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**Written Contribution on UNDROP**

**General Comment on Land and the ICESCR**

**July 2021**

**KEY MESSAGES**

* The United Nations (UN) General Assembly (GA) adopted the UN Declaration on the rights of peasants and other people working in rural areas (UNDROP) in 2018, after almost 20 years of mobilization by La Via Campesina, other rural people’s organizations and civil society organizations.[[1]](#footnote-1) CETIM, FIAN International, the Geneva Academy of International Humanitarian Law and Human Rights, Marc Edelman, Professor at the City University of New York, and Henry Thomas Simarmata, Executive Coordinator of APINTLAW, which all sign this contribution to the UN Committee on Economic, Social and Cultural Rights (ESCR) with La Via Campesina, have supported this process. They are all promoting UNDROP’s implementation.[[2]](#footnote-2)
* UNDROP is based on several binding international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), and it has been elaborated in a way that is complementary to these and other international instruments protecting the right to land. UNDROP has been adopted by a large majority of states at the UNGA. It provides that states, UN agencies, international and regional organizations shall contribute to its implementation. In adopting UNDROP, the UNGA invited “Governments, agencies and organizations of the UN system and intergovernmental and non-governmental organizations to disseminate the Declaration and to promote universal respect and understanding thereof”, without making any distinction according to states’ votes during this adoption.[[3]](#footnote-3) All states and UN organizations should therefore promote UNDROP.
* UNDROP has been adopted after 6 years of intensive negotiation at the Human Rights Council, during which every word has been well chosen. Most of UNDROP is based on agreed language from other international instruments, which also applies to articles 5 and 17 that enshrine the right to land.[[4]](#footnote-4) During the negotiation, many elements that states considered problematic in draft articles 5 and 17 have been cut, such as the right to permanent sovereignty over natural resources, the right to territory, and the right to free, prior and informed consent. What remains in these articles is the definition of the right to land that has resulted from the negotiation. In its General Comment, the CESCR should therefore clearly say that UNDROP enshrines the right to land in its articles 5 and 17 – like it does for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (para. 26). It is difficult to see why there would be a difference in the treatment of the two UN Declarations.
* In 2019 and 2020, the UN Human Rights Committee and the Inter-American Court on Human Rights referred to UNDROP to protect the right to land in two important cases.[[5]](#footnote-5) In 2019, nine UN special procedures and four members of UN treaty bodies, including a member of CESCR, committed to protect the rights enshrined in UNDROP, to integrate UNDROP in the exercise of their mandates, and to provide guidance to states on how they can implement UNDROP.[[6]](#footnote-6) They also underlined that special measures shall be taken by states and other stakeholders to protect human rights defenders of land, environment and natural resources and that their safety must be prioritized and protected via all available mechanisms. This General Comment on Land offers a great opportunity for the CESCR to promote UNDROP and the rights of peasants.

* UNDROP specifies the rights of peasants, landless people, rural workers, herders, pastoralists, and fisherfolk, and their families, who represent 2 billion people. Particularly vulnerable and marginalized, these people represent 70% of those who live in extreme poverty and 80% of the world’s hungry.[[7]](#footnote-7) According to UNDROP, these people have “a special dependency on and attachment to the land” (UNDROP Article 1). They are among the first victims of human rights violations associated with land, and therefore among those that the CESCR aims to protect through its General Comment on Land. They should therefore be explicitly mentioned each time the CESCR refers to vulnerable and marginalized groups in its General Comment.
* In this General Comment, the CESCR should not only refer to UNDROP a few times (once in the text and twice in footnotes), or summarize it in a very small paragraph at the end (para. 52). Instead, it should include UNDROP in a systematic manner in all relevant parts of its General Comment. As we will see, UNDROP is particularly relevant in relation to the following issues: recognition of the right to land; non-discrimination; rural women’s rights; protection against forced eviction, displacement and land exploitation; entitlements to agrarian reform; conservation and sustainable use of land; consultation, participation and transparency; access to justice and remedies.

**UNDROP’S ARTICLES 5 AND 17 ENSHRINE THE RIGHT TO LAND**

Article 5 enshrines the right of peasants and other people working in rural areas – alone, or in association with others or as a community (art. 1.1) – to have access to and to use in a sustainable manner the natural resources present in their communities that are required to enjoy adequate living conditions, including land, and their right to participate in the management of these resources (art. 5.1). Article 17 recognizes the right to land of peasants and other people living in rural areas, and it provides that this right can be exercised individually and/or collectively (art. 17.1).

UNDROP’s article 17 provides that the right to land and other natural resources includes the right of peasants and other people working in rural areas to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures (art. 17.1).

**NON-DISCRIMINATION – GC paras. 14 and 15**

UNDROP provides that peasants and other people working in rural areas have the right to the full enjoyment of the right to land, free from any kind of discrimination (art. 3.1 and 17.1). To guarantee that right, UNDROP provides that states shall take appropriate measures to eliminate conditions that cause or help to perpetuate discrimination, including multiple and intersecting forms of discrimination, against peasants and other people working in rural areas (art. 3.3). States shall also remove and prohibit all forms of discrimination relating to the right to land, including those resulting from change of marital status, lack of legal capacity or lack of access to economic resources (art. 17.2).

**RURAL WOMEN’S RIGHTS – GC paras. 16 and 17**

Rural women’s rights have been recognized in article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women and, in a very similar way, in UNDROP’s article 4. This article provides that states shall take all appropriate measures to eliminate all forms of discrimination against peasant women and other women working in rural areas, including those resulting from change of marital status, to promote their empowerment, and to ensure that they enjoy without discrimination all the human rights and fundamental freedoms set out in UNDROP, including the right to equal access to, use of and management of land, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes (art. 4.1 and 4.2). UNDROP’s article 17.2 also provides that states shall also remove and prohibit all forms of discrimination relating to the right to land, including those resulting from change of marital status (art. 17.2).

**LAND TENURE, PROTECTION AGAINST FORCED EVICTION, DISPLACEMENT AND LAND EXPLOITATION (CONSULTATION AND IMPACT ASSESSMENT)**

To protect peasants and other people working in rural areas against the negative effects of land exploitation, UNDROP’s article 5 provides that states shall take measures to ensure that any exploitation affecting the natural resources that they traditionally hold or use is permitted based on, but not limited to: a duly conducted social and environmental impact assessment; consultations in good faith, in accordance with UNDROP’s article 2.3[[8]](#footnote-8); and modalities for the fair and equitable sharing of the benefits of such exploitation that have been established on mutually agreed terms between those exploiting the natural resources and the peasants and other people working in rural areas (art. 5.2).

UNDROP enshrines the right of peasants and other people working in rural areas to be free from forced eviction and displacement (art. 17.3 and 17.4). To guarantee the exercise of this right, states shall provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems. States shall protect legitimate tenure and ensure that peasants and other people working in rural areas are not arbitrarily or unlawfully evicted and that their rights are not otherwise extinguished or infringed. States shall also recognize and protect the natural commons and their related systems of collective use and management (art. 17.3).

To protect peasants and other people working in rural areas against arbitrary and unlawful displacement from their land and other natural resources, UNDROP provides that states shall incorporate protections against displacement into domestic legislation that are consistent with international human rights and humanitarian law. States shall prohibit arbitrary and unlawful forced eviction, the destruction of agricultural areas and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as a means or method of war (art. 17.4).

UNDROP also provides that those who have been arbitrarily or unlawfully deprived of their lands have the right to return to these lands, including in cases of natural disasters and/or armed conflict, and to have restored their access to the natural resources used in their activities and necessary for the enjoyment of adequate living conditions, whenever possible, or to receive just, fair and lawful compensation when their return is not possible (art. 17.5).

UNDROP’s article 24 on the right to housing, also provides that states shall not, arbitrarily or unlawfully, either temporarily or permanently, remove peasants or other people working in rural areas against their will from the homes or land that they occupy without providing or affording access to appropriate forms of legal or other protection (art. 24.3). When eviction is unavoidable, the state must provide or ensure fair and just compensation for any material or other losses (art. 24.3).

**ENTITLEMENTS TO AGRARIAN REFORM – GC paras. 10, 15, 16, 35, 36**

UNDROP recognizes the need to conduct agrarian reform to fulfil the right to land. Its article 17 provides that states “shall take appropriate measures to carry out agrarian reforms in order to facilitate the broad and equitable access to land and other natural resources necessary to ensure that peasants and other people working in rural areas enjoy adequate living conditions, and to limit excessive concentration and control of land, taking into account its social function” (art. 17.6). It also provides that landless peasants, young people, small-scale fishers and other rural workers should be given priority in the allocation of public lands, fisheries and forests (art. 17.6).

**CONSERVATION AND SUSTAINABLE USE OF LAND AND OTHER NATURAL RESOURCES**

UNDROP’s article 18 on the right to environment recognizes the right of peasants and other people working in rural areas to the conservation and protection of the environment and the productive capacity of their lands, and of the resources that they use and manage (art. 18.1).

To protect that right, it provides that states shall take effective measures to ensure that no hazardous material, substance or waste is stored or disposed of on the land of peasants and other people working in rural areas, and that they shall cooperate to address the threats to the enjoyment of their rights that result from transboundary environmental harm (art. 18.4). They shall also protect peasants and other people working in rural areas against abuses by non-State actors, including by enforcing environmental laws (art. 18.5). And they shall protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, from overuse and contamination by harmful substances, in particular by industrial effluent and concentrated minerals and chemicals that result in slow and fast poisoning (art. 21.4). To fulfil that right, the UNDROP provides that states shall take measures aimed at the conservation and sustainable use of land and other natural resources used in their production, including through agroecology, and ensure the conditions for the regeneration of biological and other natural capacities and cycles (art. 17.7).

**PARTICIPATION – GC paras. 17, 18, 30, 40 and 51**

The right to participation, enshrined in Articles 2.3 and 10 of the UNDROP, is fundamental to the implementation of the right to land. To guarantee this right, UNDROP provides that states shall promote the participation, directly and/or through their representative organizations, by peasants and other people working in rural areas in decision-making processes that may affect their lives, lands, and livelihoods. According to UNDROP, states shall also respect the establishment and growth of strong and independent organizations of peasants and other people working in rural areas (art. 10.2). UNDROP also provides that states shall formulate, in partnership with peasants and other people working in rural areas, public policies at the local, national, regional, and international levels to advance and protect the right to adequate food, food security and food sovereignty, and sustainable and equitable food systems that promote and protect their rights (art. 15.5). Specialised agencies, funds, and programmes of the UN system and other intergovernmental organisations, including international and regional financial organisations, shall also consider ways to ensure the participation of peasants and other people working in rural areas in UNDROP’s implementation (art. 27.1).

**TRANSPARENCY / INFORMATION – GC paras. 18, 46, 49 and 51**

UNDROP’s article 11 enshrines the right to information, defined as the right of peasants and other people working in rural areas to seek, receive, develop, and impart information, including information about factors that may affect the production, processing, marketing, and distribution of their products. To guarantee this right, UNDROP provides that states shall adopt measures to ensure that they have access to relevant, transparent, timely, and adequate information in a language and form and through means adequate to their cultural methods so as to promote their empowerment and to ensure their effective participation in decision-making in matters that may affect their lives, land, and livelihoods (art. 11.2).

**ACCESS TO JUSTICE / REMEDIES FOR HUMAN RIGHTS VIOLATIONS ASSOCIATED WITH LAND – GC paras. 22, 56 and 57**

UNDROP recognises the right of peasants and other people working in rural areas to effective and non-discriminatory access to justice, including access to fair procedures for the resolution of disputes and to effective remedies for all infringements of their human rights (art. 12.1). It also provides that such decisions shall be given in the language of the persons concerned, and give due consideration to their customs, traditions, rules, and legal systems in conformity with relevant obligations under international human rights law (arts. 12.1 and 12.2).

UNDROP also enshrines the right of peasants and other people working in rural areas to legal assistance. To guarantee that right, states shall consider additional measures, including legal aid, to support peasants and other people working in rural areas who would otherwise not have access to administrative and judicial services (art. 12.3). Linking access to justice and human rights violations associated with land, UNDROP also requires states to provide peasants and other people working in rural areas with effective mechanisms for the prevention of and for redress for any action that has the aim or effect of violating their human rights, arbitrarily dispossessing them of their land, or of depriving them of their means of subsistence and integrity, and for any form of forced sedentarization or population displacement (art. 12.5).

1. UN General Assembly, [UN Declaration on the Rights of Peasants and Other People Working in Rural Areas](https://undocs.org/A/RES/73/165), 17 December 2018. [↑](#footnote-ref-1)
2. For more information on the work of these organizations in supporting UNDROP’s implementation, see the websites of [La Via Campesina](https://viacampesina.org/en/undrop-illustrations/), [CETIM](https://www.cetim.ch/factsheets-on-peasants-rights/), [FIAN International](https://www.fian.org/en/publication/article/peasants-rights-briefings-2690), [the Geneva Academy of International Humanitarian Law and Human Rights](https://www.geneva-academy.ch/research/our-clusters/sustainable-development/detail/13-the-rights-of-peasants), and [APINTLAW](https://apintlaw.info/). On Prof. Edelman’s work on UNDROP, see [P. Claeys and M. Edelman, “The United Nations Declaration on the rights of peasants and other people working in rural areas”](https://www.tandfonline.com/doi/full/10.1080/03066150.2019.1672665), *The Journal of Peasant Studies*, Grassroots Voices, 2019. [↑](#footnote-ref-2)
3. [Resolution 73/165 of the UN General Assembly](https://undocs.org/A/RES/73/165), adopted on 17 December 2018, §2. [↑](#footnote-ref-3)
4. See [The Right to Land and the UNDROP: How Can We Use the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas to Protect the Right to Land?](https://www.geneva-academy.ch/joomlatools-files/docman-files/Guide%20the%20right%20to%20land%20and%20UNDROP%20%281%29.pdf) ; [The Right to Land and Other Natural Resources](https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Right%20to%20Land%20and%20Other%20Natural%20Resources.pdf) ; [FIAN International Briefing on the Right to Land and Other Natural Resources](http://www.fian.org/fileadmin/media/Publications/Peasants_Rights/PeasantsRights_right_to_land.pdf) ; [CETIM Brochure on The Right to Land](http://www.cetim.ch/wp-content/uploads/Right-to-land-A42.pdf) ; [Your Land, My Land, Our Land: Grassroots Strategies to Preserve Farmland and Access to Land for Peasant Farming and Agroecology](https://www.eurovia.org/wp-content/uploads/2020/05/EN-Your_Land_My_Land_Our_Land1.pdf). [↑](#footnote-ref-4)
5. UN Human Rights Committee, *Portillo Cáceres and Others v. Paraguay*, UN Doc. CCPR/C/126/D/2751/2016, 20 September 2019; Interamerican Court on Human Rights, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Decision of 6 February 2020. [↑](#footnote-ref-5)
6. [Joint statement by UN human rights experts – 1st anniversary of the adoption of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25439&LangID=E), 17 December 2019. [↑](#footnote-ref-6)
7. UN Department of Economic and Social Affairs (2019). [Report of the Expert Group Meeting on “Eradicating Rural Poverty to Implement the 2030 Agenda for Sustainable Development”](https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/04/DraftReport-EGM-Rural-Poverty2019.pdf); C. Di Nucci et al. (2020). [To move the needle on ending extreme poverty, focus on rural areas](https://www.ifad.org/en/web/latest/blog/asset/41808748). IFAD. [↑](#footnote-ref-7)
8. UNDROP article 2.3 provides that “Without disregarding specific legislation on indigenous peoples, before adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect the rights of peasants and other people working in rural areas, States shall consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions, engaging with and seeking the support of peasants and other people working in rural areas who could be affected by decisions before those decisions are made, and responding to their contributions, taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.” [↑](#footnote-ref-8)