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The Oxford Handbook of Land Politics

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<https://doi.org/10.1093/oxfordhb/9780197618646.001.0001>

Published: 2022

Online ISBN: 9780197618677

Print ISBN: 9780197618646

CHAPTER

Land Is a Human Right

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<https://doi.org/10.1093/oxfordhb/9780197618646.013.36> Pages C36S1–C36P175

Published: 18 September 2023

Abstract

This chapter explores the human right to land from both a historical and a normative perspective. It analyzes the key developments that have led to the recognition of the human right to land in international human rights law. The first part of the chapter explores land as a key component of other human rights, such as the rights to food, housing, property, and other economic, social, and cultural rights. The second part then describes how various international legal instruments came to recognize land as a self-standing human right. It discusses the various dimensions of the right to land and what this right means for different groups, with a focus on Indigenous Peoples, peasants, and other people working in rural areas. Finally, the third part explores current challenges for the implementation of the right to land, with an emphasis on forced evictions and displacements, the gender and intersectional dimensions, and the impacts of transnational corporations. The overall objective is to highlight the benefits of adopting a human rights approach to land issues, seeing land, not as a mere commodity, but as central to the realization of human rights.

Keywords: [land](#), [human rights](#), [right to land](#), [land rights](#), [indigenous peoples](#), [peasants](#), [UNDROP](#), [UNDRIP](#), [VGGT](#)

Subject: [Political Economy](#), [Comparative Politics](#), [Political Behaviour](#), [Politics](#)

Series: [Oxford Handbooks](#)

Collection: [Oxford Handbooks Online](#)

Introduction

The commodification of natural resources, and especially the conversion of land into a product that can be bought, sold, leased, or exchanged on markets, is one of the founding characteristics of capitalism (Bernstein 2010). Marx and Polanyi, for example, showed that the enclosure of land played a key role in the development of capitalism in England in the sixteenth and seventeenth centuries (Roudart and Mazoyer 2015; Vergara-Camus 2012). Today, an increasing proportion of the land and common resources on which rural communities depend is being commoditized. This historical process of commodification is far from complete, however. In many parts of the world, the establishment of private property rights on the land, enshrined in law and enforced by the state, is not yet a reality. It is challenged by social actors, particularly in the rural South but also in the North (Transnational Institute 2013).

The pressures on the land seem more numerous every day, as the result of urbanization, tourism, industrialization, financialization, mining, or conservation. Land has also been transformed into an opportunity for transnational investment, as shown by the growing number of large-scale land acquisitions, a phenomenon widely documented since the 2007–2008 food crisis and reinforced by the financialization of agriculture (Bourke Martignoni et al. 2022; Gironde, Golay, and Messerli 2015; Margulis, McKeon, and Borras 2013). States have played an active role in this process, often facilitating the appropriation of nature through legislative reforms to encourage companies, pension funds, and other states to invest in land (Künnemann and Monsalve Suárez 2013; Cotula 2020b).

The growing agrarian crisis fueled by the failure of land reform measures, corporate takeover of lands, privatization of basic services, increase in development-based displacement, and the dispossession of small-scale farmers has contributed to land issues becoming a central social justice and human rights problem (Gilbert 2013; De Schutter 2010). Over the last few decades, a growing range of actors have documented and denounced land issues from a human rights perspective (Golay and Biglino 2013). The climate crisis is compounding these trends: land degradation and soil erosion are leading to important changes in land use and land cover, adding to the well-documented impacts of extreme weather events such as droughts and floods, and threatening land-based livelihoods such as pastoralism and small-scale farming.

Responses to climate change are also exacerbating pressures on land, for example, in the form of renewable energy or carbon-credit projects. Many transnational corporations have made net-zero emissions pledges but remain embedded in the fossil fuel economy. To reach their zero targets, these companies are adopting so-called nature-based solutions—ranging from planting trees to increasing carbon storage in agricultural soils and closing off forests. These solutions ultimately seek to integrate the carbon-storage capacity of nature into corporate profit chains and turn nature and carbon into financial assets (Friends of the Earth International 2022). There is growing evidence that many land-based mitigation responses, such as afforestation or reforestation or carbon-offsetting projects, generate competition for land, and lead to land conversion and displacements of other land uses (IPCC 2019), threatening the human rights of those living on and off the land.

In response, a range of social movements, civil society organizations (CSOs), and scientists are pushing for sustainable land-management practices, agroecology, and the protection of the collective rights of local communities, highlighting the key roles these communities play for ecological restoration and stable and resilient carbon storing. Human rights have been central in these advocacy strategies.

This chapter explores and unpacks the land and human rights nexus from both a historical and a normative perspective. Its main argument is that the international human rights community has moved from exploring the articulation of land with a range of human rights (OHCHR 2015), to establishing and codifying land as an individual and collective human right. It looks at the development of key international

instruments that have gradually led to the recognition of land as a new human right. The chapter presents some of the main dimensions of the human right to land and how it is protected in international human rights law, with a view to clarifying its normative content. It does not seek to be an exhaustive treatment of the topic but discusses what the protection of the right to land looks like for local communities. The term “local communities” refers to those whose livelihoods depend on land and related natural resources (UN Human Rights Council 2009; Clarke 2015; Kanosue 2015). It also points to future challenges for the realization and implementation of the right to land, with an emphasis on forced evictions and displacements, gender equality, and land investments and transnational corporations.

As scholars dedicated to the recognition, protection, and defense of the human right to land, we are committed to clearly distinguishing “land as a human right” from the broader term “land rights” that is often used by both state and non-state actors, in different policy and legal contexts and instruments. The term “land rights” encompasses all the specific rights related to land, such as ownership, tenancy, and usufruct, whether under national law or customary systems. An individual peasant or local community, for example, can have a range of important land rights, such as the right to own the land or the right to access a forest or grazing areas. It can also have certain protections (and obligations) as tenants. Land rights can provide an important avenue for protecting the connection between people and land, because they are usually embedded in legal and policy frameworks at national level, with their associated safeguards. Yet land rights constitute only some aspects of the human right to land, which comprises other elements and entitlements, as will be shown.

In our view, a human-rights-based approach to land brings other perspectives to the value of land, giving it social, cultural, and ethical dimensions and more importantly, recognition as a fundamental right. It takes the emphasis away from considering land as a commodity or an exclusively commercial good (Gilbert 2013) and insists on its social function (Cotula 2022). It affirms that land is not only a valuable economic asset but also a source of identity and culture. It promotes and protects the right of local people to use, own, and, most importantly, control the developments undertaken on their own lands (Gilbert 2013). It provides a powerful mobilizing frame for local, national, and transnational movements that are engaged in struggles to defend and control lands and territories (Claeys 2015). It is a tool for re-establishing a political limitation on “absolute private property” (Vergara-Camus 2012). As suggested by FIAN International, the explicit recognition of a human right to land also makes it possible to question the legal doctrines inherited from the colonial era (which grant states the almost absolute power to dispose of the soil and do not effectively protect informal or customary land rights), as well as to pursue political reforms aimed at promoting the privatization and commodification of the land such as titling programmes (FIAN International 2009). If the human right to land is well articulated at the international and regional levels and invoked by social actors in land-related struggles, then this right can influence land legislation and land reforms at the national level (Golay 2020b; Gilbert 2013; Cotula 2022).

For this reason, we will consistently refer to the human right to land here, to designate the bundle of individual and collective rights, freedoms and entitlements, and related state territorial and extraterritorial obligations that together give substance to land as human right. We will also refrain from using the term “rights to land,” which tends to be used as an equivalent to land rights, creating further confusion.

The chapter is organized in three main sections: Part 1 discusses land and human rights from a historical perspective. Part 2 explores the emergence of the human right to land from below, leading to its recognition in various international instruments, with a focus on UN Declarations, Principles, and Guidelines. Part 3 points to some challenges for the realization of the human right to land.

Part 1: Land and Human Rights from a Historical Perspective

Even though there is no specific right to land enshrined in the International Bill of Human Rights (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic Social and Cultural Rights), several other rights have been interpreted to protect some of the main elements of the right to land. Based on positive interpretations of the rights to property, life, food, housing, water, culture, and health, international human rights bodies have developed a substantive jurisprudence that recognizes the importance of protecting land. Similarly, recognizing the indivisibility and interdependence of all human rights, international treaty-monitoring bodies have engaged in the discussion about land rights relying on civil and political rights, as well as economic, social, and cultural rights, which has also led to a rich and evolving jurisprudence. The prohibition of discrimination in access to property proclaimed under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has also been a strong anchor in efforts to protect and promote Indigenous Peoples' land rights. More recently, the Human Rights Committee protected peasants' land rights through a progressive interpretation of the right to be protected against the arbitrary or unlawful interference with their homes (as recognized in Art. 17 of the ICCPR). Furthermore, acknowledging the essential role land plays in the realization of a range of socioeconomic rights, the UN Committee on Economic, Social and Cultural Rights (CESCR) in 2022 adopted General Comment No. 26 to clarify the obligation of states with respect to land-related covenant rights (UN Committee on Economic, Social and Cultural Rights 2022). These normative developments have not happened in a vacuum. They have been shaped by transnational legal mobilizations—the use of the law “from below” by agrarian social movements, as Part 2 of the chapter highlights. These developments have also greatly benefited from the work of key special rapporteurs and UN committees within the UN human rights system. The continued work of the UN Independent Commissions of Inquiry, most recently, the Commission on South Sudan and the Commission on Palestine and Israel, is also important. At the regional level, the Inter-American Court of Human Rights has adopted several decisions on Indigenous Peoples' land rights based on their right to property, a recognition of the collective, cultural, and spiritual nature of land rights. Land has also been recognized as an important element in fulfilling the rights to housing and food and to practice religion, as adjudicated by the African Court on Human and Peoples' Rights. This section addresses some of these influential normative developments. It explores land in relation to the rights to food, housing, property, and economic, social, and cultural rights.

Land as a Component of the Right to Food

Access to land and security of tenure have long been described as key components of the right to food. In 2004, when states adopted the right to food guidelines at the Food and Agriculture Organization of the United Nations, they recognized that the right to food protects the right of rural communities to access productive resources or the means of food production, including land (FAO 2004, guideline 8).

In two reports, presented in 2002 and 2010, the first two special rapporteurs on the right to food emphasized the need to guarantee access to land and security of tenure, including through agrarian reform, to ensure the right to food of rural communities (UN General Assembly 2002, 2010). Both reports underlined that access to land is essential for most of the people suffering from hunger, who often work as smallholder farmers or agricultural laborers, because the land they have is not sufficient or is otherwise inadequate. They also underlined that women and Indigenous Peoples enjoy special protections in international law. In March 2010, in response to a proliferation of large-scale land acquisitions, the special rapporteur on the right to food, Olivier De Schutter, submitted a report to the Human Rights Council in which he described the phenomenon and its causes and presented a set of human rights principles applicable to large-scale land acquisitions and leases (UN Human Rights Council 2009). In his 2010 report to the General Assembly, De

Schutter recommended that international human rights bodies consolidate the right to land, and clarify “the issue of land as a human right.” The special rapporteur also called on states to implement land redistribution programs in places with high concentrations of land ownership (UN General Assembly 2010).

Land as a Component of the Right to Housing

As noted by the first UN special rapporteur on the right to housing, land as an entitlement is often an essential element necessary to understand the degree of violation and the extent of the realization of the right to housing. In several reports and statements, the special rapporteur stressed that land is a critical element of the right to housing (Kothari 2020). Inadequate housing is often the consequence of being barred from access to land and common property resources. Inequitable land ownership patterns and landlessness give rise to interrelated problems ranging from inadequate housing, lack of livelihood options, poor health, hunger, and food insecurity to acute poverty. In several of these reports, the special rapporteur also stressed the need to recognize the link between the right to housing and women’s rights to land, property, and inheritance (UN Commission on Human Rights 2001, 2002, 2005a, 2005b, 2006; UN Human Rights Council 2007).

International human rights instruments have made the link between the right to housing and land rights since 1991. The link has been established in General Comments from the CESCR on adequate housing and on forced evictions. The inseparable connection between the right to adequate housing and land is also reflected in “Basic Principles and Guidelines on Development-based Evictions and Displacement” (hereafter, the UN Evictions Guidelines) (UN Human Rights Council 2007, Annex 1) and in the “Guiding Principles on Security of Tenure for Urban Poor”—developed by the UN special rapporteurs on the right to housing (UN Human Rights Council 2013).

There is extensive recognition and substantiation, in the context of forced evictions and displacement, of the right to land in the UN Evictions Guidelines. In the section “Implementation of State Obligations” (para. 16), the UN Evictions Guidelines stress the need for states to refrain from confiscating lands if doing so does not contribute to the enjoyment of the right to land, which can include implementing land reform or redistribution for the benefit of vulnerable persons, groups, or communities. Paragraph 25 of the UN Evictions Guidelines also urges states, in the context of providing legal protection against forced evictions, to take immediate measures to confer legal security of tenure on all those who do not have formal titles to home and land. The UN Evictions Guidelines (para. 26) stress, with the imperative of equal enjoyment of human rights, that such titles to housing and land are conferred on all women.

In the section of the UN Evictions Guidelines on the human rights safeguards required “Prior to Evictions” (para. 43), states are urged to ensure that evictions do not result in individuals becoming homeless. States must take all appropriate measures to ensure that alternative housing and access to productive land is made available to those evicted.

In the section “Compensation” (para. 60), the UN Evictions Guidelines stipulate that cash compensation should under no circumstances replace real compensation in the form of land and common property resources. The UN Evictions Guidelines state that in situations where land has been taken, the evicted should be compensated with land of commensurate quality, size, and value, or better. Paragraph 61 urges that compensation should accrue to all those who are evicted irrespective of whether they hold title to their property. Paragraph 63 urges states, in the context of estimating economic damage, to take into consideration the loss of land plots and the losses that would have accrued from lost wages and incomes. The UN Evictions Guidelines call for compensation to be disaggregated based on gender and on impact and loss assessment to account for the value of business losses, equipment and inventory, livestock, land, trees and crops, and lost or decreased wages or income.

Since being acknowledged by the UN Human Rights Council in 2007, the UN Evictions Guidelines have increasingly been used by a range of actors across the world. They have been relied on for continued human rights standard-setting based on the importance of the right to land. Some of the examples are included in the set of core principles put forward by the UN special rapporteur on the right to food regarding large-scale land acquisitions (UN Human Rights Council 2009), by the UN special rapporteur on the right to housing regarding security of tenure (UN Human Rights Council 2013), by the UN Committee on the Elimination of Discrimination against Women in its General Recommendation No. 34 articulating the rights of rural women to housing and land (CEDAW 2016), and, most recently, by the CESCR in its General Comment on land. The guidelines are also used extensively in manuals, handbooks, and technical- and human rights-education training material by numerous UN agencies, national and international civil society groups, and independent institutions (Kothari 2021).

The Right to Property as a Basis to Advance Land Rights

In several cases, the Inter-American Court on Human Rights has interpreted the right of Indigenous Peoples to property as implying the obligation of the state to recognize, delineate, and protect their land as collective property, especially so that they can continue to have access to their own means of subsistence (Golay and Cismas 2010; Mackay 2007).

In 2001, for example, in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Court protected the access of some one hundred families of the Awas Tingni community to their ancestral lands, which were threatened by a concession the government of Nicaragua had awarded to a Korean company (Inter-American Court on Human Rights 2001). The Court ruled that the state must adopt positive legislative, administrative, or other measures, with the full participation of the community and in accordance with its values and customary law, to delineate, demarcate, and recognize the property titles of this community.

In 2006, the Court protected the right to property of the members of the Sawhoyamaxa Indigenous community against the lack of protective measures taken by the government of Paraguay (Inter-American Court on Human Rights 2006). The Court determined that the state must take legislative, administrative, and other necessary measures to ensure that the members of the community might enjoy, formally and physically, their ancestral lands.

This approach has also been adopted by both the African Commission and the African Court on Human and Peoples' Rights in two decisions concerning Indigenous Peoples in Kenya, where the court highlighted the connection between Indigenous peoples' right to property and their right to land (Gilbert 2017). This was first established in the case *Endorois Welfare Council v. Kenya* (2010), which took into account the jurisprudence of the Inter-American Court of Human Relations, including the *Mayagna (Sumo) Awas Tingni Community* case, referenced above. The case was important because it was the first time that the African Commission recognized Indigenous Peoples' rights to their ancestral lands under the African Human Rights System.

However, the very concept of property can contrast with Indigenous conceptions of the relationship between humans and nature (Gilbert 2022), and there are questions about whether, in the longer term, the property framing and court orders to the state to demarcate and title collective lands might ultimately compound the commodification of resources that human rights activists seek to resist (Cotula 2020a).

Land in Relation to Economic, Social and Cultural Rights: General Comment No. 26

In December 2022, the CESCR adopted General Comment No. 26 on land and economic, social and cultural rights (GC26), following eight years of discussions. The CESCR begins by highlighting the close relationship between various economic, social, and cultural rights and land, with a focus on the rights to food, housing, and water and to take part in cultural life. It further, for the first time in a general comment, links land to other rights of the Covenant such as the rights to health and to self-determination (paras. 6–11). All these rights are now framed as “Covenant rights related to land” (paras. 22, 26, 32) or “land-related rights of the Covenant” (para. 59).

Some of the elements inserted in the GC26 suggest an endorsement of a right to land by the CESCR, while putting more emphasis on a rights-based approach to land. First, the GC26 addresses the typology of state obligations to “respect, protect and fulfil” nationally and extraterritorially, as it ordinarily does in its general comments. On this occasion, though the GC26 does not explicitly refer to a particular right, it develops a framework of specific obligations of states parties’ to the Covenant in a land-related context. One outstanding element is the obligation of states to respect, protect, and fulfill “access to, use of and control over land,” when this is necessary to guarantee the aforementioned Covenant rights. These entitlements, especially the control over land, have been consistently endorsed by scholars and civil society organizations as a central element of a human right to land, and we welcome their inclusion in this general comment.

Second, the GC26 pays special attention to particularly affected and discriminated groups such as women, Indigenous Peoples, and peasants. Land is recognized to be a pivotal resource for women that allows them to meet their subsistence needs, access goods and services, engage in political participation, become more independent, and limit their exposure to violence. The central importance of land for the livelihoods of both Indigenous Peoples and peasants is also recognized and, deriving from this, their definition as holders of the right to land (paras. 13–19). The GC26 also highlights the impact of forced evictions and displacement on the enjoyment of the land-related rights of the Covenant. In addition, it acknowledges the particular risk faced by human rights defenders, especially those engaged in land and environmental protection (paras. 48–50, 54). The need to ensure that states effectively implement policy and legal frameworks related to land and Covenant rights, and that they provide effective remedies is considered crucial in this context (paras. 59–61).

However, the GC26 fails to explicitly recognize the existence of the right to land as a stand-alone human right, which is a missed opportunity. We also regret the rather weak reference to the impact of climate change on access to land and rights holders, which could have gone further in addressing the links between land-based mitigation and adaptation and human rights. We further lament the lack of attention paid in the GC26 to urban land users, whose rights are not addressed, despite their being identified as one of the groups most impacted by long-term trends in high demand for land and urbanization, especially persons living in poverty in urban areas (para. 2). Despite these limitations, we hope that positive outcomes for the protection of the human right to land will nonetheless result from the adoption of GC26.

Part 2: The Recognition of the Human Right to Land

Over the last fifteen years, several important international human rights instruments have recognized the right to land as a stand-alone human right, giving it greater visibility and protection than could have been by simply highlighting the importance of access to land or land rights in the realization of other human rights, such as the rights to food, housing, or property. While these instruments have predominantly emanated from the human rights system in the form of UN Declarations, other UN bodies have contributed to the development of human-rights-based international norms relevant to the right to land, such as the UN Committee on World Food Security (CFS). As discussed below, the CFS makes global policy recommendations that are not legally binding but nevertheless have considerable impact thanks to the participatory way in which they are elaborated—notably, because the negotiation process involves representatives of affected constituencies and relies on consensus building among CFS participants (Claeys and Duncan 2019). This section discusses the relevance of the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the 2012 CFS Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forest (VGGT), and the 2018 UN Declaration on the Rights of Peasants. These instruments have contributed to the international recognition of the right to land as an individual and collective human right and to the rise of local communities as subjects of international law.

Conceptualization of the Right to Land “from below”

The normative developments of the right to land as described in detail here have been shaped by the progressive engagement of social movements with human rights as an emancipatory ideal. A distinctive aspect of the historical development of the human right to land is its emergence “from below” (Claeys 2015; Franco and Monsalve Suárez 2018; Cotula 2022): that is, rather than in a top-down diplomatic process, its normative content was directly shaped by the advocacy of peasants, migrants, women, Indigenous Peoples, and farmworkers. Transnational agrarian movements have insisted that international legal instruments should recognize that land is an essential part of the life, identity, and culture of rural communities and, as such, a foundational dimension of international human rights law.

The conceptualization “from below” is particularly evident in the case of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), an international instrument directly championed by agrarian movements through local-to-global advocacy over several years (Claeys 2018). But “from below” also describes the long-standing engagement of civil society actors and social movements in international policy arenas where the right to land has been discussed, whether at the regional or global levels, such as the Civil Society and Indigenous Peoples Mechanism (CSIPM) of the CFS.

The dialogue between human rights experts, social movements, diplomats, and NGOs has helped to identify important limitations in the approach taken by UN human rights bodies to develop the right to land—that is, to see land, not as a stand-alone right, but as a key dimension of several internationally recognized human rights. For example, the right to property can protect peasants’ land rights, including those based on customary systems, but landed elites have often invoked the same right when trying to prevent redistributive reforms. To address these limitations, organizations of peasants, Indigenous Peoples, and other people working in rural areas have long advocated for a more explicit and progressive recognition of the right to land. Their engagement has directly shaped the content of the right to land.

The Right to Land in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

Coming from the most diverse places of the planet, Indigenous Peoples have approached international and regional human rights institutions to gain support for the recognition of their fundamental right to land and territories. Although Indigenous Peoples are among the world's most diverse populations, most Indigenous cultures share a similar deep-rooted relationship with their lands and ancestral territories. For Indigenous communities, the value of land often goes far beyond its economic value. Many have stressed that territories and lands are the basis not only of economic livelihoods but are also the source of spiritual, cultural, and social identity. Control of land and territories is one of the most pressing and significant issues for Indigenous communities, who are suffering from forced displacement, dispossession, and land encroachment. At the national level, there is a general lack of recognition of land rights for Indigenous Peoples, which has forced them to turn to international law to seek protection. International human rights law has therefore been an important legal framework to support Indigenous Peoples' fundamental right to their lands and territories.

In terms of the legal framework, one of the first challenges faced by Indigenous advocates has been the historical lack of recognition of the importance of their right to land under human rights law (Gilbert 2016). There is no specific right to land under the main human rights treaties, and as we have seen, land rights are barely mentioned in human rights norms and instruments. Although there is no specifically recognized universal human right to land, Indigenous rights activists and representatives have pushed the human rights system to change to integrate their fundamental rights to land and territory. This has materialized in two forms: first, by the positive interpretation of other relevant human rights, such as the rights to property, food, housing, and cultural rights (as discussed earlier); and second, through the development of a specialized body of norms concerning Indigenous Peoples' right to land.

The second approach emerged through the development of norms that are specifically recognizing and protecting Indigenous Peoples' right to land, notably UNDRIP, adopted in 2007 by the UN General Assembly. UNDRIP focuses a lot of its attention on the right to land of Indigenous Peoples, with more than half of its articles relating to this right. It notably affirms that "indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired" (art. 26). It also highlights that states shall give legal recognition and protection to these lands, territories, and resources, and recognize the customs, traditions, and land tenure systems of the Indigenous Peoples concerned. The significance of the right to land is embedded throughout UNDRIP; several articles highlighting its significance in terms of cultural rights, rights to the environment and spiritual and religious and cultural heritage. UNDRIP also puts great emphasis on the connection between land management and the rights of Indigenous Peoples, notably the right to free, prior, and informed consent.

The adoption of UNDRIP marks an important moment because it universally proclaims and recognizes the importance of the right to land for Indigenous Peoples. Although it is not strictly binding because it is a declaration, it reflects and integrates the evolution of the jurisprudence and customary norms developed under more general international human rights instruments. As such, it offers a comprehensive legal framework regarding Indigenous Peoples' right to land under international human rights law. There are, nonetheless, debates about the legal value of UNDRIP—over whether it is only "soft law" or more binding—as well as debates on whether it has reached the level of customary international law (Barelli 2009). Despite these debates, UNDRIP has been increasingly used in litigation and the jurisprudence of courts and human rights bodies (Allen and Xanthaki 2011). In terms of the contents of the right to land within UNDRIP, there is also an issue regarding its temporal application. Indeed, UNDRIP recognizes that for many Indigenous Peoples, the connection to land is ancestral and historical, opening the door to complex issues of restitution

and reparations—an issue which is often very controversial with states, especially in former settler-colonized states (Lenzerini 2008).

The Right to Land in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGT)

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) are the first global instrument to provide comprehensive guidance on land and resource governance. The CFS unanimously endorsed the guidelines on May 11, 2012, after two years of multistakeholder consultations and one year of intergovernmental negotiations (CFS 2012; Munro-Faure and Palmer 2012; Seufert 2013).

While the initiative to develop the VGGT was not intended to be a response to transnational land-based activities, its timing coincided with a global surge in large-scale land deals for agribusiness plantations, particularly around a spike in food prices spike in 2007–2008, which triggered widespread concerns about “land grabbing” and compounded public support for a new international instrument on land governance that would highlight the strong connections between land and human rights (Seufert 2013; Cotula 2017).

As highlighted above, the VGGT promote governance reform through multistakeholder dialogue and political consensus, rather than binding norms. But while the guidelines are not legally binding, they enjoy considerable legitimacy derived from the consultative process that led to their development and to subsequent expressions of high-level political support, including from the UN General Assembly and the G20. Some VGGT provisions—such as on gender equality and respect for human rights—reflect binding international law (CFS 2012; Cotula 2017).

As a negotiated text, the VGGT reflect diverse concerns ranging from social justice to land-market efficiency (Franco and Monsalve Suárez 2018). The VGGT take a holistic approach to the governance of natural resources, covering fisheries and forests, as well as land, and the guidelines explicitly link resource governance to realizing human rights and achieving food security. The VGGT call on states to recognize, respect, protect, promote, facilitate, and enforce all “legitimate tenure rights.” This emphasis on legitimate tenure rights partly reflects the key demands of social movements during the negotiations (FIAN International 2011). It means that, alongside rights created or acquired through formal procedures (“legal” tenure rights), policy and practice should recognize and respect rights that have social legitimacy—for example, by virtue of customary use or the fairness of land acquisition. In line with this approach, the VGGT call on states to recognize, respect, and protect socially legitimate tenure rights “not currently protected by law” (CFS 2012, para. 4.4, see also paras. 5.3, 7.1).

Even though the emphasis on legitimate tenure rights means that the VGGT are more relevant to land rights than to the human right to land per se, the guidelines do explicitly link land to human rights, and as such, they embody an important step forward to recognizing a right to land, while also providing insights, at least indirectly, about how to further clarify the normative content of that right. For example, various VGGT provisions relate the guidelines’ overarching policy goal to the realization of the right to food; reiterate the human rights obligations of states and reaffirm the responsibility of businesses to respect human rights; and clarify the relationship between land and human rights in wide-ranging contexts, including private sector investment (see e.g., CFS 2012, paras. 1.1, 2.2, 3.2, 3B.1, 3B.4, 4.1, 4.3, 4.8, 4.9, 9.3, 12.4, 12.6, 12.8, 16.7, 16.9). In addition, the framing of the VGGT’s guiding principles (sect. 3A) closely mirrors the human rights obligations to respect, protect, and fulfill. The VGGT’s call for states to recognize, respect, and protect all legitimate tenure rights, including those that are not currently protected by law, resonates strongly with international human rights law, which protects Indigenous Peoples’ right to their ancestral lands even in

the absence of legal recognition under domestic law; while VGGT provisions on restitution and redistribution (CFS 2012, sects. 14, 15) connect to the redistributive aspects of the right to land.

Although the notion of legitimate tenure rights provides a flexible concept that can cater to diverse land and resource claims, it is also vulnerable to abuse—for example, where public authorities do not recognize the legitimacy of certain forms of landholding or use, such as those of pastoralists or shifting cultivators (Touré 2018; Nguiffo, Kenfack, and Mballa 2009; Lavigne Delville et al. 2002). The VGGT call on states to identify the legitimate tenure rights in a given context through participatory processes (e.g., para. 4.4). They also explicitly discuss certain types of rights as legitimate tenure rights, including rights held by “indigenous peoples and other communities with customary tenure systems,” women, pastoralists, and tenants (e.g., CFS 2012, para. 9.4).

Based on these foundational concepts, the VGGT provide more detailed guidance on specific issues such as land tenure reform, land restitution, land redistribution, land-based investments, and land administration. Regarding land-based investments, for example, the VGGT affirm the responsibilities of businesses to do no harm, to comply with national law and applicable international treaties, to respect human rights and legitimate tenure rights, to safeguard against environmental damage and tenure dispossession, to work in partnership with local tenure right holders, and to strive to contribute to policy objectives such as poverty eradication, food security, and sustainable resource use (CFS 2012, paras. 3.2, 12.4, 12.12).

The VGGT guidelines have provided an international benchmark not only for states to reform their laws, policies, and institutions, but also for social movements to pioneer new rights-based approaches and hold governments accountable (Franco and Monsalve Suárez 2018; Sandwell et al. 2019). Monitoring these emerging and evolving practices over time can provide insights not only on the effectiveness of soft-law instruments in driving change but also on the place of rights constructs in land governance.

The Right to Land in the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)

The UN General Assembly adopted UNDROP in 2018, after almost twenty years of mobilization by the transnational agrarian movement La Via Campesina and its allies (Golay 2019). Peasant movements and organizations of other rural communities, including fishers, pastoralists, and agricultural workers, demanded that UNDROP be adopted to rebalance power relations in rural areas and to push states to respect, protect, and fulfill the human rights of peasants and other people working in rural areas (Golay 2020b). In its mission to strengthen these rights, which were only partially recognized in international human rights law before 2018, UNDROP addresses a number of fundamental questions, including the right to land, which is central for billions of people (Nyéléni Europe and Central Asia Platform for Food Sovereignty 2020). In endorsing a broad definition of rights-holders in its article 1, UNDROP recognizes that peasants and other people working in rural areas are made of socially differentiated classes and sectors that may in turn have differentiated access to land (Claeys and Edelman 2020).

UNDROP recognizes the right to land (and other natural resources, including water bodies, coastal seas, fisheries, pastures, and forests) for non-Indigenous Peoples and communities for the first time in international human rights law (CETIM 2014; FIAN International 2021; Golay 2020a, b). Its articles 5 and 17 provide that this right can be exercised individually and/or collectively, and that it includes freedoms and entitlements: freedom from discrimination; protection against forced eviction, displacement, and land exploitation; and entitlements to agrarian reform and to conservation and sustainable use of land and other natural resources (Golay 2020b, 2020a). These articles also provide that landless peasants, young people, small-scale fishers, and other rural workers should be given priority in the allocation of public lands, fisheries, and forests, and that the natural commons and their related systems of collective use and

management shall be recognized and protected (Errico and Claeys 2019). Combined with article 4, these articles define important elements of the right to land of rural women, who shall be empowered and enjoy this right without discrimination (Golay 2020b).

UNDROP's article 17 provides that the right to land includes the right of peasants and other people working in rural areas to have access to, sustainably use, and manage land and other natural resources to achieve an adequate standard of living, to have a place to live in security, peace, and dignity and to develop their cultures.

UNDROP provides that all states, UN agencies, international and regional organizations shall contribute to its implementation. Civil society organizations and social movements, including peasant organizations, should also support UNDROP's implementation. Activities that these actors shall undertake to promote UNDROP and protect the right to land include raising awareness about UNDROP, fighting forced evictions and displacements, protecting land rights defenders, pushing for agrarian reform, pushing for the recognition of peasants and their communities as rights holders, pushing for the recognition of states and regional and international organizations as duty bearers, and calling for more accountability mechanisms while using existing ones (Golay 2020b).

In 2019, the UN Human Rights Committee was the first UN treaty body to refer to UNDROP in an individual case, in its decision in *Portillo Cáceres and Others v. Paraguay* (UN Human Rights Committee 2019; Golay 2020a, b, c). Portillo Cáceres and members of his family are peasants engaged in family farming in Paraguay. They live in a community that received land under the agrarian reform program in 1991. They sent a communication to the UN Human Rights Committee in 2016, claiming that the massive use of agrochemicals (pesticides and insecticides) in nearby large plantations had poisoned several of them, led to the death of their relative Ruben Portillo Cáceres, and polluted their land and other natural resources. In its decision, the UN Human Rights Committee found violations of Cáceres family members' rights to life, privacy, family, and home, and to an effective remedy. It explained that Portillo Cáceres and members of his family depend on their crops, fruit trees, livestock, fishing, and water resources for their livelihoods. It added that they have a special attachment to and dependency on the land, using the words of and referring to UNDROP's article 1. It concluded that these elements can be considered to fall under the scope of "home"—that is, the place where a person resides or carries out his or her usual occupation. Because the pollution has caused direct repercussions for the Cáceres family's crops, fruit trees, livestock, fishing, and water resources, their right to privacy, family, and home had been violated.

In December 2019, several UN human rights experts called the UN Human Rights Council to create a new special procedure to monitor UNDROP, and they committed to protect the rights enshrined in UNDROP, to integrate UNDROP's implementation in the exercise of their mandates, and to provide guidance to states on how they can implement UNDROP (UN Human Rights Independent Experts 2019). They also underlined that special measures shall be taken by states and other stakeholders to protect human rights defenders of the land, environment, and natural resources—who are the first victims of criminalization, intimidation, and attacks against their physical integrity and life—and that their safety must be prioritized and protected via all available mechanisms (UN Human Rights Independent Experts 2019).

Like UNDRIP, UNDROP offers a comprehensive legal framework regarding peasants' right to land under international human rights law that can be used by various actors at all levels. In the future, one of the challenges is going to be reconciling and ensuring synergies between UNDROP and UNDRIP, notably in situations involving potential clashes between peasants and Indigenous Peoples (Bessa and Gilbert 2022).

Part 3: Challenges for the Realization of the Right to Land

Despite important advances in the protection of the right to land through international instruments, local communities continue to face major challenges. Here we explore some of these challenges, with a focus on forced evictions and displacements, the gender dimensions of the right to land, and the impacts of corporate forms of land control led by transnational corporations.

The Right to Land and Forced Evictions and Displacements

The failure of many states to enshrine in law and policy the human rights to land, food, housing, and related rights at domestic level makes people and communities vulnerable to forced evictions and displacements. Globally, the trend to evict communities in the name of city beautification, urban renewal, industrialization, conservation, and development-based activities, including mining or the building of dams and other infrastructure, has been accelerating (Kothari 2015).

States continue to use their powers, often given to them by national law, of “eminent domain”—that is, the power to appropriate private property for public use, to force people to give up their lands and homes. The exercise of eminent domain and the cynical use of the doctrine of public purpose for private benefit has become common across the world. Formal laws that give states the power of eminent domain are also used to override claims to land and natural resources that are protected by the “customary rights” that, for example, Indigenous Peoples, claim (Ramanathan 2009). Groups that are not holders of legally recognized property rights are disproportionately impacted by evictions and displacements—Indigenous Peoples, peasants, pastoralists, fisher folk, nomads, and urban dwellers.

As we have seen, in the early 2000s, the UN special rapporteur on the right to housing led a process to draft the UN Evictions Guidelines (UN Human Rights Council 2007) to establish a universal standard that, by protecting rights to housing, land, and related rights, could put the brakes on the unfettered, speculative use of land and property. The UN Evictions Guidelines are today a key global operational tool to control and monitor the practice of forcibly evicting and displacing people from their homes and land. They protect people’s and communities’ human rights in the processes before, during, and after evictions, displacement, and resettlement, and the role of local governments is seen as critical in all three stages (before, during, and after evictions). The UN Evictions Guidelines also call on states to actively monitor and carry out evaluations to determine the consequences of evictions.

Yet fifteen years after the adoption of the guidelines, the continued implementation of neoliberal policies based on large-scale infrastructure projects in both urban and rural areas, the continued commodification and financialization of homes and land, and development- and conservation-based displacement continues across the world. The unwillingness to implement the human rights to housing and land, which could counter the neoliberal approach, further exacerbates the crisis and continues to take decision-making about what happens to land and land-based resources out of the hands of local people and communities.

The Right to Land from a Gender and Intersectional Perspective

Women have long been excluded from formal land rights and from participating in communal land governance (Razavi 2009). In response, feminist collectives within agrarian social movements have campaigned for the full integration of gender equality and women's rights into the policies and legal instruments designed to guarantee the human rights to food, land, work, and social security (Desmarais 2003). Despite important advances, there is still a long way to go. The UNDROP, for example, is an important achievement for rural people, because it explicitly recognizes the human rights to land, seeds, and food sovereignty. Yet, it fails to recognize a number of crucial issues for women and gender equality (Bourke Martignoni and Claeys 2022). First, UNDROP fails to recognize women's right to equality in marriage and family relations and women's sexual and reproductive health and rights. Second, UNDROP is silent on the disproportionate burden of unpaid reproductive and agricultural labor performed by women (Shah and Lerche 2020). Third, it does not recognize gender identity and sexual orientation as grounds for discrimination. And finally, it fails to acknowledge patriarchy as a source of violence and structural oppression against women and nature. The failure of UNDROP to directly address these issues robs this new international instrument of much of its political power.

Despite these shortcomings, UNDROP can be interpreted progressively, because it prohibits any kind of discrimination, including on the basis of sex and marital status (art. 3.1), and it provides that states "shall take appropriate measures to eliminate conditions that cause or help to perpetuate discrimination, including multiple and intersecting forms of discrimination, against peasants and other people working in rural areas" (art. 3.3). This explicit recognition of intersectionality is unique in an international human rights instrument.

Further, UNDROP article 4 reasserts the need to ensure women's substantive equality (art. 4). In that regard, it follows a similar approach to UNDRIP, which recognizes the rights of Indigenous women and children to "enjoy the full protection and guarantees against all forms of violence and discrimination" (art. 22.1). Although UNDRIP does not specifically mention the right of women to land, UNDROP emphasizes states' obligation to take "appropriate measures to remove and prohibit all forms of discrimination relating to the right to land" (art. 17.2). UNDROP also provides that states "shall ensure that peasant women and other women working in rural areas enjoy without discrimination all the human rights and fundamental freedoms set out in the present Declaration and in other international human rights instruments, including the rights: "[t]o equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes" (art. 4.2(h)).

One promising avenue for a progressive interpretation of UNDROP is to build on CEDAW's interpretive General Recommendation (GR) no. 34 on the rights of rural women, which was elaborated in parallel to UNDROP and adopted in 2016 (CEDAW 2016).

GR no. 34 recognizes rural women's right to land as a fundamental human right, and it articulates several issues that are important to consider in promoting this human right (para. 56). First, it highlights the importance of identifying and redressing the "negative and differential impact" of trade liberalization, privatization, and the commodification of land and natural resources on rural women's rights. Second, it insists on the importance of enacting temporary special measures to achieve substantive gender equality in inheritance and user rights over land, including communal lands. Special measures can also be implemented to increase women's participation in political and public service. Guidance provided by the VGGT can also be useful in defending, promoting, and protecting women's right to inherit land. Indeed, guideline 4.6 highlights that states "should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights," which goes beyond UNDROP. Third, it points to the need to guarantee women's sexual and reproductive health and rights. Fourth, it recalls the obligations of states and other duty-bearers to redress the disproportionate burden of unpaid care and agricultural work performed

by women. Fifth, in guideline 80, in the context of the need for strong measures to protect women against evictions from their homes and lands, it urges states to adopt measures that are in line with international standards, including the UN Evictions Guidelines.

GR no. 34 is more progressive than CEDAW (adopted in 1979), which advances women's rights within the confines of mainstream gender-equality policies and legal frameworks without advocating for radical or systemic change (Bourke Martignoni 2018). In contrast, GR no. 34 provides useful guidance for a feminist and progressive interpretation and implementation of UNDROP. Several transnational agrarian movements and human rights organizations, such as La Via Campesina and FIAN International, have developed training materials based on UNDROP and GR no. 34 (FIAN International 2020). In their publications, these organizations call for policies and legislation that acknowledge the intersection of patriarchy, race, social class, age, ability, and sexual orientation. Indeed, discrimination can affect all aspects of social and political identity (gender, race, class, sexuality, disability, age, etc.) and the way they overlap, or "intersect." Applying an intersectional approach is key to promoting and defending women's right to land, because this makes it possible to assess how multiple forms of oppression come together to create new types of discrimination and inequality and then take measures to address these. Applying an intersectional approach is also a powerful tool to address discrimination based on gender identity and sexual orientation (Gioia 2019).

The Right to Land and Transnational Corporations

Transnational corporations (TNCs) often lead and organize production and trade through global value chains (Gereffi, Humphrey, and Sturgeon 2005). Within these networks the TNCs select the types of business relationships that define the types of governance of the value chain and determine the level of control over the activities they exercise within the value chain. For this reason, it is important to consider, not only the direct land impact of foreign direct investment (FDI), but also the more indirect impacts arising from corporate-driven value chain relations and transformations, which make them one of the major drivers of violations of the right to land.

The kind of business relationships a TNC elects to engage in will vary depending on the business itself. In the case of land-related businesses, such as those in the extractive industry and agricultural production, TNCs have traditionally selected FDI relationships because they entail more direct control over land and subsoil resources. However, TNCs have also engaged in other forms of land control besides FDI. These involve business relationships such as contract farming, where land control is realized through contractual arrangements that tie producers and production forms to specifications that are dictated by a lead firm (Borras et al. 2012) and, in a more sophisticated way, via arrangements governing control over technology and markets (Ribot and Peluso 2003). Through these processes, TNCs can control the value chain, including land, and therefore benefit from this resource (Torres-Marenco 2019).

Within this context, large-scale land-based investments for export-oriented activities can also be associated with food-crop importation (e.g., in the case of mining but also several cash crops); reduced support for locally grounded agriculture and increased land concentration; food insecurity; environmental contamination; land dispossession and displacement; harassment; impoverishment; and murders and forced disappearances.

Also impacting the right to land is the phenomenon known as the "financialization of land," which is especially linked to the corporate agriculture sector but also has growing relevance in the context of climate change adaptation and mitigation—notably, through "nature-based solutions" and carbon markets. This phenomenon consists of financial actors such as banks and investment funds taking ownership of land and companies throughout the agri-food sector, and prioritizing shareholder returns over agricultural

production decisions linked to the land itself, their local environment, and their workers (Wegerif and Anseeuw 2020). This trend is changing the use of land as a productive resource to its use as a new asset class, where investors can diversify, protect, and increase their portfolios (Margulis et al. 2013; Wegerif and Anseeuw 2020; Clapp and Isakson 2018). Such a phenomenon is considered to have led to speculation on commodity prices, corporate concentration, land inequality and concentration, agricultural land grabbing, and insecurity over the long term about the social and ecological sustainability of food and agriculture (Bourke Martignoni et al. 2022; Anseeuw and Baldinelli 2020; Clapp and Isakson 2018; Clapp 2012).

This reality negatively impacts the right to land of local communities because they face not only issues of land deprivation, including changes in access to, use of, and control over land, but also wider issues concerning their human rights. These violations are even more concerning because the regulation of both processes—corporate-driven value chains and the financialization of land—is made more difficult by their complex structures and transnational character.

The adoption of human rights instruments addressing the activities of TNCs has remained on the international agenda since the 1970s. However, despite the magnitude of their impact on human rights, resistance to allocating human rights obligations to businesses has prevailed. For this reason, the approach to tackling human rights abuses in this context remains state-centric. This was reflected in the UN Guiding Principles on Business and Human Rights (UNGPs), a benchmark soft-law instrument endorsed in 2011 by the Human Rights Council, which developed the framework “protect, respect and remedy” and clarified distinct but complementary responsibilities: states have a duty to protect, and businesses have the responsibility to respect human rights. Access to effective remedy is primarily a duty of the state, which should provide both judicial and nonjudicial grievance mechanisms. Businesses should also establish operational-level grievance mechanisms for identifying adverse human rights impacts and facilitating early, direct remediation of those by the business entity. Access to an effective remedy is considered essential to ensure protection from human rights violations linked to businesses. However, this aspect of the UNGPs has faced some criticism and challenges, including a charge that the text gave preference to developing nonjudicial over judicial grievance mechanisms as it allocated major attention to the “effectiveness criteria” for the former (Deva and Bilchitz 2013); that there exist major barriers for victims wanting to access judicial mechanisms (Skinner et al. 2013); that there remains a lack of implementation of corporate grievance mechanisms, as well as any key criteria for their development (Martin and Bravo 2016); and that the UNGPs’ effectiveness criterion is insufficient to measure an effective remedy (Wielga and Harrison 2021).

Since the endorsement of the UNGPs, the practice of human rights bodies has broadly followed the language of the framework “respect, protect and remedy” when discussing the human rights responsibilities of businesses; this is evidenced by CESCR General Comment No. 24 on States Obligations in the Context of Business Activities (UN Committee on Economic, Social and Cultural Rights 2017), the IACHR report on business and human rights (Inter-American Commission on Human Rights 2019), and the drafting of a Binding Treaty on Business and Human Rights (OEIGWG Third Revised Draft 2021). These address how states should domestically regulate the responsibility of businesses to respect human rights and the access to effective remedy based on the legally established general obligation to protect—including that of an extraterritorial nature—according to current human rights standards. And though all these instruments recognize that the impact of businesses often disproportionately affects local communities, none of them elaborate further on a right to land. Until recently, the CESCR General Comment No. 26 on Land and Economic, Social and Cultural Rights (2022) linked business activities to “land-related Covenant rights” by extending the standards of the CESCR General Comment No. 24 to this context (UN Committee on Economic, Social and Cultural Rights 2022).

By clarifying the accountability of TNCs for human rights violations in their operations and supply chains, these instruments can address concerns linked to the right to land in the context of business activities.

Measures taken to implement them could have a significant bearing on land issues. The range of relevant measures is broad and would include, for example, establishing effective human rights due-diligence legislation and accountability mechanisms that cover violations of the right to land in connection with the conduct of a given business or issues associated with its supply chain, both within and outside the jurisdiction of the relevant state (GC24 paras. 32, 33; GC26 paras. 30, 42). It would also include integrating a consideration of human rights, and specifically the right to land, into any support provided to business activities overseas, including, for example, in the form of development finance institutions; considering the right to land, the right to development and other human rights of the communities in decision-making related to negotiating international economic agreements (Inter-American Commission on Human Rights 2019, para. 45); abstaining from entering into trade or investment agreements that might affect the realization of human rights (GC24 paras. 13, 29), for instance, ensuring they do not have an adverse impact on access to productive resources in other countries (GC26 para. 45); and paying special attention to the rights of land defenders and the serious risks they often face in advocating against violations of the right to land in the context of business activities.

In more systemic terms, the IACHR Report called on states to prevent land grabbing and situations of land concentration that would jeopardize the enjoyment of human rights; and the Commentary to the UNGPs recalled the need to clarify the governance of access, ownership, and use of land and to guide businesses on how to effectively consider issues of gender, vulnerability, and marginalization (at p. 3). Furthermore, General Comment No. 26 prescribes that states, in the context of land acquisitions, should ensure that the acquisition or lease of land by land investors does not violate international norms and guidelines or deprive local communities of access to the land they depend on for their livelihoods (GC26 para. 43). Several instruments call on states to ensure equitable access to productive resources (GC24, for example), while also preventing forced evictions (UNGPs, p. 12; GC24 paras. 11–12; GC26 para. 27). International instruments also call on states to pay special attention to vulnerable groups such as Indigenous Peoples, Afro-descendant communities, peasants, and other people working in rural areas, including in the context of their participation, prior consultation, and free, prior, and informed consent to business-related processes.

The fact that none of the existing international instruments on business and human rights is legally binding hampers implementation and the ability to ensure effective remedies for violations. Social movements representing local communities in the Global South have strongly criticized the nonbinding character of the UNGPs and expressed disappointment over the progress and emerging outcomes in the negotiations on the Binding Treaty on Business and Human Rights, which have thus far failed to impose human rights obligations directly onto businesses (Campaña Global 2020). The proposed Binding Treaty on Business and Human Rights has been criticized in connection with its limited “legal teeth” and clarity about assuring accountability and remedies (López 2021). Further, it is not yet clear how the proposed treaty could meaningfully address issues related to the conduct of actors “upstream” of the business activities associated with human rights violations, such as lenders and investment funds. Additionally, regulating due diligence and the accountability of businesses along the value chain has proven inherently difficult owing to the complexity of these networks, as can be seen in the experience with the mandatory due-diligence norms adopted by European states (European Coalition for Corporate Justice 2021). All these factors represent critical challenges that would need to be met in order to address the drivers of violations of the right to land linked to business activities.

Concluding Remarks

The evolution of a human right to land, and the elements that encompass it, has historically been constructed from two complementary perspectives. The first conceptualizes land as a basis for the realization of other human rights, such as the right to food or housing. The second articulates a self-standing, more encompassing, human right to land that has ramifications affecting not only land relations but also the wider frameworks for addressing issues such as territorial control, climate change, and the regulation of business activities. This second perspective, which we support, sees the right to land as an individual and collective human right comprising the rights to access, use, manage, and control land and natural resources. It emphasizes the agency of Indigenous Peoples and local communities, such as peasants, pastoralists, and other small-scale food producers, which the right to land aims to protect. It sees the right to land as closely linked to cultural rights, cultural heritage, and spiritual and religious practices, as has been highlighted in many of the cases brought by Indigenous Peoples; and it argues that the right to land is central to the rights of future generations, as highlighted in the recently adopted Maastricht Principles on the Human Rights of Future Generations (Maastricht Principles, forthcoming).

The effective and progressive realization of the right to land faces many challenges, including the persistence of forced eviction and displacement, gender inequality and discrimination, and the need to redress the increasingly tight control over land by TNCs. In the future, additional research will be needed to document recent and emerging developments that may affect the right to land, and how we should conceptualize it. For example, the climate crisis highlights the need to conceptualize the right to land as a precondition for measures to address climate change and restore ecosystems, challenging the “technofixes” that fail to confront the deeper-level drivers of climate change or even masquerade land grabs as climate policies. Strengthening the right to land can provide a fundamental pillar supporting the rights of future generations by advancing equitable, sustainable, and localized responses to the social and environmental challenges associated with climate change. Another example is the spread of digital technologies in the land sphere—an area where real-life developments have vastly outpaced the elaboration of international guidance or regulations, particularly from a human rights perspective. Developing an understanding of the right to land that can do justice to all these complex challenges, while also providing practical guidance for implementation, will be key in realizing the right to land for both present and future generations.

Acknowledgments

All the authors have contributed equally to this manuscript.

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