Good Governance and Human Rights in Land and Natural Resource Tenure

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Land and natural resources tenure is the relationship, defined either in law or in custom, of people with the land and related resources found in the earthly environment. Land administration is the way in which the rules of land tenure are applied and made operational, including the official recognition of traditional use, formal land registration, land use planning, land consolidation and zoning, land management and property taxation. The administration of natural resources, more generally, includes the formulation and implementation of rules related to elements on and/or beneath the land and subject to human exploitation. That exploitation may be by consumption, or extraction, or by speculating future exchange values, among other means. The rules of use vary depending upon whether the resource is renewable or subject to depletion without the prospect of renewability. The rules also distinguish between and among various types of use, possession and/or ownership of such resources.

In their primordial state, both land and other natural resources derive from, and remain related to the global, national and/or local commons, regardless of the form of tenure attributed to them. Thus, this paper applies the principle found in many of our constitutions applying to property, in general, such that especially those values derived from the commons are ethically and administratively subject to their social function.

Governance is the process of managing and administering resources on behalf of the public. It is the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws required to maintain democratic order and civil peace.

Good governance is the administration of the public interests effectively and efficiently, with transparency, ensuring effective participation and consultation of the affected people, while ensuring accountability to the public for disposition of its funds (taxes) and values derived from the commons.

Good governance also suggests political stability as an outcome of reconciling public and private interests, government effectiveness in delivering services responsively, regulatory quality and fair and diligent rule of law, as well as control of corruption and other offenses and crimes by public officials and their cohorts.

The concept of good governance also means that government is well managed, inclusive, and produces desirable outcomes. The principles of good governance can

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be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, civic engagement and security.2

As one of the desired outcomes of good governance is security, it is important to note the economic and social dimensions of security to encompass at least three cardinal points: First, national security, including the protection of the right of the peoples of the region to self-determination; secondly, democratic security entails the promotion of citizenship rights of the individuals and peoples in each country through their institutions of democratic accountability; and, thirdly, human security, particularly in the forms of social protection and decent employment, which should be promoted through regional regulation and economic integration.”3 All of these aspects of security, while constituting essentials of modern statecraft, also constitute human rights with corresponding treaty obligations on the states to respect, protect and fulfill.

**Good Governance and Human Rights**

The UN Commission on Human Rights has noted that, beyond the principles statements of human rights declarations, “a conducive environment, at both the national and the international levels, for the full enjoyment of all human rights” is required. States collectively has recognized that “transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests…” Moreover, “such a foundation is a *sine qua non* for the promotion of human rights.”4 Consistent with this paper, the states in the Commission emphasized, in this context, the need “to promote partnership approaches to international development cooperation and to ensure that prescriptive approaches to good governance do not impede such cooperation.” Thus, good governance through the human rights regime is essential to the intergovernmental effort to maintain the conditions of good governance and the social progress intended for it to enable.

State subsequently have recognized also that “good governance at the national level, including through the building of effective and accountable institutions for promoting growth and sustainable human development, is a continuous process for all Governments, regardless of the level of development of the countries concerned.”5 Thus, indispensable good governance requires corresponding government performance at both the global and local levels by applying the criteria of human rights.

**International Human Rights Law**

Human rights are the codified recognition of human needs that must be fulfilled for a human to live a dignified life to which s/he is thus entitled.6 All of the world’s inhabitants living in human settlements rely directly or indirectly on land and natural resources for their survival.

Until now, however, the human rights system has not yet codified a “human right to land,” or a “human right to natural resources.” That lacuna in human rights law as developed does not mean that equitable access to, and enjoyment of land and natural resources are any less indispensable to a life of human dignity. Rather, the link among human rights, states’ human rights treaty obligations, and land and
natural resource tenure embodies the essential elements (normative content) of other rights upon which the dignified life of every human person depends.

The authority of the legal sources carries corresponding obligations on most States as parties to the international human rights treaties, and applies universally to all people on the planet as human rights. Popular and nongovernmental parties also advance claims in human rights language that may qualify as “emerging” human rights, eventually to be codified in the law. All legally established human rights norms originated as popular claims carried forth through various forms of historic struggle.

The Moral Dimension

The popular sources are useful especially in demonstrating ground-level recognition of the various elements of the land and natural resources-related human rights in and of themselves, but also provide a list of human rights that reflect common human needs, but await codification as bona fide rights. The “emerging rights” claims to land, energy and natural resources, among others, contain elements inextricable from human rights, including the human right to life, adequate housing, water, food, health, property, development, a clear and healthy environment and, often, to self-determination and freedom from discrimination. The popular sources and their emerging-rights claims are indicators of the ever-evolving specificity of human rights law and the legal and problem-solving horizons toward which social movements and the human rights community are heading.

The Legal Authority

Please note that the legal instruments cited here carry differing levels of obligation, and they are organized. Customary law is made up of those norms and principles that legal opinion and interstate institutions consider so basic and so repeatedly affirmed as to be binding on all legal personalities, in particular states. The Universal Declaration of Human Rights, the principled antecedent to all subsequent UN human rights treaties, is the most relevant example of customary law for our purposes, even though it does not establish a monitoring and enforcement mechanism to ensure compliance with the states commitments—although not obligations—that it enshrines.

The ratified treaties (Covenants, Charters, Conventions, etc.) are binding on all their ratifying states parties, and each of the current generation of human rights treaties establishes an independent body to monitor and guide implementation. The treaty-monitoring process provides an opportunity for civil society, states and the authorized international legal monitoring bodies each to play a role. These international treaties are characterized as hard law (lex lata), because of their binding nature. Treaty law, by definition, is any agreement between two or more states. These treaties are either international or regional in nature and scope.

The “soft-law” instruments (lex feranda) include the Declarations, Basic Principles, Minimum Rules, General Comments, etc., that are the multilateral commitments arising from international conferences, assemblies, summits, congresses and other specialised meetings. Also included in this category are the general and country-specific guidance that the treaty-monitoring bodies issue to guide and specify treaty obligations, as well as those instruments of interstate agreement (decisions and
resolutions) arising from the various political bodies of the international system (e.g., UN Commission on Human Rights, Human Rights Council, International Labour Organisation (ILO), General Assembly, etc.). These instruments contain standards that are declaratory of already-binding international law, reflect the collective political will and commitment of states and provide specificity to the general articles in the binding instruments. However, these form legal and policy guidance without the corresponding obligations of treaty law and without the corresponding legal monitoring mechanisms.

The codified human rights that contain land and natural resources access as normative content are found in most of the major human rights treaties, including the International Convention on the Elimination of all Forms of Racial Discrimination, (ICERD) (1965), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), International Covenant on Civil and Political Rights (ICCPR) (1966), the Convention to Eliminate All Forms of Discrimination against Women (CEDaW) (1979), the Convention on the Rights of the Child (CRC) (1989) and the corresponding rights enshrined in the fundamental ILO Conventions: Freedom of Association and Protection of the Right to Organise No. 87 (1948); Right to Organise and Collective Bargaining No. 98 (1949); Forced Labour No. 100 (1951); Discrimination (employment and Occupation) Convention No. 111 (1958); Minimum Age Convention No. 138 (1973); and Worst Forms of Child Labour Convention No. 182 (1999). Other ILO Conventions addressing land and natural resources include the Rural Workers’ Organisations Convention No. 141 (1975) and Indigenous and Tribal Peoples Convention No. 169 (1989).

The treaty interpretation and jurisprudence of the UN Committee on Economic, Social and Cultural Rights (CESCR), the treaty body authorized to interpret and monitor implementation of ICESCR, have contributed much to the clarity on the relationships between land and natural resources, on the one hand, and human rights entitlements and state obligations, on the other. Among the CESCR’s interpretive instruments are the General Comment (GC) N° 4 on the right to adequate housing, N° 7 on forced evictions, N° 12 on the right to adequate food, N° 14 on the right to the highest attainable standard of health, N° 15 on the right to water) and N° 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

By way of interpreting the rights and state obligations under the ICCPR, the monitoring body, the Human Rights Committee, addresses land and natural resources in its GCs N° 12 on the right to self-determination, N° 21 on equality in marriage and family relations, N° 23 on the rights of minorities and N° 32 on the right to equality before courts and tribunals and to a fair trial. The CEDaW monitoring body also addresses land and natural resources tenure in its GC No. 24 on women and health, while the Committee on the Elimination of Racial Discrimination (CERD), which monitors and interprets ICERD, also sets out the human rights and state obligations related to land and natural resources in its General Recommendations N° XXI on the right to self-determination and N° XXIII on the rights of indigenous peoples.

Another lacuna in human rights law affecting land and natural resource tenure and its governance is in the recognition of property “rights.” The moral arguments for “property rights” and/or “a right to property” have been long contested and variously established in national laws and constitutions. However, owing the Cold War and
ideological polarization in the UN system during the adoption of the Covenants, a “right to property” does not appear in either of the Covenants. Therefore, that right, which is inextricably linked to governance of land and natural resources, has not developed as a prominent subject of interpretation in international human rights jurisprudence, or in the GCs of CESCR or HRC. However, a “right to property” is enshrined in ICERD and, with particular application to indigenous populations, in ILO Convention 169. The principal of the “social function of property” for regulating that right is found in national constitutions and legislation and remains a subject for debate and legal clarification in many jurisdictions.

What Must States Do to Implement Their State’s Human Rights Obligations:?
Given the nature of treaty law and human rights treaties in particular, every human right imposes corresponding obligations for the state, as the legal personality that guarantees those rights. Arising from any human right are the two practical questions of what the state is treaty bound to do, and how the state is to carry out those duties. Answering those two questions evokes both hard law and its authoritative interpretations.

The principal human rights codified and/or legally interpreted to have bearing on governance over land and natural resource tenure include the human rights to adequate housing, water, food and health, among others. As noted above and below, other human rights whose enjoyment relies on access to land and natural resources include the right to self-determination and freedom from discrimination, which coincidentally constitute over-riding principles to follow in the implementation of all other human rights. As established in the General Comments (GCs) and in practice, the methodology for states to implement their human rights obligations rests on three aspects of what a state is obliged to do:

- To respect the rights; that is, not to interfere with the exercise of a right;
- To protect the rights; which means to ensure that others do not interfere, primarily through effective regulation and remedies; and
- To fulfill the rights, including take positive steps to promote the rights and their remedies, facilitate access to rights, and provide for those unable to provide for themselves.

The obligation to respect human rights requires that states refrain from interfering directly or indirectly with people’s enjoyment of human rights. This is an immediate aspect of the state’s human rights obligation that includes respecting efforts people themselves exert to realize their rights. Therefore, this aspect forms a “negative” state obligation in the sense that the state and government avoid violating human rights. For example, governments must not carry out evictions without due process of law or providing alternative accommodation, among other preconditions.

Under the obligation to protect human rights, states must actively prevent, investigate, punish and ensure remedy and reparations for the damage and harm caused by abuses of human rights by third parties (i.e., private individuals, commercial enterprises, or other nonstate actors). This is an immediate aspect of obligation by which governments must regulate and monitor, for instance, third parties whose activities have public consequences such as private security firms, industries emitting potentially hazardous waste, public services delegated or contracted to private actors, or subcontractors on public works projects.
States have an obligation to take positive steps to fulfill human rights by undertaking legislative, administrative, budgetary, judicial and other measures toward the full realization of human rights. This obligation should be realized progressively, according to ICESCR; however, the progressive nature does not permit the state and its government to delay the necessary measures. This obligation includes duties to facilitate (increase access to resources and means of attaining rights), promote (inform people about the rights and encourage their application) and provide (ensure that the whole population may realize their rights where they are unable to do so themselves). That means that authorities must, for example, provide defendants with any necessary interpretation so that they can understand court proceedings, or introduce meaningful vocational training to ensure that students benefit from education. Above all, governments must give priority to meeting the minimum essential levels of each right, especially for the most vulnerable.

How Must States Implement Their Obligations?

While the foregoing principles establish the parameters as to what the state is treaty bound to do, the “over-riding principles” clarify how the state is to accomplish these essential human rights tasks. These principles are repeated in the initial articles of both international human rights Covenants and other major international human rights treaties and standards, and correspond to norms of justice arising from the major legal systems of the world. These are principles of immediate application to ensure that all human rights related to good governance in land and natural resource tenure are respected, protected and fulfilled within a context that ensures (1) the realization of the inalienable right to self-determination; (2) freedom from discrimination, in general; (3) the effective application of gender equality; (4) the rule of law, including access to justice and domestic application of the human rights contained in each treaty, particularly by adopting legislative measures.

Common to Article 2 in the two human rights Covenants, nondiscrimination stands out as an over-riding principle with immediate application to all the rights contained in those instruments. The Covenants prohibit arbitrary preferential or punitive treatment and oblige States parties to undertake steps to ensure that rights be exercised without distinction or discrimination “of any kind [as to] race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The nondiscrimination principle of implementation, whether generally or in application to a specific population segment, requires that the state also exert special efforts, in law and in fact, to ensure respect, protection and fulfillment of the human right to water for vulnerable, marginalized or historically disadvantaged sections of the population as a means of remedy or “positive discrimination,” “special temporary measures,” or “affirmative action.”

Gender equality is a legal principle that is wider in concept than nondiscrimination, entailing also the recognition of, and appropriate response to women’s special needs simultaneous with their roles as domestic providers. International hard and soft law instruments elaborate the application of this over-riding principle in land and natural resource administration, including women’s equal ownership, access to and control over land and the equal rights to own property and to adequate housing.
In the case of economic, social and cultural rights (ESCR), of which land and natural resource tenure are closely tied, these over-riding principles for implementing states’ human rights obligations involve also (5) the progressive realization of the rights by positive and nonretrogressive measures that realize “the constant improvement of living conditions,” especially for those deprived of the enjoyment of their ESCR rights. Moreover, states are obligated also (6) to apply the maximum of available resources and, at least, to ensure the core content of the rights as an absolute minimum, regardless of the economic status of the country, and to engage in (7) international cooperation that ensures the respect, protection and fulfillment of human rights domestically and extraterritorially.

For our purposes, ICESCR serves as the principle source of these rights and implementation principles in treaty form. ICESCR’s Article 2.1 explains that states are required to undertake steps, individually and through international assistance and cooperation, especially economic and technical, progressively to achieve the full realization of the covenanted rights by all appropriate means. This obligation applies equally to the state able to provide assistance, as well as to the state receiving it, as in cases of disaster or serious economic decline. Thus, states party to ICESCR bear an obligation to apply these principles extraterritorially and in their international relations not only to respect, protect and fulfill ESCRs within the state’s jurisdiction and/or territory of effective control. Any state’s treaty obligations, as well as all of the codified human rights, impose an extraterritorial obligation on the state, regardless if the state is acting unilaterally or jointly with others. Thus, states are required to ensure that their actions as members of international organizations take due account of the right to water. Accordingly, states that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, are required to take steps to ensure that the rights and corresponding obligations discussed here are taken into account in their lending policies, credit agreements and other international practices.

Among the obligations of states’ parties to human rights treaties is to monitor and report implementation of the treaty, submitting initial and periodic reports to the treaty-monitoring bodies. Comprehensive monitoring of the human right to adequate housing requires assessing each entitlement (element) in light of the rights and corresponding obligations arising from the seven over-riding human rights treaty-implementation principles:

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<th>Seven Over-riding Treaty-Implementation Principles</th>
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<td>1. Self-determination</td>
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<td>2. Nondiscrimination</td>
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<td>3. Gender equality</td>
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<td>4. Rule of law</td>
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<td>5. Progressive realization (nonregressivity/nonretrogression)</td>
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<td>6. Maximum of available resources</td>
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<td>7. International cooperation</td>
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The normative approach provided in the international human rights system prevails upon the monitor to pose a number of relevant questions related to implementation not only of the specific content of the particular right, but also these over-riding principles common to the principal human rights treaties and applicable to all rights. Consistent with the requirements of modern statecraft, these human rights obligations provide mandatory guidance for governance—that is, legislation,
regulations, policies and practices, etc.—that affects the enjoyment of all of the above-specified rights related to land and natural resource tenure.

While the state’s obligation to respect, protect and fulfill all human rights is subject to certain conditions such as international cooperation and progressive realization, the state is obliged to ensure that it meets its “core obligations” under each of the rights. CESCR has confirmed that such a core obligation is for states to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights with immediate effect.  

When a state fails to uphold its obligations to respect, protect and fulfill through application of all of the over-riding principles, then the state is responsible for a violation. Such a violation could be either one of outright commission by the state or any of its representatives, or it could be by way of omission; that is, by failing to act according to its obligations. A violation by commission or omission entitles the victim/affected persons to remedy, which the state is required to effect through various means. (See remedy and reparations below.)

Which Related Rights Are Established in Human Rights Law?

The Human Right to Life

Article 6.1 of the ICCPR provides that everyone has the inherent right to life, prohibits the arbitrary deprivation of life and that the right to life shall be protected by law. The Human Rights Committee has interpreted the right to life as:

.... the supreme right from which no derogation is permitted even in time of public emergency, which threatens the life of the nation. The protection against arbitrary deprivation of life is of paramount importance....State Parties should take measures not only to prevent and punish deprivation of life by criminal act, but also to prevent arbitrary killings by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore the law must strictly control and limit the circumstances in which a person may be deprived of life by such authorities.

The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost among them the right to food, water and human dignity. The right to water is also inextricably related to the right to the highest attainable standard of health (Art. 12, para. 1) and the rights to adequate housing and adequate food (Art. 11, para. 1).

Nonetheless, acts of war and other mass violence continue to plague humanity and sacrifice the lives of thousands of innocent human beings every year. States parties to the human rights treaties are obliged to take measures not only to prevent and punish deprivation of life by criminal acts, but they also have the duty to prevent arbitrary killing by their own forces. The deprivation of life by the authorities of the state is a grave violation. The law must strictly control and limit the circumstances in which such authorities may deprive a person of her/his life. The state bears a particular obligation to prevent, prosecute and punish public or private actors who engage in violence at any scale as part of disputes over land and natural resources tenure.
The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures to respect, protect and fulfill the right to a minimum standard of living “consistent with human dignity.” Thus States parties are required to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate hunger, malnutrition and the consequences of drought and other threats to human life, particularly through good governance in land and resources tenure. The Aarhus Convention, in force in the European Community, asserts that “adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself” which encompasses “the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations…”

Certain well-known domestic court cases have given examples of violations to the right to life through deprivation of land and natural resources, including through forced evictions. Regional human rights courts also have reached similar rulings where impeded resources access have had a negative impact on access to food, and hence violated the right to life recognized by Article 4 of the American Convention on Human Rights (ACHR).

Some domestic courts actually have overruled statutory law authorizing local officials forcibly to evict urban dwellers occupying public property without due process safeguards. In such a case the right to life was found to encompass the right to housing. The Court found that forcibly to evict "pavement dwellers" would deprive them of their means of livelihood, because of the proximity of the dwellings to their place of employment. The court resolved that to “[d]eprive a person of his right to livelihood, you shall have deprived him of his life,” and therefore “if the petitioners are evicted from their dwellings, they will be deprived of their livelihood.”

**The Human Right to a Clean and Healthy Environment**

In international human rights law, the right to a clean and safe environment is derived from other human rights codified in treaty form. The CESCR’s GC No. 4 on the right to adequate housing recognizes that “all beneficiaries of the right to adequate housing should have sustainable access to natural and common resources...” The legal interpretation of the human right to health also recognizes that the right to health embraces a wide range of socioeconomic factors that promote conditions for a healthy life, including a healthy environment. Other soft law instruments reaffirm the human rights dimensions of the environment. Principle 1 of the Stockholm Declaration of 1972 states: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.” The subsequent Rio Declaration (1992) affirms that “human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature” (Principle 1). The Rio Declaration also reaffirms states’ “responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction” (Principle 2) and recognizes that, “In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.
In that connection, too, CESCR recognizes and explicit “right to healthy natural and workplace environments.” The fulfillment of that right entails the state ensuring the “the improvement of all aspects of environmental and industrial hygiene” involves, among other actions, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.

While respecting, protecting and fulfilling the right to health, states are required also to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline.

In addition, access to, and quality of the environment in human rights law establishes entitlements such that “all peoples shall freely dispose of their wealth and natural resources.” This right, arising from the right to self-determination (see below), shall be exercised “in the exclusive interest of the people” and “in no case shall a people be deprived of it…”

Several regional human rights treaties contain an explicit pronouncement of a human right to (a clean and healthy) environment. The African Charter establishes that states parties “shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.” The European Charter of Fundamental Rights (2000) calls for “a high level of environmental protection, and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.” In the Inter-American Human Rights System, the “Protocol of San Salvador” (not yet in force) explicitly recognizes a “Right to a Healthy Environment,” providing that “Everyone shall have the right to live in a healthy environment and to have access to basic public services” and that “the States Parties shall promote the protection, preservation, and improvement of the environment.”

The European Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention) recognizes that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.” The Convention recognizes further that, “to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights.” Thus, as with all rights, the right to a clean and healthy environment is interdependent and indivisible with other rights, including the human rights to participation and the right to information.

Although regional in scope, the Aarhus Convention carries a global significance. It also forms the legal elaboration of Principle 10 of the Rio Declaration, which stresses
the need for citizen’s participation in environmental issues and for access to information on the environment held by public authorities. (See the right to participation below.)

With its thematic focus on a particularly affected group, the nonbinding UN Declaration on the Rights of Indigenous Peoples, recognizes that “respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.” The Declaration proclaims that “Indigenous peoples have the right to the conservation and protection of the environment...” and that “states shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”

The Right to Property

The right to own and freely dispose of property is a well-established “natural right” in Western legal traditions. Customary human rights law recognizes that “Everyone has the right to own property alone as well as in association with others” and that “No one shall be arbitrarily deprived of his property.” However when the right is applied to land and natural resources, wider and competing interests enter into consideration and often are the subject of restrictions on the private and absolute right to own and dispose of land and natural resources, as well as principles of the social function of property.

Applying the full complement of human rights contained in the UDHR, ICERD guarantees “the right to own property alone as well as in association with others.” The ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries recognizes the need for special measures to accommodate forms other than private, freehold tenure among indigenous communities, including measures “for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.”

On the subject of a right to landed property, ILO 169 stipulates that “lands” entails “the concept of territories, which covers the total environment of the areas [that] the peoples concerned occupy or otherwise use.” The treaty also establishes that state parties’ obligation such that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.” States parties to the Convention recognize “the rights of ownership and possession of the peoples concerned over the lands [that] they traditionally occupy” and to protect such property rights by law, and violations are subject to judicial and material remedy.

The normative content of the right to adequate housing is much more than a right to property, and involves other nonmaterial and ambient dimensions. However, CESCRI’s GC No. 4 acknowledges the various types of tenure relations to the possession of property, including freehold, leasehold, communal tenure, etc. The state is required to respect, protect and fulfill each applicable form of tenure under law, including to “take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”
The Human Right to an Adequate Standard of Living

Conceptually linked to life and livelihood, the right to an “adequate standard of living” is enshrined in law under ICESCR’s Article 11, encompassing more specific rights including the human rights to adequate housing, adequate food and water. Already in 1962, ILO Convention No. 117 on Social Policy set forth obligations of states and competent authorities for the promotion of productive capacity and the improvement of living standards of agricultural producers. ILO 117 explicitly clarifies that duty to include “the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and labourers the highest practicable standards of living...”

In addition to the need to ensure that persons with special needs and disabilities have access to adequate food, water, accessible housing and other basic material needs, states must ensure also that support services, including appropriate facilities and devices are available for such persons, in order to assist them to increase their level of independence in their daily living and to exercise their rights.

Legal recognition and guarantees for the protection of indigenous and tribal rights to land and other resources are not only good governance issues, but also human rights treaty obligations of the state. Such enterprises as logging and mining concessions often are granted without consulting or even informing indigenous and tribal groups, while depleting their access to the means of an adequate standard of living. Such practiced would constitute a breach of a state’s obligations under certain treaties.

For all persons subject to discrimination and bearers of the human rights to an adequate standard of living, the corresponding obligation of the state includes to ensure equal/equitable access to tenure-protected land and natural resources. Good governance in land and natural resource tenure is vital for women in ways that link to their rights to land, property and adequate housing.

Deprivation of access to land and natural resources may be result from direct or indirect acts of state or government. For example, when the authorities decide not to assign a needed teacher to a rural area, families may lose their will and ability to remain on their land in search of another way to educate the children. Many rural communities tire of knowing that their children are keen to learn when such facilities are denied to them, while the state and governance provide for others instead. Similarly, when rural and land-based communities have no health services to ensure their physical well-being, many are forced to leave their lands as well as a consequence of the state’s violation of other right by omission.

The Human Right to Adequate Housing

ICERD actually contains the historic first codification of the human right to housing, which was earlier recognized in UDHR (Article 25). GC No. 4 on the right to housing provides the normative content of the right enshrined in Article 11 of the ICESCR, which places adequate housing within the broader right to an adequate standard of living. That GC provides seven elements of the right to housing, all of which must present in order for the housing to be considered adequate in international human
rights law. These minimum requirements begin with the property dimension of adequate housing, recognizing that legal guaranteed security of tenure is an entitlement essential to the enjoyment of the right, and that the state’s corresponding obligation is to protection against dispossession and forced eviction from housing or land.

International law prohibitions against forced eviction characterize the practice variously as “prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law,” followed by “a gross violation of human rights.”

The exceptional circumstances required in international human rights law for any eviction to be legally permissible include features of governance that apply the state’s treaty obligations corresponding to the human right to adequate housing, including appropriate procedural protection and due process as essential. The required procedural protections include ensuring: (a) an opportunity for genuine consultation for and with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions must not take place in particularly bad weather or at night, unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts. In addition, evictions should never result in individuals being rendered homeless or vulnerable to the violation of other human rights.

Beyond secure tenure and freedom from dispossession, GC No. 4 stipulates also that other elements equally indispensable include the availability of services, materials, facilities and infrastructure such that the housing contain certain facilities essential for health, security, comfort and nutrition. “All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.” This entitlement recognizes the link between the right to adequate housing and the enjoyment of both public goods and services and environmental goods and services, which should be understood to include land and natural resources required for adequate housing.

Also related to land and natural resources and no less essential to the enjoyment of the right to adequate housing are affordability, habitability, accessibility, location and cultural adequacy. Governance of land and natural resource tenure can have a profound effect on these entitlements in societies where natural materials constitute the chief sources of building materials for housing. As noted above, governance of land and natural resources can have a direct effect on environmental quality and
safety, thus, affect housing habitability and forming the nexus between the human right to adequate housing and the right to health.\textsuperscript{56}

A person’s accessibility to adequate housing is particularly relevant to land and natural resource tenure in the case of impending or actual natural disasters; whereas, people living in disaster-prone areas and other vulnerable groups should be ensured some degree of priority consideration in the housing sphere. (See vulnerable groups below.) Law, policy, budgets, regulations and official practices related to land and natural resources should take fully into account the special housing needs of such groups. CESC\textsuperscript{R} advises that, “Within many States parties, increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discriminable governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.”\textsuperscript{57}

The location entitlement of adequate housing also relies on good governance in land and natural resources tenure. The location of housing should be consistent with the other human needs and rights to access services and facilities, including environmental and recreational facilities. Housing should not be built without access to such services and facilities, on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

The housing rights entitlement to cultural adequacy bears a material dimension in relation to the way that housing is constructed. The building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. “Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.”\textsuperscript{58} The connection to the governance of land and natural resource tenure become clear particularly in certain minority and/or indigenous communities, whose special relationship to land and environment, including the use and maintenance of natural resources, and must be respected, protected and fulfilled as a matter of their survival as a community.\textsuperscript{59}

The Human Right to Water

The human right to water, enshrined in Articles 11 and 12 of ICES\textsuperscript{R}, is also a component of the broader right to an adequate standard of living, but also is closely linked with other rights. Water is not only an essential human need for domestic consumption, for eating, drinking, bathing, and sanitation, for example, but also for more social and public needs, such as securing livelihoods (the right to decent work) and enjoying certain cultural practices and the right to take part in cultural life (Article 15).

Human rights treaties guaranteeing equitable access to material needs of life for particular groups also specifically mention water rights and state obligations related to water.\textsuperscript{60} In ensuring adequate and equitable access to water for the various essential purposes of human life, states are required to give priority to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the other rights contained in ICES\textsuperscript{R}.\textsuperscript{61}
The human right to water for all means that, while the adequacy of water required for the right to water may vary according to different conditions, it always should be subject to standard factors in all circumstances:

Availability: The water supply for each person must be sufficient and regular for personal and domestic uses continuous for personal and domestic uses. The quantity of water available for each person should correspond to WHO guidelines as a minimum, while some individuals and groups may also require additional water due to health, climate, and work conditions.

Quality: The water required for each personal or domestic use must be safe and, therefore, free from micro-organisms, chemical substances and radiological hazards that threaten a person’s health. Furthermore, water should be of acceptable characteristics (e.g., color, odor and taste) for each personal or domestic use.

Accessibility: Water and water facilities and services have to be accessible to everyone wherever they live, and without discrimination of any kind, in accordance with the over-riding principles of human rights treaty implementation. The state bears the obligation to ensure accessibility in its four coinciding dimensions:

Physical accessibility: Water, and adequate water facilities and services, must be within safe physical reach for each household, educational institution and workplace and serve all segments of the population.

Economic accessibility: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other human needs and, consequently, human rights.

Information accessibility: Accessibility includes the right to seek, receive and impart information concerning water issues, as well as to seek, understand and manage relevant information. (See the right to information below.)

Nondiscrimination: As a standard feature of implementing any human right, water and water facilities and services must be accessible to all without arbitrary discrimination by the state, its agents or other third parties.

The authoritative interpretation of the human right to water in CESC's GC No. 15 guides the state on what to do and how to implement its corresponding obligations. The obligation to respect the right to water requires that states refrain from interfering directly or indirectly with the enjoyment of the right to water such as any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for example through waste from state-owned or state-managed facilities, or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

Protecting the right to water is the obligation that requires states parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Such third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, adopting the necessary and effective legislative and other measures to restrain third parties from denying, compromising or interfering with equal access to adequate water in any way. To prevent such abuses the required regulatory system should include independent
monitoring, genuine public participation and imposition of penalties for noncompliance.\textsuperscript{68}

The obligation to \textit{fulfil} the right to water can be understood as facilitating, promoting and providing access to water. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. Promotion, in this context, means that the state is obliged to take steps to ensure appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States are obliged also to fulfil (provide) the right to water when a person or a group is unable, for reasons beyond their control, to realize that right by the means at their disposal.

In order to fulfil the right to water, states must ensure that water is affordable through measures that may include: (a) the use of appropriate low-cost techniques and technologies; (b) pricing policies such as free or low-cost water; and (c) income supplements or subsidies, especially for disadvantaged groups. In order to ensure these measures and the application of the human rights methodology required under treaty, the state should adopt a corresponding policy. Failure to do so may constitute a violation, or series of violations. Adhering to the obligations to respect, protect and fulfill the right to water, the state should sufficiently recognize this right within the national political and legal systems, by way of legislation and enforcement.\textsuperscript{69}

The rights water bears a particular international cooperation dimension; whereby, states have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party’s jurisdiction or effective control must not deprive another country, or residents of another country, of the ability to realize the right to water for all persons in its jurisdiction and effective control.\textsuperscript{70}

**The Human Right to Adequate Food**

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. Therefore, realizing the right to adequate food is a process, not simply a matter of possessing food, and cannot be interpreted in a narrow or restrictive sense that equates the food with a minimum package of calories and other specific nutrients. The state’s obligation relative to the right to adequate food has to be realized progressively. However, states bear a core obligation to take the necessary action to mitigate and alleviate hunger, even in times of natural or other disasters.\textsuperscript{71}

Adequacy of food means that realization of the right involves the fulfillment of a variety of conditions, including that the food is available, accessible, sustainable and of good quality. The notion of \textit{sustainability} is intrinsically linked to the notion of adequate food or food \textit{security}, implying food being accessible for both present and future generations.
The core content of the right to adequate food implies that food be available in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable according to the criteria of the local culture. The accessibility of adequate food should be sustainable and not interfere with the enjoyment of other human rights.

Availability and accessibility of food refer to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning processing, distribution and market systems that can move food from the site of production to where it is needed. Accessibility encompasses both economic and physical accessibility, which means that personal or household financial costs associated with food acquisition for an adequate diet should not threaten or compromise other human needs and human rights. Economic accessibility relates to any acquisition pattern or entitlement through which people gain access to their food. It is a measure by which food access is deemed to be satisfactory.

The state must ensure that disadvantaged or vulnerable groups such as landless persons and other particularly impoverished segments of the population are served through special food, nutrition and/or distribution programs. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need to receive priority consideration. Especially with respect to good governance in land and natural resources tenure, states must address the particular vulnerability of many communities of indigenous peoples whose access to their ancestral lands may be threatened or foreclosed.

To meet these criteria and avoid violations by omission or commission, the state should formulate and implement a national strategy on the right to food. Such a national strategy should address critical issues and vulnerable populations, and establish measures to ensure effective functioning of all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security. Such a strategy in force should ensure the sustainable management and use of natural and other resources for food at the international, national, regional, local and household levels.

**The Human Right to Health**

ICESCR’s Article 12.1 provides a definition of the right to health, while Article 12.2 illustrates examples of states’ obligations to respect, protect and fulfill the right. The human right to the highest attainable standard of mental and physical health contains both freedoms and entitlements: The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, nonconsensual medical treatment and experimentation. The actual entitlements include the right to a system of health protection that ensures equal opportunity for people to enjoy the highest attainable level of mental and physical health.

Similar to the normative content of other rights such as food and water, the human right to health in all its forms and at all levels contains interrelated and essential elements:
Availability: Functioning public health and health-care facilities, goods, services and programs must be present in sufficient quantity within the state and its territory. As noted above, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, essential drugs, hospitals, clinics and other health-related personnel and facilities are essential to the respect, protection and fulfillment of the human right to health.

Accessibility: Health facilities, goods and services have to be accessible to everyone without discrimination, within the states jurisdiction or territory of effective control. This means also applying the over-riding principle of nondiscrimination in the provision of facilities, goods and services on the basis of geographical location, so as not to disadvantage people and communities in rural, informal or traditionally managed areas. The economic dimension of accessibility relates to affordability of health care for all. Payment for health-care services, as well as services related to the underlying determinants of health deriving from natural resources, has to be based on the principle of equity. Thus, states must ensure that health-related goods, services and facilities, whether privately or publicly administered, are accessible for all, including socially disadvantaged groups. Accessibility of health and health case relates also to information such that the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not compromise the right to privacy in this context, such that personal health data always be treated with confidentiality.

Acceptability: All health facilities, goods and services—including those related to the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities—must be respectful of medical ethics and culturally appropriate for all individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements.

Quality: As well as being culturally acceptable, health facilities, goods and services, including those related to the governance of land and natural resources that form underlying factors of health, must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water and adequate and environmentally safe sanitation.

The world health situation has changed dramatically over time and the notion of health correspondingly has become substantially wider in scope. More risks to health are known and addressed, and public related concerns as social violence and armed conflict. Environmental hygiene, as an aspect of the right to health, encompasses taking steps on a nondiscriminatory basis to prevent threats to health from unsafe and toxic water conditions.

Therefore, the right to health, defined as an inclusive right, incorporates not only to effective and appropriate health care, but also involves the underlying determinants of health. These relate to safe and potable water access, adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, and effective participation of the concerned population in all health-related decision making at the community, national and international levels.

Related also to policies and programs in other sectors (e.g., for national food sovereignty), the state's national health strategy should address critical issues and measures in regard to all aspects of the food system, the various fields of health,
education, housing, employment and social security for the sustainability of physical health. States are required to ensure the most sustainable management and use of natural and other resources for food at the international, regional, national, local and household levels.

Emerging international law, national and regional jurisprudence, common practice by states have established the need to take special measures in relation to indigenous peoples’ right to health. Appropriate health services should be culturally appropriate, considering traditional preventive care, therapeutic and healing practices and medicines. That not only requires effective participation in a collective manner of governance for affected community, but also requires the preservation and conservation of vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples. The Committee notes that, in indigenous communities, the health of the individual has a collective dimension, and health often is linked to the health of the community or society as a whole. The state scrupulously should avoid development-related activities that lead to the displacement of land-based communities and indigenous peoples from their traditional territories and environment, especially when against their will, denying them their sources of nutrition and impeding their symbiotic relationship with their lands and natural resources, has a deleterious effect on their health.

**The Human Right to Self-determination**

The principle of equal rights and self-determination of peoples is considered to have been a general principle of international law arising from common state practice long before the founding of the League of Nations. However, self-determination was first codified as a human right in the Charter of the United Nations (1945), which provides self-determination as among the purposes of the United Nations. States have progressively reaffirmed and legally defined the principle of self-determination through the UN system since its founding. The material significance of self-determination as it relates to land and natural resources is further elaborated in the Covenants on human rights adopted in 1966. The common Article 1.2 of both the ICCPR and ICESCR sets forth that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

How concerned persons/communities exercise an effective role in determining the terms by which they realize many human rights is also a subject of the inalienable right of self-determination. Self-determination is the right of peoples, not of states. It is the state, however, that is the legal personality obliged to ensure the respect, protection, defense, promotion and fulfillment of self-determination as a duty under public international law, as well as the essential legitimizing factor of the state itself.

The self-determination of peoples bears distinct internal and external aspects. An internal aspect arises from all peoples’ right to pursue freely their economic, social and cultural development without outside interference. With respect to self-determination in modern statecraft, governments are supposed to represent the
whole population without distinction as to race, color, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.\textsuperscript{82} States have an obligation to respect, protect and fulfill, to the extent possible, the right to self-determination for those peoples denied that inalienable right. This right entails corresponding duties for all states and the international community as a whole, as well as its institutions.

The concept of, and right to self-determination manifest in a spectrum of types and expressions of effective local control over land, natural resources and their development. Relations within a community and territory may involve either external or internal self-determination; that is, national independence as in the formal distinction of a self-determination unit with its own internationally recognized borders, a self-determination unit within the internationally recognized borders of a unitary state, or a community’s\textsuperscript{83} effective control over land, resources, developments and relations affecting it.\textsuperscript{84}

In its GC No. 12 on “the right of self-determination of peoples” (1984), The UN Human Rights Committee (HRC) gave its guidance on the corresponding obligations of states and the centrality and interdependence of self-determination:

…the right of self-determination is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of all rights.

The right—and over-riding treaty implementation principle—of self-determination imposes specific obligations on states not only in relation to peoples domestically, but toward all peoples who have been unable to exercise or have been deprived of the possibility of exercising their right to self-determination.

**Self-determination applied to communities**\textsuperscript{85}

The right and over-riding principle of self-determination is subject to both international legal and popular claims to the same, including self-determined development at the community level for the autonomous management of their lands and natural resources.

Self-determination becomes as vital as any other need that grounds other human rights, including those other over-riding principles of rule of law, nondiscrimination, gender equality and international cooperation consistent with all human rights. In their collective dimension, these all become community needs and, consequently, rights insofar as their absence leads to erosion and violation of a bundle of individual, stand-alone rights and can lead to the deprivation or demise of a community as such.

That having been said, and recognizing that self-determination can be either internal or external, the international public law term of art “internal self-determination unit” applies in the case of a group or community, and is subject to case-by-case interpretation. This could refer to the rightful place of a minority or an indigenous people. It could conceivably apply also to a community of rural or urban poor, particularly if their survival and/or well-being is threatened and their self-
determination then becomes a need/right and requisite to the realization of other rights (life, adequate housing, culture, health, etc.).

The Human Right to Freedom from Discrimination

Like self-determination, an inalienable human right common to the major legal systems throughout the world, a fundamental requisite of justice is the absence of discrimination on any arbitrary basis. Thus, along with self-determination, the right to freedom from discrimination also was codified first in the Charter of the United Nations. 86

Given its centrality, the principle of nondiscrimination, consequently, is an over-riding human rights principle embodies in the first articles of each major human rights treaty. Nondiscrimination, and its corresponding State obligation to ensure nondiscrimination, are enshrined in the preamble of all international declarations and resolutions concerned with human rights matters, governance and the relations between and among States, nations and peoples.

Discrimination typically results in deprivation of human needs and rights. ICERD defines discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin [that] has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. 87

In the Convention and its negotiation history, an important distinction emerges: While it is the obligation of States’ parties and their governments to combat both “racism” and “racial discrimination,” the former is a state of mind that should be eradicated through measures including education and other efforts to bring about a cultural and social transformation toward antidiscrimination. The latter, “racial discrimination” is the actual activation of prejudice which, in its manifestation, is a material violation of the rights of others. Any official action or omission of practicing or condoning racial discrimination is a violation of an immediate obligation of the state, not subject to “progressive realization.”

Inherent in the principle of nondiscrimination is the understanding that programs formally providing advantages to persons and groups historically subject to discrimination are not considered to constitute unlawful discrimination. On the contrary, international public law calls upon States to provide additional assistance to those persons and groups subject to past and/or present discrimination, as in corrective/positive discrimination or affirmative action programs that redress foregoing patterns of deprivation. 88 Therefore, in the field of land and natural resource tenure, governments should take measures to ensure that vulnerable and disadvantaged groups are provided for in policies and programs to combat discrimination. Accordingly, the UN Habitat Governing Council has recognized the need for further such measures. 89 The UN Special Rapporteur on adequate housing also has provided guidance on how to avoid discrimination in development projects involving displacement. 90

The Human Right to Development
Arising from the fundamental tenets of the UN Charter and the UN’s purposes, the right to development is inextricably linked to the over-riding treaty-implementation principle human right to self-determination.

Development is a comprehensive economic, social, cultural and political process that seeks the constant improvement of the well-being for the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the resulting benefits. The right to development, as defined in the UN Declaration on the Right to Development, recognizes also that development and its corresponding rights have an international dimension as well.

The international community has recognized that the “human person is the central subject of development and should be the active participant and beneficiary of the right to development.” The Declaration on the Right to Development also recognizes corresponding responsibilities of “all human beings.” The right to development also contains duties as well as rights of states, to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population. Therefore, the over-riding principle of international cooperation bears a special importance to states’ realizing their own right to development on behalf of their constituents. However, the Declaration recognizes that states bear “the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.”

Relevant to development as such, the Declaration enshrines the recognition that “All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.” Thus, development, by definition, is the condition that combines respect, protection and fulfillment of all human rights.

Other Congruent Rights
As the above definitions indicate, the human rights and corresponding obligations for good governance in land and human rights tenure are multifaceted. Clearly, understanding the human rights framework necessarily entails several core entitlements related to substantive aspects and processes necessarily to respect, protect and fulfill the associated human rights. Certain of these essential elements are recognized in international law as distinct human rights human rights guarantee these processes and, therefore, human rights methodology provides further criteria for states to know the how of implementing their treaty obligations related to administration of land and natural resources tenure. To the extent that these distinct human rights are indispensable to the implementation of the above-mentioned rights, those can be called “congruent rights” or “transversal rights.”

Information, Education, Capability and Capacity Building
As noted in connection to the above-cited rights, individuals and communities must have access to appropriate data, documents and intellectual resources that affect their right to obtain adequate housing. Having access to appropriate data means being informed about potential industrial and natural hazards, infrastructure, planning
design, availability of services and natural resources and other factors that affect the right. The state has the obligation to ensure that laws and policies facilitate such access and ward against denial of the right to adequate housing. Unimpeded opportunity and reasonable means for public debate and expression with respect of the process of government, administration and finance procedures, market mechanisms and the activities of the private sector and others engaged in the housing sphere are presupposed in a democratic society.

Individuals and communities should have access to technical assistance and other means to enable them to improve their living standards and fully realize their economic, cultural and social rights and development potential. The state, for its part, should strive to promote and provide for catalysts and mechanisms for the same, including efforts to ensure that all citizens are aware of procedural measures available toward defending and realizing her/his right to adequate housing. This concept is sometimes also referred to as empowerment, which is defined as a process that enhances the ability of disadvantaged (“powerless”) individuals or groups to challenge and change (in their favor) existing power relationships that place them in subordinate economic, social and political positions.97

The Human Right to Information

UDHR affirms that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”98 ICESCR guarantees also that states recognize “the right of everyone to take part in cultural life; to enjoy the benefits of scientific progress and its applications.”99 However, the principle instrument that established the right to information and corresponding state obligations is ICCPR, which sets forth: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”100 Regional treaties also guarantee the human right to information in their context.101

In particular, victims/affected persons posses rights to remedy and reparations that include relevant information concerning violations and reparation mechanisms.102 States adopting and participating in the Desertification Convention (1994), as ewll as soft-law instruments such as the Habitat II Agenda (1996) and World Summit on Sustainable Development Plan of Implementation (2002) have echoed the commitment to ensure rights to information to people affected in the development process.103 Women and vulnerable groups are particularly recognized for their special needs for, and traditional exclusion from access to information in processes related to land and natural resources tenure.104

The Human Right to Education

Likewise, respect, protection and fulfillment of the human right to education is essential to manage of information indispensable to achieve other human rights in the context of land and natural resource tenure administration. ICESCR establishes this right with corresponding state obligation, including the guarantee of free and compulsory elementary education.105
Human rights law establishes that education in all its forms and at all levels shall exhibit the certain interrelated and essential features:  \(^{106}\)

Availability: Education must be available so that functioning educational institutions and programs are present in sufficient quantity within the state’s effective territory. More specifically related to land and natural resource tenure are the presence of such elements as proper sanitation facilities for both sexes, safe drinking water and information technology;

Accessibility: Educational institutions and programs must be accessible to everyone, without discrimination, within the jurisdiction of the state, and must ensure both physical and economic accessibility for all.

Acceptability: The form and substance of education, including curricula and teaching methods, have to be acceptable in the sense that they are relevant, culturally appropriate and of good quality.

Adaptability: Education has to be flexible and subject to periodic review, evaluation and reform so that it can meet the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings and address the major challenge emerging in the field of land and natural resource tenure administration. The international community has affirmed the essential requirement of education as a right in order to achieve development.  \(^{107}\)

As recognized in international practice, the implementation of the right to education is not only a theoretical process of accumulating data, but one of developing capability and capacity in a way that enables the enjoyment of other human rights. ICESCR obliges states to direct education “to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.” States have agree “that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”  \(^{108}\) ICERD further recognizes the right to “to education and training...”  \(^{109}\)

In the sphere of land natural resource tenure administration, the tripartite constituents of the ILO have recognized the need for state authorities to promote productive capacity and improve living standards of agricultural producers, including through the supervision of tenancy arrangements and of working conditions “with a view to securing for tenants and labourers the highest practicable standards of living...”  \(^{110}\) In declaratory instruments such as the FĂĎ Peasants Charter (1979),  \(^{111}\) Habitat II +5 Declaration (2001),  \(^{112}\) the World Summit on Sustainable Development Plan of Implementation (2002)  \(^{113}\) and the FAO Voluntary Guidelines on the Right to Adequate Food (2004), states expressed the need and commitment to “support investment in human resource development such as health, education, literacy and other skills training, which are essential to sustainable development, including agriculture, fisheries, forestry and rural development.”  \(^{114}\)

**Participation, Association, Peaceful Assembly and Self-Expression**

Effective participation in decision making is essential to the fulfillment of all human rights.  \(^{115}\) At all levels of the decision-making process in respect of the equitable and effective administration of land and natural resources, individuals and communities must be able to express and share their views, they must be consulted and be able
to contribute substantively to such processes. The state must ensure access to decision-making centers and effectively combat fraudulent and corrupt practices.

Everyone must be free to engage and form an association with others in accordance with one’s own interest and consistent with the norms of human rights and democratic society. As affirmed in ICCPR and several instruments of the ILO, for effective self-expression, it is often necessary for people and communities to exercise rights to freedom of association and assembly, thereby organizing themselves according to their shared interests in order to make their voices heard. Such association can serve many other purposes as well, including sharing vital information, capacities and technologies, and advocating measures toward solving housing and land rights problems. 116

Everyone shall have the right to hold opinions without interference, and everyone has the right to freedom of expression. Within certain restrictions in the interest of human rights and nondiscrimination in a democratic society, the right to freedom of expression includes the freedom and capacity to seek, receive and impart information and ideas of all kinds and in all forms. 117 The state must ensure that land and natural resource tenure laws, practices and policies to not preclude free expression, including cultural and religious diversity. Moreover, the right to self-expression must be respected, protected, promoted and fulfilled to ensure harmonious and effective design, implementation and maintenance of the community, for which necessarily addressing the interests of multiple parties is only possible through cooperation in consideration of their views.

Education, information, free expression and related capabilities are prerequisites to the enjoyment of the human rights to participation, which, in turn, transverses all of the other rights affected by land and natural resource tenure administration. The human right to participation in government and public life was first recognized and then codified to address electoral processes and access to public service. 118

However, in actual application, the right has a much broader scope. It has come to mean that effective participation includes cooperation, coordination and partnership at all levels between and among affected parties, especially nongovernmental organizations; local populations, both women and men; and particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision making, and implementation and review of programs affecting land and natural resources. 119 Further commitments by states and guidance for implementing these rights in the context of land and natural resource governance are found in such instruments as Vancouver Declaration on Human Settlements (1976), 120 the Declaration on the Right to Development (1986), 121 Agenda 21 (1992), 122 the Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), 123 the Habitat II Agenda, 124 and regional instruments. 125 The FAO’s Peasants Charter (1979) is also explicit as to the meaning of the rights to expression, association, assembly and participation, in particular the inclusion of vulnerable, grassroots and marginalized groups, with local and national government in decision making related to land reform. 126

**Right to Freedom of Movement and Related Rights**
Every person lawfully within the territory of a state has the right to liberty of movement and freedom to choose his residence within that territory, and everyone shall be free to leave any country, including his own. Movement and resettlement may be essential to survival in the case of natural or human-made disaster.

Good governance in land and natural resource tenure may affect a bundle of human rights of affected persons facing displacement. Any resettlement arrangement, whatever the cause, must be consensual, fair and adequate to meet individual and collective needs. It must provide sufficient access to the sources of livelihood, productive land, infrastructure, social services and civic amenities, including for aliens and refugees. Moreover, there must also be fair and adequate remedy and reparations for damage, loss and costs, particularly when human caused. It is expressly prohibited for a state to *refoule* a person back across an international border when that person faces a well-founded fear of persecution upon her/his return.

**Human Rights to Privacy and Security of Person**

Every man, woman, youth and child has the right to live and conduct her/his private life in a secure environment and place of residence that is protected from threats or acts that compromise her/his mental or physical well-being or integrity. The state, correspondingly, must address the security needs of the community once determined, in particular the needs of women, the elderly, children and other vulnerable individuals and groups. As one of its principal tasks and functions, the state must then ensure physical security to the extent possible, refraining from threat to, or interference in personal and private activity in the home that does not infringe upon the corresponding rights of others. However, domestic violence, in particular, and all forms of violence against women and child abuse must be prosecuted as any other violent crime.

Customary and human rights treaty law have established the rights to security of person and freedom from interference with his privacy, family, home or correspondence, including through specific regional instruments. Thus, these two distinct rights are closely intertwined and often cited together. Often, too, these rights are linked to the safety and privacy of the home. Thus, to these rights are inherently connected to the enjoyment of the human right to adequate housing, which good governance in land and natural resource tenure directly affects, as noted above. The explicit human rights recognized in the Universal Declaration of Human Rights, Article 3 are formulated such that "Everyone has the right to life, liberty and security of person," thus linking security rights and obligations to the first of the series of rights provided in this framework: the human right to life itself.

**Human Rights Law and Humanitarian Law**

Most human rights and corresponding state obligations apply in all situations. Certain human rights are nonderogable, which means that they cannot be relegated to a lower priority or be violated even in states of emergency or time of war.

International humanitarian law—also known as the law of war—governs the conduct of armed conflict and seeks to limit its effects, including those violating human rights and those affecting land and natural resource tenure and their governance. At the
core of IHL are the four Geneva Conventions of 1949 and their Additional Protocols (Protocol I and II) of 1977. Among the most significant for the protection of land and natural resource tenure is the Fourth Geneva Convention of 1949 (Civilians Convention), which lays out rules to protect civilians, including civilians in occupied territory, from the consequences of war. Common Article 3 (so named because it applies to all the Geneva Conventions) specifically accounts for conflict of a noninternational nature including civil wars, internal conflicts that cross borders into other states, and internal conflicts where third party states or multinational forces intervene. The Additional Protocols I and II of 1977, which develop and supplement the Geneva Conventions and relate to the protection of victims of armed conflicts in international and noninternational conflicts, respectively. Several other treaties also prohibit or restrict the use of specific weapons due to their disproportionate damage to civilian populations, environment, land, property and natural resources.

The Geneva Conventions are today universally applicable, all States having ratified them. Notably, the Fourth Geneva Convention for the protection of civilians was preceded by the Hague Regulations of 1899 and 1907 and their annexes, which first codified the laws and customs of war on land and today are also considered customary international humanitarian law (customary IHL). That means that they are universally binding regardless of whether or not a state has ratified the treaty. It is generally accepted that the Geneva Conventions and the Hague Regulations are both complimentary and supplementary (as the Civilians Convention offers additional provisions, notably contained in article 49).

As for the Additional Protocols, even if there are still states that have not ratified them, many of their provisions are considered as being part of customary IHL, including all the provisions on the conduct of hostilities.

At the heart of IHL are the principles of distinction, necessity and proportionality, which oblige parties to a conflict, including both state and non-state actors, to target only military objectives and not the civilian population, individual civilians or civilian objects. While it is understood that civilian casualties cannot always be avoided during conflict, IHL requires parties to distinguish between combatants and civilians and military targets and civilian objects and to take precautions in attacks to minimize the injury and damage caused to the latter. Failing to make this distinction in military conduct and to accurately assess the necessity of an attack and weigh the anticipated military advantage against the damage caused to civilians and civilian infrastructure constitutes an indiscriminate attack or an excessive and disproportionate use of force. For example, bombardment and missile strikes that treat a number of clearly separated and distinct military objectives located in an urban area or rural village as a single military objective are strictly prohibited.

The only circumstance in which a party may target civilians is if they assume a direct role in hostilities, making them de facto combatants. Likewise, the only circumstance in which attacks on civilian objects are lawful is if, at the time of the attack, they were used for military purposes and their destruction serves a definite military purpose, fulfilling the requirement of military “necessity”. Still, the proportionality principle governs attacks on all legitimate military objectives in order to prohibit excessive effect in relation to the concrete and direct military advantage sought. Because military forces are proscribed special obligations toward the civilian population in IHL, they bear an extremely heavy burden of proof that any injury to civilians and civilian infrastructure was necessary. Indeed, jurists and
international tribunals have firmly negated assertions that military necessity prevails over other considerations proscribed in IHL or human rights law.

IHL is then explicit in its protection of the HRAH. Both the Hague Regulations and the Fourth Geneva Convention provide that a State’s military must respect and protect civilian property, both private and public, that it cannot confiscate such property unless that action fulfils the strict criterion of military necessity, in which case any confiscation would be temporary, and that destruction and appropriation of property is forbidden and constitutes a grave breach of the laws of war unless rendered absolutely necessary.  

Grave breaches of international humanitarian law are defined in the Geneva Conventions as well as the Additional Protocol I and amount to war crimes in international law. Parties to the treaty are obliged to pursue and punish suspected perpetrators before their own courts. Thus, each state is also obliged to enact legislation to provide for punishment of any person who has committed such a grave breach, regardless of the nationality of the perpetrator or the place where the offense was committed.  

IHL also forbids damage to property as a preventive means and expressly forbids military forces from destroying property with the intent to deter, terrify, or take revenge against the civilian population. Injury to property intended to cause permanent or prolonged damage is also expressly forbidden.

In addition to recognizing attacks on civilian persons in their homes or other shelters and attacks on, or damage and destruction of civilian property (private and public) as war crimes, IHL recognizes other acts that are violations of the HRAH or could potentially lead to violations of land and natural resource tenure such that constitute war crimes and/or crimes against humanity. For example, according to Article 147 of the Fourth Geneva Convention, “unlawful deportation or transfer” constitutes a grave breach to the Convention. War crimes also encompass other serious violations of international humanitarian norms applicable in international and noninternational armed conflict.

The Applicability of Human Rights Law in Armed Conflict

While international conflict is regulated by IHL, many judicial bodies, including the ICJ, have addressed the applicability of international human rights law during armed conflict, both international and noninternational. The Court first affirmed the applicability of international human rights law during armed conflicts in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons: “The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency.” Important recent ICJ decisions and Advisory Opinions have affirmed the applicability of international human rights law to situations of military operations and occupation. Other international courts, including the ECtHR and the Inter-American Court of Human Rights (IACHR) have applied the human rights treaties over which they have jurisdiction to situations of armed conflict.

The UN Human Rights Committee has also recognized the applicability of ICCPR to both international and noninternational conflicts, including situations of occupation. There are various approaches to interpreting the relationship between human rights
law and IHL, applied by different intergovernmental resolutions and domestic legal systems, supporting the idea that human rights law should be considered a complimentary system to IHL or least that human rights law must be considered alongside IHL in certain situations. The “complimentary” and “harmonious” approach considers that each system should be considered simultaneously and that neither should take precedent. The second approach, called *lex specialis*, recognises that IHL was designed specifically to regulate conduct during conflict and therefore, while human rights law may still be applied and considered, it takes precedence as the specific law that should prevail over certain other general rules. The last approach simply considers that the application of the two must be considered on a case by case basis according to the most appropriate norm for the situation of concern.\(^{150}\)

However, some do hold that the complementarity of human rights law and IHL is challenged by the fact that state parties engaged in armed conflict can derogate from certain human rights norms (suspend or restrict) in narrowly defined circumstances, and only to the extent strictly required by the situation.\(^{151}\) In proclaiming a state of emergency, a government is still bound by the rule of law and this situation should not become a law unto itself.

While legal questions persist regarding the extent of the application of human rights law during armed conflict, there is little dissent from the position that human rights and their corresponding state obligations do apply in times of war.

Relevant to natural resources in time of conflict, some human rights instruments are explicit as to the continuing obligations of state to respect, protect and fulfill human rights. CESCR has noted that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law.\(^{152}\) This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.\(^{153}\)

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**Guidelines for Good Governance in Land and Natural Resource Tenure in the context of Conflict, Occupation and War**

Governance in land and natural resource administration can be at once a source of conflict, as well as a peace-building and conflict resolution mechanism. In most regions, land issues and conflict are closely interlinked, as land is at the heart of the matter as well, as a national security issue. The causes of conflict may be internal and/or external.

Internal causes may include: (i) population growth; (ii) extremist ideologies, national, religious and political conflicts, as well as the desire to impose and assert national identity; (iii) demographic manipulation; (iv) competition over control of land with the water and other natural resources it contains; (v) land confiscation; (vi) contradictions between different life styles (vii) absence of appropriate development; (viii) lack of partnership between governments and citizens; (ix) absence of just laws and/or lack of enforcement; (x) corruption in public administration; and (xi) public-sector mismanagement.
External factors may include: (i) globalization and/or colonial ambitions; (ii) extremist ideologies, national, religious and political conflicts, as well as the desire to impose and assert national identity; (iii) demographic manipulation; (iv) international complicity and double standards; (v) competition over control of land including its water and natural resources; (vi) creation and feeding of conflicts in pursuit of markets for various commodities, especially military equipment; (vii) the lack of agreements for the management of resources shared between and among states, especially water resources; (ix) climate change and its consequences, especially drought; and (x) imposition of certain policies, such as privatization of natural resources.

War, occupation and conflict have impacts at several levels, bringing about:

- Population transfer, including the implantation of settler colonies by the occupier, leading to indigenous people’s internally displaced persons (IDPs), or external (refugee) displacement;
- Control of land and water resources through confiscation of land, denying access by the land’s owners either directly (e.g., by issuing military orders) or indirectly, through threats and intimidation to prevent the occupied people from accessing their lands. Sometimes this involves destruction of land by planting landmines and other ordnance, uprooting trees, contaminating land and ground water with military waste. Such breaches often bring about a variety of immediate and long-term consequences from environmental damage;
- Illegal amendments to the urban planning regimes of occupied towns and villages, in addition to the denial of formal recognition of villages and communities, leading to foreclosure of inhabitants’ access to land and natural resources and/or erasure of the communities;
- Loss of cultural identity and memory, including the erosion of social customs due to estrangement from the land, and social dismemberment. Changes in village names erase cultural identity and memory for future generations;
- Use and management of natural resources by the occupier to impose occupation (“protected” areas that then are transferred to settler colonies);
- Wholesale change of land features (e.g., removal of entire villages) and/or partial changes (e.g., by removing the top soil);
- Dramatically increased pressure on scarce resources, leading to an increase in land prices in the few remaining nonoccupied areas, and lost hope in the future;
- Exploitation of ambiguities in the regulations and laws that facilitate the process of forgery and fraud.

Recommendations:
At the international level:

- Given the scarcity of water in the region and its geopolitical implications, international mechanisms between and among neighboring states for transparent, participatory and justice-based resource management and conflict resolution need to be established to manage cross-border natural resources, especially water;
- International organizations should respect and apply international law without discrimination toward any party;
- Perpetrators of crimes and illegal activities related to land, natural resources and housing (ownership, pollution, vandalism, population transfer, etc.) should be prosecuted in accordance with international law and treaty obligations;
International organizations should be reformed in order to apply international humanitarian law and human rights law effectively, especially to combat all forms of discrimination and racism wherever they may exist;

Fair and participatory agreements should be concluded at all levels for the human rights-based administration of natural resources shared between and among states in cases where they are not explicitly covered adequately by current norms and conventions.

At the local level:

- Taking into consideration both treaty obligations and constitutional provisions, government should put in place appropriate laws, policies, programs and budgets to combat and prevent violations resulting from poor land and natural resource management, and consider:
  - States carry out a thorough legal review in order to harmonize domestic law with treaty obligations and to implementation and enforce human rights law and its provisions related to land and natural resource access and tenure;
  - Governments establish a transparent system of land management with oversight and accountability mechanisms;
  - Domestic standard setting to ensure equitable land distribution;
  - All concerned public and private institutions actively combat all forms of administrative corruption related to land issues;
  - States develop their judicial system to implement just, rapid and effective solutions for disputes over land and natural resources;
  - Governments distribute services among the state’s regions in order to reduce the need for internal migration;
  - Each state establishes and implements an appropriate migration policy that corresponds to human rights and ensures sustainable social development;
  - States and governments formulate land administration policy with particular objective to ensure locally directed and indigenous social development;
  - Effective objection mechanisms to be in place and functioning in advance of land and natural resource mismanagement, and remedially to ensure full reparations in the actual event of all forms of damage resulting.

In light of both treaty obligations and constitutional provisions, governments should legislate and implement laws, policies, programs and budgets to combat violations resulting from poor land and natural resource management, including the following measures consistent with the established principles of transitional justice:

- Preserving memory of the events and circumstances involving the violations against affected persons and communities;
- Documentation and publication, including records of the testimonies of affected persons and the damages arising from the violations;
- Promoting reconciliation within the concept of justice;
- Reforming policies, laws and institutions to ensure nonrecurrence of the violation;
- Ensuring reparation of damages, including:
  - Restitution, whenever possible, that restores the victim to the original situation before the violation of international human rights law or serious violations of international humanitarian law occurred, including the restoration of liberty, enjoyment of all human rights, identity, family life and
citizenship, return to one’s place of residence, restoration of employment and return of property;
  o Consensual return to the affected people’s land and housing;
  o Comprehensive rehabilitation;
  o Compensation for losses not subject to restitution;
• Commitment of the violator not to repeat crime under penalty of law; and
• Affected persons’ satisfaction with the reparations effected.
Annex: Traditional Occupancy and Use as Ownership

Recent years have witnessed parallel developments in the Bedouin land issue. While incitement against the Bedouin reportedly has increased within the context of pervasive anti-Arab incitement, residents of the unrecognized villages and organizations have engaged in greater political and legal action to defend their rights. Measures toward improving the state's provision of services for residents of unrecognized villages have been achieved as a result of court petitions as well as social advocacy undertaken by Naqab residents and various nongovernmental organizations.

The persistent conflict between the State of Israel and the Naqab Bedouin is becoming seen increasingly as an intractable component of the wider Palestine-Israel conflict. In addition to the deliberations of human rights and indigenous peoples' forums, a further example of the unrecognized villages' emergence in international forums is the treatment of the unrecognized villages as a contextual issue in the recent report of the UN Fact-finding Mission on the Gaza Conflict.

The UN General Assembly has recognized a principle of international cooperation in cases of prolonged conflict and institutionalized discrimination within states. Already in the early 1950s, the question of apartheid in South Africa came to the General Assembly agenda despite the protestations of the South African delegation that the world body's discussion of institutionalized discrimination in the Union of South Africa breached the principle of state sovereignty and noninterference. Ultimately, the deliberations affirmed that a matter of domestic violations of human rights constitute a responsibility of the international community of states when that situation undermines regional peace and security.

It is noted that governments administering the state with an excessive emphasis upon security concerns at the expense of other values, or pursuing statecraft through discrimination run the risk of implementing policies intended on preserving the state, but which perpetuate conflict and/or contain the seeds of the state's own undoing.

The Israeli government's establishment of the Goldberg Commission in pursuit of alternative approaches to the land conflict in the Negev apparently is seen as embodying a preference for domestic conflict resolution as a measure of statecraft. That initiative coincides with a period in which legal systems have found resolution to domestic conflicts over traditional lands with the application of constitutional and emerging international human rights norms.

In the Calder case brought by the Nisga'a Indians of British Columbia, Canada, the plaintiffs argued that they possessed land rights to their traditional territory since time immemorial, and had never surrendered or lost their rights to it. In their 1973 verdict, the judges of the Canadian Supreme Court recognized the existence of Aboriginal rights to land for the first time.

In 1992, a Meriam islander from the Torres Straits of Australia brought a case before the High Court and (posthumously) established the right of indigenous people in Australia to own their lands. In accepting his claim, the High Court recognised the existence of ―native title‖ for the first time and overthrew the ideological concept of ―terra nullius,‖ the legal fiction that the land had been unoccupied when the British colonizers arrived.

In the Delgamuukw case (1997), brought by the Gitxsan and Wet'suwet'en tribes of British Columbia, the Canadian Supreme Court found that indigenous people have a constitutional right to own their ancestral lands and to use them almost entirely as they wish. The Court confirmed that indigenous people continued to own their lands unless the government had explicitly "extinguished" their ownership, and also emphasized the importance of oral history as evidence of indigenous peoples' long ownership of their territories.
When the Nicaraguan government granted a logging concession over their traditional lands to a Korean company, the indigenous Sumu people of the village of Awas Tingni took their case all the way to the Inter-American Court of Human Rights. In 2001, the Court affirmed the existence of indigenous peoples’ collective rights to their land, resources, and environment, and declared that the government granting the concession violated community’s rights without either obtaining its consent or consulting with its.\textsuperscript{162}

In 2002, a group of San Bushmen of Botswana challenged their forced removal from their ancestral hunting grounds in the Central Kalahari Game Reserve. The High Court in Botswana has ruled that more than 1,000 San Bushmen were wrongly evicted and should be allowed to return. The Court’s ruling is seen as a wider test of whether governments can remove people from ancestral lands legally.\textsuperscript{163}

In Malaysia, the Temuan people of Bukit Tampoi village in Malaysia fought a ten-year battle to stop their land from being used for road construction of a road link to a new airport. The state had claimed that the Temuans and other “Orang Asli” (first peoples) were merely tenants on state land and, therefore, not entitled to any compensation. In 2005, Malaysia’s Court of Appeal affirmed the Temuans’ rights to ownership of their land, and ordered a developer, the Malaysian government and a government agency to provide substantial compensation.\textsuperscript{164}

South Africa’s Richterveld bears striking similarities to that of the Botswana Bushmen. In that case, 3,000 Nama people challenged the South African government in court after authorities evicted from their diamond-rich land in the early 1900s. The South African Constitutional Court ruled in 2007 that the Nama people had both communal land ownership and mineral rights over their traditional use territory. The Court also affirmed that failure to respect indigenous peoples’ land ownership under their own traditional law, even if it is unwritten, constitutes “racial discrimination.”\textsuperscript{165}

The Cobell case, filed in 1996, alleged the United States Government had mismanaged billions of dollars in income from natural resources on Native American land. The dispute actually dates back to the 1887 Dawes Act, which seized Indian land, much of it rich in natural resources, transferring it to white-owned companies. Under the Act, the land was divided into plots and each Native family was assigned a parcel of land, a concept alien to their culture in which all land belonged to the tribe. It was supposed to involve “compensation” for the use of their land; however, disputes arose almost immediately, perpetuated as ever smaller parcels of land were inherited by new generations. That now-discredited law and policy led to the devastation of indigenous communities. Under the 7 December 2009 Class Action Settlement Agreement, the Department of the Interior will share $1.4 billion of the originally claimed $47 billion) among 300,000 members of the Blackfoot, Fort Sill Apache, Lac du Flambeau Chippewa and Winnebago tribes as compensation, and set up a $2 billion fund to buy land from them.\textsuperscript{166}

The most recent ruling found the State of Kenya in violation of the Endorois people by evicting them from their land. The African Commission on Human and People’s Rights Commission ruled on 4 February 2010 that the Endorois’ eviction from their traditional land for tourism development violated their human rights. The Commission found that the Endorois’ eviction, with minimal compensation, violated their right as an indigenous people to property, health, culture, religion, and natural resources. This was the first ruling of an international tribunal to find a violation of the right to development, to determine which peoples are indigenous in Africa, and to determine their rights to land. The Commission ordered Kenya to restore the Endorois to their historic land and to compensate them.\textsuperscript{167}

Traditional-use land rights and the rights of indigenous people generally under international law are partly a product of rulings arising in many legal cases around the world. Each of these test cases has contributed to what is a continuously evolving area of international law. The legal developments and policies of democratic nations throughout the world have
formed a common understanding of the importance of affording special treatment to indigenous populations. This has been reflected also in the UN Declaration on the Rights of Indigenous Peoples.\textsuperscript{168} Increasingly, legal challenges in pursuit of justice in land disputes in legal systems around the world are affirming the tenure of traditional-use lands of peoples whose presence predates the state. In states with systems that have not yet evolved in accordance with these international minimum standards, the solution to such land problems must be an ethical, not only a legal, one.

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\textsuperscript{1} Social function: in theory, a social function is “the contribution made by any phenomenon to a larger system of which the phenomenon is a part.” [Thomas Ford Hoult, Dictionary of Modern Sociology (Totowa NJ: Littlefield Adams 1969), p. 139.] In practice, the social function of a thing is its use or application to the benefit of the greater society, in particular, prioritizing those with the greatest need. Thus, the social function of a property, good, resource or service is realized when it is applied to satisfy a general social need or the unmet need of a segment of society. [See Habib Bourgulba, “fonction sociale de la propriété” (1967).] The 1988 Brazilian Constitution explicitly recognizes the right to decent housing, and provides that property, whether urban or rural, “shall fulfill its social function” (Article 5, §XXXII). Unoccupied buildings or unproductive land, thus, became more susceptible to expropriation in the social interest. The Egyptian Constitution also explicitly recognizes the social function of property (Articles 30 and 32). Islamic philosophy, prophetic authority and law recognize ownership, but reserve water, pasture and fire as common entitlement of the people with a social function, \textsuperscript{1} restricting their privatization. [The Prophet Muhammad (PBUH) famously enjoined: “Muslims are to share in these three things: water, pasture, and fire.” 15 Hadith related by Abu-Dawud, Ibn Majah, and al-Khallal. See Islamset, at: http://www.islamset.com/env/contenv.html.]
\textsuperscript{2} FAO 2007
\textsuperscript{4} Commission on Human Rights resolution 2000/64, para. 1.
\textsuperscript{5} Commission on Human Rights resolution 2001/72, preamble.
\textsuperscript{6} Doyle and Gough, A Theory of Human Need (; ).
\textsuperscript{7} Article 5.d.(v) “The right to own property alone as well as in association with others.”
\textsuperscript{8} This typology has now been recognized by treaty monitoring bodies as well as regional human rights enforcement bodies. See General Comments of the Committee on Economic, Social and Cultural Rights and, for example, Inter-American Court of Human Rights, Case Velázquez Rodríguez, Judgment of 29 July 1988, Series C, No. 4, and Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria, African Commission on Human and Peoples’ Rights, Communication No. 155/96, October 2001.
\textsuperscript{9} UN Charter Articles 55 and 56 provide that all members pledge themselves to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction. The duty to protect applies to all human rights: Human Rights Committee, General Comment 31 on Article 2, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. HRI/GEN/1/Rev.6, para 8.
\textsuperscript{10} For further guidance on the legal obligations to immediate implementation of the nondiscrimination principle applied to housing rights, see the report of the Special Rapporteur on Adequate Housing E/CN.4/2002/59.
\textsuperscript{11} ICESCR, Article 2.2; ICCPR, Article 2.1.
\textsuperscript{12} CEDAW, General recommendation No. 25: temporary special measures, para. 17.
\textsuperscript{14} Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of ICESCR.
\textsuperscript{15} General comment No. 3 (1990).
\textsuperscript{16} UNHDR, ICCPR and ICESCR.
\textsuperscript{17} HRC GC 6, the right to water, para. 15.
\textsuperscript{18} See general comment No. 14 (2000) on the right to the highest attainable standard of health, paragraphs 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51.
\textsuperscript{19} CEDAW General Comment No. 4 (1991), para. 8(b). See also the report by Commission on Human Rights’ Special Rapporteur Miloon Kothari on adequate housing as a component of the right to an adequate standard of living, E/CN.4/2002/59; and Special Rapporteur Jean Ziegler on the right to food, E/CN.4/2002/58.
\textsuperscript{20} HRC GC 6, the right to water, para. 2.
\textsuperscript{21} Ibid., para. 3.
\textsuperscript{23} The High Court of Botswana found that the refusal to issue hunting permits to pastoral people living in a game reserve, while terminating basic services (including food rations) there, was unlawful and, according to one
judge, was “tantamount to condemning the remaining residents of the [reserve] to death by starvation” (para. 137); and found that such measures violated the pastoralists’ constitutional right to life. In a separate opinion by J. Phumaphi, *Sesana, Sethobogwa and Others v Attorney General*, para. 137. See also Lorenzo Cotula, ed., *The Right to Food and Access to Natural Resources Using Human Rights Arguments and Mechanisms to Improve Resource Access for the Rural Poor* (Rome: FAO, 2008), p. 26.


CESCR GC No. 4, para. 8(b).

CESCR General comment No. 14: The right to the highest attainable standard of health, paras. 4 and 11.

Ibid., Article 12.2 (b).

The Committee takes note, in this regard, of Principle 1 of the Stockholm Declaration of 1972 which states: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”, as well as of recent developments in international law, including General Assembly resolution 45/94 on the need to ensure a healthy environment for the well-being of individuals; Principle 1 of the Rio Declaration; and regional human rights instruments such as article 10 of the Salvador Protocol to the American Convention on Human Rights.

CESCR GC No. 12, para. 36. See also ILO Occupational Safety and Health Convention, 1981 (No. 155) and Occupational Health Services Convention, 1985 (No. 161) and, more generally, The Rio Declaration on Environment and Development (1992), Principles 6, 7, 8, 11.


Article 36.


ICPR, Article 25.

ICPR, Article 19.


Ibid., Article 29.

Ibid., Article 32.3

UDHR, Article 17.1, 17.2.

ICERD, 5.d(v).

Article 4.

ILO No. 169, Article 13.

Article 14.

Articles 17 and 18.

GC 4, para. 8(a).

International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962), Article 4(d).

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (see note 6 above), Rule 4.


With particular reference to the over-riding principle of nondiscrimination, ICERD provides: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of…(e) Economic, social and cultural rights, in particular: (iii) The right to housing…

GC 4, para. 1 and GC 7, para. 18.

Commission on Human Rights resolution 1993/77.

GC 7, para. 15.

GC 4, para. 8(b).


GC 4, para. 8(e).

Ibid., para. 8(g).


For instance, Article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to […] water supply.” The Convention on the Rights of the Child (Article 24, paragraph 2) requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water.”

See World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

According to the CESC’s General Comment 15, “drinking” means water for consumption through beverages and foodstuffs. “Personal sanitation” means disposal of human excreta. Water is necessary for personal
sanitation where water-based means are adopted. “Food preparation” includes food hygiene and preparation of foodstuffs, whether water is incorporated into, or comes into contact with, food. “Personal and household hygiene” means personal cleanliness and hygiene of the household environment. GC 15, para. 12.


64 WHO, Guidelines for drinking water quality, 2nd edition, vols. 1–3 (Geneva: WHO, 1993) provides water-quality criteria “intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a minimum concentration, of constituents of water that are known to be hazardous to health.”

65 See also General Comments No. 4 (1991), paragraph 8 (b), No. 13 (1999), paragraph 6 (a) and No. 14 (2000), paragraphs 8 (a) and (b). Household includes a permanent or semipermanent dwelling, or a temporary halting site.

66 GC 15, para. 48.

67 Ibid., para. 22.

68 Ibid., para. 23.

69 Ibid., para. 28.

70 The Committee notes that the United Nations Convention on the Law of Non-Navigational Uses of Watercourses requires that social and human needs be taken into account in determining the equitable utilization of watercourses, that States parties take measures to prevent significant harm being caused, and, in the event of conflict, special regard must be given to the requirements of vital human needs: see articles 5, 7 and 10 of the Convention.

71 As provided in ICESCR, Article 11, para. 2.


73 International Covenant on Civil and Political Rights, Article 19.2.

74 Common article 3 of the Geneva Conventions for the protection of war victims (1949); Additional Protocol I (1977) relating to the Protection of Victims of International Armed Conflicts, article 75 (2) (a); Additional Protocol II (1977) relating to the Protection of Victims of Non-International Armed Conflicts, article 4 (a). Under ICESCR, Article 12, para. 2 (b).

75 See also General Comment No. 14.

76 Recent emerging international norms relevant to indigenous peoples include the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989); articles 29 (c) and (d) and 30 of the Convention on the Rights of the Child (1989); article 8 (j) of the Convention on Biological Diversity (1992), recommending that States respect, preserve and maintain knowledge, innovation and practices of indigenous communities; Agenda 21 of the United Nations Conference on Environment and Development (1992), in particular chapter 26; and Part I, paragraph 20, of the Vienna Declaration and Programme of Action (1993), stating that States should take concerted positive steps to ensure respect for all human rights of indigenous people, on the basis of non-discrimination. See also the preamble and article 3 of the United Nations Framework Convention on Climate Change (1992); and article 10 (2) (e) of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994). During recent years an increasing number of States have changed their constitutions and introduced legislation recognizing specific rights of indigenous peoples...

77 Charter of the United Nations, 26 June 1945, Article 1(2): “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace...” The Charter’s Article 55 stipulates further:

With a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

78 For example, see Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), preambles and Article 7; “Permanent sovereignty over natural resources,” General Assembly resolution 1803 (XVII) (1962), preambles and paras. 1–2, 5–7; International Convention on the Elimination of All Forms of Racial and Religious Discrimination (1965), Articles 1 and 5; Declaration on Social Progress and Development (1969), Articles 2, 3 and Part II; Declaration on Principles of International Law (1970), preamble and, esp., “The principle of equal rights and self-determination of peoples”; ECOSOC Declaration on Race and Racial Prejudice (1978), Articles 1, 3, 5 and 9; Declaration on the Right to Development (1986) preamble and Article 1, 6 and 8.

79 International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 3 January 1976 in accordance with Article 27); Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI), 16 December 1966 (entered into force 23 March 1966 1976 in accordance with Article 49).
Consistent with the principle of the Universal Declaration of Human Rights, Article 21, which states that “the will of the people shall be the basis of the authority of government.”

UN Committee on the Elimination of Racial Discrimination has provided its General Recommendation XXI on the right to self-determination, which provides a classical interpretation of this over-riding principle for application of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in document A/51/18, at the Committee’s forty-eighth session (1996).

While a standard legal definition of nation and people remains a subject of debate, the International Court of Justice has offered criteria for a community, having distinct rights as “a group of persons living in a given country or locality, having a race, religion, language and tradition of their own and united by the identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.” Permanent Court of International Justice, The Greco-Bulgarian “Communities,” Advisory Opinion No. 17, 13 July 1939 (Leyden: Sijthoff, 1930), p. 21.


Legally defined as “a group of persons living in a given country or locality having a race, religion, language and tradition of their own and united in the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.” Permanent Court of International Justice, The Greco-Bulgarian “Communities,” Advisory Opinion No. 17, 31 July 1930 (Leyden: Sijthoff, 1930), p. 21.

Charter of the United Nations, Preamble: “We the peoples of the United Nations…reaffirm faith in fundamental principles, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. Article 1.2: The Purposes of the United Nations are: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace…”; Article 55: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples…”


UN Charter, op. cit., Preamble and Article 2.1.

Declaration on the Right to Development, op. cit. Preamble.


Ibid., Article 2, para. 2.

Ibid., Article 2.

Ibid., Article 6, para. 2.


Universal Declaration of Human Rights (UDHR) (1948), Article 19.

15.1a, 15.1b.

Article 19.2.

African Charter on Human and Peoples’ Rights (1981), Article 9: 1: “Every individual shall have the right to receive information”; Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995): “General Principles and Goals…5. The youth are the main element of society’s development and production, must be provided with wide-ranging opportunities to exercise their right to education and training, and to secure work and adequate housing in order to start and maintain families. They must be enabled for effective and collective participation in all activities of sustainable development…”


Desertification Convention (1994), Article 10.2e: “National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, inter alia, promote policies and strengthen institutional frameworks which develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology…”; Habitat Agenda, adopted by the second United Nations Conference on Human Settlements
International agencies and nongovernmental organizations to provide appropriate assistance and advice to concerned persons, especially women, to enable them to return to work within their own communities. (v) Improve accessibility and training opportunities for rural women, men, and youth. (vi) Encourage local authorities and rural communities to participate in the formulation and implementation of rural development programmes. (vii) Recruit male and female extension and research workers and rural educators from rural areas and their ability to respond to the needs of the rural poor. (ii) Expand education and training in agriculture, forestry, and fisheries, especially at the middle level, with emphasis on problem-solving and adaptation to local conditions, drawing upon practical experience. (iii) Improve communication and coordination between development planners, rural educators, extension workers, and the members of broad-based people's organizations with respect to the objectives, design and implementation of rural development programmes. (iv) Recruit male and female extension and research workers and rural educators from rural communities and encourage them to return to work within their own communities. (v) Improve communication and interchange between research institutions, extension agencies and farmers, and devise ways for participation by representatives of peasant groups in setting research, extension and training priorities and in formulating grassroots education and training programmes that are more responsive to their needs. (vi) Make effective use of regional and national centres to serve as focal points for the dissemination of appropriate basic rural technological skills and crafts.

(Habitat II) (1996): “Article 45.k: Promoting equal access to reliable information, at the national, subnational and local levels, utilizing, where appropriate, modern communications technology and networks”; World Summit on Sustainable Development Plan of Implementation (2002), Article 11(e): “Support local authorities in elaborating slum upgrading programmes within the framework of urban development plans and facilitate access, particularly for the poor, to information on housing legislation.”

Committee on Human Rights, “Women’s equal ownership of, access to and control over housing,” resolution 2000/13, para. 7: “Also encourages Governments, specialized agencies and other organizations of the United Nations system, international agencies and nongovernmental organizations to provide … concerned persons, as appropriate, with information and human rights education concerning women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing…”. Declaration on Cities and Other Human Settlements in the New Millennium (Habitat II +5 United Nations General Assembly resolution S–25/2 [2001]): “38. Also resolve to empower the poor and vulnerable, inter alia through…enabling better access to information and good practices, including awareness of legal rights.”

Article 13: “(1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. (2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right…”.

Committee on Economic, Social and Cultural Rights General comment No. 13, the right to education (art. 13) (1999).

Declaration on the Right to Development (GAR 41/128 [1986]), Article 8: 1: “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education,… housing…”; Article 9: 1: “All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.”

ICESCR, Article 13.1: “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”

ICERD, Article 5 (e) (v).

International Labour Organisation Convention No. 117 on Social Policy (Basic Aims and Standards) (1962) 4(d).

Declaration of Principles and Programme of Action (Peasants Charter), adopted by World Conference on Agrarian Reform and Rural Development, Rome (July 1979): VII. Education, training and extension: “Education, including preschool and primary education, and training and extension services are fundamental needs for human development in rural areas and also for expansion and modernization of rural economies. Basic literacy and numeracy and free education for all children, including those in rural areas, deserve the highest priority. No less essential is the creation and expansion of training and extension networks for both men and women to develop and improve skills and to increase productivity and income-generating capabilities. There is also need for establishment of effective linkages between extension and problem-solving research. In view of the great urgency of these needs and the magnitude of the task in relation to the resources of developing countries, low-cost techniques of education and training for short periods merit close consideration. In formulating policies and programmes, governments should consider action to: B. Broadening understanding of development personnel…(i) Institute and strengthen continuing education programmes for men and women on equal terms, including retraining and reorientation for public officials, policy makers and administrators, technicians and educators, especially to improve their understanding of the conditions and problems of rural areas and their ability to respond to the needs of the rural poor. (ii) Expand education and extension training in agriculture, forestry and fisheries, especially at the middle level, with emphasis on problem-solving and adaptation to local conditions, drawing upon practical experience. (iii) Increase interaction and communication between development planners, rural educators, extension workers, and the members of broad-based people's organizations with respect to the objectives, design and implementation of rural development programmes. (iv) Recruit male and female extension and research workers and rural educators from rural communities and encourage them to return to work within their own communities. (v) Improve communication and interchange between research institutions, extension agencies and farmers, and devise ways for participation by representatives of peasant groups in setting research, extension and training priorities and in formulating grassroots education and training programmes that are more responsive to their needs. (vi) Make effective use of regional and national centres to serve as focal points for the dissemination of appropriate basic rural technological skills and crafts.

Habitat II +5 United Nations General Assembly resolution S–25/2 (2001), Article 45: “We further commit ourselves to the objectives of: (i) Promoting gender-sensitive institutional and legal frameworks and capacity-building at the national and local levels conducive to civic engagement and broad-based participation in human settlements development; (h) Institutionalizing a participatory approach to sustainable human settlements development and management, based on a continuing dialogue among all actors involved in urban development (the public sector, the private sector and communities), especially women, persons with
disabilities and indigenous people, including the interests of children and youth; (m) Facilitating participation by tenants in the management of public and community-based housing and by women and those belonging to vulnerable and disadvantaged groups in the planning and implementation of urban and rural development."

112 In the World Summit on Sustainable Development Plan of Implementation (2002), article 8, states promise to: “Take joint actions and improve efforts to work together at all levels to improve access to reliable and affordable energy services for sustainable development sufficient to facilitate the achievement of the millennium development goals, including the goal of halving the proportion of people in poverty by 2015, and as a means to generate other important services that mitigate poverty, bearing in mind that access to energy facilitates the eradication of poverty. This would include actions at all levels to: (a) by intensifying regional and international cooperation in support of national efforts, including through capacity-building, financial and technological assistance and innovative financing mechanisms, including at the micro and meso levels, recognizing the specific factors for providing access to the poor; (f)…by facilitating the creation of enabling environments and addressing capacity-building needs, with special attention to rural and isolated areas, as appropriate;...39. (a) Mobilize adequate and predictable financial resources, transfer of technologies and capacity-building at all levels...


115 Shue 1996.

116 ICESCR, Article 6; International Labour Organisation Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize (1948). ICPR, Articles 21 and 22, paras. 1–3; ILO Convention No. 135 Workers’ Representatives Convention (1971); Right to Organise and Collective Bargaining Convention (1949), Article 1.1, 1.2 (a) and (b); also ICERD, Article 5 (d) (ix), Article 5 (e) (ii).

117 ICPR, Article 19.


119 Desertification Convention (1994), Article 10.2e, 10.2f: “National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, inter alia...promote policies and strengthen institutional frameworks which develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology...provide for effective participation at the local, national and regional levels of nongovernmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes.”

120 Vancouver Declaration on Human Settlements (1976), II. General Principles...13; III. Guidelines for Action...10.

121 Declaration on the Right to Development UN General Assembly resolution 41/128 (1986), Articles 1.1 and 8.2.

122 Agenda 21, adopted at the United Nations World Conference on Environment and Development (UNCED) (1992), para. 7.20;

123 Paras. 34, 102 and 108.


125 Such as the Arab Declaration on Sustainable Development for Human Settlements (Rabat Declaration) (1995), General Principles and Goals...3, 5 and 10; Commitments...9.

126 Declaration of Principles and Programme of Action (Peasants Charter), adopted by World Conference on Agrarian Reform and Rural Development, Rome (July 1979), III. People’s participation, A. Popular organization (i), (ii), (iii), (iv), (v) and (vi); B. Strengthening of local government, (i), (ii), (iii); C. Participation in agrarian reform, (i), (ii) and (iii).


128 Convention relating to the Status of Refugees (1951), “(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it...” and Article 33: Prohibition of expulsion or return (“refoulement”); also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Article 3.1: “No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

129 UDHR, Article 12; ICCPR, Article 17.1; ICERD, Article (9b) 80:


These include, among others, the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, the 1993 Convention on the prohibition of the production, stockpiling and use of chemical weapons and on their destruction, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, as well as their various Protocols.

Military objectives are defined as those objects that, by their nature, location, purpose or use, effectively contribute to military action, and whose total or partial destruction, capture or neutralization, in the current circumstances provides a definite military advantage.

Everything that is not a military objective is considered a civilian property. In case of doubt, presumptions of civilian status and civilian object exist in IHL.

The general IHL principle of precaution also requires each party to the conflict to give effective advance warning of attacks that may affect the civilian population, providing enough time and opportunity to evacuate safely, unless circumstances do not permit.

Similarly prohibited are indiscriminate attacks including those actions that employ a method or means of combat that cannot be directed at a specific military objective, or employ a method or means of combat with effects that cannot be limited as required by IHL.

The Interpretive Guidance on the notion of direct participation in hostilities under IHL, by Nils Melzer, was published in 2009 by the International Committee of the Red Cross (ICRC), and aims to clarify the meaning and consequences of direct participation in hostilities under international humanitarian law (IHL).

Disproportionate attacks would be those that cause incidental civilian injury or loss of life, damage to civilian objects, or any combination thereof.


Grave breaches are defined in First Geneva Convention, Article 50, Second Geneva Convention, Article 51, Third Geneva Convention, Article 130, Fourth Geneva Convention, Article 147, and Additional Protocol I, Articles 11 and 85.

Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Article 146. In addition, State Parties also have to take appropriate measures for the suppression of all acts violating the provisions of the Fourth Convention other than the grave breaches defined in article 147.


See International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004, ICJ Reports (9 July 2004), at § 106-113; and International Court of Justice, Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda), ICJ Reports (19 December 2005), § 216.

European Court of Human Rights, Cyprus v. Turkey, Judgment (10 May 2001); European Court of Human Rights, Isayeva, Yusupova and Bazayeva v. Russia, Judgment (19 December 2002).


UN Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on Stares Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 11. Also Concluding
observations of the Human Rights Committee: "The State party should in particular (a) acknowledge the applicability of the Covenant with respect to individuals under its jurisdiction but outside its territory, as well as its applicability in time of war" – United States, UN Doc. CCPR/C/USA/CO/3 (2006), at § 10. "The State party shall take all necessary steps to strengthen its capacity to protect civilians in the zones of armed conflict, especially women and children"- Democratic Republic of Congo, UN Doc. CCPR/C/COD/CO/3 (2006), at § 13. See also Israel, UN Doc. CCPR/CO/78/ISR (2003), Sri Lanka, UN Doc. CCPR/CO/79/LKA (2003), Colombia, UN Doc. CCPR/CO/80/COL (2004).

For more details, see


The ICCG does allow for the possibility to derogate from obligations to respect, protect and fulfill certain rights, in particular circumstances that threaten the nation’s existence, such as armed conflict, provided that the measures are strictly necessary and are rescinded as soon as the relevant circumstances cease to exist. ICESCR to too allows for limits to be placed on the guarantees of the Covenant in times of armed conflict.

GC 14: right to water, para. 22. The Committee For the interrelationship of human rights law and humanitarian law, the Committee notes the conclusions of the International Court of Justice in Legality of the Threat or Use of Nuclear Weapons (Request by the General Assembly), ICJ Reports (1996) p. 226, paragraph 25.


General Assembly resolutions 103(I), 19 November 1946, 377A (IV) section E, 3 November 1950, 616 B (VII), 5 December 1952; and 721(VIII), 8 December 1953 affirmed that “it is in the higher interests of humanity to put an end to put an immediate end to religious and so-called racial persecution and discrimination” and that “it is highly unlikely, and indeed improbable, that the policy of apartheid will ever be willingly accepted by the masses subjected to discrimination.” In particular, the resolutions recognized that “The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa,” Resolution 721(VIII), 46th plenary meeting, 8 December 1952, affirmed also, in para. 1, that “enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon a respect for observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries”; and that “in a multi-racial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring the equality before the law of all persons regardless of race, creed or colour, and when economic, social and political participation of all racial groups is on a basis of equality.”


United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 2 October 2007. The Declaration provides that: “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. (Article 10)

Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. (Article 21.1)

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. (Article 23)

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. (Article 26(1)) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. (Article 26(2)) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned” (Article 26(3).)

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process….“ (Article 27).