

Gender equality, the right to education and other cultural rights

WG discussion on the Draft UN Declaration on the rights of peasants and other people working in rural areas
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Joanna Bourke-Martignoni, University of Fribourg

Overview

- Gender equality and non-discrimination in the draft Declaration (Article 4)
- Specific rights of rural women (Article 6)
- Rights to education and training (Article 28)
- Cultural rights and traditional knowledge (Article 29)

Gender equality and non-discrimination

- Preliminary and final studies of the Human Rights Council Advisory Committee in 2010 and 2012 focused on discrimination and inequalities in connection with peasants and other people working in rural areas.
- Preamble to the draft Declaration on the rights of peasants and other people working in rural areas states ‘peasants and other people working in rural areas are equal to all other people and, in the exercise of their rights, should be free from any form of discrimination, including discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, wealth, birth or other status.’

Gender equality and non-discrimination

- In its final study in 2012, the Human Rights Council Advisory Committee concluded 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.
- Major causes and manifestations of discrimination specific to people working in rural areas and peasants were identified as; expropriation of land, forced evictions and displacement, gender-based discrimination, absence of participation in agrarian reform and rural development policies, lack of minimum wage and social protection and the repression and criminalization of movements to protect the rights of peasants and other people living in rural areas.

Gender equality and non-discrimination

- Umbrella equality/non-discrimination clause in the draft Declaration is the same as that contained in open-ended equality provisions in Article 2 of the UDHR, Article 2 (3) ICESCR and Article 2 (1) ICCPR.
- Vital to recognise and respond to **intersectional and multiple** forms of discrimination based on several grounds. e.g. widowed peasant women (discrimination on grounds of social status, location/occupation, age and gender).
- Intersectional discrimination is both **qualitatively** and **quantitatively** different from discrimination based on a single ground. The new form of discrimination that is created may give rise to mutually reinforcing violations of many different human rights e.g. food, land, social security, work, equality before the law, equal access to justice, security of person, health and education.

Gender equality and non-discrimination

- CERD, CEDAW, CESCR have all recognised the impact of intersecting and compounded forms of discrimination and it has been observed by these bodies that peasants and other people working and living in rural areas frequently face intersectional forms of discrimination.
- Article 4 (1) of the Draft Declaration notes that States ‘shall take measures to ensure the full and equal enjoyment by peasant women and other women working in rural areas of all human rights and fundamental freedoms.’
- Human rights mechanisms have interpreted obligations of non-discrimination and equality as requiring States to take **positive measures to respect, protect and fulfil** all human rights for everyone.

Gender equality and non-discrimination

- Both formal (*de jure*) and substantive (*de facto*) equality must be guaranteed. **Substantive equality** is a concept now well-developed in international human rights law by CEDAW, CERD and the CESCR.
- This means that **direct** as well as **indirect** discrimination must be effectively prevented and remedied.
- Specific State obligations to prevent and remedy inequalities and discrimination include; adoption of comprehensive legislation, targeted programmes/policies/budgets and strategies (focus on the most marginalized groups), elimination of systemic discrimination (through measures to combat and eliminate stereotypes and promote participation through temporary special measures etc.), remedies and accountability mechanisms, development of monitoring and research systems.

Rights of rural women

- Pervasive discrimination against rural women has been observed by human rights mechanisms including: lack of access to decent work, land, productive resources, credit, extension services, social security, education and training, health care, high levels of violence and lack of access to justice.
- One important observation by a number of human rights mechanisms (CESCR, HRC, CEDAW, CSW etc.) has been that women often face specific barriers with respect to land ownership in that they only hold **secondary title to land** and productive resources which is mediated through male family members.
- That being said it is important to note that **rural women do not form a homogenous or essentialised category** and care needs to be taken to recognise specificities within the group including characteristics such as; ability, ethnicity, age and socio-economic status which may, in some contexts be more decisive than rural location.

Rights of rural women

- CEDAW Article 14 and forthcoming General Recommendation on Rural Women.
- Article 14 (2) CEDAW provides that women shall (a) participate in the elaboration and implementation of development planning at all levels; (b) have access to adequate health care facilities; (c) benefit directly from social security programmes; (d) obtain all types of training and education; (e) organize self-help groups and cooperatives; (f) participate in all community activities; (g) have access to agricultural credit and loans and equal treatment in land and agrarian reform; (h) enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Rights of rural women

- Article 6 of the Draft Declaration includes additional elements from other sources of international human rights law (including the ICCPR, ICESCR, CEDAW and the Commission on the Status of Women) in that it emphasises the right of rural women to be free from gender-based violence (Article 6 (2) (i)) and highlights the specific context of many rural communities, in particular, ‘traditional attitudes regarding the subordinate role of women’ that must be addressed.
- Article 6 of the Draft Declaration also highlights obligations of States to ensure equality between women and men in marriage and family relationships – both formal and substantive.
- States have obligations to regulate and monitor the application of **traditional and customary legal norms** to ensure that these are harmonised with international human rights law. See the Human Rights Committee General Comment no. 32 (2007) as well as CEDAW General Recommendation no. 29 (2013). This is particularly important in connection with rural women’s inheritance, land and succession rights.

Rights to education and training

- Right to education as a ‘multiplier’ which enables access to many related human rights: food security, health, political participation, decent work, social security, justice etc.
- The right to education is recognised in a large number of international legal instruments e.g. UDHR Article 26, ICESCR Article 13, UN CRC Articles 28-29.
- Human rights mechanisms have frequently acknowledged the lack of availability, accessibility and poor quality of education in rural areas.
- Research in connection with the MDGs shows that it is rural regions within countries that are less likely to meet the targets that have been set for universal primary education and gender equality within education.

Rights to education and training

- The '4As' framework on education developed by the UN SR on the Right to Education and Committee on Economic, Social and Cultural Rights demonstrates State obligations with respect to the right to education: availability, accessibility (non-discrimination, economic, physical), acceptability (quality) and adaptability (context).
- Article 28 of the Draft Declaration highlights several elements of the right to education that are particularly applicable to peasants and other people working in rural areas and focuses on the need to ensure that education is adapted and appropriate to rural contexts.
- The current draft article could, however, be expanded and strengthened to align it more closely with existing international human rights law (in particular Article 13 of the ICESCR) – formal and non-formal education should be available and accessible at all levels (early childhood-primary-secondary-vocational-tertiary-continuing-fundamental education/literacy) and measures must be taken to monitor the **quality** of education in rural areas and to remove barriers to accessibility (economic, physical and discriminatory)

Rights to Education and Training

- Links between elimination of child labour and education are made in the draft Declaration (supported by ILO Convention no. 182 on the worst forms of child labour and General Comment no. 1 by the UN Committee on the Rights of the Child). Strategies should be adopted to ensure that working children in rural areas are not deprived of their rights to education.
- **Early childhood education** has been recognised by the Committee on Economic, Social and Cultural Rights (General Comment no. 13 (1999), the UN SR on the Right to Education and UNESCO in the framework of Education for All as vitally important for preventing and redressing systemic discrimination and inequalities. These bodies have observed that quality early childhood education is often unavailable and inaccessible in rural areas.
- **Accessibility barriers** to education at all levels in rural areas include; lack of local language education, absence of appropriately qualified teaching staff, resources and school infrastructures including information technologies and information concerning training opportunities.

Cultural rights and traditional knowledge

- Cultural rights enable the development and expression of various world views (individual and collective) and provide for freedoms in matters of identity.
- Article 29 of the Draft Declaration provides equal (non-discriminatory) protection for the cultural rights and knowledge of peasants and other people working in rural areas. These are rights that have often been neglected by the human rights mechanisms.
- Article 29 (2) 'Peasants and other people working in rural areas have the right to freely pursue their cultural development and knowledge and the right to maintain, control, protect and develop their cultural or traditional knowledge, including their technologies, genetic resources, seeds, medicines, oral traditions, literatures, designs and visual and performing arts.'

Cultural Rights and traditional knowledge

- Article 29 of the Draft Declaration is closely modelled on Article 31 of the UN Declaration on the rights of indigenous peoples which recognises the right to ‘maintain, control, protect and develop’ cultural heritage, traditional knowledges and cultural expressions.
- Cultural rights (including obligations to promote and protect expressions of traditional knowledge) are also recognised in the UDHR and in the ICESCR as well as in instruments such as the UNESCO Universal Declaration on Cultural Diversity (2001) and instruments on biological diversity such as the 1992 UN Convention on Biological Diversity (Art. 10 (c)) and the 2010 Nagoya Protocol on Access to Genetic Resources and Benefit-sharing (Art. 5.5).

Cultural Rights and Traditional Knowledge

- The UN SR on Cultural Rights notes that ‘culture can be understood as a product, as a process *and* as a way of life’ and that culture includes references beyond ethnicity, language and religion.
- Culture needs to be understood as a dynamic concept that changes over time.
- Many of the human rights of peasants and other people working in rural areas contain ‘cultural dimensions’ and these need to be read as essential elements of each of the rights concerned.

Cultural rights and traditional knowledge

- Cultural rights therefore form a component of all of the rights contained in the draft Declaration e.g. the right to culturally appropriate food, the right to education in local languages, the right to participation and information through media and in relevant fora, the right to a safe, clean and healthy environment as well as the right to means of production that are adapted to the cultural context in which they occur.
- Ensuring a greater protection for the cultural diversity of peasants and other people working in rural areas may assist in enriching the universal coverage of human rights guarantees. Human rights are not only ‘top down’ but also need to be interpreted based on their application in local cultural settings.