

Land Rights Issues in International Human Rights Law

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Introduction

Up to one quarter of the world's population is estimated to be landless, including 200 million people living in rural areas,¹ and approximately 75% of the world's population living in extreme poverty (less than \$1/day) live in rural areas.² According to the Food and Agriculture Agency of the United Nations (FAO), "rural landlessness is often the best predictor of poverty and hunger."³ "While not the only pathway out of poverty, ample evidence suggests that access to land is effective in helping rural households generate higher incomes" through the sale of crops and the money saved when the family feeds itself from the land.⁴ Yet, even though "land constitutes the main asset from which the rural poor are able to derive a livelihood . . . [m]illions of families, though they toil on the land, do not enjoy ownership rights over it and are considered landless."⁵

The condition of landlessness threatens the enjoyment of a number of fundamental human rights. Access to land is important for development and poverty reduction, but also often necessary for access to numerous economic, social and cultural rights, and as a gateway for many civil and political rights. However, there is no right to land codified in international human rights law.

Land is a cross-cutting issue, and is not simply a resource for one human right in the international legal framework. And yet, while rights have been established in the international legal framework that relate to land access for particular groups (e.g. indigenous people and, to a more limited extent, women), numerous rights are affected by access to land (e.g., housing, food, water, work), and general principles in international law provide protections that relate to access to land (e.g., equality and nondiscrimination in ownership and inheritance), an explicit consideration of the legal implications of access to land for a broad range of human rights is necessary.

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¹ SECURE LAND RIGHTS FOR ALL, UN-HABITAT GLOBAL LAND TOOL NETWORK 4 (2008).

² See Roy L. Prosterman & Tim Hanstad, *Land Reform in the Twenty-First Century: New Challenges, New Responses*, 4 SEATTLE J. SOC. JUST. 763, 763 (2006).

³ Centre on Housing Rights and Evictions (COHRE), *Housing and Property Restitution for Refugees and Displaced Persons*, 3-5 (2007), available at <http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/PinheiroPrinciplesHandbook2007.pdf>.

⁴ Alain De Janvry et al., *Access to Land and Land Policy Reforms*, in ACCESS TO LAND, RURAL POVERTY, AND PUBLIC ACTION, 4 (Oxford Univ. Press 2001).

⁵ Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Miloon Kothari ¶ 67, U.N. Doc. A/HRC/7/16 (Feb. 13, 2008) [hereinafter 2008 Report of the Special Rapporteur on adequate housing].

Access to Land and the Human Rights Impact

Land ownership can be a vital source of capital, which opens personal credit markets, leads to investments in the land, provides a social safety net, and transfers wealth to the next generation.⁶ Beyond the potential for a higher income, “[s]ecure access to land provides a valuable safety net as a source of shelter, food and income in times of hardship, and a family’s land can be the last available resort in the instance of disaster.”⁷ Moreover, access to land affects a broad range of fundamental human rights. In both urban and rural areas, individuals rely on the availability of adequate plots of land for shelter and the availability of resources. In rural areas in particular, the realization of the right to food is intimately tied to the availability of land on which to grow crops. Additional rights, including the right to water, the right to health, the right to work, are all tied to access to land. Identity, particularly for indigenous groups,⁸ is also tied to land. In some domestic contexts, recognition of citizenship is also attached to ownership of land, limiting the ability of landless individuals to travel and participate in the political process.⁹

The problem of rural landlessness continues to increase as land in rural areas comes under multiple pressures, including population growth, fragmentation, land use conversion, environmental degradation, and the impact of natural disasters.¹⁰ Without secure land rights, individuals and communities live under the constant threat of eviction, impacting a range of fundamental human rights. Tenure security in land or secure usage rights in land, in the form of formal legal, customary or religious rights, can provide more predictability and secure access to fundamental rights, including to food, housing, water, and health. The right to housing and the prohibition against forced evictions, both of which relate to land access, have been defined in numerous international documents, but the right to land, and the broader implications of access to land in the international human rights framework, remains imprecise.

Land Rights in the International Legal Framework

The necessity of providing access to land in order to facilitate the realization of human rights has been considered in several international principles and interpretive documents,¹¹ but no

⁶ See De Janvry, *supra* note 4 at 17.

⁷ See *id.* at 5; COHRE, *supra* note 3 at 3.

⁸ See discussion *infra*, *Indigenous rights and women’s rights*.

⁹ See, e.g., Nepal Citizenship Act 2006, art. 8 (requiring the provision of a land or tenancy certificate as in the application for a citizenship certificate on the basis of birth in Nepal). The need to provide a land or tenancy certificate can be circumvented if one is unavailable, and if the applicant can provide three depositions from individuals already owning citizenship certificates, but in the context of landless communities, this is impractical. Similarly, in Nepal, citizenship certificates are often required in order to obtain tenancy certificates or to purchase land, making land acquisition and the acquisition of proof of citizenship all but out of reach for individuals living in landless communities in rural Nepal. See LIZ ALDEN WILY, *LAND REFORM IN NEPAL: WHERE IS IT COMING FROM AND WHERE IS IT GOING?* 120 (2009).

¹⁰ *Id.*, at 2.

¹¹ See, e.g., The Vancouver Declaration on Human Settlements, UN Conference on Human Settlements, *Adopted* June 11, 1976, General Principles: Land; Voluntary Guidelines of the Food and Agriculture Organization of the United

international right to land is explicit in the international legal framework. Moreover, the obligation of states towards individuals and land access has not been given adequate attention. However, a review of the international human rights framework¹² as it stands makes clear that while not wholly defined, land rights are invoked in a number of key areas, suggesting that further consideration by the international community is necessary.

Indigenous rights and women's rights

Explicit rights to land have been developed in two key areas of international human rights law, the rights of indigenous people and the rights of women. Land access and use is frequently tied to the spiritual, cultural and social identities of peoples. As such, land rights have been more fully developed in the sphere of indigenous rights.

Convention 169 on Indigenous and Tribal Peoples, which was adopted by the International Labour Organization in 1989,¹³ is legally binding on States Parties and the only binding international instrument related to the rights of indigenous peoples. The Convention establishes the right of indigenous peoples in independent countries to “exercise control, to the extent possible, over their own economic, social and cultural development,” in a number of areas.¹⁴ The Convention includes a section on land, and requires States Parties to identify lands traditionally occupied by indigenous peoples and guarantee ownership and protection rights.¹⁵ In essence, the “measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.”¹⁶ The Convention also requires the provision of legal procedures to resolve land claims,¹⁷ establishes rights over natural resources,¹⁸ protects against forced removal,¹⁹ and

Nations (FAO), *adopted* 127th Session of the FOA Council, November 2004, Guideline 8B (*Access to resource and assets: Land*); *see also* discussion, *infra*.

¹² International humanitarian documents also relate to land, displacement as a result of internal and international conflict, and circumstances under which restitution for confiscated property may be appropriate. The role of land within the international humanitarian framework is beyond the scope of this paper, but further research in this area is also encouraged. *See, e.g.*, protections against the extensive destruction and appropriation of property except where justified by “military necessity” or the “necessities of war.” Geneva Convention (I) for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field, Aug. 12, 1949, art. 50; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 147. Similarly, considerations related to the restitution of the housing, land, and property rights of displaced peoples merits additional analysis, which will begin with the Pinheiro Principles. UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) [Hereinafter “Pinheiro Principles”].

¹³ *See* International Labour Organization, Convention 169, Indigenous and Tribal Peoples Convention, *opened for signature* Jun. 27, 1989, *available at* <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169> [Hereinafter ILO Convention 169].

¹⁴ *Id.* at art. 1.

¹⁵ *Id.* at art. 14.

¹⁶ *Id.* at art. 13.

¹⁷ *Id.* at art. 14.

¹⁸ *Id.* at art. 15.

¹⁹ *Id.* at art. 16.

establishes a right of return and compensation for lost land through either land (of at least equal quality and quantity) or money.²⁰

In 2007, the U.N. General Assembly adopted the Declaration on the Rights of Indigenous Peoples, which states that “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”²¹ The Declaration, while not binding, states that indigenous people have a right to own and develop resources on their land, a right to legal recognition of indigenous lands by states, and a “right to redress . . . 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.”²² Both the Convention and the Declaration emphasize participatory dialogue and the need for free, prior, and informed consent with respect to decision-making about lands occupied by indigenous peoples,²³ especially where the relocation of peoples from land is under consideration.²⁴

Land rights are also invoked in the international legal framework on women’s rights. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) requires that State Parties “shall ensure women the right to . . . equal treatment in land and agrarian reform as well as in land resettlement schemes. . . .” CEDAW also provides that both spouses must enjoy “[t]he same rights . . . in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property” in marriage.²⁵ Equal rights to inherit, purchase, and dispose of property also promote women’s rights more generally. While land rights are not explicitly developed more fully in this Convention or elsewhere in the core human rights treaties, however, the human rights framework clearly dictates that human rights be applied non-discriminatorily and equally for all people.

The right to housing

Within the international bill of human rights—namely, the Universal Declaration of Human Rights (UDHR), and the two binding Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—a number of articles are directly tied to rights to land. The UDHR and ICESCR protect the right to an adequate standard of living; the UDHR and ICCPR protect privacy and property rights.

²⁰ *Id.* at art. 16.

²¹ United Nations, Declaration on the Rights of Indigenous Peoples, art. 26(1), Sept. 13, 2007, *available at* http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf [Hereinafter Declaration on the Rights of Indigenous Peoples]. The Declaration was adopted by the General Assembly but is not legally binding on state parties.

²² *See id.* at art. 26(2), 26(3) & 28.

²³ *See id.* at art. 10, 28, 29, 32.

²⁴ *See also* discussion *infra*, “The Right to Housing.”

²⁵ *See id.* at art. 16(h).

Numerous economic, social and cultural rights in the UDHR and ICESCR are intimately connected to access to land, including the rights to housing, food, health, and work.²⁶ The right to adequate housing is particularly relevant and land is a critical element of fulfilling the right. Indeed, “[l]and is often a necessary and sufficient condition on which the right to adequate housing is absolutely contingent for many individuals and even entire communities.”²⁷

Housing is a fundamental human right which has been included in numerous international documents.²⁸ Clarity on the scope of the right to adequate housing has been provided by two General Comments²⁹ of the Committee on Economic, Social and Cultural Rights, and also by the work of the special rapporteur on the right to adequate housing as a component of the right to an adequate standard of living. General Comment 4 on the Right to Adequate Housing emphasizes that the right to housing is not to be interpreted narrowly, but “should be seen as the right to live somewhere in security, peace and dignity.”³⁰ The General Comment outlines key elements to the right to adequate housing, including availability of services, habitability, location, and affordability.³¹ Security of tenure and the protection against forced eviction is often a touchstone with respect to identifying where the right to adequate housing is protected, and these elements are also necessary with respect to access to land.

While the economic, social and cultural rights protected under the ICESCR are on their face most obvious in their connection to land, the civil and political rights in the UDHR and ICCPR should not be ignored. Article 17 of the UDHR states that “(1) [e]veryone has the right to own

²⁶ See, e.g., United Nations, Universal Declaration of Human Rights (UDHR), art. 23, 25, Dec. 10, 1948, available at <http://www.un.org/Overview/rights.html#a25> [Hereinafter UDHR]; United Nations International Covenant on Economic, Social, and Cultural Rights (ICESCR), art. 2, open for signature Dec. 16, 1966, available at http://www.unhcr.ch/html/menu3/b/a_cescr.htm [Hereinafter ICESCR], at art. 6, 7, 11, 12. The ICESCR is binding on States Parties, obligating States to “take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.” See also Committee on Economic, Social and Cultural Rights, General Comment No. 3, *The nature of States parties obligations* (art. 2, para 1), UN doc. E/1991/23 (Dec. 14, 1990).

²⁷ Commission on Human Rights, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, ¶ 41, U.N. Doc. E/CN.4/2005/48 (March 3, 2005).

²⁸ See, e.g., UDHR, *supra* note 26 at art. 25; European Social Charter, art. 16, 529 U.N.T.S. 89, entered into force Feb. 26, 1965 (affirming the right of the family to social, legal and economic protection by means including providing family housing); ICESCR, *supra* note 26 at art. 11(1); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e)(iii), G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969 (requiring the prohibition of racial discrimination in all forms in the enjoyment of the right to housing); Convention on the Elimination of All Forms of Discrimination Against Women, art. 14(2)(h), G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 2, 1981 (prohibiting discrimination on the basis of sex in the enjoyment of adequate living conditions, “particularly in relation to housing, sanitation, electricity and water supply”); Convention on the Rights of the Child, art. 27(3), G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990 (requiring States Parties to take measures to provide material assistance with regard to housing for children and those responsible for them who are in need).

²⁹ General Comments, adopted by the Committee on Economic, Social and Cultural Rights, are authoritative interpretations of the ICESCR.

³⁰ Committee on Economic Social and Cultural Rights (CESCR), General Comment 4, *The right to adequate housing* (Art. 11(1)), ¶ 7 (Dec. 13, 1991) [Hereinafter CESCR, General Comment 4].

³¹ *Id.* at ¶ 8.

property alone as well as in association with others [and] (2) [n]o one shall be arbitrarily deprived of his property.”³² The same wording is not reflected in the ICCPR, where Article 17, focusing on privacy, states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”³³ The ICCPR and ICESCR and their General Comments overlap frequently, and the rights in the ICCPR, these rights are “a very important dimension in defining the right to housing” and that right “cannot be viewed in isolation from other human rights.”³⁴ This consideration is consistent with the indivisibility of human rights firmly rooted in international law.³⁵

The prohibition against forced evictions and the legal obligations on states in carrying out evictions merit particular attention. General Comment 7 of the Committee on Economic, Social and Cultural Rights notes that “forced evictions are *prima facie* incompatible with the requirements of the [ICESCR].”³⁶ Yet evictions have become commonplace, resulting from, for example, armed conflicts, ethnic violence, urban redevelopment, development and infrastructure projects, and city beautification. Evictions are prohibited except when carried out in accordance with international human rights law.³⁷ Under article 2(1) of the ICESCR, states are obligated to use “all appropriate means”³⁸ to realize the right to housing, which includes “refrain[ing] from forced evictions and ensur[ing] that the law is enforced against its agents or third parties who carry out forced evictions.”³⁹ Article 17 of the ICCPR compliments the “right not to be forcefully evicted without adequate protection” when it “protect[s] against ‘arbitrary or unlawful interference’ with one’s home.”⁴⁰ Article 2(3) of the ICCPR also requires state parties to provide “an effective remedy”⁴¹ for persons whose rights have been violated, which includes “adequate compensation for any property.”⁴²

³² UDHR, *supra* note 26, art. 17.

³³ United Nations, International Covenant on Civil and Political Rights (ICCPR), art. 17, *open for signature* Dec. 16, 1966, available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

³⁴ CESCR, General Comment 4, *supra* note 30 at ¶ 9.

³⁵ See, e.g., Vienna Declaration and Program of Action, *World Conference on Human Rights* UN Doc. A/CONF. 157/23 ¶ 5 (Jul. 12, 1993) (“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”)

³⁶ Committee on Economic Social and Cultural Rights (CESCR), General Comment 7, *The right to adequate housing (Art. 11(1)): forced evictions*, ¶ 1 (May 20, 1997) [Hereinafter CESCR, General Comment 7].

³⁷ See *id.* “In cases where eviction is considered to be justified [, such as consistent nonpayment of rent], it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.” *Id.* at ¶14. See also Commission on Human Rights, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, ¶¶ 13–17, U.N. Doc. E/CN.4/2004/48 (Mar. 8, 2004).

³⁸ ICESCR, *supra* note 26 at art. 2(1).

³⁹ CESCR, General Comment 7, *supra* note 36 at 3.

⁴⁰ *Id.* quoting ICCPR, *supra* note 33 at art. 17(1).

⁴¹ ICESCR, *supra* note 26 at art. 2(3).

⁴² CESCR, General Comment 7, *supra* note 36 at 4.

International documents have been developed to direct states where and under which circumstances evictions can lawfully be utilized. One overriding principle is to ensure that feasible alternatives are explored in consultation with all affected persons,⁴³ and ensure that affected persons have prior notice that evictions are being considered.⁴⁴ Where relocations⁴⁵ are being considered for indigenous communities from traditional lands, the obligation on states to ensure participatory decision-making and consent of affected communities is heightened. International principles and ILO Convention 169 state that relocation must be an exceptional measure. Where it is considered necessary, such relocation “shall only take place with [the community’s] free and informed consent.”⁴⁶ If consent cannot be obtained, relocation can only take place in conformity with “national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.”⁴⁷ The need to secure the consent of communities affected by evictions and relocations is also reflected in guidelines on development-based evictions, where States are directed to ensure “full and prior informed consent regarding relocation.”⁴⁸ States are required to provide a remedy where evictions are not carried out in compliance with international law. Such remedy must “provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property.”⁴⁹ An assessment of damage to individuals should, “where the home and land also provide a source of livelihood for evicted inhabitants,” account for value of land.⁵⁰ The circumstances surrounding forced evictions do not always allow for restitution or return, but where circumstances allow, in the context of development projects, states are directed to assist returning persons in recovering their property, and provide for voluntary return.⁵¹

Evictions are often identified with taking place in urban areas but also frequently occur in rural areas among landless groups or in the name of development.⁵² Forced evictions, particularly those carried out through violence or coercion, tend to intensify violations of interrelated rights, including the right to water and the right to health, and can also lead to increased social inequality, social conflict, and segregation.⁵³ Forced evictions from land, whether in rural or urban areas, therefore tie land access to a number of underlying human rights. Tenure security, that is defined as a “degree of security of tenure which guarantees legal protection against forced eviction, harassment

⁴³ See, e.g., *id.* at 12; Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, UN Doc. A/HRC/4/18, art. 38.

⁴⁴ Basic Principles and Guidelines on Development-Based Evictions and Displacement, *supra* note 43, at 37.

⁴⁵ Relocations of communities are distinct from evictions, but for the purposes of this paper in considering the impact on land rights of removing individuals or communities from access to their lands, we have considered them together. In future, a more detailed analysis may be useful.

⁴⁶ See ILO Convention 169, *supra* note 13, at art. 16.

⁴⁷ *Id.*

⁴⁸ Basic Principles and Guidelines on Development-Based Evictions and Displacement, *supra* note 43, at 56.

⁴⁹ *Id.* at 60.

⁵⁰ *Id.* at 63.

⁵¹ *Id.* at 64–67. Considerations related to restitution and return are also relevant in the context of the rights of refugees and displaced peoples. See, e.g., Pinheiro Principles, *supra* note 12.

⁵² CESCR, General Comment 7, *supra* note 36 at 5.

⁵³ Basic Principles and Guidelines on Development-Based Evictions and Displacement, *supra* note 43.

and other threats,”⁵⁴ does not necessarily require ownership, but “include[es] rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.”⁵⁵ The implementation of a domestic legal framework that protects tenure security and promotes equal access to tenure security for women and other socially vulnerable groups, will promote the protection of the right to housing.

The right to food and the right to water

Other rights protected under international law are threatened by the condition of landlessness. The international framework protects the right to food, water, a right that is not explicitly mentioned in the ICESCR but which has been derived from it,⁵⁶ health, and work. In rural areas in particular, access to land is necessary to realize the right to food and to be free from hunger as protected under Article 11 of the ICESCR.⁵⁷ States parties to the ICESCR are directed to “improve methods of production, conservation and distribution of food . . . by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.”⁵⁸ In considering that the “roots of the problem of hunger and malnutrition are not lack of food but lack of *access to available food*” (emphasis in original), General Comment 12 on the right to adequate food states availability “refers to the possibilities either for feeding oneself directly from productive land or other natural resources,” or from functioning market systems making food available.⁵⁹ The General Comment further states that ensuring access to “food or resources for food” requires states to implement full and equal access to economic resources, including the right to inheritance and ownership of land, for all people, and particularly for women.⁶⁰ The FAO Voluntary Guidelines adopted in 2004 also direct states to promote equal access to land ownership, and further state that “[a]s appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women.”⁶¹

The special rapporteur on the right to food “believes that access to land is one of the key elements necessary for eradicating hunger in the world,”⁶² and notes that “many rural people suffer from hunger because either they are landless, they do not hold secure tenure or their properties are so small that they cannot grow enough food to feed themselves.”⁶³ In defining the obligations of states

⁵⁴ *See id* at 2.

⁵⁵ *Id.*

⁵⁶ *See, e.g.*, Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the ICESCR* (General Comment 15: The Right to Water, arts. 11 and 12 of the International Covenant) (Jan. 20, 2003).

⁵⁷ ICESCR, *supra* note 26 at art. 11(2).

⁵⁸ *Id.*

⁵⁹ Committee on Economic Social and Cultural Rights (CESCR), General Comment 12, *The right to adequate food* (Art. 11), ¶ 12 (Dec. 5, 1999).

⁶⁰ *Id.* at ¶ 26.

⁶¹ Voluntary Guidelines of the Food and Agriculture Organization of the United Nations (FAO), *supra* note 11, Guideline 8B (Access to resource and assets: Land).

⁶² Commission on Human Rights, *Report of the Special Rapporteur on the right to food, Jean Ziegler*, ¶ 22, U.N. Doc. A/57/356 (Aug. 27, 2002) [Hereinafter *2002 Report of the Special Rapporteur on the right to food*].

⁶³ *Id.* at ¶ 23

with respect to the right to food, the special rapporteur has consistently referred to the necessity of land in respecting, protecting, and fulfilling the right. The special rapporteur noted that where a state has arbitrarily evicted or displaced people from their land, “especially if the land was their primary means of feeding themselves,” it has violated the right to food.⁶⁴ The special rapporteur has documented numerous cases where evictions from land have led to violations of the right to food.⁶⁵ The right to water, which “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses,”⁶⁶ is similarly dependent on access to land, whether in an urban or rural setting. Many of the adverse effects on food access that flow from evictions will similarly affect access to safe drinking water.⁶⁷

Moreover, in taking steps to fulfill the right to food, a state must take proactive steps. The special rapporteur notes that this “could mean improving employment prospects, by introducing an agrarian reform programme for landless groups or promoting alternative employment opportunities,”⁶⁸ and has emphasized that “access to land and agrarian reform must form a key part of the right to food.”⁶⁹ The focus on land access and the right to food gains new urgency in light of the ongoing global food crisis.⁷⁰

Additional considerations

Human rights are indivisible, interrelated and interdependent, and land is a cross-cutting issue. While access to land most obviously affects the underlying rights to housing, food, and water, there are additional rights within the international framework that are impacted. The right to work, which “includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts,”⁷¹ often depends upon access to resources. In countries that are largely rural and where industry is not developed, land as a resource is often a precondition to work. Similarly, insofar as land access impacts the availability of food and water, the right to the highest attainable standard of health can be affected by the condition of landlessness. Moreover, the displacement from lands of indigenous peoples in particular can deny access to culturally specific sources of nutrition and medicines, having a detrimental effect on their health.⁷²

Conclusion

⁶⁴ Commission on Human Rights, *Preliminary report of the Special Rapporteur on the right to food*, Jean Ziegler, ¶ 27, UN Doc. A/56/210 (Jul. 23, 2001) [Hereinafter *Preliminary report of the Special Rapporteur on the right to food*]. See also *id.* at ¶ 28.

⁶⁵ See, e.g., Commission on Human Rights, *Report of the Special Rapporteur on the right to food, Addendum, Mission to Guatemala*, Jean Ziegler, UN Doc. E/CN.4/2006/44/Add.1 (Jan. 18 2006).

⁶⁶ CSRCR, General Comment 15: The Right to Water, *supra* note 56 at 2.

⁶⁷ Centre on Housing Rights and Evictions, *Right to Water: Background Information* (2006), available at <http://www.cohre.org/water>.

⁶⁸ *Preliminary report of the Special Rapporteur on the right to food*, *supra* note 64 at ¶ 29.

⁶⁹ *2002 Report of the Special Rapporteur on the right to food*, *supra* note 62, at ¶ 30.

⁷⁰ See Human Rights Council, Report of the Special Rapporteur on the right to food (Olivier De Schutter), UN Doc. A/HRC/9/23 (Sept. 8, 2008) ¶ 20–22.

⁷¹ ICESCR, *supra* note 26, art. 6(1).

⁷² Committee on Economic Social and Cultural Rights (CESCR), General Comment 14, *The right to the highest attainable standard of health* (Art. 12), ¶ 27 (Nov. 8, 2000).

The call for a greater focus on land, its role in fulfilling international human rights, and a definition of the right to land has been repeated by a number of international actors, including special rapporteurs of the Human Rights Council,⁷³ non-governmental organizations,⁷⁴ and international governmental bodies.⁷⁵ Whereas international legal instruments have not adequately considered the considerable role that land plays in the international human rights framework it is clear with even a brief analysis that land is a fundamental element in access to numerous international human rights. Where land policies are carried out by both governmental and private bodies, a number of underlying rights can be affected, even where governments are acting under eminent domain or engaging in rural development programs, and states must consider and abide by their international human rights obligations.

⁷³ See, e.g., *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, ¶ 31, 33, UN Doc. A/HRC/4/18 (Feb. 5, 2007) (“the Special Rapporteur strongly believes that the Human Rights Council should consider devoting attention to the question of the human right to land and should conduct studies in this regard In particular, the Special Rapporteur requests the Council to: . . . Recognize the right to land as a human right and strengthen its protection in international human rights law”); 2008 Report of the Special Rapporteur on the right to housing, *supra* note 5, ¶ 104 (“ . . . the [Human Rights] Council should: . . . Consider the relationship between the right to land and congruent human rights and their implementation, in particular in regard to adequate housing and the right to food and work as a means to combat poverty, discrimination, violence, evictions and displacement”).

⁷⁴ See, e.g., International Land Coalition 2009 Conference, Kathmandu Declaration: Securing Rights to Land for Peace and Food Security, April 23, 2009, available at http://www.landcoalition.org/pdf/09_Katmandu_declaration_E.pdf (“Gaining secure access to land and natural resources is central to their enjoyment of full citizenship and wider human rights, especially the right to food. Land issues shape social, economic and political relations, and are a concern for everyone.”)

⁷⁵ Economic and Social Council, Development Cooperation Forum, Annual 2008 High-Level Segment Ministerial Declaration, Implementing the internationally agreed goals and commitments in regard to sustainable development, draft declaration, UN Doc. E/2008/L.10 ¶ 28 (July 3, 2008) (“We recognize the crucial importance of enhanced access of the rural poor, women and men, to productive assets, in particular land and water, and stress that priority attention should be given to the adoption of policies and the implementation of laws that guarantee well-defined and enforceable land- and water-use rights and promote legal security of tenure, while recognizing the existence of different national laws and/or systems of land access and tenure.”); United Nations Public-Private Alliance for Rural Development, Ministerial Declaration on Rural Development, “Promoting an integrated approach to rural development in developing countries for poverty eradication and sustainable development,” para 24, Doc. A58/3/Rev1 (July 3, 2003).