

# Collective Rights

## IN THE UNITED NATIONS DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

This briefing note is part of a series published by FIAN International as input for the negotiations regarding the UN declaration draft on the rights of peasants and other people working in rural areas.

This set of documents addresses the following issues: States' obligations, the right to sovereignty over natural resources, development and food sovereignty, the right to land and other natural resources, the right to seeds and biological diversity, the rights of rural women, access to justice, the right to a decent income and livelihood, and the right to water.

All the briefing notes are available on our website: <http://www.fian.org/>



<sup>1</sup> Andrea Nuila is a program supervisor at FIAN International. The author would like to thank Sofia Monsalve, Priscilla Claeys and Saúl Vicente for their guidance and suggestions in the preparation of this document, and A.W. Lappenberg for his comments.

*Peasants, indigenous people, fisherfolk and nomads have long claimed that recognizing their human rights exclusively as individuals disregards the essential role that community relationships play in their management and use of communal resources, the protection of community members' rights, as well as the preservation of the individual's and its group, subjectivity and identity.*

*The document is structured as follows: (i) an introduction to the collective rights recognized in the draft of the United Nations Declaration on the rights of peasants and other persons working in rural areas (hereinafter, the Declaration); (ii) a brief description of the legal status of rural and peasant communities in domestic systems and international human rights law, (iii) an analysis of the collective rights that the Declaration aims to recognize; and finally, (iv) a discussion of the most prevalent arguments in favor of and against incorporating collective rights into the Declaration.*



## 1. THE DEFINITION OF COLLECTIVE RIGHTS IN THE DECLARATION

The Declaration draft recognizes peasant communities, indigenous peoples and nomadic and transhumant communities as holders of collective rights.<sup>1</sup> Given that rural communities often depend on one or more traditional collective activity for their livelihood<sup>2</sup>, the Declaration establishes that the recognition of communities involved in small-scale agricultural production also includes communities engaged in artisanal small-scale agriculture, such as raising livestock, pastoralism, fishing, forestry, or hunting and gathering<sup>3</sup>, that is, other rural communities in addition to peasants.

In order to be considered holders of the human rights recognized in the Declaration, these communities must engage in – or seek to engage in – small-scale agricultural production to subsist or trade, and rely significantly, though not necessarily exclusively, on family or household labor, and other non-monetized ways of organizing labor, and have a special dependence on and attachment to the land.<sup>4</sup>

The rights the Declaration aims to enshrine are, therefore, those fundamental to promoting and protecting the collective interests of these specific legal subjects. The rights in question generally concern the free, prior and informed consent of the community; the possibility of creating their own food and agricultural systems; the collective management of land, seeds or other natural resources; as well as the enjoyment of the benefits of resource development and conservation.

<sup>1</sup> Draft Declaration on the rights of peasants and other persons working in rural areas presented by the chairperson-rapporteur of the working group, UN Doc. A / HRC / WG.15 / 4/2, Article 1.

<sup>2</sup> See ILO Convention 169 on Indigenous and Tribal Peoples, 1989 (No.169), Artículo 23 (1).

<sup>3</sup> Draft declaration on the rights of peasants and other people working in rural areas presented by the working group chair-rapporteur, UN Doc. A/HRC/WG.15/4/2, Artículo 1.2.

<sup>4</sup> Idem. Article 1.1



## 2. COLLECTIVE RIGHTS IN DOMESTIC LAW

The various theories on collective rights agree in that these rights must be clearly differentiated from those whose exercise, interest and entitlement are individual, as well as from those rights whose entitlement is individual while their exercise and interest are collective. Therefore, the following characteristics, at the very least, must co-exist to constitute a collective right: 1. The holder of the right is collective; 2. The exercise of the right pertains to a legally protected collective good; and 3. The interest of the right is of a collective nature.<sup>5</sup>

A quick perusal of national law demonstrates that contrary to what States reported during the negotiations of the Draft Declaration, the recognition of legal subjects meeting the abovementioned characteristics is not unusual in the legal systems of several of the States party to the declaration. In fact, States often grant rights to indigenous and tribal communities or other minority groups, including peasants or other rural communities. The latter, even when not recognized as right holders, are considered de facto or formal collective political subjects by some States, and not exclusively as the sum of individuals.

This consideration can be explained by the socio-economic conditions shared by people who live and work in rural areas.<sup>6</sup> In particular, rural people suffer from a lack of legal protection; discrimination and social exclusion; and a lack of access, management and control over the natural resources on which they depend to survive. Furthermore, their communities are also at risk of being destroyed by forced evictions<sup>7</sup>.

Therefore, these circumstances, which are often accompanied by a specific ethnic identity and/or language, religious beliefs, or a communal connection with the land, lay down the basis for the legal recognition of the collective rights of rural communities. Especially those rights related to the conservation of identity, culture and ancestral traditions, as well as the management of and access to natural resources, and collective tenure or property. The following paragraphs provide some examples.

In the Constitution of the Democratic Republic of the Congo, the collective right to property is recognized as a fundamental right, including property acquired by customary law. Collective rights to the environment are also recognized, and sanctions are established for those who deprive collective<sup>8</sup> of their means of subsistence<sup>9</sup>. The Angolan Constitution grants local communities the

collective right to property<sup>10</sup>. Meanwhile, the Bill of Rights of the South African Constitution also recognizes communal property rights.<sup>11</sup> The Republic of South Sudan establishes in its Constitution the right of communities to a clean and healthy environment.<sup>12</sup>



5 José García Añón, *Collective Rights and Diversity: the Exile of Rights*. Pg. 247.

6 80% of hungry people live in rural areas, and 50% of them are small-scale farmers living in peasant or other rural communities. See, A/HRC/RES/7/14, par. 10 and A/HRC/22/46, par. 3-4

7 For example, the Constitution of Nepal defines marginalized and vulnerable people as „made politically, economically and socially backward, are unable to enjoy services and facilities because of discrimination and oppression and of geographical remoteness or deprived thereof and are in lower status than the human development standards“. Constitution of Nepal (2015). Article 306 (m).

8 The provisions fall under the rules of collective rights. However the sanction mentioned herein uses the concept of “corporations” to refer to a collective legal subject.

9 Constitution of the Democratic Republic of Congo (2005) Articles 34, 50 – 61.

10 Constitution of the Republic of Angola (2010) Article 37.2

11 Article 25

12 Constitution of the Republic of South Sudan (2011) Article 41.

Another example can be found in the Bolivian Constitution which grants the right of forest exploitation to rural communities, and establishes rules regarding the protection of communal or collective entitlement of land by peasant communities and the recognition and respect of communities' management of water resources.<sup>13</sup> The Constitution of Ecuador recognizes collective rights related to the entitlement of community lands, possession of land and participation in the management of natural resources located in collective territories, among others. It also recognizes



13 Ecuador's Constitution recognizes the same collective rights for indigenous communes, communities, peoples and nationalities. Constitution of the Republic of Ecuador Articles 57 and 281-282; and Political Constitution of the Plurinational State of Bolivia, Articles 374, 386, 394 and 405.

the rights to prior consultation regarding the exploitation of natural resources, the preservation of management practices for biodiversity and the natural environment, and the right to a healthy environment and to collective knowledge as well.<sup>14</sup>

In addition, several States have constitutional or operational provisions that, although they do not confer rights, they do recognize rural communities as political subjects and regulate the State's behavior in favor of these communities' interests. For example, States such as Ecuador and Bolivia recognize the collective interest of rural communities in terms of the protection and promotion of food sovereignty.<sup>15</sup> Angola recognizes access to and use of land by local communities.<sup>16</sup> The Mexican Constitution includes legislation favorable to the ejido and other communities, including provisions regarding community life, and the communal use of land, forests and water.<sup>17</sup> The Constitution of Mozambique recognizes the cooperative and social sector, which includes means of community production managed and owned by local communities.<sup>18</sup> The current Constitution of South Sudan includes, within its provisions on land entitlement and tenure, the recognition of communal land which includes those traditionally and historically owned or used by local communities.<sup>19</sup>

Several other States also grant collective rights to rural communities. For example, Cambodia's fishery law recognizes the collective right of fishing communities to access and manage resources<sup>20</sup>. The Indian Forest Act establishes collective rights to habitation, property, access, use and tenure of land; and to management of and access to biodiversity; and to intellectual property and traditional knowledge related to biodiversity and cultural diversity.<sup>21</sup> Other cases that should be mentioned are the special law on the protection of indigenous genetic resources of agrarian interest in the region of Lazio, Italy, which recognizes the collective right of local and indigenous communities to genetic resources from certain plants and animals.<sup>22</sup> And furthermore, different European States, such as Portugal, grant collective land rights to communities or other local collectives.<sup>23</sup>

14 Constitution of the Republic of Ecuador, Articles 57 and 397.

15 While Ecuador recognizes indigenous collectives, communes, communities, peoples and nationalities as holders; Bolivia, on the other hand, establishes right-holding groups as those that share a cultural identity, language, historic traditions, institutions, territory and worldview, whose existence predates the Spanish colonial invasion. See the Constitution of the Republic of Ecuador Article 10 and 57, and the Political Constitution of the Plurinational State of Bolivia, Article 30.

16 Constitution of the Republic of Angola (2010) Article 15.2.

17 Political Constitution of the United States of Mexico. Article 27.

18 Constitution of the Republic of Mozambique (2004) Article 99.

19 Constitution of the Republic of South Sudan (2011) Article 170.1. and 170.5.

20 Law on Fisheries (2007) Cambodia. Artículos 59-63

21 Forest Act (2006) India. Artículo 3.1.

22 Turela delle risorse genetiche autoctone di interesse agrario (2000) legge regionale N.15, Latium, Italia. Article 5. Consultada el 08.10.17 en <[http://www.arsial.it/arsial/wp-content/uploads/page/legge\\_regionale\\_1\\_marzo\\_2000.pdf](http://www.arsial.it/arsial/wp-content/uploads/page/legge_regionale_1_marzo_2000.pdf)>

23 See the Eurostat survey from the European Union Commission: <[http://ec.europa.eu/eurostat/statistics-explained/index.php/Farm\\_structure\\_survey\\_%E2%80%93\\_common\\_land-](http://ec.europa.eu/eurostat/statistics-explained/index.php/Farm_structure_survey_%E2%80%93_common_land-)



### 3. COLLECTIVE RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW

Given the fragmentation of public international law, it is not surprising that a consistent interpretation of collective human rights is lacking.<sup>24</sup> This state of affairs is illustrated by the lack of recognition of peasant community rights in the main treaties of the universal human rights system despite the fact that these communities are recognized as collective political subjects in other spheres of international law. However, precedents established by the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter, the Declaration of Indigenous Peoples) and the interpretative authorities of the United Nations treaties on the collective dimensions of certain rights are significant resources for an eventual recognition of peasant communities as right-holders of collective human rights.

The Declaration of Indigenous Peoples introduces an understanding of collective rights in international human rights law.<sup>25</sup> This declaration affirms that human rights<sup>26</sup> encompass both the individual and collective dimensions<sup>27</sup>; and that the content of these rights involves the interest of the collective subject, given that they are legal entitlements vital to the existence of the subject.

Turning to the interpretive authorities on UN treaties, General Comment No. 21 of the Committee on Economic, Social and Cultural Rights (hereinafter CESCR) on the right to participate in cultural life sets a crucial precedent for the recognition of collective human rights. In this comment, the CESCR recognizes that the phrase “everyone” refers to both the individual and the collective subject and that, therefore, a person can exercise [cultural] rights individually, in association with others, or within a community or a group.<sup>28</sup>



The collective exercise of certain rights has also been referenced by the CESCR in its interpretation of access to adequate reparation for individuals or groups in the context of a violation of the right to health (Comment No. 14). This comment does not limit itself to collectives that are already recognized (indigenous and tribal peoples or Afro-descendant communities). Rather, it establishes that even when there are no adequate mechanisms for a claim to be exercised by a group, States are bound by the collective and individual dimensions of the right to health. Thus, the CESCR emphasizes the critical value that collective rights hold in this regard, given that public health policies have prevention and promotion approaches designed primarily for groups.<sup>29</sup>

Treaty committees have developed extensive jurisprudence on the collective rights of indigenous and tribal peoples. This body of law includes interpretations regarding the collective nature of human rights to land, communal resources and territories; the collective right to participate in the exploitation, management and conservation of natural resources<sup>30</sup>, as well as collective access to justice and adequate reparations<sup>31</sup>.

24 In public international law, collective rights are recognized in: the Charter of the United Nations, 1945, Articles 1.2. and 55. International Covenant on Civil and Political Rights, Articles 1.1., and 1.2. (article common to the United Nations International Covenants on Human Rights) in regard to the right to self-determination of peoples and their rights to property, natural resources and wealth and their development. Resolution 96 (II) of December 11, 1946 of the General Assembly of the United Nations with regard to the right to existence of human groups and its resolution 1541 of December 14, 1960 on the rights of peoples. The United Nations Declaration of the Indigenous Peoples of 2007. Convention number 169 of the International Labor Organization on indigenous and tribal peoples, 1989. The Convention on Biological Diversity of 1992. Some members of the international law community maintain that the recognition of collective rights is established in the International Covenant on Economic, Social and Cultural Rights, in Article 8.1. b and c as it recognizes rights that can only be realized collectively. The American Declaration on the Rights of Indigenous Peoples of 2016. United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 1963. Declaration on Race and Racial Prejudice, adopted and proclaimed by the General Conference of UNESCO in 1978. Third Decade to Combat Racism and Racial Discrimination and its Program of Action since 1993. The Declaration and Action Plan of the III World Conference against Racism, Racial Discrimination, Xenophobia. And the Vienna Declaration on the Right to Development of 1986.

25 Preamble to the United Nations Declaration on the Rights of Indigenous Peoples, A / RES / 61/295; 2007: “Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,” Article 7.2 “Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including the forcibly removing children from the group to another group.”

26 Such as the right to participate in, contribute to and enjoy economic, social, cultural and political development; prior consent; the right to land and resources; as well as the protection and conservation of the environment.

27 Idem.

28 General Comment No. 21, 2009 approved by the Committee on Economic, Social and Cultural Rights. Par. 9.

29 General comment No.14: The right to the highest attainable standard of health (art.12) in HRI/GEN/1/Rev.9 (Vol.I) pg. 96, Footnote. 30.

30 See. CERD/C/SUR/CO/13-15 (CERD, 2015), párr. 24; CERD/C/SUR/CO/12, párr. 12; CCPR/C/PAN/CO/3 (CCPR, 2008); CERD/C/COL/CO/15-16 (CERD, 2016), par.19.b. and General Recommendation No. 23 (1997). Special rapporteurs have advocated for similar interpretations. Among them, the special rapporteur on adequate housing highlighted the need for measures considering the collective nature of identity, territory and ancestral practices to guarantee the exercise of human rights for all people. See, A/ HRC/13/20/Add.2. (SR Housing, 2010).

31 CERD/C/SUR/CO/13-15 (CERD, 2015), par.36.



In the field of international human rights law, the collective exercise of certain rights has been established based on the characteristics of indigenous and tribal peoples. For example, it has been established that in order for States to fulfill their obligation to guarantee, they must take into consideration that the health of indigenous communities is characterized by a uniquely collective nature.<sup>32</sup> Since, as noted by the CESCR, actions affecting these groups (in particular the displacement of indigenous peoples from their territories or environment against their will) occur to the group as a whole and not to isolated individuals in the community. The aforementioned action, according to the CESCR, results in the displaced group losing access to its sources of nutrition, while their symbiotic relationship with their land is also destroyed, and therefore the health of the group deteriorates.<sup>33</sup>

The CESCR has recommended that States adopt effective measures of a collective nature to safeguard indigenous groups' interests in terms of scientific production. This observation is especially relevant for peasant communities, which are also bearers and producers of scientific knowledge, which is often at risk of being coopted or destroyed. The measures suggested include the recognition, registration and protection of collective authorship under intellectual property rights, including when pertinent to the collective community management of benefits derived from production.<sup>34</sup>

Elaborating a detailed interpretation of indigenous peoples' collective human rights is important as they may be transposed to peasants' human rights. Furthermore, the Declaration also applies to indigenous peoples who work in rural areas.<sup>35</sup> Equally important are the conceptual advances made in the universal human rights system, in particular the recognition of: (i) holders of non-individual human rights, which presents the possibility for other groups, such as peasant communities, to exercise human rights as such; and (ii) the collective exercise of certain

human rights, especially those related to social and cultural rights considered a vital part of the existence of the community and its members.

## 4. COLLECTIVE RIGHTS IN THE DECLARATION ON THE RIGHTS OF PEASANTS AND OF OTHER PEOPLE WORKING IN RURAL AREAS

In the preamble, the Declaration recognizes the unique relationship and interaction between peasants and the land, water, nature and territory around them and on which their livelihood depends.<sup>36</sup> The recognition of the human rights enshrined in the Declaration aims to promote and protect the social relationships that sustain peasants and other rural communities as a group, improve their socio-economic conditions, and their participation in the collective management of their resources and the enjoyment of the benefits of their development and conservation.

### ***The right to land and other natural resources, the right to seeds, and the rights to water and sanitation***

The right to land and other natural resources includes the right to land, bodies of water, coastal areas, fisheries, pastures and forests that right holders need to maintain an adequate standard of living, have a safe place to live with peace and dignity, and develop their cultures.<sup>37</sup> The right to seeds<sup>38</sup> is established as the right to save, use, maintain and develop seeds, crops and genetic resources, (or those

32 General comment No.14: The right to the highest attainable standard of health (art.12) in HRI/GEN/1/Rev.9 (Vol.I) pg. 84, par. 27.

33 General comment No.14: The right to the highest attainable standard of health (art.12) in HRI/GEN/1/Rev.9 (Vol.I) pg. 84, par. 27.

34 General comment No.17: The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (art.15). in HRI/GEN/1/Rev.9 (Vol.I) pg.130, par. 32.

35 Draft declaration on the rights of peasants and other persons working in rural areas presented by the Chairperson-Rapporteur of the Working Group, UN Doc. A/HRC/WG.15/4/2, Article 1.3.

36 Idem, preamble, paragraph 3.

37 Idem, Article 17.

38 See, article in the WATCH



of choice,) as well as to exchange, donate, sell, use and re-use farm-saved seeds or propagating material.<sup>39</sup> The right to water and sanitation includes the right to safe drinking water and sanitation, to a sanitation supply and services system, as well as the right to water for farming, fishing and livestock, and to equitable access to water management systems.<sup>40</sup>

The rights established are designed to safeguard the minimum necessary for the survival and dignity of the group as such. Thus establishing rights which are exercised collectively, such as those related to the protection of traditional knowledge on genetic plant resources and the participation of right holders in decision-making processes; the right to water management supply systems and to sanitation facilities; the collective right to be protected from arbitrary displacements, to return to one's land or have access restored; as well as access to the resources necessary to enjoy adequate living conditions when a group has been arbitrarily or unlawfully deprived of them.<sup>41</sup>

The recognition of these rights reflects the nature of community life, especially in terms of the use, access and management of common resources, given that most of them are socially defined and collectively organized.<sup>42</sup> This way, we can better comprehend how certain violations of human rights are both individual and collective. For example, in practice, expropriation, forced evictions and displacements in rural areas primarily target the community as a whole, and not exclusively the individual.

Guaranteeing access to resources for peasant communities, and the right to participate in their exploitation, as well as the right to participate in decisions on internal and local issues related to resource management strengthens the community's enjoyment of economic, social, cultural and political development. On the contrary, an exclusively individual approach to rights could lead to anti-democratic practices within communities by allowing benefits to be appropriated by individuals to the detriment of other members of the community, which would be contrary to the object and purpose of this Declaration.

On the other hand, if State actions are not directed towards the community as a whole, States are unable to effectively comply with their international obligations to respect, protect and guarantee the enjoyment of rights.<sup>43</sup> For example, States are required to legally recognize customary rights to land tenure; however, many States fail to acknowledge communal tenure of land.<sup>44</sup> The same contradiction occurs with prior consultation, protection of traditional knowledge, and the right to participation in decision-making about the management (use and conservation) of seeds: if collective rights are not recognized as such to participate in said processes according to the community's internal structures and respective designations.<sup>45</sup>

As far as the right to seeds is concerned, any attempt to comply with provisions designed to protect peasant seed systems are rendered insufficient if the community's internal mechanisms are not respected. The same applies to correlative rights, such as the right to a decent income and livelihood and to means of production, especially in regard to the right to develop community-based commercialization systems.<sup>46</sup>



39 Idem, Article 19. See also, Sofia Monsalve, "The Right to Seeds and Biodiversity," FIAN International, March 2016.

40 Draft Declaration on the Rights of Peasants and Other Persons Working in Rural Areas presented by the Chairperson-Rapporteur of the Working Group, UN Doc. A/HRC/WG.15/4/2, Article 21.

41 Idem, Articles 17.1- 17.5, 19.1 and 21.1-21.2.

42 Idem.

43 See, Ana María Suárez Franco and Romain Houlmann, "The Obligations of States", FIAN International, May 2017.

44 See, Sofia Monsalve, "The Right to Land and other Natural Resources," FIAN International, December 2015.

45 See, General Obligations of States, Article 2.3.

46 Draft declaration on the rights of peasants and other persons working in rural areas presented by the Chairperson-Rapporteur of the Working Group, UN Doc. A/HRC/WG.15/4/2, Article 16.1.



### **The right to food sovereignty**

From the beginning, food sovereignty has been a guiding principle and keystone for the Declaration. This concept highly values food providers, promotes local food systems, and advocates for local food providers' control over natural resources and respect for their rights. Food sovereignty strives to foster and maintain local skills and knowledge, and the use of agro-ecological production and harvesting methods.<sup>47</sup>

These basic principles constitute the theoretical framework of food sovereignty which has been incorporated as a right in the current Declaration draft.<sup>48</sup> If the human right to food sovereignty is recognized it would necessarily entail recognition for communities involved in small-scale agricultural production as right holders. This is because a community's right to food sovereignty cannot be protected and promoted if said right cannot be exercised collectively, particularly if communities are not able to: 1. participate in decision-making processes, and/or 2. define their own food and agriculture systems.

### **The right to a safe, clean and healthy environment**

The international community has recognized the fundamental relationship between certain specific communities and the environment, and the mutual dependence between the well-being of these communities and the protection and improvement of their environment.<sup>49</sup>

Protecting the cultural and social relationships that comprise a community is essential to safeguarding a safe, clean and healthy environment.<sup>50</sup> If the environment is

destroyed, there can be negative repercussions for community members, the relations of production amongst them and therefore, for the interactions between the entire community and its resources.<sup>51</sup> In order to guarantee and promote environmental conservation, including the productive capacities of land, territories, and other resources, States must therefore be able to protect the interest of the community as a whole instead of restricting themselves to the protection of individual entitlements.

### **Cultural rights and traditional knowledge**

Culture and traditional knowledge are built on the relationships that sustain a community and are essential to the individual fulfillment of community members.

The exercise of these rights necessarily entails collective dimensions, in particular the preservation, protection and development of traditional knowledge, i.e. life styles, production methods and technology.<sup>52</sup> The clearly collective origins of such knowledge and culture logically correspond to collective rights and represent collective interests. In fact, even the World Intellectual Property Organization has declared that the law should provide protection to holders of traditional knowledge and traditional cultural expressions, especially indigenous peoples and local communities, but not to specific individuals, "including in cases where traditional knowledge or creations are developed by an individual member of a community."<sup>53</sup>

47 Nyéléni Forum for Food Sovereignty (2007), Summary Report.

48 Draft Declaration on the Rights of Peasants and Other Persons Working in Rural Areas presented by the Chairperson-Rapporteur of the Working Group, UN Doc. A/HRC/WG.15/4/2, Article 15.

49 See, Declaration of the United Nations Conference on the Human Environment.

50 „Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development“. The Rio Declaration on Environment and Development of the United Nations Conference on Environment and Development, A/CNF.151/26, Principio 22.

51 See, Resolution of the Human Rights Council on Human Rights and the Environment, A/HRC/RES/16/11 (2011). [www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/FIAN%20International.pdf](http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/FIAN%20International.pdf)

52 Draft declaration on the rights of peasants and other persons working in rural areas presented by the Chairperson-Rapporteur of the Working Group, UN Doc. A/HRC/WG.15/4/2, Article 26.1.-26.2.

53 World Intellectual Property Organization Intellectual property and genetic resources, traditional knowledge and traditional cultural expressions 2015.



## 5. PRINCIPAL ARGUMENTS AGAINST THE RECOGNITION OF COLLECTIVE HUMAN RIGHTS

### **Human rights can only be conferred to individuals**

During the sessions of the working group on the Declaration draft, some States have expressly rejected the recognition of collective human rights. One of their main arguments is that, with the exception of the right to self-determination, the concept of collective human rights in international law is untenable because recognition of such rights would supplant individual rights.<sup>54</sup>

Nevertheless, considering that this Declaration aims to expand the universal protection of peasants' human rights and not restrict them, we would like to suggest a rather different interpretation that debunks the myth that individual rights are in opposition to collective rights, as if an inextricable contradiction existed between the individual and the community.

A human being does not exist in isolation from his or her society. Anthropologists and sociologists have demonstrated the different ways in which the environment and social interactions shape the process of identification, therefore conditioning how an individual creates his or her identity.<sup>55</sup> Societies (particularly indigenous, aboriginal and peasant communities, in which women play prominent roles) build a foundation of knowledge about their environment based on the time spent interacting with it. Hence, knowledge represents a cultural construction closely related to the nature of the geographical area in question.

This knowledge construction, in turn, generates local systems of classification and nomenclature regarding the natural environment, which reflect the unbreakable bond between nature, society and language. Thus, an individual's identity not only develops vis-a-vis the collective, which is of vital importance to the individual, but the group itself also establishes a collective identity.<sup>56</sup>

The foregoing in addition to the socio-economic conditions of peasants and other rural communities included in the Declaration, is crucial to understanding collective subjectivity and the need to adopt regulations that serve to protect and promote it. As the Plurinational State of Bolivia pointed out during the Declaration negotiations, collective rights do not diminish human rights but rather, „enable the recognition of, and give visibility to, certain groups that

had suffered exclusion or were at a social, economic or political disadvantage.”<sup>57</sup>

Furthermore, the collective human rights recognized in the Declaration have been set in line with the international pro homine legal principle.<sup>58</sup> This means on the one hand, that legal interpretations of provisions in the Declaration cannot harm or endanger other individual human rights.<sup>59</sup> And on the other, that cultural rights cannot be invoked to infringe upon human rights guaranteed by international law, nor to limit their scope.<sup>60</sup>

Finally, the recognition of collective rights does not in any way exempt States from their obligations regarding other rights, nor does it allow the dignity of the individual to be subordinated to the interests of the collective. Rather, the aim is for State actions to be directed toward the community as a whole, otherwise States cannot fulfill their obligations to respect, protect and guarantee the enjoyment of individual human rights.



54 UN Doc. A/HRC/33/59 (2016) Par.74 & 77. And UN Doc. A/HRC/36/58 (2017) Par.47 & 89.  
55 See, Stuart Hall, "The Question of Cultural Identity" in *Modernity an Introduction to Modern Societies*, coords. Stuart Hall et al. (Blackwell Publishers), 597.  
56 See, Polleta Francesca & Jasper, James, "Collective Identity and Social Movements," *Annu. Rev. Sociol.* 2001.27:283-305, pg. 285.

57 UN Doc. A/HRC/33/59 (2016) Par.87  
58 In the same vein, no provision of the Declaration can be interpreted as the right of "any State, people, group or person to engage in any action contrary to the Charter of the United Nations and specifically any action which would dismember or impair the territorial integrity or political unity of independent States."  
59 Draft declaration on the rights of peasants and other persons working in rural areas presented by the Chairperson-Rapporteur of the Working Group, UN Doc. A/HRC/WG.15/4/2. Preamble, par. 2.  
60 Idem. Article 26.1.

## **Collective rights cannot be recognized because they are not enforceable**

The Declaration establishes the right to access just and fair procedures for dispute resolution, as well as effective remedies in the case of infringement of individual or collective rights.<sup>61</sup> It also establishes States' obligation to provide non-discriminatory access to justice through judicial and administrative bodies. Provisions in the Declaration ensure that although the judicial and administrative system are conceived based on the individual exercise of rights holdership, a community's internal systems may determine their own structures for participation and representation. Therefore, leaving collective rights in fact enforceable.

On the other hand, the methods of such participation and representation mechanisms must be formulated by States in exercise of their sovereignty and according to the object and goals of the Declaration, as well as the customs, traditions, norms and legal systems of the communities in question. The fact that national law in some States recognizes the right to class actions against activities harmful to the public welfare, including infringement upon rights to the commons or other collective interests, demonstrates that collective legal subjects can utilize the appropriate mechanisms to exercise collective claims and enforce their rights.<sup>62</sup>

## **Collective rights only apply to indigenous peoples**

Some States have raised objections regarding the recognition of the human rights of rural communities not considered to be indigenous. Specifically, proponents of this argument maintain that: 1. Collective human rights are exclusive to indigenous peoples; 2. The recognition of collective rights in the Declaration would trigger a regression in the presently recognized human rights of indigenous peoples.<sup>63</sup>

Although international law has solidified the existence of indigenous peoples' rights, this does not hinder international human rights law from continuing its development in this regard. On the one hand, the common imaginary division between indigenous peoples and peasant communities does not entirely reflect reality. In some rural areas, the identities of these two types of communities (indigenous and peasant) may be difficult to differentiate. And furthermore, just as indigenous peoples have come to be considered collective subjects based on criteria documenting the relationship between a peoples and their territories, it is also possible to identify, as this document has done, the distinctive elements that differentiate peasant communities from other sectors of society and individuals. Specifically, we should bear in mind the socio-economic and historical factors surrounding small-scale food-producing communities.

Finally, recognizing the human rights of non-indigenous rural communities does not necessarily entail their dominance or favoring of these groups over others. On the contrary: the recognition of their human rights and a systematic interpretation of them places right holders included in this Declaration on a more equal footing with other groups.<sup>64</sup>

## **6. WHY IS IT NECESSARY TO RECOGNIZE COLLECTIVE RIGHTS IN THE DECLARATION ON THE RIGHTS OF PEASANTS AND OF OTHER PEOPLE WORKING IN RURAL AREAS?**

### **The principle of dignity for human beings**

Let us return to the foundations that gave rise to the negotiations on this Declaration. La Vía Campesina, representing over 200 million peasants in Africa, Asia, Europe and America, called for this declaration based on the structural social exclusion that plagues small-scale food producers.<sup>65</sup>

Human rights violations directed at peasant and other rural communities affect their members and the collective as a whole. Human dignity as a cornerstone of human rights theory should therefore be applied to peasants in their specific context, in which there is not necessarily a dissociation between an individual's dignity and living conditions and that of the community, in terms of people's relationship with the land, as well as their lifestyle and means of production.

The foregoing would not only allow the international community to continue developing the rights of relevant legal subjects, but also to address the collective dimension that is fundamental to certain human rights. That is, this broader interpretation which associates human dignity with specific groups, communities or collectives, would no longer restrict it to the individual as a subject isolated from his or her society.

61 Idem. Article 12.1. and 12.2.

62 Constitution of the Republic of Angola. Colombia

63 UN Doc. A/HRC/36/58 (2017) par 89, 175 & 259.

64 Kymlicka, Will, Individual and Collective Rights, In: "Collective Rights", María Paz Ávila Ordóñez and María Belen Corredores Ledesma, Editoras, 2009. Pg. 7

65 La Vía Campesina, Peasants Fighting For Justice: Cases of Violations of Peasants Human Rights. 2017



## ***A normative gap in international human rights law***

Of the approximately 925 million people in the world who suffer from hunger, 80% live in rural areas, and of this percentage, more than 50% work in food production.<sup>66</sup> Despite advances in national law on the rights of collective subjects, there is still a regulatory gap in international human rights law, which leaves rural communities who are not considered indigenous or tribal in a vulnerable legal position.

The recognition of collective human rights in the Declaration accurately reflects the reality of rural communities and the social relationships that serve to maintain them. Collective rights also vindicate the lengthy consultation process, during which peasant communities around the world spoke out on the kinds of rights that reflect their realities and rejecting those that represent values unrelated to their way of life and their identities.<sup>67</sup>

## ***The recognition of collective rights reflects the evolution of international human rights law***

Placing human beings at the center of international human rights law entails recognition of the different dimensions by which people develop and assert themselves. As noted throughout this document, the actions of different States around the world have not consistently recognized the collective identity and interests of peasant communities. Given the fragmented nature of international law, some States fail to acknowledge peasant communities' collective, social and cultural relationships related to the management and use of their resources. Meanwhile, these same States do recognize the special relationship between peasants, as a collective subject, and their environment when implementing development policies in other arenas.

If these contradictory attitudes found in the international community toward the most excluded sectors of society are reconciled, a framework could be created for more equitable policies and practices that fully integrate the interests outlined in human rights law and cultural pluralism as well.<sup>68</sup>

The jusphilosophical school of thought that refuses to acknowledge that certain rights are not confined to the limits of the individual legal subject may hinder international law from developing in that direction. Moving beyond an individualist interpretation of human rights represents a decisive step for the evolution and humanization of international law; thereby communities and individuals would be conceived as direct beneficiaries, and the ultimate beneficiary is society as a whole.



<sup>66</sup> See, International Fund for Agricultural Development (IFAD), Report on rural poverty 2001: The challenge of ending rural poverty, 2011. Consult this document at [www.ifad.org/poverty/](http://www.ifad.org/poverty/).

<sup>67</sup> See, Priscilla Claeys, "Food Sovereignty and the Recognition of New Rights for Peasants at the UN: A Critical Overview of La Vía Campesina's Rights Claims over the Last 20 Years," Taylor & Francis (2014): 2-7.

<sup>68</sup> Rosseti, Andrés, On Collective Rights, pg. 236. See: [https://www.academia.edu/16594645/Sobre\\_los\\_derechos\\_colectivos](https://www.academia.edu/16594645/Sobre_los_derechos_colectivos)



## CONTACT :

### FIAN Belgium

Rue Van Elewyck, 35  
1050 Brussels - Belgium  
+32 (0)2 640 84 17  
fian@fian.be - www.fian.be



With the  
financial  
support of



### FIAN International Secretariat

Willy-Brandt-Platz 5  
69115 Heidelberg - Germany  
+ 49 6221 65300-30  
www.fian.org