

**Василь Іванович Шакун**

*Київський регіональний центр Національної академії правових наук України  
Київ, Україна*

**Валерій Михайлович Гесць**

*Державна установа «Інститут економіки та прогнозування НАН України»  
Київ, Україна*

**Олена Миколаївна Бородіна**

*Державна установа «Інститут економіки та прогнозування НАН України»  
Київ, Україна*

### **ЗАБЕЗПЕЧЕННЯ ПРАВ ЛЮДИНИ В ЗЕМЕЛЬНИХ ПРАВОВІДНОСИНАХ: СОЦІОЕКОНОМІЧНІ Й ПРАВОВІ ЗАСАДИ**

**Анотація.** Відкриття вільного ринку землі та розширення масштабів її купівлі-продажу у сучасних умовах розвитку українського суспільства і держави є вкрай актуальною темою та потребує відповідного наукового опрацювання саме з позицій прав людини. Тому автори поставили за мету проаналізувати міжнародні правові документи у сфері регулювання процесів захисту прав селян на землю та запропонували науково-обґрунтовані пропозиції із вдосконалення відповідних процесів в Україні. У роботі із застосуванням загальнонаукових і спеціальних методів наукового пізнання (діалектичного, формально-логічного, системного, історико-правового та порівняльного аналізу) розглянуто правові засади та міжнародні підходи щодо захисту прав селян на землю у контексті роз'яснення та узагальнення основних положень правозахисних документів, особливо Декларації ООН про права селян та інших людей, які працюють у сільській місцевості, ухваленої Генеральною асамблеєю ООН у грудні 2018 р. Аналіз показав, що низка інших прав, закріплених у Декларації, є взаємопосилюючими та необхідними для реалізації захисту прав на землю, серед них – право на участь, право на інформацію та доступ до правосуддя. В результаті проведеного дослідження розроблено пропозиції щодо виконання Україною своїх зобов'язань як члена ООН та держави-учасниці Ради ООН з прав людини у сфері захисту земельних прав селян. Усі гілки влади в Україні, включаючи виконавчу, законодавчу та судову, мають бути залучені до виконання Декларації створивши для цього нові механізми правозахисних практик у сфері регулювання земельних відносин, та систему моніторингу гарантування прав селян у процесі функціонування вільного ринку землі на національному та локальному рівнях

**Ключові слова:** правозахисний підхід, право на землю, сільська місцевість, земельна реформа, Декларація ООН про права селян та інших людей, які працюють у сільській місцевості

**Vasyl I. Shakun**

*Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine  
Kyiv, Ukraine*

**Valerii M. Heiets**

*State Organization “Institute of Economics and Forecasting  
of the National Academy of Sciences of Ukraine”  
Kyiv, Ukraine*

**Olena M. Borodina**

*State Organization “Institute of Economics and Forecasting  
of the National Academy of Sciences of Ukraine”  
Kyiv, Ukraine*

## **ENSURING HUMAN RIGHTS IN LAND LEGAL RELATIONS: SOCIO-ECONOMIC AND LEGAL FRAMEWORKS**

**Abstract.** *The opening of the free land market and the expansion of its purchase and sale in the current conditions of development of Ukrainian society and the state is an extremely relevant topic and requires appropriate scientific study from the standpoint of human rights. Therefore, the authors aimed to analyse international legal documents in the field of regulation of protection of peasants' rights to land and proposed scientifically sound proposals to improve the relevant processes in Ukraine. The work with the use of general and special methods of scientific knowledge (dialectical, formal-logical, systematic, historical-legal and comparative analysis) considers the legal framework and international approaches to protect the rights of peasants to land in the context of clarifying and summarizing the basic provisions of human rights documents. especially the UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas, adopted by the UN General Assembly in December 2018. The analysis showed that a number of other rights enshrined in the Declaration are mutually reinforcing and necessary for the protection of land rights, including the right to participate, the right to information and access to justice. As a result of the study, proposals were developed for Ukraine to fulfill its obligations as a member of the UN and a member state of the UN Human Rights Council in the field of protection of land rights of peasants. All branches of government in Ukraine, including the executive, legislature and judiciary, should be involved in the implementation of the Declaration by creating new mechanisms for human rights practices in land regulation and a system for monitoring the rights of peasants in the free land market at national and local levels*

**Keywords:** *human rights approach, right to land, rural areas, land reform, UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas*

### **INTRODUCTION**

On July 16, 1990, the Verkhovna Rada of the Ukrainian PCP adopted the Declaration [1] on State Sovereignty, “expressing the will of the people of Ukraine” and “seeking to create a democratic society” and “recognising the need to build the rule of law, with the aim of establishing the sovereignty and self-government of the people of Ukraine,” proclaimed the state sovereignty of Ukraine as the supremacy, independence, completeness and indivisibility of power within its territory and independence and equality in foreign relations. According to Section II of the Declaration: “citizens of the Republic of all nationalities constitute the people of Ukraine; the people of Ukraine are the only source of state power in the Republic; the sovereignty of the people of Ukraine is realized based on the Constitution of the Republic both directly and through people's deputies elected to the Verkhovna Rada and local councils of the Ukrainian PCP” [1]. The Declaration enshrined the right of ownership of the Ukrainian people: “The people of Ukraine have the exclusive right to own, use and dispose of the national wealth of Ukraine. Land, its subsoil, airspace, water and other natural resources within the territory of the Ukrainian PCP, natural resources of its continental shelf and exclusive (marine) economic zone, all economic and scientific-technical potential created in Ukraine is property of its people, the material basis of the sovereignty of the Republic and are used to meet the material and spiritual needs of its citizens” [1].

On July 1, 2021 in Ukraine in accordance with the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Circulation of Agricultural Land” No. 552-IX from 03/31/2020 opened a free market of purchase and sale of agricultural land for individuals, and from 2024 The participants of the

land market will be enterprises of various organisational and legal forms, including export-oriented agricultural holding companies, which today lease from 100 to 600 thousand hectares of land.

In many countries, the transition to large-scale export-oriented agriculture has led to significant increases in food prices, local food insecurity, forced evictions, and rural displacements, which in turn has increased migration from rural to urban areas and, as a result, contributed to increased migration from rural to urban areas and, as a result, increased pressure on access to urban land, communications and housing [2]. Much of this relocation is carried out in a way that violates human rights in many communities, further exacerbating their precarious situation and negatively affecting the country's spatial development.

The Office of the United Nations High Commissioner for Human Rights (Office of the High Commissioner for Human Rights – the main body of the United Nations for Human Rights, which represents international obligations to promote and protect the full range of human rights and freedoms) said that land is not just a commodity, but an important catalyst for the realisation of many human rights [3]. The right to land is pervasive, directly affects the exercise of a number of other human rights and therefore needs the highest recognition and protection of all UN member states.

The postulate is obvious – for many people the land is a source of livelihood and the basis for the realisation of their basic rights to food, water, habitat. It is closely linked to people's identity, their social and cultural rights. Aspects of human rights to land address a number of issues related to poverty reduction and rural development, building harmony in rural areas, and humanitarian development.

The issue of land relations is especially relevant in connection with the military conflict in eastern Ukraine, which began in 2014 and continues to this day. According to the Unified State Register, the number of companies, among the owners, founders or final beneficiaries of which there is at least one citizen or resident of the Russian Federation or the Republic of Belarus, as of January 1, 2022 was 16,896 companies. Among them, about 1,200, along with their main activities, also declared work in the agricultural sector by renting land. Under such conditions, this poses a threat to Ukraine's national security.

*The aim of the work* is to analyse the legal framework and international approaches to the protection of peasants' land rights in the context of clarifying and summarising the main provisions of the UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas adopted by the UN General Assembly in December 2018 and development based on scientifically sound proposals for improving the relevant processes in Ukraine in a free land market.

## **1. MATERIALS AND METHODS**

The methodological basis of the study was taken in dialectical unity and contradictions of genetic and teleological principles of knowledge of socio-legal phenomena and concepts in terms of their causal relationship and interdependence, historical development and functioning; their value-target structure and social purpose.

The materials of the study are the main provisions of international legal acts of the UN in the field of human rights, as Ukraine as one of the founding members of the UN (Ukraine participated in the UN from 1945 to 1991 as the USSR, and since independence – as Ukraine) in the activities of this organisation one of the priority areas of foreign policy.

The Declaration on the Rights of Peasants and Other Persons Working in Rural Areas (hereinafter referred to as the Declaration) is a key study of international legal documents. In 2018, the United Nations, in the light of current challenges and the growing threat to peasants of their rights to land, has offered States an integrated human rights instrument, the Declaration of the Rights of Peasants and Other People Working in Rural Areas. With this tool, states can build national systems to protect the rights of peasants, especially during agrarian and land transformations. In developing the main provisions of the Declaration, experts have applied an integrated systematic approach to the protection of the rights of peasants to use and strengthen existing instruments for the protection of human rights [5]. With this in mind, the adoption of the Declaration at the UN General Assembly level has created a unique opportunity to recognise and protect the rights of peasants, local communities, indigenous peoples, fishermen, pastoralists, nomads, hunters, landless, rural women, rural youth and agricultural workers vision of solving the problem.

In the course of the research the materials and main provisions of the international documents related to the Declaration [6-8] were used, such as: Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women for Youth; ILO Convention No. 169 concerning Indigenous and Tribal Peoples; UN Declaration on the Right to Development; UN Declaration on the Rights of Indigenous Peoples; Voluntary principles to support the progressive realisation of the right to

adequate food in the context of national food security; Voluntary principles for responsible management of land use, fishery resources and forests in the context of national food security; Voluntary principles for sustainable small-scale fisheries in the context of food security and poverty eradication.

The study includes an analysis of the main conclusions of the UN Special Rapporteur on the right to food, including land rights [9], and the provisions of the Joint Statement of Key Human Rights Advisers at the UN level, “Action to implement the UN Declaration on the rights of peasants and other people working in rural areas” [10], made by them on the occasion of the 1<sup>st</sup> anniversary of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas on December 17, 2019. The statement said that the Declaration on the Rights of the Peasant was drafted in the light of the provisions of binding international treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on Biological Diversity and its Protocols, and the International Treaty on Plant Genetic Resources for Food and Agriculture. Based on the fact that the Declaration summarises the basic provisions of binding international treaties, UN human rights experts have recognised the need for all states to better protect the rights of peasants and other people working in rural areas and called on states to implement the Declaration on the Rights of Peasants and Other People working in rural areas, as the widespread recognition of the new norms set out in this document is crucial to promoting a comprehensive human rights movement.

## 2. RESULTS

In the Declaration of the Rights of Peasants and Other People Working in Rural Areas, the rights of rural communities to land are argued in various articles (first, second, third, fourth, fifth, seventeenth, eighteenth, twenty-first, twenty-fourth) [4]. Land rights are set out directly in Articles 5 and 17, and in Article 4, which deals exclusively with women's right to land. The right to land includes freedoms and norms, including freedom from discrimination, protection against forced evictions, movement and exploitation of land, and the right to agrarian reform and the preservation and sustainable use of land. Other rights, such as the right to participate, information and access to justice, which are important for the protection of the rights of rural communities to land, are also enshrined in the Declaration [4]. Therefore, the Declaration is an important tool for synergetic interaction between the state and the peasants in protecting their legal rights in access to land and the realization of the public function of land ownership.

The Declaration defines the right to land and other natural resources along with the obligations of states to respect the legitimate rights of peasants in Articles 5 and 17. In particular, Article 5 provides:

1. Peasants and other people working in rural areas have the right to access and use natural resources in their communities in a sustainable way to ensure adequate living conditions [...]. They also have the right to participate in the management of these resources.

2. States should take measures to ensure that any exploitation affecting natural resources owned or used by peasants and other people working in rural areas is carried out based on:

(a) conducting appropriate social and environmental assessments;

(b) voluntary consultations in accordance with Article 2.3 of this Declaration;

(c) creating conditions for the equal and equitable distribution of the benefits of such exploitation, established on mutually agreed terms between those who use natural resources and peasants and other people working in rural areas.

Article 17 of the Declaration states:

1. Peasants and other people living in rural areas have the right to land, individually and/or collectively, [...] including the right of access, sustainable use and management of land, water bodies, coastal waters, fishery resources, pastures, forests to ensure a decent standard of living in security and peace and to develop their culture.

2. States should take appropriate measures to eliminate and prohibit all forms of discrimination related to the right to land, including those arising from marital status, incapacity or lack of access to economic resources.

3. States should take appropriate measures for the legal recognition of property rights, allowing for the existence of different models and systems. This includes ordinary property rights, which are not currently protected by law. States must protect legal property and ensure that peasants and other people working in rural areas are not evicted arbitrarily or illegally, and their rights are not diminished or violated. States must recognise and protect natural resources and related systems of collective use and management.

4. Peasants and other people working in rural areas have the right to protection from arbitrary and illegal movement from their land or place of residence, or from the deprivation of other natural resources necessary to meet decent living conditions. States should include protection against relocation in national legislation consistent with international human rights and humanitarian law. States should prohibit unauthorised and unlawful forced evictions, the destruction of agricultural land, and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as an instrument or means of war.

5. Peasants and other people working in rural areas who have been arbitrarily or illegally deprived of land have the right, individually and/or collectively, together with others or as a community, to return to their land, which they have arbitrarily or illegally deprived of, including in cases of natural disasters and/or armed conflicts and to restore access to natural resources necessary to meet adequate living conditions or to obtain equal, fair and legal compensation in the event that their return is not possible.

6. If necessary, states should take appropriate measures to carry out agrarian reforms to facilitate comprehensive and equal access to land and other natural resources needed to provide peasants and other people working in rural areas with adequate living conditions and to limit excessive land concentration and control of land, considering its social function. Priority in the distribution of public lands, reservoirs and forests should be given to landless peasants, youth, small-scale fishermen and other rural workers.

7. States should take measures aimed at the conservation and sustainable use of land and other natural resources used in their production, including through agri-environment, and provide conditions for the restoration of biological and other natural opportunities and cycles.

Article 5 enshrines the right of peasants and other people working in rural areas – alone or in association with others or as a community – to have access to and use the natural resources available in their communities to ensure adequate living conditions, including land, in a sustainable way; and have the right to participate in the management of these resources (paragraph 5.1). Article 17 enshrines the right to land of peasants and other people living and/or working in rural areas and stipulates that this right may be exercised individually and/or collectively (paragraph 17.1), independently or jointly with others or as a community (in accordance with Article 1, paragraph 1.1) [4].

Therefore, according to the Declaration, the right to land of peasants and other people working in rural areas includes the right of access, sustainable use, management of land and water bodies, coastal waters, fishery resources, pastures and forests to achieve a decent standard of living to have a place to live in security, peace and dignity and develop their culture (p. 17.1).

Given the particular severity of the problem, a special place in the Declaration is given to the right of rural women to land (Article 4). According to the Food and Agriculture Organization of the United Nations, rural women around the world play a key role in local and global food systems – producing food crops and earning income for their families. However, women and girls make up 70% of the world's hungry people and face multiple discrimination in access to productive resources, including land [11]. Article 4 of the Declaration provides:

1. States shall take all appropriate measures to eliminate all forms of discrimination against rural women and other women working in rural areas and to promote their empowerment to ensure the full and equal enjoyment of all human rights and fundamental freedoms based on equality between men and women, including the realisation, free participation and benefit of rural development in the economic, social, political and cultural spheres.

2. States shall ensure that rural women and other women working in rural areas enjoy all the human rights and fundamental freedoms set forth in this Declaration and other international human rights instruments without discrimination. [4]

In international human rights law, in particular the Convention on the Elimination of All Forms of Discrimination against Women [12], the rights of rural women are recognised in Article 14, which is fully consistent with Article 4 of the Declaration [4]. This article states that States should take all appropriate measures to eliminate all forms of discrimination against rural women and other women working in rural areas, promote their rights and ensure that they enjoy all human rights and fundamental freedoms without discrimination, including the right to on equal access, use and management of land and other natural resources, including equal or priority treatment of land and agrarian reforms and resettlement schemes (Article 4, paragraph 4.1 and paragraph 4.2) [12]. To prevent discrimination against rural women's land rights from family conflicts, Article 17 provides that States must eliminate and prohibit all forms of discrimination relating to land rights, including those arising from marital status, incapacity or lack of access to economic resources (Article 17, paragraph 17.2) [12].

The right to land includes freedoms and rights that states must respect, protect and exercise without any discrimination [7], as the right to land is complementary to other human rights. In rural areas, the right to land

is a “portal” for the realisation of other vital rights and freedoms of rural communities. Among them, the most important are the following human rights and freedoms, which directly depend on the right to land, namely: freedom from discrimination; protection against forced eviction and relocation; protection against the negative consequences of land use; real participation in the benefits of agrarian transformations; conservation and sustainable use of land resources.

### *2.1. Freedom from discrimination*

Peasants and other people working in rural areas have the right to full enjoyment of the right to land and have the right to be free from various forms of discrimination in respect of this right (Article 3.1, paragraph 17 and Article 17, paragraph 17.1) [12]. The Declaration stipulates that States should take appropriate measures to eliminate conditions conducive to the continuation of discrimination, including various and pervasive forms of discrimination against peasants and other persons working in rural areas (Article 3, paragraph 3.3) [4]. States should also eliminate and prohibit all forms of discrimination concerning land rights, including those arising from marital status, incapacity or lack of access to economic resources (Article 17, paragraph 7.2) [13, p. 1597; 14, p. 1187].

### *2.2. Protection against forced eviction and relocation*

Peasants and other people working in rural areas also have the right to freedom from forced eviction (migration) and movement (Article 17, paragraph 17.3 and paragraph 17.4). States must ensure the legal recognition of property rights [15; 16], including customary land tenure rights, which are currently not protected by law, while recognising the existence of different models and systems of land use by peasant farms in the place of residence [17, p. 48-50]. States should protect the lawful residence of local people and those working in rural areas, ensure that peasants and other people working in rural areas are not evicted arbitrarily or illegally, and that their rights are not suppressed or violated in any other way. States must also recognise and protect the natural heritage of rural communities and related systems of collective use and management (Article 17, paragraph 17.3) [15].

To protect peasants and other people working in rural areas from arbitrary and illegal removal from their land, states must implement protection against displacement in national legislation consistent with international human rights and humanitarian law. States must prohibit the arbitrary and unlawful forced evictions of rural residents, the depopulation of rural areas and the confiscation or expropriation of land and other natural resources, including as a punitive measure or as an instrument or method of violent confrontation (Article 17, paragraph 17.4) [15].

The Declaration stipulates that those who have been arbitrarily or illegally deprived of land have the right, individually and/or collectively, together with others or as a community, to return to their land from which they were arbitrarily or illegally deprived, including in the event of natural disasters and/or armed conflict, and to restore access to the natural resources used in their activities and necessary to meet adequate living conditions or, where possible, to obtain equal, fair and legal compensation in the event that recovery is not possible (Article 17, paragraph 17.5) [4]. Article 24 on the right to housing also stipulates that States shall not arbitrarily or illegally, temporarily or permanently evict peasants or other persons working in rural areas against their will from the houses or lands they occupy without providing access to appropriate forms of legal or other protection (Article 24, paragraph 24.3). In the event that eviction is imminent, the state must provide or provide the peasants with equal and fair compensation for any material or other damage (Article 24, paragraph 24.3) [4].

### *2.3. Protection against the negative consequences of land use*

Article 5 stipulates that States must take measures to ensure that any exploitation affecting natural resources traditionally preserved or used by farmers and other persons working in rural areas is based on a proper assessment of the social and environmental impact of such exploitation of rural communities and territories; bona fide consultations organised for rural residents in accordance with Article 2, paragraph 2.3, Declarations and methods of equal and equitable distribution of benefits from such exploitation, established on mutually agreed terms between those who use natural resources and rural communities (Article 5, paragraph 5.2) [18, p. 112].

#### *2.4. The right to participate in the benefits of agrarian reform*

The Declaration recognises the need for agrarian transformation for peasants to exercise their land rights. Article 17 stipulates that States must take appropriate measures to carry out agrarian reforms to guarantee rural communities wide and equal access to land and other natural resources necessary to provide peasants and other people working in rural areas with decent living conditions, and in order to limit the excessive concentration and control of land resources to a limited number of users, considering the social function of the land (Article 17.6). When allocating public lands, fish resources and forests, priority should be given to landless peasants, youth, small-scale fishermen and other rural workers (Article 17, paragraph 17.6) [4].

#### *2.5. Conservation and sustainable use of land*

The Declaration defines the right of peasants and other people working in rural areas to preserve and protect the environment and the productive potential of agricultural land, and other natural resources that they use and dispose of (Article 18, paragraph 18.1). Article 18 states that states must take effective measures to overcome the lack of safe storage and disposal of hazardous materials, substances and waste on the land of peasants and other people working in rural areas. Rural communities, in turn, will cooperate in addressing the threat to the exercise of their rights resulting from transboundary environmental damage (Article 18, paragraph 18.4). States should also protect peasants and other people working in rural areas from the abuse of non-state actors (private sector, corporations, agribusinesses and entrepreneurs), including by complying with environmental laws (Article 18, paragraph 18.5) [4].

States should also protect and restore water-related ecosystems in rural areas, including wetlands, forests, rivers, aquifers and lakes, from overuse and pollution by harmful substances, including industrial effluents and concentrated minerals and chemicals, which are slowly or quickly lead to poisoning of living organisms (Article 21.4). To realise this right, the Declaration stipulates that states must take measures aimed at the conservation and sustainable use of land and other natural resources used for production, in particular through agri-environment, and provide conditions for the restoration of biological and other natural opportunities and cycles (Article 17, paragraph 17.7) [4]. A number of other rights enshrined in the Declaration are interdependent and mutually reinforcing with the right to land and necessary for the protection of land rights. These are the right to participate, information and access to justice, which are enshrined in Articles 2, 10, 11, 16, 19, 27 [4].

#### *2.6. Fundamental right to participate*

The right to participate enshrined in Article 2, paragraph 2.3, Article 10 and Article 16, paragraph 3 [4] is fundamental to the exercise of the right to land, and the entire Declaration. A separate article 10, in particular, states:

1. Peasants and other people working in rural areas have the right to participate actively and free of charge directly and/or through representative organisations in the preparation and implementation of policies, programmes and projects that may affect their lives, land and livelihoods.

2. States should promote the participation of peasants and other people working in rural areas, directly and/or through representative organisations, in decision-making processes that may affect their lives, land and livelihoods; this includes respect for the establishment and growth of strong and independent organisations of peasants and other people working in rural areas and their participation in the preparation and implementation of food, labour and environmental safety standards that may affect their lives, work and safety in the countryside.

States should promote rural communities and ensure their full and equal access to and participation in local, national and regional markets to sell their products at prices that ensure them and their families a decent standard of living (Article 16.3) [4].

According to the Declaration, states must also respect the creation and growth of strong and independent organizations of peasants and other people working in rural areas (Article 10.2). States promote their involvement directly and/or through their representative organisations in decision-making processes that may affect their lives, land and livelihoods. This involves the involvement of rural communities in the development of national and international agreements and standards (Article 2, p. 4), food safety, labour and environmental standards (Article 10, p. 2), legislation covering product evaluation and certification (Article 11, p. 3), seed policy, protection of plant varieties and other intellectual property laws, certification schemes and seed market laws (Article 19, item 8) and conducting research and development in the field of agriculture (Article 19, p. 7) [4].

The Declaration also stipulates that States, in partnership with peasants and other people working in rural areas, must pursue public policies at the local, national, regional and international levels to promote and

protect the rights to adequate nutrition, food security and food sovereignty, steel and fair food systems (Article 15, paragraph 5). Specialised institutions, funds and programmes of the UN system and other intergovernmental organisations, including international and regional financial organisations, are also considering ways to ensure the participation of peasants and other people working in rural areas in the implementation of the Declaration (Article 27, paragraph 1) [4].

### *2.7. The right to housing*

The right to information is enshrined in Article 11, p. 1 and 2:

1. Peasants and other persons working in rural areas have the right to seek, receive, develop and transmit information, including information on factors that may affect the production, processing, marketing and distribution of their products.

2. States shall take appropriate measures to ensure that peasants and other people working in rural areas have access to appropriate, transparent, timely and adequate information in a language, form and means appropriate to their cultural traditions, to promote their empowerment and ensuring effective participation in decision-making in matters that may affect their lives, land and livelihoods.

The right to information is the right of peasants and other people working in rural areas to seek, receive, develop and transmit information, including information on factors that may affect the production, processing, marketing and distribution of their products [19, p. 101; 20, p. 2055]. To guarantee this right, states should take measures to ensure access to relevant, transparent, timely and adequate information in the language, form and means appropriate to their cultural methods, to promote their empowerment and ensure effective participation in decision-making in cases that may to influence their life, land and livelihoods [21, p. 3; 22, p. 1535].

### *2.8. Access to justice*

Access to justice is key to upholding the right of peasants to land and protecting defenders of the right to land [23]. This fundamental right of the peasants is reflected in Article 12, paragraphs 1 and 12, paragraph 5:

1. Peasants and other people working in rural areas have the right to effective and non-discriminatory access to justice, including access to fair dispute resolution procedures and effective remedies against all human rights violations. Such a decision must take due account of their customs, traditions, norms and legal systems in accordance with the relevant obligations under international law.

2. The State shall provide to peasants and other persons working in rural areas effective mechanisms to prevent and compensate for any action aimed at or leading to human rights violations, the unauthorised deprivation of land and natural resources or deprivation of livelihoods, and to any form of forced relocation of the rural population.

These articles of the Declaration recognise the right of peasants and other persons working in rural areas to effective and non-discriminatory access to justice, including access to fair dispute resolution procedures and effective remedies against all human rights violations (Article 12, paragraph 1). It is also stipulated that such decisions must take due account of the customs, traditions, norms of peasants and other people working in rural areas and legal systems in accordance with the relevant obligations under international human rights law (Article 12, paragraph 1) [4].

To guarantee the right of access to justice, and the right to land, Article 12, paragraph 5, requires the state to provide peasants and other people working in rural areas with effective mechanisms to prevent and compensate for any actions aimed at or leading to the violation of human rights, unauthorized deprivation of land and natural resources, deprivation of livelihood, and any form of forced displacement [24, p. 431; 25, p. 12].

## **3. DISCUSSION**

In today's world, when the problem of human rights has gone far beyond the borders of a single state, there is a need to create universal international legal standards, which are also recognised as fundamental human rights. These standards are reflected in a number of important international legal acts that have established universal standards of human rights and interests, defining the limit beyond which the state can not go [26, p. 8]. The Declaration of the Rights of Peasants is a universal international legal standard in guaranteeing the rights of peasants to land. The implementation of the Declaration is a unique opportunity to set precedents for the redress of various forms of discrimination, violations and historical injustices that have affected peasants and other people working in rural areas for decades. Particular attention should be paid to developing appropriate measures to eliminate all forms of discrimination against women farmers and other women working in rural

areas, promoting their rights and ensuring that they enjoy all human rights and fundamental freedoms without discrimination in the Declaration.

At the international level, the main provisions of the Declaration will be included in the strategies aimed at achieving the Sustainable Development Goals. UN human rights experts in their respective positions will implement the provisions of the Declaration of the Rights of Peasants in the course of their mandates; available methods will protect the rights of peasants and other people working in rural areas and provide recommendations to states on the directions, mechanisms and tools for implementing the provisions of the Declaration of the Rights of Peasants at the national level [10].

Specialised UN agencies, funds and programmes and other intergovernmental organisations, including international and regional financial organisations, will contribute to the full implementation of the Declaration, including through mobilization, assistance and cooperation; promote respect for and full application of the provisions of the Declaration; will monitor their effectiveness. These include the United Nations World Food Security Committee (FAO) and UN specialised agencies, funds and programmes. The International Monetary Fund (IMF), the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO) should consider the need to implement the UN Declaration on the Rights of Peasants and Other Persons Working in Rural Areas.

The UN Human Rights Council is currently establishing a new Special Procedure for Monitoring the Rights of Peasants and Other People Working in Rural Areas; monitoring the implementation of the Declaration will be included in the Universal Periodic Review. It is also planned to establish a UN Voluntary Fund for peasants and other people working in rural areas to support their participation in the UN human rights system [10].

At the national level, states must play a key role in implementing the Declaration of the Rights of Peasants. This role is emphasised in numerous UN regulations that define and detail the obligations of states [27]. States parties to the UN Human Rights Council must report on the implementation of the rights of peasants and other people working in rural areas, and, above all, the rights to land. The UN Council also has the right to consider individual complaints from peasants about violations of their rights in the process of land reform in accordance with the rights guaranteed to them by the Declaration. Following the consideration of individual applications, the Council makes recommendations to the authorities.

Ukraine, which is a member of the United Nations and a member state of the UN Human Rights Council, has opened a real land protection instrument, approved by the UN General Assembly. To transform the Declaration from a human rights document into a real tool, the state of Ukraine must implement a number of measures:

- to involve all branches of government, including the executive, the legislature and the judiciary, in the implementation of the main provisions of the Declaration on the Rights of Peasants and Other Persons Working in Rural Areas;
- to ensure the coherence of international agreements and standards to which Ukraine is a party with the rights of peasants enshrined in the UN Declaration, and to develop mechanisms to ensure their coherence with national agricultural, land, regional, economic, social and cultural policies;
- to consolidate at the legislative level the status of peasants and other people working in rural areas as agents of change and key actors in local, national and international implementation of human rights protection. Effective implementation of the Declaration provides for the full and active participation of peasants and other people working in rural areas in all measures related to its implementation. Peasants should be involved directly or through representative organisations in decision-making processes that may affect their lives, land, resources and livelihoods. To this end, the creation and development of strong independent organisations of peasants and other people working in rural areas must be supported at the state level;
- to develop a number of measures of state regulation of the activities of private sector entities (large land users, agricultural holdings, transnational corporations and other economic entities), aimed at their observance of the rights of peasants enshrined in the Declaration. Such measures include the need to protect peasants from landlessness, forced migration, arbitrary or illegal evictions and relocations; ensure that no hazardous materials, substances or wastes are stored or disposed of on their land, and prevent risks arising from the development, transport, use, transfer or release of any living modified organisms;
- create a rural network of legal aid to peasants, especially landless people, youth, small producers and other rural workers in the sale of land, distribution of state lands, forest and water resources for agriculture and fisheries, support for peasant seed production and agrobiodiversity;
- introduce new mechanisms for monitoring the protection of peasants' rights in the process of introducing a free land market at the national and local levels, prepare regular public reports on the state of affairs in the field of respect for peasants' land rights and other rights set out in the Declaration;

- ensure the implementation of appropriate and effective measures to promote international cooperation in support of national efforts to realise the rights of peasants in accordance with the Declaration, including in partnership with relevant international and regional organisations and civil society, including organisations of peasants and other rural workers.

## CONCLUSIONS

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas is an important tool for synergistic cooperation between the state and peasants in protecting their legal rights to land and realising the public function of land ownership. According to the Declaration, the right to land of peasants and other people working in rural areas includes not only the right to sell land. In the international interpretation, it is the right to access, sustainable use, management of land and water bodies, coastal waters, fishery resources, pastures and forests to achieve a decent standard of living, to have a place to live in security, peace and dignity, to develop their culture.

In legal theory and practice, land law should be considered not only from a purely technical standpoint, but also on a systematic basis, as the right to land is a “portal” for the realization of other vital rights and freedoms of rural communities. Among them, the most important are the following human rights and freedoms, which directly depend on the right to land – the right to food, water, spatial livelihood; freedom from discrimination; protection against forced eviction and relocation; protection against the negative consequences of land use; real participation in the benefits of agrarian transformations; conservation and sustainable use of land resources, etc.

The Declaration summarises the main provisions of binding international human rights treaties, indicating the need for Ukraine to better protect the rights of peasants and other people working in rural areas, as wide recognition of the new norms set out in this document is crucial to promote inclusive human rights movement.

The primacy of human rights enshrined in the Declaration of the Rights of Peasants over other international instruments, including those governing trade, investment and intellectual property rights, is based on the priority given to human rights in international and national law under UN Charter – Article 1, paragraph 3, Articles 55, 56 and 103.

## REFERENCES

- [1] Law of Ukraine No. 55-XII “Declaration of State Sovereignty of Ukraine”. (1990, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/55-12#Text>.
- [2] Kuznietsova, N.S., Onishchenko, N.M., & Kot, O.O. (2020). Legal aspects of the opening of Ukraine’s land markets. *Environmental Policy and Law*, 50(3), 279-287. doi: 10.3233/EPL-200224.
- [3] Land and human rights. (2015). Retrieved from <https://cutt.ly/KKIDPxw>.
- [4] Human Rights Council No. A/HRC/RES/39/12 “United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas”. (2018, September). Retrieved from <https://cutt.ly/OKIDSET>.
- [5] Cherniavskiy, S., Babanina, V., Mykytych, O., & Mostepaniuk, L. (2021). Measures to combat cybercrime: Analysis of international and Ukrainian experience. *Cuestiones Políticas*, 39(69), 115-132. doi: 10.46398/cuestpol.3969.06.
- [6] Land and Human Rights: Standards and Applications. (2015). Retrieved from [https://www.ohchr.org/Documents/Publications/Land\\_HR-StandardsApplications.pdf](https://www.ohchr.org/Documents/Publications/Land_HR-StandardsApplications.pdf).
- [7] Monsalve, S. (2015). *The right to land and other natural resources in the United Nations declaration on the rights of peasants and other people working in rural areas*. Retrieved from <https://cutt.ly/bKID3wM>.
- [8] Özden, M. (2014). *The right to land*. Retrieved from <https://cutt.ly/eKIDUZx>.
- [9] Report of the Special Rapporteur on the right to food. (2010). Retrieved from <https://undocs.org/A/65/281>.
- [10] Joint statement by UN human rights experts – 1<sup>st</sup> anniversary of the adoption of the UN Declaration on the rights of peasants and other people working in rural areas. (2019). Retrieved from <https://cutt.ly/HKIDMHd>.
- [11] The state of food and agriculture 2010-11. Women in agriculture: Closing the gender gap for development. (2011). Retrieved from <http://www.fao.org/3/i2050e/i2050e.pdf>.
- [12] General Recommendation on the Rights of Rural Women No. 34 “Convention on the Elimination of Discrimination against Women”. (2016, March). Retrieved from <https://undocs.org/CEDAW/C/GC/34>.
- [13] Onishchenko, N.M., & Lutskyi, R.P. (2020). Law and person: Modernity and forecasting. *International Journal of Criminology and Sociology*, 9, 1596-1599. doi: 10.6000/1929-4409.2020.09.182.
- [14] Kuznietsova, N.S., Prytyka, Y.D., & Khomenko, M.M. (2020). Arbitrability of corporate disputes: National realities and foreign experience. *Journal of Advanced Research in Law and Economics*, 11(4), 1184-1190. doi: 10.14505/jarle.v11.4(50).14.

- [15] Cherniei, V., Cherniavskiy, S., Babanina, V., & Tykhonova, O. (2021). Criminal Liability for cryptocurrency transactions: Global experience. *European Journal of Sustainable Development*, 10(4), 304-316.
- [16] Cherniavskiy, S., Babanina, V., Vartyletska, I., & Mykytych, O. (2021). Peculiarities of the economic crimes committed with the use of information technologies. *European Journal of Sustainable Development*, 10(1), 420-431. doi: 10.14207/ejsd.2021.v10n1p420.
- [17] Onishchenko, N.M., Tarakhonch, T.I., & Bohinich, O.L. (2021). The state as a party to private law relations. *Global Journal of Comparative Law*, 10(1-2), 47-60. doi: 10.1163/2211906X-10010005.
- [18] Kuznietsova, N.S., Stefanchuk, R.O., & Kot, O.O. (2020). Lack of regulation in determining the moment of conclusion of the land lease agreement. *Astra Salvensis*, 8, 105-122.
- [19] Kuznietsova, N.S., Kot, O.O., Hryniak, A.B., & Pleniuk, M.D. (2020). Abolition of the commercial code of Ukraine: Potential consequences and necessary prerequisites. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(1), 100-131. doi: 10.37635/jnalsu.27(1).2020.100-131.
- [20] Kuznietsova, N.S., Prytyka, Y.D., & Khomenko, M.M. (2019). Temporal boundaries of an arbitration agreement as a prerequisite for submitting a dispute to international commercial arbitration. *Journal of Advanced Research in Law and Economics*, 10(7), 2055-2059. doi: 10.14505/jarle.v10.7(45).16.
- [21] Suniehin, S.O., & Onishchenko, N.M. (2018). Public servant: Legal and ethical dimensions in the context of contemporary realities. *Journal of legal, Ethical and Regulatory Issues*, 21(1), 1-8.
- [22] Skrypniuk, O.V., Onishchenko, N.M., & Parkhomenko, N.M. (2019). Awareness in law as strategic direction of legal policy. *Journal of Advanced Research in Law and Economics*, 10(5), 1534-1540.
- [23] Land and human rights: Annotated compilation of case law. (2015). Retrieved from <https://cutt.ly/AKIDKka>.
- [24] Petryshyn, O.V., Kuznietsova, N.S., & Kot, O.O. (2020). Transformation of approaches to the right of the individual to information in keeping with European integration. *Rivista di Studi Sulla Sostenibilita*, 1, 423-440.
- [25] Kuznietsova, N.S., Petryshyn, O.V., & Pylypenko, D.S. (2021). The Civil Code of Ukraine – A reliable regulator of civil relations in civil society. *Global Journal of Comparative Law*, 10(1-2), 5-15.
- [26] Romaniuk, O.V., & Chovhan, V.O. (2016). *International standards, recommendations and recommendations in the field of execution of punishments and activity of bodies and establishments of execution*. Bila Tserkva: Bila Tserkva school of PPP DKVS of Ukraine.
- [27] Christophe, G. (2019). *The implementation of the United Nations declaration on the rights of peasants and other people working in rural areas*. Geneva: Geneva Academy of International Humanitarian Law and Human Rights.

### **Vasyl I. Shakun**

Doctor of Law, Professor

Academician of the National Academy of Legal Sciences of Ukraine

Chief Researcher of the Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine

01024, 3 Philip Orlik Str., Kyiv, Ukraine

### **Valerii M. Heiets**

Doctor of Economics, Professor

Academician of NASU

Director of the State Organization “Institute of Economics and Forecasting of the National Academy of Sciences of Ukraine”

02000, 26 Panas Myrny Str., Kyiv, Ukraine

### **Olena M. Borodina**

Doctor of Economics, Professor

Corresponding Member of NASU

Head of the Department of Economics and Policy of Agrarian Transformations of the State Institution “Institute of Economics and Forecasting of the National Academy of Sciences of Ukraine”

02000, 26 Panas Myrny Str., Kyiv, Ukraine

**Suggested Citation:** Shakun, V.I., Heiets, V.M., & Borodina, O.M. (2022). Ensuring human rights in land legal relations: Socio-economic and legal frameworks. *Journal of the National Academy of Legal Sciences of Ukraine*, 29(1), 59-69.

**Submitted:** 23.04.2022

**Revised:** 22.05.2022

**Accepted:** 19.06.2022