

## **30 ARTICLES ON THE 30 ARTICLES**

### **THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 70: STILL WORKING TO ENSURE FREEDOM, EQUALITY AND DIGNITY FOR ALL**

#### **Article 17: Right to Own Property**

Australia's aboriginal people have no written language, so they pass their heritage along through ceremonies and story-telling. As elders recite, others often draw icons in the sand, depicting beliefs, events and life-giving places where water and food could be found. When the ceremony ends, the sand is brushed away to guard the secrets.

Within the last 50 years, they were encouraged to transfer their secret sand paintings to canvas. Their striking paintings, incorporating dots, spirals and cross-hatching, have become valuable art pieces.

In a court in the year 2000, they also unlocked the title to a vast territory in the Great Victoria Desert in Western Australia, which the court ruled was their ancestral home, accepting paintings as proof of the Spinifex people's claim in lieu of a formal written deed. Kirsten Anker, an expert on indigenous law said that for this group: "the painting is not just a fact about law, it is law."

Article 17 of the Universal Declaration of Human Rights (UDHR) guarantees the right to property. This is yet another right included in reaction to the atrocities of the Holocaust, when property was confiscated from Jews and others, often to enrich Nazi officials. European Jews were stripped of billions of dollars' worth of cash, artwork, houses, businesses and personal belongings. "Hitler's Final Solution was not only an act of genocide: it was also a campaign of organised theft," says one writer.

Despite this motivation, as the UDHR was being drafted between 1946 and 1948, the world was dividing into the ideological camps of the Cold War, with democratic and capitalist countries on one side and non-democratic socialist states on the other.

The socialist countries, as well as some developing countries, were hostile to the idea that private property was a fundamental human right. In some quarters this suspicion remains until today. Unlike many rights in the UDHR that are amplified in other important UN instruments, the right to private property is not specifically amplified in subsequent human rights conventions. Some prohibit discrimination on the basis of property (or other formulations), but none of them have a specific right to private property. However, the

"The theory of Communism may be summed up in one sentence: Abolish all private property."

—Karl Marx

United Nations Declaration on the Rights of Indigenous Peoples recognises indigenous peoples' rights with respect to their lands, territories and resources.

One of the early drafts of the UDHR (later rejected) called for workers to have the right to own the means of production. Another draft would have required government to help their citizens obtain a minimum of private property in order to assure "the essential material needs of a decent life." The Soviet Union delegation opposed any kind of absolute right to private property, but finally settled for Paragraph 2, which says, in its entirety: "No one shall be arbitrarily deprived of his property."

This phrasing today is often invoked by minority and indigenous groups who are displaced from their resource-rich lands by development projects. Recognition of the property rights of indigenous peoples is fundamental to their ability to survive (spiritually, culturally and financially), defend their territory and often to guard against climate change – for example through the destruction of the Amazon rain forest.

On 26 May 2017, the African Court on Human and Peoples' Rights made a landmark judgment in a case involving the mass eviction of the Ogiek peoples from the Mau Forest by the Kenya Forest Service. The Court found that the Kenyan Government had violated seven separate articles of the African Charter on Human and People's Rights, with the violations amounting to a persistent denial of Ogiek land rights and their religious, cultural and hunter-gather practices.

On the other side of the world, the Inter-American system has contributed to the understanding and strengthening of indigenous rights, for example via a ground-breaking ruling by the Inter-American Court on the requirement for free, prior and informed consent, in a case involving the Saramaka people of Suriname. The Court held that "regarding largescale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramaka, but also to obtain their free, prior, and informed consent, according to their customs and traditions."

Women also are often shut out of property ownership by laws and social norms. The World Bank says close to 40 percent of the world's economies have at least one legal constraint on women's rights to property, and 39 countries allow sons to inherit a larger proportion of assets than daughters. It was not until 1922 that the UK and the US allowed women equal inheritance, and as recently as 1976 that women in Ireland were able to own their homes outright.

Many see a link between women's property rights and prosperity. Educated women who control their own property benefit society, says Chilean writer Isabel Allende. "If a woman is empowered, her children and her family will be better off. If families prosper, the village prospers, and eventually so does the whole country."

**This is one in a series of articles published by the Office of the High Commissioner for Human Rights (OHCHR) to mark the 70<sup>th</sup> anniversary of adoption of the Universal Declaration of Human Rights on 10 December 1948. All rights enshrined in the UDHR are connected to each other, and all are equally important.**