; 7.6; 7 to 10 and 16.
- [*Basic principles and guidelines on development-based evictions and displacement*](#) (A/HRC/4/18, annex I).

⁴⁶ Concluding observations on Argentina (E/C.12/ARG/CO/3), Cambodia (E/C.12/KHM/CO/1), the Democratic Republic of the Congo (E/C.12/COD/CO/4), Israel (E/C.12/ISR/CO/3) and Poland (E/C.12/POL/CO/5).

⁴⁷ CEDAW/C/IND/CO/SP.1.

⁴⁸ CEDAW/C/KEN/CO/7.

⁴⁹ CERD/C/FRA/CO/17-19, para. 18.

⁵⁰ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

E. Right to an effective remedy

Introduction

When human rights are violated, victims should have access to effective recourse mechanisms, such as courts or other grievance resolution mechanisms, and to be granted adequate reparation for harm suffered as a consequence of such violations. States have a duty to investigate alleged violations, and, if a crime has been committed, prosecute those who are responsible. This holds true when human rights are violated as a result of a certain land use (e.g., resulting in pollution or degradation) or in the process of claiming rights over land.

The lack of a grievance resolution mechanism, coordination and the clear allocation of responsibilities among public authorities to deal with grievances and deliver remedies, or the presence of corruption, often undermine access to justice and an effective remedy for people affected by land issues. On the other hand, affordable legal aid, the services of paralegals and mobile services for remote areas can facilitate access to judicial reviews relevant to land, and thus access to justice and an effective remedy, for people living in poverty or in remote areas.

Immediately following a period of conflict, ensuring the right to an effective remedy for human rights violations and abuses is crucial for the consolidation and maintenance of peace. Peace cannot be achieved unless the population is confident that redress for grievances and human rights violations and abuses, including those arising from land disputes or deprivation of access to land, can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice.

“The Committee ... is concerned that the absence of an effective system for the recognition and restitution of land rights prevents indigenous communities from gaining access to their ancestral lands. Another source of concern is the State party’s failure to undertake full investigations and action in response to threats and violence against some indigenous and Afro-descendent communities in connection with evictions from their lands ...”

Source: Concluding observations of the Committee on the Elimination of Racial Discrimination on Paraguay (CERD/C/PRY/CO/1-3), para. 15.

International standards as applicable to land

Everyone has the right to an effective remedy by the competent national tribunals for acts violating fundamental and human rights recognized by national or international law.

(Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights art. 2 (3); International Convention on the Elimination of All Forms of Racial Discrimination, art. 6)

Adequate procedures shall be established within the national legal system to resolve land claims by the indigenous peoples concerned.

(ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, art. 14 (3))

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

(United Nations Declaration on the Rights of Indigenous Peoples, art. 40)

Example of application

When States fail to implement human rights standards, aggrieved rights holders are entitled to institute proceedings for appropriate remedies before competent judicial, administrative or other authorities, in accordance with the rules and procedures provided by law. The competent authorities must enforce such remedies when granted and take measures to protect claimants from retaliation and other violence.

In its general comment No. 9 (1998) on the domestic application of the Covenant, the Committee on Economic, Social and Cultural Rights drew attention to “the fundamental requirements of international human rights law” and stated, “thus the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place” (para. 2).

According to the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, remedies include the victim’s right to (a) equal and effective access to justice and to administrative and other bodies, (b) adequate, effective and prompt reparation for the harm suffered, and (c) access to relevant information concerning violations and reparation mechanisms.⁵¹

⁵¹ General Assembly resolution 60/147, para. 11.

Those *Basic Principles and Guidelines* further stipulate that the reparation should be appropriate and proportional to the gravity of the violation and the circumstances of each case, and include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. *Restitution* should restore the victim to the original situation before the violation; *compensation* should be provided for any economically assessable damage; *rehabilitation* should include medical and psychological care as well as legal and social services. *Satisfaction* includes various measures, including those aimed at the cessation of continuing violations, verification of the facts and full and public disclosure of the truth, or public apology. Finally, *guarantees of non-repetition* comprise preventive measures, such as ensuring effective civilian control of military and security forces, strengthening the independence of the judiciary, or promoting mechanisms for preventing and monitoring social conflicts and their resolution (para. 23).

The practice of forced eviction conducted in a way that is contrary to international human rights standards constitutes gross violations of human rights.⁵² In its general comment No. 7 (1997), the Committee on Economic, Social and Cultural Rights considers that the procedural protections which should be applied in relation to forced evictions include, among other things, provision of legal remedies and of legal aid to persons who are in need to seek redress from the courts (para. 15).

Under the *Basic principles and guidelines on development-based evictions and displacement* (para. 59), appropriate remedies include “fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and [they] should comply, as applicable, with the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*”.

The *Guiding Principles on Internal Displacement* (principle 29) make it clear that internally displaced persons undergoing resettlement must not be discriminated against and have the right to fully participate in public life. Furthermore, the State must assist them to recover their property and possessions or be compensated for the loss. Court procedures can be difficult to understand, time-consuming and expensive, thus preventing most returnees, particularly women, from submitting property and land claims.

In its concluding observations on various States parties, the Committee on the Elimination of Racial Discrimination has recommended action to ensure access to justice, just compensation and restitution to persons, including members of indigenous communities, affected by forced evictions and unlawful land management.⁵³ The Committee on Economic, Social and Cultural Rights, in its concluding observations, has recommended action by some States to ensure legal remedies for victims of forced evictions and land-grabbing.⁵⁴

The Committee on the Elimination of Discrimination against Women, in its concluding observations on India (2010), recommended measures to ensure land and housing rights,

⁵² Commission on Human Rights resolutions 1993/77 and 2004/28.

⁵³ Concluding observations on Cambodia (CERD/C/KHM/CO/8-13), Cameroon (CERD/C/CMR/CO/15-18), Paraguay (CERD/C/PRY/CO/1-3) and Ukraine (CERD/C/UKR/CO/19-21).

⁵⁴ Concluding observations on Argentina (E/C.12/ARG/CO/3), Israel (E/C.12/ISR/CO/3) and Russian Federation (E/C.12/RUS/CO/5).

as an element of rehabilitation and compensation for women victims of violence in connection with riots in Gujarat.⁵⁵

Case law

Kenya, High Court at Embu: *Ibrahim Sangor Osman and Others v. the Hon. Minister of State for Provincial Administration & Internal Security and Others, Constitutional Petition No. 2 of 2011 (16 November 2011)*. This case involved the forced eviction of a large community, which was not provided with alternative land or housing and was relocated to areas without access to primary education. The legal issues focused on whether remedies could include an order to ensure restitution of land and housing to those forcibly evicted. In its ruling, the Court, relying on international human rights law and comparative jurisprudence from South Africa, found that restitution of the status quo ante was the proper remedy. With respect to remedies, the Court also relied on article 8 of the *Basic Principles and Guidelines on the Right to a Remedy for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law*.⁵⁶

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guiding principle 3.2, guidelines 4.9, 21.1, 25.4, 25.5.
- [*Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*](#) (United Nations publication, Sales No. E.13.XIV.5), principles 1, 11, 14, 15, 17, 19, 22, 24–31.
- [*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), principle 2.
- [*Basic principles and guidelines on development-based evictions and displacement*](#) (A/HRC/4/18, annex I), paras. 17, 22, 59–68.
- [*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*](#) (General Assembly resolution 60/147).
- [*Guiding Principles on Internal Displacement*](#) (E/CN.4/1998/53/Add.2), principle 29.2.

⁵⁵ CEDAW/C/IND/CO/SP.1, para. 35.

⁵⁶ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

F. Rights to freedom of movement and residence

Introduction

An increasing number of people are being forced to leave their homes and lands. Such involuntary movement is often caused by armed conflict or a natural disaster. In both cases, the displaced person's right to freedom of movement and residence may be undermined if they are prohibited from returning to their original home and land, for example, if the area is cordoned off as a security zone or no-build zone for military or disaster-prevention purposes. Displaced persons might also be forced to remain in specific areas and any movement outside these zones may be forbidden.

"The Committee expresses concern at the restrictions to freedom of movement imposed on Palestinians, in particular persons residing in the 'Seam Zone' between the wall and Israel, the frequent refusal to grant agricultural permits to access the land on the other side of the wall or to visit relatives, and the irregular opening hours of the agricultural gates."

Source: Concluding observations of the Human Rights Committee on Israel (CCPR/C/ISR/CO/3), para. 16.

The rights to freedom of movement and to freely choose one's residence guarantee liberty of movement and protect against enforced displacement. These freedoms are crucial, for example, to people being able to access work, education and health care, and to sustain their livelihoods.

In the context of customary land use for grazing and hunting and gathering activities, freedom of movement is particularly important and constitutes a cornerstone of many people's livelihoods in rural areas. Illegitimate restrictions on movement in certain zones declared for exclusive military or private corporate use, or expansion of farming areas across pastoralists' seasonal grazing routes, may impede the freedom of movement of mobile communities, resulting in tension and conflict.

International standards as applicable to land

Everyone lawfully within the territory of a State has, within that territory, the right to freedom of movement and residence.

(Universal Declaration of Human Rights, art. 13; International Covenant on Civil and Political Rights, art. 12; Convention on the Elimination of All Forms of Discrimination against Women, art. 15 (4); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (i); Convention on the Rights of Persons with Disabilities, art. 18; American Convention on Human Rights, art. 22)

Everyone shall be free to leave any country and shall not be arbitrarily deprived of the right to enter his or her own country.

(Universal Declaration of Human Rights, art. 13; International Covenant on Civil and Political Rights, art. 12; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (ii); Convention on the Rights of Persons with Disabilities, art. 18; American Convention on Human Rights, art. 22)

Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

(International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 39 (1))

States shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

(Convention relating to the Status of Refugees, art. 26; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), art. 9 (2) (f))

Example of application

The Human Rights Committee, in its general comment No. 27 (1999) on freedom of movement, notes that, “everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence” (para. 4). The Committee states that “the right to move freely relates to the whole territory of a State, including all parts of federal States. According to article 12, paragraph 1, persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place” (para. 5).

States must ensure that the rights guaranteed in article 12 of the International Covenant on Civil and Political Rights are protected not only from public but also from private interference. In the case of women, the Committee further notes that the obligation to protect is particularly pertinent. “For example, it is incompatible with article 12, paragraph 1, that the right of a woman to move freely and to choose her residence be made subject, by law or practice, to the decision of another person, including a relative” (para. 6).

Importantly, in the same general comment, the Committee underlines that “subject to the provisions of article 12, paragraph 3, the right to reside in a place of one’s choice within the territory includes protection against all forms of forced internal displacement” (para. 7). In the same vein, the *Principles on housing and property restitution for refugees and displaced persons* (“Pinheiro Principles”) note that no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.⁵⁷ In its general comment No. 15 (1994) on the

⁵⁷ E/CN.4/Sub.2/2005/17, annex, principle 9.

position of aliens under the Covenant, the Human Rights Committee further states that non-citizens have the right to liberty of movement and choice of residence (paras. 7 and 8).

The Committee on Economic, Social and Cultural Rights, in its general comment No. 4 (1991), points out that the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. “The full enjoyment of other rights – such as ... the right to freedom of residence ... – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society” (para. 9).

See also the summary sheets on the right to adequate housing and on the right to property.

Case law

Inter-American Court of Human Rights: *Case of the Moiwana Community v. Suriname, Series C, No. 124 (15 June 2005)*. This case dealt with the attack perpetrated by members of the armed forces of Suriname against the N'djuka Maroon village of Moiwana. State agents killed over 40 men, women and children, and razed the village to the ground. Those who escaped the attack fled into the surrounding forest, and then into exile or internal displacement. Furthermore, there was no adequate investigation of the massacre, no one had been prosecuted or punished and the survivors remained displaced from their lands, being unable to return to their traditional way of life.

The Court held that Suriname was responsible for the violation of the following rights of the American Convention on Human Rights: the right to humane treatment (art. 5 (1)), the right to freedom of movement and residence (art. 22), the right to property (art. 21) and the rights to judicial guarantees and judicial protection (arts. 8 (1) and 25).⁵⁸

Other relevant standards and guidelines

- [Basic principles and guidelines on development-based evictions and displacement \(A/HRC/4/18, annex I\), paras. 6, 57.](#)
- [Principles on housing and property restitution for refugees and displaced persons \(E/CN.4/Sub.2/2005/17, annex\), principle 9.](#)

⁵⁸ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

G. Rights to freedom of opinion, expression, assembly and association

Introduction

Restrictions on the freedoms of opinion, expression, peaceful assembly and association constitute serious obstacles to human rights defenders working on land issues in order to claim rights and vindicate changes or solutions to the situations that affect them or the people they represent.

People living in informal settlements who protest against evictions, movements of landless people who occupy land in a non-violent manner, peasants who claim the equitable distribution of land, or others who claim and promote land-related rights may face excessive use of force by police, arbitrary criminal prosecution or harassment. Their activities may be suppressed under general restrictions on the freedoms of expression and peaceful assembly and association, which may be imposed in order to restrict political activities or for security reasons.

The Special Rapporteur on the right to food observed that the increasing pressures on land “exacerbate conflicts over land and lead to a worrisome criminalization of social movements aimed at carrying out agrarian reforms ‘from below’, including by claiming land that is unused and, in their view, should be distributed more equitably”.

Source: Report of the Special Rapporteur on the right to food (A/65/281), para. 10.

International standards as applicable to land

Everyone has the right to freedom of opinion and expression, peaceful assembly and association.

(Universal Declaration of Human Rights, arts. 19 and 20; International Covenant on Civil and Political Rights, arts. 19, 20 and 21; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (viii) and (ix))

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, to meet or assemble peacefully, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms and to study, form and hold opinions on the observance, both in the law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

(Declaration on Human Rights Defenders, arts. 5 (a) and 6 (b) and (c))⁵⁹

⁵⁹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144).

Examples of application

The free exercise of the rights to seek and impart information, ideas and opinions, to express views individually as well as collectively, to form and join associations and to assembly is a fundamental tenet of a democratic regime. Such freedoms and rights play an important role in understanding and ensuring participation in the management of public services and goods, as well as of natural resources, including land. The freedoms of opinion, expression, peaceful assembly and association are also crucial for rights holders to claim their rights publicly. In that sense, the Human Rights Committee notes in its general comment No. 34 (2011) on freedoms of opinion and expression that “freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights” (para. 3).

In that general comment, the Committee also recalls that article 19 of the International Covenant on Civil and Political Rights states that “the exercise of the right to freedom of expression carries with it special duties and responsibilities” and that “for this reason two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or public order (*ordre public*) or of public health or morals”. However, the Committee underlines that, when a State party imposes restrictions on the exercise of freedom of expression, “these may not put in jeopardy the right itself”. The Committee adds that “paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be ‘provided by law’; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality” (paras. 21 and 22).

Under the *Basic principles and guidelines on development-based evictions and displacement*, prior to evictions, all potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information and full consultation and participation, as well as to propose alternatives that authorities should duly consider (guideline 38).

See also the summary sheets on the right to participation, on the right to information and on the rights of human rights defenders working on land issues.

In its general comment No. 4 (1991), the Committee on Economic, Social and Cultural Rights points out that the full enjoyment of certain rights, for instance the right to freedom of expression and the right to freedom of association (such as for tenants and other community-based groups), as well as the right to freedom of residence and the right to participate in public decision-making, is indispensable if the right to adequate housing is to be realized and maintained by all groups in society (para. 9).

Urbanization and urban renewal processes may deliberately or without intention restrict public spaces and in turn affect people’s right to peacefully gather and express their opinion.

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guideline 4.8.
- [*Basic principles and guidelines on development-based evictions and displacement*](#) (A/HRC/4/18, annex I), para. 38.
- [*Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*](#) (Rome, FAO, 2005), guideline 1.2 in conjunction with guideline 8.

Summary sheet

H. Right to freedom of religion

Introduction

Land and structures of spiritual value, such as sacred sites and cemeteries, have a profound religious significance for many communities, including indigenous peoples. The exercise of the right to religious worship can, however, be adversely affected if such sites and structures are destroyed, damaged or endangered, or if access to them is undermined as a result of conflict or development-related activities.

The use of public and private land, space and buildings for religious activities may also be restricted by State laws, policies and practices in the form of expropriation of land that encompasses spiritual sites of religious groups, or the placing of obstacles in the way of religious minorities seeking to obtain land titles in order to construct places of worship.

The Islamic Community in Bosnia and Herzegovina brought a case before the Human Rights Chamber for Bosnia and Herzegovina alleging that the municipal bodies of Banja Luka destroyed and removed remains of the mosques, desecrated adjoining graveyards – or allowed these acts to happen – and have refused them permission to rebuild destroyed mosques. The Chamber concluded that the refusal to allow reconstruction of mosques and the erection of fences around the sites of destroyed mosques are the result of a failure by the authorities to secure to those believers the right to manifest freely their religion.

Source: Bosnia and Herzegovina, Human Rights Chamber for Bosnia and Herzegovina: The Islamic Community in Bosnia and Herzegovina v. the Republika Srpska, Case No. CH/96/29 (11 June 1999) in Land and Human Rights: Annotated Compilation of Case Law.

International standards as applicable to land

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

(Universal Declaration of Human Rights, art. 18; International Covenant on Civil and Political Rights, art. 18; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (vii); Convention on the Rights of the Child, art. 14 (1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 12; American Convention on Human Rights, art. 12; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 9)

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to profess and practise their own religion.

(International Covenant on Civil and Political Rights, art. 27)

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

(African Charter on Human and Peoples' Rights, art. 8)

They have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites and the right to the use and control of their ceremonial objects.

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard. States shall provide effective mechanisms for just and fair redress for any development project affecting indigenous lands or territories, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

(United Nations Declaration on the Rights of Indigenous Peoples, arts. 12, 25 and 32.3)

Examples of application

According to the Special Rapporteur on freedom of religion or belief, places of worship are an essential element of the manifestation of the right to freedom of religion or belief to the extent that the great majority of religious or belief communities need the existence of a place of worship where their members can manifest their faith. Unlike other forms of violation of the right to freedom of religion or belief, restrictions on places of worship or other religious sites in many cases violate the right not only of a single individual but of a group of individuals forming the community that is attached to the place in question.⁶⁰

See also the summary sheet on the right to take part in cultural life.

In his report on his mission to the Islamic Republic of Iran in 2005, the Special Rapporteur on adequate housing described how the housing situation of religious minorities was adversely affected by discriminatory laws and property confiscation. He especially highlighted instances where members of the Baha'i faith had had their property, including sacred places, such as cemeteries and shrines, confiscated in a discriminatory manner.⁶¹

⁶⁰ E/CN.4/2005/61, paras. 51 and 52.

⁶¹ E/CN.4/2006/41/Add.2, paras. 81–85.

Regarding indigenous peoples' access to their ancestral lands and territories and their religious freedom, see also the summary sheet on the rights of indigenous peoples to their traditional lands, territories and resources, including water.

Case law

African Commission on Human and Peoples' Rights: *Centre for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, Communication No. 276/03 (25 November 2009). The African Commission considered the forced eviction from ancestral land of the Endorois community and its impact on several rights under the African Charter on Human and Peoples' Rights. The African Commission found that Kenya was in violation of articles 1, 8, 14, 17, 21 and 22 of the African Charter. Among other considerations, the African Commission highlighted the impact on the right to religious freedom (art. 8) and on cultural rights (art. 17), since the community was removed from sacred grounds, rendering it virtually impossible to maintain some essential religious and cultural practices, sites were damaged by authorities, and systematic restrictions to access were imposed.⁶²

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guidelines 9.1, 9.7, 18.2.

⁶² See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

I. Right to information

Introduction

Access to information is a precondition to meaningful participation in decision-making processes and to assess government decisions critically, which is part of freedom of expression. To ensure accountability, governments have a duty to produce and disseminate relevant information about their plans, projects, decisions and results. There are many cases where land deals, development plans and land reforms are carried out without transparent and inclusive processes. People often face obstacles in accessing thorough and credible information. Consequently, they cannot exercise legitimate means of opposing and resisting decisions in order to protect their rights.

The media play a key role in disseminating information and creating a space for public debates. However, too often, journalists and media workers face criminal prosecution, harassment and even life-threatening physical violence, while dealing with land conflicts and other land-related issues, including development, environmental and business projects or forced evictions, in rural as well as urban areas.

A linguistic minority group may have difficulty in seeking and receiving information, such as legislation on land tenure or urban renewal plans, because information is disseminated in the State's official language only. This also creates obstacles in regard to access to justice.

“It is essential that land leases or purchases are fully transparent ... This requires that States ensure the adequate participation of local communities concerned by land leases or purchases, and that the decision-making process is fully transparent.”

Source: Report of the Special Rapporteur on the right to food (A/HRC/13/33/Add.2), para. 31.

“Critical factors affecting women's right to adequate housing and land are ... lack of information about women's human rights ... Protecting women's right to adequate housing must place the indivisibility of human rights at the centre of any strategy, incorporating both the civil and political elements (e.g., right to security, right to participation, right to information) as well as the economic, social and cultural elements of the right to adequate housing (e.g., right to food, education, land, water).”

Source: Women and adequate housing: Study by the Special Rapporteur on adequate housing (E/CN.4/2005/43), summary and para. 40.

International standards as applicable to land

Everyone shall have the right to freedom of expression including freedom to seek, receive and impart information through all forms of communication of his or her choice.

(Universal Declaration of Human Rights, art. 19; International Covenant on Civil and Political Rights, art. 19 (2); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 13 (2); Convention on the Rights of Persons with Disabilities, art. 21)

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, the State shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.

(Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, art. 1)

Everyone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

(Declaration on Human Rights Defenders, art. 6 (a) (b) and (c))

Examples of application

Access to information is a crucial prerequisite for free, active and meaningful participation in decision-making as well as for seeking justice and effective remedies. Full, correct and timely access to information about land-related policies, laws and decisions and the impact they have is essential for rights holders in participating in decision-making in a meaningful way, as well as in holding duty bearers accountable for measures taken, including in relation to access to, use of and control over land. A general lack of knowledge about one's rights and existing administrative and judicial mechanisms impedes people from effectively claiming their rights.

In its general comment No. 34 (2011), the Human Rights Committee notes that, to give effect to the right of access to information held by the public bodies, "States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation" (para. 19).

Similarly, the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* highlight the importance of “clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all” (guiding principle 3B (8)). The *Voluntary Guidelines* elaborate concrete contexts in which access to information is crucial, including in relation to modifications of policy, legal and organizational frameworks related to tenure rights and their anticipated impact, allocation of tenure rights and delegation of tenure governance, transfer of rights of use and ownership of land, sale and lease readjustments of parcels or holdings, restitution procedures, redistributive reforms and processes for expropriation (guidelines 5.8, 8.9, 9.4, 12.11, 13.1, 14.4, 15.9, 16.2). Accordingly, States should establish policies and laws to promote the sharing of information, including on tenure rights (guideline 6.5). States should further establish appropriate and reliable recording systems, such as land registries, that provide accessible information on tenure rights and duties, in order to increase tenure security (guideline 8.4).

Under the *Basic principles and guidelines on development-based evictions and displacement*, specific attention should be given to the dissemination of timely and appropriate information to groups particularly vulnerable to eviction, through culturally appropriate channels and methods. Urban or rural planning and development processes should involve all those likely to be affected and should include the effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups, as well as laws and policies relating to protection against forced evictions.⁶³

According to the *Guiding Principles on Internal Displacement*, if displacement occurs in situations other than during the emergency stages of armed conflict or a disaster, adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation.⁶⁴

See also the summary sheets on the right to participation and on the rights to freedom of opinion, expression, assembly and association.

The *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* stipulate that remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to access to relevant information concerning violations and reparations mechanisms. For the victim to have equal access to an effective remedy and to reparations, States should disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law.⁶⁵

⁶³ A/HRC/4/18, annex I, paras. 35, 37, 38, 56 (e) and (h).

⁶⁴ E/CN.4/1998/53/Add.2, principle 7, para. 3 (b)-(c).

⁶⁵ General Assembly resolution 60/147, paras. 11 (c), 12 (a) and 24.

See also the summary sheet on the right to an effective remedy.

Other relevant standards and guidelines

- [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (Rome, FAO, 2012), guidelines 5.8, 6.5, 8.4, 9.4, 9.8, 10.5, 11.4, 11.5, 12.11, 13.6, 14.4, 15.9, 17.3, 17.5, 18.3, 18.5, 24.4, 25.4.
- [Basic principles and guidelines on development-based evictions and displacement](#) (A/HRC/4/18, annex I), paras. 35, 37, 38, 56 (e) and (h).
- [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#), (General Assembly resolution 60/147), paras. 11 (c), 12 (a), 24.
- [Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security](#) (Rome, FAO, 2005), guideline 11.5.
- [Guiding Principles on Internal Displacement](#) (E/CN.4/1998/53/Add.2), principle 7, para. 3 (b)–(c).

Summary sheet

J. Right to life

Introduction

For the full enjoyment of the right to life, no one, including those deprived of land, should be deprived of their means of subsistence. Where the livelihood of individuals and communities fundamentally depends on the subsistence activities they carry out on land, depriving those people of their access to land may result in their ill-health, malnutrition, starvation and even, eventually, a high rate of mortality.

Furthermore, people often face threats to their right to life when claiming or protecting their rights or the rights of others to use, manage and develop land resources. For instance, many women human rights defenders face physical violence, including sexual assaults, as a consequence of claiming equal inheritance rights for women as for men. Human rights advocates have been assassinated for defending the rights of informal settlers, peasants, landless people or indigenous peoples during land disputes. Likewise, journalists and media workers have been threatened and attacked when they have reported on human rights violations and abuses committed by landowners, business enterprises or governments.

Between December 2006 and May 2011, the Special Rapporteur on the situation of human rights defenders sent 34 communications regarding defenders working on land and environmental issues in connection with the activities of extractive industries as well as construction and development projects. The main context in which these violations occurred was ongoing land disputes with both State and non-State actors, including multinational corporations and private security companies.

According to the information received, defenders working on such issues seem to face a high risk of violations to their physical integrity, including attempted killings, killings, attacks, assault and ill-treatment, and excessive use of force by the police during demonstrations. They have also been subjected to threats and death threats and different forms of intimidation and harassment.

Violations against these defenders are carried out at the hands of State and non-State actors. State actors have included police, local authorities and public officials who have spoken out publicly against the work of defenders. Non-State actors have included transnational companies, the media, paramilitary groups and private security guards.

Source: Adapted from the report of the Special Rapporteur on the situation of human rights defenders (A/HRC/19/55), paras. 66, 68 and 70.

International standards as applicable to land

Every human being has the inherent right to life and no one shall be arbitrarily deprived of his life. Every person has the right to have his life respected.

(Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, art. 6 (1); American Convention on Human Rights, art. 4; African Charter on Human Rights and Peoples' Rights, art. 4)

Every woman shall be entitled to respect for her life and the integrity and security of her person.

(Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 4)

Examples of application

There are many cases of human rights defenders, community representatives or individuals working on land-related issues having been physically and mentally abused or even killed. States are bound to protect them – and their relatives – against any form of harassment, threat and harm.

The Human Rights Committee, in its general comment No. 6 (1994) on the right to life, points out that “the right to life has been too often narrowly interpreted. The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures” (para. 5). To that end, the right to life includes not only the right not to be arbitrarily deprived of one’s life but also the right to protection of one’s life through actions that fulfil the right to a decent life.

In addition, in its general comment No. 7 (1997), the Committee on Economic Social and Cultural Rights notes that, “owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights”, including the right to life. The Committee underlines that “the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions” (para. 4).

In the same vein, both the *Basic principles and guidelines on development-based evictions and displacement* and the *Guiding Principles on Internal Displacement* state that evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected.⁶⁶

See also the summary sheets on the rights to freedom of opinion, expression, assembly and association and on the rights of human rights defenders working on land issues.

⁶⁶ A/HRC/4/18, annex I, para. 47, and E/CN.4/1998/53/Add.2, principle 8.

Case law

Inter-American Court of Human Rights: *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C, No. 125 (17 June 2005). Due to the State's lack of recognition of the communal ownership and possession of the Yakye Axa's traditional land, the members of the community were effectively displaced and forced to survive under appalling conditions. The Court recognized a violation of the right to life on account of the State's failure to take adequate measures, including positive obligations, to ensure a dignified life, such as livelihood associated with access to land traditionally used by the community.⁶⁷

Other relevant standards and guidelines

- [*Basic principles and guidelines on development-based evictions and displacement*](#) (A/HRC/4/18, annex I), para. 47.
- [*Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*](#) (Rome, FAO, 2005), guideline 8, in particular 8.11.
- [*Guiding Principles on Internal Displacement*](#) (E/CN.4/1998/53/Add.2), principle 8.

⁶⁷ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

K. Right to participation

Introduction

From a human rights perspective, active, free and meaningful participation is a cornerstone of the responsible governance of land and natural resources. Public participation in land-related decision-making processes ensures that the allocation and use of land will serve citizens' priorities and not be derailed by corruption or private interests. Land reforms, redistributive processes and agricultural decisions in rural areas should be supported by participative processes.

The lack of participation by affected communities in policymaking can lead to a failure of land-related policies and programmes, and may result in social tension and violence. For instance, forcibly evicting people from informal settlements may result in those evicted repeatedly returning to the same site as they have no other place to go, so that the eviction fails to achieve its objective. On the other hand, empirical evidence indicates that the upgrading of slums involving a participatory process with slum dwellers can lead to more sustainable and effective solutions for urban development.

In working for the restitution of returning refugees and internally displaced persons, where there is a lack of participation by both the returnees and subsequent occupants of the land in order to identify durable solutions, this will often undermine conflict resolution or lead to a new conflict.

“While noting the efforts to give preference to households headed by women in land distribution under the Land Law, the Committee is concerned about the overall implementation of the Law. It is also concerned that women lack both awareness about their rights and understanding of the legislation and land registration process. The Committee is particularly concerned about the situation of female heads of household who have lost their livelihoods as a result of the confiscation of land by private companies and are excluded from decision-making processes concerning land distribution.”

Source: Concluding comments of the Committee on the Elimination of Discrimination against Women on Cambodia (CEDAW/C/KHM/CO/3), para. 31.

International standards as applicable to land

Everyone shall have the right and the opportunity to take part in the conduct of public affairs, either directly or through freely chosen representatives, including the formulation of government policies and decisions.

(Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25 (a); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (c); Convention on the Elimination of All Forms of Discrimination against Women, art. 7; Convention on the Rights of Persons with Disabilities, art. 29)

States shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right to participate in all community activities and in elaboration of development planning at all levels.

(Convention on the Elimination of All Forms of Discrimination against Women, art. 14 (2) (a) and (f))

Governments shall establish means by which indigenous peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them.

(ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, art. 6 (b))

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. They shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or use. States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, including those relevant to removal and relocation from their land, just and fair compensations, development, utilization or exploitation of mineral, water or other resources located in their land, as well as storage or disposal of hazardous materials and conduct of military activities on their land.

(United Nations Declaration on the Rights of Indigenous Peoples, arts. 5, 10, 18, 19, 27, 28.1, 29, 30, 32 and 41; ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, arts. 5 (c), 7 (1) and (3), 15 and 16.2)

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, States shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.

(Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, art. 1)

Examples of applications

Everyone shall have the opportunity to participate in decision-making, including the assessment, design, implementation, monitoring and evaluation of laws, policies and programmes that affect his or her human rights, including decisions related to access to, use of and control over land and land-based resources. The free, active and meaningful participation of marginalized and discriminated groups throughout the legal, policy and programme cycle relevant to land is particularly important, since they tend to be routinely excluded from decision-making even as they play a key role in finding effective, equitable and sustainable solutions. Specific instruments require participatory dialogue and free, prior and informed consent on issues that may affect indigenous and tribal peoples, including projects related to development, resource extraction or the relocation of peoples from land.

Closely related and connected to the right to freedom of opinion, expression, assembly and association is the right to take part in public affairs, including the right to stand and vote in elections. Meaningful participation and consultation, as well as the right to hold public officials and institutions accountable for carrying out their mandated roles in accordance with the law, are equally relevant standards.

United Nations treaty bodies, such as the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, have recommended that States ensure consultation with affected communities, including in the following contexts:

- Prior to conducting development projects, exploitation of natural resources, and land acquisition and concession;⁶⁸
- In the management of land and natural resources;⁶⁹
- When developing legislation and mechanisms for land management;⁷⁰
- When solving and preventing land conflicts.⁷¹

⁶⁸ Concluding observations of the Committee on Economic, Social and Cultural Rights on Cambodia (E/C.12/KHM/CO/1), Chad (E/C.12/TCD/CO/3) and Madagascar (E/C.12/MDG/CO/2) and of the Committee on the Elimination of Racial Discrimination on Argentina (CERD/C/ARG/CO/19-20), Chile (CERD/C/CHL/CO/15-18) and the Congo (CERD/C/COG/CO/9) and of the Human Rights Committee on the United Republic of Tanzania (CCPR/C/TZA/CO/4).

⁶⁹ Concluding observations of the Committee on Economic, Social and Cultural Rights on Australia (E/C.12/AUS/CO/4) and of the Committee on the Elimination of Racial Discrimination on the Congo (CERD/C/COG/CO/9).

⁷⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination on Finland (CERD/C/FIN/CO/19) and Suriname (CERD/C/SUR/CO/12).

⁷¹ Concluding observations of the Committee on Economic, Social and Cultural Rights on the Democratic Republic of the Congo (E/C.12/COD/CO/4) and Finland (E/C.12/FIN/CO/5).

In its general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, the Human Rights Committee notes that the conduct of public affairs is a broad concept, which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at the international, national, regional and local levels (para. 5). The Committee observes that citizens can also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association (paras. 6–8). Emphasizing the importance of effective, meaningful and informed participation, the Committee further recalls that, “freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement, which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice” (para. 12).

See also the summary sheets on the right to information and on the rights to freedom of opinion, expression, assembly and association.

In its general recommendation No. 23 (1997) on political and public life, the Committee on the Elimination of Discrimination against Women recalls that the concept of equal participation in public life between women and men also “includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life” (para. 5). In its concluding observations on various States, the Committee has called on those States to take the necessary measures to increase and strengthen the participation of women in designing and implementing local development plans, including those relevant to the management of land resources.⁷²

In its general recommendation No. 22 (1996) on refugees and displaced persons, the Committee on the Elimination of Racial Discrimination notes of refugees and persons displaced on ethnic grounds that “all such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance” (para. 2 (d)). The *Principles on housing and property restitution for refugees and displaced persons* (“Pinheiro Principles”) require that States and other international and national entities ensure voluntary repatriation and that housing, land and property restitution programmes for internally displaced persons are carried out with adequate consultation and participation with the affected persons, groups and communities, including women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children (principle 14).

⁷² Concluding observations on Chad (CEDAW/C/TCD/CO/1-4), Fiji (CEDAW/C/FJI/CO/4), Kenya (CEDAW/C/KEN/CO/7), the Lao People's Democratic Republic (CEDAW/C/LAO/CO/7), Lesotho (CEDAW/C/LSO/CO/1-4), South Africa (CEDAW/C/ZAF/CO/4) and Zambia (CEDAW/C/ZMB/CO/5-6).

With regard to the rights of indigenous peoples to be consulted on matters that may affect them, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has stated that consultations should be conducted in the nature of negotiations toward mutually acceptable arrangements and not merely by informing indigenous peoples about decisions already made or in the making without allowing them genuinely to influence the decision-making process.⁷³ In that sense, the Special Rapporteur has advised not to issue concessions regarding the land used and occupied by indigenous and tribal peoples unless pursuant to the affected group's free, prior and informed consent.⁷⁴ The Special Rapporteur articulated that the State's duty to consult does not require States to consult with indigenous peoples whenever a State decision may affect them along with the rest of the population. However, it "applies whenever a State decision may affect indigenous peoples in ways not felt by others in society". For example, legislation on land or resource use may have broad application but, at the same time, may affect indigenous peoples' interests in particular ways because of their traditional land tenure or related cultural patterns, thus giving rise to the duty to consult.⁷⁵

In its general recommendation No. 23 (1997) on indigenous peoples, the Committee on the Elimination of Racial Discrimination called upon States to "ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent" (para. 4 (d)). The Committee further requested States to take steps to return ancestral lands to indigenous peoples where they have been deprived of those lands without their free and informed consent (para. 5).

Similarly, in its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee on the Elimination of Racial Discrimination recognized the right of people of African descent to prior consultation with respect to decisions that may affect their rights (para. 4 (d)).

In its concluding observations on certain States, the Committee on the Elimination of Racial Discrimination has recommended that those States take measures to ensure the right of minorities and indigenous communities to take part in public planning and decision-making, including with regard to the development and management of their traditional lands.⁷⁶ In the same vein, in its concluding observations on Sweden, the Human Rights Committee recommended action to strengthen the role of the Sami Parliament in decision-making affecting the land and traditional activities of the Sami people.⁷⁷

Case law

Colombia, Constitutional Court: *Judgement SU-039/97 (3 February 1997)*. This case dealt with the right of indigenous peoples to participate through consultations in decisions that may affect them, in particular related to the defence and preservation of indigenous

⁷³ A/HRC/12/34, para. 46.

⁷⁴ A/HRC/18/35/Add.7, paras. 19 and 40.

⁷⁵ A/HRC/12/34, para. 43.

⁷⁶ Concluding observations on Peru (CERD/C/PER/CO/14-17) and Ukraine (CERD/C/UKR/CO/19-2).

⁷⁷ CCPR/C/SWE/CO/6.

land. The Court found that the process used to secure an environmental licence for oil exploration had ignored the U'wa community's fundamental right to be formally and substantially consulted. This decision was based on the principle that participation through consultation is a fundamental right, because it is an essential way to preserve the ethnic, social, economic and cultural integrity of indigenous communities, which was necessary for their survival as a social group.⁷⁸

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#), (Rome, FAO, 2012), guiding principle 3B (6), guideline 9.9.
- [*Guiding principles on human rights impact assessments of trade and investment agreements*](#) (A/HRC/19/59/Add.5), principle 4.
- [*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), principles 1, 2, 10.
- [*Basic principles and guidelines on development-based evictions and displacement*](#) (A/HRC/4/18, annex I), paras. 38, 53, 55, 56 (e) and (i), 65.

⁷⁸ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

L. Right to property

Introduction

The right to property, which is a self-standing right, particularly in the regional human rights instruments, often encompasses land and land use. Access to, use of and control over land are often strengthened by the individual or collective right to property, which may provide, for example, protection against forced evictions or arbitrary deprivation. Those who rely on activities related to land for their livelihood may benefit from the secure enjoyment of the right to property.

On the other hand, the right to property alone may not provide the best framework for the consideration of land issues, as many human rights issues related to land in fact derive from conflicts over property and use of land. For instance, a focus on land titling may overlook other types of tenure rights over land, such as gathering and grazing rights, which are often exercised by marginalized groups as indispensable elements in maintaining their livelihoods. Property rights are by definition exclusive of everyone else's claims on the same asset and, hence, granting property rights to a party usually means excluding others from rights regarding the same asset. Moreover, the way in which the right to property is enshrined in human rights instruments often privileges the respect of existing property arrangements (e.g., "No one shall be deprived of his possessions").⁷⁹ If the distribution of wealth and property is highly unfair and unequal, the claim of property rights will tend to favour those who are more powerful and wealthy, rather than the poor or marginalized. When the regulatory framework is inadequate, commodification of land may lead to concentration of landownership and increased social inequality.

Furthermore, as is the case with many other human rights, the right to property is not absolute. Measures aimed to rectify structural inequalities in access to, use of and control over land, such as land or agrarian reform or elimination of discrimination against women with regard to inheritance or ownership of land, may therefore limit the right to property of some. Likewise, States may legitimately exercise their sovereign power by placing restrictions on the use of land or by expropriating private land and property on the grounds

"In many developing countries and particularly in sub-Saharan Africa, the rights of land users are not properly secured. Much of the land is formally owned by the State, and the land users have no property titles to the land they cultivate. In many cases, too, a complex combination of property rights and users' rights results in a situation in which those who cultivate the land do not own it ... This situation is the source of legal uncertainty. It also implies that land users will not have access to legal remedies, and receive adequate compensation, if they are evicted from the land they cultivate, for instance after the Government has agreed that foreign investors take possession of the land."

Source: Report of the Special Rapporteur on the right to food (A/HRC/13/33/Add.2) para. 23.

⁷⁹ European Convention on Human Rights, Protocol No. 1, art. 1.

of public interest. In fact, as recalled when addressing the land implications of the right to food, agrarian reform, which is regarded as a suggested means to realize the right to food, may require expropriation and redistribution of the property of land.

See also the summary sheet on the right to adequate food.

International standards as applicable to land

Everyone has the right to own property, alone as well as in association with others and no one shall be arbitrarily deprived of his or her property.

(Universal Declaration of Human Rights, art. 17)

Everyone has the right to non-discrimination and equality before the law in the enjoyment of the rights to own property alone as well as in association with others and to inherit.

(International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (v) and (vi))

Everyone has the right to property. No one shall be deprived of his property except in the public interest and in accordance with the law (and upon payment of just compensation).*

*(European Convention on Human Rights, Protocol No. 1, art. 1; *American Convention on Human Rights, art. 21; African Charter on Human and Peoples' Rights, art. 14)*

States shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. States shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. In this context, States shall ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

(Convention on the Elimination of All Forms of Discrimination against Women, arts. 15 (2) and 16 (1) (c) and (h))

In the context of sustainable development, States shall promote women's access to and control over productive resources such as land and guarantee their right to property.

(Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 19 (c))

Examples of application

Everyone has the right to the peaceful enjoyment of one's possessions, and the prohibition of arbitrary dispossession. Expropriation and limitation on this enjoyment may be limited by law but require a number of safeguards. Land and land uses may be encompassed in the notions of property and possession.

Ways in which the right to property is understood and protected may have a positive or negative impact on equitable access to, use of and control over land.

The Special Rapporteur on the situation of human rights in Cambodia has been calling for a speedy land titling programme to protect the rights of communities affected by land concessions.⁸⁰

On the other hand, the Special Rapporteur on the right to food states that, among the approaches intending to improve security of tenure of land, the one oriented towards promoting land marketability through titling may have unintended negative impact on access to, use of and control over land by marginalized groups. Firstly, where adequate macroeconomic conditions are not present, the creation of markets for property rights over land may lead to distress sales by smallholder farmers facing debts or to farmers being expelled from land used as collateral to guarantee repayment of a loan, and thus result in more land concentration. Secondly, individual titling may not be a solution for those land users who do not cultivate land, for instance, pastoralists. It may increase the risk of conflicts, if important gaps exist between customary and traditional usage rights over land and the formal rights guaranteed through titling. Thirdly, individual titling may not adequately protect the access of local communities to common goods, including grazing lands, forests, water, fisheries and surface minerals. Community-based ownership is often a traditional and effective way to grant control and proprietary rights to persons who have little or no other property.⁸¹ In this context, the Special Rapporteur on the right to food indicates the importance of an approach which is oriented towards broadening the entitlements of the relevant groups in order to ensure more secure livelihoods.⁸²

The international treaty bodies have repeatedly affirmed women's equal rights in relation to land and property. More broadly, the Committee on Economic, Social and Cultural Rights, in its general comment No. 20 (2009), refers to property status, such as landownership or tenure, or lack of it, as one of the prohibited grounds of discrimination (para. 2). Under general comment No. 16 (2005), the Committee requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so (para. 28). Accordingly, the Human Rights Committee in its general comment No. 28 (2000), states that "the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground" (para. 19). Similarly, in its general recommendation No. 21 (1994), the Committee on the Elimination of Discrimination against Women affirms that "when a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or male relative's concurrence or guarantee, she is denied legal autonomy" (para. 7). The Committee further underlines that, with respect to article 16 (1) (h), "in countries that are undergoing a programme of agrarian reform or redistribution of land amongst groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed" (para. 27).

⁸⁰ A/HRC/24/36, para. 48.

⁸¹ A/HRC/13/33/Add.2, para. 26.

⁸² A/65/281, para. 21, and A/HRC/13/33/Add.2, para. 9.

See also the summary sheets on non-discrimination and equality and on the right to adequate housing. On the criteria for exceptional limitations of the right to property, see the summary sheet on safeguards against limitation of human rights for public interest.

Case law

European Court of Human Rights: *Ucci v. Italy*, Application No. 213/04 (22 June 2006).

This case dealt with government authorities taking possession of agricultural land with the intent of expropriating it without compensation. The European Court of Human Rights found that the actions of the Government resulted in the applicant being unable to dispose of his land, and that there was no remedy at the domestic level. Consequently, the Court found a violation of article 1 of Protocol No. 1 to the European Convention on Human Rights on protection of property.⁸³

Other relevant standards and guidelines

- [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (Rome, FAO, 2012) in particular sections 3.1.2; 4.4; 7.6; 7 to 10 and 16.
- [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), sect. IV.
- [Basic principles and guidelines on development-based evictions and displacement](#) (A/HRC/4/18, annex I), paras. 50, 52, 56 (b), 60, 61, 66, 67, 71.
- [Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security](#) (Rome, FAO, 2005), guidelines 8.6, 8.10.

⁸³ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

M. Right to self-determination

Introduction

Land, water and natural resources are, for many peoples in the world, central to meeting their social, economic and cultural needs and, thus, for achieving self-determination.

The right to self-determination provides a basis for collectively claiming control over the natural wealth and resources necessary for livelihood and subsistence. For example, people living in occupied territories, or marginalized nations or peoples, have been claiming access to, use of and control over land as a crucial means to exercise their self-determination.

“For the Sami people, as with other indigenous peoples throughout the world, securing rights over land and natural resources is fundamental to their self-determination, and is considered a prerequisite for the Sami people to be able to continue to exist as a distinct people.”

Source: Report of the Special Rapporteur on the rights of indigenous peoples: The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland (A/HRC/18/35/Add.2), para. 79.

International standards as applicable to land

One of the purposes of the United Nations is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.

(Charter of the United Nations, art. 1.1)

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources and in no case should a people be deprived of its own means of subsistence.

(International Covenant on Economic, Social and Cultural Rights, art. 1; International Covenant on Civil and Political Rights, art. 1)

All peoples shall have the unquestionable and inalienable right to self-determination, freely determine their political status, and pursue their economic and social development according to the policy they have freely chosen. All peoples shall freely dispose of their wealth and natural resources and in no case shall a people be deprived of this right. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

(African Charter on Human and Peoples' Rights, arts. 20, 21 and 22)

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(United Nations Declaration on the Rights of Indigenous Peoples, art. 3)

Examples of application

The Human Rights Committee, in its general comment No. 12 (1984) on the right to self-determination of peoples, emphasizes that article 1 (2) of the International Covenant on Civil and Political Rights affirms a particular aspect of the economic content of the right of self-determination, namely, the right of peoples, for their own ends, to freely "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". The Committee further underlines that this right entails corresponding duties for all States and the international community (para. 5).

In its general recommendation No. 21 (1996) on the right to self-determination, the Committee on the Elimination of Racial Discrimination distinguishes two aspects of the self-determination of peoples: an external and an internal aspect. The Committee notes that the *internal aspect* entails the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect, there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The *external aspect* of self-determination implies that all people have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject people to alien subjugation, domination and exploitation (para. 4).

In its concluding observations on Norway, the Committee on the Elimination of Racial Discrimination recommends that the State take measures to ensure that the rights of the Sami people to the natural resources on their traditional lands are fully respected.⁸⁴ In its concluding observations on various States, the Committee on Economic, Social and Cultural Rights has urged States to take measures to address the adverse effects of large-scale land acquisitions and exploitation of natural resources on the right to self-determination of indigenous peoples.⁸⁵

See also the summary sheet on the rights of indigenous peoples to their traditional lands, territories and resources, including water.

⁸⁴ CERD/C/NOR/CO/19-20.

⁸⁵ Concluding observations on Brazil (E/C.12/BRA/CO/2), Cambodia (E/C.12/KHM/CO/1), Chad (E/C.12/TCD/CO/3) and Sri Lanka (E/C.12/LKA/CO/2-4).

Other relevant standards and guidelines

- [*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), para. 30.

Summary sheet

N. Right to take part in cultural life

Introduction

The cultural life of many communities is closely related to land. Ways of life linked to agriculture, fishing or hunting, as well as cultural festivals and rituals, for instance, rely heavily on access to specific lands and spaces. Expropriation, illegal occupation and exploitation, pollution and degradation of ecosystems by the extraction of natural resources, or the construction of roads, canals or ports, may destroy or deny access to places and environments necessary for the exercise of cultural activities of local communities.

Cultural goods and practices, such as plants gathered or grown for traditional rituals and medicines, trees or animal hides used for crafts and other cultural objects, flora and fauna that provide essential material for culturally adequate housing, clothing or diet, may become unavailable where land and ecosystems are destroyed or the community is displaced or relocated away from such environments.

In particular, the symbolic relationship of some minority groups and indigenous peoples with ancestral lands and territories serves as a constitutive element of their cultural identity and ensures their cultural survival.

“A primary poverty reduction strategy of the Remote Area Development Programme [of Botswana] was the resettlement of remote dwellers into ‘remote area settlements’ in order to facilitate the provision of social services. This practice failed to recognize the distinct cultural and land-use patterns of many of the indigenous communities it was intended to aid ... The Basarwa have been particularly affected by a uniform approach to development ... They have traditionally maintained a hunter-gatherer subsistence way of life, which is in tension with Remote Area Development Programme initiatives to relocate them into settled communities in favour of a sedentary, agro-pastoralist lifestyle.”

Source: Report of the Special Rapporteur on the rights of indigenous people: The situation of indigenous peoples in Botswana (A/HRC/15/37/Add.2), paras. 31 and 32.

International standards as applicable to land

Everyone has the right freely to participate in cultural life, in community with others, and without discrimination.

(Universal Declaration of Human Rights, art. 27; International Covenant on Economic, Social and Cultural Rights, art. 15; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (e); Convention on the Elimination of All Forms of Discrimination against Women, art. 13; Convention on the Rights of the Child, art. 31; African Charter of Human and Peoples’ Rights, art. 17; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 14)

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture.

*(International Covenant on Civil and Political Rights, art. 27;
Convention on the Rights of the Child, art. 30)*

States undertake to promote the conditions necessary for persons belonging to national minorities; to maintain and develop their culture; to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage; and to effectively participate in cultural life.

(Framework Convention for the Protection of National Minorities, arts. 5 (1) and 15)

Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

*(ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries
(No. 169), 1989, art. 13)*

Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

They have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites and the right to the use and control of their ceremonial objects.

They have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora... They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

(United Nations Declaration on the Rights of Indigenous Peoples, arts. 11, 12 and 31 (1))

States shall endeavour to protect communities with special attachment to, and dependency on, land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests.

States shall take all appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration and reinsertion.

(African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), arts. 4 (5) and 11 (5))

Examples of application

In its general comment No. 21 (2009) on the right of everyone to take part in cultural life, the Committee on Economic, Social and Cultural Rights articulated that “culture” encompasses, inter alia, “ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives” (para. 13). The Committee further elaborated that *access to cultural life*, as an element of the right to take part in cultural life, includes the right to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage (para. 15 (b)).

Similarly, with regard to the exercise of the cultural rights of minorities protected under article 27 of the International Covenant on Civil and Political Rights, the Human Rights Committee in its general comment No. 23 (1994) on the rights of minorities, observes that, “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples”, and “that right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law” (para. 7).

In order to protect and promote the right to take part in cultural life, the United Nations human rights mechanisms have issued concrete recommendations in specific country contexts. In its concluding observations on Madagascar (2009), the Committee on Economic, Social and Cultural Rights expressed its concern over the systematic exploitation of land and natural resources which prevents the Malagasy population and its different ethnic groups from maintaining their cultural and social links with the natural environment and their ancestral land. Based on this observation, the Committee recommended that Madagascar adopt specific measures and appropriate legislation to protect the ancestral lands and cultural identity of different ethnic groups in the country.⁸⁶

The Committee on the Elimination of Racial Discrimination, in its concluding observations on the Lao People’s Democratic Republic (2012), in view of the customs and traditional practices of members of ethnic groups in mountainous areas, expressed its concern that the land regime of the State party, whereby land is allotted for housing, farming, gardening and grazing, fails to recognize a link between the cultural identity of ethnic groups and their land. Therefore, the Committee called upon the State party to review its land regime with a view to recognizing the cultural aspect of land as an integral part of the identity of some ethnic groups.⁸⁷

See also the summary sheets on the right to adequate food, on the right to participation, on the right to information and on the right to freedom of religion.

⁸⁶ E/C.12/MDG/CO/2, para. 33.

⁸⁷ CERD/C/LAO/CO/16-18, para. 16.

Indigenous peoples' right to take part in cultural life

In relation to the rights of indigenous peoples, international human rights instruments and mechanisms have acknowledged that those peoples' right to ancestral land, territories and resources constitutes an essential basis for their cultural life. The Committee on Economic, Social and Cultural Rights, in its general comment No. 21 (2009), cites the United Nations Declaration on the Rights of Indigenous Peoples (art. 26 (a)), in noting that "the strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (para. 36).

In the same vein, the Inter-American Court of Human Rights recognized that the failure to guarantee the right of indigenous peoples to access, use and control their ancestral territories would mean the deprivation of the basic foundation for the development of their culture.⁸⁸ In a similar judgement, the Court stated: "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."⁸⁹

The Committee on the Elimination of Racial Discrimination, in its general recommendation No. 23 (1997), takes note of the fact that, in many regions of the world, indigenous peoples have lost their land and resources to colonists, commercial companies and State enterprises, and that, as a consequence, the preservation of their culture and their historical identity has been and continues to be jeopardized.

Based on these understandings, the United Nations human rights mechanisms articulated corresponding State obligations to realize the right of indigenous peoples to take part in cultural life. In its general comment No. 21 (2009), the Committee on Economic, Social and Cultural Rights calls on States to "take measures to 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 otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories" (para. 36). In its general recommendation No. 23 (1997), the Committee on the Elimination of Racial Discrimination calls upon States to "recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation" (para. 4 (a)). The Committee especially calls upon States "to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources" (para. 5). The Human Rights Committee, in its general comment No. 23 (1994), elaborates that the enjoyment of cultural rights of indigenous peoples "may require positive legal measures of protection and measures to ensure the

⁸⁸ Inter-American Court of Human Rights: *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C, No. 125 (17 June 2005), para. 131. See *Land and Human Rights: Annotated Compilation of Case Law*.

⁸⁹ Inter-American Court of Human Rights, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Series C, No. 79 (31 August 2001), para. 149. See *Land and Human Rights: Annotated Compilation of Case Law*.

effective participation of members of minority communities in decisions which affect them” (para. 7).

Furthermore, the United Nations human rights mechanisms have issued concrete recommendations in specific country contexts on cultural rights of indigenous peoples. In his report on the situation of indigenous peoples in Botswana (2010), the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people encourages government development programmes, including those specifically for the benefit of non-dominant indigenous communities, to accommodate more diverse cultural identities. He recommends that such development programmes should promote, in consultation with the affected communities, economic and other development activities that align with the culture of the targeted communities.⁹⁰ In its concluding observations on the Russian Federation (2011), the Committee on Economic, Social and Cultural Rights recommended that the Government incorporate the rights of indigenous peoples into national laws relevant to land, forests and water, including the rights of indigenous peoples to their ancestral lands and natural resources on which indigenous communities rely for their subsistence.⁹¹

Regarding indigenous peoples’ access to their ancestral lands and territories, see the summary sheet on the rights of indigenous peoples to their traditional lands, territories and resources, including water.

Case law

Inter-American Court of Human Rights: *Kichwa Indigenous People of Sarayaku v. Ecuador*, Series C, No. 245 (27 June 2012). This case involved the granting of a permit by the State to a private oil company to carry out oil exploration and exploitation activities in the ancestral territory of the Kichwa indigenous people of Sarayaku, without previously consulting them. The forcible entry caused destruction of sacred sites, deprived the people of subsistence activities and led to confrontations between the indigenous community, the company and Ecuador’s armed forces. The Court held that Ecuador was responsible for the violation of the indigenous people’s rights to consultation, communal property and cultural identity. The Court reaffirmed the State duty to consult, which cannot be delegated to third parties.⁹²

Other relevant standards and guidelines

- [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (Rome, FAO, 2012), guidelines 9.1, 9.7, 16.2, 18.2
- [Basic Principles and Guidelines on Development-based Evictions and Displacement](#) (A/HRC/4/18, annex I).

⁹⁰ A/HRC/15/37/Add.2, paras. 31 and 79.

⁹¹ E/C.12/RUS/CO/5, para. 7.

⁹² See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

O. Rights to water and sanitation

Introduction

Access to safe drinking water and adequate sanitation is often inextricably linked with land and housing, and with the use of natural resources. The disposal of excrement and waste affects land and the environment.

Security of tenure often determines accessibility of water, sanitation and other housing-related services in both urban and rural settings. The lack of secure tenure can discourage investment by service providers and residents themselves to set up water and sanitation connections in informal settlements at risk of eviction. Moreover, arbitrary disconnection of water to force people off their land and dwellings may happen in the event of disagreements between residents and landlords or landowners.

In rural areas, diversion, depletion and pollution of water resources as a consequence of large-scale development or industrial projects, such as mines, oil installations or industrial agriculture, compromise the availability and quality of water in surrounding areas and thus undermine the enjoyment of the right to water by inhabitants. In addition, when a community is excluded from access to water in its vicinity, women and girls may be exposed to higher risk in terms of their physical security, as they bear the burden of fetching water for domestic use. Women and girls also face sexual violence while accessing distant water sources or open fields for sanitation. Such risks undermine the enjoyment of the right to water and sanitation by women and girls as well as their families.

“Rights-based analyses in the water and sanitation sectors have revealed, for example, lack of secure land tenure as a key blockage, in particular in urban slums.”

Source: Report of the independent expert on safe drinking water and

International standards as applicable to land

Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

(Universal Declaration of Human Rights, art. 25; International Covenant on Economic, Social and Cultural Rights, art. 11.1, read in conjunction with the Human Rights Council resolution 15/9, paras. 2 and 3)

States shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.

(Convention on the Elimination of All Forms of Discrimination against Women, art. 14 (2) (h))

Examples of application

Acknowledging the importance of equitable access to safe and clean drinking water and sanitation as an integral component of the realization of all human rights, the General Assembly and the Human Rights Council have recognized the right to water and sanitation as integral elements of the right to an adequate standard of living.⁹³

In its general comment No. 15 (2002), the Committee on Economic, Social and Cultural Rights recalls that article 11.1 of the International Covenant on Economic, Social and Cultural Rights specifies a number of rights emanating from, and indispensable to, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The Committee points out that “the use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.” The Committee further underlines that the human right to water is indispensable for leading a life in human dignity, and a prerequisite for the realization of other human rights. The Committee calls on States parties to take steps to ensure that rural and deprived urban areas have access to properly maintained water facilities, emphasizing that no household should be denied the right to water on the grounds of its housing or land status. States should also ensure that indigenous peoples’ access to water resources on their ancestral lands is protected from encroachment and unlawful pollution (paras. 16 (c) and (d)).

The then independent expert on the issue of human rights obligations related to safe drinking water and sanitation emphasized that the lack of access to water and sanitation was not simply a question of scarcity of technology or resources. Rather, it was a matter of setting priorities and “a function of societal power relations and a problem of poverty and deeply entrenched inequalities”.⁹⁴ Later, as Special Rapporteur on the human right to safe drinking water and sanitation, reporting on good practices for the implementation of the right to water and sanitation, she noted that the lack of adequate sanitation in urban areas was further exacerbated by a lack of secure land tenure and that improvements, such as latrine construction, might not be allowed owing either to regulations or to landowners refusing permission to build. She further pointed out that “without secure tenure, households are unwilling to invest in sanitation hardware if they are under threat of eviction, and service providers may not be willing to extend services to low-income areas for fear of not being able to recover costs”.⁹⁵

See also the summary sheet on the right to adequate housing.

⁹³ General Assembly resolution 64/292, preamble and para. 1. Note that water for agriculture is not included in the right to water.

⁹⁴ A/65/254, para. 50.

⁹⁵ A/HRC/18/33/Add.1, para. 49.

In its concluding observations on El Salvador (2010), the Committee on the Elimination of Racial Discrimination recommended that the State step up its efforts to improve the enjoyment by indigenous peoples of economic, social and cultural rights, including access to safe drinking water, and guarantee their rights to land and resources traditionally owned and used.⁹⁶

See also the summary sheet on the rights of indigenous peoples to their traditional lands, territories and resources, including water.

Case law

African Commission on Human and Peoples' Rights: *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v. Sudan, Communication No. 279/03–296/05 (27 May 2009)*. This case dealt with human rights violations, including forced eviction and destruction of food and water resources associated with forced displacement from land, in the context of the conflict in Darfur. The Commission found that the affected party had been deprived of their right to livelihood and ordered remedies, including the rehabilitation of economic and social infrastructure, such as education, health, water and agricultural services, in order to provide conditions for the return in safety and dignity of internally displaced persons and refugees.⁹⁷

⁹⁶ CERD/C/SLV/CO/14-15, para. 19.

⁹⁷ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

P. Rights of indigenous peoples to their traditional lands, territories and resources, including water

Introduction

Indigenous peoples in every part of the world enjoy distinctive spiritual relationships to their ancestral lands, which provide them with the means for their livelihoods, well-being and cultural survival. Consequently, whereas most rights in relation to access to, use of and control over land apply to all individuals or groups of individuals without distinction, indigenous peoples enjoy specific rights in relation to their ancestral lands, which must be safeguarded.

Indigenous peoples, while being extremely marginalized historically and socially, are now facing threats to their traditional way of life. Encroachments on coastal lands by State entities and private investors for the purpose of establishing special economic zones or building luxury residential and leisure complexes for tourism, often result in forced resettlement of indigenous peoples from their traditional habitat. Similarly, exploitation of natural resources and development projects affecting indigenous peoples' ancestral lands are common in many parts of the world. These projects are often known to lead to the destruction of entire ecosystems upon which indigenous communities depend.

Non-recognition of the communal property rights of ancestral lands, lack of proper titling, and titling or concessions to private parties with regard to indigenous peoples' ancestral land are problems faced by most indigenous communities in the world. Furthermore, lack of restitution or fair compensation for wrongs suffered in the past, including expropriations of traditional territories of indigenous peoples, is a cause of many ongoing land disputes.

“Extractive activities, cash crops and unsustainable consumer patterns have generated climate change, widespread pollution and environmental degradation. These phenomena have had a particularly serious impact on indigenous peoples, whose way of life is closely linked to their traditional relationship with their lands and natural resources, and has become a new form of forced eviction of indigenous peoples from their ancestral territories, while increasing the levels of poverty and disease.”

Source: Report of the Special Rapporteur on the rights of indigenous peoples (A/HRC/4/32), para. 49.

International standards as applicable to land

Indigenous peoples have the right to ownership and possession of the lands, territories and natural resources, which they have traditionally owned, occupied or otherwise used or acquired. They have the right to own, use, develop and control these lands, territories and resources and States shall give legal recognition and protection to them. Such recognition shall be conducted with due respect to the customs, traditional and land tenure systems of the indigenous peoples concerned. These rights also include the right to participate in the use, management and conservation of these natural resources, as well as access to effective procedural protection and remedies in relation to their rights to land and resources.

(ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, arts. 14 and 15; United Nations Declaration on the Rights of Indigenous Peoples, art. 26)

They 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.

(United Nations Declaration on the Rights of Indigenous Peoples, art. 32)

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

(United Nations Declaration on the Rights of Indigenous Peoples, arts. 29 and 30)

Indigenous peoples have the right not to be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. They 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.

(ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, art. 16; United Nations Declaration on the Rights of Indigenous Peoples, arts. 10 and 28)

Adequate procedures shall be established within the national legal system to resolve land claims by indigenous peoples.

(ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, art. 14)

Procedures established by indigenous peoples for the transmission of land rights among members of these peoples shall be respected.

(ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, art. 17)

Examples of application

In addition to the rights of indigenous peoples described in other summary sheets, specific land rights apply to them, as codified in the ILO Convention No. 169, 1989, and the United Nations Declaration on the Rights of Indigenous Peoples. These instruments have guided the interpretation of United Nations human rights bodies when considering the rights of indigenous peoples. In its general recommendation No. 23 (1997), the Committee on the Elimination of Racial Discrimination calls upon States parties to “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” (para. 5).

The Committee on Economic, Social and Cultural Rights, in its general comment No. 14 (2000) on the right to the highest attainable standard of health, noting the collective dimension of the health of indigenous peoples, considers that, “development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health” (para. 27).

In its general comment No. 15 (2002), the Committee on Economic, Social and Cultural Rights also elaborates that, in the context of guaranteeing the enjoyment of the right to water without discrimination, States should take steps to ensure that “indigenous peoples’ access to water resources on their ancestral lands is protected from encroachment and unlawful pollution” (para. 16 (d)).

In its general comment No. 21 (2009), the Committee on Economic, Social and Cultural Rights highlights that the strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, including the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. It further stresses that “indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity” (para. 36).

Similarly, in its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee on the Rights of the Child notes that, under article 6 (the right of the child to life, survival and development) of the Convention on the Rights of the Child, “in the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture”. In this regard, the Committee considers that “States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children’s right to life, survival and development to the maximum possible” (para. 35). In its concluding observations on Guatemala (2010) the Committee on the Rights of the Child expressed concern over the exclusion of indigenous children in relation to access to basic services necessary for their comprehensive development, including difficulties in gaining access to land and the lack of respect for their traditional lands.⁹⁸

Importantly, indigenous peoples should fully and meaningfully participate in any decisions related to any land and natural resources they possess or traditionally use. In this regard, international standards have indicated the right of indigenous peoples to free, prior and informed consent.

⁹⁸ CRC/C/GTM/CO/3-4, para. 101.

Case law

Supreme Court of Canada: *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (26 June 2014). The Tsilhqot'in Nation, a semi-nomadic grouping of six bands sharing common culture and history, sought a declaration prohibiting commercial logging on their traditional territory. The logging was licensed by the province of British Columbia in 1983. The Supreme Court of Canada unanimously granted a declaration of aboriginal title and recognized the breach by British Columbia of its duty to consult owed to the Tsilhqot'in Nation. The Court stated that aboriginal title confers on the group that holds it the exclusive right to decide how the land is used and the right to benefit from those uses, subject to the restriction that the uses must be consistent with the group nature of the interest and the enjoyment of the land by future generations.⁹⁹

Other relevant standards and guidelines

- [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (Rome, FAO, 2012), part 3.
- [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), principles 2 and 10.

Additional resources

For more on the rights of indigenous peoples, see also:

- United Nations Development Group, [United Nations Development Group Guidelines on Indigenous Peoples' Issues](#) (2008).
- Inter-American Commission on Human Rights, [Indigenous and tribal peoples' rights over their ancestral lands and natural resources: Norms and jurisprudence of the Inter-American Human Rights System](#) (OEA/Ser.L/V/II. Doc. 56/09) (2009).

⁹⁹ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

Q. Rights of human rights defenders working on land issues

Introduction

Human rights defenders – people who act to promote or protect human rights – play a crucial role in human rights promotion, and yet they face all kinds of threats when acting in this capacity. This holds particularly true with regard to human rights defenders dealing with issues of land, natural resources and environmental matters. They are too often exposed to severe and violent attacks that risk their physical and mental well-being and even their lives.

It is commonly observed that local communities that denounce the negative impact of extractive industries face death threats, intimidation and physical attacks by private security guards employed by the companies concerned. Women human rights defenders may be additionally targeted as women. They often suffer stigmatization and a higher risk of sexual violence. Journalists and lawyers dealing with land-related issues, such as forced evictions, crime, corruption and minorities' rights, are threatened, attacked, tortured and even killed in attempts to silence them, restrict space for public opinion and discussion or undermine the access of victims to justice and remedies.

“... the second most vulnerable group when it comes to the danger of being killed because of their activities in the defence of human rights, are defenders working on land and natural resources”.

Source: Report of the Special Representative of the Secretary-General on human rights defenders (A/HRC/4/37), para. 45.

“The Government must take urgent and effective steps to protect the safety of Afro-Colombian leaders, their organizations and the human rights non-governmental organizations that champion their rights. This is particularly crucial with respect to members of Community Councils and others who are advocating for land restitution.”

Source: Report of the independent expert on minority issues: Mission to Colombia (A/HRC/16/45/Add.1), para. 91.

See also the summary sheet on the right to life.

International standards as applicable to land

Everyone who, individually or with others, acts to promote or protect human rights, including those relevant to land issues, has the rights to:

- *Seek the protection and realization of human rights at the national and international levels;*
- *Conduct human rights work;*
- *Form associations and non-governmental organizations;*

- *Meet or assemble peacefully;*
- *Seek, obtain, receive and hold information;*
- *Develop and discuss new human rights ideas and principles and to advocate their acceptance;*
- *Submit to governmental bodies and agencies and organizations criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;*
- *Make complaints about official policies and acts and to have such complaints reviewed;*
- *Offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;*
- *Attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;*
- *Have unhindered access to and communication with non-governmental and intergovernmental organizations;*
- *Benefit from an effective remedy;*
- *The lawful exercise of the occupation or profession of human rights defender;*
- *Effective protection under national law in reacting against or opposing acts or omissions attributable to the State that result in violations of human rights; and*
- *Solicit, receive and utilize resources for the purpose of protecting human rights.*

(Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), arts. 1, 5, 6, 7, 8, 9, 11, 12 and 13; International Covenant on Civil and Political Rights, arts. 19 and 21)

Examples of application

“Human rights defenders” is the term used to describe people who, individually or with others, act to promote or protect human rights.¹⁰⁰ This definition covers those defending the human rights of communities in relation to land, natural resources and the environment. In her 2011 report, the Special Rapporteur on the situation of human rights defenders calls on States to give full recognition to the important work carried out by defenders working on land and environmental issues in trying to find a balance between economic development and respect for the environment, including the right to use land, natural wealth and resources, and the rights of certain groups, including indigenous peoples and minorities.¹⁰¹

The Special Rapporteur further underlines that States should not tolerate the stigmatization of the work of these defenders by public officials or the media, particularly in context of social polarization, as this can foster a climate of intimidation and harassment that might encourage rejection and even violence against defenders. States should combat impunity for attacks and violations against these defenders, particularly by non-State actors and

¹⁰⁰ OHCHR [Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights](#), p. 2.

¹⁰¹ A/HRC/19/55, paras. 124 and ff.

those acting in collusion with them, by ensuring prompt and impartial investigations into allegations and appropriate redress and reparation to victims.

The rights of peaceful demonstration, expression of opinion, and gathering in assemblies and associations of human rights defenders working on land issues are protected under international law and are an essential element in the respect, protection and promotion of human rights.

See also the summary sheet on the rights to freedom of opinion, expression, assembly and association.

In its concluding observations on Argentina (2011), the Committee on Economic, Social and Cultural Rights expressed concern over instances in which the security forces and agents, both public and private, resorted to reprisals and disproportionate use of force against persons participating in activities in defence of economic, social and cultural rights, in particular in the context of land disputes.¹⁰² In its concluding observation on Cambodia (2009), the Committee also recommended that the State take all necessary measures for the protection of human rights defenders, including indigenous leaders and peasant activists engaged in defending the economic, social and cultural rights of their communities, and ensure that all cases of alleged abuse are promptly investigated and prosecuted.¹⁰³

In his 2011 report, the Special Rapporteur on the situation of human rights in Cambodia stressed that the peaceful expression of opinion should not be dealt with under the Penal Code. He was particularly concerned in this regard by the charges of incitement, defamation and dissemination of information that had been brought against human rights defenders, land rights activists and individuals of communities defending their land and housing rights in the face of eviction. The Special Rapporteur stressed that the Government should engage the people affected by land disputes in meaningful consultations regarding adequate compensation, or adequate alternative housing options, where applicable. Authorities should respect and protect the rights of people affected by land disputes, including by ensuring that they are not subjected to excessive use of force, harassment and intimidation, that they can exercise their right to peaceful protest, and that defamation, disinformation and incitement charges are not brought arbitrarily.¹⁰⁴

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* highlight the work of human rights defenders by affirming that “States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests” (guideline 4.8).

¹⁰² E/C.12/ARG/CO/3, para. 13.

¹⁰³ E/C.12/KHM/CO/1, para. 31.

¹⁰⁴ A/HRC/18/46, paras. 8–24 and 90.

Case law

Inter-American Court of Human Rights: *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, Series C, No. 279 (29 May 2014)*. The case examined the criminalization of indigenous leaders and activists claiming indigenous peoples' rights to their ancestral land. Indigenous activists who had been found guilty by the criminal court in Chile under anti-terrorism legislation challenged the decision. The Court decided that convictions based on such legislation, violated, inter alia, the rights to equality and non-discrimination, fair trial, the rule of law principle and the right to freedom of expression, as the conviction included a 15-year prohibition to operate social media or to perform functions related to the issuance or dissemination of opinions or information. The Court considered that the conviction not only violated the freedom of expression of the convicted activists, but also produced a chilling effect on the exercise of freedom of expression of the Mapuche people, as it could have caused a reasonable fear in other members of the group involved or wishing to participate in claiming their territorial rights.¹⁰⁵

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guideline 4.8.

¹⁰⁵ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

R. Safeguards against limitation of human rights for public interest

Introduction

In exceptional circumstances, States may need to limit or terminate individual and collective land tenure for the overall benefit of society. For instance, the construction of a school, hospital or road may require withdrawing individual and collective tenure exercised over the land envisaged for such construction. Such limitation is often justified under the concept of public interest, also known as public good or eminent domain justification.¹⁰⁶ This concept allows for expropriation, compulsory acquisition, or other forms of legal change in land use and tenure arrangements. Similarly, the concept of the “social function” of property or of land has been used in some countries to allow for the redistribution of land in agrarian reforms.¹⁰⁷

“In support of small agricultural producers, the Special Rapporteur recommends that the Government of China consider adopting the following measures to strengthen the security of tenure of rural households who depend on agriculture for their livelihood ... Better circumscribe the possibility for the collective to impose readjustments, as well as the possibility for the State to evict land users in the public interest, including by allowing courts to apply much stricter scrutiny to the authorities’ reliance on these exceptions to the security of tenure of the land user.”

Source: Report of the Special Rapporteur on the right to food: Mission to China (A/HRC/19/59/Add.1), para. 41.

Expropriation of land under the justification of public interest can be a powerful tool for redistribution of wealth or for having a positive impact on the realization of human rights. At the same time, depending on how expropriation is carried out, it may seriously restrict the enjoyment of human rights by causing forced evictions or undermining access to housing, livelihoods and social services. The legitimacy of expropriation is increasingly questioned, with a growing number of cases of the acquisition of land in the name of public interest, which is subsequently transferred for use by private companies (so-called privatization of land).

Space for public discussion or peaceful protest on land issues can be limited under a general restriction of freedom of expression or of assembly for the protection of national security.

¹⁰⁶ Article 1 of Protocol No. 1 to the European Convention on Human Rights mentions “public interest” and article 21.2 of the American Convention on Human Rights mentions “public utility or social interest” as reasons for deprivation of property

¹⁰⁷ For instance, according to article 21.1 of the American Convention on Human Rights, “the law may subordinate ... the use and enjoyment [of property] to the interest of society”. In Brazil, the Constitution allows land expropriation for land redistribution where the “social function” of land is not being fulfilled, e.g., where land is not being actively cultivated (E/CN.4/2003/54/Add.1, para. 18).

Thus, State actions to change provisions of land tenure or any other measures which may affect human rights have to be consistent with the safeguards provided under international human rights law.

International standards as applicable to land

In the exercise of their rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purposes of securing due recognition and respect for the right and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(Universal Declaration of Human Rights, art. 29; International Covenant on Economic, Social and Cultural Rights, art. 4)

The restrictions that may be placed on the enjoyment or exercise of rights or freedoms may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

(American Convention on Human Rights, art. 30)

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.

(American Convention on Human Rights, art. 21; African Charter on Human and Peoples' Rights, art. 21.1)

Examples of application

When measures taken in the name of public interest may restrict land tenure and affect human rights, such measures can be justified only when they are:

- Provided by law;
- Consistent with other human rights obligations to which the State is subject;
- Necessary for promoting general welfare in a democratic society;
- Proportionate and undertaken to the extent strictly required by the exigencies of the situation;
- Non-discriminatory;
- Regulated so as to ensure full and fair compensation and rehabilitation.

Decisions for eviction and expropriation based on the public interest argument must conform with a number of conditions to protect human rights and the rule of law, for instance:

- Only exceptional circumstances justify the use of the “public interest” argument;
- They must be “reasonable” and carried out as a last resort when no alternative is available;
- They must be “proportional” (i.e., the decision’s impact on and potential benefit for various groups must be evaluated, including through an eviction impact assessment);
- They must promote general welfare and show evidence of such an outcome;
- They must be non-discriminatory in law and in practice;
- They must be defined in law and “foreseeable”;
- They are subject to control to evaluate their conformity with the constitution and the State’s international obligations;
- Information on decisions and the criteria for their justification must be public and transparent;
- They are subject to consultation and participation;
- Effective recourse mechanisms should be available for those directly or indirectly affected.

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* underscore these safeguards. They states that, while land tenure rights can be limited by the rights of others and by measures taken by the States that are necessary for public purposes, “such measures should be determined by law, solely for the purpose of promoting general welfare including environmental protection and consistent with States’ human rights obligations” (guideline 4.3).

In more practical terms, these safeguards require States to take a number of actions, for instance:

- Ensuring such measures are authorized under national law and are consistent with international human rights law;
- Clearly demonstrating and providing proof that such measures will achieve the intended purpose, which promotes general welfare;
- Conducting ex-ante and ex-post human rights impact assessments on such measures, including the discriminatory impact they may have on certain groups;
- Ensuring an open and transparent public debate on such measures, in particular in consultation with and with the participation of those who may be affected;
- Seeking assessment by independent bodies on their reasonableness and proportionality;
-

- Providing grievance and judicial recourse mechanisms and enforcing remedies granted by such processes.

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guideline 4.3.
- [*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).
- [*Basic principles and guidelines on development-based evictions and displacement*](#) (A/HRC/4/18, annex I), paras. 21 and 22.

Summary sheet

S. Responsibilities of business enterprises and State duties

Introduction

The activities of businesses are a driving force of both the national and global economy. However, these activities can also result in land-related conflicts (among other things), with negative impact on the enjoyment of human rights.

In rural areas, for example, the industrial exploitation of natural resources, such as coal and timber, is known to lead to degradation and pollution of land and water sources, which in turn affects the livelihoods and health of local communities. Likewise, particularly since the 2008 world food crisis, agricultural companies are rushing to acquire land on a large scale in order to supply agricultural products to the wealthier food-importing countries, which, ironically, increases hunger among local communities. While many such projects promise local residents work, electricity, health care and education, they often fail to deliver, and local communities end up destitute.

In the urban context, business enterprises construct shopping malls and high-end residences, leading to forced evictions and the destruction of parks and other public open spaces in the name of “urban renewal”. Other hazards, especially in industrial complexes, include the dumping of toxic waste and contamination of soil and water, posing severe health risks for neighbouring residents.

“The expert was informed that mineral exploration and extraction has resulted in herders losing access to their traditional herding lands, and that pastureland and surface water resources have been destroyed. As a result, the herders’ enjoyment of the rights to an adequate standard of living and to take part in cultural life through farming and animal husbandry has been impacted. She noted concerns about the right to water, which is essential not only for the preservation of the nomadic lifestyle and culture, but also for those who are living in towns across the region. Finally, the expert was informed that mineral exploration has required herders to move their herds to more remote regions, for longer periods of time, limiting their access to education, health care and social welfare services.”

Source: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Visit to Mongolia (A/HRC/23/32/Add.1), para. 60.

In outlining the general regulatory and policy functions of the State, the Special Representative recalls that “it is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights holders and business enterprises.”

Source: Final report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/17/31), Commentary to principle 3.

International standards as applicable to land

States have a duty to respect, protect and fulfil human rights and fundamental freedoms, including in relation to the activities by third parties, such as business enterprises; Business enterprises as specialized organs of society performing specialized functions are required to comply with all applicable laws and respect human rights; Victims of human rights abuse have a right to access effective judicial and non-judicial remedies.

(Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, general principles)¹⁰⁸

Examples of applications

The *Guiding Principles on Business and Human Rights: Implementing the “Protect, Respect and Remedy” Framework* (A/HRC/17/31) were presented to the Human Rights Council by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, and unanimously endorsed by the Council, in March 2011. A set of *foundational and operational principles* presented with the Framework provides detailed analysis and commentary on the Framework’s three pillars, i.e., “the State duty to protect human rights”, “the corporate responsibility to respect human rights” and “access to remedy”.

This framework is also adopted in the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, endorsed by the Committee on World Food Security (guiding principle 3.2).

On its visit to Mongolia in 2012, the Working Group on the issue of human rights and transnational corporations and other business enterprises was informed that, as a consequence of mineral exploration and extraction, herders had lost access to their traditional herding lands, and that pastureland and surface water resources had been destroyed. As a result, the herders’ enjoyment of the rights to an adequate standard of living, to take part in cultural life and to water were undermined, and their access to education, health care and social welfare were limited. The Working Group urged business enterprises involved in mining activities to comply with their obligations under Mongolian law to restore land after mining, and urged the Government to ensure adequate financial and technical resources to effectively monitor their compliance. The Working Group further recommended that the Government maintain adequate policy space to meet its human rights obligations when entering into investment treaties or contracts with business enterprises, and integrate the management of human rights risks into State–investor contract negotiations.¹⁰⁹

¹⁰⁸ United Nations publication, Sales No. 13.XIV.5.

¹⁰⁹ A/HRC/23/32/Add.1, paras. 59–65.

In his 2009 study on large-scale land acquisition and leases, the Special Rapporteur on the right to food proposed a set of 11 core principles and measures for host States and investors. He emphasized that, in the vast majority of cases of large-scale investments in land, the benefits of the investment could be achieved without changing existing rights over the land and that such alternatives should be explored prior to any shift in such rights. However, in the event of a large-scale land acquisition and lease, he proposed applying the following principles, at a minimum:

1. The investment negotiations should be conducted in a transparent and participatory manner;
2. Any shifts in land use should only take place with the free, prior and informed consent of the local communities concerned;
3. The conditions of shifts in land use or evictions should be regulated by law in accordance with the relevant international human rights standards;
4. The local population should benefit from the revenues generated by the investment agreement;
5. In countries facing high levels of rural poverty and in the absence of employment opportunities in other sectors, host States and investors should promote labour-intensive farming systems;
6. Host States and investors should cooperate in identifying ways to ensure modes of agricultural production that respect the environment;
7. The obligations of the investor should be defined in clear terms and be enforceable;
8. Investment agreements with net food-importing countries should include provision for some sales on local markets (the proportion depending on prices of food commodities on international markets);
9. A participatory impact assessment should be conducted prior to the completion of the investment negotiations;
10. There should be consultation with indigenous peoples to obtain their free and informed consent prior to the approval of any project;
11. The human and labour rights of waged agricultural workers should be protected by law, consistent with the applicable ILO instruments.¹¹⁰

Case law

Ecuador, Constitutional Court: *Federación Independiente del Pueblo Shuar del Ecuador (FIPSE) v. Arco Oriente Inc.*, Case No. 994-99-RA (16 March 2000). The case involved the encroachment of indigenous land by a private company and the failure of the State to abide by the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989. The private oil company (Arco Oriente Inc.) negotiated land deals with private individuals to circumvent consultations with the traditional representation structures of the indigenous community. The Court ruled that the company's behaviour was incompatible with Convention No. 169 and the Constitution of Ecuador. The decision resulted in legal protection of the indigenous communities' traditional ways of

¹¹⁰ A/HRC/13/33/Add.2, annex.

political organization and representation and a requirement for mandatory consultation with the proper representatives of the community.¹¹¹

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guiding principle 3.2.
- [*Guiding principles on human rights impact assessments of trade and investment agreements*](#) (A/HRC/19/59/Add.5), guideline 2.1.
- [*Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*](#) (United Nations publication, Sales No. E.13.XIV.5).
- [*Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State–Investor Contract Negotiations: Guidance for Negotiators*](#) (United Nations publication, Sales No. E.15.XIV.5).
- [*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).
- [*Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*](#) (Rome, FAO, 2005), guideline 4.3.

¹¹¹ See *Land and Human Rights: Annotated Compilation of Case Law*.

Summary sheet

T. International Humanitarian and Criminal Law

Introduction

Land issues also arise in the context of armed conflict where, in addition to international human rights law, international humanitarian law is also applicable. Armed conflicts cause displacement and destruction of land and other land-related resources and facilities, including water sources, housing, livestock and crops. Such acts undermine people's livelihood and may constitute war crimes. Occupying powers often restrict land tenure of residents in occupied areas. These actions may amount to violations of international humanitarian and/or international criminal law. These bodies of law thus provide useful guidance in relation to land and natural resources issues.

“The Commission received numerous accounts ... of the destruction of objects indispensable to the survival of the civilian population. In some cases, the allegation was of deliberate destruction. In others, it would appear that the damage may have been collateral. One witness spoke of livestock being deliberately killed with small firearms and agricultural land being burnt down. Another witness in the same area noted that ‘shelling has spared neither livestock nor agriculture lands, with reports of burning fields, and killing of livestock’. A witness ... also spoke of ‘livestock, farms, and crop growing have been hit intentionally ... in particular to ensure that people under the siege would be deprived of food leading to malnutrition and ultimately to starvation’. Another testimony referred to ‘Qadhafi forces entering villages, robbing belongings of residents, and burning down houses after killing what remains of the livestock’. Two witnesses mentioned the contamination of wells by Government forces.”

Source: Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya (A/HRC/17/44), paras. 159 and 160.

International standards as applicable to land

*International humanitarian law*¹¹²

Attack on civilian objectives

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 or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

(Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 54 (2); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 14)

¹¹² Each treaty cited in this sheet has a different scope of application. For example, the Second Additional Protocol to the Geneva Conventions of 1949 applies to internal or civil wars, while others apply to international armed conflicts. Some articles cited have specific limitation clauses. Readers are strongly encouraged to consult the original text of the instruments when applying them.

Prohibition of forced transfer or movement

In situations of occupation, individual or mass forcible transfers as well as deportations of civilians from occupied territory are prohibited, regardless of their motive, unless total or partial evacuation of a given area is necessary for the security of the population or imperative military reasons. Persons evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. It should be ensured, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated. The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

(Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part), art. 49)

Unlawful deportation or transfer of a protected person constitutes a grave breach of the Convention.

(Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part), art. 147)

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. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

(Protocol II to the Geneva Conventions of 12 August 1949, art. 17)

Protection of immobile properties in situations of occupation

In situation of occupation, the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

(Regulations respecting the Laws and Customs of War on Land, art. 55 (annex to Convention (IV) respecting the Laws and Customs of War on Land); International Committee of the Red Cross (ICRC), Study on Customary International Humanitarian Law, rule 51 (b)¹¹³)

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

(Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, art. 53; ICRC, Study on Customary International Humanitarian Law, rule 51 (c))

Protection of environment

Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the

¹¹³ According to ICRC, each of these rules is a norm of customary international law applicable in both international and non-international armed conflicts. See www.icrc.org/customary-ihl.

natural environment and thereby to prejudice the health or survival of the population. Attacks against the natural environment by way of reprisals are prohibited.

(Protocol I to the Geneva Conventions of 12 August 1949, arts. 35 (3) and 55)

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

*(Protocol I to the Geneva Conventions of 12 August 1949, art. 56 (1);
Protocol II to the Geneva Conventions of 12 August 1949, art. 15)*

Protection of cultural objectives and of places of worship

It is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

*(Protocol I to the Geneva Conventions of 12 August 1949, art. 53;
Protocol II to the Geneva Conventions of 12 August 1949, art. 16)*

Principle of distinction

Civilian objects are protected against attack, unless and for such time as they are military objectives.

*(Protocol I to the Geneva Conventions of 12 August 1949, art. 52 (1);
ICRC, Study on Customary International Humanitarian Law, rule 10)*

Principle of proportionality

Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

*(ICRC, Study on customary international humanitarian law, rule 14;
Protocol I to the Geneva Conventions of 1949, art. 51 (4) and (5) (b))*

Principle of precaution

In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.

*(ICRC, Study on customary international humanitarian law, rules 15 and 22;
Protocol I to the Geneva Conventions of 1949, arts. 57 and 58)*

International criminal law

War crimes

The following acts may constitute war crimes when conducted in the context of an international armed conflict:

Grave breaches of the Geneva Conventions of 12 August 1949, including: extensive destruction and appropriation of property, not justified by military necessity and

carried out unlawfully and wantonly and unlawful deportation or transfer or unlawful confinement;

Other serious violations of the laws and customs applicable in international armed conflict, including: intentionally directing attacks against civilian objects, intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; pillaging a town or place, even when taken by assault; intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival.

The serious violations of the laws and customs applicable in armed conflicts not of an international character can also constitute war crimes, including; intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes and historic monuments; pillaging a town or place, even when taken by assault; ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

(Rome Statute of the International Criminal Court, art. 8)

Crimes against humanity

The following acts may constitute "crimes against humanity" when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

(Rome Statute of the International Criminal Court, art. 7 (1))

Genocide

The following acts may constitute “genocide” when committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such; killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, forcibly transferring children of the group to another group.

(Rome Statute of the International Criminal Court, art. 6)

Examples of application

In the context of armed conflicts, international humanitarian law and international human rights law provide complimentary and mutually reinforcing protection.¹¹⁴ In addition, international criminal law provides for individual criminal responsibility for war crimes. International criminal law also provides for individual criminal responsibility for crimes against humanity and the crime of genocide, which can be committed both in armed conflict and in a context other than armed conflict. United Nations human rights mechanisms have elaborated on the mutual reinforcement of these norms.

In its general comment No. 15 (2002), the Committee on Economic, Social and Cultural Rights notes that “during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law”. The Committee underlines that this includes “protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water” (para. 22).

According to the Special Rapporteur on the right to food, protection provided under international humanitarian law complements the protection of the right to food. In this context, he examined the prohibition of the destruction of civilian objects essential to the survival of civilians, and suggested that the destruction of crops by chemical defoliants, the pollution of water reservoirs and contamination by landmines, which render agricultural areas useless, can constitute violations of international humanitarian law.¹¹⁵

The Special Rapporteur on toxic waste discussed in detail the applicability of the international humanitarian law to the release of toxic wastes and dangerous products during armed conflict, including the principles of customary international humanitarian law applicable to both international and non-international armed conflicts, codified under the Geneva Conventions and their Protocols.¹¹⁶

In relation to the principles of distinction, he observed that attacks on industrial facilities could be deemed to be illegal if the attacked site “has no link to military operations and the objective of the attack is to destroy the economic capability of the State”. He also noted that

¹¹⁴ See *International Legal Protection of Human Rights in Armed Conflict* (United Nations publication, Sales No. E.11.XIV.3).

¹¹⁵ A/56/210, paras. 37–57. See also the Report of the Special Rapporteur on toxic waste (A/HRC/5/5), para. 53.

¹¹⁶ A/HRC/5/5, paras. 48–53.

“the environment and its different elements (i.e., land, forests, oceans) are considered to be civilian objects. Elements of the environment, for example forest cover in a specific area, can be the object of attack only if it is used to conceal military objectives”.

In relation to the principle of proportionality, he observed that “an attack which could cause the release of toxic and dangerous products would violate this principle if the toxic products released could be expected to cause deaths or health problems in the civilian population or damage to civilian objects, including the natural environment, which would be excessive in relation to the military advantage gained from the destruction of the facility”.

The principle of precaution will oblige parties to the conflict to take precautionary measures in attack, as well as against the effect of attacks. The Special Rapporteur listed the examples of such measures, including: determining that the means of attack will be least likely to cause incidental damage and that another target, which will afford an equivalent military advantage while posing a lesser threat to the civilian population or objects, is not available; avoiding placing potential military objectives within or near densely populated areas; and giving advance warning of an attack which might affect the civilian population, unless the circumstances do not permit it.

The Special Rapporteur further referred to the prohibition on causing widespread, long-term and severe damage to the natural environment. He noted that this prohibition is particularly applicable to the widespread use of defoliants and other herbicides, as well as to the targeting of facilities which could release a significant volume of toxins capable of severely affecting a large area for a long period. He underlined that this prohibition is absolute and causing such damage cannot be justified by military necessity.

In relation to the prohibition of attacks on works and installations containing dangerous forces, he referred to the *Study on customary international humanitarian law* (International Committee of the Red Cross), which suggested that chemical plants and petroleum refineries should also benefit from this prohibition.

Lastly, the Special Rapporteur pointed out that the prohibition on destruction of objects indispensable to the survival of the civilian population forbids pollution, by chemical or other agents, of water reservoirs, or destruction of crops by defoliants.

A group of seven United Nations special procedure mandate holders recalled, in their report on the situation of human rights in Darfur, Sudan (2007), that “it is prohibited to make civilians or civilian objects (including cultivated land and livestock) the target of attacks or to launch indiscriminate attacks (including burning of villages and aerial bombardments); that such attacks can amount to war crimes and crimes against humanity, that suspects, including bearers of command responsibility, will be investigated and brought to justice, and that any immunities would be waived.”¹¹⁷

¹¹⁷ Final report on the situation of human rights in Darfur prepared by the group of experts mandated by the Human Rights Council in its resolution 4/8, presided by the Special Rapporteur on the situation of human rights in the Sudan and composed of the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on the situation of human rights defenders, the Representative of the

The United Nations Fact-Finding Mission on the Gaza Conflict (2009) found that grave breaches of the Fourth Geneva Convention were committed by the Israeli armed forces in Gaza, including “extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly.” The Mission also considered that “the series of acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed.”¹¹⁸

While it is important to be aware of the role and applicability of international humanitarian and criminal law on land issues during armed conflict, it should also be noted that the application of these bodies of law does not necessarily negate continued application of international human rights law. The Special Rapporteur on toxic waste noted the importance of applying both international humanitarian and human rights law, stating “while international humanitarian law rules will govern the conduct of parties to a conflict [in order to prevent damage], human rights law will govern the response of Governments after [the damage is done]”.

He further elaborates the advantage of the application of human rights law, in addition to humanitarian law, in relation to access to a remedy, as follows:

“Whereas the applicability of humanitarian law will end with the cessation of hostilities, human rights obligations remain applicable in peacetime. This is particularly important in respect of the release of toxic products, as the negative effects of such a release are very likely to continue for a long time after the end of the conflict. Furthermore, seeking reparation for violations of human rights might be easier than for violations of international humanitarian law. Indeed, the bearer of human rights obligations is easy to identify: the main duty-bearer being the State on whose territory the violation took place or the State which exercises control over that territory. In addition, by controlling the territory on which the violation has occurred, the State is in a better position to offer redress for the non-fulfilment of human rights. Violations of humanitarian law may however be the result of an act by an armed opposition group or a foreign State. For this reason, it may be impossible to obtain redress and seeking compensation may be complicated by issues of jurisdiction and the general settlement of claims in peace agreements between States. Proving a violation of international humanitarian law may also be more difficult than proving a violation of human rights law. Indeed, proving violations, especially of the rules related to the conduct of hostilities, has always been a complex issue; for example, how does one prove whether an attack was proportional or not, or that dual-use facilities constitute a military objective? Some cases are clear cut but most fall into a grey area. On the other hand, the non-fulfilment of a human right is fairly straightforward, easily observable and thus easier to prove”.¹¹⁹

Secretary-General on the human rights of internally displaced persons and the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/6/19), recommendation 1.1.1.

¹¹⁸ A/HRC/12/48, paras. 1935–1936.

¹¹⁹ A/HRC/5/5, paras. 56–57.

Case law

International Court of Justice: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) (9 July 2004)*. This Advisory Opinion dealt with the construction of a wall by Israel, which resulted in the destruction of and de facto annexation of land from the Occupied Palestinian Territory on the West Bank, including land used by individuals and communities for agriculture and water resources. The Court recognized that the construction of a wall constituted breaches by Israel of various of its obligations under the international humanitarian and human rights law, including article 49 (prohibition of forcible deportation and transfer of civilians) and article 53 (prohibition of destruction of real and personal properties in the occupied territory) of the Fourth Geneva Convention.¹²⁰

Other relevant standards and guidelines

- [*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*](#) (Rome, FAO, 2012), guideline 25.

¹²⁰ See *Land and Human Rights: Annotated Compilation of Case Law*.



IV. SELECTED BIBLIOGRAPHY AND GUIDANCE

A. Reports

This is a non-exhaustive list of reports produced by special procedure mandate holders linking land issues and human rights.

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

Report 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/7/16](#))

Section V elaborates on the discussion regarding the existing link between access to land and the human right to adequate housing. Section III addresses the realization of the right to adequate housing for specific groups, including women and indigenous peoples. Placing emphasis on the gender perspective of the right to adequate housing, the Special Rapporteur addresses and reiterates a set of recommendations on women's rights to housing, land, property and inheritance.

Special Rapporteur on the right to food

Report on the right to food ([A/65/281](#))

The report focuses on access to land and security of tenure as essential elements for the enjoyment of the right to food. The report explores the threats posed by the increasing pressures on land and on three categories of land users: indigenous peoples, smallholders and special groups such as herders, pastoralists and fisherfolk. It explores how States and the international community could better respect, protect and fulfil the right to food by giving increased recognition to land as a human right.

Special Rapporteur on the situation of human rights defenders

Report on the situation of human rights defenders ([A/HRC/19/55](#))

Section III focuses on the risks and challenges faced by selected groups of defenders, including defenders working on land issues.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Report on the situation of human rights and fundamental freedoms of indigenous people ([A/HRC/12/34](#))

Section II provides guidance on the duty of States to consult with indigenous peoples on matters affecting them. The Special Rapporteur highlights the importance of the participation of indigenous peoples, through consultation, at the earliest stages of the development of government initiatives.

Independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation/
Special Rapporteur on the human right to safe drinking water and sanitation

Special Rapporteur on violence against women, its causes and consequences

Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation ([A/65/254](#))

The report focuses on the contribution of human rights, in particular the human rights to water and sanitation, to the realization of the Millennium Development Goals. Lack of secure land tenure, for example, is identified, as a key blockage, particularly in urban slums.

Report on economic and social policy and its impact on violence against women ([E/CN.4/2000/68/Add.5](#))

The report analyses the effects some economic and social policies have in encouraging violence against women, including in relation to women's legal status, cash crops, tourism, relocation and forced evictions.

B. Commentaries

This is a non-exhaustive list of commentaries – essentially by treaty-based bodies – that explain the relation between land issues and human rights.

Human Rights Committee

General comment No. 28 (2000) on equality of rights between men and women

The Human Rights Committee states that “the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground” (para. 19).

General comment No. 23 (1994) on the rights of minorities

The Human Rights Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. Positive legal measures may be required to ensure that members of minorities can effectively participate in decisions that affect them, including their right to engage in traditional activities such as fishing or hunting and the right to live in reserves protected by law (para. 7).

Committee on
Economic,
Social and
Cultural Rights

General comment No. 21 (2009) on the right of everyone to take part in cultural life

The Committee on Economic, Social and Cultural Rights highlights that the strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, including the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. It further stresses that indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity. States must take measures to recognize and protect indigenous peoples' rights to own, develop, control and use their communal lands, territories and resources, and, when these are inhabited or used without their free and informed consent, take steps to return them (para. 36).

General comment No. 20 (2009) on non-discrimination in economic, social and cultural rights

The Committee on Economic, Social and Cultural Rights refers to property status – such as landownership or tenure, or lack thereof – as one of the prohibited grounds of discrimination (para. 25).

General comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights

The Committee on Economic, Social and Cultural Rights requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so (para. 28).

General comment No. 15 (2002) on the right to water

The Committee on Economic, Social and Cultural Rights calls on States to take steps to ensure that rural and deprived urban areas have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status. States should also ensure that indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution (para. 16).

General comment No. 14 (2000) on the right to the highest attainable standard of health

Noting the collective dimension of the health of indigenous peoples, the Committee on Economic, Social and Cultural Rights considers that “development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health” (para. 27).

General comment No. 12 (1999) on the right to adequate food

The Committee on Economic, Social and Cultural Rights underlines availability as an element of the right to adequate food. Availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand (paras. 8 and 12).

General comment No. 7 (1997) on the right to adequate housing: forced evictions

The Committee on Economic, Social and Cultural Rights observes that, “owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions” (para. 4).

General comment No. 4 (1991) on the right to adequate housing

The Committee on Economic, Social and Cultural Rights refers to legal security of tenure, including occupation of land, as one of the aspects of the right to adequate housing that must be taken into account in any particular context. The Committee considers that all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats (para. 8 (a)). The Committee further recommends that “access to land by landless or impoverished segments of the society should constitute a central policy goal. 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

Committee on the Elimination of Racial Discrimination

land as an entitlement” (para. 8 (e)). The full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association, the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society (para. 9).

General recommendation No. 23 (1997) on indigenous peoples

The Committee on the Elimination of Racial Discrimination calls upon States to “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” (para. 5). The Committee further states that the right to restitution should only be substituted by the right to just, fair and prompt compensation when returning lands and territories is not possible for factual reasons and such compensation should as far as possible take the form of lands and territories.

Committee on the Elimination of Discrimination against Women

General recommendation No. 21 (1994) on equality in marriage and family relations

The Committee affirms that “when a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband’s or male relative’s concurrence or guarantee, she is denied legal autonomy” (art. 15, para. 7).

Committee on the Rights of the Child

General comment No. 11 (2009) on indigenous children and their rights under the Convention

The Committee on the Rights of the Child notes that, in the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture. In this regard, the Committee considers that States should consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children’s right to life, survival and development to the maximum extent possible (para. 35).

For more information emanating from the human rights mechanisms in the United Nations System (special procedures, treaty bodies and the universal periodic review) consult the [Universal Human Rights Index](#).

C. Tools and Guidelines

The following tools and guidelines are useful in land-related situations.

<p>State-negotiated text</p>	<p><u>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security</u> (Rome, FAO, 2012)</p> <p>These State-negotiated guidelines aim at promoting secure tenure rights and equitable access to land, fisheries and forests. They were officially endorsed by the Committee on World Food Security on 11 May 2012. For translation in United Nations languages, and other material, see: www.fao.org/nr/tenure/voluntary-guidelines/en/</p>
<p>Special Rapporteur on adequate housing as a component of the right to an adequate standard of living</p>	<p><u>Basic principles and guidelines on development-based evictions and displacement</u> (A/HRC/4/18, annex I)</p> <p>The Basic principles and guidelines provide recommendations and guidance on how such processes should be conducted in full respect of international human rights standards. They give guidance on measures to be taken and human rights standards to be protected prior to, during and after evictions, as well as provision regarding the right to remedies and restitution for persons affected by forced relocation.</p> <p><u>Guiding principles on security of tenure for the urban poor</u> (A/HRC/25/54)</p> <p>The principles give guidance on existing human rights standards as they pertain to housing and land tenure. The principles aim to provide guidance to States and others to address this challenge in order to ensure adequate housing for poor and vulnerable people in urban and peri-urban areas.</p>
<p>Representative of the Secretary-General on the Human Rights of Internally Displaced Persons/ Special Rapporteur on the Human Rights of Internally Displaced Persons</p>	<p><u>Guiding Principles on Internal Displacement</u> (E/CN.4/1998/53/Add.2)</p> <p>The Guiding Principles stipulate that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands” (principle 9).</p>

Sub-Commission on the promotion and protection of human rights

[Principles on housing and property restitution for refugees and displaced persons \(“Pinheiro Principles”\)](#)

The principles provide policy guidance regarding how to ensure the right to housing and property restitution. Under these principles, all internally displaced persons and refugees shall be protected from arbitrary and unlawful deprivation of any housing, land and/or property, and have the right to have such property fully restored to them, or be adequately compensated, regardless of whether they return to the original place of residence or not. The principles require that States and other international and national entities ensure voluntary repatriation and that housing, land and property restitution programmes for internally displaced persons are carried out with adequate consultation and participation with the affected persons, groups and communities, including women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children (principle 14).

Special Rapporteur on the right to food

[Guiding principles on human rights impact assessments of trade and investment agreements](#) (A/HRC/19/59/Add.5)

These principles provide States with guidance on how best to ensure that the trade and investment agreements they conclude are consistent with their obligations under international human rights instruments.

[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)

The Special Rapporteur on the right to food examines the potential impact of large-scale land acquisitions and leases on the human right to adequate food, recalling obligations imposed on States under international human rights law. The Special Rapporteur proposes a set of 11 core principles and measures aiming to ensure that negotiations leading to land acquisition and leases comply with a number of procedural requirements, including the informed participation of local communities.

Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other

[Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#)

The Guiding Principles are structured around three pillars: (1) the duty of States to protect against human rights abuses by third parties, including business enterprises; (2) the corporate responsibility to respect human rights; and (3) the need for greater access by victims to effective judicial and non-judicial

**business
enterprises**

remedies. The Special Representative recalls that “greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights holders and business enterprises.”

In 2011, the Human Rights Council established the Working Group on the issue of human rights and transnational corporations and other business enterprises to promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights.

D. Other publications

Fact Sheets

- No. 25 (Rev.1): [Forced Evictions](#) (2014) (OHCHR and UN-Habitat).
- No. 21 (Rev.1): [The Right to Adequate Housing](#) (2009) (OHCHR and UN-Habitat).
- No. 35: [The Right to Water](#) (2010) (OHCHR, UN-Habitat and WHO).
- No. 34: [The Right to Adequate Food](#) (2010) (OHCHR and FAO).
- No. 29: [Human Rights Defenders: Protecting the Right to Defend Human Rights](#) (2004) (OHCHR).

For additional Fact Sheets, click [here](#).

Web-based toolkits

- [The Right to Adequate Housing Toolkit](#) (OHCHR).
- [Toolkit on the Right to Food](#) (OHCHR).
- [Governance of Tenure, Information Resources](#) (FAO).

Other publications

[Respecting Free, Prior and Informed Consent: Practical Guidance for Governments, Companies, NGOs, Indigenous Peoples and Local Communities in Relation to Land Acquisition](#), Governance of Tenure Technical Guide No. 3 (Rome, FAO, 2014).

[Realizing Women's Rights to Land and Other Productive Resources](#) (Geneva and New York, OHCHR and UN-Women, 2013).

[Governing Land for Women and Men: A Technical Guide to Support the Achievement of Responsible Gender-equitable Governance of land Tenure](#), Governance of Tenure Technical Guide No. 1 (Rome, FAO, 2013).

[Improving Governance of Forest Tenure: A Practical Guide](#), Governance of Tenure Technical Guide No. 2 (Rome, FAO, 2013).

[Implementing Improved Tenure Governance in Fisheries: A Practical Guide to Support the Implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (preliminary version) (Rome, FAO, 2013).

Catarina de Albuquerque with Virginia Roaf, [On the Right Track: Good Practices in Realising the Rights to Water and Sanitation](#) (Lisbon, Special Rapporteur on the human right to safe drinking water and sanitation, 2012).

[Forced Evictions Assessment Questionnaire](#) (Geneva, OHCHR, 2011).

[Losing Your Home: Assessing the Impact of Eviction](#) (Nairobi, UN-Habitat and OHCHR, 2011).

[Monitoring Security of Tenure in Cities: People, Land and Policies](#) (Nairobi, UN-Habitat and Global Land Tool Network, 2011).

[IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters](#) (Washington, D.C., Brookings–Bern Project on Internal Displacement, 2011).

[IASC Framework on Durable Solutions for Internally Displaced Persons](#) (Washington, D.C., Brookings Institution–University of Bern Project on Internal Displacement, 2010).

[Housing the Poor in Asian Cities: Land: A Crucial Element in Housing the Urban Poor](#), Quick guides for policy-makers, No. 3 (Bangkok and Nairobi, Economic and Social Commission for Asia and the Pacific and UN-Habitat, 2008).

Global Land Tool Network, [Gendering Land Tools: Achieving Secure Tenure for Women and Men](#) (Nairobi, UN-Habitat, 2008).

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