

VOLUNTARY GUIDELINES FOR GOOD GOVERNANCE IN LAND AND NATURAL RESOURCE TENURE

CIVIL SOCIETY PERSPECTIVES



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FIAN International and
Hakijamii (Economic and Social Rights Centre)

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The views expressed in this publication are those of the author and do not necessarily reflect the views of FAO and GLTN.

List of abbreviations

CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
COHRE	Centre on Housing Rights and Evictions
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
GLTN	Global Land Tool Network
IADB	Inter-American Development Bank
ICARRD	International Conference on Agrarian Reform and Rural Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
IFI	International Financial Institutions
ILO	International Labour Organization
MPA	Management of Marine Protected Areas
NGO	Non Governmental Organization
OECD	Organisation for Economic Co-operation and Development
UDHR	Universal Declaration of Human Rights
UN	United Nations

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Summary

The lack of adequate and secure access to land and natural resources by the rural and urban poor is one of the key causes of hunger and poverty in the world. Land tenure conflicts and related violations of human rights are the result of a range of structural and contextual factors. These include unequal power structures, overly market-oriented economic development models, elitist decision making processes, weak, corrupt and inefficient land administration institutions, discrimination in accessing justice, abuses of power by non-state actors; and persecution of organized social movements struggling for access to land and natural resources. Policy responses to address the current food crisis and climate change have also neglected to properly deal with the above mentioned pressing land and natural resources tenure issues and are often not human rights-based.

The FAO initiative to adopt guidelines for land and natural resources tenure is therefore timely as it would fill a serious policy gap. Different constituencies like women, indigenous and tribal peoples, fisherfolks, peasants and landless, forest communities, pastoralists, urban poor and other communities have been organizing themselves in order to articulate their views and demands regarding land and natural resources tenure. Their voices should be fully taken into account throughout a future process of adopting guidelines on governance of land tenure and natural resources.

Using a human rights framework for improving the governance of land and natural resources tenure is needed, and should be incorporated in the process of adopting any guidelines. Land and natural resources are vital for the realisation of the full range of human rights of women, indigenous peoples and marginalized groups. A human rights framework means addressing the unequal relationships of power and corruption within and behind prevailing land tenure structures. In that sense, a human rights framework can provide a unique contribution by making land tenure governance truly accountable, transparent, democratic and participatory.

If this can be achieved, guidelines on governance of land tenure and natural resources could become an instrument for social movements, marginalized groups and civil society at large democratizing land and natural resources tenure for the well-being of the whole society.

1. Introduction

The lack of adequate and secure access to land and natural resources by the rural and urban poor is one of the key causes of hunger and poverty in the world. According to the Hunger Task Force of the Millennium Project, about half of the people suffering from hunger in the world live in smallholder farming households, while roughly two-tenths are landless. A smaller group, perhaps one-tenth, are pastoralists, fisherfolk, and forest users. The remainder, around two-tenths, live in urban areas (UN Millennium Project, 2005).

The highly unequal distribution of land ownership in many countries remains an issue of concern, from Latin America to sub-Saharan Africa to South East Asia. In rural areas, the trend towards the reconcentration of land ownership and the reversal of redistributive agrarian reform processes can be observed in countries with traditionally more egalitarian patterns of access to land, such as China, some states in India and in West Africa (Akram Lodhi et al. 2007, Baranyi et al. 2004, Leite 2006, Moyo and Yeros, 2005, Guidi and Chuntao, 2006). The former Special Rapporteur on the Right to Housing, Miloon Kothari, estimated that that an average of 71.6 per cent of rural households in Africa, Latin America and Western and Eastern Asia (excluding China) are landless or near landless (Commission on Human Rights, 2005). In urban areas in the South, a similarly unequal distribution of land is emerging with almost no pressure for any form of land reform – in one African city, 65 percent of the population live on 5 percent of the land in the city.

Land issues are also at the center of the climate crisis. Land use and land use changes are responsible for greenhouse gas emissions and play a key role in policy responses to climate change (IPCC, 2000). Desertification, defined as land degradation in arid, semi-arid and dry sub-humid areas, results from various factors, including climatic variations and human activities, which directly affects an estimated 250 million people worldwide. Sea levels are also rising, affecting the lives of coastal communities. Thus, climate change is likely to lead to an increase in the frequency and severity of sudden disasters and physical water scarcity, triggering an increase in short-term, internal and regional displacement, particularly in Asia and Africa. It is estimated that 1 billion people could be forced to migrate because of climate change by 2050 (Christian Aid, 2007), which will most likely lead to more conflicts over land and water.

The precise extent of land grabbing, violent dispossession and displacement from armed conflicts, extractive and agribusiness industries, tourism, industrial and infrastructure projects, accelerated urbanisation and last, but not least, the promotion of agrofuels remains unknown. Indigenous peoples, fisherfolks and other traditional rural communities are further threatened by deforestation, monoculture plantations, wildlife and environmental conservation projects, water pollution and depletion of the oceans. More recently countries which depend on food imports are seeking to outsource their domestic food production by gaining control of farm land in other countries as a long-term measure to ensure their food security. At the same time, private investors have discovered foreign farmland as a new source of profit (GRAIN, 2008). Widespread forced evictions of rural and urban communities have been documented by human rights organizations (Amnesty International, 2008; COHRE, 2006; International Alliance of Inhabitants, 2007; Habitat International Coalition, 2006 and 2007; FIAN and La Vía Campesina, 2004, 2005 and 2006). Thus, ensuring land and natural resources tenure security remains an urgent issue to be tackled in order to immediately

secure the livelihoods of the rural and urban populations, particularly in light of the current food crisis. Unfortunately, the policy responses to address the food crisis, particularly the Common Framework for Action presented by the United Nations (UN) High-Level Task Force on the Global Food Crisis, have so far neglected to properly deal with these issues or adopt a human rights based response (see Human Rights Council, 2008; FIAN, 2008b).

In this sense, the FAO (Food and Agriculture Organization of the United Nations) initiative to adopt guidelines for land and natural resources tenure is timely as it would fill a serious policy gap in the current context. As a multilateral exchange forum and specialized UN agency working on normative issues related to food and agriculture, FAO is well-placed to take such a leading position. The International Conference on Agrarian Reform and Rural Development (ICARRD), organized by the FAO in close collaboration with the Brazilian government in March 2006, has raised great expectations among civil society organizations about the renewed commitment of FAO and its member states to land reforms aimed at combating poverty and hunger. In addition, the Global Land Tool Network (2008), hosted by UN-Habitat, has committed itself to the development of such guidelines as part of its broader work in developing and promoting pro-poor and gendered tools.¹

Using a human rights framework for improving the governance of land and natural resources tenure is needed in the process of adopting such guidelines. Land and natural resources are vital for the realization of the full range of human rights of women, indigenous peoples and the marginalized groups such as peasants, landless rural workers, residents and workers in the informal economy, fisherfolks, pastoralists and ethnic groups. Moreover, a human rights framework means addressing the unequal relationships of power which are behind unjust and unsustainable land tenure structures. It means tackling corrupt and biased land tenure related institutions against the poor. In that sense, a human rights framework can provide a unique contribution to make land tenure governance truly accountable, transparent, democratic and participatory. The challenge for any future guidelines on governance of land tenure and natural resources is therefore whether they can contribute to the work of not only states but also social movements, marginalized groups and civil society at large in democratizing land and natural resources tenure for the well-being of the whole society by ensuring protection and fulfillment of human rights (Borras and Franco, 2008).

¹ See www.glt.net

2. Tenure problems faced by marginalized groups

Land tenure conflicts and related violations of human rights have been a result of a vast range of structural and contextual factors but often tied to unequal balances in power relationships. These include:

- land concentration;
- land grabbing;
- lack of security of tenure;
- authoritarian imposition of “development”-based projects by public and private sectors;
- occupation of vacant lands;
- exploitation of natural and mineral resources;
- clash of laws and policies regulating land use and occupation;
- forced evictions and displacements;
- war and territorial occupation by foreign countries;
- discriminatory legislation regulating inheritance, marital property and divorce;
- discriminatory land legislation and policies that exclude access and tenure by minorities and indigenous peoples;
- lack of legal recognition for collective and community-based property rights;
- impunity for violations of land rights; and
- criminalization of organized social movements struggling for access to land and natural resources.

This section aims at providing an overview about the main problems in land and natural resources tenure with a particular focus on the legal framework, land administration institutions, recourse mechanisms and courts, persecution of land rights defenders and the role of non-state actors. These challenges are viewed principally from the perspective of women, indigenous peoples, people living in poverty and a range of marginalised groups, particularly landless peasants, fisherfolks, pastoralists and the urban poor.

2.1 Problems related to the legal framework and conflicts with other legal regimes

The legal framework in many countries can often be very hostile to the rights of marginalized peoples. In some cases, there is rights-empowering legislation but other more harmful laws can still persist. Some of the key issues in the legal framework include:

- *Insecurity of tenure and conflict is fueled by a series of often contradictory traditional and modern norms, laws and practices.*

In many countries, traditional land rights practices have been weakened by modern States and compounded by corruption and land concentration amongst elites. So called ‘modern’ norms are applied only partially, and are biased toward certain actors at the expense of others (ROPPA, 2006). Plant (1993:17) notes that, “the provisions of civil law, which usually provides for firm recognition of private land ownership, can be in conflict with those of constitutional, agrarian [or urban] laws that recognise the ‘social function’ of property and place limitations on the exercise of private land ownership.”

- ***Those irregularly occupying land or housing have no security of tenure.***

Real or alleged individual private owners can often successfully argue that their rights take precedence over those asserting mere possession (Strotzake, 2000). Usually these clashes involve the civil and political rights of those who own a legally recognized and registered title over a land parcel and the economic, social and cultural rights of those who are dependent on land for their subsistence or for their cultural reproduction (Plant, 1993). This conflict is caused by the distinct notions established by civil law in particular regarding ownership and possession where the first, by being considered a “real right” is accorded more judicial protection than the latter. In common law countries some room is given for adverse possession, but it is usually of minimal effect and difficult to invoke. In customary tenure arrangements, there may be no distinction between ownership and possession as such. This insecurity is rarely redressed in statutory land rights. At the national level, especially in African countries, there are considerable pressures to “replace customary land tenure regimes by private and registered forms of ownership in the interests of greater agricultural efficiency” (Plant, 1993:27). This trend was particularly enhanced in the last two decades with individual titling projects promoted by the World Bank and the Institute for Law and Democracy.

- ***It is widely held that access to land and adequate housing should be regulated exclusively by real estate market forces or intended for acquisition as individual property.***

This approach is based on a vision which considers the absence of formal property rights to the assets owned by the poor as a key problem (De Soto, 2000). However, formalisation does not always lead to protecting the rights of the poor. Empirically has shown to be counter-productive in many situations, as it incentivises land-grabbing and gentrification and does not necessarily resolve competing conflicts over land.² A range of different types of tenure models are often needed to protect the rights of the poor. At the international level, human rights standard-setting on positive obligations to improve land rights is predominantly related to indigenous peoples and equal rights of women (although it remains still very weak) and it is necessary to enhance this approach in relation to others.

- ***Absence of laws providing protection against forced evictions and ensuring adequate compensation and resettlement.***

For example, in Kenya, Mitullah and Kibwana (1998) are able to track the existence of seventeen different laws permitting forced eviction. Many countries still require laws outlawing forced and unlawful evictions in accordance with international human rights law, is still needed in many countries. Most evictions, including those based on national legal enforcement orders, ignore the international and constitutional legislation which guarantees the right to housing and other human rights (UN HABITAT Advisory Group on Forced Evictions, 2007, UN Basic Principles and Guidelines on Development-based Evictions and Displacement, 2007).

² See Literature cited in Langford (2007).

- ***Domestic legislation affecting land and natural resources tenure is not coherent in strengthening the access to and control over land and natural resources by the rural and urban poor.***

The existence of contradicting laws affecting land tenure (land use, land administration, forest, environment, water management, fisheries, mining, agricultural investment, industrial and trade policies, urban planning regulations, and civil codes in the case of countries with a Roman legal system) further threaten tenure security for the poor, indigenous peoples and other vulnerable groups (Franco, 2005b).

- ***Expropriation of land, while crucial for many development projects, has resulted in massive displacements of poor populations and vulnerable groups.***

Although it has been increasingly clear that growth alone will not alleviate poverty and reduce inequalities, economic development laws and policies which have merely focused on growth and productivity like industrial agricultural policies for export, promotion of agrofuels, liberalization of agricultural trade, heavy investments in extractive industries, tourism, big infrastructure projects like dams, airports, highways, etc., accelerated urbanization, and Special Economic Zones and industrial development projects have unleashed an enormous pressure on the natural resources of the poor. Land and natural resources expropriation of peasants, indigenous lands and fisherfolks' access to the sea and rivers regularly happens in the name of so called "national" and "development" interests.

According to Azuela, 2007:4). this is "aggravated by the fact that legal systems usually do not recognize the difference between taking land away from people who live on (and from) it, than expropriating land from individuals or organizations for whom land is only an 'asset'" Today, many laws provide wide discretionary power to the State to expropriate land on the grounds of public interest. Expropriation laws are not consistent with economic, social and cultural human rights and envision a predominant system of formal property rights. There is also lack of adequate regulation over compensation due to expropriation, and most of the affected people by such projects have tenure rights over the lands that are not legally recognized for the purpose of compensation and usually are not consulted about the expropriation. At the other extreme, expropriation might result in the transference of exorbitant sums of money from the government to private landowners through judicial decisions.

- ***Land tenure and land redistribution laws, including land reform measures like expropriation of unproductive land in favor of the rural poor, are not adequately implemented.***

For example, the agrarian reforms initiated in the 1960s in most Latin American countries – with the assistance of the U.S. government (Alliance for Progress Programme) – obtained minimal results on the benefit of the landless poor due to the power of great landowners and the massive financial support given to agricultural export projects. In Ecuador, the Government only distributed non-productive land, which facilitated the concentration of quality land in the hands of the large landowners. In Brazil, the Land Statute set a minimum limit for the land to be distributed to each landless family for the purposes of agrarian reform, but

did not place a limit on the maximum size that each individual owner could possess (UN Habitat, 2005). Elsewhere, in West Bengal state in India for example, 1 million acres of land acquired for distribution over the last few decades but only 250,000 was actually distributed (Liberation, 2002). In many cases there has been abolition of redistributive land reform laws and other provisions guaranteeing an equitable land distribution like clauses on the social function of land, etc.

- ***Women continue to face overt and implicit discrimination impeding realization of their land rights, including access, registration and inheritance.***

Agrarian and urban land reform programs and laws have lacked a gender approach (Agarwal 1994, 2003; Deere and León, 2000; Razavi 2003) with many titling programs favoring men as the ‘family head’, a practice that was enforced and supported by much land reform legislation passed in the 19th and 20th centuries (UN Habitat, 2005). While there have been some improvements in inheritance laws, many only grant a widow a right to use the family home. Even matrilineal systems that have better protected women (such as those in some southern African countries) are under threat from land market pressure and individual registration. According to cultural dictates in some parts of Latin America, daughters are expected to relinquish land to sons,³ and there are numerous instances of widows in Africa and the Middle East being violently removed from their land and homes by relatives of the husband. Religious law of more progressive origins, such as the Sharia, whereby the Koran grants women shares of property that are half those received by male relatives, has been more conservatively interpreted over time. Inheritance laws in most countries also provide for complete testamentary freedom, which leaves the surviving spouse defenceless in a marriage with a separation of property regime. There are also wider structural factors that have limited inheritance where women usually move to their husband’s lands, and therefore are no longer entitled to their own family’s inheritance (Deere and León, 2000). Likewise, women need equal protection in the event of divorce. Lack of security of tenure can also increase domestic violence against women and leaves them with fewer alternatives.

- ***Lack of legal recognition of collective and community-based property rights of indigenous and other local communities***

One of the main challenges for indigenous peoples is to guarantee their rights over the lands and territories they occupy (Commission on Human Rights, 2000; Carino, 2006; Vicente, 2006). Many States failure to acknowledge indigenous rights to lands, territories and resources and, on the contrary, implement discriminatory laws and policies as, for example, laws regarding the extinguishment of indigenous peoples’ land and resource rights, discriminatory laws in regard to treaties made with indigenous peoples which allow the State to abrogate or violate the treaties, among others. As an example, studies on the access to natural resources by indigenous communities in Nepal argue that at least forty common and special laws are discriminatory against indigenous communities (Upreti and Adhikari, 2006).⁴ In the case of Guatemala, the national

³ Ibid.

⁴ However, it is important to mention that in considering access to land by indigenous communities, the Inter-American American Court and the Inter-American Commission of Human Rights have protected

legal system does not recognize communal rights over lands traditionally occupied by indigenous communities, which violates their right to property. Although it does recognize co-property, it is governed by modern civil law, while communal property is regulated by indigenous customary law, with its own forms to transmit and transfer property and land rights among the indigenous community members. Non-recognition of the profound relationship between indigenous peoples and their lands, territories and resources exists which comprises various social, cultural, spiritual, economic and political dimensions and responsibilities; which is moreover a collective and intergenerational relationship.

- ***Urban development model and planning policies largely facilitate the retention of land for real estate speculation and the appropriation by private property owners of the benefits of public investment in public infrastructure.***

As a result, more and more people, especially low-income groups, are being excluded from serviced land and being forcibly evicted from their homes and made to relocate to peripheral areas characterized by insecurity, informality and precariousness. The absence of provision of public/low cost housing as well as demolitions of informal settlements and slums without adequate resettlement also contribute to the rise of homelessness, yet land is often available in many cities. Discriminatory, undemocratic and non-participatory city and master plans further promote segregation, ghettoisation, and a growing “urban apartheid” which results in cities with gated colonies for the rich and the poor being further pushed towards the margins. The trend of urban development plans is to favor real estate speculation and alter land use to promote profit-making enterprises, often at the cost of the livelihoods and housing rights of the poor. Financial crises lead to increased foreclosure orders, placing real estate assets and homes in the hands of speculators – resulting in accumulation through dispossession (Harvey, 2003). To this could be added the growth of land mafias, the absence of urban laws assigning areas in the city for the poor and vulnerable groups and the lack of mandatory provisions for low cost housing in laws and policies, which results in the expulsion of the urban poor from city centres to peripheral areas.

- ***Fisherfolk communities, particularly small-scale, struggle in many places to access fishing areas and other natural resources related to fishing⁵***

Expansion of tourism projects, industrial shrimp aquacultures, privatization of access to beaches, port infrastructure and expansion for international trade has increasingly lead to depriving traditional fishing communities of their lands and access to the sea and maritime resources. Increasing privatization of the access rights to fishergrounds and maritime resources due to the system of individual transferable fishing quotas is denying fishing communities their collective rights of access and use of maritime territories and coastal lands. In the absence of legal recognition of communities’ customary rights to the coast, oceans, rivers and lakes, the forced eviction of coastal communities for purposes of tourism, industrial development, port expansion and purported “safety” regulations is also on the rise.

their right to property even in the absence of formal titles (for instance the cases Mayagna (Sumo) Awas Tingni vs. Nicaragua (2001) and Sawhoyamaya vs. Paraguay (2006)).

⁵ See (Avendaño, 2006).

Depletion of seas due to industrial fishing practices, contamination and destruction of coastal and maritime ecosystems are on the rise.

- ***Lack of participation of the rural poor in developing land tenure systems and laws which impact land and natural resources tenure and rights.***

The above is further compounded by the often systematic absence of legal mechanisms to carry out meaningful and participatory consultations regarding the adoption of legislative or executive measures regulating land rights is common. States also need to establish participatory mechanisms for consulting with indigenous peoples on issues of their interest using the principles of free, prior and informed consent (UN Habitat, 2005).

2.2 Problems related to land administration institutions

Land administration systems have to be put in place to make security of tenure rules operational and enforceable, and the rules and practices governing such systems will define how land tenure rights are accorded and managed by State authorities. Efficient procedures related to land administration generally allow transactions to be completed quickly, inexpensively, and transparently. However, in many parts of the world, formal land administration procedures are time-consuming, bureaucratic and expensive, and are frequently non-transparent, and inaccessible to much of the poor population. As a result, transactions frequently take place off-the-record or informally (FAO, 2002).

While improvement and formalization of land administration systems has been promoted as indispensable for economic development and security of market land transactions, objective must not be just to improve the formal administration system. Often the land administration system just caters for a minority of land occupiers and owners and improvements can further exacerbate land inequalities. Improving land administration should therefore not come at the expense of ensuring that marginalized groups improve their security of tenure over access to land and natural resources. As FAO (2005:27), has stated, “The distributional consequences of land registration depend on the design of the [allocation and] registration process and of the institutions responsible for its management.” In this sense, attention needs to be paid to establishing a registration system that considers the necessities of the poor and vulnerable groups in terms of language, accessibility, cost and recording rights.

Some of the key problems in many countries include:

- Land administration institutions are, generally speaking, poorly funded. In fact, a decrease of budgetary investments on basic infrastructure and on land and housing programs has been observed over a period of time in many countries. Institutions in charge of implementing redistributive land and agrarian reform laws have been particularly affected by budget cuts. In some cases, land records are outdated, land administration institutions are not efficient, and they do not have enough competent staff and are prone to corruption.
- Nowadays agencies in each country deal with public information on land by means of registration systems comprising maps, measurements, identification of limits, properties and the values of estates. However, many countries do not have national systems, and each State or municipality has developed its own system (UN Habitat,

2005). At least such municipal system should be connected nationally in order to better monitor land transactions and identify land grabbing attempts.

- There is a lack of administrative mechanisms to resolve indigenous land and land restitution claims. Many of the land claims cases to the Inter-American Court of Human Rights have concerned failure to demarcate and register indigenous territories (Melish, 2008). Land administration institutions lack proper capacity to efficiently undertake these processes.
- Collection of land related information tend to privilege the use of information technology and communications and to ignore participatory methodologies which involve the affected local communities. In the worst cases, these technologies which are difficult to control for local communities could be captured by powerful actors.
- Land administration institutions tend to focus on formal areas and to serve first the interest of powerful actors. Marginalized groups tend to be excluded from the land administration services because they are too costly, complex and difficult to access. Moreover, land administration institutions are seldom gender sensitive and their staff is predominantly male. Land administration and registration institutions can operate with biases regarding women's land rights.
- According to UN Habitat (2007) there are currently no global tools or mechanisms in place to monitor security of tenure. In addition, there is a lack of statistics and other disaggregated data on issues linked to security of tenure and forced evictions. Data relating to socio-economic conditions and land tenure that would allow for better identifying marginalized groups and the problems they face. This would include global statistics disaggregated by gender concerning the number of landless people or people with insufficient land, the degree of concentration of land and other resources, about the loss of access to land for different rural groups, the reasons for that loss, public land use, and other issues.
- Lack of indicators and benchmarks regarding secure access to land and natural resources to measure progressive/regressive implementation and evaluate whether the realisation of human rights have been contingent on a gradual expansion in the availability of resources.

2.3 Problems with recourse mechanisms and courts

Many land tenure conflicts are managed by courts and judges whose decisions are often not influenced by international human rights law. These decisions, usually based on property rights law rarely recognise the collective nature of rights and conflicts nor the social rights of the affected communities. They further perpetuate a view of the absolute nature of individual property ownership rights which ignores the human rights of the affected population, such as the right to adequate housing and food, to access to land and to natural resources, to water, to work, to health, etc. (Strotzake, 2000; Houtzager, 2005). There are of course some exceptions with the Colombian Constitutional Court more strictly examining interferences with indigenous territories for example (see Sepúlveda, 2008).

Some of the key problems include:

- Lack of collective litigation procedures to address collective land tenure conflicts. Individual civil private law models undermine the capacity of the poor population to seek justice and redress violations promptly and successfully.
- Lack of access to justice by low income populations and by vulnerable groups involved in land tenure conflicts and impunity of resulting human rights violations has contributed to sharpened fears of violence and insecurity (Santos and Rodriguez Garavito, 2005). In South Africa, farm workers and dwellers have constitutional and legislative rights to long term secure tenure on farms and forced eviction can only be ordered by a court, but only 1 percent of eviction cases are actually addressed by courts (Social Surveys Africa and Nkuzi Development Association, 2005). Courts are not easily accessible for the poor because they might be remote, costly, corrupt and gender insensitive. There is a lack of access to free legal assistance to poor people and vulnerable groups which undermines access to justice.
- Slow and complex judicial procedures leading to backlog of cases and failure to bring perpetrators to trial.
- Absence of special land courts in most countries and inadequate models for restitution and alternative land, resources and accommodation.
- Tendency to criminalize the rural and urban poor, especially the homeless and landless. Civil disobedience and direct actions like land occupations and blocking roads to protest against government failure in fulfilling social rights have been considered criminal offences instead of dealing with them as social conflicts (see further below at 2.5).

2.4 Problems with non-state actors

The behavior and activities of non-state actors like landlords, insurgent and paramilitary armed groups, corporations and national and transnational companies have a massive impact on the land and natural resources rights of marginalized groups. Globalized economic actors are trying to secure access and control over natural resources in regions which were not integrated in the global economy and in which traditional rural communities live. Entire world regions and territories are being restructured in order to be more functional for the accumulation of capital (Holt-Giménez, forthcoming).

In many reported cases around the globe, these processes have adversely affected rural communities because they have been expropriated and dispossessed of their lands and natural resources without any compensation, leading to impoverishment and loss of livelihoods (ESCR-Net, 2008). Landlords and companies in many cases tend to not recognize the rights of marginalized groups and directly grab their lands by coercion or brute force, or they actively pressure governments to expropriate the targeted lands and natural resources so they can lease or buy it from the government (Langford and Halim, 2007).

Paramilitary groups, as in the case of Colombia, are responsible for mass expropriation of the lands and territories of peasants, Afro-Colombians and indigenous communities

(Comisión Colombiana de Juristas, 2006), resulting in massive internal displacements. In the Philippines, insurgent armed groups like the New Peoples' Army have impeded the autonomous organizations of rural workers to claim land (Franco, 2005a) and have obstructed the demarcation of indigenous lands (Mendoza, 2007).

International financial institutions (IFI) have played a major role in urban and agricultural development through the financial and technical support to land reform programmes, infrastructure projects and institutional capacity building in developing countries. Many of these projects affect millions of people and cause considerable human suffering, resulting in often gross and systematic violations of human rights. Very often their legal liability for actions or omissions that resulted in human rights violations is not considered due to immunity clauses. Immunity, however, should only be applied in the narrow sense; that is, with regard to the institution's efforts to fulfill its own stated purposes. Because human rights violations fall outside of this framework, immunity cannot be applied. In other cases, IFIs have promoted land administration policies strongly focused on strengthening individual property rights and leading to the privatisation of collective and communal forms of land and natural resources tenure.

While the World Bank Inspection Panel has provided some relief to groups affected by World Bank-sponsored infrastructure projects, its mandate and effectiveness is limited (Clark, 2002, 2008). In one rare attempt to hold the World Bank accountable under human rights standards, COHRE (Centre on Housing Rights and Evictions) has filed a complaint against the World Bank and the Inter-American Development Bank (IADB) before the Inter-American Commission of Human Rights (COHRE, 2004) because they provided loans for the construction of the Chixoy Dam, which resulted in the massacre of 444 Maya-Achí indigenous persons of the Rio Negro community in Guatemala.

Multilateral development banks are also increasingly promoting the creation of market driven "land banks" that would facilitate the takeover of agricultural land for industrial purposes. In many cases, these policies have resulted in exacerbating discrimination against women and increasing the insecurity of land tenure of poor and marginalized holders (Deere and León, 2003; Leonard and Narintarakul Na Ayutthaya, 2006; Ho and Spoor, 2005). Moreover, international financial institutions have contributed to undermining land redistribution policies based on instruments like expropriation and land ceilings by introducing the model of market-based distribution of land. This model has not delivered the expected results in the countries where it has been applied, as it was unable to effectively overcome the inequalities in access and control of land for wide sectors of the population (Borras 2003, 2006; Garoz, Alonso and Gauster 2005; Mondragón 2006; Sauer 2006; Sauer and Pereira, 2006; Wegerif 2005; Lahiff, Borras and Kay, 2007

In the case of urban centres, market-driven projects have resulted in land speculation and land concentration. They are implemented by real state agencies and private corporations, through urban gentrification, rental increases and private land development, resulting in the forced evictions of poor people living in informal settlements. Market-driven displacements may also result from *in-situ* tenure regularisation, settlement upgrading and basic service provision without involvement of the community, which give rise to increases in housing expenditure that the poorest segment of the population is not able to afford (UN HABITAT, 2007).

2.5 Persecution and criminalization of land and natural resources rights activists

Land tenure conflicts are frequently dealt with through the use of violence by the police, private militias and landowners, and the victims are often arbitrarily detained, jailed, tortured, and even assassinated. The majority of the cases documented also demonstrate examples of threats and persecution of community leaders who have been defending those threatened with eviction as well as of violence and loss of livelihood by the affected persons.

According to the former UN Special Representative on Human Rights Defenders, Ms Hina Jilani, the second most vulnerable group of human rights defenders are those working on land rights and natural resources. She recorded that in the Philippines alone, more than 14 defenders working on issues of land rights and agrarian reform have reportedly been killed during 2006 (Human Rights Council, 2007). Ms Jilani also drew attention to the fact that defenders working on land rights often organise themselves in the form of social movements which are usually broad grassroots-based movements with a more horizontal organisational structure than for instance most NGOs (Non Governmental Organization). According to her, these movements and the defenders who are actively involved in those movements have faced several specific challenges. She particularly highlighted the accusations of not being properly registered and therefore deemed illegal. The reason behind the non-registration often is that the movements do not have the organisational structures that are needed to enable registration with the authorities, such as a permanent headquarters or a secretariat. Another continued challenge is that defenders engaged in social movements are accused of “forming criminal gangs” and the like (Human Rights Council, 2007).

The right to organise collectively as trade unions for landless laborers or in peasant organisations is, in many countries, difficult to exercise. Arbitrary detentions of peasant and indigenous leaders take place regularly. Half of all trade union leaders in the world killed each year are based in Colombia. Many of them have worked in rural areas with agricultural laborers and with peasant organizations. Peasant, indigenous peoples, fisherfolks and other leaders face in many countries political persecution and harassment (Amnesty International, 2008; FIAN and La Via Campesina, 2004, 2005, 2006). Conflicts in rural areas, such as land conflicts, are often difficult to solve, long term, and protracted. The remoteness of rural areas often makes it easier to harass rural leaders with impunity, while a similar problem in an urban area of the same country would not occur to the same extent although in many urban centres such harassment is common, particularly those with large informal settlements.

3. Demands of marginalized groups related to land and natural resources tenure

In this section, we highlight how different constituencies have been organizing themselves in order to be able to articulate their views and demands regarding land and natural resources tenure. We do not intend to give an exhaustive overview about the myriad of groups working at grassroots level. What we want to do is to briefly present key demands of some of the most active networks, social movements and people's organizations working on land and natural resource tenure issues. Provided in the annex is a compilation of some relevant declarations approved by such groups. Our brief overview about key demands should not preclude FAO from directly engaging with these movements and organizations in order to let them speak for themselves in a future process of adopting guidelines on governance of land tenure and natural resources.

These demands are not homogenous and there can be conflict in practice between different groups over the very same resources. However, this problem can often be externally created – ill-conceived policies can pit different groups of the poor against one another. The situation of conflicting norms and practices, the role of the private sector and of states, and the increase in migration driven by economic globalization and displacement, have exacerbated long standing conflicts and created new ones. Among these are conflicts between pastoralists and sedentary farmers, between settlers and colonists on the agricultural frontier and local, endogenous populations whose territories they are encroaching upon, and conflicts between farmers, pastoralists, colonists and settlers, on the one hand, with private sector companies on the other. These conflicts sometimes reach such large proportions that they threaten national security (ROPPA, 2006).

Capturing the voices of the poor and social movements is also neither axiomatic nor straightforward and a human rights-based approach demands that multi-stakeholder processes are held to minimum standards and means of accountability. It is important to understand the different constituencies, ensure that all representative opinions are heard, and political and economic support given to strengthen their bargaining power. Civil society organizations also need to be accountable for those they attempt to speak on behalf of (Odindo, 2007). They should also play a key role in building bridges so that communities and social movements can directly negotiate with governments, donors and international institutions.

3.1 Women

Women's movements consistently demand full equality of opportunities and rights to land, natural resources, property, housing and inheritance that recognize their diversity; distinct rights in land tenure systems; equal representation in the decision making regarding land and natural resources at all levels, local, national and international. They also highlight the need for land redistribution policies and programs for women and that the provision of land must be supplemented with livelihood-related resources, employment opportunities and skills. The claims include that women should be recognised as the major decision-makers and managers of many grazing lands; forestlands, water and other common property resources and that women's rights to these resources should be legally guaranteed and ensured. Collective rights and tenure over land and natural resources for women pastoralists and farmers

also need to be legally recognized (see Consult for Women and Land Rights, India and Action Aid International, 2006). Marital property regimes need to be reformed as the majority of women cannot access land or housing rights through marital common property (Deere, C. et al, 2001; Tang, 2007).

Pressure from the women's movement and, more recently, from international donors, have led to an increase in joint titling of land in land distribution programs (UN Habitat, 2005). Women's legal ownership of land can also be encouraged through *individual land titles and tenure* in the name of women alone for farms, garden plots or housing/homestead land for subsistence needs; and *group rights* under control of women's groups on common property resources, surplus ceiling land, forest and water resources.

3.2 Indigenous peoples

A key demand of indigenous peoples is the recognition and effective respect and protection of their rights to self-determination and to own, control and manage their ancestral lands and territories, waters and other resources collectively (see annex 4). National land systems must respect traditional authorities and customary systems of land allocation and transfer. The recognition of their distinct spiritual and material relationship with their lands and territories is crucial as well as the collective nature of their rights to land and territory. "Some indigenous demands, seeing land rights as a territorial issue, necessarily challenge the prevailing trend towards the exclusive recognition of private property rights" (Plant, 1993:28).

Indigenous and ethnic groups demand the right to determine and establish priorities and strategies for their self-development and for the use of their lands, territories and other resources. They also demand protection from the State over their rights to land and resources, including protection against interference from third parties. Furthermore, indigenous peoples must be assigned special rights that can be enforced *against* the State as their original rights over lands and resources predate the nation State. As a corollary they demand that free, prior and informed consent must be the principle of approving or rejecting any project or activity affecting their lands, territories and other resources. Indigenous peoples claim either the physical restitution of the lands from which they have been unlawfully dispossessed in the past, or payment of compensation.⁶

3.3 Peasants and rural landless

Landless peasants and other land scarce groups demand redistribution of land ownership in context of highly unequal distribution of land in many states. They highlight the importance of effective state-led land and agrarian reform policies in the light of the failure of market-based land distribution schemes. Redistributive agrarian reforms are a key building block of the Food Sovereignty model which is at the very core of peasants demands. In this sense, land redistribution is not enough, but has to be

⁶ The Inter-American Court of Human Rights has accorded the right to return and restitution of property and land rights to the affected indigenous or tribal peoples in the cases of *Mayagna (Sumo) Awas Tingni Community vs. Nicaragua*; *Moiwana Community vs. Surinam*; *Yakye Axa vs. Paraguay*; and *Sawhoyamaya Indigenous Community vs. Paraguay*. In all of these cases, the affected people or communities were large in number. All the victims involved had been forcibly displaced from their lands or houses and had been denied access to an effective remedy.

supported by a series of measures which guarantee security of land and resource tenure and the sustainable use of land for productive purposes (see annex 1, 2). Group victims of caste discrimination also demand secure access to and control over land and natural resources.

Peasants have also started to frame their land and natural resources claims as territorial claims and demanding self-determination and free, prior and informed consent regarding their lands. The Declaration “Land, Territory and Dignity” (see annex 1) therefore reads:

All of the original peoples, indigenous peoples, ethnic minorities, tribes, fisherfolk, rural workers, peasants, the landless, nomadic pastoralists and displaced peoples, have the right maintain their own spiritual and material relationships to their lands; to possess, develop, control, and reconstruct their social structures; to politically and socially administer their lands and territories, including their full environment, the air, water, seas, ice floes, flora, fauna and other resources that they have traditionally possessed, occupied and/or utilized. This implies the recognition of their laws, traditions, customs, tenure systems, and institutions; as well as the recognition of territorial and cultural borders of peoples. This all constitutes the recognition of the self-determination and autonomy of peoples.

3.4 Fisherfolk

Fisherfolk demand legal recognition, protection and enforcement of the collective rights of traditional/artisanal fishing communities to access and use fishergrounds and maritime resources. They also demand new fishing policies that effectively recognize their rights and that stop the depletion of life in the sea and undermine the very resources their lives depend upon. Considering the vulnerability of coastal populations, particularly fisherfolk, to natural disasters such as cyclones, earthquakes and tsunamis, they demand effective participatory mechanisms that should be developed at the regional, national, and local levels to prevent, or if that is difficult, to mitigate the effect of natural disasters and to help them rebuild their fisheries-based livelihoods in a time-bound manner (see annex 5).

3.5 Afro-descendants

Black political movements have presented demands and employed strategies seeking to establish an “indigenous identity” (WADE, 1997).⁷ As a result, legal reforms related to afro-descendants rights – typically based on those of the indigenous peoples – have been implemented in various countries, especially in Latin America. In many cases in which resources and territorial rights are being disputed, the afro-descendent movements utilise the language, demands and discussion points which were previously associated only with the indigenous movements, tracing connections between their own cultures and identities and ideas of territorial and cultural rights within the State-

⁷ For instance, the struggles of indigenous communities and black people against threats of forced evictions resulting from the activities of logging and mining companies, in the beginning of the 80s in Chocó, Colombia, led to a claim of territorial rights based on the indigenous model of the Regional Organization Embera Waunan. Within this framework, a black territorial discourse was construed and resulted in the emergence of a social actor known as ‘black communities’ (Hoffman, 2002). During the draft of the Colombian National Constitution (1991), the black communities were represented and their proposals presented by an indigenous spokesperson.

Nation (Anderson, 1994). In many cases afro-descendants have recognised themselves as *tribal peoples*, considering the conceptual meaning posed by Convention No. 169 of the International Labour Organization (ILO), when demanding collective rights, communal territories, autonomy and cultural protection. They have thus sought representation in a similar manner to the indigenous peoples, as *a people* that have a single identity and cultural traditions in relation to their territories. This representation is a basis for demands, not only for individual rights but also for collective rights as distinct social subjects: for the right to preservation of their cultural and linguistic heritage, and collective and communal rights to the land and its resources. This tendency can be seen in Colombia (*Palenques*), Brazil (*Quilombos*), Nicaragua (*Creoles*), Honduras (*Garifunas*), Surinam (*Marrons*), Belize and Ecuador.

Afro-descendants also demand the abrogation of all discriminatory legislation regulating access to land and housing and the adoption of affirmative measures to democratise access to such resources. Territorial demands encompass the reconstruction of their own history and their collective memories. Land is the foundation and basis for affirming their black identity and their role in national societies.

3.6 Urban groups

Collective demands from urban groups can be particularly seen in the:

- European Charter for the Safeguarding of Human Rights in the City (Saint-Denis, 2000), adopted by more than two hundred European cities.
- Treaty for Democratic, Equitable and Sustainable Cities, Towns and Villages (World Conference on the Environment, Rio de Janeiro, ECO/1992).
- World Charter on the Right to the City was drafted to disseminate the concept of the right to the city as a collective human right (see annex 5).

Such urban groups often include tenants' associations, advocacy-oriented social movements, co-operatives and community based organizations which have introduced innovative experiences in self-management. (HIC, 2004; Langford and Goldie, 2007).⁸

Urban groups demand an end for forced evictions which undermine their ability to have secure tenure and access to relevant land and natural resources (UN HABITAT Advisory Group on Forced Evictions (2007) as well as space in the city to develop livelihoods and access to housing and services. The idea of the right to the city has been born out of many of these struggles and is conceived as the right to an equitable use of cities under the principles of sustainability, democracy and social justice. Because all human rights are interconnected and interdependent, the right to the city includes the rights to land, natural resources, means of subsistence, labour, health, education, culture, housing, social protection, healthy environments, sanitation, public transportation, leisure and information. It also includes the right to meet and organise freely, the respect for minorities and immigrants, and for ethnic, sexual, and cultural plurality, and the guarantee of the preservation of historical and cultural heritage (Osorio, 2005).

⁸ The Habitat International Coalition (HIC) tabulated the results of 40 experimental projects for the production of social habitats conducted by social movements and organizations in Argentina, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Mexico, Nicaragua, Peru, the Dominican Republic and Venezuela (HIC, 2002).

In recognition of the fact that rising real state prices have made access of homeownership increasingly distant for many urban dwellers, tenants and low-income groups, access to security of tenure takes on added significance. Enjoying tenure security has been far more important to urban dwellers than homeownership or the provision with a title to a land plot. Interventions for rehabilitation or renovation of central areas have also been a demand of urban social movements. Examples from Brazil and Peru show that they seek not only the restoration and conservation of empty and old buildings for historical or cultural purposes, but also for social housing projects (UN Habitat, 2007). Since the 1990s urban social organisations and movements started occupying shared-management spaces in programs and resources related to public social policy, via political parties, municipal councils, and participatory budgeting. This change of direction towards “institutionalization” was certainly a democratic conquest in representative (political parties) and participative terms (councils and participatory budgeting).

3.7 Demands related to the environment and climate change

In the debate about climate change mitigation, it is of utmost importance to take into account socio-economic structural issues such as landlessness and highly concentrated ownership of agricultural lands in some regions including Latin America, Southern Africa, South Asia and Southeast Asia. In these regions, the best lands are controlled by few owners who are increasingly dedicating land and water to grow monocultures for export which in turn entails intensive use of agrochemicals and deplete soils and water sources. Due to the unwillingness of governments to change land tenure structures that favor land concentration in agricultural production, landless agricultural communities have often been forced to fell forests located on poor soils, to farm thin, easily eroded soils on steep slopes, and to try to eke out a living on desert margins and in rainforests. This has led to conflicts among displaced peasant communities and indigenous peoples. The better soils of most countries have been concentrated into large holdings and their productive capacity of these soils is dropping rapidly due to soil compaction, erosion, waterlogging, and fertility loss, together with the growing resistance of pests to pesticides and loss of biodiversity (Rosset, 2006).

In order to properly take into account socio-economic structural issues behind the environmental and climate crisis, broad coalitions of social and environmental movements are emerging (see annex 6) to claim the need of rights based resource conservation that enforces indigenous land rights and promotes peoples' sovereignty over energy, forests, land and water; and the need for agrarian reforms and the promotion of sustainable small-scale farming, which is labor-intensive, requires little energy use, and can store more CO² in soil organic matter.

Movements rallying for Food Sovereignty demand therefore that the socio-environmental function of land, the sea, and the natural resources needs to be recognised. The use of land and natural resources should primarily be for food production and should be in a manner which is sustainable and protects the environment and nature (see annex 1). Finally, all land and natural resources rights activists demand effective protection of life and security of persons, freedom of assembly, of association, of all persons who struggle to protect their land, water and natural resources.

4. Good governance and human rights in the context of land and natural resources tenure

4.1 Good governance

The concept of good governance emerged amongst the international community in the 1990s as a way to sensitively address three issues in the South: the lack of effective *administration, management and empowerment*, particularly respect for democracy and human rights. Indeed, the concept is generally not applied in the North and some commentators have claimed that it therefore does not meet the definition of a global public good (Sano, 2007). Thus is it questionable whether the FAO guidelines should be based on the principle of good governance when human rights have a much stronger international and universal backing. Effective administration can of course contribute to the realisation of human rights, and if good governance is understood to include human rights aspects of empowerment, then it can make a substantial contribution if properly defined. However, strong justification should be provided if concepts largely developed for North-South development cooperation are preferred over principles that have been universally agreed upon for the last sixty years.

As a starting point for the discussion, we consider FAO's definition of the following key concepts (FAO 2007: 3-6):

- Land tenure is the relationship, whether defined legally or customarily, among people with respect to land.
- Land administration is the way in which the rules of land tenure are applied and made operational. It includes land registration, land use planning, land consolidation, land management and property taxation.
- Governance is the process of governing. 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.
- What is good governance? The avoidance of corruption is one obvious aspect of good governance. However, features of good governance also include accountability, political stability, government effectiveness, regulatory quality and rule of law, as well as control of corruption. Good governance means that government is well managed, inclusive, and results in desirable outcomes. The principles of good governance can be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, participation, civic engagement and security.

According to UN-Habitat (2007:168), good urban governance is based on the notion of 'inclusive cities', which encompasses participatory decision-making in cities and devolution of power from central to local government. The conceptual basis for decentralisation is "devolution of responsibilities to the lowest appropriate level." The other cornerstone of good urban governance – the direct and broad-based participation of communities in decision-making – is a way of improving effectiveness of local policies and to prioritise citizen's initiatives and needs.

4.2 Relationship between good governance and human rights

According to the Office of the High Commissioner for Human Rights, governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights. The true test of "good" governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights.⁹ The Commission on Human Rights 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, and that such a foundation is sine qua non for the promotion of human rights¹⁰. In this sense, full respect, protection and promotion of human rights is not only a result of truly good governance but should also be a constitutive part of it.

The International Council on Human Rights Policy (ICHRP) (2008) has demonstrated that even though key words like participation, accountability and transparency are central to the good-governance and the human rights agenda, they can have different interpretations in practice.¹¹ Participation is fashionable in the development agenda but it is mainly a concept employed without reference to clear standards, applied in a discretionary manner and in certain cases has even been used to co-opt, manipulate and depoliticize processes (ICHRP 2008, para 49). In contrast, the principle of participation from a human rights perspective refers to a group of rights which effectively enable people to:

- participate in the public sphere, including the right to participate in the conduction of public affairs (Art. 25 ICCPR),
- the right to vote and to be elected (Art. 25 ICCPR),
- the right to freedom of expression (Art. 19 ICCPR),
- the right to access information (Art. 19 ICCPR),
- the right to freedom of assembly (Art. 21 ICCPR), and association (Art. 22).
- the right of indigenous peoples to participate in government and at levels of decision making (Article 6(b) ILO Convention 169 and the Declaration on the Rights of Indigeous Peoples 2007).

The right to participation in the field of economic, social and cultural rights has also been recognized by the UN Committee on Economic, Social and Cultural Rights.¹²

Accountability is inextricably linked to participation but the good governance and anti-corruption agenda tends to focus on the horizontal accountability. Horizontal accountability is associated with a system of intra-state controls, while vertical accountability implies the operation of controls from outside the state (ICHRP 2008, para 88). In ICHRP's view the good governance agenda has reduced the discussion about accountability to technocratic reforms, top-down oriented, without any involvement of the people affected by the very reforms, which is perhaps one important reason why these reforms have not delivered the expected results. In

⁹ See <http://www.unhchr.ch/development/governance.html>

¹⁰ Resolution 2000/64 on the role of good governance in the promotion of human rights.

¹¹ Personal communication with Magdalena Sepúlveda who is coordinating this research work. Apart from her work at ICHRP Ms Sepúlveda is the current UN Independent Expert on Human Rights and Extreme Poverty.

¹² See for example, Committee on Economic, Social and Cultural Rights, *General Comment 15, The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003).

contrast, international human rights law is largely premised on identifying duty-bearers and rights-holders, which requires that governments and other duty bearers are vertically accountable to rights-holders through various mechanisms..

Although there is no consensus in the definition of transparency, most definitions include the increased flow of accessible, accurate, understandable and timely information (ICHRP 2008, para 72). What is lacking in this concept from the human rights point of view, is the right to access this information and the obligation of governments to set up mechanisms which ensure that this right can be exercised.

The human rights principles of non-discrimination and equality are less common in the good governance agenda. These principles are fundamental to the human rights system and ensure that all persons are equal before the law and entitled to receive equal protection against discriminatory practices. These principles are codified in Article 2 of the Universal Declaration of Human Rights (UDHR), Articles 3, 24, 26 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 2 and 3 of the the International Covenant on Economic, Social and Cultural Rights (ICESCR).

4.3 International human rights law and rights to land and natural resources of the poor

4.3.1 Key human rights treaties

Besides human rights principles like participation, accountability, transparency, non-discrimination and equality, we will now turn to the entitlements of marginalised social groups regarding land and natural resources tenure according to international human rights law. The following legal treaties and declarations are particularly relevant:

- Article 1 of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) which enshrines people's right to self-determination to pursue their economic, social and cultural development as well as their right to be in no case deprived of their own means of subsistence.
- Article 27 of ICCPR protects the rights of ethnic, religious or linguistic minorities, which has been interpreted by the UN Human Rights Committee to include protection of traditional livelihoods and natural resources.¹³
- Article 11 of ICECSR recognises the fundamental right to be free from hunger and the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
- Article 14 of the Covention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides for the elimination of discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development. In particular, women have the right to access agricultural credit and loans, marketing facilities,

¹³ See UN Human Rights Committee, *L'ansman v Finland (No. 2)* (Communication No. 671/1995), Views of 30 October 1996,

appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.

- Articles 13-19 of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples safeguard in a comprehensive way the rights of indigenous peoples to their lands and territories. The concept of land encompasses the notion of territories, considered the lands used, owned or occupied by a community or people for the production and reproduction of their forms of social, environmental and economic development, traditions, religions, cultures – their way of life (Art. 13). The Convention recognises the rights of indigenous and tribal peoples over the lands, territories and resources they traditionally own or otherwise occupy and use, and provides for a range of protective measures, especially against forced evictions and the arbitrary removal from their land (Arts. 7, 14, 15, 16, 17, 18). Similar provisions were included in the UN General Assembly's Declaration on the Rights of Indigenous Peoples of 2007.
- Article 54 of the I Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, and article 14 of the II Protocol Additional to the Geneva Conventions and relating to Protection of Victims of Non-International Armed Conflicts, prohibit to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive. Article 55 of the I Protocol enshrines furthermore the protection of the natural environment in warfare against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
- The American Convention recognises the right to privacy, which comprises the right to be protected against arbitrary and abusive interference with one's home (Art.11).the right to housing is recognised in Article 26 . which refers to the American Convention to the Charter and *was amended by the Protocol of Buenos Aries*. This protocol added to the Charter the new Section VII, including Article 31 (now Article 34) and the reference to adequate housing. Many economic and social standards are enumerated in Article 34(k) of the Charter, including the right to adequate housing which is clearly an economic and social standard set forth in Article 34(k) of the Charter.
- The American Declaration and Convention on Human Rights also guarantee the right to property although the positive obligations are measured. The American Declaration of the Rights and Duties of Man states that “every person has a right to own such private property *as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home*” (Art. XXIII) (emphasis added). The American Convention of Human Rights regulates property rights in Art. 21, and security, autonomy, the preservation of culture, human dignity, economic and social development, and other fundamental values are justifications for granting protection to the right to property, as interpreted by the Inter-American

Commission for Human Rights and the Inter-American Court for Human Rights. Protection can be positive (“everyone has the right to own property”) or negative (protection against arbitrary deprivation or unjustified interference).¹⁴

- The African Charter on Human and Peoples’ Rights recognises the right to property and the African Commission on Human and Peoples’ Rights has, in addition, further derived rights to housing and food from this right combined with other Charter rights and in accordance with their mandate to do so under Article 60 and 61. Article 21 further recognises the duty of the State to protect the natural resources of peoples:

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law....5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.”

- The right to property was not included in international human rights treaties but was included in Article 17 of the Universal Declaration of Human Rights (UDHR). This enshrines the right to property as the right of everyone to own property alone or in association with others, as well as the right not to be arbitrarily deprived of property. This cautiousness in international human rights law suggests that other human rights need to be taken into account when recognising and regulating the right to property at the regional and national level.

4.3.2 Human rights standards and jurisprudence

In addition, these rights have been interpreted in practice by various UN committees. The UN Committee on Economic, Social and Cultural Rights, for example, has issued General Comment N° 4 on the right to adequate housing, N° 7 on forced eviction, N° 12 on the right to adequate food, and N° 15 on the right to water. It is the treaty body in charge of interpreting and monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights. Political bodies such as the UN Human Rights Council, the former UN Human Rights Commission and UN Sub-Commission on the Protection and Promotion of Human Rights together with their Special Procedures have also applied the rights.

¹⁴ The General Assembly Resolution 41/132 and Commission Resolution 1987/17 considered that no State, group or person should be engaged in any activity or perform any act aimed at the destruction, inter alia, of the right to own property. They also urged States to protect the right of everyone not to be arbitrarily deprived of their property. Cited in the complete final report on the right of everyone to own property alone as well as in association with others, submitted by Mr. Luis Valencia Rodríguez, independent expert, to the forty-ninth session of the UN Commission on Human Rights, para. 131 E/CN.4/1994/19.

We overview some of the important documents and mechanisms:

- The former UN Commission on Human Rights, made up of States, called **forced evictions** a ‘gross violation of human rights’. This largely represents international and regional human rights law which is unequivocal on the obligation of States to protect individuals from forced eviction from their home and thus from unjust expropriation (Langford and DuPlessis, 2005).
- The UN Committee on Economic, Social and Cultural Rights (1991 and 1997) has stated that:
 - (i) Evictions should only proceed in ‘exceptional circumstances’;
 - (ii) Substantial justification must exist for any eviction;
 - (iii) All feasible alternatives to eviction must be explored in consultation with the affected persons;
 - (iv) There must be due process; all individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected;
 - (v) Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights;
 - (vi) Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available;
 - (vii) Legislation must be enacted to ensure effective protection from forced eviction.
- In General Comment No. 12, the UN Committee on Economic, Social and Cultural Rights stated that the **right to food** is realised 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. This includes both the use of productive land or other natural resources to obtain food and income as well as functioning distribution, processing and market systems that can move food from the site of production to where it is demanded. Based on this interpretation, it is clear that the ability to individually or communally cultivate land (on the basis of ownership or other form of tenure) is part of the basic content of the right to adequate food which must be respected, protected and fulfilled by States.
- Special attention is due to the work of the **Special Rapporteur on the Right to Food**, who has specifically dealt with the relationship of this right and access to land and agrarian reform (UN General Assembly, 2002); and the work of the **Special Rapporteur on Adequate Housing**, who has dealt intensively with the problem of forced evictions and has recently outlined UN Basic Principles and Guidelines on Eviction and Displacement Generated by Development (Human Rights Council, 2007). Moreover, the former Special Rapporteur on Adequate Housing, Miloon Kothari, recommended to the Human Rights Council in his last report that the right to land be recognised as a human right as this would be a major step forward in strengthening the human rights of those dependent on land for their lives and livelihoods (Ibidem). It is also important to highlight the developments and studies done by the Working Groups and the former UN Sub-Commission on the Promotion and Protection of Human Rights, particularly in matters relating to indigenous rights to land and territory.

- Other UN guidelines that should be taken into account include the *Guiding Principles on Internal Displacement*, and the *Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons*.
- Relevant provisions are also contained in the *World Conference on Agrarian Reform and Rural Development* and its Plan of Action and in the Declaration of the *International Conference on Agrarian Reform and Rural Development*. The latter particularly highlights the importance of a participatory approach based on the economic, social and cultural rights of rural people, including women, forest, fishery, indigenous and traditional rural communities, as well as good governance for the equitable management of land, water, forests and other natural resources within the context of national legal frameworks focusing on sustainable development and overcoming inequalities.
- The *Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security*, drawn up by States in the Council of the FAO (2004) is highly relevant. The guidelines explicitly provide:

States should take measures to promote and protect the security of land tenure, especially with respect to women, poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities (Article 8.10).

Moreover, the guidelines contain useful provisions regarding economic development policies (guideline 2) and access to resources and assets (guideline 8) which strengthen access and use of land and natural resources of marginalized groups.

- *The Declaration on Social Progress and Development* (proclaimed by UN General Assembly resolution 2542 (XXIV) of December 1969) links social development and the right to work through access to land and to the means of production. It states that social and economic advancement must assure equal opportunities to disadvantaged or marginal sectors of the population (Art. 5(d)) and that social progress and development require the participation of society in productive and socially useful labor and the establishment of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property and create equality among people (Art. 6). The right to work and the free choice of employment must be made effective in conformity with human rights and based on the principles of justice and the social function of property.
- Other important instruments are the Convention to Combat Desertification, the Convention relating to the Status of Refugees, the International Convention on the Elimination of All Forms of Racial Discrimination, the Stockholm Declaration on the Human Environment, the Rio Declaration on Environment and Development,

the Code of Conduct for Responsible Fisheries, the Vancouver Declaration on Human Settlements, the Istanbul Declaration on Human Settlements the International, the Habitat Agenda, the Agenda 21, Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the World Food Summit Plan of Action.

- As regards indigenous peoples, the *UN Declaration on the Rights of Indigenous Peoples* provides for the full protection, through effective mechanisms for prevention of and redress for, any action which has the aim of dispossessing them of their lands, territories or resources (Art. 8(b)), as well as the right to not be forcibly removed from their territories without free, prior and informed consent, the right to be compensated and the right to return (Art. 10). Furthermore, they are entitled to the right to land, territories and natural resources they have traditionally owned, occupied, used or acquired, to the right to own, use, control and develop lands, territories and resources they possess, and a right to their legal recognition and protection (Art. 26). The relationship between their right to maintain a distinctive spiritual relationship with their land, territories, water, coastal seas and other resources is recognized and protected by Art. 26. Governance and management of land, land systems and the environment by the indigenous peoples are regulated by Arts. 29 and 32.¹⁵

4.3.3 Extra-territorial obligations

The rights of marginalised groups regarding land and natural resources have an extra-territorial dimension. Although the primary responsibility to ensure human rights will always rest with national governments, all countries must ensure that their policies do not contribute to human rights violations in other countries.¹⁶ This is particularly important in the context of globalization and ever stronger international interdependence.

The principle of international cooperation was established in articles 55 and 56 of the United Nations Charter; and in paragraphs 1 of article 2, paragraph 1 of article 11 and article 23 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UN Committee on Economic, Social and Cultural Rights has interpreted the latter to require States to respect, protect and fulfil the Covenant rights extra-territorially. This means refraining from actions directly or indirectly contravene the enjoyment of Covenant rights, ensuring that third parties within their jurisdiction (such as registered corporations) don't violate the Covenant rights, including setting up

¹⁵ The last version of the Draft American Declaration on the Rights of Indigenous Peoples also recognizes the collective rights of indigenous peoples, which include the administration and control of their lands, territories, and natural resources (Art. VI(2)). It also enshrines the following social, economic, and property rights on behalf of the indigenous communities (Section 5): a) to maintain and strengthen their distinctive spiritual, cultural, and material relationship with their lands, territories and resources; b) to preserve them for themselves and future generations; c) recognition of their property, use, and ownership rights of land and territories ancestrally occupied as permanent, exclusive, inalienable, imprescriptible, and indefeasible; d) the respect of their practices, usages, and customs in matters related to land titling and property rights; e) the right to attribute ownership within the community; f) to be protected against land encroachment and intrusion; g) the right to participate in programs involving prospecting, planning, and exploitation of mineral or resources located in their land and territories, as well as to the benefits of such activities; h) to receive compensation for any harm they suffer as a result of such activities; i) the right to a legal framework and effective remedies to protect all the articles referred thereto.

¹⁶ For developments in this regard related to the right to food see Commission on Human Rights (2006). See also Brot für die Welt et al., (2006).

accountability mechanisms as needed, and taking positive steps within maximum available resources to formulate, adopt, fund and implement policies and programs which explicitly address and remedy obstructions to the realization of economic, social and cultural rights (See General Comment No. 15, 2002). These obligations do not of course lessen the obligations on states receiving aid or hosting transnational corporations for example.

As participants in bilateral cooperation and as members of international organizations, states should ensure that their actions properly take into account human rights obligations related to access to land and natural resources. State that are members of international financial institutions such as the International Monetary Fund, the World Bank and regional development banks should take steps to ensure that their loans policies, credit agreements and other international measures take these obligations into consideration. In fact, the World Bank, the International Monetary Fund, FAO and all specialised UN agencies, by virtue of this status, are compelled themselves to observe the provisions of Art. 55 of the UN Charter which oblige the UN to promote universal respect for, and observance of, human rights and fundamental freedoms for all.

4.3.4 Transnational corporations

The OECD (Organisation for Economic Co-operation and Development) Guidelines on Multinational Enterprises 2000 provide that transnational corporations should respect human rights and National Contact Points in OECD countries can receive complaints concerning the behavior of transnational corporations although they have no power to enforce these Guidelines. Section II provides that:

Enterprises should: 1. Contribute to economic, social and environmental progress with a view to achieving sustainable development. 2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

The former UN Sub-Commission on the Promotion and Protection of Human Rights adopted in August 2003 the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights which is an initiative to produce a code of conduct on human rights issues that applies to all businesses without requiring their individual ratification. While the Human Rights Commission did not adopt the document, it could be used to develop standards. Article 12 of these Norms state that transnational corporations and other business enterprises shall *respect economic, social and cultural rights* as well as civil and political rights and *contribute to their realization* and shall *refrain from actions that obstruct or impede the realisation of those rights.*

The notion of a transnational obligation to protect economic, social and cultural rights by regulating and holding accountable corporations registered in a home country for human rights violations in another country has been supported by some UN monitoring bodies (for instance, the Concluding Observations of the Committee on the Elimination of Racial Discrimination regarding the United States, 2008 - CERD/C/USA/CO/6). The UN Committee on Economic, Social and Cultural Rights has also asked States to regulate transnational corporations registered or based in other countries in order that they respect economic, social and cultural rights.¹⁷

¹⁷ See for example, UN Committee on Economic, Social and Cultural Rights, *General Comment 15, The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003).

4.4 Integrating human rights in the good governance agenda

FAO's definition of good governance unfortunately does not sufficiently include the human rights dimension. Borrowing from the wealth of standard setting work done by UN human rights bodies on key principles like participation, accountability, transparency, non-discrimination and equality could be very useful for drafting future guidelines on land and natural resources tenure. Integrating and operationalising human rights principles and entitlements into the design and implementation of land policies and programs will yield stronger results. In fact, as was shown in chapter 2 and 3, multiple violations of the human rights of marginalized communities are at the core of land and natural resources conflicts. Not addressing them will perpetuate this situation. Therefore, future guidelines need to respond to the main land and natural resources tenure problems faced by marginalised rural and urban groups, like those related to unequal power structures, to discrimination in mainstream economic development models, to exclusion from decision making processes on land tenure laws and policies, to weak, corrupt and inefficient land administration institutions, to discrimination in accessing justice and to abuses of powerful non-state actors. How this could be done will be explained in the next section.

5. Key principles and issues to be dealt with in future guidelines on land and natural resources tenure

5.1 Key principles

5.1.1 Non-discrimination and equality

The principle of non-discrimination is a fundamental tool for guaranteeing the inclusion of marginalised groups in all decision making processes related to land tenure. It is particularly important to guarantee non-discrimination in: land tenure laws, regulations and practices; decision-making processes for passing and adopting land tenure laws or regulations; the implementation of land tenure laws, regulations and policies; access to justice and remedies when land related rights have been violated. *De facto* discrimination in land tenure, as is often the case for women and the landless, occurs as a result of the unequal access to land and natural resources and other factors. This differential treatment should be brought to an end as speedily as possible. Special measures such as agrarian, aquatic and urban reforms taken for the sole purpose of securing adequate advancement of certain groups or individuals may be necessary, in order to ensure that they exercise effective equal enjoyment of economic, social and cultural rights. Such affirmative action measures are not discrimination if they are only continued until they have achieved sustainable success.

5.1.2 Participation

The principle of participation is fundamental for the inclusion of diverse marginalised individuals and social groups in decision making and effective control regarding land and natural resources tenure. The breadth of participation is defined as the degree of diversity and pluralism of participating individuals and groups with special attention paid to the inclusion of traditionally discriminated groups on the grounds of gender, race, ethnicity, classes or age; and the depth of participation is defined as the participants' degree of influence and impact in decision making and/or effective control over land and natural resources that should be duly and simultaneously taken into account in order to guarantee truly participatory processes which are not just smoke screens or co-opted by powerful actors.¹⁸ Full enjoyment of civil and political rights such as the right to association, to assembly, to freedom of expression and to access information are absolutely crucial for marginalized groups in order to be able to organize themselves and challenge unjust laws and practices regarding land and natural resources tenure. Minimal institutional conditions for the full participation of marginalised social groups should be ensured. The principle of free, prior and informed consent of all marginalised rural and urban groups before undertaking any project or program that may affect their life and livelihoods should be effectively ensured.

5.1.3 Priority for vulnerable groups

Social groups who are marginalised for whatever reason are less likely to have their land and natural resources' rights respected than other groups in society. On the other hand, they are much more deeply affected by the impact of violations of their land and natural resources' rights. They lack financial and other resources to correct the situation caused by the violation or to survive the waiting period before they receive compensation or rehabilitation, if any. For these reasons, good governance in land and natural resources tenure requires prioritized attention to the realisation of the rights of

¹⁸ Definitions taken from ICHRP 2008.

marginalized groups, especially women, minorities, indigenous and tribal peoples, the urban and rural poor, the disabled, children and the elderly. Addressing discrimination, inequalities and inequities in access and tenure to land and natural resources is a fundamental element of a human rights-based approach.

5.1.4 Accountability

Accountability can be defined as concrete means for controlling the behavior of those that exercise power by those who have the least power. Because human rights clearly define who are the rights-holders and who are the duty-bearers, States have the obligation to organize an institutional system whereby all people can accede to accountability mechanisms regarding land and natural resources tenure. Effective accountability also means ensuring powerful economic actors such as transnational corporations and international financial institutions are held accountable. Good governance in the field of land and resources involves public institutions providing equal distribution of services and access to them, permitting the right to participation and to information, promoting dignity and creating effective mechanisms of accountability.

5.1.5 Transparency

States and other authorities regulating land and natural resources tenure should disclose and guarantee effective access, particularly for for marginalized groups, to all relevant information and documents that might be essential for decision making by individuals and groups concerning social control over land and natural resources administration. The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters could provide a practical guide on how to frame inclusive processes on land tenure governance.

5.1.6 Indivisibility and interdependence of all human rights

A human rights-based approach to good governance in land and natural resources tenure emphasizes universal, interdependent, indivisible and interrelated human rights. The achievement of good governance should be an outcome of the realization of existing rights; that applying the principles of human rights is an integral part of the process, and that citizens have rights and are not mere passive recipients. In this sense, full enjoyment of the civil and political rights enshrined in the International Covenant on Civil and Political Rights like the right to participate in the conduction of public affairs (Art. 25), the right to vote and to be elected (Art. 25), the right to freedom of expression (Art. 19), right to access information (Art. 19), the right to freedom of assembly (Art. 21), and association (Art. 22) among others, are absolutely crucial in the decision-making processes and implementation of policies related to land and natural resources. Recognition and support of social and grassroots movements struggling for their rights to land and natural resources is of utmost importance.

5.2 Key issues

5.2.1 Forced evictions and arbitrary displacement

- States should ensure that they have laws and institutions that effectively protect individuals and groups from forced eviction and denial of access to essential natural resources. States should undertake a full review of laws that may permit forced eviction and take appropriate action to change laws that conflict with international human rights standards.
- States should protect marginalized individuals and groups from forced evictions committed by third parties.
- States should ensure that the displacement of people from their homes and basic livelihoods is considered an action of last resort and that evictions should only occur in exceptional circumstances. When forced evictions are carried out as a last resort and in full compliance with international human rights law, affected persons cannot be rendered homeless and must be accorded procedural protections enshrined in General Comment n. 7, para. 15.
- States must ensure that the public interest criteria that can be used to justify an eviction are clear, consistent with international human rights law and demonstrably proved in each case, keeping in mind that evictions should only occur in exceptional circumstances.. Pursuing a public interest can never result in violation of human rights. If so, the public interest would be disqualified as such. This should be enshrined as the key principle in any law or guideline.
- A participatory and transparent process should be adopted to determine whether there are alternatives to the planned expropriation and eviction. This should precede the decision and it should not be assumed that the standard consultation/objections processes are sufficient. Such a process should extend beyond the preparation of impact assessments and involve the active partnership of the State, the affected peoples and involved third parties in assessing various alternatives. A comprehensive eviction impact assessment should be conducted that would factor in all social, cultural, environmental and material as well as non-material costs of a proposed project. If the State and the affected persons cannot agree, there should be an independent review of the decision.
- States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real state. States should review the operation and regulation of the housing and tenancy markets and, when necessary, intervene to ensure that market forces do not increase the vulnerability of marginalized groups to forced eviction.
- States should guarantee access to effective remedies for forced evictions, giving priority to restitution or resettlement/relocation instead of compensation. In the event that affected communities opt for compensation and in case of resettlement, the allocation of land, housing and resources cannot be become worse-off with regards to their previous situation. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) outlines basic compensatory principles which can be applied in the case of forced evictions.

- States should apply appropriate civil or criminal penalties against any public or private person or entity which carries out evictions in a manner not fully consistent with international human rights standards.
- States should consider imposing moratoriums on pending evictions affecting vulnerable groups and the poor until a proper legal and institutional framework is in place.
- A key reference for developing this guideline should be the UN Basic Principles and Guidelines on Eviction and Displacement Generated by Development.

5.2.2 Tenure models

- States should guarantee that all persons possess a degree of security of tenure which guarantees legal protection against evictions and other threats. Experience shows that a menu or *continuum of rights* should be available (UN-Habitat, 2003) and states should ensure that a range of options for securing land and natural resources can be adopted. This includes basic protection from forced evictions, leasehold, cooperatives, license systems, community trusts and schemes, and affordable tenant-purchase schemes should be available. When individual titles for land are the preferred option, steps can be taken to modify the property rights to protect the poor. A good example is the Brazilian City Statute, a Federal Law passed in 2001 which provides for regularisation of land ownership and prevents speculation by zoning the area as of social interest and thus restricting the degree of transferability (Osorio, 2006; UN-Habitat, 2005). It is important to note that the passage of this legislation was the result of a 10 year campaign by social movements and civil society organizations under the National Forum of Urban Reform.
- States should consider whether grassroots community land solutions can be recognised and upscaled. Rakodi and Leduka (2003) argue that we need to understand “the predominant contemporary processes of land delivery” including “non-statutory law and custom, as well as the various actors in the informal land delivery systems” and then build on “success of large scale informal land delivery” while addressing its shortcomings.
- States should recognize community-based property rights and collective tenure systems which prevent forced eviction of communities from their lands, increase their bargaining power in negotiating with the state, protects human rights to food, health, housing, culture, and security of the person and home, as well as local livelihoods of communities, and contributes to environmental justice and sustainable management of natural resources. Legal recognition of collective tenure systems should be an option for communities *insofar* as they comply with human rights, *particularly the rights of women*. Many rural poor access land and resources through collective *customary* land systems. In Africa, they account for up to 85 percent of land tenure systems (Cotula, Toulmin and Quan, 2006). Collective forms of tenure and collective procedures to achieve tenure rights are also relevant in urban areas. States should review legislation as to reduce the period of time necessary to acquire land through adverse possession, as well as to guarantee access to collective judicial procedures for slum dwellers to acquire tenure. This is particularly the case in slum upgrading projects.

- In order to sustain the livelihood security of pastoralists, their access rights must be acknowledged and secured, and efforts must be made to build conflict management systems that respect the multiple users of shared resources. Pastoralists are highly dependent on flexible access to sizeable collective areas of grazing land and water resources as opposed to individual property rights to land, but many countries consider their way of life backward and access by pastoralists to resources is seldom recognised and easily encroached upon by agribusiness, game parks and sedentary farmers.
- In the case of indigenous peoples, collective ownership on ancestral territories is clearly a matter of right and should be implemented by States. It has been increasingly recognised in international law and Constitutions such as in Colombia and Brazil where indigenous groups have legally enforced the State's duty to demarcate and legally establish indigenous territories. Special measures are needed to recognize, demarcate and protect ancestral lands to promote the establishment of contiguous indigenous territories to allow traditional economic, social and cultural practices and enable sustainable land use and conservation. In many cases this will require the return of seized lands and allowing communities to opt for non-transferability of the property. The latter is necessary in order to reduce vulnerability to corruption, manipulation and/or violence by outside forces, and prevent the dismemberment and loss of ancestral lands.
- States should guarantee access rights of small-scale and indigenous fishing communities to territories, lands and waters on which they have traditionally depended for their life and livelihoods. Small-scale fisheries should be established and fostered as the preferred model for the Exclusive Economic Zone (EEZ). States should ensure that the declaration, establishment and management of Marine Protected Areas (MPAs) bindingly involve the active participation of local and indigenous communities and small-scale fishers.

5.2.3 Redistribution of land and natural resources

In contexts of highly unequal access to land and natural resources, States should implement redistributive land reforms that:

- Give all rural marginalized groups access to and control over land and natural resources so that they can live in dignity; redistribution processes based on market mechanisms are extremely limited in their scope and thus expropriative measures – in strict accordance with the rule of law – as well as land ceilings and land taxes remain key instruments;
- Guarantee the fulfillment of the social function of property by limiting the recognition of private land rights by other considerations of public interest. This empowers the state to expropriate non-used, unproductive or sub-used lands for distributive purposes, usually upon the payment of compensation using bounds of public debt. A firmer role is needed of government to reduce the intense speculation in land, which leads to exclusion of the poor;
- Gives women distinct and individual rights to land either as owner or in co-ownership in individual land tenure systems or individual use rights in communal/colective land tenure systems;

- Respects the rights of indigenous peoples to their lands, territories and natural resource, as well as the collective rights of nomadic pastoralists;
- Are preferentially undertaken within the agricultural frontier and preserve the means of subsistence for future generations;
- Ensure sustainable patterns of production, preventing soil and water pollution and protecting the fertility of the soil, the biodiversity of genetic resources and the climate.

5.2.4 Women's rights

- States should review and reform statutory, customary and religious laws that discriminate against women in access to and ownership, control and use of land.
- State should provide legal recognition of joint registration of land rights by men and women, as well as regulations and programmes to ensure that the law is well-known and implemented without discrimination. Joint registration of land rights for spouses, including under customary law, can enable women to better protect their land rights.
- Many women are unaware of their legal and customary rights, whether because of illiteracy, poverty, lack of modern communication systems, or prejudice. Wide dissemination of information on women's rights is critical, including the existing rights under national law which should be strongly supported. After an intensive village-to-village information dissemination campaign in Laos, joint registration and individual registration by women under a 1994 law increased dramatically as did the proportion of women using their land as collateral for mortgages (Scholz, 2007).
- State should strengthen the capacity of local-level institutions to administer land and adjudicate disputes in a gender-neutral way and support the participation of women at all levels of land administration, management and policy-making.
- States should support access by women to recourse mechanisms. In the case of customary law, the constitutional Court of South Africa overturned the customary law rule of primogeniture and the Black Administration Act in which the house of the father upon death became the property of the eldest male relative (Sullivan, 2005).¹⁹
- States should support pro-poor and pro-women rural development that provides agricultural support services, labor-saving domestic and agricultural devices, basic public services, and access to credit, capital, appropriate technologies, markets and information. Furthermore, they should support programs and projects that empower women and communities to prevent and remedy HIV-related evictions.

¹⁹ *Bhe v. Magistrate Khayelitsha & Ors.* 2005 (1) BCLR 1 (CC), 15 Oct. 2004

5.2.5 Sustainable use of land and natural resources

- States should recognize the socio-environmental function of land, the sea, and the natural resources. The use of land and natural resources should primarily be for food production and should be in a manner which is sustainable and protects the environment and nature.
- States should foster small-scale uses of productive natural resources for family agriculture and small producers, in particular rural people, women and vulnerable groups, such as indigenous people, forest and fishing communities, pastoralists, peasants, and landless people, to ensure food security and sustainable livelihoods. Economic development policies should be oriented to this goal.

5.2.6 Land tenure in conflict, post conflict and reconstruction after natural disasters

- In cases of international and non-international armed conflicts, it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. Furthermore, the protection of the natural environment in warfare against widespread, long-term and severe damage must be ensured. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
- All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal. States shall demonstrably prioritize the right to restitution and to return as the preferred remedy for displacement and as a key element of restorative justice. The Pinheiro Principles should be a key reference to develop this guideline.
- Critical to any post-disaster rehabilitation program is the need to recognise and uphold the human rights to disaster prevention, and to adequate and timely relief and rehabilitation. Strong human rights-based gender sensitive disaster prevention, mitigation and rehabilitation policies need to be developed and implemented. Women and children tend to suffer the most from disasters and their special needs and rights must be protected. With regard to land and natural resources, special efforts have to be made to restore land and natural resource rights irrespective of whether people held titles to their lands or homes. Where agricultural or coastal land has been lost, efforts must be made to provide alternative land of equal or commensurate value to ensure that livelihoods are not lost. In particular, any post-disaster response must stress on: i) the need for participatory and in-depth consultations with affected people, including women, children, and other marginalized and vulnerable communities; ii) the incorporation of human rights standards of adequacy in all housing and livelihoods plans; iii) the development of enforceable timelines for completion of reconstruction; iv) the creation of effective monitoring and grievance redressal mechanisms.

5.2.7 Institutions

- States should evaluate periodically the mandate and performance of the relevant public institutions dealing with land and natural resources tenure and, where necessary, establish, reform or improve their organization and structure in order to guarantee that they are conducive in achieving a human rights-based good governance in land tenure.
- States should ensure coordinated efforts of the relevant ministries, agencies and offices dealing with land and natural resources tenure and establish, for example, national intersectoral coordination mechanisms to ensure the concerted implementation, monitoring and evaluations of policies, plans and programs aimed at realizing the land and natural resources rights of the poorest groups.
- Public institutions dealing with land and natural resources tenure should have sufficient resources as well as sufficiently and highly qualified personnel. For this purpose, states should mobilize the maximum available domestic and foreign resources, and new sources.
- Participatory methodologies for the collection of land and natural resources related information should be strengthened by public institutions dealing with land and natural resources tenure.

5.2.8 Recourse mechanisms

- Administrative, quasi-judicial and judicial mechanisms should be available to provide adequate, affordable, effective and prompt remedies accessible to members of vulnerable groups, and in particular should be envisaged. Each person or community that has been a victim of a violation of their rights to land and natural resources should be able to count on legal or other types of recourse either on a national or international level.
- Every victim of such violations should have the right to adequate remedies which could consist of restitution, compensation, satisfaction or guarantees that such acts will not be repeated.
- States should support the development of paralegal networks and groups to help women and marginalized groups intervene in disputes over access to land and prevent forced evictions.
- Persons who have a right to security of tenure and whose security of tenure is threatened or has been infringed, should have a right to legal representation or legal aid at State expense if substantial injustice would otherwise result, and if they cannot reasonably afford the cost thereof from their own resources.²⁰

5.2.9 Conflict resolution

- Local communities and peoples that share territories should have equitable, access to them. States should support the efforts of the organized civil society to solve conflicts over shared territories between different sectors by improving their

²⁰ *Nkuzi Development Association v. Government of the Republic of South Africa and The Legal Aid Board*, LCC 10/01, decided 6 July 2001 (see also (2002) 2 SA 733 (LCC)). See discussion in Budlender (2004).

traditional management of territories, particularly because one major source of conflict is the overexploitation of nature and unsustainable management of territories by one sector to the detriment of another, by one generation to the detriment of future generations.

- States should support the local communities to strengthening their capacities to democratically negotiate and share territories in order to ensure the peaceful coexistence of diverse communities.

5.2.10 Monitoring

- States should collect statistics and other disaggregated data on issues linked to security of tenure and forced evictions, the number of landless people or people with insufficient land, the degree of concentration of land and other resources, the loss of access to land for different groups, the reasons for that loss, the availability of public land, and other related socio-economic data. Disaggregation of data should consider at least gender, race and social status.
- States should develop indicators and benchmarks regarding secure access to land and natural resources to measure progressive/regressive measures and evaluate whether relevant economic, social and cultural rights are being progressively realized in accordance with the expansion in the availability of resources.
- States should establish mechanisms to monitor and evaluate the implementation of these guidelines. Civil society should be encouraged to independently monitor these processes.

5.2.11 Extra-territorial dimension

- States and UN-specialised agencies should observe the extra-territorial dimension of their human rights obligations related to land and natural resources of marginalized groups. International cooperation concerning land policy and any other policy which might affect the lives and livelihoods of marginalized groups should be guided by basic human rights principles.
- States and UN-specialized agencies should contribute to the fulfillment of the present guidelines which assist States in their national efforts to good governance in land and natural resources tenure. States and UN-specialised agencies should particularly refrain from destroying local communities' existing access to land and natural resources. Under no circumstances should forced evictions be encouraged or supported.
- States and UN-specialised agencies should not promote regressive measures for the enjoyment of the human rights connected to land and natural resources – for example, policies that promote privatization and commodification of land and natural resources, or policies which prevent the redistribution of resources.
- States and UN-specialized agencies should guarantee effective participation of affected groups, particularly of women, in the design and implementation of international cooperation policies related to land and natural resources. Access to monitoring mechanisms and independent compliant mechanisms which would allow affected groups to assert their rights should be ensured.

5.2.12 Non-state actors

- In cases of international and non-international armed conflicts, it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. Furthermore, the protection of the natural environment in warfare against widespread, long-term and severe damage must be ensured. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
- Transnational corporations and other business enterprises should respect the rights to land and natural resources as well as civil and political rights of marginalized groups. Transnational corporations and other business enterprises should contribute to the realization of these rights, and should refrain from actions that obstruct or impede the realization of these rights.

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Annexes

Annex 1. "Land, Territory and Dignity" Forum, Porto Alegre, March 6-9, 2006: For a New Agrarian Reform based on Food Sovereignty!

We are representatives of organizations of peasants, family farmers, indigenous peoples, landless peoples, artisanal fisherfolk, rural workers, migrants, pastoralists, forest communities, rural women, rural youth, and defenders of human rights, rural development, the environment, and others. We come from the whole world, to participate in the "Land, Territory and Dignity," to defend our land, our territory, and our dignity.

States and the international system have not been capable of defeating poverty and hunger in the world. We reiterate our call to our governments, to the FAO (with its founding mandate), to the other institutions of the United Nations system, and to the other actors who will be present in the International Conference on Agrarian Reform and Rural Development (ICARRD), and on our societies, to decisively commit themselves to carrying out a New Agrarian Reform based on Food Sovereignty, the Territories and the Dignity of the Peoples, which guarantees us, as rural women, peasants, family farmers, indigenous peoples, communities of artisanal fisherfolk, pastoralists, landless peoples, rural workers afrodescendents, Dalit communities, unemployed workers and other rural communities, effective access to and control over the natural and productive resources that we need to truly realize our human rights.

We call the International Conference on Agrarian Reform and Rural Development (ICARRD), the States and the FAO to assume a real political will need to eradicate the hunger and poverty that millions of women and men are facing all over the world. If this Conference fails to recognize the proposals put forward by our Parallel Forum the Conference cannot be considered successful.

Food Sovereignty and Agrarian Reform

The new agrarian reform must recognize the socio-environmental function of land, the sea, and the natural resources, in the context of food sovereignty. We understand that food sovereignty implies policies of redistribution, equitable access and control over natural and productive resources (credit, appropriate technology, etc.), by rural women, peasants, indigenous peoples, communities of artisanal fisherfolk, rural workers, unemployed workers, pastoralists, Dalit communities and other rural communities; rural development policies based on agroecological strategies centered on peasant and family agricultural and artisanal fishing; trade policies against dumping and in favor of peasant and indigenous production for local, regional and national markets; and complementary public sector policies like health care, education and infrastructure for the countryside.

The use of natural resources should primarily be for food production. The new agrarian reform must be a high priority on the public agenda. In the context of food sovereignty, agrarian reform benefits all society, providing healthy, accessible and culturally appropriate food, and social justice. Agrarian reform can put an end to the massive and forced rural exodus from the countryside to the city, which has made cities grow at unsustainable rates and under inhuman conditions; would help provide a life with dignity for all members of our societies; would open the way toward a more broad-based and inclusive local, regional and national economic development, that benefits the majority of the population; and could put an end to unsustainable practices

of intensive monoculture that make wasteful use of water and poison our land and water with chemicals, and of industrial fishing that over-exploits and exhausts our fishing grounds. It is necessary new fishing policies that recognize the rights of fishing communities and stop depleting life in the sea. For all these reasons, agrarian reform is not just needed in the so-called "developing countries," but also in Northern, so-called "developed" countries.

Food sovereignty is based on the human rights to food, to self-determination, on indigenous rights to territory, and on the rights of rural peoples to produce food for local and national markets. Food sovereignty defends agriculture *with* farmers, fisheries *with* artisanal fishing families, forestry *with* forest communities, and steppes *with* nomadic pastoralists...

Furthermore, agrarian reform should guarantee rights to education, to healthcare, to housing, to social security and to recreation. Agrarian reform should assure the creation of the spaces where we maintain our culture, to provide a home to children and youth, so that our communities can develop their full diversity and so we can construct a citizenship on the basis of our relationship to the land, the sea, the forests....

Role of the State

The State must play a strong role in policies of agrarian reform and food production. The State must apply policies that recognize rights and democratize access to land, to coastal areas, forests, and so on, especially in cases where access to these resources are concentrated in the hands of a few. Furthermore, the State should guarantee community control over natural resources by peasant, fisherfolk, pastoralist, and forest communities, and by indigenous peoples, such that they can continue to live and work in the countryside and on the coasts, by means of collective and community rights. Agrarian reform should create jobs with dignity and strengthen the rights of rural workers. States have the right and the obligation to define, without external influences, their own agrarian, agricultural, fishing and food policies in such a way as to guarantee the right to food and the other economic, social and cultural rights of the entire population. The small-scale producers must have access to credit at low interest rates and adapted to local conditions, to fair prices and market conditions, and to technical assistance for agro ecological forms of production. Research and systems of support for collection of harvests and distributing them to local and regional markets must have strong state support and must work for the common good.

Recognition of the Concept of Territory

The concept of territory has been historically excluded from agrarian reform policies. No agrarian reform is acceptable if it only aims at the distribution of land. We believe that the new agrarian reform must include the Cosmo visions of territory of communities of peasant, the landless, indigenous peoples, rural workers, fisherfolk, nomadic pastoralists, tribes, afrodescendents, ethnic minorities, and displaced peoples, who base their work on the production of food and who maintain a relationship of respect and harmony with the Mother Earth including the oceans.

All of the original peoples, indigenous peoples, ethnic minorities, tribes, fisherfolk, rural workers, peasants, the landless, nomadic pastoralists and displaced peoples, have

the right maintain their own spiritual and material relationships to their lands; to possess, develop, control, and reconstruct their social structures; to politically and socially administer their lands and territories, including their full environment, the air, water, seas, ice floes, flora, fauna and other resources that they have traditionally possessed, occupied and/or utilized. This implies the recognition of their laws, traditions, customs, tenure systems, and institutions; as well as the recognition of territorial and cultural borders of peoples. This all constitutes the recognition of the self-determination and autonomy of peoples.

The expression of gender and youth in the struggle for agrarian reform

We recognize the fundamental role of women in agriculture and fishing and in the use and management of natural resources. There can be no genuine agrarian reform without gender equity, thus we demand and we commit ourselves to ensuring that women receive full equality of opportunities and rights to land and natural resources that recognize their diversity, and that past discrimination against rural women and the social disadvantages they have faced be redressed. We also recognize that without young people who stay in the countryside there is no future for our societies. The new agrarian reform must give priority both to womens' rights and to guaranteeing a future with dignity for today's rural youth.

We demand that governments honor their commitments and obligations that they assumed in various international conferences such as the Beijing Conference and the World Conference on Racism. Their commitments to gender equality and racial diversity that are upheld in the Convention for the Elimination of All Forms of Discrimination Against Women and the Peasant Charta that was adopted in the World Conference On Agrarian Reform and Rural Development. We demand the implementation of a redistributive agrarian reform which will allow women and youth access to and jurisdiction over land and natural resources and guarantee the representation of women and youth in the decision making mechanisms concerning management at all levels, local, national and international. It is indispensable to have adequate financial resources for capacity building and education in sexual and reproductive health.

No to the Privatization of the Seas and the Land, No to the Dominant Model of Production and Development

Together with the privatization of land and coastal areas we are seeing the privation of biodiversity. Life is not a commodity.

We will continue to **resist** the neoliberal policies implemented by our governments and imposed by the World Bank, the WTO and other actors. These destructive policies include so-called land administration, cadastre, delimitation, titling and parceling of lands, and the policies of decollectivization, all with the goal of privatization of land in individual hands; the promotion of markets for buying, selling and renting of lands, "land banks," the end of land distribution programs; the return of reformed lands to former landlords, the reconcentration of land; the privatization of water, the sea, seeds, forests, fishing areas, and other resources, as well as services of extension, credit, transport and marketing, roads, healthcare, education, and so on, and the dismantling of public sector support for peasant production and the marketing of their products. We roundly oppose the introduction of transgenic seeds and the suicide or "terminator"

seed technology that expropriates control over seeds from rural communities and transfers it to a handful of transnational corporations.

The privatization of natural resources and technologies has increased the inequality between men and women, casts, ethnies, classes and generations. These policies are perpetuating displacement, persecution and criminalization of these already marginalized groups.

By the same token, we will continue to resist the dominant model of production and development, with its processes of neoliberal globalization, the transformation and insertion of farming, fishing and forestry into the production chains of transnational corporations, industrial agriculture, forestry and fisheries (contract production, export monocultures, plantations, big-boat fishing, biofuels, genetic engineering and GMOs, nanotechnology). Investments in mining, agribusiness, biopiracy, green neoliberalism, infrastructure mega projects, are destroying our territories and agriculture, our fisheries and are causing displacement of local people and rootlessness from the countryside and costal areas as “Reconstruction” programmes after natural disasters, wars and free trade policies (WTO, FTA, CAP, Farm Bill and so on) are also doing.

Agricultural policies financing the dumping exports of agrarian and fishing products must be replaced by policies realizing food sovereignty which respect the endogenous development of peoples.

We recognize and value initiatives like ALBA for the regional integration and the exercise of food sovereignty. In this context agrarian reform and rural development should be an integral part of these initiatives.

Criminalization and repression of social movements

We reject and condemn the repression that we face, that any person who fights for agrarian reform faces, in almost all countries—in the Americas as in Asia, in Europe, in Africa. We denounce the militarization and military occupation in Irak, South Korea, Palestine that displace our peoples and steal them their territories; the so-called "war against terrorism" that serves as a pretext to repress us, and the criminalization (labeling us as "criminals") of our movements. To fight for our rights and dignity is an obligation; and it is our human right to do so.

We demand that the States establish mechanisms for protection of life and security of persons who struggle to protect their land, water and natural resources. States must guarantee effective legal mechanisms for punishing those who are guilty of such crimes.

Land Occupations, and the Recovery and Defense of Territories. Social mobilization as a strategy of struggle and construction of proposals.

We defend our actions of land occupation and the recuperation and active defense of our land, territories, seeds, forests, fishing grounds, housing, etc., as necessary and legitimate to realize and defend our rights. If our day-by-day experience in the struggle for human dignity has taught us anything, it is that direct actions like land occupations, and recuperations and active defense of territories, are absolutely necessary in order to move governments to fulfill their obligations and implement effective policies and programs of agrarian reform. We pledge to keep carrying out these non-violent actions

for as long as is necessary to achieve a world with social justice, which gives each and everyone the real possibility of having a life with dignity. Without the mobilization and full participation of social movements, there will be no genuine agrarian reform.

Food sovereignty is not just a vision but is also a common platform of struggle that allows us to keep building unity in our diversity. We believe that access and control over natural resources, food production, and the increase of decision-making power are three main themes that bring us together.

Agrarian reform and food sovereignty commit us to a larger struggle to change the dominant neoliberal model. We must build alliances with other sectors of society, a citizens power that can guarantee deep agrarian reforms. We commit ourselves to promote joint actions, articulations, exchanges, and all the forms of pressure that are underway, especially through the international campaigns that our organizations and networks are carrying out or developing. We are convinced that only the power of organized peoples and mobilization can achieve the needed changes, thus our principal task is to inform, raise awareness, debate, organize and mobilize with the people. We call on all the actors and forces present here to keep building our unity, and we will carry these conclusions back to debate with our social bases, and will use these ideas to confront the policies of international bodies like the FAO, and our governments. We ask that the International Planning Committee for Food Sovereignty (IPC) to give priority in its work to the follow-up of these conclusions.

Land, sea, and territory to affirm our dignity.

Land, sea, and territory for dreams.

Land, sea, and territory for LIFE

Annex 2. Declaration of the Forum for Food Sovereignty, Nyéléni 2007

We, more than 500 representatives from more than 80 countries, of organizations of peasants/family farmers, artisanal fisherfolk, indigenous peoples, landless peoples, rural workers, migrants, pastoralists, forest communities, women, youth, consumers and environmental and urban movements have gathered together in the village of Nyéléni in Sélingué, Mali to strengthen a global movement for food sovereignty. We are doing this, brick by brick, as we live here in huts constructed by hand in the local tradition, and eat food that is produced and prepared by the Sélingué community. We give our collective endeavor the name “Nyléni” as a tribute to and inspiration from a legendary Malian peasant woman who farmed and fed her peoples well.

Most of us are food producers and are ready, able and willing to feed all the world’s peoples. Our heritage as food producers is critical to the future of humanity. This is specially so in the case of women and indigenous peoples who are historical creators of knowledge about food and agriculture and are devalued. But this heritage and our capacities to produce healthy, good and abundant food are being threatened and undermined by neo-liberalism and global capitalism. Food sovereignty gives us the hope and power to preserve, recover and build on our food producing knowledge and capacity.

Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts the aspirations and needs of those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations. It defends the interests and inclusion of the next generation. It offers a strategy to resist and dismantle the current corporate trade and food regime, and directions for food, farming, pastoral and fisheries systems determined by local producers and users. Food sovereignty prioritises local and national economies and markets and empowers peasant and family farmer-driven agriculture, artisanal - fishing, pastoralist-led grazing, and food production, distribution and consumption based on environmental, social and economic sustainability. Food sovereignty promotes transparent trade that guarantees just incomes to all peoples as well as the rights of consumers to control their food and nutrition. It ensures that the rights to use and manage lands, territories, waters, seeds, livestock and biodiversity are in the hands of those of us who produce food. Food sovereignty implies new social relations free of oppression and inequality between men and women, peoples, racial groups, social and economic classes and generations.

In Nyéléni, through numerous debates and interactions, we are deepening our collective understanding of food sovereignty and learning about the realities of the struggles of our respective movements to retain autonomy and regain our powers. We now understand better the tools we need to build our movement and advance our collective vision.

What are we fighting for?

A world where:

- all peoples, nations and states are able to determine their own food producing systems and policies that provide every one of us with good quality, adequate, affordable, healthy and culturally appropriate food;

- there is recognition and respect of women's roles and rights in food production, and representation of women in all decision making bodies;
- all peoples in each of our countries are able to live with dignity, earn a living wage for their labour and have the opportunity to remain in their homes, if they so choose;
- food sovereignty is considered a basic human right, recognised and implemented by communities, peoples, states and international bodies;
- we are able to conserve and rehabilitate rural environments, fish populations, landscapes and food traditions based on ecologically sustainable management of land, soils, water, seas, seeds, livestock and all other biodiversity;
- we value, recognize and respect our diversity of traditional knowledge, food, language and culture, and the way we organise and express ourselves;
- there is genuine and integral agrarian reform that guarantees peasants full rights to land, defends and recovers the territories of indigenous peoples, ensures fishing communities' access and control over their fishing areas and eco-systems, honours access and control by pastoral communities over pastoral lands and migratory routes, assures decent jobs with fair remuneration and labour rights for all, and a future for young people in the countryside;...where agrarian reform revitalises inter-dependence between producers and consumers, ensures community survival, social and economic justice, ecological sustainability, and respect for local autonomy and governance with equal rights for women and men...where agrarian reform guarantees rights to territory and self-determination for our peoples;
- share our lands and territories peacefully and fairly among our peoples, be we peasants, indigenous peoples, artisanal fishers, pastoralists, or others;
- in the case of natural and human-created disasters and conflict-recovery situations, food sovereignty acts as a form of "insurance" that strengthens local recovery efforts and mitigates negative impacts... where we remember that communities affected by disasters are not helpless, and where strong local organization for self-help is the key to recovery;
- peoples' power to make decisions about their material, natural and spiritual heritage are defended;
- all peoples have the right to defend their territories from the actions of transnational corporations;

What are we fighting against?

- Imperialism, neo-liberalism, neo-colonialism and patriarchy, and all systems that impoverish life, resources and eco-systems, and the agents that promote the above such as international financial institutions, the World Trade Organization, free trade agreements, transnational corporations, and governments that are antagonistic to their peoples;
- The dumping of food at prices below the cost of production in the global economy;
- The domination of our food and food producing systems by corporations that place profits before people, health and the environment;
- Technologies and practices that undercut our future food producing capacities, damage the environment and put our health at risk. These include transgenic crops and animals, terminator technology, industrial aquaculture and destructive fishing practices, the so-called White Revolution of industrial dairy practices, the so-called 'old' and 'new' Green Revolutions, and the "Green Deserts" of industrial bio-fuel monocultures and other plantations;

- The privatisation and commodification of food, basic and public services, knowledge, land, water, seeds, livestock and our natural heritage;
- Development projects/models and extractive industries that displace people and destroy our environments and natural heritage;
- Wars, conflicts, occupations, economic blockades, famines, forced displacement of peoples and confiscation of their lands, and all forces and governments that cause and support these;
- Post disaster and conflict reconstruction programmes that destroy our environments and capacities;
- The criminalization of all those who struggle to protect and defend our rights;
- Food aid that disguises dumping, introduces GMOs into local environments and food systems and creates new colonialism patterns;
- The internationalisation and globalisation of paternalistic and patriarchal values, that marginalise women, and diverse agricultural, indigenous, pastoral and fisher communities around the world;

What can and will we do about it?

- Just as we are working with the local community in Sélingué to create a meeting space at Nyéléni, we are committed to building our collective movement for food sovereignty by forging alliances, supporting each others' struggles and extending our solidarity, strengths, and creativity to peoples all over the world who are committed to food sovereignty. Every struggle, in any part of the world for food sovereignty, is our struggle.
- We have arrived at a number of collective actions to share our vision of food sovereignty with all peoples of this world, which are elaborated in our synthesis document. We will implement these actions in our respective local areas and regions, in our own movements and jointly in solidarity with other movements. We will share our vision and action agenda for food sovereignty with others who are not able to be with us here in Nyéléni so that the spirit of Nyéléni permeates across the world and becomes a powerful force to make food sovereignty a reality for peoples all over the world.
- Finally, we give our unconditional and unwavering support to the peasant movements of Mali and ROPPA in their demands that food sovereignty become a reality in Mali and by extension in all of Africa.

Now is the time for food sovereignty!

Annex 3. Synthesis report of the Forum for Food Sovereignty, Nyéléni 2007

Access and control over resources

The access, control and stewardship of the natural resources that peasant farming, pastoral, artisanal fishing, forest dwelling and indigenous communities rely on for food and livelihoods – for example, land, forests, water, seeds, livestock, fish and other aquatic species – are essential for food sovereignty. For generations, local communities have conserved the richness and diversity of these resources by controlling access to them for the practice of agroecologically sustainable and biodiverse agriculture, livestock production, pastoralism and artisanal fishing, saving and protecting their lands, territories, forests and water bodies from over-use, depletion and contamination. We must ensure women's access to land, abolishing discriminatory laws of inheritance and repartition in the event of divorce; transforming customs that deny women's right to the land; and equality between women and men in processes of agrarian reform.

A genuine agrarian reform is needed that allows us continued rights of access to and control over our territories, including for Indigenous Peoples and pastoralists, that can then be used exclusively for ecologically and socially sustainable production. We require similar rights to water bodies and coastal commons for artisanal fisheries, preventing the imposition of industrial aquaculture or destructive fishing practices, as well as guaranteeing riparian and beach access to these resources. We must develop a common plan of action around the fight against water privatisation, commodification of water and exploitation of ground water by transnational corporations.

Access to and control over our seed varieties, livestock breeds and fish species that are the basis of food sovereignty should not be compromised by intellectual property rights nor should they be contaminated by genetically modified organisms.

We must guard against humanitarian and development assistance that reduce access and our control over natural resources, as happened, for example, after the December 2004 Indian Ocean Tsunami. We must force governments either to apply existing international laws and agreements, or design national laws, that guarantee the rights of access to the resources to which people are entitled and prevent the privatization of common resources and the actions of transnational corporations, which limit our access to the natural resources we need to realize food sovereignty.

Sharing territories

We must first define territories beyond geopolitical boundaries so as to include the territories of indigenous peoples, nomadic and pastoralist communities and beach-based fisherfolk. We should also view nature as material and spiritual beings, not as 'resources' that exist to be exploited. We understand the holistic nature of territories as including land, water, seeds, livestock breeds and aquatic organisms. Local communities and peoples that share territories should have equitable, but controlled, access. One of the biggest obstacles to equitable access to territories is the privatization of land, water and material beings. We need to fight against all forms of expulsion of peoples from their territories and against mechanisms that favour remote, corporate or centralised control of territories.

We need to ensure the peaceful coexistence of diverse communities in territories by strengthening our organizations and multi-sectoral alliances so as to democratically negotiate and share territories. A strong, aware and organized civil society will be able to assert the rights of peasants/farmers, artisanal fisherfolk, pastoralists and indigenous communities. We must also assert the rights of young people and women to access territories.

We can solve conflicts over shared territories between different sectors by improving our traditional management of territories, particularly because one major source of conflict is the overexploitation of nature and unsustainable management of territories by one sector to the detriment of another, by one generation to the detriment of future generations. We need to fight for genuine comprehensive agrarian reform based on the diverse needs of peoples and for governments to protect the rights of those who inhabit territories.

Anchored in our traditional knowledge, we need to create our own research activities to collect and imagine alternative solutions to the obstacles to sharing territories by diverse communities. One such solution is the creation of an alternative economic system of exchanges among local producers that resists global market domination.

Annex 4. The Kimberley Declaration: International Indigenous Peoples Summit on Sustainable Development, Khoi-San Territory, Kimberley, South Africa, 20-23 August 2002

We, the Indigenous Peoples, walk to the future in the footprints of our ancestors
(Kari-Oca Declaration, Brazil, 30 May 1992)

We the Indigenous Peoples of the World assembled here reaffirm the Kari-Oca Declaration and the Indigenous Peoples' Earth Charter. We again reaffirm our previous declarations on human and environmental sustainability.*

Since 1992, the discussions on sustainable development have been intensified however, the ecosystems of the earth continue to be degraded increasingly. We are in crisis. We are in an accelerating spiral of climate change that will not abide unsustainable greed.

Today we reaffirm our relationship to Mother Earth and our responsibility to coming generations to uphold peace, equity and justice. We continue to pursue the commitments made at Earth Summit as reflected in this political declaration and the accompanying plan of action. The commitments which were made to Indigenous Peoples in Agenda 21, including our full and effective participation, have not been implemented due to the lack of political will.

As peoples, we reaffirm our rights to self-determination and to own, control and manage our ancestral lands and territories, waters and other resources. Our lands and territories are at the core of our existence - we are the land and the land is us; we have a distinct spiritual and material relationship with our lands and territories and they are inextricably linked to our survival and to the preservation and further development of our knowledge systems and cultures, conservation and sustainable use of biodiversity and ecosystem management.

We have the right to determine and establish priorities and strategies for our self-development and for the use of our lands, territories and other resources. We demand that free, prior and informed consent must be the principle of approving or rejecting any project or activity affecting our lands, territories and other resources.

We are the original peoples tied to the land by our umbilical cords and the dust of our ancestors. Our special places are sacred and demand the highest respect. Disturbing the remains of our families and elders is desecration of the greatest magnitude and constitutes a grave violation of our human rights. We call for the full and immediate repatriation of all Khoi-San human remains currently held in museums and other institutions throughout the world, as well as all the human remains of all other Indigenous Peoples. We maintain the rights to our sacred and ceremonial sites and ancestral remains including access to burial, archaeological and historic sites.

The national, regional and international acceptance and recognition of Indigenous Peoples is central to the achievement of human and environmental sustainability. Our traditional knowledge systems must be respected, promoted and protected; our collective intellectual property rights must be guaranteed and ensured. Our traditional knowledge is not in the public domain; it is collective, cultural and intellectual

property protected under our customary law. Unauthorized use and misappropriation of traditional knowledge is theft.

Economic globalization constitutes one of the main obstacles for the recognition of the rights of Indigenous Peoples. Transnational corporations and industrialized countries impose their global agenda on the negotiations and agreements of the United Nations system, the World Bank, the International Monetary Fund, the World Trade Organization and other bodies which reduce the rights enshrined in national constitutions and in international conventions and agreements.

Unsustainable extraction, harvesting, production and consumption patterns lead to climate change, widespread pollution and environmental destruction, evicting us from our lands and creating immense levels of poverty and disease.

We are deeply concerned that the activities of multinational mining corporations on Indigenous lands have led to the loss and desecration of our lands, as exemplified here on Khoi-San territory. These activities have caused immense health problems, interfered with access to, and occupation of our sacred sites, destroyed and depleted Mother Earth, and undermined our cultures.

Indigenous Peoples, our lands and territories are not objects of tourism development. We have rights and responsibilities towards our lands and territories. We are responsible to defend our lands, territories and indigenous peoples against tourism exploitation by governments, development agencies, private enterprises, NGOs, and individuals.

Recognizing the vital role that pastoralism and hunting-gathering play in the livelihoods of many Indigenous Peoples, we urge governments to recognize, support and invest in pastoralism and hunting-gathering as viable and sustainable economic systems.

We reaffirm the rights of our peoples, nations and communities, our women, men, elders and youth to physical, mental, social, and spiritual well-being.

We are determined to ensure the equal participation of all Indigenous Peoples throughout the world in all aspects of planning for a sustainable future with the inclusion of women, men, elders and youth. Equal access to resources is required to achieve this participation.

We urge the United Nations to promote respect for the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded between Indigenous Peoples and States, or their successors, according to their original spirit and intent, and to have States honor and respect such treaties, agreements and other constructive arrangements.

Language is the voice of our ancestors from the beginning of time. The preservation, securing and development of our languages is a matter of extreme urgency. Language is part of the soul of our nations, our being and the pathway to the future.

In case of the establishment of partnerships in order to achieve human and environmental sustainability, these partnerships must be established according to the

following principles: our rights to the land and to self-determination; honesty, transparency and good faith; free, prior and informed consent; respect and recognition of our cultures, languages and spiritual beliefs.

We welcome the establishment of the United Nations Permanent Forum on Indigenous Issues and urge the UN to secure all the necessary political, institutional and financial support so that it can function effectively according to its mandate as contained in ECOSOC Resolution E/2000/22. We support the continuation of the United Nations Working Group on Indigenous Populations based on the importance of its mandate to set international standards on the rights of Indigenous Peoples.

We call for a World Conference on Indigenous Peoples and Sustainable Development as a culmination of the United Nations International Decade for the World's Indigenous Peoples (1995-2004) and as a concrete follow-up to the World Summit on Sustainable Development.

We continue to meet in the spirit of unity inspired by the Khoi-San people and their hospitality. We reaffirm our mutual solidarity as Indigenous Peoples of the world in our struggle for social and environmental justice.

* Including the Draft Declaration on the Rights of Indigenous Peoples; the Charter of the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests; the Mataatua Declaration; the Santa Cruz Declaration on Intellectual Property; the Leticia Declaration of Indigenous Peoples and Other Forest Dependent Peoples on the Sustainable Use and anagement of All Types of Forests; the Charter of Indigenous Peoples of the Arctic and the Far East Siberia; the Bali Indigenous Peoples Political Declaration; and, the Declaration of the Indigenous Peoples of Eastern Africa in the Regional WSSD Preparatory Meeting.

Annex 5. World Charter for the Right to the City

Social Forum of the Americas – Quito – July 2004

World Urban Forum – Barcelona – October 2004

World Social Forum – Porto Alegre – January 2005

Revision in preparation for Barcelona – September 2005

Preamble

The new millennium dawned with half of the world's population living in cities, and experts forecast that by 2050 the world's urbanization rate will reach 65%. Cities are potentially territories with vast economic, environmental, political and cultural wealth and diversity. The urban way of life influences the way in which we link with our fellow human beings and with the territory.

However, contrary to these potentials, the development models implemented in the majority of impoverished countries are characterized by the tendency to concentrate income and power, generating poverty and exclusion, contributing to environmental degradation, and accelerating migration and urbanization processes, social and spatial segregation, and privatization of common goods and public spaces. These processes favor proliferation of vast urban areas marked by poverty, precarious conditions, and vulnerability to natural disasters.

Today's cities are far from offering equitable conditions and opportunities to their inhabitants. The majority of the urban population is deprived or limited – in virtue of their economic, social, cultural, ethnic, gender or age characteristics – in the satisfaction of their most elemental needs and rights. Public policies that contribute to this by ignoring the contributions of the popular inhabiting processes to the construction of the city and citizenship are only detrimental to urban life. The grave consequences of this situation include massive evictions, segregation, and resulting deterioration of social coexistence.

This context favors the emergence of urban struggles that remain fragmented and incapable of producing transcendental changes in the current development model, despite their social and political importance.

In the face of this reality, and the need to counter its trends, urban organizations and movements linking together since the First World Social Forum (2001) have discussed and assumed the challenge to build a sustainable model of society and urban life, based on the principles of solidarity, freedom, equity, dignity, and social justice, and founded in respect for different urban cultures and balance between the urban and the rural. Since then, an integrated group of popular movements, nongovernmental organizations, professional associations, forums, and national and international civil society networks, committed to the social struggles for just, democratic, humane and sustainable cities, has worked to build a World Charter for the Right to the City. The Charter aims to gather the commitments and measures that must be assumed by civil society, local and national governments, members of parliament, and international organizations, so that all people may live with dignity in our cities.

The Right to the City broadens the traditional focus on improvement of peoples' quality of life based on housing and the neighborhood, to encompass quality of life at the scale of the city and its rural surroundings, as a mechanism of protection of the population that lives in cities or regions with rapid urbanization processes. This implies initiating a new way of promotion, respect, defense and fulfillment of the civil, political, economic, social, cultural and environmental rights guaranteed in regional and international human rights instruments.

In the city and its rural surroundings, the correlation between these rights and their necessary counterpart of duties can be demanded in accordance with the different responsibilities and socio-economic conditions of its inhabitants, as a form of promotion of: just distribution of the benefits and responsibilities resulting from the urbanization process; fulfillment of the social functions of the city and of property; distribution of urban income; and democratization of access to land and public services for all citizens, especially those with less economic resources and in situations of vulnerability.

For its origin and social meaning, the World Charter for the Right to the City is, above all, an instrument oriented to strengthen urban processes, vindications, and struggles. We call on the Charter to be constituted as a platform capable of linking the efforts of all those actors – public, social and private – interested in allocating full validity and effectiveness to this new human right through its promotion, legal recognition, implementation, regulation, and placement in practice.

Part I – General Provisions

ARTICLE I. THE RIGHT TO THE CITY

1. All persons have the Right to the City free of discrimination based on gender, age, health status, income, nationality, ethnicity, migratory condition, or political, religious or sexual orientation, and to preserve cultural memory and identity in conformity with the principles and norms established in this Charter.

2. The Right to the City is defined as the equitable usufruct of cities within the principles of sustainability, democracy, equity, and social justice. It is the collective right of the inhabitants of cities, in particular of the vulnerable and marginalized groups, that confers upon them legitimacy of action and organization, based on their uses and customs, with the objective to achieve full exercise of the right to free self-determination and an adequate standard of living. The Right to the City is interdependent of all internationally recognized and integrally conceived human rights, and therefore includes all the civil, political, economic, social, cultural and environmental rights which are already regulated in the international human rights treaties.

This assumes the inclusion of the rights to work in equitable and satisfactory conditions; to establish and affiliate with unions; to social security, public health, clean drinking water, energy, public transportation, and other social services; to food, clothing, and adequate shelter; to quality public education and to culture; to information, political participation, peaceful coexistence, and access to justice; and the right to organize, gather, and manifest one's opinion. It also includes respect for minorities; ethnic, racial, sexual and cultural plurality; and respect for migrants.

Urban territories and their rural surroundings are also spaces and locations of the exercise and fulfillment of collective rights as a way of assuring equitable, universal,

just, democratic, and sustainable distribution and enjoyment of the resources, wealth, services, goods, and opportunities that cities offer. The Right to the City therefore also includes the right to development, to a healthy environment, to the enjoyment and preservation of natural resources, to participation in urban planning and management, and to historical and cultural heritage.

3. The city is a culturally rich and diversified collective space that pertains to all of its inhabitants.

4. For the effects of this Charter, the meaning of the concept of city is two-fold. For its physical character, the city is every metropolis, village, or town that is institutionally organized as local governmental unit with municipal or metropolitan character. It includes the urban space as well as the rural or semi-rural surroundings that form part of its territory. As public space, the city is the whole of institutions and actors who intervene in its management, such as governmental authorities, legislative and judicial bodies, institutionalized social participation entities, social movements and organizations, and the community in general.

5. For the effects of this Charter, all the persons who inhabit a city, whether permanently or transitionally are considered its citizens.

6. Cities, in co-responsibility with national authorities, should adopt all necessary measures – to the maximum allowed by the resources available to them – to progressively achieve, by all appropriate means and with the adoption of legislative and regulatory measures, the full realization of economic, social, cultural, and environmental rights. Furthermore, cities in accordance with their legal framework and the international treaties, should dictate legislative or other appropriate provisions so they fully reflect the civil and political rights gathered in this Charter.

ARTICLE II. PRINCIPLES AND STRATEGIC FOUNDATIONS OF THE RIGHT TO THE CITY

1. Full exercise of citizenship and democratic management of the city:

1.1. Cities should constitute an environment of full realization of all human rights and fundamental liberties, assuring the dignity and collective well-being of all persons, in conditions of equality, equity, and justice. All persons have the right to find in the city the necessary conditions for their political, economic, cultural, social, and ecological realization, assuming the duty of solidarity.

1.2. All persons have the right to participate through direct and representative forms in the elaboration, definition, implementation, and fiscal distribution and management of public policies and municipal budgets, in order to strengthen the transparency, effectiveness, and autonomy of local public administrations and of popular organizations.

2. Social function of the city and of urban property:

2.1. As its primary purpose, the city should exercise a social function, guaranteeing for all its inhabitants full usufruct of the resources offered by the city. In other words, the city must assume the realization of projects and investments to the benefit of the urban community as a whole, within criteria of distributive equity, economic complementarity, respect for culture, and ecological sustainability, to guarantee the

well-being of all its inhabitants, in harmony with nature, for the present and for future generations.

2.2. The public and private spaces and goods of the city and its citizens should be used prioritizing social, cultural, and environmental interests. All the citizens have the right to participate in the ownership of the urban territory within democratic parameters, with social justice and within sustainable environmental conditions. The formulation and implementation of public policies should promote socially just and environmentally balanced uses of urban space and soil, in conditions of security and gender equity.

2.3 Cities should promulgate adequate legislation and establish mechanisms and sanctions designed to guarantee full advantage of urban soil and public and private properties which are deserted, unused, underused, or unoccupied, for fulfillment of the social function of property.

2.4 In the formulation and implementation of urban policies, the collective social and cultural interest should prevail above individual property rights and speculative interests.

2.5. Cities should inhibit real estate speculation through adoption of urban norms for just distribution of the burdens and benefits generated by the urbanization process, and the adaptation of economic, tributary, financial, and public expenditure policy instruments to the objectives of equitable and sustainable urban development. The extraordinary income (appreciation) generated by public investment – currently captured by real estate and private sector businesses – should be redirected in favor of social programs that guarantee the right to housing and a dignified life for the sectors living in precarious conditions and risk situations.

3. Equality, no-discrimination:

3.1 The rights enounced in this Charter should be guaranteed for all the persons who inhabit cities, either permanently or temporarily, with no discrimination of any kind.

3.2 Cities should assume commitments acquired in regard to implementation of public policies that guarantee equal opportunities for women in cities, expressed in the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW) and in the Environment (Rio de Janeiro 1992), Women's (Beijing 1995), and Habitat II (Istanbul 1996) Conferences, among others. The necessary resources should be allocated from governmental budgets to assure the effectiveness of said policies, and the necessary mechanisms and quantitative and qualitative indicators should be established to monitor their fulfillment over time.

4. Special protection of groups and persons in vulnerable situations

4.1 Groups and persons in vulnerable situations have the right to special measures for protection and integration, resource distribution, access to essential services, and protection from discrimination. For the effects of this Charter, the following groups are considered vulnerable: persons or groups living in poverty or situations of environmental risk (threatened by natural disasters), victims of violence, persons with disabilities, forced migrants (displaced), refugees, and all groups living in disadvantaged situations with respect to the rest of the inhabitants, in accordance with each city's reality. In turn, priority attention should be addressed within these groups to the elderly, women (in particular female household heads), and children.

4.2 Cities, through affirmative action policies in favor of the vulnerable groups, should suppress the political, economic, social, and cultural obstacles that limit the freedom, equity, and equality of citizens and impede the full development of the person and his or her effective political, economic, social, and cultural participation in the city.

5. Social commitment of the private sector

Cities should promote the participation of private sector agents in social programs and economic endeavors with the purpose to develop solidarity and full equality among inhabitants, in accordance with the guiding principles established in this Charter.

6. Promotion of the solidary economy and progressive taxation policies

Cities should promote and value the political and economic conditions necessary to guarantee social-solidarity economic programs and progressive taxation systems that assure just distribution of the resources and funds necessary for implementation of social policies.

Part II. Rights relative to the Exercise of Citizenship and to Participation in the Planning, Production and Management of the City

ARTICLE III. PLANNING AND MANAGEMENT OF THE CITY

1. Cities should open institutionalized forms and spaces for broad, direct, equitable and democratic participation by male and female citizens in the processes of planning, elaboration, approval, management and evaluation of public policies and budgets. Guarantees should be in place for the operation of collegiate bodies, audiences, conferences, and public consultations and debates, and to allow and recognize popular initiative processes in legislative proposals and urban development planning.

2. In conformance with the fundamental principles of their legal organization, cities should formulate and apply coordinated and effective policies against corruption; in promotion of the participation of society; and that reflect the principles of the force of law, dutiful management of public affairs and goods, integrity, transparency, and accountability.

3. To safeguard the principle of transparency, cities should organize their administrative structures in a way that guarantees the effective responsibility of their functionaries vis-à-vis their citizens, as well as the responsibility of the municipal administration in its relations with other levels of government and regional and international human rights bodies and entities.

ARTICLE IV. SOCIAL PRODUCTION OF HABITAT

Cities should establish institutional mechanisms and develop the necessary legal, financial, administrative, programmatic, fiscal, technological, and training instruments to support the diverse modalities of social production of habitat and housing, with special emphasis on self-managed processes, whether they be individual, family, or organized collective efforts.

ARTICLE V. EQUITABLE AND SUSTAINABLE URBAN DEVELOPMENT

Cities should develop urban-environmental planning, regulation, and management that guarantees equilibrium between urban development and protection of natural, historic, architectural, cultural and artistic heritage; that impedes segregation and territorial

exclusion; that prioritizes social production of habitat, and that guarantees the social function of the city and property. For that purpose, cities should adopt measures that foster an integrated and equitable city.

City planning and the sectoral programs and projects should integrate the theme of urban security as an attribute of the public space.

ARTICLE VI. RIGHT TO PUBLIC INFORMATION

All persons have the right to solicit and receive complete, reliable, adequate and timely information in relation to the administrative and financial activity of any entity pertaining to city administration, the legislative and judicial branches, and the businesses and private or mixed societies that deliver public services.

The respective governmental or private sector functionaries should produce the information required of their area of competence within a minimum time period if they do not have the information at the moment of the request. The only limit on access to public information is respect for the right of individuals to privacy.

Cities should guarantee mechanisms so that all persons have access to effective and transparent public information. For that purpose, actions should be developed to promote access for all population sectors to the new information technologies, their use, and their periodic up-dating.

All persons or organized groups, and especially those who self-produce their housing and other habitat components, have the right to obtain information on the availability and location of adequate land, housing programs developed in the city, and support instruments available.

ARTICLE VII. FREEDOM AND INTEGRITY

All persons have the right to freedom and integrity, both physical and spiritual. Cities should commit to establish protection guarantees that assure that these rights are not violated by individuals or institutions of any nature.

ARTICLE VIII. POLITICAL PARTICIPATION

1. All citizens have the right to participate in local political life through the free and democratic election of their local representatives, as well as in all the decisions that affect local policies of urban planning, production, renovation, improvement, and management.

2. Cities should guarantee the right to free and democratic election of local representatives, the realization of plebiscites and popular legislative initiatives, and equitable access to public debates and audiences on issues relevant to the city.

3. Cities should implement affirmative action policies for the representation and political participation of women and minorities in all local elective posts and positions responsible for the city's public policy, budget, and program definition.

ARTICLE IX. RIGHT TO ASSOCIATE, GATHER, MANIFEST, AND TO DEMOCRATIC USE OF URBAN PUBLIC SPACE

All persons have the right to associate, meet, and manifest themselves. Cities should provide and guarantee public spaces for this effect.

ARTICLE X. RIGHT TO JUSTICE

Cities should adopt measures designed to improve the access of all persons to the law and to justice.

Cities should foment the resolution of civil, penal, administrative, and labor conflicts through implementation of public mechanisms of conciliation, transaction, mediation, and arbitration.

Cities should guarantee access to justice services, establishing special policies in favor of the vulnerable population groups, and strengthening free public defense systems.

ARTICLE XI. RIGHT TO PUBLIC SECURITY AND PEACEFUL, SOLIDARY AND MULTICULTURAL COEXISTENCE

Cities should create conditions for public security, peaceful coexistence, collective development, and the exercise of solidarity. For that they should guarantee the full usufruct of the city, respecting diversity and preserving the cultural memory and identity of all citizens free of discrimination of any kind.

The primary missions of the security forces include respect for and protection of the rights of citizens. Cities should guarantee that the security forces under their jurisdiction apply the use of force strictly within the provisions of the law and with democratic control.

Cities should guarantee the participation of all their citizens in the control and evaluation of the security forces.

Part III. Rights to Economic, Social, Cultural, and Environmental Development of the City

ARTICLE XII. RIGHT TO WATER AND TO ACCESS AND SUPPLY OF DOMESTIC AND URBAN PUBLIC SERVICES

Cities should guarantee for all their citizens permanent access to public services of potable water, sanitation, waste removal, energy and telecommunications services, and facilities for health care, education, basic-goods supply, and recreation, in co-responsibility with other public or private bodies, in accordance with the legal framework established in international rights and by each country.

In regard to public services, cities should guarantee accessible social fees and adequate service for all persons including vulnerable persons or groups and the unemployed – even in the case of privatization of public services predating adoption of this Charter.

Cities should commit to guarantee that public services depend on the administrative level closest to the population, with citizen participation in their management and fiscal oversight. These services should remain under a legal regimen as public goods, impeding their privatization.

Cities should establish systems of social control over the quality of the services provided by public or private entities, in particular relative to quality control, cost determination, and attention to the public.

ARTICLE XIII. RIGHT TO PUBLIC TRANSPORTATION AND URBAN MOBILITY

1. Cities should guarantee for all persons the right to mobility and circulation in the city, in accordance with an urban and interurban circulation plan and through an accessible public transportation system, provided at a reasonable cost and adequate for different environmental and social needs (gender, age, capacity, etc.).
2. Cities should stimulate use of non-polluting vehicles and establish areas reserved for foot traffic, permanently or during certain times of the day.
3. Cities should promote removal of architectural barriers, installation of the necessary facilities in the mobility and circulation system, and adaptation of all public or public-use buildings and work and leisure facilities to guarantee access for persons with disabilities.

ARTICLE XIV. RIGHT TO HOUSING

1. Cities, within the framework of the respective competences, should adopt measures to guarantee for all citizens that housing expenses be accessible in accordance with incomes, that it fulfill adequate living conditions, that it be adequately located, and that it adapt to the cultural and ethnic characteristics of those who inhabit it.
2. Cities should facilitate adequate housing supply and urban facilities for all citizens and establish subsidy and finance programs for land and housing acquisition, tenure regularization, and improvement of precarious neighborhoods and informal settlements.
3. Cities should guarantee priority for vulnerable groups in housing laws, policies, and programs, and assure finance and services specifically designated for children and the elderly.
4. Cities should include women in the possession and ownership documents issued and registered, regardless of their civil status, in all public policies developed related to land and housing distribution and titles.
5. Cities should promote the installation of shelters and social rental housing for female victims of domestic violence.
6. All homeless citizens, individually, as couples, or as family groups, have the right to demand of the authorities effective implementation of their right to adequate housing in a progressive manner and through application of all available resources. Shelters and bed-and-breakfast facilities may be adopted as provisional emergency measures, without obviating the obligation to provide definitive housing solutions.
7. All persons have the right to security of housing tenure through legal instruments that guarantee it, and the right to protection from eviction, expropriation, or forced or arbitrary displacement. Cities should protect tenants from profiteering and from arbitrary evictions, regulating housing rents in accordance with General Comment N° 7 of the United Nations Committee on Economic, Social and Cultural Rights.
8. Cities should recognize as direct interlocutors the social organizations and movements that defend and work to fulfill the rights linked to the right to housing

contained in this Charter. Very special attention, promotion and support should be directed to organizations of vulnerable and excluded persons, guaranteeing in all cases preservation of their autonomy.

9. This article is applicable to all persons, including families, groups, untitled occupants, the homeless, and those persons or groups whose housing circumstances vary, including in particular nomads, travelers, and romanies.

ARTICLE XV. RIGHT TO WORK

Cities, in co-responsibility with national authorities, should contribute, to the degree of their possibilities, to the achievement of full employment in the city. Cities should also promote continued education and retraining for workers, employed or unemployed, through permanent formation programs.

Cities should promote the creation of conditions to prevent child labor so that boys and girls may enjoy their childhoods and acquire an education.

Cities, in collaboration with other public administrations and the private sector, should develop mechanisms to guarantee equality for all persons in labor matters, impeding any discrimination.

Cities should promote women's equal access to employment through the creation of day care centers and other measures, and of disabled persons through implementation of appropriate facilities. To improve work conditions, cities should establish programs to improve the urban housing used by female household heads and vulnerable groups as work spaces.

Cities should promote progressive integration of the informal commerce carried out by low-income and unemployed persons, avoiding their elimination and repression toward informal merchants. Spaces adapted for informal commerce should be provided and adequate policies should be developed for their incorporation within the urban economy.

ARTICLE XVI. RIGHT TO A HEALTHY AND SUSTAINABLE ENVIRONMENT

Cities should adopt prevention measures against pollution, unordered occupation of the territory, and occupation of environmental protection areas, as well as measures in favor of energy conservation, waste management and reuse, recycling, recovery of slopes, and expansion and protection of green areas.

Cities should respect natural, historic, architectural, cultural, and artistic heritage, and promote the recovery and rehabilitation of degraded areas and urban facilities.

Part IV. Final Provisions

ARTICLE XVII. OBLIGATIONS AND RESPONSIBILITIES OF THE STATE IN THE PROMOTION, PROTECTION, AND IMPLEMENTATION OF THE RIGHT TO THE CITY

1. The international bodies and the national, provincial, regional, metropolitan, municipal and local governments are responsible for the effective application and defense of the rights enunciated in this Charter, as well as all the civil, political,

economic, social, cultural, and environmental human rights of all citizens, based on the international human rights system and the system of competences valid in the respective country.

2. The no-implementation by the responsible governments of the rights contained in this Charter, or their application in disagreement with the guiding principles and directives or with the international and national human rights norms applicable in the country, will constitute violation of the Right to the City, which may only be rectified through implementation of the necessary measures for the reparation/reversal of the act or omission originating the violation. Said corrective measures should assure that the negative effects or damages derived from the violation be repaired/reverted in such a way as to guarantee for all citizens effective promotion, respect, protection, and fulfillment of the human rights contained in this Charter.

ARTICLE XVIII. MEASURES FOR IMPLEMENTATION AND MONITORING OF THE RIGHT TO THE CITY

1. Cities should adopt all the necessary regulatory measures, in an adequate and immediate manner, to assure the Right to the City for all persons, in conformance with this Charter. Cities should guarantee the participation of citizens and civil society organizations in the regulatory review process. Cities are obligated to use up to the maximum of the resources available to them to fulfill the legal obligations established in this Charter.

2. Cities should provide training and education in human rights for all the public agents related to the implementation of the Right to the City and corresponding obligations, in particular for functionaries employed by the public bodies whose policies influence in any way the full realization of the Right to the City.

3. Cities should promote the teaching and socialization of the Right to the City in all educational centers, universities, and through the communications media.

4. Cities should establish, together with their inhabitants, evaluation and monitoring mechanisms through an effective system of *right to the city indicators*, with gender differentiation, to assure the Right to the City based on the principles and norms of this Charter.

5. Cities should regularly and thoroughly monitor the degree of respect upheld for the obligations and rights enunciated in this Charter.

ARTICLE XIX. VIOLATIONS OF THE RIGHT TO THE CITY

Violations of the Right to the City are constituted by the actions and omissions, legislative, administrative and legal measures, and social practices that result in impediment, rejection, difficulty, or impossibility in the:

- implementation of the rights established in this Charter;
- collective political participation of all inhabitants, including in particular women and social groups, in city management;
- fulfillment of the decisions and priorities defined in the participative processes that form part of city management;
- conservation of cultural identities, forms of peaceful coexistence, social production of habitat, and the forms of manifestation and action of social and citizen groups, especially the vulnerable and disadvantaged, based on their uses and customs.

Actions and omissions may be incurred in the administrative field in the elaboration and execution of projects, programs and plans; in the legislative sphere through law enactment and control of public resources and governmental actions; and in the legal sphere in trials and decisions on collective conflicts and court decisions in relation to issues of urban interest.

ARTICLE XX. DEMANDABILITY OF THE RIGHT TO THE CITY

All persons have the right to access to and use of effective and complete administrative and legal resources related to the rights and duties enunciated in the present Charter, including the non-enjoyment of said rights.

ARTICLE XXI. COMMITMENTS IN RELATION TO THE CHARTER FOR THE RIGHT TO THE CITY

I - The social networks and organizations commit to:

1. Broadly disseminate this Charter and promote international articulation in favor of the Right to the City within the context of the World Social Forum, as well as in other conferences and international forums, with the objective to contribute to advance the struggle of the social movements and nongovernmental networks in the construction of dignified life in the cities;
2. Build platforms with which to demand the Right to the City, and document and disseminate national and local experiences that contribute to the construction of this right;
3. Present this World Charter for the Right to the City to the distinct bodies and agencies of the United Nations System and regional bodies to initiate a process whose objective is the recognition of the Right to the City as a human right.

II - The national and local governments commit to:

1. Elaborate and promote institutional frameworks that consecrate the Right to the City, and urgently formulate plans of action for a model of sustainable development applied to cities, in accordance with the principles enunciated in this Charter;
2. Build partnership platforms, with broad civil society participation, to promote sustainable development in cities;
3. Promote the ratification and application of the human rights treaties and other international and regional instruments that contribute to the construction of the Right to the City.

III- The members of Parliament commit to:

1. Promote citizen consultations and undertake lobby activities with the objective to enrich the contents of the Right to the City and advance their recognition and adoption by the international and regional human rights bodies and by the national and local governments.
2. Elaborate and enact laws that recognize and consecrate the human Right to the City, in accordance with the contents enunciated in this Charter and with the international human rights instruments.

3. Appropriately adapt the national and local legal frameworks to incorporate the international obligations assumed by the States in human rights matters, with special attention to those contained in this Charter.

IV- The international bodies commit to:

1. Undertake all possible efforts to sensitize, stimulate, and support governments in the promotion of campaigns, seminars and conferences, and to facilitate appropriate technical publications that support governmental adherence to the commitments contained in this Charter;

2. Monitor and promote the application of the human rights treaties and other international and regional instruments that contribute to the construction of the Right to the City;

3. Open spaces of participation in the consultative and decision-making bodies of the United Nations system that facilitate discussion of this initiative.

All persons, civil society organizations, local governments, members of parliament, and international organizations are invited to actively participate at the local, national, regional and global levels in the process of integration, adoption, dissemination and implementation of the World Charter for the Right to the City as one of the paradigms for a better world in this millennium.

[Translation: Jodi Grahl, May 2005]

Annex 6. Statement from Civil Society Preparatory Workshop to the Global Conference on Small-Scale Fisheries (4SSF), Bangkok, Thailand, 11 to 13 October 2008

Preamble

We, 106 participants from 36 countries, representing small-scale fishing communities and indigenous communities dependent on fisheries for life and livelihood, and their supporters, having gathered in Bangkok from 11 to 13 October 2008 at the Civil Society Preparatory Conference Workshop;

Building on prior preparatory processes, in particular the Statement developed by the World Forum of Fisher Peoples (WFFP) and preparatory workshops organized by the International Collective in Support of Fishworkers (ICSF) and other organizations in Asia (Siem Reap, Cambodia), Eastern and Southern Africa (Zanzibar, Tanzania), and Latin America (Punta de Tralca, Chile);

Recognizing the principle of food sovereignty outlined in the Nyelini Declaration;
Declaring that the human rights of fishing communities are indivisible and that the development of responsible and sustainable small-scale and indigenous fisheries is possible only if their political, civil, social, economic and cultural rights are addressed in an integrated manner;

Recognizing that all rights and freedoms apply equally to all men and women in fishing communities and recognizing the continued contribution of women in maintaining the resilience of small-scale fishing communities;

Declaring that the dependence of fishing communities on aquatic and coastal living natural resources is shaped by the need to meet life and livelihood in their struggle to eradicate poverty, to secure their well-being as well as to express their cultural and spiritual values;
Recognizing the complementarity and interdependency of fisheries-related activities within fishing communities; and

Recognizing the interconnectedness between the health and wellbeing of coastal communities and of aquatic ecosystems;

Hereby call upon the Food and Agriculture Organization of the United Nations (FAO), other United Nations agencies, regional fisheries bodies and our respective national governments to:

Securing access rights

1. Guarantee access rights of small-scale and indigenous fishing communities to territories, lands and waters on which they have traditionally depended for their life and livelihoods;
2. Recognize and implement the rights of fishing communities to restore, protect and manage local aquatic and coastal ecosystems;

3. Establish small-scale fisheries as the preferred model for the Exclusive Economic Zone (EEZ);
4. Establish and enforce measures to prohibit industrial fishing in inshore waters;
5. Prohibit illegal fishing and all destructive fishing gears and practices;
6. Reverse and prevent the privatization of fisheries resources, as through individual transferable quotas (ITQs) and similar systems that promote property rights;
7. Reverse and prevent the displacement of fishing communities through the privatization of waters and lands of fishing communities for activities that include tourism, aquaculture, defence/military establishments, conservation and industry;
8. Ensure that the declaration, establishment and management of marine protected areas (MPAs) bindingly involves the active participation of local and indigenous communities and small-scale fishers;
9. Ensure the integration of traditional and indigenous knowledge and customary law in fisheries management decision-making;
10. Guarantee the equal participation of small-scale and indigenous fishing communities in fisheries and coastal management decision-making, ensuring their free, prior and informed consent to all management decisions;
11. Recognize the traditional fishing rights of small-scale and indigenous fishers from immediately neighbouring adjacent States and set up appropriate bilateral arrangements for protecting their rights;
12. Protect all marine and inland water bodies from all forms of pollution, and reclamation;
13. Reject industrial aquaculture and genetically modified and exotic species in aquaculture;
14. Recognize, promote and protect the diversified livelihood base of fishing communities.

Securing post-harvest rights

15. Protect access of women of fishing communities to fish resources for processing, trading, and food, particularly through protecting the diversified and decentralized nature of small-scale and indigenous fisheries;
16. Improve access of women to fish markets, particularly through provision of credit, appropriate technology and infrastructure at landing sites and markets;
17. Ensure that international trade does not lead to environmental degradation or undermine the human rights and food security of local fishing communities;

18. Put in place specific mechanisms to ensure that trade promotes human development, and that it leads to equitable distribution of benefits to fishing communities;
19. Effectively involve fishing communities in negotiations dealing with international trade in fish and fish products;
20. Guarantee institutional arrangements that give priority to fish for local consumption over fish for export or for reduction to fishmeal;
21. Regulate processing capacity, particularly in export-oriented fisheries, to be in line with the sustainability of the fishery;
22. Reject ecolabeling schemes, while recognizing area-specific labeling that identifies socially and ecologically sustainable fisheries;

Securing human rights

23. Protect the cultural identities, dignity and traditional rights of fishing communities and indigenous peoples;
24. Implement legal obligations arising from the United Nations Declaration on Human Rights (UNDHR) and subsequently-adopted human rights legislation, including the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples (UNDRIPS);
25. Guarantee the rights of fishing communities to basic services such as safe drinking water, education, sanitation, health and HIV/AIDS prevention and treatment services;
26. Guarantee the rights of all categories of workers in the fisheries, including self-employed workers and workers in the informal sector, to social security and safe and decent working conditions;
27. Implement the ILO Work in Fishing Convention 2007 and extend its provisions to include inland and shore-based fishers;
28. Ensure that States seek the free, prior and informed consent of small-scale fishing communities and indigenous peoples before undertaking any project or programme that may affect their life and livelihoods;
29. Adopt specific measures to address, strengthen and protect women's right to participate fully in all aspects of small-scale fisheries, eliminating all forms of discrimination against women and securing their safety against sexual abuse;
30. Take urgent and immediate steps for the release and repatriation of arrested fishers, in keeping with the provisions of UNCLOS and human rights instruments;
31. Protect men and women engaged in regional cross-border fisheries trade against harassment;

32. Enact and enforce legislation to create autonomous disaster prevention and management authorities based on the need to rebuild and revitalize small-scale and indigenous fisheries;

33. Establish mechanisms to support fishing communities affected by civil war and other forms of human rights violations to rebuild their lives and livelihoods;

34. Improve institutional co-ordination at all levels to enhance the well-being of fishing communities;

35. Guarantee rights of fishing communities to information in appropriate and accessible forms; and

36. Provide support to capacity-building of fishing and indigenous communities to participate in governance of coastal and fisheries resources.

National governments have a legal obligation to implement international human rights instruments. We demand that all governments take these obligations seriously and create the environment for fishing communities to fully enjoy these rights. We demand the urgent establishment of independent mechanisms to monitor, and report on implementation of human rights obligations.

We call on the FAO's Committee on Fisheries (COFI) to include a specific chapter in the Code of Conduct for Responsible Fisheries (CCRF) on small-scale fisheries, recognizing the obligations of States towards them.

We also recognize our responsibility as representatives and supporters of the small-scale and indigenous fisheries to assist the local communities who have so far been marginalized to claim their rights at national levels.

We reiterate our deep sense of urgency about the neglect of small-scale and indigenous fisheries and demand immediate action to avert impending disaster and conflict.

Annex 7. What's missing from the climate talks? Justice!

BALI (INDONESIA), 14 December 2007 - Peoples from social organizations and movements from across the globe brought the fight for social, ecological and gender justice into the negotiating rooms and onto the streets during the UN climate summit in Bali. [1]

Inside and outside the convention centre, activists demanded alternative policies and practices that protect livelihoods and the environment. In dozens of side events, reports, impromptu protests and press conferences, the false solutions to climate change - such as carbon offsetting, carbon trading for forests, agrofuels, trade liberalization and privatization pushed by governments, financial institutions and multinational corporations - have been exposed.

Affected communities, Indigenous Peoples, women and peasant farmers called for real solutions to the climate crisis, solutions which have failed to capture the attention of political leaders. These genuine solutions include:

- reduced consumption.
- huge financial transfers from North to South based on historical responsibility and ecological debt for adaptation and
- mitigation costs paid for by redirecting military budgets, innovative taxes and debt cancellation.
- leaving fossil fuels in the ground and investing in appropriate energy-efficiency and safe, clean and community-led renewable energy.
- rights based resource conservation that enforces Indigenous land rights and promotes peoples' sovereignty over energy, forests, land and water.
- sustainable family farming and peoples' food sovereignty.

Inside the negotiations, the rich industrialized countries have put unjustifiable pressure on Southern governments to commit to emissions' reductions. At the same time, they have refused to live up to their own legal and moral obligations to radically cut emissions and support developing countries' efforts to reduce emissions and adapt to climate impacts.

Once again, the majority world is being forced to pay for the excesses of the minority. Compared with the outcomes of the official negotiations, the major success of Bali is the momentum that has been built towards creating a diverse, global movement for climate justice.

We will take our struggle forward not just in the talks, but on the ground and in the streets - Climate Justice Now!

Notes

[1] Many social movements and groups that came together in Bali have agreed to establish a coalition called Climate Justice Now! in order to enhance exchange of information and cooperation among themselves and with other groups with the aim of intensifying actions to prevent and respond to climate change. Justice must be at the heart of tackling climate change, and must in no way be sacrificed. Members of this coalition include: Carbon Trade Watch, Transnational Institute; Center for Environmental Concerns; Focus on the Global South; Freedom from Debt Coalition, Philippines; Friends of the Earth International; Gendercc - Women for Climate Justice, Global Forest Coalition; Global Justice Ecology Project; International Forum on Globalization; Kalikasan-Peoples Network for the Environment (Kalikasan-PNE); La Via Campesina; Members of the Durban Group for Climate Justice; Oilwatch; Pacific

Indigenous Peoples Environment Coalition, Aotearoa/New Zealand; Sustainable Energy and Economy Network; The Indigenous Environmental Network; Third World Network; WALHI/ Friends of the Earth Indonesia; World Development Movement, World Rainforest Movement.