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# Seeding Hope? Land in the International Human Rights Agenda

## Challenges and Prospects

Working Paper by  
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## **ABOUT THE INTERNATIONAL NETWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCR-NET)**

The International Network for Economic, Social and Cultural Rights (ESCR-Net) is a collaborative initiative of groups and individuals from around the world working to secure economic and social justice through human rights. ESCR-Net seeks to strengthen the field of all human rights, with a special focus on economic, social and cultural rights, and further develop the tools for achieving their promotion, protection and fulfillment. Through ESCR-Net, groups and individuals exchange information, develop a collective voice, amplify their actions, and develop new tools and strategies. By facilitating joint actions, enhancing communications and building solidarity across regions, the network seeks to build a global movement to make human rights and social justice a reality for all.

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The participants in the meeting included:

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- Brian Osbon, Ekta Parishad, Europe;
- Felix Kirchmeier, Friedrich Ebert Stiftung;
- Jill Carr-Harris, Ekta Parishad;
- Laure-Anne Courdesse, OHCHR;
- Magdalena Sepulveda, UN Special Rapporteur on Extreme Poverty;
- Marie Bohner – Ekta Parishad, Europe;
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## FOREWORD

This paper draws heavily on conversations and informal consultations with a broad range of representatives from social movements and civil society organisations, scholars and independent experts on the issue of human rights and land. It highlights some of the key arguments put forth during a meeting on land and human rights convened by a meeting in Geneva in September 2011.<sup>1</sup> Subsequent to the meeting, the authors finalised this paper, which was subsequently vetted by a group of “expert readers,”<sup>2</sup> whose comments were then incorporated.

This is a Working Paper and the ideas reflected will continue to evolve as discussions progress and deepen. The observations and proposals reflected here will inform the ongoing work by ESCR-Net to contribute to a stronger international recognition of a human right to land and promote a central role for social movements in that agenda. It will serve as an input to a meeting amongst social movements in South Africa in May 2012, to share experiences and demands and evaluated proposals for demanding land as a human right.

## INTRODUCTION AND CONTEXT

Across the world, access to – or control over – land is igniting social and political conflict with serious human rights ramifications and pushing the issue of land increasingly towards the centre of the human rights agenda. While many social movements are demanding explicit recognition of a human right to land, advocates and human rights experts are demonstrating a growing interest in strengthening international standards and protections for those who suffer serious human rights violations as a result of the lack of access to – or control over – land.

What are the contours of a human rights agenda with respect to land? What are the approaches being pursued by social movements and the broader human rights community? Is the problem that existing international norms are inadequate to address the full range of human rights issues in relation to land? Is it therefore necessary to develop new norms or specific instruments? Or is the challenge one of the effective implementation, which in turn requires sound and purposive interpretation and strategic use of human rights standards in specific issues and situations relating to land?

This paper offers an overview of some of the main human rights issues related to land policies. It reflects on critical issues that determine whether (and how) human rights can contribute to stronger protections of land rights in the face of unprecedented levels of land grabbing; forced evictions and displacement, landlessness; and concerns over the sustainable management of natural resources. It surveys the diverse claims articulated by many social movements and explores key opportunities and challenges to advancing a human rights agenda with respect to land.

The paper is divided into two parts: Part I includes a brief overview of human rights in the context of land policies and a summary assessment of the jurisprudence of international human rights bodies on land. Part II discusses the key issues, challenges and opportunities confronting social movements and advocates aiming to advance a human rights agenda on land.

This paper is intended to contribute to the growing debate amongst human rights advocates and experts regarding the various questions highlighted above. It suggests the need to more fully comprehend, and respond to, the demands of social movements, and outlines some proposals and recommendations in the hope that they may strengthen the work of activists, advocates and experts to shape land policies that ensure respect for human rights in principle and practice.

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1 See Acknowledgements.

2 Ibid.

## I. LAND AND HUMAN RIGHTS: CONTEXT, JURISPRUDENCE AND SOME OUTSTANDING ISSUES

### THE CASE FOR A STRONGER HUMAN RIGHTS AGENDA ON LAND

For millions of people, the ability to realise their human rights and live in dignity is often contingent on their access to, and control over, lands, territories and natural resources. Land rights have thus been a focus of social movements and civil society organisations across the world. At the same time, land, natural resources and their productive potential has long been central to statecraft and public policy and attracted a wide range of state and non-state interests and has often been a flashpoint for social and political conflict.

Two realities make a compelling case for building a comprehensive human rights agenda on land. The first is the significance of land for the realisation of a range of internationally recognised human rights, including the right to an adequate standard of living, food, adequate housing and water,<sup>3</sup> the right to enjoy one's own culture,<sup>4</sup> the right to freely pursue economic, social and cultural development,<sup>5</sup> equal treatment<sup>6</sup> and the right to privacy and family life.<sup>7</sup> The second is the alarming extent of grave human rights violations arising from situations of land grabbing, landlessness, forced evictions and displacement, whereby people are dispossessed of their means of livelihood and habitat, social conflicts erupt and land-rights advocates and activists are criminalised and persecuted.

Today, as much as one quarter of the world's population is landless, including 200 million people living in rural areas;<sup>8</sup> and the numbers are steadily increasing. Currently, 19.5 million hectares of farmland are converted annually into industrial and real estate.<sup>9</sup> Heightened pressures on lands drives the displacement of small farmers and peasants from the areas they have farmed for generations or forces the sub-division of land into portions insufficient to feed their families. The 'global land grab', as it is generally described, refers to a process of large scale land acquisition

for production, often by foreign investors, which establishes land holdings unprecedented in disproportion to their average size.<sup>10</sup> It implies the dispossession of small-holder farmers (particularly women, who represent the great majority of subsistence farmers and gatherers) and other groups from the lands and natural resources on which their livelihoods depend. This process poses critical threats to their ability to realise the right to food, right to adequate housing and a range of other rights. However, it is not just farming communities who face these threats. In coastal areas and watersheds, an estimated 120 million people depend directly on fishing to feed their families and sustain their livelihoods, 95% of whom live in developing countries.<sup>11</sup> For these groups, access to coastal lands or riverside areas is essential for their subsistence and economic development. Yet the acquisition of coastal lands for the purposes of tourism, industry, extractive industries, transportation infrastructure and Special Economic Zones<sup>12</sup> (among other purposes) has impeded the ability of small farmers, fisher folk and other smallholders from realising a range of other rights, especially their right to food.<sup>13</sup>

Indigenous peoples have a particular relationship with their lands and territories that represent not only the basis for their material survival but also for the maintenance of their culture and the exercise of their right to self-determination. Approximately 370 million indigenous peoples living in some 90 countries<sup>14</sup> reside in areas where intensive natural resource extraction occurs, rendering them especially vulnerable to dispossession and displacement.<sup>15</sup> They often lack titles or tenure formally recognised by the state and frequently face discrimination and other obstacles in realising their rights to their lands and territories.

3 E.g., Art. 25 UDHR and 11 ICESCR.

4 Art. 27 ICCPR.

5 E.g., Art. 1 ICESCR and ICCPR.

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

7 Aert, 12 UDHR, Art. 17 ICCPR.

8 UN-HABITAT, *Secure Land Rights for All*, Nairobi:UN-HABITAT, 2008, p. 4, available at: [www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=2488&alt=1](http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=2488&alt=1), accessed August 31, 2011.

9 UN General Assembly, 65th Session, Report of the Special Rapporteur on the Right to Food, A/65/281, 11 August 2010, p. 6.

10 [www.ifad.org/english/land/index.htm](http://www.ifad.org/english/land/index.htm) and FIAN International. "Land Grab study," 2010. Available at: [fian.org/resources/documents/others/report-on-land-grabbing/pdf](http://fian.org/resources/documents/others/report-on-land-grabbing/pdf)

11 Allison, E.H. & Ellis, F., "The Livelihoods Approach and Management of Small-Scale Fisheries", *Marine Policy*, Vol. 25, No. 5, 2001, p. 1.

12 For an analysis see Sampat, Preeti. "Special Economic Zones in India: Reconfiguring Displacement in a Neoliberal Order?", *City & Society*, Volume 22, Issue 2, pp. 166–182, December 2010.

13 UN Millennium Project, *Halving Hunger: It Can Be Done, Summary version of the report of the Task Force on Hunger*, New York: The Earth Institute at Columbia University, 2005.

14 UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, ST/ESA/328, New York: DESA, 2009, p. 1.

15 UN General Assembly, 65th Session, Report of the Special Rapporteur on the Right to Food, A/65/281, 11 August 2010, p. 7.

Numbering approximately 120 million worldwide,<sup>16</sup> pastoralists are another group who rely on their access to and use of lands to sustain their livelihoods and culture. Even though this group is often under-represented in international fora, herders represent an important population. In Mongolia, for example, semi-nomadic and nomadic herders make up approximately 30% of the country's population, and across the drylands of sub-Saharan Africa, almost 60 million people depend on their ability to access pasture lands for grazing.<sup>17</sup>

Access to, and control over land is also a central human rights issue in a rapidly urbanising world. Land grabbing has been exacerbated by models of urban development, which have transformed urban lands into capital sinks storing profits accrued from other sectors. This renders them targets of intensive speculation and other activities driven by the financial sector, often resulting in driving up its market value while driving out its low-income residents.<sup>18</sup>

Urban areas are home to many of the world's poorest people. In 2010 some 827.6 million people lived in slums or informal urban settlements,<sup>19</sup> and their population is predicted to grow by up to six million each year, adding another 61 million people to the informal neighborhoods of the world's cities by 2020. Poor and disadvantaged urban populations clearly face different issues than rural communities, such as small farmers who depend on land to grow their food. In the case of poor and informal urban neighborhoods, communities often organise around efforts to resist forced evictions and promote secure and permanent tenure and access to essential services.<sup>20</sup> Conflicts over the "urban commons" between agents of financial capital, on the one hand, and the residents of informal and low-income neighborhoods, on the other, provide a stark illustration of the power and human rights

issues at stake with regard to land. In many cases, rural and urban communities confronting dispossession, displacement and disempowerment as a result of land-grabbing or unjust land policies face a wide-range of threats, harassment and violence, from state and non-state actors alike.

The issue of land has long been a central theme in the struggles for social justice of social movement organisations. The notion of a human right to land has found increasing recognition within the international development<sup>21</sup> and human rights communities, and jurisprudence related to the issue of access to, use of or control over lands, is progressively developing. At the same time, international human rights law has failed to comprehensively define whether (and under what conditions) such a right exists, according to international standards.

## LAND IN INTERNATIONAL HUMAN RIGHTS JURISPRUDENCE

This section presents a brief overview of the treatment of land according to international human rights law. It is by no means exhaustive; rather, it is intended to signal key developments in international human rights jurisprudence related to land.<sup>22</sup> While human rights bodies have yet to recognise land as a free-standing human right, there exist a number of broadly accepted international instruments and regional jurisprudence that address various human rights issues relevant to land.

The Universal Declaration of Human Rights guarantees that "[e]veryone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."<sup>23</sup> The two core human rights covenants also recognise the principle of self determination; namely, that people may "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 land and resources and in no case should a people be deprived of its own means of subsistence."<sup>24</sup> It has also been widely accepted

16 UN General Assembly, Human Rights Council, 13th Session, "Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge", Report of the Special Rapporteur on the Right to Food, A/HRC/13/33/Add.3, 28 December 2009, p. 11.

17 UN General Assembly, Human Rights Council, 13th Session, "Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge", Report of the Special Rapporteur on the Right to Food, A/HRC/13/33/Add.3, 28 December 2009, p. 11.

18 See *The Urban and Northern Face of Global Land Grabs*, Eric Holt-Giménez, Yi Wang and Annie Shattuck, Paper presented at LDPI Conference, April 2011. This paper, a draft, is a result of research in progress.

19 UN-Habitat, "Urban Trends: 227 Million Escape Slums", *State of the World's Cities*, March 2010, p. 1, available at: [www.unhabitat.org/documents/SOWC10/R1.pdf](http://www.unhabitat.org/documents/SOWC10/R1.pdf).

20 Warah, Rasna, "Land Rights Campaign in Nairobi : Squatters fight for their Homes", *Africa Recovery*, Vol. 15 #1-2, p. 3, available at: [www.un.org/ecosocdev/geninfo/afrec/vol15no1/151city3.htm](http://www.un.org/ecosocdev/geninfo/afrec/vol15no1/151city3.htm).

21 See for example [www.oxfam.org/en/grow/issues/land-grabs](http://www.oxfam.org/en/grow/issues/land-grabs).

22 For a comprehensive human rights law analysis see, for example, *Legal Opinion: The Right to Property From A Human Rights Perspective*, Christophe Golay and Ioana Cismas, ICHRDD and ADH Genève, 2010 and *Land Rights Issues in International Human Rights Law*, E. Wickeri and A. Kalhan, Institute for Human Rights and Business, undated.

23 UN General Assembly, 3rd Session, Universal Declaration of Human Rights, A/RES/217 A (III), 10 December 1948 (Article 17).

24 UN General Assembly, 21st Session, International Covenant on Economic, Social and Cultural Rights, A/RES/2200 (XXI), 16 December 1966 (Article 1) and UN General Assembly, 21st Session, International Covenant on Civil and Political Rights, A/RES/2200 (XXI), 16 December 1966 (Article 1).

that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...”<sup>25</sup> Most member states of the UN have also acknowledged that “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.”<sup>26</sup> States have also undertaken to eliminate discrimination and to guarantee the right of everyone to own property alone as well as in association with others.<sup>27</sup> Equal rights for women “in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property”<sup>28</sup> has also been recognised.

The interpretive work of the main UN human rights treaty bodies have further contributed to emerging jurisprudence regarding human rights and land. A number of General Comments<sup>29</sup> and Concluding Observations following the review of states by the Committee on Economic Social and Cultural Rights have reflected concern about natural resource exploitation, forced evictions and land grabbing, among other issues.<sup>30</sup> The Committee on Elimination of all forms of Discrimination Against Women has also issued jurisprudence related to land,<sup>31</sup> and the Human Rights Committee has established, in several rulings, that the issue of access to and rights over land also implicate a range of civil and political

rights.<sup>32</sup> An additional body of interpretive works and emerging jurisprudence relevant to land and human rights may also be found within the European, Interamerican and African human rights systems,<sup>33</sup> as well as in case law from countries around the world.<sup>34</sup>

As far back as 1990, the UN Special Rapporteur on Economic, Social and Cultural Rights submitted a progress report to the Commission on Human Rights, in which he underscored the relationship between land and human rights and recommended that a human rights perspective be employed in addressing issues related to land.<sup>35</sup> In 1994, the UN Commission on Human Rights appointed an Independent Expert on the right of everyone to property, who stressed, in his final report the “need to maintain a clear link between the right to own property, the right to adequate housing and other relevant human rights.”<sup>36</sup> More recently, in 2008, the UN Special Rapporteur on the right to adequate housing called on the UN Human Rights Council to recognise the right to land as a human right and strengthen its protection in human rights law,<sup>37</sup> which was reaffirmed by the Human Rights Council’s Advisory Committee in early 2011.<sup>38</sup>

In recent years efforts to codify the rights of specific groups vulnerable to discrimination and marginalisation have also addressed human

25 UN General Assembly, 21st Session, International Covenant on Civil and Political Rights, Op. cit. (Article 12) and UN General Assembly, 3rd Session, Universal Declaration of Human Rights, Op. cit. (Article 12).

26 UN General Assembly, 3rd Session, Universal Declaration of Human Rights, Op. cit. (Article 25) and UN General Assembly, 21st Session, International Covenant on Economic, Social and Cultural Rights, Op. cit. (Article 11.1).

27 UN General Assembly, 21st Session, International Covenant on Economic, Social and Cultural Rights, Op. cit. (Article 5 d. (v)).

28 UN General Assembly, 21st Session, International Covenant on Civil and Political Rights, Op. cit. (Article 3); UN General Assembly, 3rd Session, Universal Declaration of Human Rights, Op. cit. (Article 2) and UN General Assembly, 20th Session, International Convention on the Elimination of All Forms of Racial Discrimination, A/RES/2106 A (XX), 21 December 1965 (Article 16.1 (h)).

29 Committee on Economic Social and Cultural Rights: General Comments No. 4 (the right to adequate housing), No. 7 (forced eviction), No. 12 (the right to adequate food), paragraph 12, No. 14 (the right to the highest standard of health), No. 15 (the right to water, No. 16 (the equal rights of men and women to the enjoyment of all economic, social and cultural rights) and No. 21 (right of everyone to take part in cultural life).

30 Committee on Economic Social and Cultural Rights: Review of Cambodia, 30, 2009; Review of Democratic Republic of Congo, 14, 2009; Review of Sri Lanka, 11, 2010; Review of Madagascar, 33, 2009 and Review of Chad, 13, 2009.

31 Committee on Elimination of all forms of Discrimination Against Women, General Recommendation No. 21 (equality in marriage and family), Review of Israel.

32 See, for example, Human Rights Committee: *Länsman et al. v. Finland*, Communication No. 511/1992 (8 November 1994).

33 African Commission for People’s and Human Rights, *Centre for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, Communication No. 276/2003 (4 February 2010); Inter American Court of Human Rights, *The Saramaka People v. Suriname*, (Judgment of 28 November 2007); *African Commission, Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communication No. 296/2005 (29 July 2010) and the *European Court of Human Rights, Dogan and others v. Turkey*, Applications nos. 8803-8811/02, 8813/02 and 8815-8819/02 (29 June 2004). See also Golay and Cismas 2010 and [www.escr-net.org/caselaw/](http://www.escr-net.org/caselaw/) for more cases.

34 South Africa: *Bhe v. Magistrate Khayelitsha & Ors*. 2005 (1) BCLR 1 (CC), Constitutional Court of South Africa (15 October 2004), United States: *South Fork Band and others v. United States DOI*, 588 F.3d 718 (9th Cir. 2009), Ninth Circuit Federal Court of Appeals (3 December 2009) and Judgment T-821/07, Constitutional Court of Colombia (5 October 2007) See [www.escr-net.org/caselaw/](http://www.escr-net.org/caselaw/) for additional examples. Many thanks to Bret Thiele for his contributions to this section.

35 U.N.Doc. E/CN.4/Sub.2/1990/19.

36 Completed Final report submitted by Mr. Luis V Rodriguez, Independent Expert, E/CN.4/1994/19, 25 November 1993, para 494.

37 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, U.N. Doc. A/HRC/7/16.

38 UN Doc. A/HRC/16/63 (18 February 2011).

rights related to land. The rights of indigenous peoples, for example, to their lands and territories have advanced the furthest in terms of formal recognition, including: “the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use ...”<sup>39</sup> There have also been renewed efforts to clarify women’s rights in relation to land, including equality with respect to property rights, inheritance as well as titling of land and homesteads.<sup>40</sup>

### SOME OVERARCHING CONCERNS

While the jurisprudence is substantial and constantly evolving, gaps exist between the rhetoric of international standards and actual policies and practices. This presents serious challenges to the ability of people to access and use and control the lands on which they physically, materially, socially and culturally depend. There appears to be broad agreement within the human rights community that the problem is twofold. On the one hand, international human rights law has failed to comprehensively address issues of land, which results in a “normative gap,” and required a new or more developed instrument in order to prevent and provide protection against a practice that results in the violation of human rights. On the other hand, there exists a serious an “implementation gap” concerning the application of the standards and protections that do exist. This occurs when states fail to pass domestic legislation, establish mechanisms and procedures, mandate institutions and allocate the resources necessary to ensure that normative standards are applied in specific policies and programs.<sup>41</sup>

The lack of strong standards governing the right to access and control land also exacerbates social inequalities and deepens the levels of marginalisation that some groups experience. This is because land and especially unencumbered rights to, and security of, land access or ownership often provides a basis for subsistence and well as economic and social mobility. The lack of effective safeguards of

their land rights leaves already marginalised populations more vulnerable to deprivations of basic necessities and fundamental liberties, and serious violations of a range of human rights. This explains why many of the standards that do exist<sup>42</sup> regarding human rights and land are often framed in the context of immediate issues, such as forced evictions, land grabbing, homelessness, landlessness, etc.<sup>43</sup> In other cases, they are framed as particular rights for specific groups of people who are particularly impacted by inadequate protections. The advantages and potential drawbacks of promoting a “group”-centred approach to recognising a human right to land is a subject of debate amongst human rights advocates and social movement leaders. Likewise, efforts to interpret and apply international standards in specific cases where groups are demanding a right to land is an ongoing challenge and its efficacy has not been definitively established, given the piecemeal nature of international human rights law.

Human rights advocates and social movements generating demands for a right to land, therefore, need to contend with several substantial challenges. To-date there is no international human rights instrument that addresses the issue of land comprehensively, and the domestication and enforcement of the standards that do exist has been partial and uneven. The absence of a clear articulation of the rights and duties related to land allows for excessive interpretive discretion. Concrete mechanisms are thus required in order to ensure compliance with human rights obligations and prevent heightened pressures on lands from contributing to food insecurity, homelessness, population displacement and a range of related concerns.

39 UN General Assembly, 61st Session, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, 2 October 2007 (Article 26).

40 See, for example, the Report of the Special Rapporteur on adequate housing, Raquel Rolnik, to the Nineteenth session of the Human Rights Council, A/HRC/19/53 See also Leilani, Farha. “Land, Property, and Adequate Housing: Women’s Human Rights” (AHRC Publications, Nov 1998) and “Is There a Woman in the House? Re/ conceiving the Human Right to Housing,” *Canadian Journal of Women and the Law*, Vol. 14, No. 1 (2002).

41 U.N. Doc [www2.ohchr.org/english/issues/racism/docs/A-HRC-4-WG3-6.pdf](http://www2.ohchr.org/english/issues/racism/docs/A-HRC-4-WG3-6.pdf).

42 Supra notes 20–30.

43 ICESCR Art. 11, CESCR, General Comments #s 4 and 7, numerous examples of national and regional jurisprudence.

## II. THE WAY FORWARD: OPPORTUNITIES AND CHALLENGES TO FURTHERING A HUMAN RIGHTS AGENDA IN RELATION TO LAND POLICIES

Human rights in relation to land are impacted by a number of institutional, legal, technological, and socio-political factors. They also involve policies concerning access to and ownership of land engaging a wide range of sectors, including agriculture, urban planning, environmental protection, industrialisation, housing, environmental regulations, etc. This section surveys some of the opportunities and challenges for mobilising the human rights framework to respond to the various issues at stake in relation to land policies. It aims to contribute to efforts toward the development and elaboration of the normative content of a human right to land, centred around the demands of the organisations and social movements representing those people for whom land is central for their livelihoods, cultures, socio-economic development and lives.

### SOCIAL MOVEMENTS AND THE PLURALITY OF CLAIMS FOR A RIGHT TO LAND

A number of social movements have mobilised their members and allies to demand human rights in the context of land, or, directly, a human right to land. In many cases, grassroots demands from distinct groups coincide closely. However, there are times when they reflect different interests, and claims to land may sometimes be framed in ways that exclude other groups from the equal enjoyment of their rights. As discussed below, human rights advocates would be well advised to take stock of the range of proposals from social movements and consider the areas of conflict or divergence between positions, in order to build on the strength of these movements while avoiding any inadvertently divisive effects.

The range of issues, demands and proposals raised by social movements with respect to land underlies the importance for human rights advocates to deepen their understanding regarding the relevant plurality of claims. One approach is to examine different meanings ascribed to land and the varied demands associated with these meanings. At the most basic level, claims in relation to land may arise in the context of survival and subsistence, reflecting a need to protect the fundamental capacities and safeguards necessary for physical existence in the face of hunger, homelessness or extreme poverty and deprivation. A second type of relationship between rights and land arises in the view of land as an asset, a basis for economic development and a viable livelihood. In this context, securing land rights could expand social opportunities and mobility, enhance economic security and provide a safeguard against the further impoverishment of already marginalised people. A third level suggests a basis for invoking wider claims and

assertions with respect to collective identity, territoriality and self-determination. While different groups will place emphasis on distinct meanings, it is important to recognise that for some groups, land is essential for their very survival, which by definition seems to qualify for primacy among the various interests at stake.

The three orders outlined above are inter-related; there are no thick lines separating the respective functions of land for different groups, and individuals or collectives may also move between or identify themselves with several of these positions, concurrently or simultaneously.

### KEY LAND-RELATED HUMAN RIGHTS CLAIMS ARTICULATED BY SOCIAL MOVEMENTS

A closer analysis of the demands made by many social movements and grassroots organisations shows that notwithstanding the many differences between interests and constituencies there are many common elements across the claims of groups as diverse as urban poor, peasants, pastoralists, fisher folk, indigenous peoples etc. The range of such claims examined in this section, while by no means exhaustive, is illustrative of the diversity of entry-points through which land rights could be promoted to enable people to realise a life of dignity.<sup>44</sup>

A central set of demands expressed by many social movements is the right to participation in policy making and governance in relation to the use of land. Urban dwellers regularly claim the right to participate in the development implementation, and management of public policies and municipal budgets.<sup>45</sup> Peasants' movements, have emphasised the right to be actively involved in planning and formulating the national budget for agriculture. They have also claimed the right to decide what they will produce and consume – and how. Organisations of fisher folk have exercised the right to participate in the management of fisheries and in negotiations around international trade in fish

44 This section has benefited greatly from information discussions with and information shared by ESCR-Net social movement members and partners, including the Nairobi People's Settlement Network, Take Back the Land, The Pakistan Fisher Folk Forum and the National Fisheries Solidarity Organization (NAFSO), Sri Lanka, the Confederacion Campesina de Peru (CCP), the Movimento Sem Terra (MST), Brazil, la Coordinadora Andina de Organizaciones Indigenas (CAOI), the National Centre for Advocacy Studies (NCAS) and many others.

45 World Charter for the Right to the City. Social Forum of the Americas – Quito – July 2004; Art. II (1.2) and III (1).

and related products.<sup>46</sup> Advocates of herders and pastoralists<sup>47</sup> have expressed a need for their active participation in land management decisions and inclusive decision-making processes related to the lands they traditionally use, as well as in policy making processes related to animal genetic resources.<sup>48</sup> The right to participate also engages other rights, such as the right to information; and several groups (namely small-holder farmers) also have demanded independent information about goods and services, capital, market, policies, prices, technology, the preservation of genetic resources, etc.<sup>49</sup> Rights related to participation are closely related to the right to free, prior and informed consent, which has been formally recognised in the case of indigenous and increasingly adopted in the context of customary law and practice related to the tenure of ancestral lands.<sup>50</sup>

Related to the right of participation, a number of groups have claimed the right of free expression and freedom of association, including the rights of human rights defenders. This is critical to a human rights agenda in relation to land because the ability for affected communities to organise and mobilise people and engage in collective expression are critical to ensuring meaningful participation and access to justice and remedies.

Another cross-cutting claim is the right to adequate housing, the right to security of land tenure and the prohibition on forced evictions and displacement. The human rights system has already recognised a whole complex of principles, standards elaborated by several treaty bodies and in the Basic Principles and Guidelines on Development-Based Evictions and Displacement.<sup>51</sup> Many of these claims have also been linked to the right to culture, right to

maintain a way of life, etc. Indigenous peoples have framed the right to land, to a large extent, as the right to maintain and reproduce their ways of life, emphasising their “spiritual and material relationship” with their traditionally owned and occupied lands and often arguing that access to lands and territories is essential to their physical and cultural survival.<sup>52</sup> Fisher folk have expressed a connection between their lands, territories and waters and their cultural and spiritual values, and have called for recognition of their rights to land in order to protect their cultural identity and dignity.<sup>53</sup> Peasants’ organisations and movements have also framed their claims for land rights in the context of the recognition and protection of local values revolving around sustainable agriculture and food sovereignty.<sup>54</sup> Pastoralists have articulated a link between the right to maintain traditional livestock breeds as collective property and an expression of indigenous knowledge and culture.<sup>55</sup> Finally, urban dwellers’ demands relating to the “social function of the city and urban property”<sup>56</sup> allude to the social and cultural value of the land that they occupy.

Another set of rights claims have centred around claims to environmental rights and sustainable development, especially the right to conserve biodiversity and devise alternatives to large-scale, industrial modes of production or natural resource exploitation. Indigenous peoples have asserted the right to conserve and protect the environment “and the productive capacity of their lands or territories and resources,”<sup>57</sup> including conservation of soil and water sources. Peasants’ movements have placed great value on biodiversity and their right to choose, grow and develop the seeds they use (as well as soils and waters) and to reject the monopoly of industrially produced or genetically-modified varieties.<sup>58</sup> Fisher folk have expressed claims for the right to participate in the restoration, protection and management of local aquatic and

46 Civil Society Workshop, Bangkok Statement on Small-Scale Fisheries, presented on 17 October 2008 at the Global Conference on Small-Scale Fisheries, Bangkok, [sites.google.com/site/smallscalefisheries/statement](http://sites.google.com/site/smallscalefisheries/statement).

47 The authors struggled to identify organisations and social movements that actually represent nomadic pastoralists. Inputs about these groups have come from organisations that work closely with this population, including ESCR-Net partners the Center for Human Rights and Development, Mongolia and the Center for Minority Rights and Education (CEMIRIDE) Kenya.

48 Organization of Pastoralists to Defend their Land Rights, a workshop organised by World Initiative for Sustainable Pastoralism (WISP) and International Land Coalition (ILC), Tanzania, 2008, available at: [www.landcoalition.org/pdf/08\\_WISP\\_Arusha\\_Workshop\\_report.pdf](http://www.landcoalition.org/pdf/08_WISP_Arusha_Workshop_report.pdf).

49 La Via Campesina, Declaration of Rights of Peasants – Women and Men, Seoul, March 2009. Articles 6 and 7.

50 UN General Assembly, 61st Session, United Nations Declaration on the Rights of Indigenous Peoples; see also *Centre for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, (2001).

51 See [www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf).

52 Supra note 48.

53 Civil Society Workshop, Bangkok Statement on Small-Scale Fisheries, Op. cit.

54 La Via Campesina, Declaration of Rights of Peasants – Women and Men, Op. cit. Article 9.

55 Köhler-Rollefson, U., Mathias, E. and al., “Livestock Keepers’ Rights: the State of Discussion”, Animal Genetic Resources, FAO, 47, 119-123, 2010, available at: [www.fao.org/docrep/013/i1823t/i1823t13.pdf](http://www.fao.org/docrep/013/i1823t/i1823t13.pdf).

56 World Charter for the Right to the City, elaborated at the Social Forum of the Americas, Quito, July 2004, Article II (2), available at: [www.dpi.org/lang-en/events/details.php?page=124](http://www.dpi.org/lang-en/events/details.php?page=124).

57 UN General Assembly, 61st Session, United Nations Declaration on the Rights of Indigenous Peoples, Op. cit. Article 29 (1).

58 La Via Campesina, Declaration of Rights of Peasants – Women and Men, Op. cit. Article 5.

coastal ecosystems;<sup>59</sup> and pastoralist groups have demanded recognition of their role as the guardians of traditional knowledge and valuable genetic resources.<sup>60</sup>

A number of social movements have also expressed demands for economic self-determination or land for decentralised, local, small-scale economic activities. Fisher folk have called for small-scale fisheries to be established as the preferred model for the Exclusive Economic Zones (EEZ) and institutional arrangements that give priority to fish for local consumption over fish for export or for reduction to fishmeal. They have also called for the prohibition of industrial fishing in inshore waters as well as industrial aquaculture and genetically modified and exotic species in aquaculture. Indigenous peoples have asserted the right to conserve and protect the environment<sup>61</sup> and have articulated their right “to maintain and develop their political, economic and social systems or institutions... and to engage freely in all their traditional and other economic activities.”<sup>62</sup> Peasants’ movements have long stressed the need for comprehensive agrarian reforms including ceilings on land ownership and redistribution of land, the right to foster local agricultural markets and agricultural practices that protect biological diversity, environmental sustainability, including by building on traditional knowledge. Advocates of pastoralists have stressed the need for land-use demarcation that reserves grazing lands as separate for farmlands, in order to avoid conflicts between groups over land-use.

### **DEVELOPING AN EFFECTIVE HUMAN RIGHTS-BASED RESPONSE TO THE QUESTION OF EMINENT DOMAIN**

One of the most significant obstacles to advancing a human rights approach to land is the doctrine of eminent domain. A 17th century idea, now seemingly inextricably intertwined with the notion of sovereignty, eminent domain refers to the power of the state to take over privately held land on the grounds of public interest, subject to payment of compensation. The doctrine, which travelled extensively through colonialism, has influenced jurisprudence across many different contexts and legal/political terrains. For example, the Indian Supreme Court has held that eminent domain is an attribute of sovereign power of the State and

that “so long as the public purpose subsists, the exercise of power by the State to acquire the land of its subjects without regard to the wishes of the owner or the person interested in the land cannot be questioned.”<sup>63</sup> Such a view, common in many jurisdictions, has led to the concentration and inevitable abuse of the authority to determine what constitutes public purpose or interest without accountability. A 2008 study by the World Resources Institute on the creation of Protected Areas in East Africa (Kenya, Tanzania and Uganda) highlighted the fact that eminent domain powers were overly broad, often interpreted to the disadvantage of marginalised populations and that the process lacks full public participation.<sup>64</sup> It is also important to note that in some cases, Kenya’s 2010 Constitution, for example, grounds such as public health, public morals and public order – familiar grounds on which many human rights can be restricted – are being merged into the figure of “public interest” in order to allow for the use of eminent domain powers.<sup>65</sup>

Questions over the use (and abuse) of eminent domain powers are also pertinent to land rights in the metropolitan centres of the global North. In *Kelo vs. City of New London* (2005),<sup>66</sup> the US Supreme Court held that (anticipated) economic development resulting from private re-development was a valid public purpose. Although the widely criticised judgment led to some measures to prevent abuse of eminent domain,<sup>67</sup> the problem persists in the USA, most notably in the form of the emergence of alleviating urban “blight” as a ground for exercise of eminent domain. This has paved the way for city authorities to declare areas suffering economic underdevelopment or stagnation, often populated by less well-off classes, as “blighted” in order to acquire lands often in favour of

59 Civil Society Workshop, Bangkok Statement on Small-Scale Fisheries, Op. cit.

60 IUCN, Pastoralism and the Convention on Biological Diversity, available at: [www.iucn.org/wisp/pastoralist\\_portal/biodiversity/](http://www.iucn.org/wisp/pastoralist_portal/biodiversity/), accessed on August 29, 2011.

61 UN General Assembly, 61st Session, United Nations Declaration on the Rights of Indigenous Peoples, Op. cit., Article 29(1).

62 Ibid, Article 20(1).

63 Usha Ramanathan, *A Word on eminent Domain* in Lyla Mehta ed. *Displaced by Development – Confronting Marginalisation and Gender Injustice*, Sage, New Delhi 2009.

64 Protected Areas and Property Rights: Democratizing Eminent Domain in East Africa, Peter G. Veit Rugemeleza Nshala, Michael Ochieng’ Odhiambo and Jacob Manyindo, World Resources Institute, 2008.

65 Provisions relating to “public purpose or public interest” figure in Article 40 (3) of the 2010 Constitution but Article 66 (1) also allows for land acquisition on grounds of “defence, public safety, public order, public morality, public health, or land use planning.”

66 See [www.ij.org/about/3393](http://www.ij.org/about/3393) and [www.ij.org/index.php?option=com\\_content&task=view&id=920&Itemid=165](http://www.ij.org/index.php?option=com_content&task=view&id=920&Itemid=165) for more on the case.

67 See for example [www.economist.com/node/4298759](http://www.economist.com/node/4298759).

powerful private interests.<sup>68</sup>

The principle of eminent domain signifies the authority vested in the state to exercise its role as a guardian of larger public interest. For instance, the doctrine provides a legal foundation for expropriation of lands in the context of land reforms, land redistribution or restitution, such as in Brazil, India or South Africa, in ways that acknowledge people not as subjects but rights-holders and conceives of the State as a guarantor of rights and not as absolute sovereign. However, a notion of eminent domain that links the power of expropriation solely to the exercise of sovereign authority sits at odds with a human rights-informed understanding of the relationship between the state and people (one of duty-holder and rights-bearers.) Overall, there exists a real tension between the full spectrum of human rights safeguards and principles (including equality before the law; participation; accountability; free, prior and informed consent; access to remedies etc.) and the way that eminent domain has generally been understood. These situations, whereby the interpretation of Eminent Domain powers allows the state to acquire land based on the shrinking and extinguishing of rights, have no place within a human rights framework.

In responding to the challenges posed by the ways in which eminent domain has been interpreted and applied, human rights advocates need to consider at least three major issues. The first is the idea of what constitutes 'public purpose' or on what grounds can acquisition of lands be determined as being in 'public interest.' This question could give rise to a broader practice of independent reviews of the public benefits that are claimed to accrue as a result of land expropriations and transparent assessment of alternative options to achieve the same public goals with minimal acquisition of land and displacement. Privatisation, including of commons, represents a major human rights

challenge as anticipated public benefits of private investment and exploitation of land or natural resources are often used as a ground to invoke 'public purpose.' The participation of communities affected by expropriation in the determination of public purpose has been a longstanding demand.<sup>69</sup> Public participation, information and access to remedies is also enshrined in international law – for example, in the Aarhus Convention<sup>70</sup> and in the standard of free, prior and informed consent (FPIC) in the case of indigenous peoples whose entire way of life may be undermined by their displacement.<sup>71</sup> FPIC is an especially important standard as it focuses less on what the State claims as "public interest" and more on how indigenous peoples conceive of their own "collective interest" or purpose.

Secondly, a transparent and informed process to determine questions of compensation and benefits-sharing is critical. Compensation cannot be divorced from questions of which costs, benefits and losses are internalised or externalised and informed public participation in this analysis is critical. Meaningful participation is also essential to address the extent to which compensation regimes comply with internationally acknowledged standards on reparations, resettlement and rehabilitation, as well as guarantees of non-repetition.<sup>72</sup> Thirdly, ensuring access to prompt, impartial and effective remedies are critical to redress grievances and ensure accountability. These include: a) independent ex-ante human rights and environmental impact assessments; b) effective complaints mechanisms and c) regular monitoring and independent oversight. Clearly, a host of procedural and substantive human rights principles – equality and non-discrimination, participation and accountability, progressive realisation, non-retrogression coupled with many specific rights pertaining to an adequate standard of living, health, livelihoods as well as those of specific groups like women, minorities and indigenous peoples, etc. – are relevant in this context.

68 See for example, Beating Bogus "Blight" in Lakewood, Ohio (2004) at [www.ij.org/index.php?option=com\\_content&task=view&id=1448&Itemid=194](http://www.ij.org/index.php?option=com_content&task=view&id=1448&Itemid=194); New Jersey Supreme Court Limits Bogus Blight Designations (2007) at [www.castlecoalition.org/pressreleases/218-new-jersey-supreme-court-limits-bogus-blight-designations](http://www.castlecoalition.org/pressreleases/218-new-jersey-supreme-court-limits-bogus-blight-designations). In 2010, the New York Court of Appeals upheld what have been termed dubious and manipulated declarations of blight that enabled the use of eminent domain in favour of acquiring land for influential private parties in two separate high-profile cases. The two cases were *Kaur v. New York State Urban Development Corporation* involving Columbia University and *Goldstein v. New York State Urban Development Corporation* involving developer Bruce Ratner. For more see, *Let There Be Blight: Blight Condemnations in New York after Goldstein and Kaur*, Ilya Somin, *Fordham Urban Law Journal*, Vol. 38, No. 4, pp. 1193–1219, October 2011 (also *George Mason Law & Economics Research Paper No. 11-38*). See also *The Blight Stops Here?* Damon W. Root, May 27, 2010 at [reason.com/archives/2010/05/27/the-blight-stops-here](http://reason.com/archives/2010/05/27/the-blight-stops-here).

69 *Compulsory acquisition of land and compensation*, Land Tenure Studies 10, FAO UN, Rome 2008. See also *Dams and Development: A new framework for decision-making*, The Report of the World Commission on Dams, Earthscan, 2000.

70 Convention On Access To Information, Public Participation In Decision-Making And Access To Justice In Environmental Matters, 1998.

71 Evidence shows that the indigenous peoples, especially forest dwelling communities, constitute a disproportionately high number of those whose lands and habitats have been expropriated for a range of purposes. See, for example, various reports of the UN Special Rapporteur on rights and freedoms of indigenous peoples, in particular the report 'Extractive industries operating within or near indigenous territories', A/HRC/18/35, July 2011. See also, *State of the World's Indigenous Peoples*, United Nations Department of Economic and Social Affairs, 2009, New York.

72 See, for instance, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*.

## GUARDING AGAINST THE COMMODIFICATION OF RIGHTS

Just as territorial disputes and conflicts related to claims over land have long been significant in shaping international relations and law, land-rights issues form a significant share of legal and socio-political disputes and conflicts within national jurisdictions. At the heart of many of these conflicts are the multiplicity of values and meanings associated with the very idea of rights in relation to land. Human rights advocates confront the challenge posed by a wide range of actors making land-related claims, many of which often reflect values and invoke rights in ways that are either very different or actually in conflict. Thus, for example, farmers – large and small; landless peasants and sharecroppers; indigenous peoples; local authorities; multinational corporations; state owned-entities; conservationists; the rural and urban poor; developers and investors etc. may all invoke 'rights' in support of their claims.

Human rights practice has to grapple with the fact that the prevailing discourse around land rights has assumed the form of individuating and commoditising entitlements to land, where access and ownership are conceived in liberal market terms. This begs the question of how such claims actually promote the realisation of a broad range of human rights. Critiques of land reform programmes – such as in Brazil, for example – that focus primarily on market-based asset transfer (i.e. enabling the landless to 'buy' and the landed to 'sell') suggest that they could result in marginalising the political issues at stake with broad-based agrarian reform that seeks land-related entitlements as part of a broader agenda of political empowerment and socio-economic transformation.<sup>73</sup> Similarly the recognition and vesting of land rights may signify contrary intentions and outcomes. For example, a new land titling bill in India is justified on the grounds that "its benefits will be wide-reaching for a free market economy. Firstly, corporations currently prefer acquiring land for profit-making through the government, to ensure that they are insulated against legal battles. The new law will render this convoluted process unnecessary. Secondly, it will offer the landed poor an easy way to certify ownership and enter the formal market economy."<sup>74</sup> In this case, titling is nothing more than a means to facilitate the expansion of the market rather than transforming power relations and addressing profound social and economic inequalities.

73 Sauer, Sergio, "The World Bank's Market-Based Land Reform in Brazil", In: *Promised Land: Competing Visions of Agrarian Reform*, Peter Rosset, Raj Patel and Michael Courville (eds.), Land Research Action Network, New York: Food First Books, 2006, p. 182.

74 Governance Knowledge Centre, *Defining Land Ownership*, 28 May 2010, available at: [indiagovernance.gov.in/news.php?id=87](http://indiagovernance.gov.in/news.php?id=87), accessed August 31, 2011.

The manner in which customary law and practices are invoked in relation to land similarly presents both a challenge and an opportunity. In some cases customary land rights systems may be critical in balancing livelihood and ecological concerns and protecting the rights of vulnerable forest and land-dependent communities. In other contexts, however, customary systems could result in exclusion or perpetuate socially or environmentally exploitative practices. In the former case, reference to customary law and practices may bolster human rights claims, and can be an effective way to frame legal (and other) arguments in favour of land rights.<sup>75</sup> However, because customary practices always operate in dynamic socio-ecological and political contexts, they may also be invoked and mobilised "as a simpler and less conflictual route to the eventual titling, registration, and privatisation of land ownership"<sup>76</sup> whereby customary practices serve to recognise certain, individual rights and exclude the rights of others (for example, those who traditionally use and control lands collectively or women).

## ON THE RIGHT TO PROPERTY

A key issue that confronts human rights advocacy in the area of land is the intersection of the right to own property with other human rights. The human rights dimensions of property rights are most often stressed in the context of grievances that arise as a result of lack of legal titles or insecurity of tenure, both of which affect people in poverty in particular.<sup>77</sup>

Given the 'finiteness' of land and its unique relevance to habitat and production, a recognition of its human rights dimensions, such as in the right to adequate housing and the right to food seems self-evident.<sup>78</sup> Yet there are dangers here too as the very vesting and recognition of rights may carry the seeds of dispossession. Hence, individuated, market-friendly property rights regimes, which often commoditise rights and land, not to mention intellectual or cultural resources, do not find much favour with social movements and many others in the human rights community.

75 See, for example, the case of *Enderois* from the African Commission.

76 Women's Movements, "Customary Law and Land Rights in Africa: The Case of Uganda", *Aili Mari Tripp African Studies Quarterly*, Available at [www.africa.ufl.edu/asq/v7/v7i4a1.pdf](http://www.africa.ufl.edu/asq/v7/v7i4a1.pdf), Accessed 31 August, 2011. (citing Deninger 2003).

77 See the work of the Commission on Legal Empowerment of the Poor and see, for example, Property Rights are Human Rights, Mary Robinson, El-Pais, 1st June 2007, available at [www.undp.org/legalempowerment/pdf/EI%20Pais.6.1.English%20version.pdf](http://www.undp.org/legalempowerment/pdf/EI%20Pais.6.1.English%20version.pdf).

78 See Golay and Cismas 2010, who also outline the relevance of right to property in the context of the right to social security.

Within the African and Inter-American human rights systems, the human rights dimensions of property rights are reflected in terms of recognising the social functions of property, a reflection of domestic constitutional practices in these regions. Stressing the social function of property may justify land redistribution programs; Article 5 (XXIII) of the Constitution of Brazil has often been cited to reinforce such policies. In other cases, it may be interpreted to legitimize restrictions on the right to own private property, such as ceilings on land ownership in the context of land reforms. An example of this may be found in Article 25 of the South African Constitution, which in paragraph 4, includes the commitment “to reforms to bring about equitable access to all South Africa’s natural resources” as a ground on which expropriation of property is allowed in public interest.

There are however, other dimensions to property rights that the human rights community needs to account for; for example, the manner in which civic freedoms and rights are tied to property rights. The US Supreme Court has held that not only is there no “dichotomy between personal liberties and property rights” but that a fundamental interdependence exists between the personal right to liberty and the personal right in property.<sup>79</sup> However, civil liberties are being challenged by property rights in new ways, most notably with the growth of mass-private or quasi-public spaces – the new urban commons – such as privately owned or developed shopping

malls, airports, parks or even city-centres, which pose significant challenges of exclusion, control and freedoms. With cities increasingly marked by a web of mass-private spaces and gated communities, ‘internal frontiers’ are on the rise, with significant restrictions on freedom of movement and assembly.<sup>80</sup> For instance, the Law Commission of Canada has noted the concerns in respect of policing and property rights in a context in which “the policing of more and more public life now falls to private rather than public police, and the question has increasingly been raised as to how to ensure that such policing reflects broad public interests, rather than the narrower, typically commercial interests of the property owners and their tenants. Furthermore, the level of policing in these areas is not determined by any reviewable standard, but rather determined by the fiscal constraints and priorities of the corporate owner.”<sup>81</sup>

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79 in [Lynch v. Household Financial Corporation](#), 405 U.S. 538 (1972).

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80 See “Off our streets: Are private developers squeezing out demos?” *The Economist*, Oct 21 2010. For more on the human rights implications of the governance urban public spaces see *Modes and Patterns of Social Control*, International Council on Human Rights Policy, 2010 available at [www.ichrp.org/files/reports/61/Social\\_Control\\_and\\_Human\\_Rights\\_ICHRP\\_Electronic\\_Final.pdf](http://www.ichrp.org/files/reports/61/Social_Control_and_Human_Rights_ICHRP_Electronic_Final.pdf).

81 *In Search of Security: The Future of Policing in Canada*, Law Commission of Canada, 2006, pp. 39-40 available at [www.policecouncil.ca/reports/LCC2006.pdf](http://www.policecouncil.ca/reports/LCC2006.pdf).

### III. CONCLUSION

#### THE CHALLENGE REMAINS

Conflicts over rights to land are inherently political. They go to the heart of the very notion of state sovereignty as it relates to the principle of eminent domain, and often become the focal point for seemingly immutable power struggles between different interest groups. Regrettably, to date, the global human rights framework has failed to provide a coherent response.

The pervasive practice of land grabbing, forced evictions and displacement, and development processes whereby people are dispossessed of their means of livelihood, as well as the persecution and criminalisation of human rights defenders involved in conflicts over lands, continues to impede the full realisation of human rights for many people. The entrenched doctrine of eminent domain and its manifestation in many country's constitutions and laws presents major challenges, as does the way in which the 'public purpose' may be utilised to justify the acquisition of lands. In addition, the prevailing discourse around land rights has assumed the form of individuating and commoditising entitlements to land, where access and ownership are conceived in liberal market terms and land is narrowly understood as property.

In the face of these challenges people have a right to to access and control lands in order to realise their right to food, housing and an adequate standard of living (among other claims). Decision-makers must be held accountable for devising and implementing policies with transparency and enabling the informed participation of all people in determining questions of benefits-sharing and compensation, and those denied a right to land should be able to access prompt, impartial and effective remedies and redress for their grievances.

#### NEW STANDARDS AND/OR NEW INTERPRETATIONS?

Notwithstanding the normative and implementation gaps in international human rights law discussed above, the human rights framework remains critical for mediating between claims, clarifying obligations and informing policymaking around land issues in ways that enable people dependent on land for their livelihoods to enjoy an adequate standard of living and a life of dignity. The evolving human rights agenda in relation to land is witness, on the one hand, to initiatives to develop new standards, and on the other hand, efforts to promote the elaboration and interpretation of existing standards in order to clarify human rights in relation to land.

In terms of the former, the proposed Convention on the Rights of Peasants has been promoted

actively in recent years by the broad-based social movement La Via Campesina<sup>82</sup> together with a number of international NGOs, experts and other activists. The strategy underlying this proposal parts from a recognition of the particular ways in which smallholder farmers and landless farmworkers require access to (and control over) land in ways which enable this group to overcome specific barriers to achieving food sovereignty, economic development and realising a range of human rights. This approach to promoting a stronger recognition of human rights related to land also reflects the pragmatic calculation that promoting human rights claims to land for certain groups may be more acceptable to states and thus more viable within the intergovernmental system, such as, in this case, the UN General Assembly.

At the same time, asserting the rights of a specific group (whether based on identity, such as indigenous peoples or way of life/economic activity, like peasants) is not the same as arguing that access to land is a universal human right. The relationship between advancing a right to land for specific groups, and the goal of a stronger recognition of universal human rights related to land, needs to be further clarified. There are also some outstanding questions regarding the potential for a group-based approach to have a divisive effect on the mobilisation of horizontal solidarities, given the range of demands and groups who have articulated claims related to lands. This risk must be managed carefully, and attention must be paid to mitigate the impacts of these differing positions on larger efforts at building solidarity between social movements and facilitating collaboration on issues of common cause. That said, it is clear that spaces such as the one presented by discussions around a Declaration on Rights to Peasants do have the potential to advance a human rights agenda in relation to land, and the opportunities and challenges inherent in this approach therefore merit a thorough evaluation.

Another approach revolves around efforts to guide the interpretation of existing international standards to clarify the rights of people, and the obligations of states and non-states actors, related to lands. One of the tenets within international human rights law is that all people may "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 land and resources and in no case should a people be deprived of its own

<sup>82</sup> See [viacampesina.net/downloads/PDF/EN-3.pdf](http://viacampesina.net/downloads/PDF/EN-3.pdf), for example.

means of subsistence.”<sup>83</sup> A number of advocates have focused on this article in efforts to clarify the normative content of principles such as the right to self-determination and a human right to land. Many of these efforts are aimed at generating and building upon human rights jurisprudence whereby land is recognised as a human right in specific contexts. This strategy emphasises the collection, and generation of new, national and regional-level case law, as well as focused work with regional mechanisms, to promote a more explicit articulation of the conditions under which the right to land is recognised for certain groups. This strategy also seeks to inform the General Comments and Concluding Observations issued by treaty bodies and the UN Human Rights Council and its Special Procedures as they relate to land and human rights.

It is clear that the specific approaches to standard-setting will be determined by a number of factors including the wider political context, opportunities and obstacles presented at different levels within the inter-governmental system, the strengths of specific advocacy initiatives etc. At the same time, these two approaches are not necessarily entirely divergent. Both respond to similar concerns in the face of rampant land grabbing, forced evictions and displacement, homelessness, rural hunger and the uncontrolled exploitation and degradation of natural resources. In consequence, diverse range of groups and communities do indeed have cross-cutting interests and claims (as discussed in II above), and have articulated many similar qualities that should inform the normative content of any new development of the human rights system relating to land. In addition, both approaches are driven by a shared understanding about the need to strengthen the human rights framework in general, and a recognition that, for certain groups, land is essential for the full realisation of their human rights.

## **TOWARD AN EFFECTIVE AGENDA ON LAND AND HUMAN RIGHTS**

Several additional developments on different fronts that engage standard-setting also appear to have opened important avenues for action. The development and expansion of extra-territorial obligations<sup>84</sup> is a promising dimension with great

relevance in the context of agricultural and land related policies, projects backed by foreign investment, international financial institutions and the role of bilateral and multilateral trade agreements, among other things. Similarly, the FAO’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests<sup>85</sup> offers another valuable instrument for advocacy as well as a platform for strategy. On another note, the analysis and recommendations in the recent report on women and land by the UN Special Rapporteur on adequate housing<sup>86</sup> opens up ways of moving forward the land rights agenda while considering women as particular rights-bearers in discussions relating to lands.

There is clearly a growing recognition among human rights advocates and social movements that a stronger, more effective international human rights agenda in relation to land is necessary, especially when without land (or land rights) a population cannot enjoy meaningfully a wide range of other human rights. While perspectives differ as to the form this should assume, it is clear that the international advocacy efforts must be guided by the experiences and struggles of communities and movements battling to realise their human rights in the face of land grabbing, forced evictions, displacement and related threats. Their demands must inform the development of international advocacy goals and strategies, which should build on the strength of these movements.

While the preceding discussion has highlighted several key demands around which a number of social movements do appear to converge, it is nevertheless important to acknowledge that this may not always be the case as in some contexts there are bound to be normative or substantive disagreements, as is common with respect to questions of access to or control over land. It is important therefore that human rights advocates and social movements remain cognisant of possibly competing demands, engaging them constructively and minimising and mitigating any inadvertent divisive effects

A “thick mapping” exercise is vital to enable human rights advocates to fully comprehend the depth and breadth of specific demands or rights claims in relation to land. Such an exercise is a necessary first step as it can highlight the various norms and institutions that influence land policies in different contexts while making visible the intersection between land related claims and other socio-political or economic issues. This can enhance the potential for developing a strategic

83 International Covenant on Economic, Social and Cultural Rights, A/RES/2200 (XXI), 16 December 1966 (Article 1) and International Covenant on Civil and Political Rights, A/RES/2200 (XXI), 16 December 1966 (Article 1).

84 The recent adoption of the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights by a wide-ranging group of independent experts and civil society organisations is especially relevant. The guidelines are available at [www.icj.org/default.asp?nodelID=349&sessID=&language=1&myPage=Legal\\_Documentation&id=23901](http://www.icj.org/default.asp?nodelID=349&sessID=&language=1&myPage=Legal_Documentation&id=23901).

85 See [www.fao.org/nr/tenure/voluntary-guidelines/en/](http://www.fao.org/nr/tenure/voluntary-guidelines/en/) for more.

86 Nineteenth session of the Human Rights Council, A/HRC/19/53.

human rights approach especially in terms of advancing the human rights agenda on land in ways that will build on and enhance solidarities across social movements as well as other actors and groups.

The effort to develop a coherent and effective human rights agenda on land will face multiple challenges, including the existence of both normative and implementation gaps, the entrenched doctrine of eminent domain and the pervasive tendency to confine issues of rights and land to narrowly construed realm of property rights and land titles within a liberal market

framework. In response, international human rights advocacy can strengthen the struggles of disadvantaged rural and urban communities by advocating for a stronger international recognition of land rights and more consistent compliance. And precisely because this will encounter significant resistance within the structures of national, regional and international law, the eventual success of this effort will hinge greatly on the ability to generate a broad and progressive argument that reinforces the claim, long championed by social movements, that land rights are human rights.

