



Peasants' Right to Land: Addressing the Existing Implementation and Normative Gaps in International Human Rights Law*

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ABSTRACT

Peasants, like other human beings, are entitled to the rights enshrined in the Universal Declaration of Human Rights and the human rights treaties that have been ratified by their states. These instruments protect a series of claims that theoretically should be enough to ensure them a dignified existence. However, their situation worldwide is generally characterised by poverty, which in many cases is rooted in human factors. Examples of these are expropriations and forced evictions, in which commonly both state and non-state actors participate. In fact, millions of people every year are forcibly evicted from their lands due to development projects, a reality that proves the existence of implementation gaps and normative gaps in international human rights law. This article seeks to explain the importance of protecting peasants, analyse the gaps that operate as regards the rights to food and property and, finally, argue that recognising and consolidating peasants' international human right to land would contribute to address these gaps.

KEYWORDS: peasants, land rights, right to land, right to food, right to property, forced evictions, Declaration on the Rights of Peasants and Other People Working in Rural Areas

1. INTRODUCTION

Peasants, like other human beings, are entitled to the rights enshrined in the Universal Declaration of Human Rights¹ (UDHR) and the rights contained in treaties that have been ratified by their own states, for example, the International

* This article is based on my dissertation in completion of my Master of Studies Degree in International Human Rights Law, University of Oxford, April 2013.

1 GA Res 217A(III), 10 December 1948, A/810 at 71.

Covenant on Civil and Political Rights² (ICCPR) and the International Covenant on Economic, Social and Cultural Rights³ (ICESCR). These instruments protect a series of rights that, in theory, should be enough to ensure a dignified existence for peasants.

However, far from this, their situation worldwide is generally precarious. In fact, 50 per cent of the world's hungry are smallholder farmers who depend mainly or partly on agriculture for their livelihoods.⁴ Yet they face a series of obstacles that hinder their ability to keep their lands or gain access to them, such as dispossession and forced evictions attributable to state and non-state actions and omissions, and hence their prospects of achieving an adequate standard of living is reduced. This situation illustrates the implementation and normative gaps that persist in international human rights law and leave peasants in a situation of vulnerability. The main argument of this article will be that peasants' right to land would contribute to addressing both deficits. This article will be divided into three sections. In the first, I will explain why it is important to protect peasants. In the second section, I will analyse how the implementation gaps and normative gaps operate as regards two rights: the rights to food and property. Finally, in the last section, I will present my main argument, which is that peasants' right to land must be recognised and consolidated as it would help solve, at least partially, the existing gaps in international human rights law.

I will use the definition of 'peasant' offered by Article 1 of the Draft Declaration on the Rights of Peasants and Other People Working in Rural Areas,⁵ which reads as follows:

Definition of peasants

1. A peasant is a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food or other agricultural products. Peasants work the land themselves and rely above all on family labour and other small-scale forms of organizing labour. Peasants are traditionally embedded in their local communities and they take care of local landscapes and of agro-ecological systems.
2. The term peasant can apply to any person engaged in agriculture, cattle-raising, pastoralism, handicrafts related to agriculture or a similar occupation in a rural area. This includes indigenous people working on the land.
3. The term peasant also applies to the landless. According to the UN Food and Agriculture Organization definition, the following categories of people are considered to be landless and are likely to face difficulties in ensuring their livelihood:
 - a. Agricultural labour households with little or no land;

2 1966, 999 UNTS 171.

3 1966, 993 UNTS 3.

4 Human Rights Council, Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas ('Final study'), 23 January 2012, A/HRC/AC/8/6, at para 8.

5 20 June 2013, A/HRC/WG.15/1/2 ('Draft Declaration'), adopted by the Advisory Committee of the Human Rights Council during its 8th session, 20–24 February 2012, *ibid.* at 22.

- b. Non-agricultural households in rural areas, with little or no land, whose members are engaged in various activities such as fishing, making crafts for the local market, or providing services;
- c. Other rural households of pastoralists, nomads, peasants practising shifting cultivation, hunters and gatherers, and people with similar livelihoods.⁶

It is worth noting that the concept of 'peasant' is very broad in the sense that it covers a very diverse group, which includes indigenous peoples and women, who may of course experience a specific problem, for example forced evictions, in their own particular and differentiated way. In other words, when thinking of peasants, the reader must at the same time consider the issue of intersectionality (which will not be discussed here) and how a specific subgroup is affected by a land related problem.

Many peasants worldwide are indigenous and, as such, enjoy a fairly well-established special protection regime mainly through the International Labour Organization Convention 169⁷ ('ILO Convention 169') and the United Nations (UN) Declaration on the Rights of Indigenous Peoples.⁸ In contrast, non-indigenous peasants are relatively less well protected due to the lack of specific norms applicable to them. Consequently, the reader must remember that the focus and concern in this article will be on the latter group. A comparison with the indigenous peoples' international protection regime will be briefly developed in the second section in order to bring the main arguments forward. For the purpose of this article, by the term 'peasant(s)' I will be referring to both female and male non-indigenous peasants.

Moreover, although this article will not address the specific issue of discrimination against peasant women, the reader should bear in mind that they are certainly affected in a particular and disproportionate way, considering, among other reasons, that they are less likely than men to have formal land titles and are less likely to be invited to participate in negotiations.⁹ Finally, the reader should consider that peasants' international human rights, including peasants' right to land, are an emerging topic, both among scholars and in international fora. Thus, the arguments advanced in this article are a humble attempt to contribute to the academic discussion that is beginning to take place and supports the struggle of thousands of peasants who are demanding more protection both nationally and internationally.

2. WHY SHOULD PEASANTS BE BETTER PROTECTED?

Some academic, non-governmental and UN documents give us an insight into the reasons why peasants should be better protected. One of the main reasons is the situation of serious vulnerability in which peasants around the world live.¹⁰ Peasants are

6 Draft Declaration, *ibid*.

7 Convention concerning indigenous and tribal peoples in independent countries 1989, 1650 UNTS 383.

8 GA Res 61/295, 13 September 2007.

9 Oxfam, "Our Land, Our Lives": Time out on the global land rush', 4 October 2012, at 6, available at: www.oxfam.org/sites/www.oxfam.org/files/bn-land-lives-freeze-041012-en_1.pdf [last accessed 8 August 2014].

10 Food First Information and Action Network (FIAN), 'Peasants need more protection: Advocacy note', September 2012, available at: www.fian.org/fileadmin/media/publications/Advocacy_note_-_Peasants_need_more_protection_files.pdf [last accessed 8 August 2014]; De Schutter, 'The Emerging Human Right to Land' (2010) 12 *International Community Law Review* 303 at 305; and Final study, *supra* n 4.

'among the most discriminated-against and vulnerable groups'.¹¹ They constitute 'a specific social group which is so vulnerable that the protection of their rights requires special measures to make sure that states respect, protect and fulfil their human rights'.¹²

Despite the process of urbanisation and migration from rural to urban contexts, almost half of the world's population (48 per cent) continues to live in rural areas.¹³ Among the rural population, it is estimated that peasants—around 1.2 billion people¹⁴—produce between 60 and 80 per cent of consumed foods worldwide¹⁵ and ironically a great many of them suffer the devastating consequences of poverty, such as the incapacity to provide for themselves and their families.¹⁶ Indeed, 'it is those who produce food who suffer disproportionately'.¹⁷ In 2011, the United Nations Human Rights Council Advisory Committee produced a report on discrimination in the context of the right to food and stated: 'Hunger, like poverty, is still predominantly a rural problem, and among the rural population it is the peasant farmers, small landholders, landless workers, fisherfolk, hunters and gatherers who suffer disproportionately'.¹⁸

The number of people who suffer from extreme poverty around the world is approximately one billion, 75 per cent of whom live and work in rural areas.¹⁹ However, this number will certainly increase if we consider the population that, without meeting the definition of 'extreme poverty', suffers intense marginalisation. According to another report by the Human Rights Council Advisory Committee, '80 per cent of the world's hungry live in rural areas' and '50 per cent of the world's hungry are small-holder farmers who depend mainly or partly on agriculture for their livelihoods'.²⁰

11 Final study, supra n 4 at para 1.

12 Preamble Draft Declaration, supra n 5.

13 The World Bank, Data, 'Rural population (per cent of total population)', available at: data.worldbank.org/indicator/SP.RUR.TOTL.ZS/countries?display=default [last accessed 8 August 2014]; and La Via Campesina, 'Declaration of Rights of Peasants – Women and Men', March 2009, available at: viacampesina.net/downloads/PDF/EN-3.pdf [last accessed 8 August 2014].

14 FIAN, supra n 10 at 1.

15 La Via Campesina, 'Peasant and Family Farm-based Sustainable Agriculture Can Feed the World', September 2010, available at: viacampesina.org/downloads/pdf/en/paper6-EN.pdf [last accessed 8 August 2014]; Saragih, 'Why the International Day of Peasants' Struggles is Important', *The Guardian*, 18 April 2011, available at: www.theguardian.com/global-development/poverty-matters/2011/apr/18/international-day-peasants-rights-grow-food [last accessed 8 August 2014]; Mooney, 'Oxfam: The Future of Agriculture. Who Will Feed Us All?', 19 December 2012, available at: blogs.oxfam.org/en/blogs/12-12-20-day-9-who-will-feed-us-all [last accessed 8 August 2014]; Canadian Biotechnology Action Network (CBAN), 'Feeding the World', available at: www.cban.ca/Resources/Topics/Feeding-the-World [last accessed 8 August 2014]; and Global Agriculture, 'Industrial Agriculture and Small-scale Farming', available at: www.globalagriculture.org/report-topics/industrial-agriculture-and-small-scale-farming.html [last accessed 8 August 2014].

16 Final study, supra n 4; and Human Rights Council, Study of the Human Rights Council Advisory Committee on discrimination in the context of the right to food ('Study on discrimination'), 16 February 2011, A/HRC/16/40.

17 See Study on discrimination, *ibid.* at para 23; and Final study, supra n 4 at para 1.

18 Study on discrimination, supra n 16 at para 23.

19 Final study, supra n 4 at para 8.

20 *Ibid.*

The precarious situation faced by peasants is accentuated in the case of women. Peasant women suffer profound discrimination that prevents them from accessing and controlling land and resources.²¹ Consequently, they are 'disproportionately affected by malnutrition, poverty and food insecurity'.²² In fact, they produce between 60 and 80 per cent of food crops in developing countries and yet they account for 70 per cent of the world's hungry people.²³

It is important to note that the causes of hunger are rooted not only in environmental and geographical phenomena, but also in human factors that involve both state and non-state actors, such as the expropriation of lands and forced evictions due to an increasing pressure on this resource in order to make way for extractive industries, agribusiness, the construction of major infrastructure projects, among other things.²⁴ In the current global context, private entities have become more and more powerful while states remain unwilling and/or unable to protect the persons under their jurisdiction, whenever the interests of the former conflict with the rights of the latter. In the case of 'peasants versus foreign investors', the contest is indeed highly unequal.²⁵ The forced eviction of entire peasant communities to allow the interests of private entities or public agencies to materialise demonstrates that inequality.²⁶ Peasants depend on the land to survive and yet a great number of them are being denied access to or deprived of land due to, *inter alia*, forced evictions.²⁷

It could be argued that the forced eviction of entire peasant communities around the world is contrary to human rights standards and norms, at least if certain

21 Ibid. at paras 21–22.

22 Ibid. at para 21.

23 Ibid.

24 Study on discrimination, supra n 16 at para 24; and Final study, supra n 4 at paras 24–27. For other examples of forced evictions, see International Rivers, available at: www.internationalrivers.org/campaigns [last accessed 8 August 2014]; Witness, available at: fe.witness.org [last accessed 8 August 2014]; International Accountability Project, available at: www.accountabilityproject.org [last accessed 8 August 2014]; and Anseeuw et al., *Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project* (Rome: ILC, 2012). Population growth, urbanisation and climate change are other causes of increasing land pressure: see Cotula, Toulmin and Quan, *Better Land Access for the Rural Poor: Lessons from Experience and Challenges Ahead* (Stevenage: IIED/FAO, 2006) at 39.

25 Cotula et al., *ibid.* at 39; see also Oxfam, supra n 9.

26 FIAN, supra n 10; Hoshour and Kalafut, *A Growing Global Crisis. Development-Induced Displacement & Resettlement* (San Francisco: Issue Paper, International Accountability Project, 2010); and Farha et al., *Forced Evictions: Global Crisis, Global Solutions* (Nairobi: UN-HABITAT, 2011) at 46.

27 La Via Campesina, 'Conferencia campesina internacional: ¡Detengamos a los Acaparamientos de Tierras!', April 2012, available at: viacampesina.org/downloads/pdf/sp/mali-report-2012-es1.pdf [last accessed 8 August 2014]; Committee on World Food Security (CWFS), 'Land Tenure and International Investments in Agriculture: A Report by the High Level Panel of Experts on Food Security and Nutrition', July 2011, at 27 and 34, available at: www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE-Land-tenure-and-international-investments-in-agriculture-2011.pdf [last accessed 8 August 2014]; Haralambous, Liversage and Romano, 'The Growing Demand for Land: Risks and Opportunities for Smallholder Farmers', February 2009, available at: www.ifad.org/events/gc/32/roundtables/2.pdf [last accessed 8 August 2014]; FIAN, *Violations of Peasants' Human Rights: A Report on Cases and Patterns of Violation 2005* (Heidelberg: FIAN International, 2005) at 4; International Institute for Environment and Development (IIED), 'Briefing. The Global Land Rush', April 2012, available at: pubs.iied.org/pdfs/17124IIED.pdf [last accessed 8 August 2014]; and Cotula, 'The International Political Economy of the Global Land Rush: A Critical Appraisal of Trends, Scale, Geography and Drivers' (2012) 39 *Journal of Peasant Studies* 649.

requirements are not met. In 1993, the UN Commission on Human Rights stated that 'the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing'.²⁸ Several General Comments subsequently issued by the UN Committee on Economic, Social and Cultural Rights (CESCR)²⁹ and, more recently, the Basic Principles and Guidelines on Development-Based Evictions and Displacement³⁰ and the Guiding Principles on Internal Displacement support such a claim.³¹

Nonetheless, many peasants have been or are at risk of being affected by expropriations and forced evictions, with serious negative consequences on their access to adequate food and housing and other basic provisions.³² According to the International Accountability Project: 'At current rates, approximately 15 million people every year are forcibly displaced from their homes, communities and lands to make way for large development projects such as coal mines, mega-dams, agro-fuel plantations and transportation infrastructure.'³³ The consequences of forced displacement are devastating: many peasants and their families are dispossessed of what is generally their only means of survival; without access to arable land, their well-being and that of their families decreases dramatically; and when the victims try to defend themselves against expropriations and evictions, they become targets of political and social repression, harassment and even murder.³⁴

28 United Nations Commission on Human Rights, Forced Evictions, 10 March 1993, E/CN.4/RES/1993/77.

29 In General Comment No 4, the Committee stated that 'instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law': CESCR, General Comment No 4: The right to adequate housing (Article 11(1)), 1 January 1992, HRI/GEN/1/Rev.7; 1-1 IHRR 9 (1994) at para 18. Furthermore, in General Comment No 7, it stated that the practice of forced evictions 'manifestly [breaches] the rights enshrined in the Covenant [and] may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions': CESCR, General Comment No 7: The right to adequate housing (Article 11(1)): Forced Evictions, 1 January 1998, HRI/GEN/1/Rev.7; 5 IHRR 1 (1998) at para 4; see also CESCR, General Comment No 2: International technical assistance measures (Article 22), 1 January 1990, HRI/GEN/1/Rev.7; 1-1 IHRR 3 (1994) at paras 6 and 8(d).

30 Human Rights Council, Annex I to the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari ('Report on adequate housing'), 5 February 2007, A/HRC/4/18.

31 Commission on Human Rights, Report of the Representative of the Secretary-General, Mr Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum, 11 February 1998, E/CN.4/1998/53/Add.2. Other international provisions supporting such a claim can be found in Office of the High Commissioner for Human Rights, 'Forced Evictions: Fact Sheet No 25/Rev.1', available at: www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf [last accessed 8 August 2014].

32 For example, see Feldman and Geisler, 'Land Expropriation and Displacement in Bangladesh' (2012) 39 *Journal of Peasant Studies* 971; UNAC, Via Campesina Africa and GRAIN, 'Brazilian Megaproject in Mozambique Set to Displace Millions of Peasants', 29 November 2012, available at: www.grain.org/article/entries/4626-brazilian-megaproject-in-mozambique-set-to-displace-millions-of-peasants [last accessed 8 August 2014]; and Salgado, 'Peasant Leaders Call for Land, Justice', 21 March 2013, available at: bulatlat.com/main/2013/03/21/peasant-leaders-call-for-land-justice/ [last accessed 8 August 2014].

33 International Accountability Project, 'Unjust Displacement is a Global Crisis', available at: accountabilityproject.org/section.php?id=23 [last accessed 8 August 2014].

34 FIAN, supra n 10; Miguel Agustín Pro Juárez Human Rights Center, *Han destruido la vida en este lugar* (Mexico City: Miguel Agustín Pro Juárez Human Rights Center, 2012); FIAN, supra n 27 at 4; and

In theory, anyone who is forcibly evicted or internally displaced should be given fair economic compensation.³⁵ Unfortunately, this is not a common reality.³⁶ Peasants end up receiving just a fraction of what they deserve (or nothing at all) and a ridiculously small amount of money in comparison with the economic gains of the state or the private entity that takes over the land to carry out productive activities (for example, agribusiness and mining).³⁷ Loss of land tenure around the world has many times led to forced eviction combined with false promises of compensation, often involving deceit on the part of government and/or companies, or simply no government explanations.³⁸ The situation is naturally the same, or could be even worse, in the case of peasants, many of whom lack legal recognition of land tenure.

Moreover, as if arbitrary dispossession, enforced displacement and lack of adequate compensation were not enough, peasant families struggle to access justice. The results are outrageous: hundreds of families are thrown into deeper poverty, as they commonly no longer have access to resources that they depended on to survive in the first place, while others become richer and richer.

The collective and individual desperation that comes as a result of expropriations and enforced displacements may produce resistance and social anger that are likely to be violently oppressed. Thus, for example, Schneider explains the dynamics of land grabs and the ensuing resistance by Cambodian peasants Schneider as follows:

The oppression from the state-led land grabs, corporate and military powers effectively pushes peasants to more overt forms of resistance. The majority of peasants have little or no hope for the future. As frustrations mount, there will likely be an increase in the incidence of confrontational resistance.³⁹

By forcibly evicting peasants from their lands (or allowing third parties to do so), without their consent and in many cases without fair compensation, governments have not only denied peasants the possibility to access basic rights, they are also denied the possibility to participate politically in the country's internal affairs. For example, they are denied the possibility to decide on the matters related to the exploitation of lands;

FIAN and La Via Campesina, *Violations of Peasants' Human Rights: A Report on Cases and Patterns of Violation 2004* (Heidelberg: FIAN/La Via Campesina, 2004) at 9.

- 35 Basic Principles and Guidelines on Development-Based Evictions and Displacement, supra n 30 at paras 59–68; Principle 29(2) Guiding Principles on Internal Displacement, supra n 31; CESCR, General Comment No 7, supra n 29 at para 13.
- 36 De Schutter, supra n 10 at 309; United Nations Permanent Forum on Indigenous Issues, *State of the World's Indigenous Peoples* (New York: United Nations, 2009) at 20 and 90; Centre on Housing Rights and Evictions, 'Forced Evictions', available at: www.cohre.org/topics/forced-evictions [last accessed 8 August 2014]; Commission on Human Rights, *Forced Evictions: Analytical report compiled by the Secretary-General pursuant to Commission resolution 1993/77, 7 December 1993, E/CN.4/1994/20*, at para 180; Office of the High Commissioner for Human Rights, supra n 31; and Oxfam, supra n 9 at 6.
- 37 CWFS, supra n 27 at 27 and 34; see also Commission on Human Rights, supra n 36 at para 180; Office of the High Commissioner for Human Rights, supra n 31; and Bengoa, 'Los derechos de los campesinos', June 2010, available at: www.droit-aliments-terre.eu/documents/sources_lascaux/articles/2010/Forum_2010/Bengoa_Forum_062010_ES.pdf [last accessed 8 August 2014].
- 38 Haralambous et al., supra n 27 at 7.
- 39 Schneider, 'What shall We do without our Land? Land Grabs and Resistance in Rural Cambodia', April 2011, at 26, available at: www.iss.nl/fileadmin/ASSETS/iss/Documents/Conference_papers/LDPI/49_Alison_Schneider.pdf [last accessed 8 August 2014].

they are excluded from the decision-making process regarding their own personal development and that of their community; and they are deprived of the possibility to participate in the design of agricultural policies.⁴⁰ In this sense, according to the High Level Panel of Experts of the UN Committee on World Food Security (an intergovernmental body that reports to the Economic and Social Council of the United Nations): 'Most of the discussion about "modernising" agriculture and encouraging international investment take place in UN, G20 and World Bank circles, but not in the countries most concerned, nor with the people most affected.'⁴¹

In summary, peasants, who represent almost half of the world population, need better international protection vis-à-vis weak domestic protection of land rights, non-environmentally caused forced evictions, land grabs and internal displacements, which are just a symptom of: the disproportionate impact of the global context on them; their vulnerability both as individuals and as a social group in spite of the importance of their contribution to global welfare; their inability to enjoy human rights on an equal footing; and the violent oppression they are likely to suffer in response to their resistance. Their protection through a specific regime would represent not only a positive and necessary reaction to a humanly untenable situation but also an important step to promote social development and peace.

3. PEASANTS AND INTERNATIONAL HUMAN RIGHTS LAW: IDENTIFYING IMPLEMENTATION GAPS AND NORMATIVE GAPS

In my analysis, international human rights law has been unable to protect peasants properly due to the existence of two gaps.⁴² The first one is an 'implementation gap' and the second is a 'normative gap'.⁴³ In this section, I will analyse how these gaps operate as regards the rights to food and property. Although other rights are also important and could be analysed here, this article will focus on these rights, as they are especially relevant to peasants due to their direct connection with the land.⁴⁴

A. The Right to Food: An Implementation Gap

The right to food is enshrined in Article 25(1) of the UDHR, Article 11 of the ICESCR and Article 12 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador').⁴⁵ The draft UN Declaration on the Rights of Peasants and Other People Working in Rural Areas⁴⁶ contains a provision on the right to food of peasants in particular. Article 3(4) reads: 'Peasants have the right to adequate, healthy, nutritious, and affordable food, and to maintain their traditional food cultures.' The right

40 La Via Campesina, *supra* n 13.

41 CWFS, *supra* n 27 at 33.

42 Final Study, *supra* n 4 at 19–20; Report on adequate housing, *supra* n 30 at paras 25–31; Gelbspan and Nagaraj, 'Seeding hope? Land in the International Human Rights Agenda: Challenges and Prospects' (Working Paper, International Network for Economic, Social and Cultural Rights, 2012, at 4), available at: www.escr-net.org/node/365087 [last accessed 8 August 2014]; and FIAN, *supra* n 27.

43 Gelbspan and Nagaraj, *ibid.* at 4; and FIAN, *supra* n 10 at 4.

44 Other rights, such as the right to adequate housing, could be analysed here, but they were left out of the scope of this article for reasons of length.

45 1988, OASTS 69.

46 See *supra* n 5.

to food is realised, according to the Committee on Economic, Social and Cultural Rights, 'when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement'.⁴⁷ The right to food requires states to guarantee that every person has the necessary resources, including land, to provide or even produce their own food.⁴⁸ Food must be *available*,⁴⁹ which means, among other things, that everyone must have the possibility to feed oneself 'directly from productive land or other natural resources'.⁵⁰

The right to food, as other rights, imposes on states three types of obligations: to respect, to protect and to fulfil.⁵¹ In General Comment No 12 the Committee on Economic, Social and Cultural Rights concluded that

[t]he obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfil* (*facilitate*) means the State must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security.⁵²

Similarly, in his 2010 report, the UN Special Rapporteur on the right to food concluded the following:

[T]he right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil).⁵³

Supporting this idea, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,

47 CESCR, General Comment No 12: The right to adequate food (Article 11), 12 May 1999, HRI/GEN/1/Rev.7; 6 IHRR 902 (1999) at para 6.

48 Ibid. at para 13.

49 The Committee also mentions that the right to food entails the accessibility of food, that is, the possibility of every person of having both economic and physical access to food: CESCR, *ibid.* at paras 8 and 13; see also Human Rights Council, Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 18 July 2012, A/HRC/21/39, at para 76.

50 CESCR, *ibid.* at para 12 (emphasis added). According to the Committee, the concept of availability also means 'well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand'. In relation to the content of these obligations, see also General Assembly, Report of the Special Rapporteur on the right to food, 11 August 2010, A/65/281 ('General Assembly Report'), at para 2.

51 CESCR, *ibid.* at para 15; and General Assembly Report, *ibid.* at paras 2–3.

52 CESCR, *ibid.* at para 15.

53 General Assembly, *supra* n 50 at para 2.

adopted in 2004 by the Food and Agriculture Organization Council, established that states should 'protect the assets that are important for people's livelihoods' and '[w]here necessary and appropriate,...carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land'.⁵⁴ Also, states should 'take measures to promote and protect the security of land tenure'.⁵⁵

In my view, the authoritative interpretation of the obligations arising from the right to food carried out by the Committee on Economic, Social and Cultural Rights and the Special Rapporteur, supported by other instruments like the Voluntary Guidelines, suggests that Article 11 of the ICESCR imposes on states the duty to protect individuals' access to land and other resources if their possibility to produce food is at risk, especially if they normally obtain food through agriculture. Thus, it could be argued that, at least in certain cases, states have a legal responsibility under Article 11 to respect and strengthen peasants' access to land and other natural resources and to prevent state or private entities from hindering such access. According to the UN Special Rapporteur, this right goes even further by requiring states to facilitate access to land when individuals do not have other means to obtain food.⁵⁶

In spite of this, violations of the right to food and other rights of peasants are common in Latin America, Asia and Africa due to forced evictions.⁵⁷ Numerous stories of peasant families who are arbitrarily deprived of their lands bear out this conclusion,⁵⁸ thus revealing the existence of a serious implementation gap that is closely related to the normative gap that will be analysed next.

B. The Right to Property: A Normative Gap

In addition to the aforementioned implementation gap, international human rights law has been unable to protect peasants properly due to the existence of normative gaps. In its 2012 Final study on the advancement of the rights of peasants and other people working in rural areas, the Human Rights Council Advisory Committee explained the following:

Existing international human rights instruments, even if they were better implemented, remain insufficient to protect fully the rights of peasants and other people working in rural areas. These groups have suffered historic and persistent discrimination in many countries around the globe, and the existing protection of their rights is insufficient to overcome this situation. It is therefore necessary to go beyond existing norms and address the normative gaps under international human rights law.⁵⁹

54 FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (Rome: FAO, 2005) at Guideline 8.1. The Voluntary Guidelines were developed by an Intergovernmental Working Group that was formed at the request of the states that attended the 2002 World Food Summit.

55 General Assembly Report, *ibid.* at Guideline 8.10.

56 See *supra* n 50 at para 3.

57 FIAN, *supra* n 27 at 4; FIAN and La Via Campesina, *supra* n 34 at 9; La Via Campesina, *supra* n 13; and Miguel Agustín Pro Juárez Human Rights Center, *supra* n 34.

58 FIAN, *supra* n 27 at 4; and FIAN and La Via Campesina, *supra* n 34 at 9.

59 *Supra* n 4 at para 67.

In my opinion, one of these gaps exists regarding the right to property. Article 17 of the UDHR enshrines the right to own property individually or collectively and not to be arbitrarily deprived of it. No similar provision exists in the ICCPR or the ICESCR, which itself suggests the existence of state resistance regarding ownership, tenure and use of land and natural resources. Nevertheless, in its case law, the Human Rights Committee has indirectly protected such a right through other treaty provisions, such as Articles 2 and 26 of the ICCPR.⁶⁰

Additionally, there are other treaty provisions that protect this right, namely Article 5(d)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination⁶¹ (CERD) and Article 15(2) of the Convention on the Elimination of All Forms of Discrimination against Women⁶² (CEDAW). At the regional level, Article 14 of the Banjul Charter,⁶³ Article 21 of the American Convention on Human Rights⁶⁴ (ACHR) and Article 1 of Protocol No 1 to the European Convention on Human Rights⁶⁵ enshrine the right to property as well.

The Inter-American Court of Human Rights has been particularly innovative in advancing the right to property enshrined in Article 21 of the ACHR through progressive interpretations that include the concept of communal property in cases related to indigenous peoples, despite the fact that the ACHR does not make reference to the right to own property in association with others.⁶⁶ Additionally, it has interpreted Article 21 to include 'any right that may form part of a person's patrimony'⁶⁷ and vested rights, that is, 'those rights that have been incorporated into the patrimony of the people'.⁶⁸ The Inter-American Court's case law has also developed to include any possessed goods,⁶⁹ which means that even in cases of customary or 'informal' tenure, indigenous peoples' right to property must be effectively protected.

60 *Adam v Czech Republic* (586/1994), CCPR/C/57/D/586/1994 (1996); 4 IHRR 379 (1997) at paras 12.7 and 13.1; *Fábryová v Czech Republic* (765/1997), CCPR/C/73/D/765/1997 (2001) at paras 10–11; *Brok and Brokova v Czech Republic* (774/1997), CCPR/C/73/D/774/1997 (2001); 9 IHRR 339 (2002) at paras 8–9; *Pezoldova v Czech Republic* (757/1997), CCPR/C/76/D/757/1997 (2002); 10 IHRR 348 (2003) at paras 12.1–12.2; and *Marik v Czech Republic* (945/2000), CCPR/C/84/D/945/2000 (2005); 13 IHRR 49 (2006) at paras 7–8.

61 1966, 660 UNTS 195.

62 1979, 1249 UNTS 13.

63 African Charter on Human and Peoples' Rights 1981, 1520 UNTS 217.

64 1969, 1144 UNTS 123.

65 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms 1952, ETS 9.

66 *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua* IACtHR Series C 79 (2001); *Case of the Yakye Axa Indigenous Community v Paraguay* IACtHR Series C 125 (2005); *Case of the Sawhoyamaya Indigenous Community v Paraguay* IACtHR Series C 146 (2006); *Case of the Saramaka People v Suriname* IACtHR Series C 172 (2007); *Case of the Xáknok Kásek Indigenous Community v Paraguay* IACtHR Series C 214 (2010); and *Case of the Kichwa Indigenous People of Sarayaku v Ecuador* IACtHR Series C 245 (2012); see also López-Murcia and Maldonado-Colmenares, 'La protección de la propiedad de la tierra en la jurisprudencia de la Corte Interamericana de Derechos Humanos y su aplicación al caso de las comunidades campesinas en Colombia' (2009) 14 *International Law: Revista Colombiana de Derecho Internacional* 71.

67 *Case of Salvador Chiriboga v Ecuador* IACtHR Series C 179 (2008) at para 55.

68 *Ibid.*

69 *Ibid.* See also *Case of the Mayagna (Sumo) Awas Tingni Community*, supra n 66; *Case of the Yakye Axa Indigenous Community*, supra n 66; *Case of the Sawhoyamaya Indigenous Community*, supra n 66; *Case of*

Under the aforementioned norms, and being subjects of international human rights law, peasants are entitled to the right to own property. However, many of them are not formal owners of the land. For example, in Africa, 'only between 2 and 10 per cent of the land in the continent is held under "formal" tenure'.⁷⁰ Moreover, although the right to property has been interpreted to include the concept of 'possession' (individual and collective), at least under certain circumstances,⁷¹ in contrast to what happens in the case of indigenous peoples, peasants' customary land tenure has not been internationally acknowledged as an entitlement.⁷²

This normative gap, which has been fairly well closed in relation to indigenous peoples, remains as regards peasants. It is the result of our current understanding of states' eminent domain powers over land, a concept that is directly linked to that of sovereignty. According to the 17th-century doctrine of eminent domain, a state, which is believed to be the ultimate owner of the lands and resources under its jurisdiction, has the power 'to take over privately held land on the grounds of public interest'.⁷³ As a result, even in cases of formal tenure, peasants are not considered to have any *real* claim over the land,⁷⁴ hence creating a disconnection between peasants and the land. As the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security stated in its 2011 report: 'National governments often simply assert underlying ownership of all resources, managed by and held in trust for the benefit of the citizenry. This leaves millions of smallholders vulnerable to dispossession'.⁷⁵

States enjoy a wide margin of appreciation to take decisions over issues of land and resources, to determine what constitutes a 'public interest' or whether the limitation of someone's right is legitimate considering the 'interests of society'.⁷⁶ Hence, I agree with those who assert that eminent domain powers are 'overly broad' and are 'often interpreted to the disadvantage of marginalised populations'.⁷⁷

the Saramaka People, supra n 66; *Case of the Xákmok Kásek Indigenous Community*, supra n 66; and *Case of the Kichwa Indigenous People of Sarayaku*, supra n 66.

70 Cotula (ed.), *The Right to Food and Access to Natural Resources* (Rome: IIED/FAO, 2009) at 27.

71 Ibid. See also the Inter-American Court's jurisprudence cited above.

72 It should be noted that security of land tenure does not necessarily mean 'individual titling and the creation of a market for land rights': see General Assembly Report, supra n 50 at para 10. In relation to problems with formal titling schemes, see, for example, CWFS, supra n 27 at 27.

73 Gelbspan and Nagaraj, supra n 42 at 7.

74 Ibid.

75 CWFS, supra n 27 at 40.

76 See, for example, *Arsovski v The Former Yugoslav Republic of Macedonia* Application No 30206/06, Merits, 15 January 2013; *Vistiš and Perepjolkins v Latvia* Application No 71243/01, Merits, 25 October 2012; and *Scordino v Italy* Application No 36813/97, Merits and Just Satisfaction, 29 July 2004. As regards, the concept of 'public interest' and the need to balance 'competing interests' in the Inter-American Court's case law, see *Case of Salvador Chiriboga*, supra n 67 at para 74; OC-5/85, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights)* IACtHR Series A 5 (1985) at paras 66–67; and OC-6/86, *The Word 'Laws' in Article 30 of the American Convention on Human Rights* IACtHR Series A 6 (1986) at para 31.

77 Gelbspan and Nagaraj citing Veit, Nshala, Ochieng' Odhiambo and Manyindo, *Protected Areas and Property Rights: Democratizing Eminent Domain in East Africa* (Washington: World Resources Institute, 2008), supra n 42 at 7.

States' large margin of appreciation and discretionary power increase their ability to commit human rights violations and abuse their authority.⁷⁸ Consequently, it is very easy for states to dispossess and displace even entire peasant communities from the land where they used to live, even if peasants own formal titles. Whenever the state wishes to displace peasants (and expropriate the land, in case they are legal owners of it), it is sufficient to argue that there is a 'public interest'; almost no additional justifications or explanations are thought to be required.⁷⁹ For example, in *Vistiņš and Perepjolkins v Latvia*, the European Court of Human Rights stated the following:

[T]he Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is 'in the public interest'. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation. Furthermore, the notion of 'public interest' is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation.⁸⁰

Furthermore, the possibility of resisting dispossessions is very low and it usually leads to social conflict and confrontation. In fact, peasant leaders have even been murdered for opposing enforced displacements, mining activities, the construction of dams, and in other similar circumstances.⁸¹

The doctrine of eminent domain has had an impact on the way the right to property is understood and interpreted. However, this understanding is proving to be inadequate to protect millions of peasants who are being dispossessed of lands and thus seriously affected. Furthermore, it has contributed to maintaining a disconnection between peasants and land. Because of this disconnection states can easily dispossess persons of their lands and thus forcibly evict peasants, even in the presence of international duties, such as the obligation to protect access to resources on which peasants' food production depends.

The existence of implementation and normative gaps has left peasants unprotected in the current global context, where a serious imbalance of power has made it very complicated or often impossible for peasants to counteract the powerful

78 Gelbspan and Nagaraj, *supra* n 42 at 7.

79 *Vistiņš and Perepjolkins v Latvia*, *supra* n 76.

80 *Ibid.* at para 79.

81 FIAN, *supra* n 10; Miguel Agustín Pro Juárez Human Rights Center, *supra* n 34; FIAN, *supra* n 27 at 4; and FIAN and La Via Campesina, *supra* n 34 at 9.

interests of private and/or public entities. When it comes to land, peasants have minimal possibilities to offset such interests. However, as will be argued next, recognising an international human right to land would not only help close the normative gap, but it would also help address the implementation deficit, as the protection of peasants' relationship with the land is fundamental to ensuring other rights, such as the right to food. Ultimately, and considering that our understanding of sovereignty and eminent domain is, in my view, proving to require change for the benefit of the individual, in the best scenario, an international human right to land would contribute to limiting the doctrine and to advancing the construction of a new paradigm of the relationship between the state and the individual.

4. PEASANTS' HUMAN RIGHT TO LAND

The right to land is enshrined in ILO Convention 169, which provides in Article 14 that '[t]he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised'. Articles 13–19 establish a set of interrelated rights and state obligations concerning such lands.

Furthermore, the recently adopted United Nations Declaration on the Rights of Indigenous Peoples⁸² states that '[i]ndigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired'⁸³ and establishes other principles related to it. In particular, Article 10 states that

[i]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Fortunately, indigenous peoples and individuals are now better protected through instruments like ILO Convention 169 and the 2007 Declaration. Consequently, they now enjoy not only the moral and political but also the legal entitlement to protect and defend their right to access, use and keep their lands.⁸⁴ They are now better equipped to counteract state or private economic interests, even when these entail carrying out activities that are normally presented as being of 'public interest', including development, investment, exploration or extraction projects.⁸⁵ For example, in the *Saramaka People* case, the Inter-American Court specified that

in addition to the consultation that is always required when planning development or investment projects within traditional Saramaka territory, the

82 See supra n 8.

83 Article 26(1).

84 The ratification of ILO Convention 169 and its implementation, on the one hand, and the non-binding nature of the Declaration, on the other, continue to pose challenges. However, their existence is a step forward in favour of indigenous peoples. The fact that the Convention has been invoked by the Inter-American Court of Human Rights in its judgments illustrates this.

85 *Case of the Saramaka People*, supra n 66 at para 129.

safeguard of effective participation that is necessary when dealing with major development or investment plans that may have a profound impact on the property rights of the members of the Saramaka people to a large part of their territory must be understood to additionally require the free, prior, and informed consent of the Saramakas, in accordance with their traditions and customs.⁸⁶

In other words, the internationally recognised norms have served many indigenous groups as a means to counteract the power of the state, especially when it is illegally or arbitrarily exercised or misused. Thanks to the above, the interests of indigenous peoples as regards land prevail over the interests of the state if any decision in relation to it is taken without their free, prior and informed consultation and, in some cases, consent.

However, these instruments only apply to indigenous peoples.⁸⁷ In other words, in contrast to indigenous peasants' right to land, the right to land of peasants who are *not* members of an indigenous community remains unprotected.⁸⁸ Although the right to food could offer a basis to demand access to resources, including land,⁸⁹ in my analysis the international human right to land should be explicitly recognised to strengthen this entitlement.

From my point of view, and as has been suggested by UN bodies, peasants' right to land must be recognised in order to advance their international protection by partially closing the gaps previously analysed. First, their right to land would help close the existing normative gap in the right to property,⁹⁰ considering this right would entail the protection of peasants' land tenure, presumably including cases of customary possession, and would limit states' eminent domain powers by subjecting any decision affecting peasants' access to land to their free, prior and informed consent.

As the Draft Declaration produced by the Human Rights Council Advisory Committee suggests, peasants' right to land would entail not only the right to own it, but also security of tenure and the right not to be forcibly evicted. In fact, it would impose on the state the obligation of obtaining peasants' free, prior and informed consent⁹¹ before any attempt at relocation, as stated in Article 4 of the Draft

86 Ibid. at para 137. More recently, in the case of the *Kichwa People of Sarayaku*, the Inter-American Court stated that the state's obligation to consult is a general principle of international law: see *Case of Kichwa Indigenous People of Sarayaku*, supra n 66 at para 164.

87 ILO Convention 169 is also applicable to tribal peoples, in accordance with Article 1.

88 In a 2005 publication on the rights of peasants of the Miguel Agustín Pro Juárez Human Rights Center, a Mexican civil society organization, noted this gap and referred to peasants' need to have their right to land recognised as in the case of indigenous peasants: see Miguel Agustín Pro Juárez Human Rights Center, *Derecho a seguir siendo campesinos* (Mexico City: Miguel Agustín Pro Juárez Human Rights Center, 2005).

89 Monsalve, 'Derecho a la tierra y derechos humanos' (2004) 31–32 *El otro derecho* 41 at 55.

90 Ibid.; and Report on adequate housing, supra n 30.

91 In relation to the duty to obtain communities' free, prior and informed consent, it is important to mention that in May 2012, the African Commission on Human and Peoples' Rights issued Resolution 224 on a Human Rights-Based Approach to Natural Resources Governance (2 May 2012, available at: www.achpr.org/sessions/51st/resolutions/224/ [last accessed 8 August 2014]) calling upon states parties to '[c]onfirm that all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources

Declaration, whose wording is almost identical to that of Article 10 of the UN Declaration on the Rights of Indigenous Peoples:⁹²

1. Peasants have the right to own land, individually or collectively, for their housing and farming.

...

5. Peasants have the right to security of tenure and not to be forcibly evicted from their lands and territories. No relocation should take place without free, prior and informed consent of the peasants concerned and after agreement on just and fair compensation and, where possible, with the option of return.⁹³

By ensuring security of tenure and by subjecting any decision of relocation to peasants' approval, peasants' right to land would limit the state's discretionary power to dispose of peasant lands under the justification of 'public interest', which has facilitated the commission of serious human rights violations.⁹⁴ At the same time, it would promote peasants' participation in the state's public affairs and policies.

Secondly, peasants' right to land would partially solve the implementation deficit. The protection of peasants' relationship with the land is fundamental to ensuring other rights, such as the right to food, and thus to reducing poverty.⁹⁵ Indeed, '[i]mproved access to land and respect for the land rights of the poor is a starting point in establishing respect for human rights'.⁹⁶ By recognising and protecting peasants' right to land, the right to food would also be indirectly protected. Additionally, the right to land would strengthen the UN bodies' interpretation of the obligations under Article 11 of the ICESCR.

The importance of the international right to land as a means to achieve other rights can be found in the 2007 report of the Special Rapporteur on adequate housing, which states that '[w]ithout the adequate legal recognition of individual as well as collective land rights, the right to adequate housing, in many instances, cannot be effectively realized'.⁹⁷ Furthermore, the Special Rapporteur noted that '[t]he right to land, however, is not just linked to the right to adequate housing but is integrally related to the human rights to food, livelihood, work, self-determination, and security of the person and home and the sustenance of common property resources'.⁹⁸

In summary, the international recognition of the right to land would limit states' discretionary power to easily deprive peasants of their lands and livelihoods under the argument of 'public interest', but it would also provide a stronger foundation for

governance'. It is worth highlighting that the resolution refers to 'communities' in general, which could be interpreted to include both indigenous and non-indigenous populations. See also Oxfam, *supra* n 9 at 14.

92 *Supra* n 8.

93 Article 4 Draft Declaration, *supra* n 5.

94 FIAN, *supra* n 27 at 4.

95 International Land Coalition, *Towards a Common Platform on Access to Land: The Catalyst to Reduce Rural Poverty and the Incentive for Sustainable Natural Resource Management* (Rome: ILC, 2003).

96 International Land Coalition, 'The Importance of Land and Resource Rights in Achieving the MDGs', available at: www.landcoalition.org/sites/default/files/legacy/legacypdf/MDG_05flyer.pdf [last accessed 8 August 2014].

97 Report on adequate housing, *supra* n 30 at para 29.

98 *Ibid.*

the protection of the right to food and other rights, including the right to an adequate standard of living and even the right to life.

It must be highlighted that land represents for peasants a means of survival.⁹⁹ As Schneider notes, '[l]and is the rural poor's most valuable asset'.¹⁰⁰ Indeed, peasants depend on their access to land to *live*, which by itself is justification enough to seek more extensive protection. In addition to this, peasants maintain a special link with this resource. In relation to this, the European Union Land Policy Guidelines state the following:

Land constitutes an asset and a source of wealth for families and individuals as well as for communities, *with strong links to cultural and spiritual values ...* The interrelated social, institutional and political factors involved in land make it an asset different from all others. *Land is never just a commodity. It combines being a factor of production, with its role as family or community property, a capital asset and a source of identity.*¹⁰¹ (emphasis added)

When solving land related cases, the Inter-American Court's reasoning has been grounded, among other things, in the indigenous communities' right to survive, as well as their right to cultural identity: the two elements that characterise the special relationship they have with their lands.¹⁰² In other words, the use and exploitation of indigenous lands are increasingly subject to approval because of the physical, cultural and spiritual dependency relationship that exists between indigenous communities and individuals and their lands.

The fact that land may represent both a source of cultural identity and a means of survival for peasants should be another invitation to analyse the possibility of recognising and consolidating peasants' right to land. With regard to this, it is worth highlighting the Special Rapporteur De Schutter's words in the sense that '[t]he recognition of communal rights should extend beyond indigenous communities, at least to certain communities that entertain a similar relationship with the land'.¹⁰³

ILO Convention 169 has been widely used, at least in Latin America, by indigenous communities and civil society organisations to defend indigenous peoples' rights and has been also invoked by local and international courts (like the Inter-American Court of Human Rights) in favour of indigenous communities.¹⁰⁴ These 'victories'

99 La Via Campesina, 'La lucha por la reforma agraria y los cambios sociales en el campo', 5 October 2000, available at: viacampesina.org/es/index.php/nuestras-conferencias-mainmenu-28/3-bangalore-2000-mainmenu-55/18-la-lucha-por-la-reforma-agraria-y-los-cambios-sociales-en-el-campo [last accessed 8 August 2014].

100 Schneider, *supra* n 39 at 26.

101 EU Task Force on Land Tenure, EU Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries, November 2004, at 2 (emphasis added), available at: ec.europa.eu/europeaid/what/development-policies/intervention-areas/ruraldev/rural_landpolicy_en.htm [last accessed 8 August 2014].

102 *Case of the Yakey Axa Indigenous Community*, *supra* n 66; *Case of the Xákmok Kásek Indigenous Community*, *supra* n 66; and *Case of the Kichwa Indigenous People of Sarayaku*, *supra* n 66.

103 General Assembly Report, *supra* n 50 at para 40(c).

104 Courtis, 'Notes on the implementation by Latin American courts of the ILO Convention 169 on indigenous peoples' (2009) 6 *Sur International Journal on Human Rights* 53.

could be seen by some as 'symbolic' gains tending to produce tangible effects at the grass roots level.¹⁰⁵ However, it must be highlighted in the first place that indigenous peoples' legal standing to defend their ancestral lands before the courts and to demand free, prior and informed consent before any major projects are carried out by the government within their territory (in clear challenge to the concept of state's 'eminent domain') has been recognised and thus has increased the capacity of indigenous peoples and individuals 'to create spaces of leverage over state behaviour' and accordingly strengthened the 'bargaining positions of rights holders in relation to states and commercial non-state actors'.¹⁰⁶ Secondly, in some cases the symbolic victory has, in fact, turned into a tangible victory.¹⁰⁷

Ultimately, due to the indigenous peoples' human rights regime, 'the paradigm has significantly shifted from a struggle for the recognition of indigenous peoples' human rights... to one for the concrete exercise and implementation of those rights entrenched in international law'.¹⁰⁸ According to Bellier and Préaud:

[I]t is in those states that are transforming their own internal fabric through constitutional reforms, and, significantly, those countries that have ratified the only constraining convention on these issues (ILO 169), that indigenous peoples have been in a position to enter self-determining reforms to their political environment, albeit confronting strong resistances from conservative politicians and magistrates.¹⁰⁹

Indigenous peoples will probably have to continue to defend their lands. However, they will do so with the moral authority granted by the rights and duties contained in the indigenous peoples' human rights regime, such as the duties to protect their relationship with the lands, not to remove them from the lands they occupy and carry out any relocation 'as an exceptional measure' and 'only with their free and informed consent'. No similar provisions exist in the case of peasants.¹¹⁰

105 See Jones, 'Powering up the People? The Politics of Indigenous Rights Implementation: International Labour Organisation Convention 169 and Hydroelectric Power in Nepal' (2012) 16 *International Journal of Human Rights* 624.

106 Ibid.

107 One example is the case of the Yakye Axa community in Paraguay, which in 2012, after many years of struggle, managed to return to its ancestral lands as a result of an agreement reached with the government and some years after the Inter-American Court (which, incidentally, used ILO Convention 169 to interpret the American Convention on Human Rights) issued its judgment in the case. See Amnesty International, 'Paraguay: Land Dispute Victory for Displaced Indigenous Community', 3 February 2012, available at: webcache.googleusercontent.com/search?q=cache:egESpiPKP5gJ:www.amnesty.org/en/news/paraguay-land-dispute-victory-displaced-indigenous-community-2012-03-02+&cd=2&hl=es-419&ct=clnk&gl=mx&client=firefox-a [last accessed 8 August 2014].

108 Bellier and Préaud, 'Emerging Issues in Indigenous Rights: Transformative Effects of the Recognition of Indigenous Peoples' (2012) 16 *International Journal of Human Rights* 474 at 484.

109 Ibid.

110 One could cite Principle 6 of the UN Guiding Principles on Internal Displacement (supra n 31), which establishes every human being's right not to be arbitrarily displaced from his or her home or place of habitual residence, including in cases of large-scale development projects. However, Principle 6 conditions this right on the inexistence of 'compelling and overriding public interests', in which case it does not provide a requirement to *obtain* prior consent. Principle 7(3)(c) establishes the obligation to *seek* free and informed consent of those to be displaced, if displacement occurs in situations other than during

As in the case of indigenous peoples, recognising peasants' right to land would constitute a step forward for peasants' legal protection and it would also serve as a political tool to support their cause. Like the rest of the international human rights norms, it would face state resistance and enforcement would pose important challenges, especially in light of powerful economic interests. Domestic reforms on the part of states, as well as civil society participation and organisation would certainly be necessary.¹¹¹ Peasants' right to land would hardly be *the* solution to all the critical conditions in which peasants live worldwide and/or the ultimate solution to the implementation gap concerning international human rights norms in general. However, the international recognition of the right to land would become an important legal tool that, together with communication and political strategies, would strengthen peasants' demand for justice and access to other rights.

5. CONCLUSIONS

Millions of peasants all over the world live in precarious conditions.¹¹² Those who have access to land and are able to produce crops are often incapable of competing with the agribusiness industry due to inadequate or non-existent state support and unfair market conditions. Many others are forcefully displaced in order to make way for the construction of investment projects and the exploitation of resources by large companies, like those in the mining sector. Many peasants are or become landless easily, even if they are among the small percentage of those who have land-ownership titles. Serious human rights violations are being committed as peasants and their families are unable to satisfy even their most basic needs due to the devastating consequences of state and non-state actions and omissions.

Reality has proved that the current international human rights norms offer peasants insufficient protection. One of the causes is the existence of an implementation gap, that is, human rights are not properly ensured by states (or sometimes not ensured at all). The right to food is an example of how rights are not adequately implemented. Although the right to food requires states to ensure that every person has the necessary resources, including land, to provide or even produce their own food and to protect such access from encroachment by private parties, millions of peasants whose lives (and those of their families) depend on land to produce their food are being forcibly evicted around the world.

Another cause of insufficient protection is the existence of a normative gap in the right to property, which in the case of peasants expresses itself as follows: although peasants are entitled to the right to property, it does not protect peasants' informal or

the emergency stages of armed conflicts and disasters. Nevertheless, it must be highlighted that *seeking* consent implies a lower threshold of protection than actually *obtaining* consent before the relocation takes place. See Barelli, 'Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples: Developments and Challenges Ahead' (2012) 16 *International Journal of Human Rights* 1 at 16.

111 Jones, *supra* n 105 at 625; and Joona, 'International Norms and Domestic Practices in Regard to ILO Convention No. 169 – with Special Reference to Articles 1 and 13–19' (2010) 12 *International Community Law Review* 213 at 233–234.

112 International Conference on Agrarian Reform and Rural Development, 'Issue Paper Three: New opportunities for community driven rural development', March 2006, at para 21, available at: www.agter.org/bdf/_docs/icarrd_ehess_issue_paper_3_en.pdf [last accessed 8 August 2014].

customary tenure of land (individually or collectively) as states' eminent domain powers have not been limited in relation to their access to land. This gap has facilitated forced evictions and other types of abuse against peasants, despite the fact that they depend on the land to survive and that it could represent a source of cultural identity.

Recognising peasants' right to land would offer at least a partial solution to these implementation and normative gaps. Since the right to land is in many cases a precondition for enjoying other rights, it would help address the implementation gap that exists in, for example, the right to food. Additionally, it would protect peasants' land tenure, including informal or customary tenure, and would limit states' eminent domain powers by subjecting any decision of displacement to their free, prior and informed consent. Consequently, it would help close the normative gap that exists in the right to property.

In practice, recognising and consolidating the right to land would improve peasants' international protection by enhancing their access to other rights and by providing them with a new tool (that could be used legally or politically) to defend themselves against forced evictions.

If defending rights that have been legally recognised may require years of struggle and resistance, demanding rights that have not even been recognised is presumably a harder task considering that one does not even have the international community's moral support expressed in terms of the internationally held belief that a right and a correlative state obligation exist. It must be noted, however, that in order to ensure better international protection, the right to land should be recognised in conjunction with other rights, such as those included in the UN draft Declaration on the Rights of Peasants and Other People Working in Rural Areas.

How the right to land and other peasant rights should be recognised and consolidated is still an open question. La Via Campesina, a transnational peasant movement, has long pushed for the adoption of a declaration on the rights of peasants (and has drafted one of its own) and eventually an international convention on peasants' rights.¹¹³

In the UN system, the Special Rapporteur on adequate housing has requested the Human Rights Council to '[r]ecognize the right to land as a human right and strengthen its protection in international human rights law'.¹¹⁴ In addition to this, the Special Rapporteur has said that '[I]and as a cross-cutting issue could also be the subject of a joint analysis by concerned mandate holders'.¹¹⁵ For his part, the Special Rapporteur on the right to food has stated that '[t]he Committee on Economic, Social and Cultural Rights could play a leading standard-setting role in clarifying the issue of land as a human right by issuing a general comment in that regard'.¹¹⁶

The Advisory Committee has recommended that the Human Rights Council should 'create a new special procedure to improve the promotion and protection of the rights of peasants and other people working in rural areas'¹¹⁷ and develop and

113 La Via Campesina, *supra* n 13; Edelman and James, 'Peasants' Rights and the UN System: Quixotic Struggle? Or Emancipatory Idea whose Time has come?' (2011) 38 *Journal of Peasant Studies* 81; and Bengoa, *supra* n 37.

114 Report on adequate housing, *supra* n 30 at para 33(e).

115 *Ibid.* at para 31.

116 General Assembly Report, *supra* n 50 at para 43(d).

117 Final study, *supra* n 4 at para 74(d).

adopt '[a] new international human rights instrument on the rights of peasants and other people working in rural areas'.¹¹⁸

Moreover, as mentioned Section 1 of in this article, the Advisory Committee has drafted a Declaration on the Rights of Peasants and Other People Working in Rural Areas. Indeed, in October 2012 the Human Rights Council established an open-ended intergovernmental Working Group that is mandated to negotiate and submit a draft declaration based on the Draft Declaration adopted by the Advisory Committee. The Draft Declaration was discussed during the Working Group's first session in July 2013 and will continue to be discussed in the forthcoming sessions.¹¹⁹

Adopting a declaration on peasants' rights or, furthermore, an international convention on peasants' rights; creating a new special procedure; issuing a general comment on the matter; and advancing peasants' rights in the case law of international courts and treaty bodies are just some examples of how the right to land and other specific rights could be pushed forward in favour of peasants. Additionally, another set of actions by influential international actors in the area of land acquisitions, such as the World Bank, would be useful to support any normative developments, by setting norms to ensure that both governments and private entities respect peasant communities' access to lands in the context of investment and 'development' projects.¹²⁰

In any case, the implementation of the right to land would pose important challenges, but it would at least provide peasants with the legal standing and a new political tool to defend their access to land and resist acts of arbitrary or illegal dispossession. Moreover, the right to land would serve to balance a highly unequal context that facilitates the commission of human rights violations and, as stated earlier, by limiting states' eminent domain powers, it would contribute to the shift towards a new paradigm of the relationship between the state and the person.

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118 Ibid. at para 74(f).

119 The Working Group's report gives an account of the different viewpoints expressed both by Member States and the non-governmental organisations that attended the Working Group's first session. It also evidences the politics that surround the issue. In particular, in the Working Group the Draft Declaration met with strong opposition from Western states: see UN Watch, 19 July 2013, available at: blog.un-watch.org/index.php/category/peasants-rights [last accessed 30 August 2014].

120 Oxfam, *supra* n 9 at 3.