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## Third session of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas

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Panel I

Presentation by

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Distinguished Madam Chair- Rapporteur, distinguished delegates, ladies and gentlemen,

Many thanks for your invitation to speak on this panel about the importance of this declaration as well as to give some comments about its draft content.

In the first place, I want to highlight the *de facto* situation which makes this declaration necessary. The preamble of the advanced version contains key points:

* peasants and other people working in rural areas suffer disproportionately from poverty and malnutrition and from the burdens caused by environmental degradation and climate change;

Here it would be also important to mention the accelerated loss of biodiversity;

* an increasing number of peasants and other people working in rural areas are forcibly evicted or displaced every year to make way for large-scale development projects;
* peasant women and other rural women perform a disproportionate share of unpaid work and often do not have equal access to land, productive resources, financial services, information, employment or social protection;
* the violence against rural women and girls in all its forms and manifestations continues being pervasive worldwide;
* small-scale fishers face difficulties to have access to the sea and other water bodies as well as to secure the sustainable use of the fishery resources on which they depend;

Likewise it would be also important to highlight the specific situation faced by pastoralists in accessing grazing lands and by forest communities;

* access to land, water, seeds and other natural resources is an increasing challenge for rural people, as well as to productive resources and investment in a self-determined rural development;
* extreme hazardous and exploitative conditions under which labourers in agriculture, fisheries and other activities have to work, often lacking living wages and social protection;
* human rights defenders working on land and natural resources issues face a high risk of being subject to different forms of intimidation and of violations of their physical integrity, including attempted killings; killings, attacks, assault and ill-treatment, criminalization and excessive use of force by the police and other private bodies during demonstrations;
* peasants and other people working in rural areas often face difficulties in gaining access to courts, police officers, prosecutors and lawyers to the extent that they are unable to seek immediate redress or protection from violence, abuse and exploitation,

Thus this declaration is of vital importance because it will increase the protection of the human rights of peasants and other people working in rural areas. It will do so by making the existing normative framework visible and by increasing coherence in the interpretation and application of existing human rights standards to peasants and other people working in rural areas.

The norms and standards protecting the rights of peasants and other people working in rural areas are dispersed and appear fragmented in a good number of treaties and soft-law instruments. We lack a systematic compilation of these standards and a coherent interpretation thereof. No wonder that national and international authorities and many of the rights holders themselves are practically not aware of this framework; and that consequently the implementation of these standards remains merely piecemeal with the disastrous consequences we all know.

The declaration will be have the value added of reaffirming individual and collective rights so that they can be transformed into legal entitlements in national laws and can be claimed and enforced before courts and quasi-judicial bodies.

The declaration will be extremely useful also to provide guidance to international organizations and specialized UN agencies on how to increase the protection of the human rights of peasants and other people working in rural areas.

Moreover, the declaration will fill normative gaps.

Besides the serious gaps in implementing and interpreting the existing standards, there are normative gaps as well. In fact, the development of international human rights law so far have not paid sufficient attention to the relationship between human dignity and nature. And yet it is impossible to conceive human dignity without relating to nature to satisfy human needs. This declaration will continue the path open up by the UN Declaration on the Rights of Indigenous Peoples in understanding this fundamental relationship for all rural people.

The right to food is one of the rights most referred to when it comes demonstrate the sufficiency of the existing human rights framework for the protection of the rights of peasants and other people working in rural areas. Indeed the right to food is absolutely key to protect access to food-producing resources but it is necessary to further clarify all its implication for peasants and other people working in rural areas under the present circumstances.

Land

To date, international human rights law guarantees limited land rights. States cannot arbitrarily deprive people of their property, nor can they evict settled communities that rely on a piece of land but lack legal title to it, without meeting certain conditions. The right to property, however, applies to land owners thus leaving landless people and those without formalized land rights without protection. And the bar against evictions can easily be circumvented as States have broad discretion to determine whether the conditions justifying evictions have been met. Ultimately, these protections are largely procedural in nature and do not offer substantive guarantees.

Land as a substantive human right has largely been developed with regard to the rights of indigenous peoples who are guaranteed the right to land and territories which they have traditionally occupied. There exists, therefore, a normative gap in international human rights law that leaves vulnerable non-indigenous rural communities who lack substantive guarantees but for whom access to land is central to their identity and essential to their survival.

Although non-indigenous communities cannot directly claim the right to land, they can seek recourse through a multitude of other human rights such as the rights to food, housing, health and an adequate standard of living.

The protection provided by these corollary rights, however, is also limited. The legal interpretation of the right to food, for example, leaves open whether people feed themselves through direct cultivation of lands or through an income and food distribution system. This flexible interpretation has been misused to justify removing people from their lands – particularly when they do not have formalized land rights - with the reasoning that they are not using land 'sufficiently/efficiently/sustainably’ and that their right to food would be ‘better realized’ through income gained from promised jobs—which rarely materialize— or through corporate social responsibility/safety net schemes which are simply charity.

In sum, non-indigenous rural communities who depend on land for their survival are in a vulnerable position, legally and otherwise. Narula therefore notes that “international human rights law must evolve from an instrumentalist approach toward the development of a substantive right to land for those whose very survival depends on it. […] if access to land continues to be given primarily instrumental consideration—as an asset that serves as a gateway to the realization of other rights—then states can continue to undermine land access by claiming that there are other means to satisfy these corollary rights.”[[1]](#footnote-1)

Seeds

The explicit recognition and protection of the rights to seeds and biological diversity in the current international human rights framework refers only to the right of Indigenous Peoples 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, inter alia seeds, medicines, knowledge of the properties of fauna and flora, as enshrined in UNDRIP. Non-indigenous peoples have to take recourse through the human rights to food, health and culture to defend and claim protection for their rights to seeds and biological diversity.

Similarly to land the protection provided by the right to food is limited. The legal interpretation of the right to food leaves open whether people feed themselves through direct cultivation or through an income and food distribution system. There is little legal interpretative work about what kind of access to seeds and agricultural biodiversity people need in order to be able to adequately feed themselves through direct cultivation, livestock keeping and hunting and gathering. As in the case of the right to land, States can claim that there are other means to satisfy the right to food other than through direct cultivation (e.g. via income and markets) so that people do not necessarily need seeds to realize their right to food.

The understanding of the rights of peasants and other people working in rural areas to seeds and agricultural biodiversity has been rather advanced in the international environmental framework (UN Convention on Biological Diversity) as well as in the agreements related to the use and conservation of plant genetic resources for food and agriculture (International Treaty on Plant Genetic Resources for Food and Agriculture). As important as they are in advancing the realization of these rights, they present important shortcomings: The CBD recognizes the vital role that women play in the conservation and sustainable use of biological diversity; and the close and traditional dependence on biological resources of many indigenous and local communities embodying traditional lifestyles. Nevertheless, the CBD focuses mainly on equitable benefit sharing and does not provide a strong recognition of the collective rights of rural people to continue sustaining their evolving relationship with plants, animals and nature in a self-determined way. Rather, the CBD reaffirms the sovereign right of States to exploit their resources pursuant to their environmental policies without clarifying what are people’s rights to these very resources vis-à-vis the state.

ITPGRFA explicitly recognizes the right of farmers to save, use, exchange and sell farm-saved seeds and other propagating material; the right to protection of traditional knowledge relevant to PGRFA and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture. These provisions have been though interpreted as leaving the recognition of Farmers’ Rights to the discretion of national governments without creating any international obligation to recognize these rights. This is particularly problematic since there are powerful national and international legal frameworks protecting the intellectual property rights of the seed and breeder industry which are increasingly restricting peasant practices and seed systems, severely impairing the right to conserve, use, maintain and develop peasants’ own seeds, crops, as well as to save, store, transport, exchange, donate, sell, use and re-use farm-saved seeds, crops and propagating material. In many countries, peasant traditional or informal practices have been declared illegal, thus criminalizing these practices. Furthermore, the IPR protection regime is to a large extent responsible for facilitating bio-piracy and for dispossessing peasants from their seed systems and associated knowledge.

Water

The Declaration on the Rights of Peasants and Other People Working in Rural Areas thus serves as an additional legal interpretation to fill in the current normative gap of the rights to water and sanitation which prioritize drinking water and sanitation and water for domestic uses and makes normative differences between drinking water and water required for production and livelihood. Indeed, water is necessary beyond domestic and sanitation uses, as it is indispensable for growing, preparing, and selling food and other products that are vital for guaranteeing livelihoods of peasants and people working in rural areas. The multi-fold character of community-based and customary water rights constitutes the lifeline for rural families, reflecting thus the need to look at water in all its usages that guarantee life in dignity. Furthermore, adequate and sufficient water for productive uses to secure rural population’s livelihood in farming, fishing, livestock keeping and any other related livelihoods is an essential prerequisite to guarantee several related rights such as the right to food, the right work and the right to decent income and livelihood.

These gaps make necessary the interpretative development of existing rights, including the spelling out standing alone rights such as the right to land, water and seeds in order to:

* + 1) overcome systematic discrimination;
  + 2) ensure substantive equality;
  + 3) guarantee the effective exercise of recognized rights.

The inherent dignity of all members of the human family is recognized in the Preamble and in Article 1 of the Universal Declaration of Human Rights. Article 22 adds that every person is entitled to the realization of economic, social and cultural rights indispensable for his or her dignity.

Land, rivers, lakes, the sea, forests, plants, seeds, animals, insects, and all living beings are essential to the human dignity of peasants, small-scale fishers, pastoralists and Indigenous peoples. When they are not able to maintain their autonomous and evolving relationship with nature in their territories, they are vulnerable to oppression, discrimination and exploitation. Therefore this relationship with nature is deeply intertwined with the human dignity of those living in rural areas.

Finally I would like to make some remarks on the contents of the existing advanced version.

The current draft is quite comprehensive and complete. The way it is structured (Definition of subjects of rights, states obligations, fundamental principles and substantive rights) serves very well the stated purposes of the declaration in the preamble.

In general the current text might be too detailed. It could be tighten up and make more succinct concentrating on the core content of the rights and giving less detail in terms of the state obligations. In any case, it has been very useful to have spelled out the concrete state obligations under each right in order to make clear what the contents of the rights are. This travaux preparatoires will certainly inform interpretative work at a later stage.

Some key elements could be strengthened:

* The inextricable connection between peasants and other people working in rural areas and nature including oceans.
* The existence of customary law and practices at national level which already recognize several rights contained in this declaration.
* The rights of young peasants and other people working in rural areas and the rights of future generations.

I hope that my presentation make clear the vital importance of this declaration. It is not exaggerated to say that it represents a watershed in the evolution of international human rights law particularly for future generations. In the light of the challenges described above, I would like to call on states to give priority to this process.

1. Narula, Smita, The Global Land Rush, P.170-171 [↑](#footnote-ref-1)