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**Requests addressed to the Advisory Committee**

**stemming from Human Rights Council resolutions**

**Reports currently under consideration by the**

**Advisory Committee: right to food**

**Preliminary study on the advancement of the rights of  
peasants and other people working in rural areas**

**Prepared by the drafting group of the Advisory Committee on the right  
to food**

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–4	3
II. Identification of discriminated and vulnerable groups working in rural areas .....	5–19	3
A. Overview of the situation of peasants and other people working in rural areas .....	5–6	3
B. Smallholder farmers.....	7–10	4
C. Landless people working as tenant farmers or agricultural labourers.....	11–13	5
D. People living from traditional fishing, hunting and herding activities.....	14–17	6
E. Peasant women .....	18–19	7
III. Causes of discrimination and vulnerability of peasants and other people working in rural areas.....	20–41	7
A. Expropriation of land, forced evictions and displacement.....	21–25	8
B. Gender discrimination .....	26–28	10
C. Absence of agrarian reform and rural development policies (including irrigation and seeds).....	29–36	11
D. Lack of minimum wage and social protection .....	37–39	13
E. Criminalization of the movements protecting the rights of people working in rural areas .....	40–41	13
IV. Current protection of the rights of peasants and other people working in rural area under international human rights law .....	42–58	14
A. The International Covenant on Economic, Social and Cultural Rights .....	43–51	14
1. The right to food.....	44–46	15
2. The right to adequate housing .....	47–49	15
3. The right to health .....	50–51	16
B. The International Covenant on Civil and Political Rights .....	52–54	17
C. The rights of women living in rural areas .....	55–56	17
D. The rights of indigenous people.....	57–58	18
V. Ways and means to advance the rights of peasants and other people working in rural areas.....	59–69	18
A. Implementation of existing international norms .....	60–62	18
B. Addressing the normative gaps under international human rights law .....	63–64	19
C. A new legal instrument on the rights of people working in rural areas .....	65–69	20
VI. Conclusion .....	70–72	21

## I. Introduction

1. Hunger, like poverty, is still predominantly a rural problem, and amongst the rural population it is those who produce food who suffer disproportionately. In a world in which we produce more than enough to feed the entire world population, more than 700 million people living in rural areas continue to suffer from hunger. Describing this situation in its preliminary study on discrimination in the context of the right to food (A/HRC/13/32), the Advisory Committee identified peasant farmers, small landholders, landless workers, fisherfolk, hunters and gatherers among the most discriminated and vulnerable groups.

2. Responding to this evidence, the Human Rights Council mandated the Advisory Committee – in its resolution 13/4 of 19 March 2010 – to undertake a preliminary study on ways and means to further advance the rights of people working in rural areas, including women, in particular smallholders engaged in the production of food and/or other agricultural products, including from directly working the land, traditional fishing, hunting and herding activities, and to report thereon to the Council at its sixteenth session.

3 This preliminary study has been prepared by the drafting group on the right to food, established by the Advisory Committee at its first session and composed of José Bengoa Cabello, Chinsung Chung, Latif Hüseyinov, Jean Ziegler and Mona Zulficar.<sup>1</sup>

4. This preliminary study begins with the identification of the most discriminated and vulnerable groups working in rural areas (II). It then describes the causes of their vulnerability (III) and reviews the existing protection of their rights under international human rights law (IV). In the final part, it puts forwards ways and means to further advance the rights of peasants and other people working in rural areas (V).

## II. Identification of discriminated and vulnerable groups working in rural areas

### A. Overview of the situation of peasants and other people working in rural areas

5. The United Nations Millennium Development Project's Task Force on Hunger has shown that 80 per cent of the world's hungry live in rural areas.<sup>2</sup> Of the 1 billion people who suffer from extreme poverty in the world today, 75 per cent live and work in rural areas.<sup>3</sup> This situation has been exacerbated with the global food crisis in 2008 and 2009. Today, 50 per cent of the world's hungry are smallholder farmers who depend mainly or partly on agriculture for their livelihoods (See section 2 below). 20 per cent of those suffering from hunger are landless families who survive as tenant farmers or poorly paid agricultural labourers and often have to migrate from one insecure, informal job to another (See section 3 below). And 10 per cent of the world's hungry live in rural communities from traditional fishing, hunting and herding activities (See section 4 below). 70 per cent of

<sup>1</sup> The members of the drafting group on the right to food would like to thank Christophe Golay and Ioana Cismas, from the Geneva Academy of International Humanitarian Law and Human Rights, for their important inputs during the drafting of this study.

<sup>2</sup> UN Millennium Project, Task Force on Hunger, *Halving hunger, it can be done*, 2005.

<sup>3</sup> International Fund for Agricultural Development (IFAD), *Rural Poverty Report 2001: The Challenge of Ending Rural Poverty*, 2001.

the world's hungry are women and a great majority of them are working in agriculture (See section 5 below).

6. In this study, we will focus on the rights of the most vulnerable people working in rural areas, with a particular focus on smallholder farmers, landless workers, fisherfolk, hunters and gatherers. We will not focus on the rights of other people working in rural areas, such as those working in the business industry or public administration.

## B. Smallholder farmers

7. Around 50 per cent of the world's hungry live on small plots of land and produce crops for subsistence and/or sale on local markets. Most of them cannot produce enough to feed themselves, essentially because they do not have sufficient access to productive resources such as land, water and seeds. Two thirds of these smallholder farmers live on remote and marginal lands under environmentally difficult conditions, such as mountainous areas or areas threatened by droughts and other natural disasters, while good, fertile land tends to be concentrated in the hands of wealthier landowners. For example, most of the fertile lands of central Guatemala are part of huge plantations, while the majority of smallholder farmers and indigenous people are left to cultivate the steep slopes of Guatemala's mountainous regions.<sup>4</sup> The same is true in many other countries, such as Bolivia<sup>5</sup> and Ethiopia.<sup>6</sup>

8. In Guatemala, land ownership is highly concentrated, with 2 per cent of the population owning up to 80 per cent of agricultural land, while 90 per cent of small farmers survive on less than 1 hectare.<sup>7</sup> The United Nations calculated that hunger and malnutrition levels in Guatemala are closely linked to the quantity of land held, with children of families possessing less than 2 *manzanas* of land (6,987 m<sup>2</sup> = 1 *manzana*) being 3.2 times more likely to be malnourished than families possessing more than 5 *manzanas*.<sup>8</sup> Poor subsistence farmers lack access to sufficient, good quality land and survive on *microfincas* (smallholdings) of less than one hectare of unproductive land, although they really need 25 hectares of fertile land to feed their families adequately. As a consequence of extreme inequality in access to land, the hungry and malnourished are predominantly indigenous people and poor peasant farmers or agricultural workers living in rural areas.<sup>9</sup>

9. The situation is similar in Bolivia, where the poor small-scale farmers own only 1.4 per cent of the cultivated land, while the wealthiest 7 per cent of Bolivian landlords own 85 per cent of the cultivated land.<sup>10</sup> In Bolivia's *Occidente* (or west), the poor and hungry are mostly indigenous people, living in rural areas and struggling to survive from small-scale and subsistence farming on the cold, windy plateau of the *altiplano*. Most people have very small landholdings, barely large enough for subsistence. Most agricultural work is done by hand with little access to machinery even to plough the fields, and there has been little investment in irrigation and other infrastructure that would allow increased production.

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<sup>4</sup> Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, A/HRC/13/33/Add.4; Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.1.

<sup>5</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, A/HRC/7/5/Add.2, para.14.

<sup>6</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2005/47/Add.1, para.11.

<sup>7</sup> Foodfirst Information and Action Network (FIAN), *The Human Right to Food in Guatemala*, 2004.

<sup>8</sup> United Nations, *Common Country Assessment. Guatemala*, 2004, p.16.

<sup>9</sup> Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, A/HRC/13/33/Add.4, para.11.

<sup>10</sup> S.Klasen and al., *Operationalising Pro-Poor Growth, A Country Case Study on Bolivia*, 2004.

This has resulted in very high levels of malnutrition, especially micronutrient malnutrition, amongst *altiplano* families because their diet is inadequate.<sup>11</sup>

10. In Ethiopia, chronic food insecurity persists in the country, which is predominantly agrarian, and poverty is significantly higher in rural areas than in urban areas.<sup>12</sup> Agriculture is still predominantly rain dependent and only 3 per cent of irrigable land is currently irrigated, contributing to high vulnerability to drought. Many of Ethiopia's farmers do not produce enough even for their own subsistence. Two thirds of household farm on less than 0.5 hectare, insufficient to support a family, and these holdings are becoming smaller and smaller given the fast rate of population growth.<sup>13</sup> The poorest and most destitute are now dependent mainly on wage labour in other people's fields. With few opportunities for wage-labour or opportunities for off-farm employment to earn income, many people simply do not get enough to eat.

### C. Landless people working as tenant farmers or agricultural labourers

11. Twenty percent of the world's hungry are landless people. Most of these people work as tenant farmers or agricultural labourers. Tenant farmers usually have to pay high rents and have little security of possession from season to season. Agricultural labourers usually work for extremely low wages that are insufficient to feed their families and often have to migrate from one insecure, informal job to another.<sup>14</sup> This is for example the case in Bangladesh<sup>15</sup> and in India.<sup>16</sup>

12. In Bangladesh, more than two thirds of rural people are now landless (own less than 0.2 hectares) and landlessness is increasing rapidly, due to demography and inheritance laws that divide holdings into ever smaller plots, but also to land-grabbing by powerful people.<sup>17</sup> Many of the landless people work as agricultural labourers, often for pitiful wages, and the rest are sharecroppers who work the land of absentee landlords in exploitative relationships where 50 per cent of the crop must be passed back to the landlord. Seasonal crises of hunger are still experienced in the northern, more arid regions of Bangladesh, particularly during the *monga*, lean season between crops when no agricultural work is available for landless labourers. Increasing landlessness is contributing to migration to urban areas in search of work, with many people living in the terrible conditions of Dhaka's slums.

13. In India, the hungry and malnourished are primarily children, women and men living in rural areas and being dependent on agriculture, working as casual workers but also as sharecroppers and tenant or marginal farmers with less than one hectare of land.<sup>18</sup> Agricultural wages are very low and increasingly precarious, minimum wages not always enforced and many people lack work during the agricultural lean season. In some states, feudalistic patterns of land ownership persist, despite legal abolition and the official Land

<sup>11</sup> United Nations Development Programme (UNDP), *Objetivos de Desarrollo del Milenio: La Paz*, 2007.

<sup>12</sup> International Food Policy Research Institute (IFPRI), *Ending the Cycle of Famine in Ethiopia*, 2003.

<sup>13</sup> D.Rahmeto and A.Kidanu, *Consultations with the Poor: A Study to Inform the World Development Report (2000/01) on Poverty and Development*, 1999.

<sup>14</sup> IFAD, *op.cit.*

<sup>15</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2004/10/Add.1, para.9.

<sup>16</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.2, paras.10-11.

<sup>17</sup> UNDP, *Human Security in Bangladesh: In Search of Justice and Dignity*, 2002.

<sup>18</sup> S.Chakravarty and S.Dand, *Food Insecurity in India: Causes and Dimensions*, 2005.

Ceilings Act that aimed to limit land concentration. Over the 1990s, the evidence suggests that concentration in land ownership increased, with many more households becoming landless and dependent on casual agricultural labour (45 per cent of households).<sup>19</sup> Scheduled castes and tribes suffer most from hunger and malnutrition in India, making up 25 per cent of the rural population but 42 per cent of the poor.<sup>20</sup> This is largely due to discrimination, as many are expected to work as agricultural labourers without being paid, many held in debt bondage by their higher-caste employers.

#### **D. People living from traditional fishing, hunting and herding activities**

14. Around 10 per cent of the world's hungry subsist through fishing, hunting and herding activities. In many countries, the traditional way of life of these people and their means of livelihood are threatened by competition over productive resources, leading to increasing hunger and malnutrition.

15. There are two types of fish production — fish captured in the wild from the sea or inland waters (capture fisheries) and fish farmed in the sea or inland waters (aquaculture) — and both are driven to industrialization, privatization and export orientation, which end up depriving local people of their traditional rights of access to fishing resources.<sup>21</sup> In 2004, the United Nations Environment Programme (UNEP) has reported, for example, that the EU paid US\$ 230 million in subsidies to its fishing fleets to enable them to take advantage of fishing rights obtained in the Argentine exclusive economic zone.<sup>22</sup> In another agreement with Senegal, the EU managed to obtain fishing rights over species that are endangered or locally used, which has allegedly threatened the food security of thousands of local fishing communities.<sup>23</sup> Fish farming is mostly located in developing countries (with 84 per cent of global production in low-income food deficit countries), particularly in China, India, the Philippines and Indonesia, and it is frequently promoted on the promise that it will relieve pressure on wild fish stocks and improve food security and provide livelihoods for the poor. However, fish farming does not automatically relieve exploitation of marine stocks — given that many farm fish are, ironically, fed with marine fish.<sup>24</sup> In fact, in most cases, fish farming has a negative impact on access to food for traditional fishing communities.<sup>25</sup>

16. People subsisting on hunting activities in forest and hill areas are also increasingly marginalized in many parts of the world. Many have lost their access to traditional forest livelihoods and food resources through the creation of forest reserves or because of development projects such as dams, power plants, coal mines and mineral industries. Many remain without access to food or to government services. In India, for example, where NGOs and academics estimate that dam projects alone have displaced up to 30 million people in the last decades<sup>26</sup>, around 40-50 per cent of the displaced are tribal people, most

<sup>19</sup> National Sample Survey data cited in J.Gosh, *Trade Liberalization in Agriculture: An Examination of Impact and Policy Strategies with Special Reference to India*, UNDP, Occasional Paper 2005/12, p.14.

<sup>20</sup> G.J.Gill and al., *Food Security and the Millenium Development Goal on Hunger in Asia*, 2003.

<sup>21</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, A/59/385, paras.33-60.

<sup>22</sup> UNEP, *Fisheries and the Environment. Fisheries Subsidies and Marine Resources Management: Lessons learned from Studies in Argentina and Senegal*, 2004.

<sup>23</sup> *Ibid.*

<sup>24</sup> R.L.Naylor and al., "Effect of Aquaculture on World Fish Supplies", *Nature*, vol.405, 2000, pp.1017-1024.

<sup>25</sup> S.C.Stonich and I. De La Torre, "Farming shrimp, harvesting hunger: the costs and benefits of the Blue Revolution", *Background*, vol.8, no.1, 2002.

<sup>26</sup> H.Mander and al, *Dams, Displacement, Policy and Law in India*, 1999.

of them living from hunting activities in forest and hill areas, even though they make up only 8 per cent of the population.<sup>27</sup>

17. In many countries, conflicts are also increasing between pastoralists and crop farmers, as farmers tend their own small animals and are less eager to allow pastoralists to graze their herds in the fields after the harvest. In Ethiopia, for example, pastoral livelihoods are becoming increasingly vulnerable, with pastoralists affected by the lack of water, land degradation and competition with agriculturalists, and poverty has been exacerbated by the collapse of the export market for livestock to Arab nations following an outbreak of Rift Valley fever.<sup>28</sup> In Niger, these issues are addressed in the *Code rural*, which set out clear rules for access to resources and sets up clearly marked corridors and areas of pasture so as to minimize conflict.<sup>29</sup> However, the means to implement the *Code rural* are sorely lacking and criticism of the bias towards agriculture in the *Code rural* has given rise to calls for a new *Code pastoral* which focus more attention on the different and very specific problems of the nomadic and semi-nomadic pastoralists.<sup>30</sup>

### **E. Peasant women**

18. Women play a crucial role in households' food security, producing the 60-80% of food crops in developing countries and earning incomes to feed their families. However, despite their key role in ensuring food security, 70% of the world's hungry are women. Women are disproportionately affected by hunger, food insecurity and poverty, largely as a result of gender inequality and their lack of social, economic and political power.

19. Peasant women in particular often face discrimination in gaining secure access to and control over other productive resources, such as land, water and credit, as they are often not recognized as producers or juridical equals. In understanding the problems faced by peasants and the discrimination they suffer, it is particularly important to note the special situation faced by women peasants. While the proportion of women heads of rural household continues to grow, reaching more than 30 per cent in some developing countries, less than 2 per cent of all land is owned by women.<sup>31</sup> Customs and traditions in many parts of the world limit women's equal access to productive resources. In some countries, discrimination is still codified in national laws, while in other countries, it is part of customary law (see section III.2 below).

## **III. Causes of discrimination and vulnerability of peasants and other people working in rural areas**

20. The main causes of discrimination and vulnerability of peasants and other people working in rural areas are closely linked to human rights violations. These are: expropriation of land, forced evictions and displacement (1); gender discrimination (2); the absence of agrarian reform and rural development policies (3); the lack of minimum wage

<sup>27</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.2, para.11.

<sup>28</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2005/47/Add.1, para.12.

<sup>29</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2002/58/Add.1, par.60.

<sup>30</sup> N.Avellal et F.Reounodji, *La législation foncière pastorale au Niger et au Tchad. Une analyse comparative*, 2009.

<sup>31</sup> FAO, *Women and the Right to Food. International Law and State Practice*, 2008.

and social protection (4); and the criminalization of the movements defending the rights of people working in rural areas (5).

## A. Expropriation of land, forced evictions and displacement

21. FIAN International has worked on more than 100 cases of violations of the right to food from 1995 to 2005, and concluded that the majority of them were related to expropriation of land, forced evictions and displacements.<sup>32</sup> Most urgent appeals of the Special Rapporteur on the right to food are also based on allegations of expropriation of land, forced evictions and forced displacements.<sup>33</sup> The recent phenomenon of the ‘global land grab’ has added a new dimension to these concerns, as governments and companies seek to buy and lease large tracts of productive land in other countries, to food to be exported back to their countries, or to grow biofuels to fill the petrol tanks of those in the global north.<sup>34</sup>

22. In many countries, the recurrence of forced evictions in the last 20 years is closely linked to a long history of expropriation of productive resources from smallholder farmers and local communities. In Guatemala, for example, there are often multiple claims to the same land, following a history of land expropriation by powerful landowners.<sup>35</sup> And in the last ten years, the response of the Government to land occupations has been forceful.<sup>36</sup> For example, local and international NGOs reported more than 30 forced evictions in 2004, affecting 1,500 families.<sup>37</sup> In the case of the *Nueva Linda* farm (Champerico, Retalhuleu), it was alleged that while some officials were negotiating a peaceful evacuation with the representatives of 22 communities who occupied the land three years before, the Civil National Police intervened violently, leaving 9 dead, over 40 injured and 13 detained, as well as the destruction of the communities’ crops and houses.<sup>38</sup> In another case recorded at *El Maguey* farm (Fraijanes), it was alleged that a group of 86 peasant families had been forcibly evicted from their land by the police and the army on several occasions, with their crops and irrigations system destroyed, despite the recognition that they own the land in a Governmental Agreement dated 7 April 2003 and a Constitutional Court decision dated 4 May 2004.<sup>39</sup> As Amnesty International noted in 2005:

“A particular characteristic of agrarian disputes in Guatemala is that the full weight of the law and judicial system is often levied in order to enforce evictions, but not to issues relating to labour rights of rural workers or land tenure of rural communities.”<sup>40</sup>

<sup>32</sup> J.Jonsen, *Developing Indicators for the Right to Food. Lessons learned from the case work of FIAN International*, 2006, pp.115-117.

<sup>33</sup> See for example A/HRC/4/30/Add.1.

<sup>34</sup> Report of the Special Rapporteur on the right to food, Olivier de Schutter, A/HRC/13/33/Add.2.

<sup>35</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.1, paras.11-12.

<sup>36</sup> *Ibid.*, paras.12; 48. Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, A/HRC/13/33/Add.4, paras.18-20.

<sup>37</sup> Colectivo de Organizaciones Sociales, *Otra Guatemala es Posible: Acuerdos de Paz, Unidad y lucha de las organizaciones sociales*, 2004; Amnesty International, *Memorandum to the Government of Guatemala: Amnesty International’s concern regarding the current human rights situation*, AMR 34/014/2005.

<sup>38</sup> FIAN, *The Human Right to Food in Guatemala*, 2004.

<sup>39</sup> *Ibid.*

<sup>40</sup> Amnesty International, *op.cit.*



23. In many other countries, smallholder farmers are forcibly displaced from their land as a consequence of development projects. This often happens in the case of large-scale commercial exploitation of the resources of smallholder farmers, including mining for minerals, oil or gas, logging, building dams and highways, or expanding industrial agriculture. Authorities rarely assess the likely impact of such projects nor do they take timely corrective action. In India, for example, many cases have been documented about forced displacements of rural communities without adequate resettlement and rehabilitation.<sup>41</sup> The case of the Narmada Dams is of particular concern, as despite clear directions by the Supreme Court in 2000<sup>42</sup>, thousands of affected people are still not adequately resettled and rehabilitated. In 2005, a report by the Indian People's Tribunal on Environment and Human Rights alleged that 11,000 families in Madhya Pradesh, 1,500 families in Maharashtra and 200 families in Gujarat were still to be rehabilitated, although their villages have already been submerged.<sup>43</sup> In November 2008, with the situation not improving, 20'000 people affected by the Narmada Dams participated in a march for displaced peoples' rights and dignity in Khandwa, Madhya Pradesh.<sup>44</sup>

24. The recent phenomenon of the "global land grab" has added a new dimension to these concerns, with the potential to involve an unprecedented level of land expropriation, forced evictions and displacements.<sup>45</sup> With the expansion of biofuels production since 2003 and the global food crisis in 2008, the revival of the strategy of foreign investors, both governments and companies, to buy or secure long-term leases of productive land in other countries can have detrimental effects on local farmers, if land used by small farmers is sold or lease to foreign investors.<sup>46</sup>

25. The most famous case is the deal between the South Korean company Daewoo and the Government of Madagascar, on a lease of 1.3 million hectares of land – or half of arable land of the country. When information was released about the deal, massive demonstrations were organized in the country with serious political implications in March 2008. Other less publicized cases happen, nonetheless, in many other countries, with an estimated number of 180 land deals existing at varying stage of negotiation.<sup>47</sup> In five countries of Sub-Saharan Africa only, it is estimated that a total of 2.5 million hectares of land have been allocated from 2004 to 2008.<sup>48</sup> It is estimated for example that South Korea signed deals for 690'000 hectares and the United Arab Emirates for 400'000 hectares in Sudan, and that a group of Saudi investors are spending 100 million US\$ in Ethiopia, to raise wheat, barley and rice on land leased to them by the Government.<sup>49</sup> In 2009 only, investors are said to have expressed interest to buy or lease an additional amount of 42 million hectares of land, among which 75% were in Africa.<sup>50</sup> Such practices, which only existed at a comparable level during the

<sup>41</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.2, paras.11;44.

<sup>42</sup> Supreme Court, *Narmada Bachao Andolan v. Union of India*, 2000.

<sup>43</sup> Report of the Indian People's Tribunal on Environment and Human Rights, 2005, [www.narmada.org/IPT\\_Report.pdf](http://www.narmada.org/IPT_Report.pdf).

<sup>44</sup> Information available at [www.narmada.org](http://www.narmada.org) (civil society) and [www.nvda.nic.in](http://www.nvda.nic.in) (Government).

<sup>45</sup> Report of the Special Rapporteur on the right to food, Olivier de Schutter, A/HRC/13/33/Add.2.

<sup>46</sup> C.Smaller and H.Mann, *A Thirst for Distant Lands: Foreign investment in agricultural land and water*, 2009.

<sup>47</sup> *Ibid.*

<sup>48</sup> L.Cotula and al., *Land grab or development opportunity? Agricultural investment and international land deals in Africa*, 2009.

<sup>49</sup> The Economist, "Outsourcing-s third wave. Rich food importers are acquiring vast tracts of poor countries' farmland. Is this beneficial foreign investment or neocolonialism?", 21 May 2009.

<sup>50</sup> World Bank, *Rising Global Interest in Farmland. Can It Yield Sustainable and Equitable Benefits?*, September 2010, p.xiv.

colonial era, will further increase the vulnerability and discrimination against local peasants.

## **B. Gender discrimination**

26. Women living and working in rural areas often face discrimination in gaining secure access to and control over other productive resources, such as land, water and credit. In many countries, they suffer multiple discriminations – as women, as poor, as rural residents and as indigenous – and rarely own land or other assets. *De jure* discrimination against women remains for example institutionalized in Guatemala, where article 139 of the Labour Code describes rural women as “helpers” of the male agricultural workers, rather than as workers entitled to receive their own salary.<sup>51</sup> As a consequence, it is reported that many landowners do not even pay women for their work – as they are considered husband’s “helpers”.<sup>52</sup>

27. In other countries, discrimination persists in customary laws, despite a strong constitutional and legislative framework. In Ethiopia, for example, women are formally entitled by the Constitution to affirmative action and equal rights (art. 35 (3)). These include equal rights over property and land, including inheritance, and rights to equality in employment (art. 35 (7 and 8)). Federal legislation, including the 1997 Rural Land Administration Proclamation and the 2001 Family Code, as well as official policy outlines the *de jure* and *de facto* equality between men and women. However, these formal rights are not enforced in practice and peasant women are the most vulnerable to hunger and poverty as a result of discrimination.<sup>53</sup> Women represent 50 per cent of the agricultural workforce in Ethiopia, yet traditionally have no right to inherit the land they work on, and little access to credit, agricultural inputs or extension training. As Meaza Ashenafi, Executive Director of the Ethiopian Women Lawyers Association has put it: “almost in all regions, women do not have any access to land whatsoever. They don’t have the right to inherit, and the only option is to get married and have a husband. But when the husband dies, they are also kicked off their land”.<sup>54</sup>

28. The same situation persists for example in Bangladesh, where women are protected and guaranteed equality by the law, but existing social values, reinforced by religion, permit discrimination against women.<sup>55</sup> Under Islamic law, women have a right to only half the land to which their male siblings are entitled; the Hindu tradition accords no land to women in inheritance custom. As a result of discrimination, malnutrition levels show a marked gender disparity, with women most profoundly affected in rural areas.<sup>56</sup>

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<sup>51</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.1, para.9.

<sup>52</sup> FIAN, *The Human Right to Food in Guatemala*, 2004.

<sup>53</sup> UNICEF and the Federal Democratic Republic of Ethiopia, *The Situation of Ethiopian Children and Women: A Rights-Based Analysis*, 2002.

<sup>54</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2005/47/Add.1, para.22.

<sup>55</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2004/10/Add.1, para.48.

<sup>56</sup> International Monetary Fund (IMF), *Bangladesh: Interim Poverty Reduction Strategy Paper*, 2003.

### C. Absence of agrarian reform and rural development policies (including irrigation and seeds)

29. To protect the rights of peasants and other people working in rural areas, more attention needs to be paid to agrarian reform that benefits landless peasants and small-scale land holders and promotes security of tenure and access to land.<sup>57</sup> Agrarian reforms are successful when land reform radically reduces inequalities in land distribution and is accompanied by sufficient access to other inputs, including water, credit, transport, extension services and other infrastructure.<sup>58</sup>

30. While the “death” of agrarian reform was proclaimed in the 1970s, and few efforts were made to conduct land reform programmes in the 1980s and early 1990s, land reform returned to the international agenda in 1996. In the Rome Declaration on World Food Security and World Food Summit Plan of Action, land reform constituted a key part of States’ commitments.<sup>59</sup> In the Declaration of the International Conference on Agrarian Reform and Rural Development organized by FAO and the Government of Brazil in March 2006, 95 States recognized the importance to establish appropriate land reform to secure access to land for marginalized and vulnerable groups, and to adopt adequate legal frameworks and policies to promote traditional and family agriculture.<sup>60</sup>

31. Land reforms in Japan, the Republic of Korea, Taiwan Province of China, China and Cuba have had a significant impact on reducing poverty and hunger and increasing economic growth.<sup>61</sup> In India, the states with the steepest declines in poverty from 1958 to 1992 were those that implemented land reform.<sup>62</sup> More recently, the move towards transformative and redistributive agrarian reform has been successfully chosen by the Government of Bolivia.<sup>63</sup> Despite the re-emergence of land reform on international and national agendas, the World Bank continues to promote models of agrarian reform that emphasize the market and are compatible with the “Washington consensus”. The World Bank’s “market-assisted” or “negotiated” models of land reform seek to overcome elite resistance to land reform by offering credit to landless or land-poor farmers so that they can buy land at market rates from large landholders, with the State playing a part only in mediation and the provision of credit.<sup>64</sup> These models have been bitterly criticized by nongovernmental organizations and social movements.<sup>65</sup>

32. Well formulated rural development policies are also essential to fulfil the rights of people working in rural areas. In the last three decades, however, support to agriculture has been dramatically decreasing. Many indebted developing countries were forced to reduce their support to small farmers and liberalize their agriculture, under strong pressure from the IMF and the World Bank. At the same time, between 1980 and 2004, the percentage of official development aid (ODA) directed to agriculture went down from 13% to 3.4%, or

<sup>57</sup> Report of the Special Rapporteur on the right to food, Olivier de Schutter, A/65/281.

<sup>58</sup> Report of the former Special Rapporteur on the right to food, Jean Ziegler, A/57/356, paras.22-42.

<sup>59</sup> FAO, WFS 96/REP.

<sup>60</sup> FAO, C/2006/REP, appendix G.

<sup>61</sup> See for example the report of the former Special Rapporteur on the Right to Food, Jean Ziegler, on his mission to Cuba, A/HRC/7/5/Add.3, paras.32;44.

<sup>62</sup> IFAD, *op.cit.*

<sup>63</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, A/HRC/7/5/Add.2, paras 31;39.

<sup>64</sup> P.Rosset, “Tides Shift on Agrarian Reform: New Movements Show the Way”, 2001.

<sup>65</sup> “Land for those who work it, not just for those who can buy it”, Final declaration of the international seminar on the negative impacts of World Bank market-based land reform policy, April 2002.

from 2.63 to 1.90 billion \$US.<sup>66</sup> This situation resulted in an unprecedented neglect of State policies in favour of small-scale agriculture, with detrimental effects on peasants in almost all developing countries, and it led to the world food crisis in 2008.<sup>67</sup>

33. The failure of States to harness water resources, both for irrigation and for drinking water (for people and for livestock) is another key factor explaining the vulnerability of people working in rural areas. In Ethiopia and Niger, for instance, respectively 3 and 10 per cent of agricultural cultivation is irrigated.<sup>68</sup> Although there are water resources available in these countries, these have been little exploited. The reason is the severe shortage of financial resources to invest in irrigation given its important costs, particularly on a large scale. There have been some impressive although limited efforts at promoting small-scale irrigation and providing wells in some villages.

34. Together with land and water, peasants need seeds in order to secure their work and food security. According to the International Convention for the Protection of New Varieties of Plants, they are free to use their traditional seeds for replanting, selling or exchange, and the 2<sup>nd</sup> World Seed Conference hosted by the FAO in September 2009 stressed the importance of protecting access to seeds in agriculture. However, this freedom is now threatened by a few transnational corporations that control the seed market and their patents on improved or genetically modified seeds.<sup>69</sup> A third of the entire global seed market is in the hands of just 10 corporations, including Aventis, Monsanto, Pioneer and Syngenta. Monsanto alone controls 90 per cent of the global market in genetically modified seeds.<sup>70</sup>

35. These transnational corporations hold the intellectual property rights to improved or genetically modified seeds, which gives them the right to prevent peasants from building up their own supplies. Peasant families who often received seeds as part of food aid programmes are now forced to buy new seeds every year. The transnational corporations began establishing their control in this area by creating seeds that were programmed to self-destruct, so-called “terminator” seeds. Then, in the face of hostile public opinion, they changed tack and today defend their patents with an increasing number of legal actions against peasants who use their seeds without paying royalties. Monsanto, for example, has brought hundreds of legal actions against peasants in recent years.

36. Every year, thousands of peasants commit suicide because they can no longer afford the seeds that they need to feed their families. In India alone, it is alleged that 200,000 peasants have committed suicide since 1997, largely because they had become dependant on seeds supplied by the transnational corporations, and had amassed debts that they could not repay.<sup>71</sup>

<sup>66</sup> Jean Feyder, Ambassador of Luxembourg, 47th Executive Session of the Trade and Development Board, 30 June 2009.

<sup>67</sup> C.Golay, “The Food Crisis and Food Security: Towards a New World Food Order?”, *International Development Policy Series*, Vol.1, 2010, pp.215-232.

<sup>68</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2005/47/Add.1, para.11; Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2002/58/Add.1, par.57.

<sup>69</sup> Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, A/64/170.

<sup>70</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2004/10, par.36.

<sup>71</sup> V.Shiva, *From Seeds of Suicide to Seeds of Hope: Why Are Indian Farmers Committing Suicide and How Can We Stop This Tragedy?*, *The Huffington Post*, 10 September 2009.

## D. Lack of minimum wage and social protection

37. As has been pointed out above, landless people that work in the rural areas are strongly affected by the lack of policies stipulating a minimum wage and of social protection nets. Agricultural labourers work for extremely low wages that are insufficient to feed their families. Moreover, these wages have no long-term security and labourers are forced to migrate from one insecure and informal job to another.<sup>72</sup> This is for example the case in Guatemala<sup>73</sup> and Bolivia.<sup>74</sup>

38. In Guatemala, permanent workers on the *fincas*, often tied into a *colono* system (under which landowners provide subsistence plots in exchange for labour), work for extremely low wages. Landowners often avoid paying legal entitlements by dismissing workers repeatedly to keep them on non-permanent contract status,<sup>75</sup> and often dismiss workers who negotiate for better conditions.<sup>76</sup> Church organizations, such as that led by Álvaro Ramazzini, Bishop of San Marcos, help families to survive by providing food donations and help workers to bring cases to local courts, although workers rarely win, and even when they do, legal orders are reportedly rarely enforced. In one case, at the *Nueva Florencia* farm (Colomba, Quetzaltenango), it was alleged that in 1997, immediately after having founded a union, 32 male and female workers were dismissed from the Nueva Florencia farm, without compensation. After many years of legal proceedings, and despite two final decisions of the Constitutional Court in 2000 and 2003 ordering the reincorporation of the workers and the reimbursement of their unpaid salaries, the workers and their families are still without work.<sup>77</sup>

39. In Bolivia, despite impressive efforts by the new Government, many agricultural workers on large estates still work in feudal conditions of semi-slavery, or debt-bondage. Forced labour, including situations of debt bondage, is still practiced by the private sector in Bolivia, including the sugar cane industry, the Brazil nut industry and on private ranches (*haciendas*) in the region of the Chaco.<sup>78</sup> Of particular concern is the situation of forced labour that the Guaraní people have to endure on some private ranches in the provinces of Santa Cruz, Chuquisaca and Tarija in the Chaco region. As they are paid extremely low wages which do not cover their basic living costs, they are forced to rely on credit from their employers. In addition, women and children are expected to work but are not paid at all.

## E. Criminalization of the movements protecting the rights of people working in rural areas

40. People working in rural areas, and in particular peasants, have always organized themselves to fight discrimination and exploitation. They began at the local level and gradually grew to form national movements. In Canada, for example, Provincial Farmers' Unions have long worked in their respective provinces to protect family farming against the

<sup>72</sup> IFAD, *op.cit.*

<sup>73</sup> Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, A/HRC/13/33/Add.4, paras.27-30. Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.1, paras.9-10;17.

<sup>74</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, A/HRC/7/5/Add.2.

<sup>75</sup> World Bank, *Guatemala: Poverty in Guatemala*, 2003, p.52.

<sup>76</sup> FIAN, *The Human Right to Food in Guatemala*, 2004.

<sup>77</sup> *Ibid.*; FIAN, *Guatemala: Harassment of illegally dismissed workers from the Nueva Florencia Farm in 1997*, 6 February 2009.

<sup>78</sup> Anti-Slavery International, *Contemporary Forms of Slavery in Bolivia*, 2006.

industrialization of agriculture, until they merged in 1969 to create the National Farmers' Union. In Brazil, the MST, or Landless Worker's Movement, has emerged in 1984 out of frustration at the extreme concentration of land in the hands of rich landowners (*latifundios*), the practice of *grillagem* (land-grabbing), and the ongoing process of the modernization and liberalization of agriculture. Hundred of organizations have done the same and in 1993, they created the international movement of peasants, Via Campesina, to protect their rights and promote agricultural policies and land reforms in favour of small farmers.<sup>79</sup>

41. Since 2001, when Via Campesina began to monitor the human rights situation of peasants worldwide, it became obvious that when peasants organize themselves to claim their rights, they are often treated as criminals, arbitrarily arrested and detained or become the victims of summary executions by the state or private police forces.<sup>80</sup> It is often peasant leaders who suffer most from human rights violations, by being arbitrarily arrested, imprisoned, tortured or executed. In the Philippines, for example, three peasant leaders were murdered between November 2008 and June 2009: Vicente Paglinawan, Vice President of the National Coordination of peasant groups for the island of Mindanao; Eliezer Billanes, Secretary General of a peasants' union; and Renato Penas, Vice President of the National Coalition of Peasant Organizations.<sup>81</sup> Via Campesina commemorates two events each year: the 1996 massacre of 19 landless peasants at Eldorado do Carajás (Brazil), on 17 April, and the death of Lee Kyun Hae, a Korean peasant who stabbed himself to death during a massive protest against the WTO in Cancun (Mexico) in 2003, on 10 September.

#### **IV. Current protection of the rights of peasants and other people working in rural areas under international human rights law**

42. The rights of peasants and other people working in rural areas are not subject to any specific protection under international law. However, like all human beings, these people benefit from the protection of the international human rights instruments.<sup>82</sup> In particular, the International Covenant on Economic, Social and Cultural Rights (1) and the International Covenant on Civil and Political Rights (2) offer significant protection to the rights of peasants and other people working in rural areas. Women living in rural areas and indigenous people also benefit from the protection granted by the Convention on the Elimination of All Forms of Discrimination against Women (3) and the United Nations Declaration on the Rights of Indigenous Peoples (4).

##### **A. The International Covenant on Economic, Social and Cultural Rights**

43. Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) protecting the right to food (a), the right to adequate housing (b) and the right to health (c) are the most relevant in respect to the protection they offer for the rights of peasants and other people working in rural areas.

<sup>79</sup> A.A.Desmarais, "Via Campesina: Consolidation d'un mouvement paysan international", CETIM, *Via Campesina. Une alternative paysanne à la mondialisation néolibérale*, 2002, pp.71-134.

<sup>80</sup> Via Campesina, *Annual Report: Violations of Peasants' Human Rights*, 2006.

<sup>81</sup> AKISAMA Statement on the Assassination of Renato Penas, [www.asianfarmers.org](http://www.asianfarmers.org).

<sup>82</sup> See C.Golay, *The Rights of Peasants*, CETIM, 2009; C.Golay, "Towards a Convention on the Rights of Peasants" in A.Paasch and S.Murphy, *The Global Food Challenge. Towards a Human Rights Approach to Trade and Investment Policies*, 2009, pp.102-111.

## 1. The right to food

44. The right to food has been proclaimed in article 25 of the Universal Declaration of Human Rights (UDHR) and enshrined in article 11 of the ICESCR. It has been interpreted as the right of all people to “be able to feed themselves, by their own means, with dignity”<sup>83</sup> and defined as “the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear”.<sup>84</sup>

45. According to the Voluntary Guidelines on the Right to Food, adopted unanimously by the member States of the FAO in November 2004, the right to food protects the right of people working in rural areas to access productive resources or the means of production, including land, water, seeds, microcredit, forests, fish and livestock (Guideline 8). According to the same guidelines, “States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land use, and, as appropriate, land reform policies, all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources, including in marginal areas” (Guideline 2.5). States also defined their obligations to respect, protect and to fulfil the right to food as follows:

“States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should 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 and to strengthen pro-poor growth. (...) States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies.” (Guideline 8)

46. This interpretation of the right to food has been completed by work of the Committee on Economic, Social and Cultural Rights. According to the Committee, States parties to the ICESCR are under an obligation to ensure sustainable access to water for agriculture and access to water and water management, and especially to sustainable techniques for gathering rain water and for irrigation, for the most disadvantaged and marginalized workers, including women.<sup>85</sup> In several of its concluding observations, the Committee also underlined the need to protect peasant families’ access to seed. In its concluding observations addressed to India, it requested for example the State to “provide state subsidies to enable farmers to purchase generic seeds which they are able to re-use, with a view to eliminating their dependency on multinational corporations.”<sup>86</sup>

## 2. The right to adequate housing

47. The right to adequate housing has been proclaimed in article 25 of the UDHR and enshrined in article 11 of the ICESCR. According to the Committee on Economic, Social and Cultural Rights, it should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head.

<sup>83</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, A/HRC/7/5, par.16.

<sup>84</sup> Report of the former Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2001/53, par.14.

<sup>85</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 15. The right to water*, E/C.12/2002/11.

<sup>86</sup> CESCR, *Concluding Observations. India*, E/C.12/IND/CO/5, para.69.

Rather, it should be seen as “the right to live somewhere in security, peace and dignity”.<sup>87</sup> The right to adequate housing has been defined as “the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity”.<sup>88</sup>

48. According to the Committee on Economic, Social and Cultural Rights, every person – including one working in rural areas – has a right to housing which guarantees at all times the following minimum conditions: legal security of tenure, including protection against forced eviction; availability of essential services, materials, facilities and infrastructure, including access to safe drinking water and sanitation; affordability, including for the poorest, through housing subsidies, protection against unreasonable rent levels or rent increases; habitability, including protection from cold, damp, heat, rain, wind or other threats to health; accessibility for disadvantaged groups, including the elderly, children, the physically disabled and victims of natural disasters; a suitable location, which means removed from sources of pollution while being close to schools and healthcare services.<sup>89</sup>

49. The Committee also underlined that States parties are under an obligation to put an end to forced evictions, defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.<sup>90</sup> These forced evictions are *prima facie* incompatible with the States’ obligations under the ICESCR and “notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”.<sup>91</sup>

### 3. The right to health

50. The right to health has been proclaimed in article 25 of the UDHR and recognized in article 12 of the ICESCR. In it has been defined as “the right to enjoy the highest attainable standard of health conducive to living a life in dignity”.<sup>92</sup> The right to health includes the provision of adequate health care but also “the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health”.<sup>93</sup>

51. According to the Committee on Economic, Social and Cultural Rights, States parties to the ICESCR must ensure that medical services and the underlying determinants of health are available to all, including people working in rural areas.<sup>94</sup> And States have a minimum core obligation to provide, as a minimum and at all times: the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; access to the minimum essential food which is nutritionally adequate

<sup>87</sup> CESCR, *General Comment 7. The right to adequate housing: forced evictions*, E/1998/22, annex IV, para.7.

<sup>88</sup> Report of the former Special Rapporteur on the right to adequate housing, Miloon Kothari, E/CN.4/2001/51, par.8.

<sup>89</sup> CESCR, *General Comment 4. The right to adequate housing*, E/1992/23, para.8.

<sup>90</sup> CESCR, *General Comment 7. The right to adequate housing: forced evictions*, E/1998/22, annex IV, para.3.

<sup>91</sup> *Ibid.*

<sup>92</sup> CESCR, *General Comment 14. The right to the highest attainable standard of health*, E/C.12/2000/4, para.1.

<sup>93</sup> *Ibid.*, para.4.

<sup>94</sup> *Ibid.*, paras.12;36.



and safe, to ensure freedom from hunger to everyone; and access to basic shelter, housing and sanitation, and an adequate supply of safe drinking water.<sup>95</sup>

## **B. The International Covenant on Civil and Political Rights**

52. Many rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) offer protection to peasants and other people working in rural areas. Of these, the most important are the right to life, the right to be free from arbitrary detention, the right to a fair trial, and the freedoms of expression and association.

53. The Human Rights Committee underlined the fundamental importance of the right to life in its General Comment 6, in which it stated that:

“The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity.”<sup>96</sup>

54. Under the ICCPR, peasants and other people working in rural areas also have the right to be free from arbitrary detention and to a fair trial if they are arrested (articles 9 and 14). Anyone deprived of his or her liberty has the right to be treated humanely (article 10) and everyone has the right to free expression and association, the right to form and join trade unions for the protection of his or her interests and the right to peaceful assembly (articles 19, 21 and 22). Arbitrary arrests and detentions and extrajudicial executions of peasant leaders are therefore serious violations of the ICCPR, as are infringements on their freedoms of expression and association and on the right to peaceful assembly by peasant movements.

## **C. The rights of women living in rural areas**

55. One of the principal aims of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is to put an end to discrimination against women living in rural areas. Article 14 of the Convention specifically protects the rights of women living in rural areas against discrimination in access to productive resources, including land, and in their access to work, adequate housing and programmes for social security, health, training and education. According to the second paragraph of this article, States parties should take appropriate measures to eliminate discrimination against women in rural areas and ensure their rights to organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment, to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes, and to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

56. In several of its concluding comments, the Committee on the Elimination of Discrimination against Women stated that women in rural areas should be given priority in development programmes and that the State parties should protect women’s access to land against the activities of private business and against forced evictions. For example, in its

<sup>95</sup> *Ibid.*, para.43.

<sup>96</sup> Human Rights Committee, *General Comment 6. The right to life*, par.3.

concluding comments to India in 2007, it urged “the State party to study the impact of megaprojects on tribal and rural women and to institute safeguards against their displacement and violation of their human rights. It also [urged] the State party to ensure that surplus land given to displaced rural and tribal women is cultivable. Moreover, the Committee [recommended] that efforts be made to ensure that tribal and rural women have individual rights to inherit and own land and property”.<sup>97</sup>

#### **D. The rights of indigenous people**

57. The main international Convention protecting the rights of indigenous people is the ILO Convention 169 on Indigenous and Tribal Peoples, ratified by 20 States. This Convention protects a large number of rights for indigenous people working in rural areas. In particular, its articles 13 to 17 recognize the rights of indigenous people to their land and territories and their right to participate in the use, management and conservation of these resources. It also enshrines the right of indigenous peoples to participation and consultation regarding all uses of resources on their lands, and the prohibition of their eviction from their lands and territories.

58. To complement the ILO Convention 169, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples in December 2008. The Declaration recognizes that indigenous people, both individually and collectively, have the right to the full enjoyment of all human rights and fundamental liberties recognized in the United Nations Charter, the UDHR and in international human rights law. It then goes further than the ILO Convention, in recognizing that indigenous people also have the rights to self-determination, land and territory. It refers to the injustices that occurred as a result of colonialism and highlights the threat that globalization currently poses and it recognizes the importance of traditional knowledge, biodiversity and the safeguarding of genetic resources. It also limits the activities that third parties can carry out on the lands belonging to indigenous communities. The fact that the Declaration has already been incorporated in domestic law in some countries, such as Bolivia and Ecuador, represents a step forward.

#### **V. Ways and means to advance the rights of peasants and other people working in rural areas**

59. Despite the existing human rights framework, peasants and other people working in rural areas are victims of multiple human rights violations, which lead to their extreme vulnerability to hunger and poverty. To overcome this situation and further advance their rights, there is a need to better implement existing international norms (1), to address the normative gaps under international human rights law (2), and to elaborate a new legal instrument on the rights of people working in rural areas (3).

##### **A. Implementation of existing international norms**

60. States should improve the protection of the rights of peasants and other people working in rural areas by implementing existing international norms at the domestic level, preferably through their recognition in national Constitutions. They should also adopt new laws to advance the protection of these rights, with the full participation of the most

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<sup>97</sup> Committee on the Elimination of Discrimination against Women, *Concluding Comments. India*. CEDAW/C/IND/CO/3, para.47.

vulnerable and discriminated groups working in rural areas. In adopting these laws, States should follow the recommendation of the Committee on Economic, Social and Cultural Rights, which stated in its General Comment 20 that:

“Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination.” (para. 8)

61. In case of human rights violations, victims could make better use of existing national, regional and international monitoring mechanisms, possibly with the support of national and international NGOs and national human rights institutions. The regional and national monitoring mechanisms have already proven to be very useful for the implementation of the rights of people working in rural areas.<sup>98</sup> New international instruments, such as the Optional Protocol to the ICESCR adopted by the General Assembly in December 2008, will offer new possibilities to have access to justice at the international level.

62. Better use should also be made of soft law instruments which improve the visibility of existing human rights norms protecting the rights of peasants and other people living in rural areas. In 2007, the former Special Rapporteur on the right to adequate housing developed the Basic Principles and Guidelines on Development-Based Evictions and Displacement to fill in some operational gaps in relation to forced evictions.<sup>99</sup> The objective of the Basic Principles and Guidelines was to offer a step by-step approach that States could follow, to ensure that the necessary displacements and evictions due to development were conducted in compliance with existing human rights law. In 2009, the Special Rapporteur on the right to food developed the *Large-scale acquisitions and leases: A set of core principles and measures to address the human rights challenge* to set criteria to be followed by States and companies in order to respect existing human rights law when buying or leasing land in other countries.<sup>100</sup>

## **B. Addressing the normative gaps under international human rights law**

63. Existing international human rights instruments, even if they would be better implemented, remain insufficient to fully protect 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.

64. In its report to the Human Rights Council in 2007, the former Special Rapporteur on the right to adequate housing, Miloon Kothari, recommended that the Council recognize the right to land in international human rights law.<sup>101</sup> The Special Rapporteur on the right to food, Olivier de Schutter, in its report presented to the General Assembly in October 2010, recommended that international human rights bodies consolidate the right to land.<sup>102</sup> The

<sup>98</sup> C.Golay, *The Right to Food and Access to Justice: Examples at the National, Regional and International Levels*, FAO, 2009.

<sup>99</sup> A/HRC/4/18.

<sup>100</sup> A/HRC/13/33/Add.2.

<sup>101</sup> A/HRC/4/18, par.33(e).

<sup>102</sup> A/65/281, par.43(d).

current process of elaborating Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources at the FAO is also meant to address the same gap. These recommendations and initiatives should be supported.

### **C. A new legal instrument on the rights of people working in rural areas**

65. The current initiatives to address existing gaps in international human rights law should be complemented by others. The fact that the great majority of peasants and other people working in rural areas are engaged in the informal sector, and are therefore not covered by the ILO Conventions, is of particular concern. The fact that their need to have a secured access to productive resources, including land, seeds, small-scale irrigation, fishing grounds or forests, is not recognized explicitly in any international human rights instruments is also very problematic. There is therefore a need to elaborate a new international instrument on the rights of peasants and other people working in rural areas.

66. In June 2008, after more than seven years of consultation with its members' organizations, Via Campesina adopted the Declaration of the Rights of Peasants – Men and Women.<sup>103</sup> And it presented it as a response to the world food crisis before the Human Rights Council and the General Assembly in 2009.<sup>104</sup> This Declaration offers an interesting basis for the recognition of the rights of peasants and other people working in rural areas, elaborated by an organization that regroups 148 organizations in 69 countries and is estimated to represent more than 200 millions peasants, smallholder farmers, agricultural workers, indigenous people, peasant women and landless people worldwide.<sup>105</sup>

67. The Declaration could serve as a model. It follows the structure of the United Nations Declaration on the Rights of Indigenous Peoples. Its first article gives a definition of a peasant, which includes small-scale farmers, landless peasants and non-agricultural households in rural areas, whose members are engaged in fishing, making crafts for the local market or providing services, and other rural households of pastoralists, nomads, peasants practising shifting cultivation, hunters and gatherers, and people with similar livelihoods.

68. The Declaration reaffirms the rights to life and to an adequate standard of living (article 3); the right to freedoms of association, opinion and expression (article 12) and the right to have access to justice (article 13). In addition, it recognizes new rights that could reinforce the protection of peasants against discrimination. These include the right to land and territory (article 4); the right to seeds and traditional agricultural knowledge and practice (article 5); the right to the means of agricultural production (article 6); the right to information and agricultural technology (article 7); the freedom to determine prices and markets for agricultural production (article 8); the right to the protection of local agricultural values (article 9); the right to biological diversity (article 10); and the right to preserve the environment (article 11).

69. Fisher communities have expressed the same need in seminars in different continents in 2010.<sup>106</sup> The different groups working in rural areas, and in particular peasant

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<sup>103</sup> Preliminary study of the Advisory Committee on discrimination in the context of the right to food, A/HRC/13/32, Annex. The Declaration is many languages at [www.viacampesina.org](http://www.viacampesina.org).

<sup>104</sup> See La Via Campesina's statement to the General Assembly of 6 April 2009, [www.viacampesina.org](http://www.viacampesina.org).

<sup>105</sup> See [www.viacampesina.org](http://www.viacampesina.org).

<sup>106</sup> See for example the conclusions of the Workshop on securing sustainable small-scale fisheries: bringing together responsible fisheries and social development, San José, Costa Rica, 20-22 October 2010.

farmers, small landholders, landless workers, fisherfolk, hunters and gatherers, are coming together to defend a better recognition of their rights in international human rights law.

## VI. Conclusion

70. Smallholder farmers, landless people, tenant farmers, agricultural labourers and people living from traditional fishing, hunting and herding activities are among the most discriminated and vulnerable people in many parts of the world. Every year, thousands of peasants farmers are victims of expropriation of land, forced evictions and displacements, and this situation could reach an unprecedented level, with the new phenomenon of the “global land grab”. At the same time, traditional fishing communities are increasingly threatened by the industrialization of fishing activities, people living from hunting activities by the creation of development projects, and pastoralists by conflicts with farmers over land and water resources. All together, these people constitute 80 per cent of the world’s hungry. Women alone represent 70 of the world’s hungry and peasant women are particularly affected by hunger and poverty, largely as a result of discrimination in access to and control over productive resources, such as land, water and credit.

71. To overcome this situation, there is a need to give more attention to agrarian reform that benefits small scale land holders, and promotes security of tenure and access to land, in particular for women. There is also an urgent need to ensure that government policies are sufficiently well formulated in order to address the needs of the most vulnerable people working in rural areas. A better implementation of the human rights instruments protecting the rights of peasants and other people working in rural areas, including the ICESCR, the ICCPR, the CEDAW and the UN Declaration on the Rights of Indigenous People, is also urgently needed. And the right to land should be recognized in international human rights law.

72. But this will not be sufficient. To further advance the rights of peasants and other people working in rural areas, there is a need to elaborate a new international human rights instrument. This instrument – a Declaration or a Convention – should recognize in a single instrument the rights that have been enshrined in other international instruments, to increase coherence and visibility. It should also recognize new rights of peasants and other people working in rural areas, such as the rights to land, to seeds and to the means of production. The elaboration of this instrument, with the full participation of peasant farmers, small landholders, landless workers, fisherfolk, hunters and gatherers, represents one of the best ways to overcome centuries of discrimination against the most vulnerable groups working in rural areas.