



**SOUTH  
CENTRE**

Development, Innovation and Intellectual Property  
Programme

## **ANALYTICAL NOTE**

### **TOWARDS THE ADOPTION OF A UN DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS**

Vitor Ido and Viviana Munoz Tellez\*

\*Vitor Ido is Researcher and Viviana Munoz Tellez is Coordinator of the Development and Intellectual Property Programme of the South Centre.

#### **Abstract**

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas has been constructed by an Open-ended Intergovernmental Working Group over six years of open and transparent negotiations. The text has significant support from members of the Human Rights Council. Accordingly, member States of the Human Rights Council should adopt the Declaration through an upcoming Resolution at the 39<sup>th</sup> Human Rights Council Session (10-28 September 2018).

*La Déclaration des Nations Unies sur les droits des paysans et des autres personnes travaillant dans les zones rurales a été élaborée par un groupe de travail intergouvernemental à composition non limitée après six ans de négociations ouvertes et transparentes. Les États membres du Conseil des droits de l'homme ont largement adhéré au texte. Ils devraient donc adopter la déclaration dans une prochaine résolution à l'occasion de la trente-neuvième session du Conseil des droits de l'homme (du 10 au 28 septembre 2018).*

*La Declaración de las Naciones Unidas sobre los derechos de los campesinos y de otras personas que trabajan en las zonas rurales ha sido elaborada por un Grupo de Trabajo Intergubernamental de Composición Abierta tras seis años de negociaciones abiertas y transparentes. Los miembros del Consejo de Derechos Humanos han apoyado ampliamente el texto de la Declaración. Por consiguiente, deberían aprobar la Declaración mediante una próxima resolución en el marco del 39º período de sesiones del Consejo de Derechos Humanos (10 a 28 de septiembre de 2018).*

## **I. Background**

In 2012, the members of the Human Rights Council have agreed to work towards a new Declaration to strengthen the protection and realization of the human rights of peasants and other people working in rural areas to reflect their specific situations and their priorities. It was recognized that peasants and people working in rural areas are amongst the most vulnerable groups, being specially affected by climate change, poverty, and the changing dynamics in agriculture, input and food markets that are placing pressure on their traditional lifestyles, food security and modes of livelihood.

The Declaration aims to provide a framework for States and the international community to strengthen the protection of the human rights of peasants and other people working in rural areas and to cooperate to improve their situation. It is important as a new tool to increase awareness of the extreme threats and vulnerabilities of peasants and rural people and set the framework for concrete actions to be taken at all levels. The Declaration will establish best practices and define the moral imperative for protection for all States.

A global framework for the protection of peasants and people working in rural areas may prove positive to the achievement of human rights and fundamental freedoms of all at large, to the extent it recognizes and further develops rights of peasants and rural workers that are crucial to the preservation of biodiversity and development of sustainable modes of production, and to enhance the social and economic development of all peoples, in both Global North and South countries, while fully respecting existing rights from other stakeholders.

This document is organized in four sections. The first presents background information on the discussions in the open-ended intergovernmental working group. The second provides an overview analysis of the discussions at the Fourth and Fifth Sessions, while the third addresses key issues included in the new draft declaration, especially Article 19 on the right to seeds. The fourth concludes by calling for member States of the Human Rights Council to adopt the upcoming Resolution at the 39<sup>th</sup> Human Rights Council giving life to the Declaration.

### **I. The Open-Ended Working Group**

The process of the Open-ended intergovernmental working group on the rights of peasants and other people working in rural areas began in 2010 with the work of the Human Rights Council's Advisory Committee (Resolution 13/4 of the Human Rights Council, adopted without a vote on 14 April 2010). This body of experts delivered its final study in 2012 (A/HRC/19/75) and submitted a model for a draft declaration on the

rights of peasants and other people working in rural areas. The working group was established in 2012 to negotiate and finalize a declaration (A/HRC/RES/21/19) on the basis of the draft submitted by the Advisory Committee, without prejudging relevant past, present and future views and proposals.

Importantly, the resolution recognized that livelihoods in rural areas are disproportionately affected by poverty, climate change, lack of development and lack of access to scientific progress, and expressed conviction of the need to strengthen the protection and realization of the human rights of peasants and other people working in rural areas. This is reasserted in the resolution (A/HRC/RES/30/13)<sup>1</sup>.

In 2016, the third session of the working group considered a new draft of the Declaration elaborated by the Chair-Rapporteur of the working group in its first and second session (A/HRC/WG.15/3/2). A related document is the Report of the Chair-Rapporteur of the Second Session of the Working Group, A/HRC/30/55.

The working group met in its fourth session from 15 to 19 May 2017. It adopted the report of the previous session (A/HRC/33/59). A study on the normative sources and rationale underlying the draft Declaration (A/HRC/WG.15/4/3), prepared by the Office of the United Nations High Commissioner for Human Rights, was presented. Apart from several informal consultations, discussions took place in the form of the invitation of experts to discuss the draft<sup>2</sup>, and various States declarations. Aiming to reach a final agreement, each article of the new draft Declaration (A/HRC/WG.15/4/2) was negotiated.

In its conclusions the working group recommended to have a fifth session which was scheduled and took place between 9 and 13 of April, 2018. A similar work methodology, including the invitation of experts, was followed. In the same sense, preparatory work comprised a new advance edited draft version by the Chair-Rapporteur was made available on 12 February 2018 (A/HRC/WG.15/5/2), an informal consultation meetings was held on 20 February 2018, as well as various informal bilateral talks with delegations.

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This resolution provided for two annual sessions of the working group for five working days each before the thirty-sixth session of the Council. They took place in May 2016 and May 2017, respectively. The resolution was passed with 31 votes in favour (Algeria, Argentina, Bangladesh, Bolivia [Plurinational State of], Botswana, Brazil, Ghana, Congo, Cote d'Ivoire, Cuba, El Salvador, Ethiopia, Gabon, Ghana, India, Indonesia, Kazakhstan, Kenya, Maldives Morocco, Namibia, Nigeria, Pakistan, Paraguay, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, United Arab Emirates, Venezuela [Bolivarian Republic of], Viet Nam), 1 against (USA), and 15 abstentions (Albania, Estonia, France, Germany, Ireland, Japan, Latvia, Mexico, Montenegro, Netherlands, Portugal, Qatar, Republic of Korea, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland).

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The seven experts were: Shivani Chaudhry, Priscilla Claeys, José Esquinas, Mamadou Goïta, Christophe Golay, Anuradha Mittal and Ana Maria Suarez Franco.

## **II. General Positions during the Fourth and Fifth Sessions of the Open-Ended Working Group**

### II.I. Fourth Session

After a support statement delivered by Mr. Director General José Graziano on behalf of Food and Agriculture Organization of the United Nations (FAO), addressing the topics of food security, zero hunger and the 2030 Agenda for Sustainable Development, the Chair-Rapporteur of the working group recalled the developments made on the topic until that point (see report A/HRC/36/58). Experts then made short introductions as to the challenges faced by peasants and other people living in rural areas.

Various statements of support and endorsement were made by the following delegations: Tunisia (on behalf of the African Group), South Africa, El Salvador (on behalf of the Community of Latin American and Caribbean States – CELAC), the Bolivarian Republic of Venezuela (on behalf of the Movement of Non-Align Countries), Nicaragua, Ethiopia, Argentina, Egypt, Chile, Brazil, Peru, the Russian Federation, India, Switzerland, Malaysia, (Plurinational State of) Bolivia, Ecuador, Cuba, Uruguay, Kenya, and Panama.

Cuba stated the need to recognize new rights through the Declaration. Uruguay, on the other hand, argued new rights were not being created, but that peoples working in rural areas should enjoy all human rights. India expressed clear support to the ongoing process, and mentioned the need to discuss substantive rights taking into consideration the existing norms in order to achieve wider support. Brazil supported the efforts, but pointed out the declaration should not oppose or criticize agribusiness. The Russian Federation emphasized new rights should not harm existing rights. Switzerland stressed the importance of implementing existing norms.

The following have also expressed support for the process: International Labour Organization (ILO), Global Women's March, La Via Campesina (Europe), La Via Campesina (Africa), the World Forum of Fisher Peoples, the International Indian Treaty Council, La Via Campesina (Palestine), the World Alliance of Mobile Indigenous Pastoralists, La Via Campesina (North America), Centre Europe-Tiers Monde (CETIM), The International Union of Food Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF), as well as other civil society organizations.

Despite highlighting the importance of the rights of people living and working in rural areas, the European Union restated the non-binding character of the declaration, which could thus not provide for the creation of new rights. Similarly, Japan pointed out its

reservation on the draft as a whole, considering discussions to be still immature and not fully recognized by the international community, and argued for the use of existing mechanisms. Mexico highlighted the current existence of international mechanisms, and considered the Declaration to violate equality and non-discrimination principles, as differentiating the targeted workers would not be feasible. Guatemala also made reservations and did not grant support to the Draft. The United States of America explicitly oppose the very mandate of the working group and thus did not participate. Other delegations also did attend<sup>3</sup>.

Following general statements, the Fourth Session of the Working Group discussed each article of the draft declaration. Discussions included the very concept of “peasants” (Article 1, Paragraph 1), the inclusion or not of the persons and collectives that live and work in rural areas (Article 1, Paragraph 3), the substitution of “people” for “persons” (Article 2), extraterritorial application (Article 2 and Paragraph 1), among other general aspects of the declaration. Apart from Article 6 (Right to life, liberty and security of person), every article received comments from various delegations and civil society organizations.

The European Union made several comments seeking to substitute or exclude references to “rights” (such as Article 10 – Right to participation, Article 11 – Right to information with regard to production, marketing, and distribution, Article 15 – Right to food and food sovereignty, Article 16 – Right to a decent income and livelihood and the means of production, Article 17 – Right to land and other natural resources, Article 20 – Right to biological diversity), include “as defined by national legislation” (Article 14 – Right to safety and health at work) and/or replace “should” with “shall” formulations. Other delegations, such as Guatemala, followed a similar attempt. Switzerland proposed the full adoption of FAO’s International Treaty on Plant Genetic Resources for Food and Agriculture’s (ITPGRFA) wording in Article 5 (right to natural resources) and Article 19 (right to seeds).

On the contrary sense, ILO and several civil society organizations and States made comments to explicitly mention certain sub-groups, such as women, livestock keepers. They have also stressed the relationship between peasants and biological diversity, among others, as well as the importance of many rights to the lives of peasants and other people working in rural areas.

At the end of the meeting, the working group adopted the following five conclusions: (a) took note of the message of FAO and the participation of ILO; (b) shared views on the revised draft declaration and welcomed the Chair-Rapporteur's efforts; (c) welcomed the constructive negotiation, broad participation and active engagement of all actors, particularly representatives of peasants and other people working in rural areas, (d) expressed concern about the human rights situation of peasants and other people working in rural areas and recognized their contributions to tackling hunger and to the conservation and improvement of biodiversity, stressing also the need to respect, promote, protect and fulfil their human rights; (e) encouraged States, civil society organizations and relevant stakeholders to send written textual proposals and contributions (A/HRC/36/58).

Therefore, the Chair-Rapporteur recommended: (a) the continuation of intersessional consultations with States, regional groups and relevant stakeholders, including academia; (b) holding a fifth session of the working group; (c) presenting a revised draft declaration based on the proposals, consultations and inputs received, at the fifth session, and (d) the continuation of constructive engagement in and dialogue to the declaration by States and other relevant stakeholders.

On 29 September 2017 the Human Rights Council adopted Resolution (A/HRC/RES/36/22), deciding: (a) to hold its fifth annual session for five working days before the thirty-eighth session of the Human Rights Council; (b) that the updated version of the draft declaration that will be presented by the Chair-Rapporteur of the working group at its fifth session, taking into consideration the report of the Chair-Rapporteur on the fourth session; and also requesting (c) Requests the Chair-Rapporteur of the working group to conduct informal consultations during the intersessional periods; (d) the Office of the United Nations High Commissioner for Human Rights to ensure the participation including representatives of peasants and other people working in rural areas, civil society and grass-roots organizations from developing countries; (e) the Secretariat to provide the working group with the human, technical and financial assistance necessary for it to fulfil its mandate, (f) the working group to submit an annual report on progress made to the Human Rights Council and the General Assembly for their consideration; and inviting (g) States, civil society and all relevant stakeholders, in particular representatives of peasants and other people working in rural areas, to contribute actively

and constructively to the work of the working group. Such Resolution was adopted with 34 votes in favour to 2, with 11 abstentions<sup>4</sup>.

## II.II Fifth Session

The Fifth Session of the Open-Ended Working Group worked on the new advanced edited version draft concluded by the Chair-Rapporteur, which circulated on 12 February 2018 (A/HRC/WG.15/5/2).

The session was opened by remarks from the Deputy High Commissioner for Human Rights, who stressed the sense of urgency to finalize the working group's work, in order to respond to the lack of protection affecting more than 1 billion people. The Deputy High Commissioner stressed that although small farmers provide a high proportion of food consumed locally, which reached 80% in Asia and sub-Saharan Africa, 80% of the world's hungry population lives in rural areas, and concluded by saying that the only way to include them was to never leave them behind.

After the adoption of the agenda and explanation of the procedures, opening statements by a representative of FAO, who noted that the draft Declaration addresses some of the most relevant areas of work identified by FAO, to make rapid progress towards achieving the goal of "zero hunger" and the 2030 Program for sustainable development, and reaffirmed its support to the Declaration, noting that it will help reach its potential and overcome the challenges they face in their daily lives. This was followed by a video message by the President of the Agriculture and Rural Development and the Environment Section of the European Economic and Social Committee, who advocated recognizing the rights of people living in rural areas on equal terms with people living in cities, and urged all participants to support the Declaration. Once again, experts were invited to contribute to the process<sup>5</sup>.

As in the previous session, several Member States expressed their support to the Declaration: Venezuela (on behalf of the Non-Aligned Movement and on its national

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In favour: Bangladesh, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Congo, Côte d'Ivoire, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, India, Indonesia, Iraq, Kenya, Kyrgyzstan, Mongolia, Nigeria, Panama, Paraguay, Philippines, Portugal, Qatar, Rwanda, Saudi Arabia, South Africa, Switzerland, Togo, Tunisia, United Arab Emirates, Venezuela (Bolivarian Republic of). Against: United Kingdom of Great Britain and Northern Ireland, United States of America. Abstaining: Albania, Belgium, Croatia, Georgia, Germany, Hungary, Japan, Latvia, Netherlands, Republic of Korea, Slovenia.

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The eight experts are: Million Belay, Ramona Duminicioiu, José Esquinas-Alcazar, Christophe Golay, Diego Monton, Smita Narula, Yiching Song, and Ana Maria Suarez Franco

capacity), Togo (on behalf of the African Group), Russia, Paraguay, South Africa, India, Peru, Iraq, Egypt, Ecuador, Plurinational State of Bolivia, Switzerland, Cuba, Portugal, Indonesia, and Panama.

Mexico reaffirmed its position of avoiding duplication with existing instruments. Uruguay also stated that rights in the declaration could create confusion with other instruments. Republic of Korea similarly mentioned that some articles could be in conflict with domestic laws and international obligations. Argentina also mentioned that would provide comments on specific topics of reservation.

The European Union stressed its commitment to the protection of rights of peasants and other people working on rural areas, including through development cooperation, while appreciating the revised version, they expressed concern about the creation of new rights. The United Kingdom endorsed the EU and also affirmed that does not recognize collective rights apart from self-determination.

Guatemala and the United States of America expressed again its reservation on the totality of the text.

Furthermore, FIAN, Via Campesina Asia, CETIM, The World Alliance of Mobile Indigenous Pastoralists, The International Union of Food Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF), The International Indian Treaty Council, Via Campesina Europe, Via Campesina Latin America and Via Campesina Africa all expressed their support to the declaration.

Overall, States and other organizations reaffirmed already known positions.

Among the main discussions concerning the draft articles, largely replicating the previous session, were: the inclusion of the expressions “food sovereignty” and “Mother Earth” at the Preamble (also Article 15), the substitution of “right to” with “access to” (various Articles), as well as “people” to “persons”, the exclusion or reintroduction of “free, prior and informed consent” (Articles 10 and 11) and “right to participation” (Article 11), the right to land and the obligations created to the States (Article 17), the right to seeds (Article 19), right to biological diversity (Article 20), cultural rights and traditional knowledge (Article 26).

The new draft contained one new article titled “General” (Article 28), which was welcomed by many Member States. Its Paragraph 1 affirms that the Declaration should not be construed as diminishing or extinguishing rights of peasants and other people working on rural areas<sup>6</sup>, whereas Paragraph 2 states human rights and fundamental



freedoms of “all” shall be respected in the exercise of the rights under the Declaration, and that limitations to all rights in the Declaration could be established by national legislation<sup>7</sup>.

The Fifth Session of the Working Group also had a specific discussion on collective rights, which is possibly the overarching matter of biggest contention. At the opportunity, well-known positions were reaffirmed.

At the end of the meeting, the Working Group adopted the following conclusions: (a) welcomed the messages at the opening of the session, as well as the participation of ILO and other organizations; (b) welcomed with appreciation the efforts made by the Chair – Rapporteur in presenting the revised draft declaration; (c) welcomed with appreciation the constructive negotiation, participation and active engagement of all relevant stakeholders, particularly representatives of peasants and other people working in rural areas; (d) expressed the shared concern about the human rights situation of peasants and other people working in rural areas and recognized their contributions to tackling hunger and to conserving and improving biodiversity, among others, and stressed the need to respect, promote, protect and fulfil their human rights; (e) encouraged that a revised draft is prepared by the Chair-Rapporteur on the basis of the different proposals and views expressed during the fifth session of the working group, and encouraged the Chair to hold informal and bilateral consultations and to circulate to the delegations the revised draft; and (f) encouraged States, civil society organizations and relevant stakeholders to send their written textual proposals and contributions to the draft declaration, as presented during the fifth session, before 20 April, 2018.

In summary, the Chair-Rapporteur recommended the following: (a) a final version of the draft declaration be prepared by the Chair –Rapporteur and be submitted to the Human Rights Council for its adoption; (b) States and other relevant stakeholders take into account the considerable progress made throughout the process of negotiations; (c) States and other relevant stakeholders continue their constructive engagement and dialogue and enhance their flexibility; (d) States commit for the prompt adoption of the draft declaration.

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1. Nothing in the present declaration may be construed as diminishing or extinguishing the rights that peasants and other people working in rural areas currently have or may acquire in the future.

2. The human rights and fundamental freedoms of all shall be respected in the exercise of the rights enunciated in the present declaration. The exercise of the rights set forth in the present declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be nondiscriminatory and necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and for meeting the just and most compelling requirements of a democratic society.

### **III. The Current Draft Declaration**

The draft document A/HRC/WG.15/5/3 was the result of the Fifth Session of the Working Group. It has been submitted to the Human Right Council this month, together with the Resolution to adopt the Declaration. The draft text itself should not be reopened for discussion, as Member States and other stakeholders had plenty of opportunities to submit proposals and discuss them through various mechanisms over the last six years. This was a comprehensive and transparent process from both the point of view of the number of meetings by several stakeholders (with quite clashing views) and from the inclusion of various proposals aiming at reaching an international consensual language. There has been no Member State to oppose the process. While not all suggestions may have been integrated in the text, the current draft has considered the sensitivities of member States and is compatible with existing international norms, including those on biodiversity, indigenous people's rights, agriculture and intellectual property rights.

The careful language proposed across the draft (for instance, the recognition of right to seeds) provides a balanced approach that while striving to strengthen the protection for peasants and rural workers, does not run in violation of other stakeholders' rights to property.. For instance, when recognizing peasants' right to seeds, the draft Declaration does not say that others shall/should not be entitled to intellectual property rights over seeds, as previous versions of the text had suggested, but that certain rights already conferred by FAO Treaty on Plant Genetic Resources for Food and Agriculture (FAO ITPGRFA) ought to be respected in this context.

The language of the Declaration does not provide a legal basis for expropriation without duly remuneration nor eliminates property rights. Instead, it specifies layers of existing rights in the context of peasants and rural areas, in order to achieve their human rights more broadly and fully.

Furthermore, in many jurisdictions, property rights are associated to a "social function" (i.e. the exercise of property rights should be in accordance with social interests) and examples of restrictions to the exercise of property are adopted in fields such as antitrust law (the case of a mandatory sharing of infrastructure, for instance), copyright law (with exceptions and limitations, and/or fair use doctrines), public law (such as expropriation with remuneration for public interest reasons) and contract law, even in jurisdictions such as United States, European Union and Japan. It is nor novel nor unique to create limitations or conditions to property rights without characterizing its abolishment. In other words, no property right, in any jurisdiction, is absolute, immutable or incompatible with certain restrictions that go much beyond human rights law.

More importantly, the Declaration provides policy space for each country or region to adopt its own suitable policies and legislations in order to implement its provisions,

instead of taking a one-size-fits-all approach. This concretely means that all countries that presented oppositions to the general language of the draft Declaration could in fact harmonize and enforce provisions in accordance with their national laws. The language of the Declaration, on its turn, is compatible with international law wording. For example, the draft Declaration uses the expression “rights, individually and/or collectively”, which means that while countries would have the obligation to respect such rights, they do not need to recognize collective rights *per se*, but may do so if they wish (as many jurisdictions already do so). The grammar of collectiveness is also embedded in a number of international treaties, such as human rights, cultural heritage and environmental law.

In this sense, the Declaration further develops and reinforces the human rights already recognized in international law including in human right treaties. As it happens in any norm-making of international human rights law, and in light of principles of good faith and irrevocability of human rights, the Declaration may also go beyond those rights and recognize new rights that may be further recognized in other future instruments. Since this is a matter of international human rights, it does not need to simply reproduce existing wordings from other instruments, and can and should innovate and provide new elements for the international law landscape. As mentioned before, the Draft Declaration would be a useful new instrument for countries to implement more suitable and comprehensive policies for the protection of peasants and other peoples living in rural areas. This task, while complex, may be one of the most significant achievements to be made with the declaration.

Several rights are established in the draft declaration, but are not entirely new as they have been recognized across several national and regional laws and may already be extracted from existing human rights. To provide one important case, the right to land and other natural resources.

Other important rights in the human rights framework are the proposed right to determine their [peasants and other peoples living in rural areas] own food and agriculture systems (recognized by many States as food sovereignty) (Article 15.4). The wording of the draft Declaration thus renders compatible jurisdictions that already use the expression “food sovereignty” with others who oppose it. Furthermore, the determination of food and agriculture systems could even fall under the private autonomy realm of individuals under several jurisdictions, so it does not oppose existing legislations. It also recognizes a right to means of production (Article 16.1) under the broader scope of an adequate standard of living for themselves and their families. Once again, this does mean there should be an expropriation of existing means of production nor the replacement of certain forms of production, but merely the recognition of autonomy to make a choice related to production, with the ultimate goal of achieving an adequate standard of living (a core of human rights in itself).

Importantly, the draft declaration advances a specific right to the protection of traditional knowledge (relevant to plant genetic resources for food and agriculture) in Article 19, Paragraph 1, (a) and Paragraph 2 (see III.1), which draws on the language of instruments such as the United Nations Declaration of Indigenous Peoples (UNDRIP), several national and regional legislations, FAO ITPGRFA, the CBD and its Nagoya Protocol on Access and Benefit-Sharing, and also pertains to broad aspirations of cultural immaterial heritage law by UNESCO.

### III.1. Right to Seeds (Art. 19)

One of the central articles of the draft declaration is the rights to seeds, Article 19. It is clear that efforts have been made in order to render the language on the right to seeds compatible with the existing international law, including FAO ITPGRFA, UPOV, the TRIPS Agreement and other intellectual property rights.

#### Draft A/HRC/WG.15/5/2

[Changes to the previous version marked in bold and italic]

#### Article 19. Right to seeds

1. Peasants and other people working in rural areas have the right to seeds, *in accordance with article 28*, including:
  - (a) The right to the protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
  - (b) The right to equitably participate in sharing the benefits arising from the utilization of plant genetic resources for food and agriculture;
  - (c) The right to participate in the making of decisions on matters relating to the conservation and sustainable use of plant genetic resources for food and agriculture;
  - (d) The right to save, use, exchange and sell *their* farm-saved seed or propagating material.
2. Peasants and other people working in rural areas have the right to maintain, control, protect and develop their *own* seeds and traditional knowledge.
3. States shall *take measures* to respect, protect and fulfil the right to seeds of peasants and other people working in rural areas.
4. States shall ensure that seeds of sufficient quality and quantity are available to peasants at the most suitable time for planting, and at an affordable price.
5. States shall recognize the rights of peasants to rely either on their own seeds or on other locally available seeds of their choice, and to decide on the crops and species that they wish to grow.
6. States shall *take appropriate measures to* support peasant seed systems, and promote the use of peasant seeds and agrobiodiversity.
7. States shall *take appropriate measures in order to* ensure that agricultural research and development **integrates** the needs of peasants and other people working in rural areas; they shall *take appropriate measures in order to* ensure their active participation in the

definition of priorities and the undertaking of research and development, *take into account [previously: oriented towards]* their experience, and increase investment into research and development of orphan crops and seeds that respond to the needs of peasants and other people working in rural areas.

8. States shall ensure that seed policies, plant variety protection and other intellectual property laws, certification schemes and seed marketing laws respect *and take into account* the rights, *needs and realities* of peasants, [*suppression of: “in particular the right to seeds”*].

As mentioned before, although the protection of traditional knowledge is addressed in article 26 and in other articles of the draft Declaration, para. 1 (a) of Article 19 specifically refer to the States' obligations in relation to knowledge concerning 'plant genetic resources'. This is not novel. The inclusion of a provision on benefit-sharing for peasants and other people working in rural areas in Article 19, Paragraph 1, (b) is in accordance with current international law obligations, especially FAO's ITPGRFA and CBD's Nagoya Protocol. Right to participate in decisions on matters related to conservation of plant genetic resources for food and agriculture in Paragraph 1, (c) and right to save, use, exchange and sell *their* farm-saved seed or propagating material in Paragraph 1, (d) also compose the core of the right to seeds. They also recall the wording and framing of FAO's ITPGRFA's Article 9 on Farmers' Rights, an established and recognized international law treaty signed by various countries.

Following the discussions at the fourth and fifth session the draft text apply to seeds developed by farmers (farmers' seeds or their farm-saved seeds). This provision needs to be read together with the provision in article 11.3 that calls States to promote access to peasants to evaluation and certification systems that are fair and impartial and where peasants can participate. These provisions are actually compatible with existing intellectual property treaties to the extent which they do not mandate the abolishment of such rights. If patents exist on plant varieties or their components, the patent owner would normally be allowed to restrict the exchange and sell of protected seeds, but not the one of seeds of peasants that have been farm-saved by themselves and are patented. If plant variety protection (PVP) is applied, depending on the rights conferred to breeders under the particular national law, the rights to exchange and sell protected seeds may be curtailed. In both cases, the rights of peasants and other peoples living in rural areas may be still recognized with licensing agreements, sharing of benefits, etc., meaning the intellectual property rights *per se* are not a barrier to the draft Declaration. However, changes in other intellectual property instruments continue to be desirable broadly, such as the negotiations currently taking place at WIPO's IGC committee, but do not pertain to the current draft itself.

Paragraph 2 predicts the “right to maintain, control, protect and develop their own seeds and traditional knowledge”. The alternative to use “rights” - instead of “access to seeds”,

as sought by the European Union – is preferable to be in accordance with other international instruments, particularly the FAO’s ITPGRFA Farmers Rights and “free, prior, informed consent” provisions. For instance, the general “access” terminology may lead to compliance of the norm through mere access to the seeds, but without any involvement of farmers. That would be the case of removing farmers from decision-making on conservation and sustainable use of plant genetic resources for food and agriculture policies (1 (c)). Paragraphs 3, 4, 5, 6 and 7 would highlight States’ obligations of considerable importance for food security. Paragraph 3 delineates a general obligation to “take measures to respect, protect and fulfil the right to seeds of peasants and other people working in rural areas”, and Paragraph 4 defines the objective that should be achieved regarding availability of seeds<sup>8</sup>. Paragraph 5 requires the recognition of the rights of peasants to both rely on their own seeds or other “local available seed of their choice”, and to decide on the crops and species they wish to grow. Paragraph 6 of article 19 recognizes the importance of farmers’ seeds and mentions agro-biodiversity. In some developing countries, 80% or more of total used seeds are produced by the farmers themselves. They all thereby leave the States leeway to decide how to guarantee it.

Paragraph 7, in contrast, also refers to the means for achieving the proposed objective (through peasants’ participation in defining priorities and the undertaking of research and development, taking into account their experience, and increasing investment into research and development of orphan crops and seeds that respond to the needs of peasants and other people working in rural areas<sup>9</sup>).

Finally, Paragraph 8 directly addresses the need for “...seed policies, plant variety protection and other intellectual property laws, certification schemes and seed marketing laws” to both respect and take into account the rights, needs and realities of peasants. Drawing on the above-mentioned discussion, this establishes a new explicit compatibility between intellectual property rights, plant variety protection systems and rights of peasants, instead of disregarding certain rights.

## **I. Way Forward**

The text of the draft Declaration has been extensively discussed over the years and is ready to be accepted at the current Human Rights Council. The last draft embodies

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Previous drafts mentioned “should take steps” and “at the right time” instead of “shall ensure” and “at the most suitable time”.

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A previous draft would mention a starker obligation: “making decisions on matters relating to the conservation and sustainable use of plant genetic resources”.

various comments made by several delegations and civil society representatives, and is in full accordance with other existing international and human rights law instruments<sup>10</sup>. It respects existing property rights, uses language from existing instruments on biodiversity, indigenous peoples, human rights and intellectual property. It recognizes the existing policy space for norms to be further developed at national level, while recognizing broad policy space for other legal systems that opt to frame human and fundamental rights differently. It advances the current international legal landscape by delineating and giving concreteness to rights of millions of vulnerable people around the world, the more general interests of humanity at large (related to the achievement of human rights to all), as well as the protection of the environment. Furthermore, the Declaration explicitly promotes international cooperation, including capacity building, technical and economic assistance and technology transfer.

The negotiation process has been transparent and worked to achieve consensus among different interests. The history of changes made to the draft Declaration reflects the significant flexibility Member States showed in order to align their positions towards reaching acceptable language that does not digress from the objectives of the Declaration.