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SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD

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Mr. Chairperson, Excellencies, Ladies and Gentlemen,

Two years ago, when I first spoke before this Committee to present my programme of work, I indicated that I would address the relationship of security of land tenure and access to land to the right to adequate food (A/63/278, paras. 33-37; see also A/57/356, paras. 24 and 30). I am here today to report on that inquiry, and to present my main conclusions.

The report was based on a questionnaire sent out to States about which measures they have adopted in order to ensure equitable access to land, and which included questions about any mechanisms that facilitate access to land by rural women.

In addition to the responses received from governments, I drew on the 115 communications concerning access to land that have been addressed to the Special Rapporteur on the right to food between 2003 and 2009. These communications cover 89 different cases in 36 countries, and they represent a significant proportion of the total number of cases received by the mandate. In December 2009, in order to complement my information, I made a public appeal to receive information about cases that illustrate the links between security of land tenure, access to land, and the right to food. Following that call, non-governmental organizations sent altogether 117 cases from all regions of the world, although mostly from South and South East Asia. Finally, I took part in a number of consultations and workshops on this issue in 2009 and 2010, in India, Malaysia and Mali.

The cases I received relate in particular to evictions for large-scale development projects, for the creation of special economic zones, for mining activities, or for the creation of large plantations. Some communications denounced the pollution of groundwater or of soils. The communications show how individuals and communities, who hold communal ownership of their land, including indigenous peoples, are particularly vulnerable.

The overall picture that emerges from this empirical evidence is impressive. What we are witnessing is a situation in which pressures on land and water are increasing at an unprecedented speed. Each year, up to 30 million hectares of farmland are lost due to environmental degradation, conversion to industrial use or urbanization. This trend has been exacerbated by the increased competition between food and energy crops and, especially since a couple of years, speculation on farmland by private investors. Certain measures adopted to mitigate climate change, under the Clean Development Mechanism or under the REDD scheme (for Reduction of Emissions from Deforestation or Forest Degradation), may also affect access to land for certain populations, particularly forest-dwelling groups, including indigenous peoples. The consequences for millions of farmers, fishermen and indigenous people are in many cases dramatic.

I have been closely monitoring this issue over the past months. In an addendum to the report I presented in March 2010 to the Human Rights Council, I listed a set of eleven Principles that are based on human rights and that are relevant for large-scale investments in land, which are one major source of these increasing pressures on land (see A/HRC/13/33/Add.2). These Principles are a restatement of existing human rights obligations. In that sense, they are a set of best practices recommended to States who wish to better comply with their human rights obligations, and it is my hope that human rights monitoring bodies, particularly the Committee on Economic, Social and Cultural Rights, will seek inspiration from the Principles I put forward to monitor more closely what is currently developing.

The report before you examines what should be done in order to ensure that these pressures on land do not have negative impacts on the enjoyment of the right to food. Rural populations grow. Competition with large industrial units is increasing. The plots cultivated by smallholders are shrinking year after year. Farmers are often relegated to soils that are less fertile – that are arid, hilly or without irrigation. This poses a direct threat to the right to food of rural populations.

Security of tenure is therefore key to protecting the rights of land users. But such security of tenure should not necessarily take the form of titling schemes that transpose the Western concept of property rights in developing regions. In the past, titling schemes have frequently been captured by local elites, and sometimes access to titling has been unaffordable for the poorest, or has confirmed existing inequalities. Where titling leads to the creation of a market for land rights, it sometimes results, in time, in more land concentration: the land is appropriated neither by those who need it most nor by those who could use it most productively, but by those who can afford to buy it; and unless they are sufficiently supported, small producers risk losing the land on which they depend if they use it as a collateral to obtain credit and become heavily indebted.

Instead, I argue that States should encourage communal ownership systems, that they should strengthen customary land tenure systems and that they should reinforce tenancy laws to improve the protection of land-users. This is in line with the conclusions reached by the Commission on the Legal Empowerment of the Poor, but also with the African Union Framework and Guidelines on Land Policy in Africa which shall shortly be moving towards the implementation phase. There is growing experience with the use of low-cost, accessible tools for recording local land rights, or at least land transactions, to ensure security of tenure through the recognition of use rights rather than full ownership. Examples include the “Plan foncier rural”, implemented in Benin and tested in Burkina Faso, and the \$1 registration process leading to the issuance of certificates in some Ethiopian states. An interesting illustration of the decentralized management of land rights is Law 2005-019 of Madagascar (loi 2005-019 fixant les statuts de la terre), which provides for the registering of use rights at the level of the municipality, thus allowing the registration of untitled property, but at a much lower cost and through a process that is much simplified in comparison to formal titling.

At the same time, in order to ensure the protection of women and outsiders to the community, such as pastoralists, it is important to carefully monitor what is done at decentralized level. Article 14, para. 2(g) of the International Convention on the Elimination of All Forms of Discrimination against Women guarantees the right of women to equal treatment in land and agrarian reform as well as in land resettlement schemes. However, laws and social customs, such as those providing that upon the death of the husband the land belongs to the sons and not to the widow, remain in place, despite the flagrant violation of women’s rights this leads to. This should not be allowed, and I express the hope that the recent establishment by the Human Rights Council of a Working Group on the issue of discrimination against women in law and practice will provide an opportunity to systematically review such forms of discrimination.

Finally, in the presence of sometimes highly unequal distribution of land in rural areas, strengthening security of tenure may not be sufficient and land redistribution may be required. The International Covenant on Economic, Social and Cultural Rights commits

States to “developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources” (Art. 11, para. 2(a)). The Final Declaration adopted at the International Conference on Agrarian Reform and Rural Development (ICARRD) held in Porto Alegre in March 2006 is a strong encouragement to move in this direction, in regions where there exist strong social disparities.

A more equitable distribution of land is desirable on both efficiency and equity grounds. It may contribute to economic growth, to the empowerment of women and to reduction of rural poverty. It improves food security, since it makes food more easily and cheaply available, providing a buffer against external shocks and providing an almost complete buffer against malnutrition.

But certain conditions have to be present for agrarian reforms to be successful. It is not sufficient simply to redistribute land: well-resourced extension services and investments upstream and downstream the production process, are equally vital – investments, for instance, in storage facilities, in communication routes, and in supporting farmers’ cooperatives to build up certain packaging, processing and marketing capacities. Land reform without rural development has often failed in the past; agrarian reform only succeeds when it goes far enough in the support it provides to its beneficiaries.

Last week, I took part in the 36th annual session of the Committee of World Food Security (CFS) in Rome, the first session of the CFS since it was reformed in November 2009, following the need to improve global governance of food security after the global food price crisis.

The question of the protection of the rights of land users was one important part of the discussions held during the session. Indeed, I had the honour of chairing the policy roundtable that was held on that theme. The CFS encouraged the continuation of the inclusive process of development of Voluntary Guidelines on the Responsible Governance of Tenure of Land and Other Natural Resources, a process launched already through inclusive consultations in different regions of the world. It is my hope that the report that is before you shall inform this process and, that in time, the links between access to land and the realization of the right to food, for those who depend on the land for their livelihoods, will be fully recognized.
