

# Recognising the land rights of indigenous peoples and rural communities

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**Current global trends are putting increasing economic pressure on land and natural resources, raising the risk that new waves of internal displacement may be caused by the combined forces of climate change and large-scale investment in agriculture.**

When the Guiding Principles on Internal Displacement were adopted in 1998, some of the Principles were relatively progressive in their recommendations, choosing interpretations of international law that reflected best practice rather than universal practice at the time in order to encourage effective state responses to displacement. Among these, Principle 9 was innovative in setting out an obligation to prevent displacement by protecting the rights of those most vulnerable to the loss of their land: “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

In practical terms, such protection implies state recognition and protection of the land tenure rights of indigenous peoples and rural communities. However, international law at the time only tenuously supported such measures even in the case of indigenous peoples, who most clearly fit the criterion of ‘special dependency on and attachment to their lands’. The main source of legal support for Principle 9 was the International Labour Organization’s Convention No. 169 concerning indigenous and tribal peoples, which required signatories to “respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories”.<sup>1</sup>

Since the adoption of the Guiding Principles, support in international law for indigenous peoples’ land rights has proliferated. Perhaps the most significant step was the 2007 adoption by the UN General Assembly of the Declaration on the Rights of Indigenous Peoples, which states that such peoples “shall not be forcibly removed from their lands or territories” barring their “free, prior and informed consent” as well as fair compensation and the option of return, wherever possible.<sup>2</sup>

At the regional level, the Inter-American Court of Human Rights has issued a consistent line of decisions during the 2000s requiring recognition of and respect for indigenous peoples’ land rights. In early 2010, many of these judgments were referred to by the African Commission on Human and Peoples’ Rights, when it issued a groundbreaking decision requiring Kenya to restore land taken from the Endorois people nearly forty years earlier. The terms of this decision imply that the ‘particular obligation’ to protect such groups from displacement referenced in Guiding Principle 9 may require state recognition of ownership of land in practice: “The African Commission notes that if international law were to grant access only, indigenous peoples would remain vulnerable to further violations/dispossession by the state or third parties. Ownership ensures that indigenous peoples can engage with the state and third parties as active stakeholders rather than as passive beneficiaries.”<sup>3</sup>

While it is now clear that indigenous land rights are protected by international law, what of the other groups that Guiding Principle 9 identifies as also having a ‘special dependency on and attachment to their lands’, such as minorities, peasants and pastoralists? Recent global trends have affirmed the wisdom of the approach adopted in the Guiding Principles, which focuses on vulnerability to the effects of loss of land (in terms of both livelihood and identity) rather than status (for example, as a member of an indigenous group).

Contemporary patterns of large-scale agricultural investment in developing countries (sometimes referred to as ‘global land-grabbing’) and pressure on natural resources have frequently led to the impoverishment and even displacement of rural communities, whether these have viewed themselves as indigenous peoples or not. The forces driving these developments include urbanisation, climate change and rising food prices. Given that these global trends are unlikely to abate, investment and development-related displacement may come to trigger international concern during the coming decade in a similar manner to conflict-related displacement in the 1990s and natural disasters after the 2004 Indian Ocean tsunami. Although the internal displacement discourse has yet to connect systematically with debates over land investment and development, Principle 9 provides an excellent starting point for consideration of how displacement related to such trends can be prevented or minimised.

Advocates for preventing the worst effects of large-scale agricultural investment have invoked the human right of rural communities to adequate food, including the means to produce their own food. In practice, the implementation of this right requires recognition and protection of such communities’ legal tenure of their land. This recognition is precisely the type of measure that Guiding Principle 9 asserts that states have a ‘particular obligation’ to implement in order to protect groups vulnerable to the loss of their land. However, only concerted advocacy on this point will ensure that Principle 9 has the preventive effect its drafters intended.

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1. International Labour Organization, Convention No. 169 (1989), Article 13 (1). [www.ilo.org/indigenous/Resources/Publications/WCMS\\_100897/lang-en/index.htm](http://www.ilo.org/indigenous/Resources/Publications/WCMS_100897/lang-en/index.htm)

2. UN General Assembly, Declaration on the Rights of Indigenous Peoples (2007), Article 10. [www.un.org/Docs/journal/asp/ws.asp?m=A/RES/61/295](http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/61/295)

3. African Commission on Human and Peoples’ Rights, Case 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (2010), paragraph 204. [www.hrw.org/sites/default/files/related\\_material/2010\\_africa\\_commission\\_ruling\\_0.pdf](http://www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_0.pdf)