

RESEARCH BRIEF

THE RIGHTS TO FOOD SOVEREIGNTY AND TO FREE, PRIOR AND INFORMED CONSENT

KEY MESSAGES

- The right to food sovereignty is at the heart of the rights-based struggles of communities of peasants and other people working in rural areas all over the world. It has been recognized in an increasing number of instruments and documents at national, regional and international levels, as well as in drafts of the UN Declaration on the rights of peasants and other people working in rural areas. It should be kept in the final version of the UN Declaration.
- The right to free, prior and informed consent in relation to the control over, use of and access to natural and genetic resources has been recognized for indigenous peoples and local communities in international law, and it has been recognized for communities of peasants and other people working in rural areas in a number of instruments and decisions at national, regional and international levels. It has also been included in several articles of the drafts of the UN Declaration. In the context of increasing privatization and commercial use of natural and genetic resources, it should remain in several articles of the final version of the UN Declaration.
- The rights to food sovereignty and to free, prior and informed consent constitute forms of collective decision-making that are essential to ensuring that peasants and other people working in rural areas are able to exercise control over local food systems and natural and genetic resources. The right to food sovereignty is an overarching right, indispensable for the exercise of other rights of peasants and other people working in rural areas, including their rights to land and other natural resources, a safe, clean and healthy environment, seeds, biological diversity and traditional knowledge, while the right to free, prior and informed consent is a key procedural component of all of these rights.

MARCH 2018 | CHRISTOPHE GOLAY

INTRODUCTION

Should the UN Declaration on the rights of peasants and other people working in rural areas (UN Declaration) include the rights to food sovereignty and to free, prior and informed consent (FPIC)? Is agreed language available to define these rights in the UN Declaration being negotiated at the Human Rights Council (HRC)? This research brief aims to respond to these questions. It presents the protection of these rights at international, regional and national levels. It then defines the main elements of the rights that could be included in the UN Declaration.

THE RIGHT TO FOOD SOVEREIGNTY

In 2007, in a forum organized in Nyéléni, Mali, by La Via Campesina and partner 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, more than 500 representatives from more than 80 countries called for a world where “all peoples, nations and states are able to determine their own food producing systems and policies that provide every one of us with good quality, adequate, affordable, healthy and culturally appropriate food”. Food sovereignty was defined as “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems”.

Like the rights to development, self-determination and free disposal of natural resources, the right to food sovereignty can be described as having an internal

FOR PRISCILLA CLAEYS

‘The right to food sovereignty can be seen as a contemporary version of the combined right to development, right to self-determination and right to dispose of natural resources.’

dimension – the rights of individuals, communities and peoples to define their local food and agricultural systems and to participate in decision-making processes around food and agricultural policies – and an external dimension – the right of states to define their food and agricultural policies and development. The right to food sovereignty has been recognized in a number of instruments and documents at international, regional and national levels.

In a report presented in 2004, the first UN Special Rapporteur on the right to food, Jean Ziegler, argued that given the “imbalances and inequities in the global trading system that can have profound negative effects on the right to food”, it was time “to examine new and alternative models for agriculture and trade, such as that provided by the vision of food sovereignty, which places priority on food security and the right to food, for all people at all times”.

In its General Recommendation no. 34 adopted in 2016, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) stated that the 189 States parties to the Convention on All Forms of Discrimination Against Women should “ensure the realization of the right to food and nutrition of rural women

FOR THE FORMER UN SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, OLIVIER DE SCHUTTER:

‘Understood as a requirement for democracy in the food systems, which would imply the possibility for communities to choose which food systems to depend on and how to reshape those systems, food sovereignty is a condition for the full realization of the right to food.’

within the framework of food sovereignty and ensure that they have the authority to manage and control their natural resources”. It is also worth noting that the Parliamentary Assembly of La Francophonie adopted a resolution on land legislation for food sovereignty in 2012.

At regional level, food sovereignty has been recognized as one of the main objectives of the 2005 Agricultural Policy of the Economic Community of West African States (ECOWAS), and in the Declaration of Cochabamba on Food Security with Sovereignty in the Americas, adopted by the General Assembly of the Organization of American States (OAS) in 2012. The Bolivarian Alliance for the Peoples of our America (ALBA) has also developed several instruments to promote food sovereignty. Food sovereignty has been recognized by a number of supranational parliamentary forums, including the Andean Parliament, the Central American Parliament, and the Latin American and Caribbean Parliament that adopted the Framework Law on the right to food, food security and food sovereignty in 2012.

The European Parliament has also acknowledged the right to food sovereignty in a number of resolutions in which it emphasised “the need to respect the principle of food sovereignty” (2002), stressed that “the right of developing countries to develop and implement agricultural policies guaranteeing them food sovereignty, in particular in WTO

negotiations, must be respected and strengthened” (2006), called on the European Union (EU) “to recognise developing countries’ right to food sovereignty and to support this with targeted measures” (2009), and supported the promotion of food sovereignty in Europe (2017). In 2017, French President Emmanuel Macron declared that one of the main objectives of the EU Common Agricultural Policy should be to protect Europe’s food sovereignty.

At national level, food sovereignty has been recognized in a number of Constitutions and national framework laws. It has been enshrined in the Constitutions of Ecuador in 2008, Bolivia in 2009, and Nepal in 2015. It has further been recognized by Bolivia in its 2013 Law on Sustainable Family Farming and Food Sovereignty, by Ecuador in its 2009 and 2010 organic laws on the food sovereignty regime, by Venezuela in its 2008 Organic Law on Agricultural and Food Security and Sovereignty, by Nicaragua in its 2009 Law on Food and Nutrition Sovereignty and Security, and by the Dominican Republic in its 2016 Law on Food Sovereignty and Food Security and Nutrition for the Right to Food. Senegal has also highlighted food sovereignty as one of the main objectives of its 2004 Agro-Sylvo-Pastoral Development Orientation Law, and Mali did the same in its 2006 Agricultural Orientation Law. Laws promoting food sovereignty have even been adopted at local level. In Geneva for example, regulations implementing the 2004 Law for the Promotion of Agriculture request the Canton of Geneva to promote agriculture following the principles of food sovereignty.

The right to food sovereignty has been included in several drafts of the UN Declaration. In the February 2018 draft, the

The right to food sovereignty has been recognized in a number of instruments and documents at international, regional and national levels.

Preamble recognizes that “the concept of food sovereignty has been used in many States and regions to designate the right to define their food and agriculture systems, and to healthy and culturally appropriate food produced through

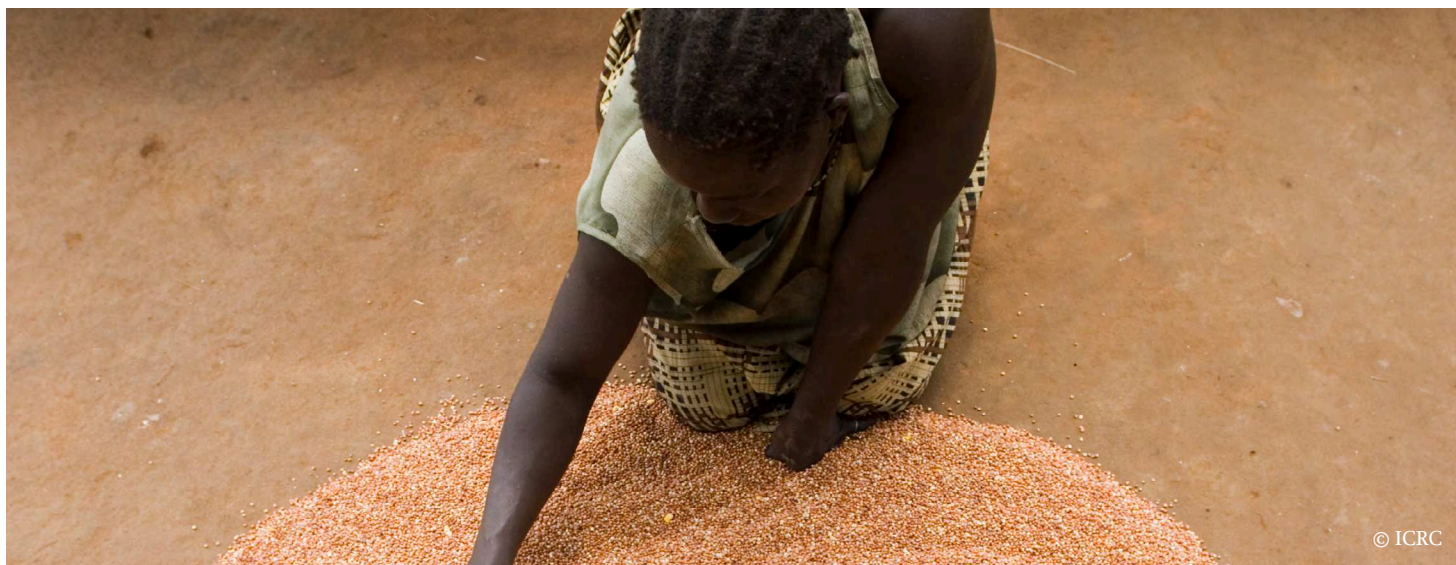
ecologically sound and sustainable methods that respect human rights”.

In the same draft, article 15(3) recognizes that

“peasants and other people working in rural areas have the right to determine their own food and agriculture systems, recognized by many States and regions as the right to food sovereignty. This includes the right to participate in decision-making processes around food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods, respecting their cultures”. Article 15(4) then provides that “States shall formulate, in partnership with peasants and other people working in rural areas, public policies at the local, national, regional and international level to advance and protect food sovereignty, sustainable and equitable food systems that promote and protect the rights contained in this Declaration”.

Some states argue that the right to food sovereignty should not be included in the UN Declaration, because it would breach World Trade Organization (WTO) rules, particularly the WTO Agreement on Agriculture. Others assert that national sovereignty is a state’s prerogative that cannot be given to peoples or communities of peasants and other people working in rural areas. The majority of experts and stakeholders involved in the negotiation, however, support the idea that the right to food sovereignty should be included in the UN Declaration.

To provide clarity on the topic, it is important to



© ICRC

underline – as we did in a research brief in relation to the rights to seeds and access to medicine and their potential tensions with intellectual property rights – that the Human Rights Council should always ensure that human rights norms prevail over commercial interests. It is also important to underline that the definition of food sovereignty proposed in the drafts of the UN Declaration does not provide peasants and other people working in rural areas, or their communities, with a degree of autonomy that is equivalent to national sovereignty.

Drawing inspiration from articles 3 to 5 of the UN Declaration on the rights of indigenous peoples, the UN Declaration could recognize that peasants and other people working in rural areas have the right to food sovereignty, and that by virtue of that right they can freely determine their local food and agricultural systems, and fully participate in decision-making processes around food and agriculture policy. States obligations to protect that right could then be defined, following the proposal given in article 15(4) of the February 2018 draft UN Declaration.

THE RIGHT TO FREE, PRIOR AND INFORMED CONSENT

The right to FPIC has been recognized for indigenous peoples in the UN Declaration on the rights of indigenous peoples adopted in 2007, and in the ILO Convention no. 169 on indigenous and tribal peoples adopted in 1989. In its articles 19 and 32, the 2007 UN Declaration requests states to “consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”, and “prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”. Its articles 10 and 29 require states to obtain the FPIC of indigenous peoples in case of relocation of indigenous peoples from their lands and territories, and in case of storage or disposal of hazardous materials on these lands and territories. Article 28 also provides that indigenous peoples have the right to restitution or, when this is not possible, compensation when their lands, territories or resources have been confiscated, taken, occupied, used or damaged without their FPIC.

States obligations to obtain the FPIC of indigenous peoples have been monitored by UN special procedures and UN treaty bodies, regional human rights mechanisms, including the Inter-American Court on Human Rights and the Inter-American Commission on Human Rights, and national courts. They have also been translated at national level through the adoption of specific laws – such as the Indigenous Peoples’ Rights Act in the Philippines – and laws and regulations in an increasing number of countries.

At international, regional and national levels, the right to FPIC has also been recognized for non-indigenous communities, including communities of peasants and other people working in rural areas. The Committee on Economic, Social and Cultural Rights (CESCR) has, for example, protected the right to FPIC of non-indigenous local communities, including pastoralist and hunter-gatherer communities, in a number of concluding observations, and it recognized the right to FPIC of minority groups, indigenous peoples and other communities in its General Comment no. 21 adopted in 2009. In many decisions, the UN Human Rights Committee has also protected the right to FPIC of non-indigenous minority communities, including those dependent on ancestral land for economic livelihood and to practice their cultures.

In the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization adopted in 2010 (Nagoya Protocol), states have recognized the right to “prior informed consent or approval and involvement of indigenous and local communities” in relation to access to genetic resources on which they have the established right to grant access (article 6), and the right to “prior and informed consent or approval and involvement of (...) indigenous peoples and local communities” as well as the need to establish “mutually agreed terms” in relation to access to traditional knowledge associated with genetic resources that is held by indigenous and local communities (article 7). It is also important to note that the right to prior and informed consent is recognized both for indigenous peoples and local communities in the 2004 Convention on Biological Diversity (CBD)’s Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and

The right to FPIC has been recognized for indigenous peoples and other local communities at international, regional and national levels.

local communities (Akwé: Kon Guidelines).

In its resolution 224 on a human-rights based approach to natural resources governance adopted in 2012, the African Commission on Human and Peoples' Rights underlined that states parties to the African Charter on Human and Peoples' Rights must take "all necessary measures (...) to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance", and that they must undertake "independent social and human rights impact assessments that guarantee free prior informed consent". In its directive on the harmonization of guiding principles and policies in the mining sector adopted in 2009, the Economic Community of West African States (ECOWAS) also provided that "companies shall obtain free, prior, and informed consent of local communities before exploration begins and prior to each subsequent phase of mining and post-mining operations". Several national laws – such as the 2016 Community Land Act in Kenya and land laws in an increasing number of countries – have also recognized community land ownership and the right to FPIC, or very similar entitlements for rural communities.

In the Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security (Tenure Guidelines) and the Voluntary guidelines for securing sustainable small-scale fisheries in the context of food security and poverty eradication (Small-Scale Fisheries Guidelines), adopted in 2012 and 2014, states have recognized the right to FPIC of indigenous peoples and the rights to consultation and participation of other local communities. In adopting the Tenure Guidelines, states committed to hold good faith consultation with indigenous peoples, through their own representative institutions in order to obtain their FPIC, and ensure consultation and participation of other communities with customary tenure systems, before initiating any project affecting the resources for which the communities hold rights, and before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights (Tenure Guidelines 9.9 and 12.7). In the two sets of guidelines, the rights to participation and consultation were defined as requiring states to engage with and seek the support of "small-scale fishing communities in the whole decision-making process related to fishery resources and

areas where small-scale fisheries operate as well as adjacent land areas", and of "those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes".

Some states have argued that, in the case of peasants and other people working in rural areas, the requirement to consult local communities with a view to obtaining their consent may be difficult to implement considering the lack

of representative institutions.

However, efforts made under the framework of the CBD to support the development of mechanisms, legislation or other initiatives to ensure the 'prior informed consent or

approval and involvement of indigenous peoples and local communities' for accessing their traditional knowledge, suggest that there are various ways for communities to set out how they expect stakeholders to engage with them and to determine for themselves how to negotiate with a variety of actors.

The right to FPIC was included in several articles of the earlier drafts of the UN Declaration on the rights of peasants and other people working in rural areas. However, aside from its limited inclusion in article 26(4) of the February 2018 draft UN Declaration – in relation to traditional knowledge associated with genetic resources – it is only partially reflected in the less extensive rights to consultation and participation contained in the current version. This deletion is worrying in the context of increasing privatization and commercial use of natural and generic resources, and it does not acknowledge the increasing recognition of the right to FPIC of peasants and other people working in rural areas at national, regional and international levels. In finalizing the UN Declaration, negotiators should therefore reintroduce this right in several articles of the UN Declaration.

Indigenous peoples and other communities with customary tenure systems face similar human rights violations and should receive the same protection from international law.

CONCLUSIONS AND RECOMMENDATIONS

It is hoped that the system of human rights protection that has developed since the adoption of the Universal Declaration of Human Rights in 1948, will soon be enhanced by a new instrument to protect the rights of peasants and other people working in rural areas, some of the most vulnerable and marginalized people in the world.

Within the negotiations on the adoption of the UN Declaration it is imperative that stakeholders find creative ways to recognize the right to food sovereignty and the right to FPIC of peasants and other people working in rural areas.

RECOMMENDATIONS FOR THE RECOGNITION OF THE RIGHTS TO FOOD SOVEREIGNTY AND TO FPIC IN THE UN DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

In defining the rights to food sovereignty and to FPIC in the UN Declaration, negotiators should include the following elements of these rights, possibly using agreed language that can be found in national, regional and international instruments, including the Nagoya Protocol, the UN Declaration on the rights of indigenous peoples, the Tenure Guidelines, the Small-Scale Fisheries Guidelines, and the Akwé: Kon Guidelines:

- Peasants and other people working in rural areas have the right to food sovereignty. By virtue of that right they can freely determine their local food and agriculture systems, fully participate in decision-making processes around food and agriculture policy, and enjoy healthy and adequate food produced through ecologically sound and sustainable methods, respecting their cultures.
- States should formulate public policies at the local, national, regional and international levels to promote and protect food sovereignty and sustainable and equitable food systems that promote and protect the rights of peasants and other people working in rural areas.
- Peasants and other people working in rural areas and their communities have the right to free, prior and informed consent in relation to decisions concerning control, management, use and access rights over natural and genetic resources that they traditionally hold.
- States should consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions in order to obtain their free, prior and informed consent, before adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect their rights, and before any exploitation of land and other natural resources that peasants and other people working in rural areas traditionally hold or use.
- States should consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions in order to obtain their free, prior and informed consent, in relation to access to genetic resources on which peasants communities and communities of other people working in rural areas have the established right to grant access, and in relation to access to traditional knowledge associated with genetic resources that is held by these communities.
- States should ensure that no hazardous materials or substances are stored or disposed of on the land or other resources of peasants and other people working in rural areas without their free, prior and informed consent.

SELECTED REFERENCES ON THE RIGHTS TO FOOD SOVEREIGNTY AND TO FREE, PRIOR AND INFORMED CONSENT

[Negotiation of a UN Declaration on the Rights of Peasants and Other People Working in Rural Areas](#)

[Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests](#)

[Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication](#)

[Nagoya Protocol](#)

[Akwé: Kon Guidelines](#)

[Final report by the former UN Special Rapporteur on the right to food, Olivier De Schutter](#)

[CEDAW Committee General Recommendation no. 34 on the rights of rural women](#)

[Report on food sovereignty by the first UN Special Rapporteur on the right to food, Jean Ziegler](#)

[OHCHR on free, prior and informed consent of indigenous peoples](#)

[FAO study on the promotion of legislative initiatives for the right to adequate food and nutrition by Parliamentary fronts against hunger in Latin America and the Caribbean, 2017](#)

[FAO guide on respecting free, prior and informed consent for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition](#)

[FAO manual on free, prior and informed consent](#)

[Legal companion to the UN-REDD Programme guidelines on free, prior and informed consent](#)

[European Union laws and related documents acknowledging food sovereignty](#)

[Declaration of Nyéléni, 2007](#)

[FIAN International briefing on the rights to sovereignty over natural resources, development and food sovereignty](#)

[Priscilla Claey's on human rights and food sovereignty](#)

[LandMark – Global Platform for Indigenous and Community Lands](#)

THE GENEVA ACADEMY

The Geneva Academy provides post-graduate education, conducts academic legal research and policy studies, and organizes training courses and expert meetings. We concentrate on branches of international law that relate to situations of armed conflict, protracted violence, and protection of human rights.

SUPPORTING THE NEGOTIATION OF A UN DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

In October 2012, the UN Human Rights Council decided to elaborate a UN Declaration on the rights of peasants and other people working in rural areas. Negotiation started in 2013. The Geneva Academy project on the rights of peasants aims to support this negotiation, by providing expert advice in relation to key challenges facing negotiators, such as the need to find solutions on the recognition of the rights to land, seeds, FPIC and food sovereignty.

**The Geneva Academy
of International Humanitarian Law
and Human Rights**

Villa Moynier
Rue de Lausanne 120B
CP 1063 - 1211 Geneva 1 - Switzerland
Phone: +41 (22) 908 44 83
Email: info@geneva-academy.ch
www.geneva-academy.ch

**© The Geneva Academy
of International Humanitarian Law
and Human Rights**

This work is licensed for use under a Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International License (CC BY-NC-ND 4.0).