

ACADEMY IN-BRIEF No. 5

Negotiation of a United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas

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Key findings and recommendations

Findings

From the start, one of the biggest challenges to drafting a United Nations (UN) Declaration on the rights of peasants and other people working in rural areas has been to find an acceptable basis for negotiation. A draft declaration proposed by the Advisory Committee of the Human Rights Council in 2012 was contested by some states and defended by others. It remains an important document that provides a foundation for discussion of subsequent drafts leading to a final UN Declaration.

The Advisory Committee's draft declaration was largely based on La Via Campesina's *Declaration on the Rights of Peasants – Women and Men*. In terms of its legitimacy this was a strength, because La Via Campesina's declaration is rooted in the realities of peasant communities who are exceptionally vulnerable and suffer extreme discrimination. In other respects, however, it was a weakness. Echoing La Via Campesina's call for peasant rights, the Advisory Committee's text did not sufficiently include the rights of *other* people working in rural areas. It did not consistently adopt agreed UN language, notably when it asserted a 'right to reject' and 'freedom to determine prices'. And it failed to define states' obligations and omitted important rights, such as the right to social security. In addition, unlike the Via Campesina's declaration which mentioned 'women and men' in every article, the Advisory Committee's text did not adequately promote and protect gender equality and the rights of rural women.

A new phase of the negotiations is now starting, on the basis of a draft proposed by Ambassador Navarro Llanos, Chairperson-Rapporteur of the open-ended intergovernmental working group established in 2012 by the UN Human Rights Council to negotiate a UN Declaration on the rights of peasants and other people working in rural areas. When they discuss this new draft, and negotiate the Declaration, this In-Brief suggests that negotiators could bridge disagreements by drawing on language that has already been adopted in other documents, and that the Declaration should recognize certain new as well as existing rights, where these are necessary to protect peasants and other people working in rural areas against *de jure* and *de facto* discrimination or to address their specific needs and vulnerabilities.

Agreed language on the rights of peasants and other people working in rural areas can be found in international human rights law (treaties, declarations, and other soft-law instruments) and other international instruments, including those developed by states at the Food and Agriculture Organization of the United Nations (FAO) and the International Labour Organization (ILO). The In-Brief shows that agreed language could assist drafters of a Declaration on the rights of peasants and other people working in rural areas to frame a number of definitions, rights and obligations, notably:

- The definition of peasants and other people working in rural areas.
- State obligations.
- Gender equality and the rights of rural women.
- Civil and political rights.
- Economic, social and cultural rights.
- The right to a clean and healthy environment.
- The rights of rural workers.
- The rights to land, fisheries and forests.
- The rights to seeds and biological diversity.
- The rights to other means of production.

Recommendations

- Agreed language should be used, as much as possible, to negotiate and finalize the UN Declaration on the rights of peasants and other people working in rural areas (UN Declaration). The use of agreed language would help negotiators to find solutions to difficult drafting issues. Agreed language can be found in international human rights law (treaties, declarations, and other soft-law instruments) and other international instruments, including those developed at the FAO and ILO.
- Agreed language can be used to draft text and define: peasants and other people working in rural areas; states' obligations; gender equality and the rights of rural women; civil and political rights; economic, social and cultural rights; the right to a clean and healthy environment; the rights of rural workers; the rights to land, fisheries and forests; the rights to seeds and biological diversity; and the rights to other means of production.

- The UN Declaration should define rights holders broadly enough to include peasants and other people working in rural areas, including landless people, rural workers, and people living from traditional fishing, herding, and hunting activities.
- The UN Declaration should address and define state obligations, possibly in a separate article at the beginning and in each article that defines a specific right of peasants and other people working in rural areas. The text should define state obligations to respect, protect and fulfil human rights and should address the particular needs and vulnerabilities of peasants and other people working in rural areas.
- Fundamental principles of equality and non-discrimination should be clearly defined. The Declaration should affirm states' obligation to guarantee the enjoyment of all rights without discrimination. It should unreservedly affirm gender equality and the rights of rural women throughout.
- The Declaration should affirm existing human rights, including civil and political rights, economic, social and cultural rights, women's rights, and the right to a clean and healthy environment, and assert their application to the particular needs and vulnerabilities of peasants and other people working in rural areas.
- It should also affirm rights that have been recognized in other international instruments, notably those agreed by states at the FAO and ILO, which recognize the rights of rural workers, the rights to land, fisheries and forests, the rights to seeds and biological diversity, and the rights to other means of production. These rights should be included in the Declaration and applied to the particular needs and vulnerabilities of peasants and other people working in rural areas.
- The UN Declaration should create new rights (including in cases where no agreed language exists) where these rights are essential to protect peasants and other people working in rural areas against *de jure* or *de facto* discrimination, or address their specific needs and vulnerabilities. The right to food sovereignty and the rights of pastoralists would meet this criterion, for example.

Introduction

As human beings, peasants and other people working in rural areas are entitled to all human rights that have been recognized by the United Nations (UN) General Assembly since the adoption of the Universal Declaration of Human Rights in 1948, including those enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Almost 50 years after these two instruments were adopted in 1966, however, peasants and other people working in rural areas remain unusually vulnerable and at risk. Peasants, landless people, rural workers, herders, pastoralists and fisherfolk represent 70% of all people who live in extreme poverty¹ and 80% of all those who are hungry.² Hundreds of millions of peasants and other people working in rural areas are victims of discrimination and human rights violations, and most of them are not effectively protected by conventions of the International Labour Organization (ILO) because they do not work in the formal sector.³

To respond to this situation, in 2008 La Via Campesina, a network of peasant organizations that is one of the world's largest transnational social movements, adopted a *Declaration on the Rights of Peasants - Women and Men*. Two years later, the UN Human Rights Council instructed the 18 independent expert members of its Advisory Committee to propose ways and means to protect the rights of peasants and other people working in rural areas. The Advisory Committee presented its final study, including a draft declaration, in 2012. Adopting one of the Committee's main recommendations, the Human Rights Council decided in September 2012 to create an open-ended intergovernmental working group (the working group) to negotiate a UN Declaration on the rights of peasants and other people working in rural areas (UN Declaration). The working group first met in July 2013; it will meet again in February 2015 to discuss a new draft prepared by its Chairperson-Rapporteur, Angélica Navarro Llanos, the Ambassador of Bolivia.

1 International Fund for Agriculture and Development (IFAD), *Rural Poverty Report 2011: Overview*, Rome, IFAD, 2010, p. 3.

2 The UN Millennium Project has estimated that 50% of the world's hungry are smallholder farmers, 20% landless people, and 10% herders, pastoralists or fisherfolk. UN Millennium Project, Task Force on Hunger, *Halving hunger: It can be done: Summary version*, New York, UN Development Programme (UNDP), 2005, pp. 4-6.

3 On the ILO's work on rural employment and development, see L. de Luca et al., *Unleashing the Potential for Rural Development through Decent Work - Building on the ILO Rural Work Legacy 1970s-2011*, ILO, Geneva, 2012. See also ILO, *The Informal Economy and Decent Work: A Policy Resource Guide*, ILO, Geneva, 2013. At: www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_212689.pdf.

This In-Brief describes the history of the negotiation process at the Human Rights Council, before analysing the strengths and weaknesses of the Advisory Committee's draft declaration. It goes on to identify agreed language in international documents that could help negotiators to finalize a UN Declaration on the rights of peasants and other people working in rural areas. In doing so, it focuses on the definition of 'peasants and other people working in rural areas'; state obligations; gender equality and the rights of rural women; civil and political rights; economic, social and cultural rights; the right to a clean and healthy environment; the rights of rural workers; the rights to land, fisheries and forests; the rights to seeds and biological diversity; and the rights to other means of production. The purpose of this In-Brief is to help negotiators to draft and finalize the UN Declaration successfully.

1. A history of negotiations at the Human Rights Council

The Human Rights Council's decision to negotiate a Declaration on the rights of peasants and other people working in rural areas was the outcome of more than ten years of work by human rights defenders and peasant organisations, in particular La Via Campesina.⁴ Pressure to draft a UN declaration increased after La Via Campesina adopted its own declaration in 2008. The Human Rights Council instructed its Advisory Committee to study the issue in 2010. The Advisory Committee presented its final study, including a draft declaration, in March 2012. In September of that year, the Council created an open-ended intergovernmental working group (the working group) and asked it to draft a 'Declaration on the rights of peasants and other people working in rural areas'.⁵ The working group met for the first time in July 2013. Bolivia's Ambassador, Angélica Navarro Llanos, was elected to chair the working group. In June 2014 she was asked by the Council to present a new draft Declaration in 2015.

La Via Campesina's Declaration

La Via Campesina is the largest network of peasant organizations to have been created; it includes more than 140 peasant organizations from 69 countries and claims to represent more than 200 million peasants.⁶ Formed in 1993 to defend the life, land and dignity of peasant families around the world, its main concern has always been food sovereignty.⁷ However, for more than ten years it has also

4 This section of the In-Brief is based on C. Golay, *Legal reflections on the rights of peasants and other people working in rural areas*, Background paper prepared for the first session of the working group on the rights of peasants and other people working in rural areas (15-19 July 2013), Geneva Academy of International Humanitarian Law and Human Rights, 2013. At: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPeasants/Golay.pdf>. See also C. Golay, *The Rights of Peasants*, CETIM, Geneva, 2009; M. Edelman and C. James, 'Peasants' rights and the UN system: quixotic struggle? Or emancipatory idea whose time has come?', *Journal of Peasant Studies*, 38(1), 2011, pp. 81-108.

5 Resolution 21/19 of the Human Rights Council (on the promotion and protection of the human rights of peasants and other people working in rural areas), adopted on 27 September 2012.

6 Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas, UN doc. A/HRC/19/75, 24 February 2012, §71.

7 P. Nicholson, X. Montagut et J. Rulli, *Terre et liberté! A la conquête de la souveraineté alimentaire*, CETIM, Genève, 2012; M. Buisson, *Conquérir la souveraineté alimentaire*, L'Harmattan, Paris, 2013.

promoted and sought to protect the rights of peasants.⁸ In 2004, 2005 and 2006, it reported on violations of the rights of peasants at side-events of the UN Human Rights Council (and the Council's predecessor, the UN Human Rights Commission) in association with the non-governmental organizations (NGOs) FIAN International (Foodfirst Information and Action Network) and CETIM (Centre Europe-Tiers Monde).⁹ After a decade of drafting and consultation, La Via Campesina adopted its *Declaration of the Rights of Peasants - Women and Men* at the International Conference on Peasants' Rights in Jakarta (June 2008).¹⁰

La Via Campesina's declaration follows the structure of the United Nations Declaration on the Rights of Indigenous Peoples. A long introduction recalls the large number of peasants all over the world who have fought throughout history for recognition of their rights, and for free and just societies. The conclusion expresses hope that the declaration will advance recognition, promotion and protection of the rights and freedoms of peasants. Like the United Nations Declaration on the Rights of Indigenous Peoples, it reaffirms the civil, political, economic, social and cultural rights of peasants, and incorporates rights that are new in international human rights law, including the right to land, the right to seeds, and the right to the means of agricultural production. For La Via Campesina, its declaration was a first step: its long term objective was to secure, with the full participation of La Via Campesina and other representatives of civil society, the adoption of a UN convention on peasants' rights.¹¹

8 The first draft Declaration on the rights of peasants was elaborated in 1999 by Serika Petani Indonesia, a member of La Via Campesina. It was discussed in the Jakarta conference of La Via Campesina in 2002. See *Peasant rights – droits des paysans – derechos campesinos*, Via Campesina, Jakarta, 2002. See also H. Saragih, *The world's peasant farmers need a peasant farmers' rights convention: the way for the United Nations to end the oppression and extinction of peasant farmers* (<http://www.cetim.ch/en/documents/05-onu2-saraghi.pdf>), published in French under the title 'Les paysans du monde ont besoin d'une convention protégeant leurs droits: le rôle attendu de l'ONU' in J. Duchatel, F. Rochat, *ONU: Droits pour tous ou loi du plus fort?*, CETIM, Genève, 2005, pp. 349-365. See also P. Claeys, 'The Creation of New Rights by the Food Sovereignty Movement: The Challenge of Institutionalizing Subversion', *Sociology*, 46(5), 2012, pp. 850-851.

9 See FIAN and La Via Campesina, *Violations of peasants' human rights*, Heidelberg, FIAN, 2004; FIAN, *Violations of peasants' human rights*, Heidelberg, FIAN, 2005; La Via Campesina, *Violations of Peasants' Human Rights*, Jakarta, La Via Campesina, 2006.

10 La Via Campesina, *Declaration of the Rights of Peasants – Women and Men*, adopted by the International Conference on the Rights of Peasants, Jakarta, June 2008. At: <http://viacampesina.net/downloads/PDF/EN-3.pdf>. The International Coordination Committee of La Via Campesina endorsed the final text of the Declaration in Seoul in March 2009.

11 See La Via Campesina, Introduction to the *Declaration of the Rights of Peasants – Men and Women*. See also Final Declaration of the International Conference on Peasants' Rights, Jakarta, 24 June 2008, at: www.viacampesina.org.

The Special Rapporteur on the right to food and the Advisory Committee

The UN human rights system responded in 2008, when it faced a global food crisis.¹² In 2009, the UN Human Rights Council and the UN General Assembly separately invited La Via Campesina to submit proposals for remedying this crisis. To both, La Via Campesina presented its *Declaration on the Rights of Peasants – Women and Men* as one contribution towards a solution.¹³

From the start of his mandate in 2008, the second UN Special Rapporteur on the right to food, Olivier De Schutter, also emphasized that peasants and other people working in rural areas needed protection from the effects of the global food crisis.¹⁴ In several reports between 2008 and 2014, he underlined that the rights of peasants and other people working in rural areas needed stronger protection. He highlighted their rights to an adequate income, to seeds, and to land and fisheries.¹⁵

The Advisory Committee of the Human Rights Council concentrated on two issues when it was formed in 2008: human rights education and the right to food.¹⁶ The second of these led it to study the rights of peasants and other people working in rural areas.

12 On the global food crisis and responses by states and the UN, see C. Golay, 'The Food Crisis and Food Security: Towards a New World Food Order?', *International Development Policy Series*, Vol. 1, 2010, pp. 215-232.

13 La Via Campesina's statement to the UN General Assembly (6 April 2009) and P. Nicholson's statement to the UN Human Rights Council (9 March 2009) are available on La Via Campesina's website, at: www.viacampesina.org.

14 See, in particular, Report of the Special Rapporteur on the right to food, Olivier De Schutter (on building resilience: a human rights framework for world food and nutrition security), UN doc. A/HRC/9/23, 8 September 2008; and Report of the Special Rapporteur on the right to food, Olivier De Schutter (on crisis into opportunity: reinforcing multilateralism), UN doc. A/HRC/12/31, 21 July 2009. See also, Report of the Human Rights Council at its seventh special session (on the negative impact of the worsening of the world food crisis on the realization of the right to food for all), UN doc. A/HRC/S-7/2, 17 July 2008.

15 See Report of the Special Rapporteur on the right to food, Olivier De Schutter (on seed policies and the right to food), UN doc. A/64/170, 23 July 2009; Report of the Special Rapporteur on the right to food, Olivier De Schutter (on agribusiness and the right to food), UN doc. A/HRC/13/33, 22 December 2009; Report of the Special Rapporteur on the right to food, Olivier De Schutter (on large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge), UN doc. A/HRC/13/33/Add.2, 28 December 2009; Report of the Special Rapporteur on the right to food, Olivier De Schutter (on access to land and security of tenure and the right to food), UN doc. A/65/281, 11 August 2011; Report of the Special Rapporteur on the right to food, Olivier De Schutter (on fisheries and the right to food), UN doc. A/67/268, 8 August 2012. See also, Report of the Special Rapporteur on the right to food, Jean Ziegler (on access to land and land reform and the right to food), UN doc. A/57/356, 27 August 2002, §§22-42.

16 See Resolution 7/14 of the Human Rights Council on the right to food, adopted without a vote on 27 March 2008, §34.

The Advisory Committee's first report on the right to food, presented to the Human Rights Council in 2009, analysed the effects of the food crisis on peasants and other people working in rural areas, and recommended that the Human Rights Council should study the food crisis, the right to food, agricultural subsidies, and the rights of peasants.¹⁷ The Human Rights Council divided over the issue; a compromise was found in resolution 10/12, adopted in March 2009, instructing the Advisory Committee to study 'discrimination in the context of the right to food, including identification of good practices of anti-discriminatory policies and strategies'.¹⁸

In a preliminary study in response, presented to the Human Rights Council in March 2010, the Advisory Committee concluded that peasants and other people working in rural areas were among the principal victims of human rights violations and discrimination, including with respect to the right to food.¹⁹ It described La Via Campesina's draft declaration (annexed to the study) as one 'of the most important developments in the protection against discrimination in the context of the right to food'²⁰ and concluded that it was 'time to undertake a preliminary study on the significance and importance of a possible new instrument on the rights of peasants and other people living in rural areas, including from traditional fishing, hunting and herding activities'.²¹

Taking this recommendation forward, in March 2010 the Human Rights Council asked the Advisory Committee 'to undertake a preliminary study on ways and means to further advance the rights of people working in rural areas, including women, in particular smallholders engaged in the production of food and/or other agricultural products, including from directly working the land, traditional fishing, hunting and herding activities'.²² In its final study on the topic, presented in March

17 See Report of the Advisory Committee on its second session (Geneva, 26-30 January 2009), UN doc. A/HRC/AC/2/2, 24 February 2009, p. 19.

18 Resolution 10/12 of the Human Rights Council, adopted without a vote on 26 March 2009, §36. During negotiation of this resolution, several Latin-American states were in favour of tasking the Advisory Committee to produce a study on the global food crisis and the rights of peasants, but other states, particularly from the Western group, were opposed.

19 Preliminary study of the Human Rights Council Advisory Committee on discrimination in the context of the right to food, UN doc. A/HRC/13/32, 22 February 2009, §§21-28. See also the working paper prepared by J. Ziegler, member of the UN Human Rights Council Advisory Committee (on peasant farmers and the right to food: a history of discrimination and exploitation), UN doc. A/HRC/AC/3/CRP.5, 4 August 2009.

20 Preliminary study of the Human Rights Council Advisory Committee on discrimination in the context of the right to food, UN doc. A/HRC/13/32, 22 February 2009, §78.

21 Preliminary study of the Human Rights Council Advisory Committee on discrimination in the context of the right to food, UN doc. A/HRC/13/32, 22 February 2009, §78.

22 Resolution 13/4 of the Human Rights Council, adopted without a vote on 14 April 2010, §44.

2012,²³ the Advisory Committee found that smallholder farmers, landless people working as tenant farmers or agricultural labourers, people living from traditional fishing, hunting and herding activities, and peasant women, were particularly subject to discrimination.²⁴ It also identified the main causes of their vulnerability and discrimination: expropriation of land, forced evictions and displacement, gender discrimination, the absence of agrarian reform and rural development policies, the lack of a minimum wage and social protection, and the repression and criminalization of movements protecting their rights.²⁵

The Advisory Committee described the protection of these people under international human rights law²⁶ and concluded that, 'despite the existing human rights framework, peasants and other people working in rural areas are victims of multiple human rights violations that lead to their extreme vulnerability to hunger and poverty'.²⁷ To overcome this situation, the Committee recommended to the Human Rights Council that it should (a) improve the implementation of existing international norms, (b) address normative gaps in international human rights law, notably by recognizing the right to land, and (c) elaborate a new legal instrument on the rights of people working in rural areas.²⁸ For the Advisory Committee, 'the best way to further advance the protection of the rights of peasants and other people working in rural areas is to adopt a new instrument – initially, a declaration – to better promote and protect these rights. In the annex to the present study, it therefore proposes a declaration on the rights of peasants and other people working in rural areas. The Declaration adopted by the Advisory Committee could serve as a model for a new instrument to be developed by the Human Rights Council.'²⁹

During this period, the UN Special Rapporteur on the right to food, then Olivier De Schutter, made the analysis and conclusions of the Advisory Committee his own. At a Human Rights Council side-event on 'the need of increased protection of human rights of peasants' (9 March 2011), he set out four reasons to adopt a new international human rights instrument on the rights of peasants and other people working in rural areas: it 'is needed in international law; it will improve the fight

²³ In Resolution 16/27, adopted without a vote on 25 March 2011, the Human Rights Council had requested the Advisory Committee to present its final study on the topic at the 19th session of the Human Rights Council in March 2012 (§46).

²⁴ Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §§9-23.

²⁵ *Ibid.*, §§24-42.

²⁶ *Ibid.*, §§43-62.

²⁷ *Ibid.*, §63.

²⁸ *Ibid.*, §63.

²⁹ *Ibid.*, §72.

against hunger; it is one of the best ways to ensure that subsistence agriculture will not be replaced by industrial agriculture; and it will increase access to the means of production in rural areas'.³⁰ He also underlined that 'the adoption of a Declaration on the rights of peasants and other people working in rural areas would increase visibility on the rights that are already recognized in international law, and help to recognize new rights, such as the rights to land, to seeds and to compensation for the losses due to food subsidies given to farmers in other countries'.³¹

In his final report, presented to the Human Rights Council in March 2014, Olivier De Schutter confirmed his strong support for a UN Declaration, stating that it could become a tool for improving the protection of peasants and other people working in rural areas and would highlight the threats they face.³²

Resolution 21/19 (September 2012)

In September 2012, the Human Rights Council accepted the main recommendation of the Advisory Committee's final study and adopted a new resolution on the promotion and protection of the human rights of peasants and other people working in rural areas. It decided:

[t]o establish an open-ended intergovernmental working group with the mandate of negotiating, finalizing and submitting to the Human Rights Council a draft UN declaration on the rights of peasants and other people working in rural areas, on the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views and proposals.³³

The content of this paragraph was debated until the last moment. Some states were reluctant to use the Advisory Committee's draft as the basis for drafting a UN Declaration. Adding 'without prejudging relevant past, present and future views and proposals' provided a solution and the resolution was adopted by 23 votes in favour, 9 against, and 15 abstentions.³⁴

³⁰ *Ibid.*, §70.

³¹ *Ibid.*, §70.

³² *Ibid.*, §28.

³³ Resolution 21/19 of the Human Rights Council (on the promotion and protection of the human rights of peasants and other people working in rural areas), adopted on 27 September 2012, §1.

³⁴ Voted in favour: Angola, Bangladesh, Benin, Burkina Faso, Cameroon, Chile, China, Congo, Costa Rica, Cuba, Djibouti, Ecuador, Guatemala, India, Indonesia, Kyrgyzstan, Malaysia, Peru, Philippines, Russian Federation, Thailand, Uganda, Uruguay. Voted against: Austria, Belgium, Czech Republic, Hungary, Italy, Poland, Romania, Spain, United States of America. Abstained: Botswana, Jordan, Kuwait, Libya, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Qatar, Republic of Moldova, Saudi Arabia, Senegal, Switzerland.

In the same resolution, the Human Rights Council requested that its President should encourage states, civil society, and all relevant stakeholders, to contribute actively and constructively to the working group's negotiations.³⁵

First session of the working group (July 2013)

The first session of the working group took place in July 2013. The Ambassador of Bolivia, Angélica Navarro Llanos, was elected Chairperson-Rapporteur. Representatives of 63 states attended the session, including Egypt, which spoke on behalf of the like-minded group, and Gabon, which spoke on behalf of the African group. Other participants included the Holy See and the State of Palestine, the European Union, and a number of NGOs, including La Via Campesina, CETIM, FIAN International, and the International Federation of Rural Adult Catholic Movements (FIMARC).³⁶

The first two days of the session were devoted to three panel discussions, which all states welcomed. The 17 experts who participated included Olivier De Schutter, José Esquinas (former Secretary General of the Intergovernmental Commission on Genetic Resources for Food and Agriculture and former Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture), several former mandate holders of UN Special Procedures, and representatives of the World Forum of Fish Harvesters and Fish Workers (WFF),³⁷ the International Commission of Jurists (ICJ), and the African Network on the Right to Food. Panels discussed (1) the importance of peasants, including their positive contribution to food security, the fight against climate change and the conservation of biodiversity; (2) the situation of human rights in rural areas, focusing on discrimination, poverty, and hunger; (3) the need for a UN Declaration on the rights of peasants and other

³⁵ Resolution 21/19 of the Human Rights Council (on the promotion and protection of the human rights of peasants and other people working in rural areas), adopted on 27 September 2012, §§4-5.

³⁶ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§5-8. The International Federation of Rural Adult Catholic Movements (FIMARC) is present in more than 60 countries and claims to support millions of peasants and other people working in rural areas around the world. See www.fimarc.org. The NGOs Villages unis pour le développement and HelpAge International also spoke during the working group's first session.

³⁷ The World Forum of Fish Harvesters and Fish Workers (WFF) was formed in 1997. It has member organizations in more than 40 countries. See: <http://worldfisherforum.org>.

people working in rural areas. The great majority of panellists concurred with the analysis and conclusions presented by the Advisory Committee in its final study.³⁸

The working group then held a first reading of the draft declaration submitted by the Advisory Committee. Many but not all states engaged in this discussion. A few states argued that the Human Rights Council was not the right body to negotiate such issues, since the FAO was doing similar work. No reply was made, though on such grounds it could be argued that discussion of the right to health should be confined to the World Health Organization (WHO), discussion of the right to education and cultural rights to the UN Educational, Scientific and Cultural Organization (UNESCO), discussion of the rights of the child to the UN Children's Fund (UNICEF), etc. Some states said they did not wish to participate in negotiation of a UN declaration on the rights of peasants and other people working in rural areas. Others did not consider the Advisory Committee's draft an acceptable basis for negotiation.³⁹ It became clear at this point that it would be difficult, but essential, to create an acceptable basis for negotiation; and that the use of agreed language would be helpful in that process.

At the end of the first session, the Chairperson-Rapporteur of the working group made the following recommendations: to convene a second session of the working group in 2014; (2) that the Chair would hold informal consultations with all stakeholders beforehand; and (3) that the Chair would be entrusted to prepare a new text for that second session.⁴⁰

Expert seminar (April 2014)

To support the process, in April 2014 the Geneva Academy of International Humanitarian Law and Human Rights (with the support of the Swiss government and in cooperation with the Permanent Mission of Bolivia) hosted a one and a half day expert seminar, attended by 35 diplomats including 4 Ambassadors, 19 experts (including Olivier De Schutter, then UN Special Rapporteur on the right to food), and 10 representatives of civil society. A number of the experts presented their view of the Human Rights Council negotiation process for the first time, including representatives of the ILO, the World Intellectual Property Organization

³⁸ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§13-25.

³⁹ *Ibid.*, §§26-33.

⁴⁰ *Ibid.*, §50.

(WIPO), the World Farmers' Organization (WFO),⁴¹ the World Forum of Fisher Peoples (WFFP),⁴² the World Alliance on Mobile Indigenous Peoples (WAMIP),⁴³ the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF),⁴⁴ and the Centre for Legal and Social Studies (CELS).

The agenda covered some of the most difficult issues facing the negotiators: (1) the definition of peasants and other people working in rural areas; (2) the right to seeds and intellectual property rights; (3) the right to land; (4) labour rights and the right to social security; (5) the need to better protect the rights of other people working in rural areas; and (6) the integration of the obligations of states and non-state actors in the UN Declaration.⁴⁵ As this In-Brief will show, the seminar was useful because it involved new actors and identified agreed language that might be used to negotiate and finalize a Declaration.

Resolution 26/26 (June 2014)

The recommendations presented by the Chairperson-Rapporteur at the end of the working group (July 2013) were accepted by the Human Rights Council in June 2014. In a second resolution on the promotion and protection of the human rights of peasants and other people working in rural areas, it decided that: (1) the working group would hold its second session before the 29th session of the Council (June 2015); (2) the Chairperson-Rapporteur would conduct informal consultations with all stakeholders before that session; and (3) the Chairperson-Rapporteur would prepare a new text for presentation at the working group's second session 'on the basis of the draft declaration presented by the Advisory

41 The World Farmers' Organization (WFO) is an organization of agricultural producers. It has more than 60 member organizations in more than 30 countries. See: www.wfo-oma.com.

42 The World Forum of Fisher Peoples (WFFP) was created in 1997. It has 29 member organizations in 23 countries and claims to represent over 10 million fisher people worldwide. See: <http://worldfishers.org>.

43 The World Alliance on Mobile Indigenous Peoples (WAMIP) was created in 2003 at the Fifth World Parks Congress (Durban) of the International Union for Conservation of Nature (IUCN). It describes itself as a global alliance of nomadic peoples and communities that practise various forms of mobility as a livelihood strategy while conserving biological diversity and using natural resources in a sustainable way.

44 The IUF is an international federation of trade unions created in 1920. It has more than 390 affiliates in 125 countries, and claims to represent a combined membership of over 12 million workers. See: www.iuf.org/w.

45 No agreement was reached during the expert seminar on whether a UN Declaration on the rights of peasants and other people working in rural areas should define the duties of non-state actors.

Committee, the discussions held during the first session of the working group and the informal consultations⁴⁶.

The resolution was adopted by 29 votes in favour, 5 against, and 13 abstentions, implying stronger support than for Resolution 21/19.⁴⁷

Informal consultations between June and December 2014

The Chairperson-Rapporteur held a number of informal consultations between June and December 2014. They included: informal consultations at the UN in Geneva on 12 November at which eleven states spoke, including Austria (speaking on behalf of the European Union), as well as representatives of nine civil society organizations or social movements;⁴⁸ informal consultations at the UN in Geneva on 4 December at which eight states spoke, including Austria (on behalf of the European Union), as well as four NGOs (including Hope International and the Lutheran World Federation);⁴⁹ meetings with states and representatives of world fisher organizations during the 31st session of the FAO Committee on fisheries in Rome (June 2014); and bilateral meetings with a number of governments and civil society organizations.⁵⁰

The mood of these informal consultations was constructive. Discussion of the different rights at issue, as well as state obligations, indicated that it would not be difficult to reach agreement on the reaffirmation of existing human rights; and that finding and using agreed language – including in FAO and ILO instruments – would be helpful in convincing states to recognize certain additional rights of peasants and other people working in rural areas.

46 Human Rights Council, Resolution 26/26 (on the promotion and protection of the human rights of peasants and other people working in rural areas), §§1–3.

47 Voted in favour: Algeria, Argentina, Benin, Brazil, Burkina Faso, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Ethiopia, Gabon, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, United Arab Emirates, Venezuela (Bolivarian Republic of), Viet Nam. Voted against: Czech Republic, Republic of Korea, Romania, United Kingdom of Great Britain and Northern Ireland, United States of America. Abstained: Austria, Botswana, Estonia, France, Germany, Ireland, Italy, Japan, Kuwait, Maldives, Mexico, Montenegro, the former Yugoslav Republic of Macedonia.

48 They included La Via Campesina, FIMARC, CETIM, FIAN International, WFFP and IUF.

49 Together with CETIM and FIAN International.

50 For example, in May 2014 the Chairperson-Rapporteur spoke at the world assembly of FIMARC in Volkersberg, Germany, and in September met German officials and civil society organizations in Berlin at a meeting convened by the German Institute for Human Rights.

2. Assessment of the Advisory Committee's draft declaration

The Advisory Committee's draft declaration in March 2012 was largely based on La Via Campesina's *Declaration of the Rights of Peasants - Women and Men*. In terms of legitimacy, this was a strength because that text is rooted in the severe discrimination and vulnerability experienced by peasant communities. In several respects, however, it generated specific weaknesses. Echoing La Via Campesina's text, the Advisory Committee's draft did not sufficiently include the rights of *other* people working in rural areas. It did not consistently adopt agreed UN language,⁵¹ notably when it proposed a 'right to reject' and 'freedom to determine prices'.⁵² And it failed to define state obligations and omitted important rights, such as the right to social security. In addition, unlike the Via Campesina's declaration which mentioned 'women and men' in every article, the Advisory Committee's text did not adequately promote and protect gender equality and the rights of rural women.

The rights of peasants and others

Although the title of the Advisory Committee's draft declaration refers to 'peasants and other people working in rural areas', the draft was criticized at the working group's first session because the preamble and most of the substantive articles 2 to 13 referred only to 'peasants'.⁵³ It is not an adequate defence to say that the draft was inspired by La Via Campesina's declaration, since the Advisory Committee's objective – as indicated by the content of its final study and the title of its draft declaration – was to affirm the rights of peasants and *other* people working in rural areas, including landless people, rural workers, and people living from traditional fishing, hunting and herding activities.

⁵¹ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §32.

⁵² Articles based on agreed language include articles 2, 3, 12, 13.

⁵³ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §32.

It can be argued that the definition of peasants proposed by the Advisory Committee is broad enough to include ‘any person engaged in agriculture, cattle-raising, pastoralism, and handicrafts-related to agriculture’ (art. 1(2)), as well as landless, agricultural labourers’ households, and other ‘rural households of pastoralists, nomads, peasants practicing shifting cultivation, hunters and gatherers, and people with similar livelihoods’ (art. 1(3)). It is also true that some articles define substantive rights for fisher people, pastoralists, nomads, hunters and gatherers (arts. 4 and 5). The final UN Declaration must nevertheless recognize more explicitly and specifically the rights of other people working in rural areas, including the above groups and rural workers.

Existing rights, new rights, and agreed language

The Advisory Committee’s draft declaration reaffirms existing human rights and proposes rights that are new in international human rights law for peasants and other people working in rural areas, in order to protect them from discrimination.⁵⁴ At the working group’s first session in 2013 and during informal consultations in 2014, some delegations criticised the proposal to recognize new rights. They argued that ‘the declaration set out new rights on which there was no broad consensus’, and that ‘existing human rights provided adequate protection to peasants’.⁵⁵ Other delegations took the view that ‘at some point in history all rights were new, and that the ‘new rights’ contained in the draft declaration were essential to further promoting and protecting peasants and other people working in rural areas’.⁵⁶ They and other participants added that ‘many provisions in the draft declaration were in fact not new, but reflected the application of existing rights to the specific needs and vulnerabilities of peasants, or reflected provisions existing in other international instruments that it was important to recognize and reaffirm in the human rights framework’.⁵⁷

The practice of combining existing rights with new rights in a single human rights instrument is not new. It has been the rule for all declarations and conventions

⁵⁴ Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §72.

⁵⁵ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §29; see also §35.

⁵⁶ *Ibid.*, §28; see also §40.

⁵⁷ *Ibid.*, §28; see also §35.

adopted by the UN in the last 40 years.⁵⁸ New instruments that protect specific categories of people have always had the effect of recognizing new rights.⁵⁹ Nevertheless, although the effect cannot therefore be criticized *per se*, it is important to discuss the content of rights that are proposed.

In its 2012 final study, the Advisory Committee stated that its draft declaration affirmed the following international human rights: the right to life and the right to an adequate standard of living, including food, housing, water and sanitation, income, health and education (art. 3 of the Advisory Committee's draft declaration); the freedoms of association, opinion and expression, which include elements of

58 See (referring also to specific examples provided in footnote 59): the Convention on the Elimination of All Forms of Discrimination Against Women, adopted on 18 December 1979; the Convention on the Rights of the Child, adopted on 20 November 1989; the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted on 18 December 1990; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted on 18 December 1992; the Declaration on Human Rights Defenders, adopted on 9 December 1998; the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006; and the Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007.

59 Among the new rights recognized for specific categories of people in the last 40 years, the following examples can be given. The right of women to bank loans, mortgages and other forms of financial credit, and rural women's rights to participate in the elaboration and implementation of development planning at all levels, to organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment, to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes, and to enjoy adequate living conditions, particularly in relation to sanitation, electricity, transport and communications, are recognized in articles 13 and 14 of the Convention on the Elimination of All Forms of Discrimination Against Women. The right of migrant workers who are documented or in a regular situation to transfer their earnings and savings, in particular funds necessary for the support of their families, from the state of employment to their state of origin or any other state is recognized in article 47 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The rights of persons belonging to minorities to establish and maintain free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contact (across frontiers) citizens of other states to whom they are related by national, ethnic, religious or linguistic ties, are recognized in article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The rights of human rights defenders to develop and discuss new human rights ideas and principles and to advocate their acceptance, and to access and communicate with international bodies with competence to receive and consider communications on matters of human rights and fundamental freedoms, are recognized in articles 7 and 9(4) of the Declaration on Human Rights Defenders. The rights of indigenous peoples to maintain and strengthen their distinct political, legal, economic, social and cultural institutions; to not be forcibly removed from their lands or territories; to determine and develop priorities and strategies for exercising their rights to development; to their traditional medicines, and their health practices; to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired; to conserve and protect the environment and the productive capacity of their lands or territories and resources; to maintain and develop contacts, relations and cooperation with their own members as well as other peoples across borders; to have access to financial and technical assistance from states and through international cooperation for the enjoyment of their rights, are recognized in articles 5, 10, 20, 23, 24, 26, 28, 29, 32, 36 and 39 of the Declaration on the Rights of Indigenous Peoples.

cultural rights (art. 12); and access to justice (art. 13).⁶⁰ It did not list the right to information, addressed in article 7, though it is an established human right, perhaps because the wording of article 7 is adapted to the specific needs of peasants and other people working in rural areas.⁶¹ All the above rights are recognized in numerous international human rights instruments, in particular the ICESCR (arts. 7, 11, 12, 13 and 15) and the ICCPR (arts. 6, 9, 10, 14, 19, 21 and 22).⁶²

The Advisory Committee noted that the following rights were new in international human rights law: ‘the right to land and territory (art. 4); the right to seeds and traditional agricultural knowledge and practice (art. 5); the right to means of agricultural production (art. 6); [...] the freedom to determine prices and markets for agricultural production (art. 8); the right to the protection of local agricultural values (art. 9); the right to biological diversity (art. 10); and the right to preserve the environment (art. 11)’.⁶³ It did not list the right to food sovereignty, defined in article 2(5) of the draft declaration as ‘the right to healthy and culturally appropriate food produced through ecological sound and sustainable methods, and the right to define their own food and agriculture systems’,⁶⁴ complemented by article 8(7) which recognized peasants’ ‘right to develop community-based commercialization systems in order to guarantee food sovereignty’. It is nevertheless a new right.⁶⁵ So is ‘the right to participate in the policy design, decision making, implementation, and monitoring of any project, program or policy affecting their land and territories’ (art. 2(4)).

While these rights can be described as new with respect to the ICCPR and the ICESCR, and their proposed formulation is not based on agreed language, many have already been recognized (even if not in exactly the same terms) in international instruments that protect specific categories of people. For example, the right to

⁶⁰ Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §72.

⁶¹ It has for example been recognized in article 19 of the ICCPR, article 13 of the Convention of the Rights of the Child, and article 21 of the Convention on the Rights of Persons with Disabilities.

⁶² For a more detailed analysis of the content of these rights in the two Covenants, see final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §§43-58.

⁶³ *Ibid.*, §72.

⁶⁴ This language is based on the definition of food sovereignty adopted by La Via Campesina and its partners at the Food Sovereignty Forum in Nyeleni (Mali) in February 2007. More than 500 representatives from more than 80 countries were present, representing organizations of peasants, family farmers, artisanal fisherfolk, indigenous peoples, landless peoples, rural workers, migrants, pastoralists, forest communities, women, youth, consumers and environmental and urban movements. See <http://nyeleni.org>.

⁶⁵ On the origins of the call to recognize a new right to food sovereignty, see P. Claeys, ‘The Creation of New Rights by the Food Sovereignty Movement: The Challenge of Institutionalizing Subversion’, *Sociology*, 46(5), 2012, pp. 844-860.

land and territory and the right to participate in decisions affecting one's land and territory have been recognized in very similar terms for indigenous people in the Declaration on the Rights of Indigenous Peoples,⁶⁶ and elements of these rights have been recognized for rural women in the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶⁷ It has also been argued that the right to land is an emerging right in international human rights law.⁶⁸

The right to means of agricultural production has been affirmed (in similar terms) in CEDAW, which states that rural women have the right 'to have access to agricultural credit and loans, marketing facilities, appropriate technology' and 'to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications'.⁶⁹ The right to protect agricultural values can be understood as a detailed recognition of the cultural rights of peasants and other people working in rural areas.⁷⁰ The right to preserve the environment has been recognized (in similar terms) in the Declaration on the Rights of Indigenous Peoples,⁷¹ and includes the right to a clean and healthy environment, which is recognized in more than 90 national constitutions and in regional human rights treaties.⁷²

The right to food sovereignty has been recognized in an increasing number of national Constitutions,⁷³ and at regional level in the Declaration of Cochabamba on food security with sovereignty in the Americas, adopted by the General Assembly of the Organization of American States in June 2012.⁷⁴

66 See articles 10, 18, 26, 28 and 32 of the Declaration on the Rights of Indigenous Peoples.

67 According to article 14(2)(a) and (g) of CEDAW, rural women have the rights to 'participate in the elaboration and implementation of development planning at all levels' and to 'equal treatment in land and agrarian reform as well as in resettlement schemes'.

68 See Report of the Special Rapporteur on the right to food, Olivier De Schutter, UN doc. A/65/281, 11 August 2011, §§39-43. See also O. De Schutter, 'The Emerging Human Right to Land', *International Community Law Review*, 12, 2010, pp. 303-334.

69 Article 14(2)(g-f) of CEDAW.

70 Article 9 of the Advisory Committee's draft declaration is similar in its wording to the recognition of cultural rights in international human rights instruments, including article 15 of the ICESCR and several articles of the Declaration on the Rights of Indigenous Peoples.

71 See article 29 of the Declaration on the Rights of Indigenous Peoples.

72 See Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, UN doc. A/HRC/22/43, 24 December 2012, §§12-27.

73 The right to food sovereignty has been recognized most recently in the constitutions of Bolivia and Ecuador and in the Interim Constitution of Nepal.

74 Declaration of Cochabamba on 'Food Security with Sovereignty in the Americas' adopted by the General Assembly of the Organization of the American States (OAS) at its 42nd regular session on 5 June 2012, OAS doc. AG/doc.5329/12 corr. 1, 14 June 2012.

In conclusion, the rights that can be described as properly new under international human rights law are: the right to food sovereignty; the right to seeds and traditional agricultural knowledge and practices; the freedom to determine prices and markets for agricultural production; and the right to biological diversity. Most of these rights can be understood, at least partly, as components of existing human rights, notably the right to food.⁷⁵ Moreover, as shown below, the rights to seeds and biological diversity, and the right to traditional knowledge – like the rights to land, fisheries and forests – have been recognized in documents outside the human rights system, in particular FAO instruments.

In its 2012 final study, the Advisory Committee argued convincingly that these ‘new’ rights should be recognized in a UN Declaration.⁷⁶ The UN Special Rapporteur on the right to food, then Olivier De Schutter,⁷⁷ and panel experts at the first session of the working group in 2013 agreed. In that meeting, the panellists said that ‘the existing legal frameworks were inadequate to the task of protecting peasant farmers’ rights and that new standards were required’,⁷⁸ that ‘the absence of a human right to land in international human rights law represented a legal lacuna, as land was critical to rural livelihood’,⁷⁹ and that a UN Declaration could ‘facilitate the recognition of new rights, such as the rights to land, to seeds and biodiversity, [and] support traditional peasant systems and enhance traditional agricultural knowledge’.⁸⁰ Several states and others, who participated in that session of the working group⁸¹ or in informal consultations in November and December 2014, adopted the same view, though states remained divided on whether to include the right to food sovereignty.⁸²

⁷⁵ See General Comment no. 12 of the Committee on Economic, Social and Cultural Rights, on the right to adequate food, UN doc. E/C.12/1999/5, 12 May 1999. See also, Report of the Special Rapporteur on the right to food, Olivier De Schutter (on seed policies and the right to food), UN doc. A/64/170, 23 July 2009. See also, FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (right to food guidelines), adopted unanimously in 2004, notably guideline 8D on genetic resources for food and agriculture and guideline 13 on market systems.

⁷⁶ Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §§ 69-74.

⁷⁷ *Ibid.*, §70.

⁷⁸ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §19.

⁷⁹ *Ibid.*, §19.

⁸⁰ *Ibid.*, §22.

⁸¹ *Ibid.*, §36.

⁸² *Ibid.*, §40.

The fact that states have recently adopted new instruments at the FAO and the Committee on World Food Security, which protect some of these rights (the rights to land, fisheries and forests, the rights to seeds and biodiversity, and the rights to other means of production), confirms their significance and continued relevance to a Declaration on the rights of peasants and others working in rural areas.

Right to reject, or right to choose and to be protected?

To reach agreement on recognition of these ‘new’ rights, nevertheless, it will be necessary to find agreed language. If negotiators can make use of language that states have already adopted in existing standards, they can more easily resolve drafting difficulties or bridge substantive differences.

One area of difficulty in the Advisory Committee’s draft declaration is the ‘right to reject’, mentioned in articles 5, 9, 10 and 11.⁸³

Article 5, on the right to seeds and traditional agricultural knowledge and practice, recognizes that peasants are entitled ‘to reject varieties of plants which they consider to be dangerous economically, ecologically and culturally’, and ‘to reject the industrial model of agriculture’ (subsections 2 and 3). Article 9(2), on the right to the protection of agricultural values, affirms that peasants are entitled ‘to reject interventions that can destroy local agricultural values’. Article 10, on the right to biological diversity, affirms the right of peasants ‘to reject patents threatening biological diversity, including on plants, food and medicine’, ‘to reject intellectual property rights on goods, services, resources and knowledge that are owned, maintained, discovered, developed or produced by local peasant communities’, and ‘to reject certification mechanisms established by transnational corporations’ (subsections 2, 3 and 4). Article 11(3), on the right to preserve the environment, recognizes that peasants have the right ‘to reject all forms of exploitation which cause environmental damage’.

This ‘right to reject’ is not based on agreed language and was criticized at the working group’s first session⁸⁴ and at the expert seminar hosted by the Geneva Academy in April 2014. The tensions that surround discussion of the right of

⁸³ Article 3(12), on the right to life and an adequate standard of living, also recognizes that peasant women are entitled ‘to control their own bodies and to reject the use of their bodies for commercial purposes’.

⁸⁴ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §37.

peasants to seeds and intellectual property rights were discussed during the working group's first session. Some delegations strongly supported peasants' right to choose to grow, develop, exchange, give or sell their own seeds, and the right of peasants and other people working in rural areas to choose to preserve and develop their local knowledge in agriculture, fishing and livestock rearing.⁸⁵ In a panel discussion on the same issue at the expert seminar, it was proposed to replace the 'right to reject' by a 'right to choose and to be protected', which would allow negotiators to use language that resembles the language adopted in the UN Declaration on the Rights of Indigenous Peoples.

Articles 5 and 31 of the 2007 UN Declaration on the Rights of Indigenous Peoples recognize the rights of indigenous peoples (to choose) to maintain, control, protect and develop their institutions, traditional knowledge, and seeds, and uphold their intellectual property rights with regard to them. The same articles define corresponding state obligations to take measures to recognize and protect the exercise of these rights.⁸⁶ Article 8 of the Declaration states that indigenous peoples 'have the right not to be subjected to forced assimilation or destruction of their culture' and defines corresponding state obligations to protect indigenous peoples against any action depriving them of their cultural values or dispossessing them of their lands, territories, or resources.⁸⁷

If it adopted similar language, the UN Declaration on the rights of peasants and other people working in rural areas could affirm the 'right to choose and to be protected' in many of its articles. For example, it could recognize the right of peasants (to choose) to maintain, control, protect and develop their seed systems, and to save, use, exchange and sell farm-saved seeds,⁸⁸ and state obligations

⁸⁵ *Ibid.*, §37.

⁸⁶ In article 5 of the UN Declaration on the Rights of Indigenous Peoples, states recognize the right of indigenous peoples 'to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State'. In article 31(1), they recognize the right of indigenous peoples 'to maintain, control, protect and develop their ... traditional knowledge ..., as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora ...', and their right 'to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions'. In article 31(2), they recognize that 'in conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights'. Article 13 states that indigenous peoples have 'the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons' (§1); and that 'States shall take effective measures to ensure that this right is protected (...)' (§2).

⁸⁷ Article 8, UN Declaration on the Rights of Indigenous Peoples.

⁸⁸ See Preamble and article 9 of the Treaty on Plant Genetic Resources for Food and Agriculture.

to protect peasants from threats posed by the commercial seed system, along with intellectual property and breeders' rights.⁸⁹ Alternatively, the text might not mention external threats, but simply affirm the state's obligation to promote and protect local guarantee schemes run by peasants' organizations with government support,⁹⁰ and establish public certification mechanisms to protect traditional seed systems on which the great majority of peasants depend to grow their crops.

Following the same logic, the Declaration could recognize the rights of peasants and other people working in rural areas (to choose) to maintain, control, protect and develop traditional knowledge, biological diversity and agricultural values.

From the start of negotiations, some states have criticized the Advisory Committee's draft on the grounds that it protects a certain model of agriculture, which they argue it should not do. The UN Declaration on the Rights of Indigenous Peoples seems also to be relevant in that context. It affirms that indigenous peoples have the right to maintain their way of life, and to be protected in doing so; in a similar manner the UN Declaration on peasants and other people working in rural areas could protect a way of working and producing. This point was made by the UN Special Rapporteur on the right to food, Olivier De Schutter, who argued that the adoption of a UN Declaration on the rights of peasants and other people working in rural areas 'is one of the best ways to ensure that subsistence agriculture will not be replaced by industrial agriculture'.⁹¹

Freedom to determine prices or right to a decent income?

Another right that requires agreed language is the 'freedom to determine price', proposed in article 8 of the Advisory Committee's draft declaration (titled 'freedom to determine price and market for agricultural production'). This proposal attracted criticism on the grounds that, although peasants and other people working in

⁸⁹ See Report of the Special Rapporteur on the right to food, Olivier De Schutter (on seed policies and the right to food), UN doc. A/64/170, 23 July 2009. Intellectual property rights are protected by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), adopted as Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization on 15 April 1994. Breeders' rights are protected by the International Convention for the Protection of New Varieties of Plants, developed under the auspices of the International Union for the Protection of New Varieties of Plants (UPOV), and adopted in its current version on 19 March 1991.

⁹⁰ See article 10(4), Advisory Committee, draft declaration on the rights of peasants and other people working in rural areas.

⁹¹ Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §70.

rural areas are entitled to price their produce, consumers and wholesalers are not obliged to buy at the price they propose. Peasants and other people working in rural areas cannot unilaterally determine prices.

A sounder approach may be to protect the right of peasants and others working in rural areas to a decent income. In its 2012 final study, the Advisory Committee observed that the absence of a minimum wage is one of the main reasons why peasants and others working in rural areas are vulnerable and suffer discrimination.⁹² In its draft declaration, the Advisory Committee therefore proposed to recognize the right of peasants to an adequate standard of living, including the right to an income sufficient to fulfil their own and their families' basic needs (art. 3(3)). The Declaration also affirmed their rights to obtain a fair price for their produce (art. 8(4)) and fair payment for their work, to fulfil their basic needs and those of their families (art. 8(5)).

These rights are founded in the right to a decent income and the right to an adequate standard of living, affirmed in articles 7 and 11 of the ICESCR⁹³ as well as ILO Conventions. The FAO's Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (right to food guidelines), which the FAO Council adopted unanimously in 2004, also recognizes that states should take measures 'to provide opportunities for work that provide remuneration allowing for an adequate standard of living for rural ... wage earners and their families, and to promote and protect self-employment'.⁹⁴

At the working group's first session (July 2013) and during informal consultations in November and December 2014, panellists, civil society organizations and some states argued strongly that a UN Declaration on the rights of peasants and other people working in rural areas should affirm the right to a decent income.⁹⁵ This entitlement could replace the notion of 'freedom to determine prices', while the Declaration, by defining corresponding states' obligations, could underline the need to establish mechanisms ensuring that peasants and other people working

⁹² *Ibid.*, §§38-40.

⁹³ Article 7 of the ICESCR recognizes the right of every person to just and favourable conditions of work, including remuneration that provides all workers, as a minimum, with a decent living for themselves and their families.

⁹⁴ FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, 2004, guideline 8.8.

⁹⁵ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§16, 38 and 40.

in rural areas are able to make a living from selling their produce. The Declaration could also recognize the role of cooperatives and other organizations that represent peasants and people working in rural areas and the need to increase their bargaining power and ability to influence prices; and could acknowledge that, to enable them to sell their produce on fair terms, peasants and others working in rural areas need access to local and national markets, and to storage and processing facilities.

Individual or collective rights?

Throughout the negotiations that led to creation of the working group, and during its first session, some states said that they were reluctant to recognize new collective rights.⁹⁶ However, few of the rights proposed in the Advisory Committee's draft declaration are inherently collective. The right to food sovereignty (recognized in articles 2(5) and 8(7)), and elements of the right to land and territory (recognized in articles 4 and 11(5)) are collective. However, the great majority of rights proposed in the Advisory Committee's draft declaration are individual rights that can be exercised collectively. This is stated explicitly in a number of provisions, including articles 1(2), 4(1), 5(6), 10(1) and 12(3),⁹⁷ and is true of most of the other rights as well.

An analysis of human rights instruments adopted in the last 40 years demonstrates that, with few exceptions, human rights are individual rights that can be exercised collectively. Take, for example, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In these instruments, the rule is that individual rights can be exercised

⁹⁶ *Ibid.*, §29.

⁹⁷ The articles recognize the right to the full enjoyment, individually and collectively, of all human rights and fundamental freedoms as recognized in the UN Charter, the Universal Declaration of Human Rights and other international human rights instruments (art. 1(2) of the Advisory Committee's draft declaration); the right to own land, individually and collectively, for housing and farming (art. 4(1)); the right to choose their own products and varieties, and methods of farming, fishing, and livestock rearing, individually and collectively (art. 5(6)); the right to express his or her spirituality, individually and collectively (art. 8(7)); the right to protect, preserve and develop biological diversity, individually and collectively (art. 10(1)); and the right to expression, individually and collectively, in his or her local customs, languages, local culture, religions, cultural literature and local art (art. 12(3)).

collectively;⁹⁸ exceptions are rare.⁹⁹ The same is true of many of the rights recognized in the ICESCR and the ICCPR, including the rights to work, to form and join trade unions, to social security, to family life, food, housing, water, health, education, liberty of movement and freedom to choose residence, fair trial, freedom of thought, conscience and religion, freedom of opinion and expression, peaceful assembly, freedom of association, child protection, political participation, and cultural rights.¹⁰⁰ All these individual rights can be exercised collectively.

When states negotiated the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on human rights defenders), the same questions arose.¹⁰¹ To underline that human rights defenders have individual rights that can be exercised collectively, states recognized in almost every provision that these rights can be exercised 'individually and in association with others'.¹⁰²

It is also worth mentioning that many collective rights have been recognized in the UN Declaration on the Rights of Indigenous Peoples.¹⁰³ Following its example, the UN Declaration on the rights of peasants and other people working in rural areas could affirm a collective right when the collective dimension is essential to protect the right in question. This would be relevant to food sovereignty, to elements of the right to land and territory, and to the 'rights to land, forests and fisheries' (see below).

98 See, for example, article 3(1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which states that 'Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination'.

99 See, for example, article 22(1) of the Convention, which states that 'Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.'

100 These rights have been recognized in articles 6 to 15 of the ICESCR and articles 12, 14, 17, 18, 19, 21, 22, 23, 24, 25 and 27 of the ICCPR.

101 The Declaration on Human Rights Defenders was adopted without a vote by resolution 53/144 of the UN General Assembly on 9 December 1998. For a short history of the *travaux préparatoires* and proposed steps to implement the declaration, see Report of the Secretary General (on implementation of the declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms), UN doc. E/CN.4/2000/95, 30 January 2000.

102 See articles 1, 2, 5, 6, 7, 8, 9, 11, 12, 13, and 17 of the Declaration on Human Rights Defenders.

103 See articles 1, 3-5, 7(2), 8-16, 18-21, 23-37 and 39-40 of the UN Declaration on the rights of indigenous peoples.

In its general comment 21, on the right of everyone to take part in cultural life, the Committee on Economic, Social and Cultural Rights (CESCR) stated that ‘the term “everyone” (...) denote[s] the individual or the collective; in other words cultural rights may be exercised by a person (a) as an individual, (b) in association with others, or (c) within a community or group, as such’.¹⁰⁴ In presenting the rights and entitlements protected by the right to participate or take part in cultural life, the CESCR defined them as the rights ‘of everyone – alone, or in association with others or as a community (...)’.¹⁰⁵

This formulation, that certain rights can be exercised ‘alone, or in association with others or as a community’ could be used to distinguish the individual and/or collective nature of rights affirmed in the UN Declaration on the rights of peasants and other people working in rural areas.

The right to social security, gender equality, and state obligations

In its final study, the Advisory Committee stated that lack of social protection was one of the main reasons why peasants and other people working in rural areas were vulnerable and suffered discrimination.¹⁰⁶ Unfortunately, it did not include a right to social security in its draft declaration, which, largely inspired by La Via Campesina’s declaration, envisions a world in which peasant autonomy will be guaranteed by giving peasants access to productive resources and an adequate income. The draft declaration did not take account of situations in which (in normal times or times of crisis) access to productive resources and an adequate income cannot be guaranteed. It is precisely in these situations that social security is essential. Today, the great majority of those working in rural areas have no access to comprehensive social protection,¹⁰⁷ though this right is recognized in

104 CESCR, General Comment 21 (on the right of everyone to take part in cultural life (art. 15, para. 1a of the ICESCR)), UN doc. E/C.12/GC/21, 21 December 2009, §9.

105 *Ibid.*, §15.

106 Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §38.

107 See O. De Schutter, UN Special Rapporteur on the right to food, and M. Sepulveda, UN Special Rapporteur on extreme poverty and human rights, *Underwriting the Poor: A Global Fund for Social Protection*, Briefing Note 07, October 2012. According to the ILO, a ‘vast majority (about 80 per cent) of the global population live in conditions of social insecurity, that is, they have little or no access to formal social security beyond the limited possibilities of relying on families, kinship groups or communities to secure their standard of living’. See ILO, *Social Security for All: Investing in social justice and economic development*, Social Security Policy Briefings, Paper 7, Geneva, 2009, p. 3.

both the Universal Declaration of Human Rights and the ICESCR.¹⁰⁸ Discussions during the working group's first session (2013) and informal consultations in 2014 strongly suggested that the right to social security should be recognized in the UN Declaration on the rights of peasants and other people working in rural areas.¹⁰⁹

The Advisory Committee's draft declaration also failed to address gender equality and the rights of rural women sufficiently, even though these rights were prominent in La Via Campesina's declaration¹¹⁰ and the Advisory Committee acknowledged in its final study that gender discrimination was one of the main reasons why women working in rural areas remain extremely vulnerable. Gender equality is mentioned once in the Advisory Committee's draft declaration (in art. 2(1)); and specific rights of rural women are recognized only in article 3. As many participants underlined, at the working group's first session and during informal consultations, the UN Declaration on the rights of peasants and other people working in rural areas should protect rural women from gender discrimination and specific risks threatening them, and affirm their rights.¹¹¹

Finally, the draft declaration does not list states' obligations. During the working group's first session and subsequent informal consultations, several participants stressed that states' obligations must be included in the UN Declaration,¹¹² which should make clear what states should do and what peasants and other people working in rural areas can expect from state authorities. State obligations are addressed in many similar international instruments, including the 2007 UN Declaration on the rights of indigenous peoples (arts. 8-17, 19, 21-22, 24, 26-27, 29-32 and 36), the 1998 UN Declaration on human rights defenders (arts. 2, 9

108 Article 22 of the Universal Declaration of Human Rights proclaims that '[e]veryone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality'. Article 9 of the ICESCR recognizes '[t]he right of everyone to social security, including social insurance'.

109 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§23, 32, and 46. In its General Comment No. 19 of on the right to social security (UN doc. E/C.12/GC/19, 4 February 2008), the CESCR states that 'States parties should () consider schemes that provide social protection to individuals belonging to disadvantaged and marginalized groups, for example crop or natural disaster insurance for small farmers or livelihood protection for self-employed persons in the informal economy' (§49, footnote omitted.)

110 In La Via Campesina's *Declaration of Rights of Peasants - Women and Men*, each substantive article and provision begins 'Peasant (women and men)...'.

111 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§15, 22-25, 30, 32, 35 and 45.

112 *Ibid.*, §§22, 28, 31 and 46.

and 12-15), and the 1992 UN Declaration on the rights of persons belonging to minorities (arts. 1, 4, 5, 7, 8). The UN Declaration on the rights of peasants and other people working in rural areas could define state obligations in general terms in an article at the beginning of the declaration, and subsequently list states' obligations in more detail in each article that affirms substantive rights.

3. Towards a UN Declaration on the rights of peasants and other people working in rural areas: the quest for agreed language

As negotiations move forward, negotiators will need to find solutions, possibly based on agreed language, that recognize existing and new rights of peasants and other people working in rural areas.

With this in mind, in April 2014 the Geneva Academy (supported by the Swiss government and in cooperation with the Permanent mission of Bolivia to the UN in Geneva) hosted an expert seminar which discussed some of the most difficult issues that negotiators will need to address. Drawing on those discussions, as well as the working group's first session and informal consultations, this section identifies language in international human rights law (treaties, declarations, and other soft-law instruments) and other international instruments (including those developed by states at the FAO and ILO) that is relevant to these difficult areas of negotiation. It focuses on language that may help to define: peasants and other people working in rural areas; state obligations, gender equality and the rights of rural women; civil and political rights; economic, social and cultural rights; the right to a clean and healthy environment; the rights of rural workers; the rights to land, fisheries and forests; the rights to seeds and biological diversity; and the rights to other means of production.

As one expert noted during the working group's first session, when using agreed language to finalize a UN Declaration on the rights of peasants and other people working in rural areas, it will be important to take a holistic approach, to cover gaps in international instruments, and to ensure that the declaration builds on existing instruments (rather than weakening them).¹¹³ The Declaration should complement other standard-setting initiatives in the United Nations.¹¹⁴

113 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §16.

114 *Ibid.*, §25.

Definition of peasants and other people working in rural areas

The Advisory Committee's final study defined the rights-holders addressed by the Declaration as 'peasants and other people working in rural areas', understood to include smallholder farmers, landless people working as tenant farmers or agricultural labourers, people living from traditional fishing, hunting and herding activities, and rural women.¹¹⁵ The Committee excluded 'the rights of other people working in rural areas, such as those working in the business, industry or public administration'.¹¹⁶

The Human Rights Council confirmed this definition when it created the working group to negotiate a 'UN Declaration on the rights of peasants and other people working in rural areas' in September 2013.¹¹⁷ However, some states remain reluctant to adopt it. During the first informal consultation in November 2014, the European Union proposed to withdraw 'peasants' from the title of the Declaration on the grounds that in English the term is disrespectful and discriminatory.

A representative of La Via Campesina replied that protection of an individual's identity is a key principle of human rights law, and peasants want their peasant identity to be recognized. When people suffer discrimination on the basis of their identity, he added, their identity should be protected, not changed. CETIM made similar points during the second informal consultation (December 2014).

The analysis of M. Edelman, Professor of anthropology at Hunter College and the Graduate Center of the City University of New York and a specialist on peasant movements, is relevant to this discussion. In a paper presented in July 2013 to the working group's first session, he explained: 'The word "peasant" appears in English in late medieval and early modern times, when it was used to refer to the rural poor, rural residents, serfs, agricultural labourers, and the "common" or "simple" people. As a verb in that period, "to peasant" meant to subjugate someone as a peasant is subjugated. [...] These derogatory meanings are indicative both of peasants' extreme subordination and of a ubiquitous elite practice of blaming peasants for a variety of economic and social ills. [...] These elites' imaginings were typically espoused in order to promote policies aimed at pushing peasants

¹¹⁵ Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §§9-23.

¹¹⁶ *Ibid.*, §10.

¹¹⁷ Resolution 21/19 of the Human Rights Council (on the promotion and protection of the human rights of peasants and other people working in rural areas), 27 September 2012, §1.

off the land and turning them into laborers'.¹¹⁸ Edelman also pointed out that '[s]ometimes groups subject to discrimination appropriate, invert and celebrate previously pejorative labels'.¹¹⁹ This is obviously true of La Via Campesina, which has successfully lifted the global profile of peasants since its creation in 1993 and given the term 'peasant' a new and contemporary resonance.¹²⁰

At the expert seminar in April 2014, participants underlined that, while 'peasant' may be disrespectful in English in some Western countries, it is widely used without disrespect in many other languages and countries. The participants therefore considered that it was appropriate to retain the term in the title of the Declaration.

It is also worth noting that the Committee of World Food Security's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (tenure guidelines) refer to 'peasant' and recognize that 'States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers'.¹²¹

During both the expert seminar and informal consultations, the need to define 'peasants' and 'other people working in rural areas' was discussed. The UN Declaration on the Rights of Indigenous Peoples does not define 'indigenous peoples'. Using that example, and arguing that self-identification and national definition would be preferable, some said that it should be left open, while others felt that a definition was necessary and that the definition proposed by the Advisory Committee provided a sound starting point.

What emerged clearly was that any definition should be broad enough to include peasants, landless people, rural workers, and people living from traditional fishing, herding, and hunting activities. During the expert seminar, participants identified several key characteristics of 'peasants and other people working in rural areas'. These include their special relationship with land and nature, the way they work and produce (mainly traditionally, in the family, anchored in the local community), and their specific situation, combining economic vulnerability and a desire for autonomy.¹²²

¹¹⁸ M. Edelman, *What is a peasant? What are peasantries? A briefing paper on issues of definition*, Background paper prepared for the first session of the working group on the rights of peasants and other people working in rural areas (15-19 July 2013), New York, Hunter College, 2013, p. 3. At: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPeasants/Edelman.pdf>.

¹¹⁹ *Ibid.*, p. 2.

¹²⁰ *Ibid.*, p. 9.

¹²¹ UN Committee on World Food Security, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (tenure guidelines), 2012, guideline 4.8.

¹²² See also *Ibid.* These elements might not be true of all rural workers.

In the remainder of this sub-section, we review the definition of ‘peasants and other people working in rural areas’ proposed by the Advisory Committee in its draft declaration, and identify agreed language that drafters might find useful when they define people engaged in small-scale fisheries and traditional hunting and herding activities, as well as rural workers.

A broad definition of peasants and landless people

Article 1(1) of the Advisory Committee’s draft declaration defines a peasant as a ‘man or woman of the land, who has a direct and special relationship with the land and nature through the production of food or other agricultural products. Peasants work the land themselves and rely above all on family labour and other small-scale forms of organizing labour. Peasants are traditionally embedded in their local communities and they take care of local landscapes and of agro-ecological systems.’

Article 1(2) states that the term can apply to ‘any person engaged in agriculture, cattle-raising, pastoralism, and handicrafts related to agriculture or a similar occupation in a rural area’, and includes indigenous people who work on the land.

Article 1(3) broadly defines ‘landless people’ in the following terms:

3. The term peasant also applies to the landless. According to the Food and Agriculture Organization of the United Nations’ definition, the following categories of people are considered to be landless and are likely to face difficulties in ensuring their livelihood:
 - (a) Agricultural labour households with little or no land;
 - (b) Non-agricultural households in rural areas, with little or no land, whose members are engaged in various activities such as fishing, making crafts for the local market, or providing services;
 - (c) Other rural households of pastoralists, nomads, peasants practising shifting cultivation, hunters and gatherers, and people with similar livelihoods.

The Advisory Committee’s definition is useful as a basis for negotiations. However, the final Declaration will need to distinguish between peasants, landless people, rural workers, people engaged in small-scale fisheries and people engaged in traditional hunting and herding activities, and define each group more sharply.

Defining small-scale fishers and fish workers

Elements of a definition of ‘small-scale fishers and fish workers’ can be found in the FAO’s Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (small-scale fisheries guidelines).¹²³

When they adopted these guidelines, states did not agree on a single definition of small-scale fisheries but underlined their special relevance to small-scale subsistence fisheries and vulnerable fisher people. The guidelines note that ‘it is important to ascertain which activities and operators are considered small-scale, and to identify vulnerable and marginalized groups needing greater attention’ (guideline 2.4). This text provides many elements that could be used to define small-scale fishers and fish workers in the UN Declaration on the rights of peasants and other people who work in rural areas. For example:

Small-scale fisheries contribute about half of global fish catches. When considering catches destined for direct human consumption, the share contributed by the subsector increases to two-thirds. Inland fisheries are particularly important in this respect and small-scale fisheries food production dominates the subsector. Small-scale fisheries employ more than 90 percent of the world’s capture fishers and fish workers, about half of whom are women. In addition to employment as full- or part-time fishers and fish workers, seasonal or occasional fishing and related activities provide vital supplements to the livelihoods of millions. These activities may be a recurrent sideline activity or become especially important in times of difficulty. Many small-scale fishers and fish workers are self-employed and engaged in directly providing food for their household and communities as well as working in commercial fishing, processing and marketing. Fishing and related activities often underpin the local economies in coastal, lakeshore and riparian communities and constitute an engine, generating multiplier effects in other sectors.

Small-scale fisheries represent a diverse and dynamic subsector, often characterized by seasonal migration. The precise characteristics of the subsector vary depending on the location; indeed, small-scale fisheries tend to be strongly anchored in local communities, reflecting often historic links to adjacent fishery resources, traditions and values, and supporting social cohesion. For many small-scale fishers and fish workers, fisheries represent a way of life and the subsector

¹²³ FAO, *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (small-scale fisheries guidelines)*, endorsed on 10 June 2014 by the FAO Committee on Fisheries.

embodies a diversity and cultural richness that is of global significance. Many small-scale fishers, fish workers and their communities – including vulnerable and marginalized groups – are directly dependent on access to fishery resources and land. Tenure rights to land in the coastal/waterfront area are critical for ensuring and facilitating access to the fishery, for accessory activities (including processing and marketing), and for housing and other livelihood support. The health of aquatic ecosystems and associated biodiversity are a fundamental basis for their livelihoods and for the subsector’s capacity to contribute to overall well-being.¹²⁴

The guidelines also define challenges that small-scale fishers and fish workers face in realizing their human rights. These elements too could assist drafters of the UN Declaration on the rights of peasants and other people working in rural areas.

Where poverty exists in small-scale fishing communities, it is of a multidimensional nature and is not only caused by low incomes but also due to factors that impede full enjoyment of human rights including civil, political, economic, social and cultural rights. Small-scale fishing communities are commonly located in remote areas and tend to have limited or disadvantaged access to markets, and may have poor access to health, education and other social services. Other characteristics include low levels of formal education, existence of ill health (often including above-average incidences of HIV/AIDS) and inadequate organizational structures. The opportunities available are limited, as small-scale fishing communities face a lack of alternative livelihoods, youth unemployment, unhealthy and unsafe working conditions, forced labour, and child labour. Pollution, environmental degradation, climate change impacts and natural and human-induced disasters add to the threats facing small-scale fishing communities. All these factors make it difficult for small-scale fishers and fish workers to make their voices heard, defend their human rights and tenure rights, and secure the sustainable use of the fishery resources on which they depend.¹²⁵

Defining people living from traditional hunting and herding activities

The Dana Declaration on Mobile Peoples and Conservation (adopted by a group of experts at an international conference held in Jordan on 3-7 April 2002) offers

¹²⁴ FAO, *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (small-scale fisheries guidelines)*, 2014, Preface, p. vi.

¹²⁵ *Ibid.*, Preface, p. vii.

a definition of mobile peoples, including people living from traditional hunting and herding activities.¹²⁶ It suggests that ‘the term mobile peoples covers indigenous and traditional peoples whose livelihoods depend on extensive common property use of natural resources, and who use mobility as a management strategy and as an element of cultural identity’.¹²⁷

Representatives of mobile peoples endorsed the Dana Declaration and created the World Alliance of Mobile Indigenous Peoples (WAMIP)¹²⁸ at the Fifth World Parks Congress convened by the International Union for Conservation of Nature (IUCN) in Durban in 2003.¹²⁹ At that event, IUCN’s members unanimously adopted the IUCN Mobile Indigenous Peoples’ Recommendation 5.27, including the Dana Declaration’s definition.¹³⁰

Elements of a definition of ‘pastoralist’ are contained in the Segovia Declaration of Nomadic and Transhumant Pastoralists, adopted in Segovia (Spain) in 2007 by almost two hundred nomadic and transhumant pastoralists representing some 50 tribes and peoples of Africa, America, Asia and Europe.¹³¹ The declaration defines migratory pastoralism as ‘an adaptive production strategy assuring the economic survival of hundreds of millions of people, as well as a way of life contributing to the sustainable management of natural resources and the conservation of nature’. Representatives of pastoralist peoples also agreed that ‘pastoral livelihoods are based on seasonal mobility and common property of natural resources (particularly rangelands), regulated by customary law and practices, customary institutions and leadership, all making use of local and indigenous knowledge’.

The definitions of mobile peoples in the Dana Declaration and IUCN recommendation 5.27 and of pastoralists in the Segovia Declaration cannot be considered agreed language; they nevertheless provide definitional elements that

126 According to Adriana Bessa, the Dana Declaration ‘was the outcome of a five-day conference in Wadi Dana Nature Reserve, in Jordan, organized by a group of scientists and professionals from diverse backgrounds and parts of the world proposing a new approach to environmental conservation in which the rights of nomadic populations – both indigenous and non-indigenous – would be recognized’. In A. Bessa, *Traditional Local Communities in International Law*, thesis submitted for assessment with a view to obtaining the degree of Doctor of Laws of the European University Institute, 2013, p. 89.

127 Dana Declaration on Mobile Peoples and Conservation, 2002. At: www.danadeclaration.org.

128 The World Alliance of Mobile Indigenous Peoples (WAMIP) describes itself as a global alliance of nomadic peoples and communities practising various forms of mobility as a livelihood strategy while conserving biological diversity and using natural resources in a sustainable way.

129 A. Bessa, *Traditional Local Communities in International Law*, thesis submitted for assessment with a view to obtaining the degree of Doctor of Laws of the European University Institute, 2013, p. 90.

130 IUCN Mobile Indigenous Peoples’ Recommendation 5.27, adopted at the fifth World Parks Congress in Durban in 2003. At: www.danadeclaration.org/pdf/recommendations27eng.pdf.

131 The Segovia Declaration, 2007. At: www.danadeclaration.org/pdf/SegoviaDeclaration.pdf.

could be helpful when defining the rights of people living from traditional hunting and herding activities in the UN Declaration on the rights of peasants and other people working in rural areas.

Defining rural workers

In the ILO Rural Workers' Organisations Convention No. 141 (1975), states have defined 'rural worker' in the following terms:

Article 2

1. For the purposes of this Convention, the term *rural workers* means any person engaged in agriculture, handicrafts or a related occupation in a rural area, whether as a wage earner or, subject to the provisions of paragraph 2 of this Article, as a self-employed person such as a tenant, sharecropper or small owner-occupier.
2. This Convention applies only to those tenants, sharecroppers or small owner-occupiers who derive their main income from agriculture, who work the land themselves, with the help only of their family or with the help of occasional outside labour and who do not--
 - (a) permanently employ workers; or
 - (b) employ a substantial number of seasonal workers; or
 - (c) have any land cultivated by sharecroppers or tenants.

This definition could be adopted to define rural workers in the UN Declaration on the rights of peasants and other people working in rural areas.

In conclusion, it is possible to elaborate an initial article of the Declaration that defines peasants and landless people in the manner proposed by the Advisory Committee, and adds agreed language, drawn from other international documents, to define other groups that work in rural areas, including rural workers, small-scale fishers and traditional hunters and herders.

State obligations

As noted, state obligations were not addressed in the Advisory Committee's draft declaration, an omission that was criticised during the first session of the

working group¹³² and informal consultations. State obligations are set out in several comparable UN instruments and should be included in the declaration that is being negotiated, to clarify what states should do and what peasants and other people working in rural areas can expect from state authorities. In this subsection, we suggest how state obligations could be defined in general terms, perhaps in an opening article. Later sub-sections of the In-Brief show how state obligations could be defined in articles that address substantive rights.

The definition of state obligations in international human rights law has evolved considerably since the ICCPR and the ICESCR were adopted in 1966. It is now generally accepted that states have a duty to respect, protect and fulfil all human rights, and guarantee the exercise of human rights without discrimination.¹³³

Obligations to respect, protect and fulfil

The CESCR and the Human Rights Committee have both made use of the respect, protect and fulfil typology,¹³⁴ to which states have also referred in other negotiations at the Human Rights Council.¹³⁵ States have also agreed to define their obligations using the respect, protect and fulfil (promote, facilitate, and

132 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§22, 28, 31 and 46.

133 See M. Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*, School of Human Rights Research Series, Vol. 18, Antwerp, Oxford, New York, Intersentia, 2003, pp. 13-14, 115-156, 397-400. For Manfred Nowak: 'The *obligation to respect human rights* refers to the duty to refrain from State intervention and applies equally to the rights to life, personal integrity and privacy as well as the rights to work, food, health and education. The same holds true for the *obligation of the State to protect human beings* against human rights abuses by private persons, and the *obligation to fulfil human rights* by means of positive legislative, administrative, judicial and practical measures necessary to ensure that the rights in question are implemented to the greatest extent possible.' M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, second revised edition, Kehl, N.P. Engel Verlag, 2005, pp. XX-XXI.

134 For the CESCR, '[T]he right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.' CESCR, General Comment N° 12: The right to adequate food (Art.11), UN doc. E/C.12/1999/5, 12 May 1999, §15.

135 During negotiation of the Optional Protocol to the ICESCR, for example, Portugal stated that 'economic, social and cultural rights, as with all human rights, entail obligations to respect, protect and fulfil. The obligation to respect requires States to refrain from acts that would serve to deprive individuals of their rights under ICESCR. The obligation to protect refers to the duty of States to ensure the recognition of the horizontal effect of the rights set forth in ICESCR and the obligation to fulfil requires the State to take steps towards the realization of economic, social and cultural rights.' Commission of Human Rights, *Report of the Secretary-General in response to Commission resolution 2003/18*, UN doc. E/CN.4/2004/WG.23/2, 17 November 2003, §15. Cuba has stated that states parties to the ICESCR are obliged to respect, protect and guarantee all the human rights set out in the ICESCR: 'Negligence in fulfilling any of these obligations constitutes a violation of human rights', *Ibid.*, §7.

provide) typology of the FAO's right to food guidelines (2004). The introduction to these declares:

States have obligations under relevant international instruments relevant to the progressive realization of the right to adequate food. Notably, States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have the obligation to respect, promote and protect and to take appropriate steps to achieve progressively the full realization of the right to adequate food. States Parties should respect existing access to adequate food by not taking any measures that result in preventing such access, and should protect the right of everyone to adequate food by taking steps so that enterprises and individuals do not deprive individuals of their access to adequate food. States Parties should promote policies intended to contribute to the progressive realization of people's right to adequate food by proactively engaging in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. States Parties should, to the extent that resources permit, establish and maintain safety nets or other assistance to protect those who are unable to provide for themselves.¹³⁶

The respect, protect and fulfil typology can also be used to define states' extraterritorial obligations.¹³⁷ During informal consultations in November and December 2014, some states and civil society organizations argued that the UN Declaration on the rights of peasants and other people working in rural areas should set out state obligations with respect to international cooperation and assistance. The UN Charter¹³⁸ and several international human rights instruments, including the ICESCR¹³⁹ and the Convention on the Rights of the Child,¹⁴⁰ refer to these obligations, and several general comments by the CESCR and the Committee on the rights of the child describe them in more detail.¹⁴¹ States have

136 FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, Preface and Introduction, §17.

137 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, adopted in September 2011 by 40 international law experts, including current and former UN Special Procedure mandate holders, and members of UN treaty and regional human rights bodies. At: www.etoconsortium.org.

138 See in particular articles 55 and 56.

139 See in particular articles 2(1), 11(1) and 11(2) of the ICESCR.

140 See in particular articles 4 and 24(4).

141 The CESCR for example has systematically defined states' extraterritorial obligations to respect, protect and fulfil the rights of the Covenant, since it published General Comment 12 on the right to adequate food (1999). The Committee on the rights of the child began defining states' extraterritorial obligations in its General Comment 5 (on general measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)), UN doc. CRC/GC/2003/5, 27 November 2003, §§7, 60-64.

also defined their extraterritorial obligation to protect tenure rights in terms that could be adopted by the UN Declaration.

States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.¹⁴²

In the same document, states defined extraterritorial obligations to respect and fulfil human rights in terms that could be adopted by drafters of the UN Declaration.¹⁴³

Obligation to guarantee the exercise of the rights of peasants and other people working in rural areas without any discrimination

This obligation is set out in article 2(2) of the ICESCR and article 2(1) of the ICCPR. It would be straightforward to include the same language in the UN Declaration.

Nevertheless, when defining this obligation in the UN Declaration, it will be important to make clear that states must take measures to prohibit *de jure* and *de*

142 UN Committee on World Food Security, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (tenure guidelines), 2012, guideline 3.2.

143 In tenure guideline 12.5, for example, states agreed that, when they 'invest or promote investments abroad, they should ensure that their conduct is consistent with the protection of legitimate tenure rights, the promotion of food security and their existing obligations (...)'. In tenure guideline 22.1, states agreed that they should cooperate 'in addressing tenure issues related to land, fisheries and forests which traverse national boundaries', and that 'where transboundary matters related to tenure rights arise (...) [States] should work together to protect such tenure rights, livelihoods and food security of the migrating populations while on their respective territories.' Tenure guideline 26.3 declares that '[d]evelopment partners, specialized agencies of the United Nations, and regional organizations are encouraged to support voluntary efforts by States to implement these Guidelines, including through South-South cooperation. Such support could include technical cooperation, financial assistance, institutional capacity development, knowledge sharing and exchange of experiences, assistance in developing national tenure policies and transfer of technology.'

facto discrimination against peasants and other people working in rural areas.¹⁴⁴ Examples of *de jure* discrimination include laws that impede peasants and other people working in rural areas from obtaining access to natural resources. With respect to *de facto* non-discrimination, states must take positive steps to guarantee equal enjoyment of rights to peasants and all other people working in rural areas.

Gender equality and the rights of rural women

As noted, the rights of rural women were not adequately protected in the Advisory Committee's draft declaration, even though 70% of the world's hungry are women and girls and the Committee itself concluded that gender discrimination is one of the main causes of rural women's extreme vulnerability.¹⁴⁵ Experts who participated in the working group's first session in July 2013 pointed out that women in agriculture face multiple forms of discrimination, and often lack access to land, extension services, and credit.¹⁴⁶ They pressed states to adopt a truly gender-sensitive approach.¹⁴⁷ The representatives of some states took a similar position during informal consultations in 2014. It will be important to promote gender equality and protect the rights of rural women in the final Declaration.

Gender equality

Equality between women and men is a fundamental principle of human rights, recognized in the ICCPR (1966), the ICESCR (1966) and CEDAW (1979). It will be straightforward to include this principle in the UN Declaration on the rights of peasants and other people working in rural areas.

When doing so, however, it will be important to describe corresponding state obligations. States should take measures to prohibit *de jure* and *de facto* discrimination against rural peasant women and other women working in rural

¹⁴⁴ The CESCR described this obligation in detail in its General Comment No. 20 (on non-discrimination in economic, social and cultural rights (art. 2(2)), UN doc. E/C.12/GC/20, 2 July 2009; the Human Rights Committee described the obligation in its General Comment No. 18 (on non-discrimination), 1989.

¹⁴⁵ Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas, UN doc. A/HRC/19/75, 24 February 2012, §§22-23, 29-30, 59-60.

¹⁴⁶ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§19 and 24.

¹⁴⁷ *Ibid.*, §§22 and 24.

areas.¹⁴⁸ Examples of *de jure* discrimination include laws that impede women from obtaining access to productive resources, including land, or an adequate wage. To ensure that women can exercise these and other rights on an equal footing with men, governments must also take steps to prevent *de facto* discrimination.

The rights of rural women

Article 14 of CEDAW sets out the rights of rural women in language that could be adopted by drafters of the UN Declaration on the rights of peasants and other people working in rural areas.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

148 The Human Rights Committee discussed *de jure* and *de facto* discrimination against women in its General Comment No. 28, Article 3 (The equality of rights between men and women), UN doc. HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000. The CESCR discussed *de jure* and *de facto* discrimination against women in its General Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the ICESCR), UN doc. E/C.12/2005/4, 11 August 2005.

- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The provisions of this article could be adopted in a specific article on the rights of rural women in the UN Declaration on the rights of peasants and other people working in rural areas. They could also provide elements of content for articles on specific rights (such as the rights to water and sanitation, housing, means of production, education and training, health, social security, and natural resources including land).¹⁴⁹

Civil and political rights

Civil and political rights are well protected in international human rights law, but peasants and other people working in rural areas nevertheless suffer severe discrimination and many violations of these rights, including the right to life and physical security, access to justice, and the freedoms of expression, assembly and association.

In its 2012 final study, the Advisory Committee found that repression and criminalization of movements protecting the rights of peasants and other people working in rural areas are among the main reasons why they are vulnerable and suffer discrimination.¹⁵⁰ In 2007 and 2012, the Special Representative of the Secretary General on human rights defenders (subsequently the Special Rapporteur on human rights defenders) concluded that defenders working on land rights and natural resources were often arbitrarily arrested or killed, or

¹⁴⁹ The CEDAW Committee may adopt a general recommendation on the rights of rural women in 2015, which could also assist negotiators.

¹⁵⁰ Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §§41-42.

criminalized, and were the among the groups most at risk of being killed because of their activities in defence of human rights.¹⁵¹

During the working group's first session in 2013, several panellists stressed that peasants and other people working in rural areas often face discrimination when they seek access to the justice system. They underlined that 'justice and the rule of law were often inaccessible for peasants and other people working in rural areas (and that this) situation impeded their enjoyment of their rights'.¹⁵² To address this problem, the example was given of Mexico which has created specialized agricultural courts.¹⁵³ During informal consultations in 2014, states and civil society organizations confirmed the need to protect access to justice for peasants and other people working in rural areas.

During the working group's first session, panellists also underlined that the Declaration must protect the freedoms of expression, assembly and association, to ensure that peasants and other people working in rural areas can meaningfully participate in decision-making, and to protect them against attack when they defend their rights (see below on the rights of rural workers).¹⁵⁴

The Committee on World Food Security guidelines on land tenure also recognized that the civil and political rights of peasants and other people working in rural areas need protection. Guideline 4.8 declares that 'States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests'.¹⁵⁵

The UN Declaration should affirm these rights in a manner that addresses the particular needs and vulnerabilities of peasants and others working in rural areas. Such an approach would follow UN practice: in the last 40 years declarations and

151 Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, UN doc. A/HRC/4/37, 24 January 2007, §§38-47; Report of the Special Rapporteur on human rights defenders, Margaret Sekaggya, UN doc. A/HRC/19/55, 21 December 2011, §§123-126. See also OMCT and FIDH, "We are not afraid" *Land rights defenders: attacked for confronting unbridled development*, Observatory for the Protection of Human Rights Defenders, Annual Report 2014, Paris, 2014. At: https://www.fidh.org/IMG/pdf/obs_2014-uk-web.pdf.

152 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §20.

153 *Ibid.*, §20.

154 *Ibid.*, §§21 and 44.

155 UN Committee on World Food Security, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (tenure guidelines), 2012, guideline 4.8.

conventions adopted by the UN to protect specific categories of people have spelled out the civil and political rights of such groups, often in more detail than the ICCPR, in order to address their specific needs.¹⁵⁶ By so doing, they complement and extend the ICCPR.

How this might be done can be illustrated by looking at the way in which the FAO's Small-scale Fisheries guidelines define the right to access justice and corresponding state obligations.

- 5.11 States should provide small-scale fishing communities and individuals, including vulnerable and marginalized people, access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights in accordance with national legislation, including alternative means of resolving such disputes, and should provide effective remedies, which may include an entitlement to appeal, as appropriate. Such remedies should be promptly enforced in accordance with national legislation and may include restitution, indemnity, just compensation and reparation.

The UN Committee on World Food Security's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security define state obligations in relation to the same right.

- 4.9 States should provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies, which may include a right of appeal, as appropriate. Such remedies should be promptly enforced and may include restitution, indemnity, compensation and reparation. States should strive to ensure that vulnerable and marginalized persons have access to such means, in line with paragraphs 6.6 and 21.6. States should ensure that any person whose human rights

¹⁵⁶ For example, articles 7, 8, and 15 of CEDAW recognize women's rights to political participation, a nationality, and equality before the law. Articles 7, 13, 14, 24 and 40 of the Convention on the Rights of the Child recognize children's rights to a nationality, freedom of expression, freedom of thought, conscience and religion, and the right to fair trial. Articles 12, 13, 16, 18 and 25 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families recognize migrant workers' rights to freedom of thought, conscience and religion, freedom of expression and opinion, liberty and security of the person, and a fair trial. Articles 5, 6, 8, 9, and 12 of the Declaration on Human Rights Defenders recognize human rights defenders' rights to associate, to information, to freedom of expression and opinion, to political participation, to a fair trial, and access to justice. Articles 12, 13, 14, 18, 21, 23, and 29 of the Convention on the Rights of Persons with Disabilities recognize the rights of persons with disabilities to equal recognition before the law, access to justice, liberty of movement, a nationality, freedom of expression and opinion, a family, and political participation.

are violated in the context of tenure has access to such means of dispute resolution and remedies.

- 6.6 States and other parties should consider additional measures to support vulnerable or marginalized groups who could not otherwise access administrative and judicial services. These measures should include legal support, such as affordable legal aid, and may also include the provision of services of paralegals or parasurveyors, and mobile services for remote communities and mobile indigenous peoples.
- 21.6 In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. Judicial authorities and other bodies should ensure that their staff have the necessary skills and competencies to provide such services.

Economic, social and cultural rights

Economic, social and cultural rights are also well protected in international human rights law. Yet almost 50 years after the adoption of the ICESCR, 70% of those living in extreme poverty¹⁵⁷ and 80% of the world's hungry are peasants and other people working in rural areas,¹⁵⁸ most of whom are not effectively protected by ILO conventions because they do not work in the formal sector.¹⁵⁹ Hundreds of millions of peasants and other people working in rural areas are deprived of or cannot enjoy their economic, social and cultural rights.

In its draft declaration, the Advisory Committee proposed to respond by affirming the rights of peasants and others who work in rural areas to an adequate standard of living (art. 3.3), food (arts. 3.4 and 3.5), water and sanitation (art. 3.6), housing (art. 3.7), education (art. 3.8), and health (arts. 3.9 and 3.10). These clauses have

¹⁵⁷ International Fund for Agriculture and Development (IFAD), *Rural Poverty Report 2011: Overview*, Rome, IFAD, 2010, p. 3.

¹⁵⁸ UN Millennium Project, Task Force on Hunger, *Halving hunger: It can be done: Summary version*, New York, UNDP, 2005, pp. 4-6.

¹⁵⁹ See ILO, *The Informal Economy and Decent Work: A Policy Resource Guide*, ILO, Geneva, 2013. At: www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_212689.pdf.

not been seriously contested since the beginning of negotiations.¹⁶⁰ However, as noted, panellists and some states have said that the Declaration should include rights to social security and to a decent income.¹⁶¹

The assertion of economic, social and cultural rights in the UN Declaration, in a manner that addresses the particular needs and vulnerabilities of peasants and others who work in rural areas, will reflect UN practice: all declarations and conventions adopted by the UN in the last 40 years to protect specific categories of people have spelled out the economic, social and cultural rights of such groups, often in more detail than the ICESCR, in order to address their specific needs.¹⁶²

In the sub-section on freedom to determine prices or the right to a decent income, we indicated how the right to a decent income might be integrated in the UN Declaration. Below, we identify elements that could help drafters to frame the rights of peasants and others who work in rural areas to social security, health, and cultural rights.

In the ILO Convention No. 188 (2007), on Work in Fishing, it was agreed that states parties 'shall ensure that fishers ordinarily resident in its territory, and their dependents to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory' (art. 34). It was also agreed that states parties will cooperate through bilateral or multilateral arrangements 'to achieve progressively comprehensive social security protection for fishers, taking into account the principle of equality of

160 During the working group's first session (July 2013), '[s]ome delegations and other participants noted that some rights had already been established in international treaties and therefore questioned why they had been included in the draft declaration, while others noted that the reaffirmation of existing rights and the recognition of new rights could be found in other human rights declarations and instruments and was common practice'. Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §35. However, the inclusion of rights that are already recognized in international human rights law was not criticized during the expert seminar in April 2014, or during informal consultations.

161 *Ibid.*, §§16, 23, 32, 38, 40 and 46.

162 For example, articles 10 to 12 of CEDAW recognize women's rights to education, work, and health. Articles 27, 28 and 29 of the Convention on the Rights of the Child recognize children's rights to health, an adequate standard of living, and education. Articles 26 and 27 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families recognize migrant workers' rights to work, social security, and trade unions rights. Articles 2 and 3 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities recognize these persons' cultural rights. Articles 24, 25, 27, 28 and 30 of the Convention on the Rights of Persons with Disabilities recognize the rights of persons with disabilities to education, health, housing, work, an adequate standard of living, and cultural rights. Articles 8 to 36 of the Declaration on the Rights of Indigenous Peoples recognize indigenous peoples' rights to culture, an adequate standard of living, health, and education.

treatment irrespective of nationality; and (...) to ensure the maintenance of social security rights which have been acquired or are in the course of acquisition by all fishers regardless of residence' (art. 36). In the FAO Committee's guidelines for small-scale fisheries, states also refer to the right to social security in terms that could be adopted by the UN Declaration: 'States should promote social security protection for workers in small-scale fisheries. They should take into account the characteristics of small-scale fisheries and apply security schemes to the entire value chain'.¹⁶³ In its general comment no. 19 on the right to social security, in addition, the CESCR has said that 'States parties should (...) consider schemes that provide social protection to individuals belonging to disadvantaged and marginalized groups, for example crop or natural disaster insurance for small farmers or livelihood protection for self-employed persons in the informal economy'.¹⁶⁴

The right to health of peasants and other people working in rural areas should include a right to be protected against the negative effects of agrochemicals. Article 3.10 of the Advisory Committee's draft declaration stated that peasants 'have the right to live a healthy life, and not be affected by the contamination of agrochemicals, such as chemical pesticides and fertilizers'. Civil society organizations, including La Via Campesina, CETIM and FIMARC, supported this position during informal consultations in 2014. Agreed language that would help drafters to define state obligations may be found in the Stockholm Convention on Persistent Organic Pollutants (2001, amended 2009). This convention, to which more than 170 states are party, aims to protect human health and the environment from persistent organic pollutants.¹⁶⁵

Finally, the declaration should affirm the cultural right of peasants and other people working in rural areas to their traditional knowledge. This right is recognized in article 31 of the UN Declaration on the rights of indigenous peoples.¹⁶⁶

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines,

163 FAO, *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (small-scale fisheries guidelines)*, 2014, guideline 6.3.

164 CESCR, General Comment no. 19 (on the right to social security), UN doc. E/C.12/GC/19, 4 February 2008, §49. Footnote omitted.

165 See the website of the Stockholm Convention on Persistent Organic Pollutants. At: <http://chm.pops.int>.

166 See also CESCR, General Comment 21 (on cultural rights), UN doc. E/C.12/GC/21, 21 December 2009, §§3, 37 and 50(c).

knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

The language of this article might assist drafters of the UN Declaration. The right of peasants and other people working in rural areas to choose to maintain, control, protect and develop their traditional knowledge could be recognized, alongside the corresponding obligation of states to take effective measures to recognize and protect the right. (See above, ‘Right to reject or right to choose and to be protected?’)

It is relevant to note that the right of peasants and other people working in rural areas to traditional knowledge has been recognized in several international instruments that protect biological diversity.¹⁶⁷ (See below, ‘The rights to seeds and biological diversity’.)

The right to a clean and healthy environment

As noted, some provisions of article 11 of the Advisory Committee’s draft declaration on the ‘right to preserve the environment’ were not based on agreed language. Article 11(3), for example, proposed a ‘right to reject all forms of exploitation which cause environmental damage’. The draft was criticized on these grounds during the working group’s first session in July 2013,¹⁶⁸ but some delegations also supported the inclusion of the right to a clean and healthy environment in the UN Declaration.¹⁶⁹ One feasible compromise would be to use agreed language to affirm the right of peasants and other people working in rural areas to a clean and healthy environment, supported by state obligations to protect it.

¹⁶⁷ These instruments include the 1992 UN Convention on Biological Diversity (art. 10(c)), the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture (art. 9), and the 2010 Nagoya Protocol on Access to Genetic Resources and Benefit-sharing (art. 5.5).

¹⁶⁸ See above, ‘Right to reject or right to choose and to be protected?’.

¹⁶⁹ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §43. One delegation noted that ‘the importance of environmental protection had already been recognized in many national constitutions, in the UN Declaration on the Rights of Indigenous Peoples and in the outcome document of the United Nations Conference on Sustainable Development (’). *Ibid.*

The right to a (clean and) healthy environment has been recognized in regional human rights treaties and more than 90 national constitutions.¹⁷⁰ Associated state obligations have been set out in several international instruments, including the 2007 Declaration on the Rights of Indigenous Peoples and the FAO's right to food guidelines. In defining the right to a clean and healthy environment of indigenous peoples, article 29 of the UN Declaration states:

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

In the FAO right to food guidelines, states recognize that they 'should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry'.¹⁷¹

Drafters of the UN Declaration on the rights of peasants and other people working in rural areas could adopt this agreed language to define the right to a clean and healthy environment and associated state obligations.

It is also worth noting that in his report to the Human Rights Council in March 2014, the UN Independent Expert on human rights and the environment, John H. Knox, set out states' obligations under international and regional human rights instruments

¹⁷⁰ See Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, UN doc. A/HRC/22/43, 24 December 2012, §§12-27.

¹⁷¹ FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, 2004, guideline 8.13.

relevant to the right to a clean and healthy environment.¹⁷² His report lists the following procedural obligations: to assess environmental impacts and make environmental information public; to facilitate public participation in environmental decision-making, including by protecting the rights to expression and association; and to provide access to remedies for harm.¹⁷³ It lists the following substantive obligations: to adopt and implement legal frameworks to protect against environmental harms that might affect enjoyment of human rights; to regulate private actors to protect against such environmental harm; and to prevent transboundary environmental harms.¹⁷⁴ In addition, states have obligations to protect individuals and groups in vulnerable situations, notably women, children and indigenous peoples.¹⁷⁵

The rights of rural workers under the ILO instruments

The rights of rural workers were not addressed comprehensively by the Advisory Committee. In particular, wage earners in rural areas (see the definition of rural workers in ILO Convention No. 141, above) were entirely missing from the Advisory Committee's draft, despite the fact that it had noted in its final report that agricultural workers are among the most vulnerable rural populations,¹⁷⁶ and that the absence of a minimum wage and social protection are among the main reasons for their vulnerability and the discrimination they suffer.¹⁷⁷ In March 2010, the UN Special Rapporteur on the right to food, then Olivier De Schutter, described the main challenges faced by more than 450 million waged agricultural workers across the globe, representing 40% of the agricultural workforce.¹⁷⁸

172 Human Rights Council, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping report, UN doc. A/HRC/25/53, 30 December 2013. See also, Draft principles on human rights and the environment, annexed to the final report prepared by Fatma Zohra Ksentini, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on human rights and the environment, UN doc. E/CN.4/Sub.2/1994/9, 6 July 1994, Annex I.

173 Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping report, UN doc. A/HRC/25/53, 30 December 2013, §§29-43.

174 *Ibid.*, §§44-68.

175 *Ibid.*, §§69-78.

176 Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §§15-17.

177 *Ibid.*, §§38-40.

178 Report of the Special Rapporteur on the right to food, Olivier De Schutter (on agribusiness and the right to food), UN doc. A/HRC/13/33, 22 December 2009, §10.

Fundamental rights at work are frequently violated in the agricultural sector. Less than 20 per cent of agricultural workers have access to basic social protection and about 70 per cent of child labour in the world is in agriculture, representing approximately 132 million girls and boys aged 5 to 14. Bonded labour practices are perpetuated from one generation to the next. Since much of waged employment is in the informal sector, national labour legislation is unable to ensure the right to a minimum wage or to protect women from discrimination.¹⁷⁹

In the same report, he listed the most important ILO conventions and recommendations protecting the rights of agricultural workers, and identified two main challenges to their implementation: guaranteeing the right to a living wage, and monitoring compliance with labour legislation.¹⁸⁰ He argued that collective bargaining is crucial for agricultural workers, 'both because knowledge and enforcement of the law tend to be weak in rural areas and because labour legislation frequently treats the agricultural sector differently from other sectors with regard to issues such as working time, overtime pay, or leave'.¹⁸¹

This analysis was confirmed by ILO and IUF representatives at the Geneva Academy's expert seminar in April 2014. They emphasized the importance of protecting freedom of association and workplace health and safety in rural areas, and realizing children's right to education in order to combat child labour. They also stressed that the UN Declaration should take care not to undermine language on rural workers' rights that had already been agreed. It was suggested that drafters of the UN Declaration could draw on ILO instruments to frame the rights of rural workers and corresponding state obligations.

For the Declaration on the rights of peasants and other people working in rural areas, the most relevant ILO instruments include the eight ILO core conventions,¹⁸² and Convention No. 141 (1975) on Rural Workers' Organisations,¹⁸³ which affirms that national policies on rural development should aim 'to facilitate the establishment and growth, on a voluntary basis, of strong and independent organisations of

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, §§14-20.

¹⁸¹ *Ibid.*, §11.

¹⁸² The eight ILO core conventions are: Convention No. 29 (1930) on Forced Labour; Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise; Convention No. 98 (1949) on the Right to Organise and Collective Bargaining; Convention No. 100 (1951) on Equal Remuneration; Convention No. 105 (1957) on Abolition of Forced Labour; Convention No. 111 (1958) on Discrimination (Employment and Occupation); Convention No. 138 (1973) on Minimum Age; and Convention No. 182 (1999) on the Worst Forms of Child Labour.

¹⁸³ 40 states are party to ILO Convention No. 141 (as of 12 January 2015). The texts and ratification status of ILO conventions can be found at www.ilo.org/dyn/normlex/en.

rural workers as an effective means of ensuring the participation of rural workers (...) in economic and social development and in the benefits resulting therefrom' (art. 4). A number of conventions also specifically protect agricultural workers: Convention No. 11 (1921) on the Rights of Association and Combination of Agricultural Workers,¹⁸⁴ which affirms that states will secure for all those engaged in agriculture the same rights of association and combination as industrial workers (art. 1); Convention No. 99 (1951) on Minimum Wage-Fixing Machinery in Agriculture;¹⁸⁵ Convention No. 129 (1969) on Labour Inspection (Agriculture);¹⁸⁶ and Convention No. 184 (2001) on Safety and Health in Agriculture.¹⁸⁷ Convention No. 184 describes measures that should be taken in relation to chemicals, the rights of women workers, and coverage against occupational health and disease.

ILO recommendations that are relevant to the rights of agricultural workers include Recommendation No. 17 (1921) on Social Insurance (Agriculture), and Recommendation No. 192 (2001) on Safety and Health in Agriculture, which sets out measures that states should take to implement Convention No. 184 (2001). They include the establishment of a national system of occupational safety and health surveillance,¹⁸⁸ and measures in relation to the use of chemicals in agriculture.¹⁸⁹

184 More than 120 states are party to ILO Convention No. 11 (as of 12 January 2015).

185 More than 50 states are party to ILO Convention No. 99 (as of 12 January 2015).

186 More than 50 states are party to ILO Convention No. 129 (as of 12 January 2015).

187 14 states are party to ILO Convention No. 184 (as of 12 January 2015).

188 Recommendation No. 192 (para. 4) affirms that states should: (1) 'establish a national system for occupational safety and health surveillance which should include both workers' health surveillance and the surveillance of the working environment' and '(2) [t]his system should include the necessary risk assessment and, where appropriate, preventive and control measures with respect to, inter alia: (a) hazardous chemicals and waste; (b) toxic, infectious or allergenic biological agents and waste; (c) irritant or toxic vapours; (d) hazardous dusts; (e) carcinogenic substances or agents; (f) noise and vibration; (g) extreme temperatures; (h) solar ultraviolet radiations; (i) transmissible animal diseases; (j) contact with wild or poisonous animals; (k) the use of machinery and equipment, including personal protective equipment; (l) the manual handling or transport of loads; (m) intense or sustained physical and mental efforts, work-related stress and inadequate working postures; and (n) risks from new technologies'.

189 Recommendation No. 192 (para. 7) affirms that 'preventive and protective measures to be taken at the level of the undertaking should include: (a) adequate personal protective equipment and clothing, and washing facilities for those using chemicals and for the maintenance and cleaning of personal protective and application equipment, at no cost to the worker; (b) spraying and post-spraying precautions in areas treated with chemicals, including measures to prevent pollution of food, drinking, washing and irrigation water sources; (c) handling and disposal of hazardous chemicals which are no longer required, and containers which have been emptied but which may contain residues of hazardous chemicals, in a manner which eliminates or minimizes the risk to safety and health and to the environment, in accordance with national law and practice; (d) keeping a register of the application of pesticides used in agriculture; and (e) training of agricultural workers on a continuing basis to include, as appropriate, training in the practices and procedures or about hazards and on the precautions to be followed in connection with the use of chemicals at work'.

It is worth noting that the definition of agriculture in ILO Convention No. 184 covers ‘agricultural and forestry activities carried out in agricultural undertakings including crop production, forestry activities, animal husbandry and insect raising, the primary processing of agricultural and animal products by or on behalf of the operator of the undertaking as well as the use and maintenance of machinery, equipment, appliances, tools, and agricultural installations, including any process, storage, operation or transportation in an agricultural undertaking, which are directly related to agricultural production’ (art. 1). For the purpose of the Convention, ‘agriculture’ does not cover: (a) subsistence farming; (b) industrial processes that use agricultural products as raw material and related services; and (c) the industrial exploitation of forests (art. 2).

Other relevant ILO instruments include Convention No. 188 (2007) on Work in Fishing, which includes a detailed right to social security for fishers (see ‘Economic, social and cultural rights’ above), and Convention No. 110 (1958) on Conditions of Employment of Plantation Workers.¹⁹⁰

As many panellists at the working group’s first session underlined, one merit of the UN Declaration is that it will define and protect the rights of peasants in terms that are consistent with the rights of agricultural workers.¹⁹¹ In other words, the UN Declaration should affirm, when relevant, that peasants and other people working in rural areas will enjoy the rights that ILO instruments accord agricultural and fish workers (including freedom of association, collective bargaining, decent income, prohibition of forced labour and child labour, working conditions, including safety and health at work). Corresponding state obligations should be defined, including measures that states should take to ensure that labour inspections adequately protect the rights of peasants and other people working in rural areas.

To illustrate how this might be done, FAO’s small-scale fisheries guidelines declare that:

- 6.6 States should promote decent work for all small-scale fisheries workers, including both the formal and informal sectors.
- 6.12 States should address occupational health issues and unfair working conditions of all small-scale fishers and fish workers by ensuring that the necessary legislation is in place and is implemented in accordance with national legislation and international human rights standards and

¹⁹⁰ 10 states are party to ILO Convention No. 110 (as of 12 January 2015).

¹⁹¹ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §22.

international instruments to which a State is a contracting party, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and relevant conventions of the International Labour Organization (ILO). All parties should strive to ensure that occupational health and safety is an integral part of fisheries management and development initiatives.

- 6.13 States should eradicate forced labour, prevent debt-bondage of women, men and children, and adopt effective measures to protect fishers and fish workers, including migrants, with a view to the complete elimination of forced labour in fisheries, including small-scale fisheries.

The rights to land, fisheries and forests under FAO and other instruments

In its 2012 final study, the Advisory Committee identified a range of threats to the land and other natural resources on which peasants and other people working in rural areas depend, and concluded that access to these resources needs additional protection under international human rights law.¹⁹² The former Special Rapporteur on the right to food, Olivier De Schutter, devoted several reports to this question¹⁹³ and reached the same conclusion.¹⁹⁴

In the working group's first session in 2013 and subsequent informal consultations in 2014, several states acknowledged that the rights to land and other natural resources are crucial for peasants and humankind.¹⁹⁵ At the same time, as we have seen, other states did not want the UN Declaration to recognize new rights, and included the rights to land and territory in this category.¹⁹⁶

192 Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §§25-28, 69-74.

193 See Report of the Special Rapporteur on the right to food, Olivier De Schutter (on large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge), UN doc. A/HRC/13/33/Add.2, 28 December 2009; Report of the Special Rapporteur on the right to food, Olivier De Schutter (on access to land and security of tenure and the right to food), UN doc. A/65/281, 11 August 2011; Report of the Special Rapporteur on the right to food, Olivier De Schutter (on fisheries and the right to food), UN doc. A/67/268, 8 August 2012.

194 Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §70.

195 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §36.

196 *Ibid.*, §29; see also §35.

As elsewhere, a compromise will be easier to find if drafters of the Declaration can employ agreed language to define the rights to land, fisheries and forests of peasants and other people working in rural areas. As it happens, through the FAO and the Committee on World Food Security, states have adopted several international soft law instruments in the last 10 years that protect the rights to land, fisheries and forests. These instruments demonstrate that these rights are no longer new and may provide the elements of agreed language needed.

For the UN Declaration on the rights of peasants and other people working in rural areas, the most relevant of these instruments are the FAO's right to food guidelines (2004), the Committee on World Food Security's tenure guidelines (2012), and the FAO's small-scale fisheries guidelines (2014). The approach these guidelines adopt to the rights to land, territory and other natural resources (including fisheries and forests) is close to the approach of La Via Campesina and the Advisory Committee's draft declaration, and departs from models that rely on individual property title to secure tenure.¹⁹⁷

Right to food guidelines (2004)

The FAO's right to food guidelines, notably guideline 8 on access to resources and to means of production, define states' obligations to respect, protect and fulfil the rights to land, forests and fisheries, and could assist drafters of the UN Declaration. Guidelines 8.1 and 8.6 state:

States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources.

¹⁹⁷ On the right to property, see C. Golay and I. Cismas, *Legal Opinion: The Right to Property from a Human Rights Perspective*, Montreal, Rights and Democracy, 2010. The UN Special Rapporteur on the right to food, Olivier De Schutter, has argued that an approach based on private property and market-led land reform is not the best option for indigenous people, smallholders, herders, pastoralists and fisherfolk; instead, states should affirm the right to land and take steps to operationalize it, for example by recognizing different categories of land use, including communal land and commons. See Report of the Special Rapporteur on the right to food, Olivier De Schutter (on access to land and security of tenure and the right to food), UN doc. A/65/281, 11 August 2011, §§39-43.

[...] States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies.¹⁹⁸

Tenure guidelines (2012)

The UN Committee on World Food Security adopted the tenure guidelines by consensus in May 2012,¹⁹⁹ after several years of negotiation that involved states, civil society organizations, social movements, and the private sector, as well as the UN Special Rapporteur on the right to food.²⁰⁰ Their main objective is to promote secure tenure rights and equitable access to land, fisheries and forests in order to reduce poverty and realize the right to food. With this in mind, they emphasize the importance of identifying, recording and respecting legitimate tenure rights, whether formally recorded or not, and protecting persons with tenure rights from forced eviction (guidelines 3.1.1 and 3.1.2). They affirm that smallholders and indigenous peoples and other communities with customary tenure systems should have special protection (guideline 7.3), and that publicly-owned lands, fisheries and forests that are collectively used and managed (such as communal land and 'commons'), including the resources themselves and their related systems of collective use and management, should also be recognized and protected (guideline 8.3).

With respect to investment in agriculture, the tenure guidelines recommend that states take steps to protect legitimate tenure rights, human rights, livelihoods, food security, and the environment (guideline 12.6). They affirm that redistributive reforms can facilitate broad and equitable access to land and inclusive rural development (guideline 15.1), and that states should cooperate in resolving transboundary issues, including by protecting rangelands, the seasonal migration routes of pastoralists, and the fishing grounds of small-scale fishers when these lie across international boundaries (guidelines 22.1 and 22.2).

Negotiators could draw on agreed language in the guidelines to define the rights to land, fisheries and forests in the UN Declaration on the rights of peasants and other people working in rural areas.

198 FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (right to food guidelines), 2004, guidelines 8.1, 8.6.

199 UN Committee on World Food Security, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (tenure guidelines), 2012.

200 See P Seufert, 'The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests', *Globalizations*, 10(1), pp. 181-186; S. Monsalve Suarez, 'Land: Not For Sale!', *Right to Food and Nutrition Watch*, 2010, pp. 33-37. See also C. Golay and I. Biglino, 'Human Rights Responses to Land Grabbing: a right to food perspective', 34 *Third World Quarterly*, 2013, pp. 1630-1650.

In addition, the tenure guidelines adopt the respect, protect and fulfil typology to define general principles with respect to state obligations and tenure rights over land, fisheries and forests. The wording of these general principles could also assist drafters to frame the rights to land, forests and fisheries and corresponding state obligations in the UN Declaration.

3A General Principles

1.1 States should:

1. Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
2. Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.
3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.

Small-scale fisheries guidelines (2014)

To promote and protect the rights of small-scale fishers and fish workers, the FAO Committee on Fisheries adopted small-scale fisheries guidelines in June 2014,²⁰¹ after protracted negotiations involving states, representatives of small-scale fishing communities, civil society organizations, regional organizations, and other stakeholders.²⁰²

The guidelines state that several 'factors make it difficult for small-scale fishers and fish workers to make their voices heard, defend their human rights and tenure rights, and secure the sustainable use of the fishery resources on which they depend' (Preface, page 5), and that '[s]mall-scale fishing communities need to have secure tenure rights to the resources that form the basis for their social and cultural well-being, their livelihoods and their sustainable development' (guideline

²⁰¹ FAO, *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (small-scale fisheries guidelines)*, 2014.

²⁰² *Ibid.*, Preamble, page 5.

5.1, footnote omitted). They then define states' obligations in relation to these rights:

- 5.3 States, in accordance with their legislation, should ensure that small-scale fishers, fish workers and their communities have secure, equitable, and socially and culturally appropriate tenure rights to fishery resources (marine and inland) and small-scale fishing areas and adjacent land, with a special attention paid to women with respect to tenure rights.
- 5.4 (...) States should take appropriate measures to identify, record and respect legitimate tenure right holders and their rights. Local norms and practices, as well as customary or otherwise preferential access to fishery resources and land by small-scale fishing communities including indigenous peoples and ethnic minorities, should be recognized, respected and protected in ways that are consistent with international human rights law.
- 5.8 States should adopt measures to facilitate equitable access to fishery resources for small-scale fishing communities, including, as appropriate, redistributive reform [...].
- 5.9 States should ensure that small-scale fishing communities are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed.
- 5.10 States and other parties should, prior to the implementation of large-scale development projects that might impact small-scale fishing communities, consider the social, economic and environmental impacts through impact studies, and hold effective and meaningful consultations with these communities, in accordance with national legislation.
- 5.12 States should strive to restore access to traditional fishing grounds and coastal lands to small-scale fishing communities that have been displaced by natural disasters and/or armed conflict taking into consideration the sustainability of fisheries resources. States should establish mechanisms to support fishing communities affected by grave human rights violations to rebuild their lives and livelihoods. Such steps should include the elimination of any form of discrimination against women in tenure practices in case of natural disasters and/or armed conflict.
- 5.19 Where transboundary and other similar issues exist, e.g. shared waters and fishery resources, States should work together to ensure that the tenure rights of small-scale fishing communities that are granted are protected.

Drafters of the UN Declaration could take many of these rights and state obligations, and much of this language, to frame the tenure rights of small-scale fishers.²⁰³

The rights to seeds and biological diversity under FAO and other instruments

In its 2012 final study, the Advisory Committee listed several threats with respect to seeds and biological diversity that peasants and other people working in rural areas face, and concluded that access to these needs stronger protection under international human rights law.²⁰⁴ The former Special Rapporteur on the right to food, Olivier De Schutter, devoted a whole report to this issue in 2009²⁰⁵ and reached the same conclusion.²⁰⁶

During the working group's first session in July 2013, some states acknowledged that recognition of the right to seeds (proposed in the Advisory Committee's draft declaration) was crucial for peasants and humankind.²⁰⁷ Panellists underlined that 'peasants did not have access to the seeds they preferred and that Governments should implement policies to support farmers' seed systems'.²⁰⁸ A number of states, civil society organizations and social movements made the same points

203 In his report on the right to food and fisheries, Olivier De Schutter noted that: '[a]ccess rights of artisanal and small-scale fishing communities — more than 90 per cent of whom are in developing countries — are protected under various instruments. Under article 5(i) of the 1995 Fish Stocks Agreement, States are required to take into account the interests of artisanal and subsistence fishers. In article 6.18 of the Code of Conduct for Responsible Fisheries, there is recognition of the important contributions of artisanal and small-scale fisheries to employment, income and food security, with States recommended to appropriately protect the rights of fishers and fish workers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.' Report of the Special Rapporteur on the right to food, Olivier De Schutter (on fisheries and the right to food), UN doc. A/67/268, 8 August 2012, §53.

204 Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §§36-37, 69-74.

205 See Report of the Special Rapporteur on the right to food, Olivier De Schutter (on seed policies and the right to food), UN doc. A/64/170, 23 July 2009.

206 Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §70.

207 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §36.

208 *Ibid.*, §25.

during informal consultations in 2014. Like the panellists and some delegations during the working group first's session, civil society organizations and social movement also insisted on the need to recognize the right to biological diversity.²⁰⁹ At the same time, some states did not wish the UN Declaration to recognize new rights,²¹⁰ and included the rights to seeds and biological diversity in this category. They also criticised the wording of the draft declaration, notably references to the 'right to reject' in articles that addressed access to seeds and biological diversity.²¹¹

As we have seen, a compromise might be found by using agreed language and replacing the 'right to reject' by a 'right to choose and to be protected'. (See above, 'Right to reject or right to choose and to be protected?'.) During the working group's first session in 2013, some delegations strongly supported peasants' right to choose to grow, develop, exchange, give or sell their own seeds.²¹² During the expert seminar in April 2014, discussing the right to seeds and intellectual property rights, proposals were made to replace the 'right to reject' with a 'right to choose and to be protected'.

The rights to seeds and biological diversity have been recognized outside the human rights system. The most important international treaty that protects the rights of peasants to seeds is the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), adopted by consensus at the FAO in 2001. More than 130 states are party to it.²¹³ The treaty establishes a multilateral system to facilitate access to seeds and planting material and to share their benefits in a fair and equitable way. It complements the UN Convention on Biological Diversity²¹⁴ and its provisions protecting farmers' rights have been described as vital to the preservation of agro-biodiversity.²¹⁵ Drafters of the UN Declaration on the rights of peasants and other people working in rural areas might use many elements of the ITPGRFA to frame the rights to seeds and biological diversity and corresponding state obligations.²¹⁶

209 *Ibid.*, §§14, 22, 43.

210 *Ibid.*, §29, see also §35.

211 *Ibid.*, §37.

212 *Ibid.*, §37.

213 Information is available at http://www.planttreaty.org/list_of_countries.

214 The UN Convention on Biological Diversity was opened for signature on 5 June 1992 during the Conference on Environment and Development in Rio de Janeiro. It entered into force on 29 December 1993.

215 See Report of the Special Rapporteur on the right to food, Olivier De Schutter (on seed policies and the right to food), UN doc. A/64/170, 23 July 2009, §43.

216 See in particular articles 9, 5.1c, 5.1d, 6.2b, 6.2c, 6.2d, 6.2e and 6.2f. See also FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (right to food guidelines), 2004, guideline 8D.

In the ITPGRFA's Preamble, states affirm that 'the rights recognized in this Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as to the promotion of Farmers' Rights at national and international levels'. In article 9, they further recognize 'the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis for food and agriculture production throughout the world'. The same article requires states parties to take measures to protect and promote farmers' rights, by: (a) protecting traditional knowledge relevant to plant genetic resources for food and agriculture, and affirming (b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture, and (c) the right to participate in making decisions, at national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.²¹⁷ Article 9 also states that its provisions shall not be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed or propagating material.²¹⁸

Commercial seed systems (and intellectual property rights and breeders' rights)²¹⁹ pose a significant threat to the traditional seed systems on which the great majority of the world's peasants depend to grow their crops.²²⁰ The ITPGRFA's language and provisions could directly assist drafters to frame the rights to seeds and biological diversity in the UN Declaration on the rights of peasants and other people working in rural areas. They might reaffirm peasants' rights to: save, use, exchange and sell farm-saved seed and other propagating material; participate in decisions about the use of plant genetic resources for food and agriculture; and receive a fair and equitable share of the benefits that arise from use of plant

217 Article 9 states that state parties will do this 'as appropriate and subject to its national legislation'.

218 Information on the implementation of article 9 is available online, at <http://www.farmersrights.org>, and at <http://www.planttreaty.org/content/farmers-rights-submissions>.

219 Intellectual property rights are protected by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), adopted as Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization on 15 April 1994. Breeders' rights are protected by the International Convention for the Protection of New Varieties of Plants, developed under the auspices of the International Union for the Protection of New Varieties of Plants (UPOV) and adopted in its current version on 19 March 1991.

220 See Report of the Special Rapporteur on the right to food, Olivier De Schutter (on seed policies and the right to food), UN doc. A/64/170, 23 July 2009.

genetic resources for food and agriculture. The ITPGRFA could also provide language for defining state obligations to protect such rights.²²¹

Drafters and negotiators could also draw inspiration from the 2010 Nagoya Protocol on Access to Genetic Resources and Benefit-sharing, which entered into force in October 2014, with more than 50 states parties.²²² The Nagoya Protocol defines benefit-sharing obligations arising from the use of traditional knowledge associated with genetic resources (art. 5(5)) and from research and development on genetic resources held by indigenous and local communities (art. 5(2)). Its language could be used to frame states' obligations with regard to the rights to seeds and biodiversity.²²³

Finally, it is interesting to note that, when they adopted the small-scale fisheries guidelines, member states of the FAO acknowledged that '[t]he health of aquatic ecosystems and associated biodiversity are a fundamental basis for (the livelihoods of many small-scale fishers, fish workers and their communities) and for the subsector's capacity to contribute to overall well-being',²²⁴ and 'the need for responsible and sustainable use of aquatic biodiversity and natural resources to meet the developmental and environmental requirements of present and future generations'.²²⁵ Drafters of the UN Declaration on the rights of peasants and other people working in rural areas could also use these provisions to frame the right to biological diversity.

The rights to other means of production under the FAO and other instruments

In its draft declaration, the Advisory Committee included a right to means of agricultural production (art. 6). Its proposal was supported by the UN Special

²²¹ Examples of agreed language that negotiators could use to define corresponding state obligations can be found in FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (right to food guidelines), 2004, guideline 8.12.

²²² The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol) was adopted on 29 October 2010. It entered into force on 12 October 2014. Information is available at www.cbd.int/abs.

²²³ See Adriana Bessa, *The Draft Declaration on the Rights of Peasants and Other People Working in Rural Areas: reflections on benefit-sharing*, 8 December 2014. At: www.benelexblog.law.ed.ac.uk/2014/12/08/the-draft-declaration-on-the-rights-of-peasants-and-other-people-working-in-rural-areas-reflections-on-benefit-sharing.

²²⁴ FAO, *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (small-scale fisheries guidelines)*, 2014, Preface, p. 4.

²²⁵ *Ibid.*, guideline 5.1.

Rapporteur on the right to food, then Olivier De Schutter, who argued that a new international human rights instrument on the rights of peasants and other people working in rural areas ‘will increase access to the means of production in rural areas’.²²⁶ In the working group’s first session, some states welcomed ‘the inclusion of a proposed right to means of production, in particular a proposed right to water for irrigation, a proposed right to obtain credit and the materials and tools needed, and a proposed right to means of transportation and to drying and storage facilities for selling products on local markets’.²²⁷ Civil society organizations and social movements also supported this right during informal consultations in 2014.

The rights to means of production (other than seeds, land, forests and fisheries) are recognized in at least two international instruments. CEDAW states that rural women have the right ‘to have access to agricultural credit and loans, marketing facilities, appropriate technology’ and ‘to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications’.²²⁸ The FAO’s right to food guidelines declare that states ‘should create an enabling environment and strategies to facilitate and support the development of private and public sector initiatives to promote appropriate tools, technologies and mechanization in the provision of relevant services, including research, extension, marketing, rural finance and microcredit, to enable more efficient food production by all farmers, in particular poor farmers, and to address local constraints such as shortage of land, water and farm power’.²²⁹

Drafters could make use of elements of these international instruments to frame a right to means of production (other than seeds, land, forests and fisheries) in the UN Declaration on the rights of peasants and other people working in rural areas. If they do so, negotiators will need to adapt their wording, which focuses almost exclusively on peasants’ needs, to include the rights of other people working in rural areas, including those living from traditional fishing, herding, and hunting activities.

²²⁶ Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §70.

²²⁷ Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §38.

²²⁸ Article 14(2)(g-f), Convention on the Elimination of All Forms of Discrimination Against Women.

²²⁹ FAO, *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (small-scale fisheries guidelines)*, 2014, guideline 8.14.

The rights of pastoralists

Compared to others who work in rural areas, the rights of pastoralists are relatively less protected under international law.²³⁰ A number of international instruments adopted by pastoralists, other nomadic peoples, and organizations that support them should nevertheless be mentioned before concluding this In-Brief, even if they do not constitute language agreed by states.

It was noted earlier that representatives of mobile peoples created the World Alliance on Mobile Indigenous Peoples (WAMIP) during the Fifth World Parks Congress of IUCN in 2003. At the same meeting, IUCN members adopted the IUCN Mobile Indigenous Peoples' Recommendation 5.27, which recommends that governments, NGOs, local communities, civil society, international organizations and inter-governmental bodies should give due recognition to mobile indigenous peoples' rights, and their special capacities and needs, and thereby:

- a. Ensure that Mobile Indigenous Peoples have secure and full rights to co-manage and self-manage their lands, that they can derive equitable benefits from the use of natural resources, including eco-tourism, and that their customary law is respected and recognized in national law;
- b. Recognize collective and customary rights of mobile communities and respect the integrity of the Mobile Indigenous Peoples' resource management systems;
- c. Recognize Mobile Indigenous Peoples' community conserved areas as a protected area governance type, and build upon their traditional and evolving institutions and customary norms;
- d. Promote policies to facilitate cross-border mobility and trade in transboundary protected areas by Mobile Indigenous Peoples who have traditionally lived in and used those areas;
- e. Adopt and promote adaptive management approaches that recognize the dependence of Mobile Indigenous Peoples on common property resources and build on their mobility and different lifestyles, livelihoods, resource rights and tenure, customary laws, and dynamic scales of land use;

²³⁰ J. Gilbert, 'Nomadic Territories: A Human Rights Approach to Nomadic Peoples' Land Rights', *Human Rights Law Review*, 7:4 (2007), pp. 681-716. Gilbert observes that the International Court of Justice recognized some rights of pastoralists and nomadic peoples in its advisory opinion on the Western Sahara in 1975 (in particular certain rights relating to lands through which they migrate).

- f. Adapt protected area and community conserved area management to the special needs of mobile communities, including their use rights, resource management practices, seasonal and temporal rights, corridors for movement, and targeting mobile use to achieve conservation objectives;
- g. Respect, promote and integrate the use of traditional knowledge, institutions and customary laws and resource management practices of Mobile Indigenous Peoples alongside mainstream science on a complementary basis. Develop common conservation objectives. Ensure that development of protected areas and related interventions are evaluated on the basis of local knowledge and are implemented through Mobile Indigenous Peoples' institutions;
- h. Recognize and guarantee the rights of Mobile Indigenous Peoples to the restitution of their lands, territories and resources, conserved and traditionally occupied and used sustainably by them, that have been incorporated within protected areas without their free, prior and informed consent; mobility should be restored where appropriate; and
- i. Promote cross-cultural dialogue and conflict resolution within and between mobile and sedentary people around and in protected areas (...).²³¹

In the Segovia Declaration of Nomadic and Transhumant Pastoralists, adopted in Segovia (Spain) in 2007, almost two hundred nomadic and transhumant pastoralists, representing some 50 tribes and peoples of Africa, America, Asia and Europe, expressed their concern that pastoralists do not enjoy equal rights to education, health and other crucial services and facilities, are excluded from fair access to and control of markets, information and knowledge they need for their well-being and development, and are marginalized politically.²³² After stating their commitment to organize themselves and defend their rights, they invited states and international organizations, as well as their customary leaders, to promote and protect their rights, including freedom of association, freedom of movement (including cross-border mobility), the right to education (including for children in mobile communities), human rights education and training, cultural rights, tenure rights over land, territories and other natural resources, the right to prior and informed consent, the rights to biological diversity and traditional knowledge, the right to health, and the right to appropriate veterinary services.

²³¹ International Union for Conservation of Nature, Mobile Indigenous Peoples' Recommendation 5.27, adopted at the fifth World Parks Congress in Durban in 2003.

²³² The Segovia declaration (2007). At: www.danadeclaration.org/pdf/SegoviaDeclaration.pdf.

In 2010, women pastoralists from 32 countries met in Mera (India) where they adopted the Mera Declaration on the Global Gathering of Women Pastoralists.²³³ In this declaration, women pastoralists pledged to continue to live in a way that is environmentally sustainable and protects biodiversity and common resources for generations to come. They called on states and international organizations, as well as their customary leaders, to promote gender equality and protect their rights, including the rights to education, health, means of production, participation and consultation; and urged them to recognize that the work of women pastoralists is a valid profession and a fundamental component of pastoralism, and that pastoralist mobility is a fundamental right.

The Declaration on Livestock Keepers' Rights was developed in 2008 by legal experts and organizations representing indigenous and ecological livestock keepers. Setting out principles and rights of livestock keepers,²³⁴ it argues that livestock keeping communities have earned certain custodianship rights over the breeds that they maintain, and have the right to decide how others use genetic resources embodied in their breeds, the right to ensure the sustainable use and conservation of their breeds and the environment, and the right to access their natural environment. States should respect, preserve and maintain the knowledge, innovations and practices of livestock keepers, who embody lifestyles relevant to sustainable use of livestock and livestock diversity. The Declaration also stated that livestock keepers have the right:

1. To make breeding decisions and breed the breeds they maintain.
2. To participate in policy formulation and implementation processes on animal genetic resources for food and agriculture.
3. To receive appropriate training and capacity building and equal access to relevant services that will enable and support them to raise livestock and process and market their products.
4. To participate in the identification of research needs and research designs with respect to their genetic resources, as mandated by the principle of prior informed consent.

²³³ The Mera Declaration on the Global Gathering of Women Pastoralists (2010). At: www.landcoalition.org/fr/news/mera-declaration-global-gathering-women-pastoralists.

²³⁴ The principles and rights listed in the Declaration on Livestock Keepers' Rights were developed in Kalk Bay (South Africa) during a consultation in 2008 between organizations representing indigenous and ecological livestock keepers and African lawyers. See I.U. Köhler-Rollefson, E. Mathias, H. Singh, P. Vivekanandan and J. Wanyama, 'Livestock keepers' rights: the state of discussion', *Animal Genetic Resources*, 47 (2010), pp. 119–123. For the Declaration, see: www.pastoralpeoples.org/docs/Declaration_on_LKRs_with_initial%20signatories_6.pdf.

5. To effectively access information on issues related to their local breeds and livestock diversity.

States have recognized some of these rights. They are affirmed, for example, in the Committee on World Food Security's tenure guidelines, in particular guidelines 6.6, 7.3, 8, 9, 17.2, 20.2, 20.3, and 22 – though only in relation to tenure rights over land, fisheries and forests. To frame language that addresses the rights of pastoralists, negotiators of the UN Declaration could draw on the IUCN's recommendation 5.27, the Segovia Declaration, the Mera Declaration, and the Declaration on Livestock Keepers' Rights, even if these documents do not constitute language that states have agreed.

It is also worth mentioning, finally, that the African Union adopted a Policy Framework for Pastoralism in Africa in 2010, to secure and protect the lives, livelihoods and rights of pastoral peoples and ensure continent-wide commitment to the political, social and economic development of pastoral communities and pastoral areas.²³⁵ The policy framework states that the following rights of pastoralists are particularly important: the rights to services, infrastructure and economic opportunities; the right to pursue a livelihood of their choice; the rights to education and to health; and in the case of women and girls the right to be protected from violence.²³⁶ It emphasises that states need to cooperate with regard to nomadic communities that cross borders.

²³⁵ African Union Department of Rural Economy and Agriculture, *Policy Framework for Pastoralism in Africa. Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities*, October 2010, Addis Ababa, Ethiopia.

²³⁶ *Ibid.*, p. 22.

Conclusions

Since negotiations started at the UN Human Rights Council, one of the biggest challenges facing negotiators of the UN Declaration on the rights of peasants and other people working in rural areas has been to agree on a basis for negotiation. The draft declaration that was proposed by the Advisory Committee in 2012 – inspired by La Via Campesina’s declaration and therefore rooted in the realities of peasant communities – laid out a range of issues. Contested by some states and defended by others, it remains an important document – a foundation for discussion of new drafts that will lead to a final Declaration.

The Advisory Committee’s draft had several weaknesses, nevertheless. It focused on peasants and did not sufficiently include the rights of other people working in rural areas. It did not always use agreed UN language, and was more easily criticised as a result for introducing several ‘new’ rights. It did not sufficiently promote and protect gender equality and the rights of rural women. It did not describe states’ obligations. And it omitted certain rights, such as the right to social security.

A fresh phase of negotiation has now started, following the preparation of a new draft by the Chairperson-Rapporteur of the intergovernmental working group, Ambassador Navarro Llanos. When states discuss this and subsequent drafts, this In-Brief argues that they should affirm existing human rights, including civil and political rights, economic, social and cultural rights, women’s rights, and the right to a clean and healthy environment, and assert their application to the particular needs and vulnerabilities of peasants and other people working in rural areas. They should also affirm rights that have been recognized in other international instruments, notably those agreed by states at the FAO and ILO, which recognize the rights of rural workers, the rights to land, fisheries and forests, the rights to seeds and biological diversity, and the rights to other means of production. And they should be ready to create new rights (including in cases where no agreed language exists) where these are essential to protect peasants and other people working in rural areas against *de jure* and *de facto* discrimination, or address their specific needs and vulnerabilities; the right to food sovereignty and the rights of pastoralists meet this criteria, for example.

In defining these rights, as well as corresponding state obligations, states should make use of language that they have already agreed in other international instruments, in order to bridge differences. Agreed language on the rights of peasants and other people working in rural areas can be found in international human rights law (treaties, declarations, and other soft-law instruments) and other international instruments, including those that have been adopted at the FAO, the ILO, and the UN Committee on World Food Security

If negotiators can find ways to bridge differences concerning the recognition of rights that are essential for the protection of peasants and other people working in rural areas, they will achieve key objectives of the UN Declaration, as defined by a number of states, NGOs, social movements and experts,²³⁷ including the former UN Special Rapporteur on the right to food, Olivier De Schutter:²³⁸ to make visible the extreme vulnerability of peasants and other people working in rural areas, and to provide this very large group of people with more visible, adequate and specific protection under international human rights law. They will also reach another objective of the UN Declaration:²³⁹ to adopt a holistic approach that covers gaps in international instruments in a manner that builds on, and does not weaken, existing instruments. This aim aligns the Declaration on the rights of peasants and other people working in rural areas with other standard-setting initiatives in the United Nations.

237 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§19, 22, 36 and 40.

238 Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February 2012, §70.

239 Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas, Chairperson-Rapporteur: Angélica C. Navarro Llanos, UN doc. A/HRC/26/48, 11 March 2014, §§16 and 25.

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