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UNVEILING PANDORA'S BOX: INVESTIGATING THE HUMAN RIGHT TO FREELY DISPOSE OF NATURAL RESOURCES AND THE HUMAN RIGHT TO A CLEAN, SAFE AND HEALTHY ENVIRONMENT IN PEASANT COMMUNITIES

SUMMARY: 1. Introduction. – 2. The Drafting History of Articles 5 and 18 of the UNDROP. – 3. Management and Control of Natural Resources. – 4. Implementation of Development Projects and Activities Affecting Peasants' Lands. – 5. Participation of Peasants in Benefits Arising from Exploitation Activities in their Lands. – 6. Protection and Conservation of the Natural Environment. – 7. Integrating Climate Change Adaptation Actions and Measures into Land Use Planning by Peasant Communities. – 8. Storage or Disposal of Hazardous Materials and Wastes in Peasant Peoples' Lands. – 9. Final Remarks

'Respect for the rights of peoples over natural resources is crucial for the flourishing of communities and states'

and

'The existing catalogue of human rights is inadequate to address specific human rights abuses related to denials of land tenure and access to natural resources'

1. Introduction

Upon the inaugural meeting of the Open-Ended Intergovernmental Working Group on a United Nations declaration concerning the rights of peasants and other rural workers (hereinafter the Working Group) in July 2013, immediate attention was focused on addressing concerns related to safeguarding peasant lands and defining the roles of peasants and rural laborers in national development, particularly concerning their stewardship of

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natural resources within their territories¹. Participants shared firsthand accounts of land dispossession resulting from development projects, highlighting the detrimental impacts on their societies and traditional ways of life. Concerns regarding pollution, environmental degradation, resource depletion, and the recognition of seeds as a fundamental human right for peasants were also prominently discussed, emphasizing the real experiences and observations within these communities.

Throughout the discussions, a representative from a peasant organization underscored the fundamental imperative for peasants to maintain autonomy over their lands and other vital natural resources essential for their sustenance². Concurrently, others emphasized the necessity for development projects in areas inhabited by peasants to advance solely with their explicit consent. As deliberations progressed, it became increasingly evident that addressing rights concerning lands, territories, and natural resources, and securing control thereof, would constitute a central focus for the Working Group's formulation of new standards³. However, achieving consensus on these matters proved to be challenging, requiring further exploration and dialogue among stakeholders to bridge differing perspectives and reach mutually agreeable solutions. Articles 5 and 18, subject to discussion herein, epitomize the culmination of negotiations, aiming to strike a delicate balance between state sovereignty over natural resources and the recognition of peasant peoples' rights. It is noteworthy that deliberations surrounding these articles unfolded amidst a transformative shift in development paradigms during those years, with heightened emphasis placed on upholding human rights and involving rights holders in the planning and execution of development endeavors⁴.

Moreover, the negotiation context was marked by an escalating emphasis on environmental preservation and its nexus with the realization of human rights, thereby spotlighting a critical concern for peasant communities owing to their profound connection with their respective territories.

This study aims to delve into the governance and utilization of peasant communities' territories, lands, and other natural resources, especially within the framework of formulating development strategies, executing associated projects, and fostering sustainable practices in rural regions. By juxtaposing the language adopted in Articles 5 and 18 of the Declaration with the historical context of their drafting, this work endeavors to shed light on the human rights of peasant populations and the corresponding governmental authority in this domain. It seeks to achieve this objective by analyzing contemporary international, regional, and national practices pertaining to land and resource management in rural areas, thereby contributing to a deeper understanding of the complexities and challenges inherent in ensuring the rights and well-being of peasant communities.

As we shall see, the set of articles presented in the present work holds particular significance for peasant communities. In a recent report, Hilal Elver, the former Special

¹ See UN Human Rights Council, *Open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas*, available at: <https://www.ohchr.org/en/hr-bodies/hrc/rural-areas/wg-rural-areas-index>.

² *Ibidem*.

³ *Ibidem*.

⁴ Incidentally, the interaction between the right to dispose of natural resources and the international legal principle of States' sovereignty over their natural resources has long been a contentious issue. See, for example, J. GILBERT, *The right to freely dispose of natural resources: Utopia or forgotten right?*, in *Netherlands Quarterly of Human Rights*, 2013, p. 314 ff; A. MENSI, *The Principle of Permanent Sovereignty over Natural Resources as a Right of States, in Indigenous Peoples, Natural Resources and Permanent Sovereignty*, Leiden, 2022, pp. 13-37.

Rapporteur to the United Nations on the Right to Food, underscored these points by emphasizing that the execution of development projects on or near peasant lands has arguably emerged as one of the most pervasive sources of challenges hindering the complete exercise of peasant peoples' rights, particularly those of women⁵.

The subsequent paragraphs will commence with an overview of the drafting history of these provisions, emphasizing the key aspects of the negotiation process between government and peasant peoples' representatives. Subsequently, we will delve into the issue of control over the natural resources associated with peasant peoples' lands, analyzing the rights of peasant communities regarding natural resources in contrast to the authority of states to manage, particularly concerning subsoil resources. After elucidating certain key principles, we will explore the limitations on states' discretion in disposing of natural resources, especially considering peasant peoples' rights to consultation and to determine and develop strategies and priorities for the utilization of their land and other natural resources, as outlined in Article 5 of the Declaration. Additionally, we will address the issue of participation in the benefits derived from activities conducted on their lands. Subsequently, our focus will shift to the conservation and safeguarding of the environment on peasant peoples' lands, including considerations regarding the storage or disposal of hazardous materials. Prior to concluding with some closing remarks, the article will also touch upon the utilization of peasant lands for the generation of green energy through wind turbines.

2. *The Drafting History of Articles 5 and 18 of the UNDROP*

In legal terms, the administration of natural resources has traditionally been regarded as an aspect of state sovereignty, encompassing the authority of governments to regulate and manage resources within their territories.⁶ This authority typically includes the power to grant licenses for resource extraction, establish environmental regulations, and negotiate international agreements related to resource exploitation. However, international human rights law extends this concept to include the rights of peoples. The human right of peoples to freely dispose of their natural resources is explicitly affirmed in Common Article 1 of the two international covenants, which emphasizes the importance of respecting the self-determination and sovereignty of peoples over their natural wealth and resources⁷.

During the negotiations of the Declaration within the Working Group, several representatives of peasant communities underscored the necessity of ensuring that development aligns with nature by guaranteeing the rights of pastoralists, fishermen, and peasants to access and utilize natural resources⁸. Specifically, there was a strong emphasis on the importance of Article 5 in securing access to land and other natural resources for small

⁵ More information on this issue is available at: <https://hilalerver.org/resources/country-mission-reports/zambia/>.

⁶ See e.g. Y. TYAGI, *Permanent Sovereignty over Natural Resources*, in *Cambridge International Law Journal*, 2015, pp. 588-615.

⁷ See J. GILBERT, *The Right to Freely Dispose of Natural Resources*, cit., pp. 314-341.

⁸ *Amplius*, see K. P. KIRSCH-JUNG, W. VON URFF (eds), *User Rights for Pastoralists and Fishermen Agreements based on traditional and modern law*, available at: https://conservationdevelopment.net/Projekte/Nachhaltigkeit/C D2/Mauretaniien/Broschuere/Mauretaniien_en.pdf.

farmers, as existing legislation often fails to protect peasants from exploitation and land grabbing⁹. This viewpoint prevailed despite opposition from other delegations, some of whom were against the establishment of new human rights. Additionally, one delegation proposed merging Article 5 with Article 17, which also addressed issues related to natural resources.

In 2013, the drafting process of the new instrument began with the Working Group presenting some draft principles¹⁰ and peasant non-governmental organizations putting forward proposals¹¹. These proposals included specific language on peasant peoples' rights to natural resources, as well as on economic exploitation. As is known, in March 2016, the Chairperson of the Working Group was entrusted with preparing and submitting a full draft¹².

Part I of the Draft Declaration on Peasant Rights, submitted by the Chairperson in 2016, contained a set of provisions concerning dignity, non-discrimination, and control over natural resources, among others¹³. In particular, Article 5, paragraph 1 provided «for the right of peasants and other people working in rural areas to sovereignty over the natural resources present in their communities»¹⁴. The remaining part of the paragraph additionally stated «Peasants and other people working in rural areas shall have the authority to manage and control their natural resources and to enjoy the benefits of their development and conservation». Additionally, it asserted that peasant peoples shall have «the right to decide whether to grant access to the natural resources in their communities and to obtain fair and equitable participation in benefits arising from their utilization».

After reviewing both this draft and the subsequent draft submitted in 2017, representatives of peasant communities suggested that the final draft of Article 5 should incorporate the term 'sustainable use' of natural resources¹⁵. Moreover, they also agreed that challenges related to the sustainable management of natural resources were predominantly linked to large-scale companies rather than peasants¹⁶. Additionally, they proposed and successfully obtained a clarification regarding the exploitation affecting the natural resources traditionally held by peasants and other people working in rural areas¹⁷. This clarification acknowledges that the exploitation of natural resources should be permitted based on, but

⁹ Geneva Academy, *Research Brief: the Right to Land and Other Natural Resources*, available at: <https://www.geneva-academy.ch/joomla-tools-files/docman-files/The%20Right%20to%20Land%20and%20Other%20Natural%20Resources.pdf>

¹⁰ See A/HRC/WG.15/1/2, 20 June 2013, available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGPLeasants/A-HRC-WG-15-1-2_En.pdf

¹¹ *Amplius*, see P. CLAEYS, *The Rise of New Rights for Peasants. From Reliance on NGO Intermediaries to Direct Representation*, in *Transnational Legal Theory*, 2019, pp. 386-399.

¹² A/HRC/WG.15/3/2, 8 March 2016, available at: <https://documents.un.org/doc/undoc/gen/g16/046/42/pdf/g1604642.pdf?token=mYjF00XALAMWmKfLj&fe=true>

¹³ See also C. GOLAY, *Legal analysis on the rights of peasants and other people working in rural areas - The Right to Seeds and Intellectual Property Rights*, available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGPLeasants/Session3/StatementsPresentations/Cristophe_Golay_GENEVA_ACADEMY.pdf

¹⁴ *Amplius*, see L. COTULA, *The right to land*, in M. ALABRESE, A. BESSA, M. BRUNORI, P. F. GIUGGIOLI (eds.), *The United Nations' Declaration on Peasants' Rights*, London, 2022, p. 91 ff.

¹⁵ See also L. COTULA, *Between Hope and Critique: Human Rights, Social Justice and Re-Imagining International Law from the Bottom Up*, in *Georgia Journal of International and Comparative Law*, 2020, pp. 473-521.

¹⁶ See e.g. S. MONSALVE SUÁREZ, *The Right to Land and Other Natural Resources in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas* (FIAN International 2015); K. CORDES, *Is there a Human Right to Land?*, 8 November 2017, in *Columbia Centre on Sustainable Investment blog*, available at: <https://blogs.ei.columbia.edu/2017/11/08/is-owning-land-a-human-right/>.

¹⁷ See S. MONSALVE SUÁREZ, above n. 16.

not limited to, a duly conducted social and environmental impact assessment and consultations conducted in good faith, in accordance with Article 2, paragraph 3 of the Declaration. Regarding draft Article 5, scholars expressed concerns that the provisions included therein could pose difficulties due to potential conflicts with existing national norms, particularly concerning sustainable development and exploitation¹⁸.

In response to the feedback received, the subsequent revised and final draft of the Declaration adopted an alternative formulation for paragraph 2, a). It urged states to guarantee that any exploitation of the natural resources traditionally held or utilized by peasants and other rural workers is authorized only following a thorough social and environmental impact assessment conducted *by technically proficient and impartial entities*. This assessment should involve the active participation of both individuals and rural communities. Furthermore, it has been stipulated that the methods for distributing the benefits derived from the exploitation of natural resources should be fair and equitable.

In parallel with the discussions on these issues, there were also discussions on the human right to a healthy environment¹⁹. However, unlike the discussions reported above on the right to natural resources, these discussions were substantially straightforward and focused on a few specific issues²⁰. One of these issues pertained to the removal of the reference to “right” in the title of Article 18, the article that embodies this right, as well as the change from “people” to “persons” throughout the article and the Declaration. Another issue relates to the observation that a “safe, healthy, and clean environment” was not a commodity but a right, grounded in international and regional instruments. In this context, it was aptly noted that the entitlement to a safe, clean, healthy, and sustainable environment was explicitly addressed in Article 29 of the United Nations Declaration on the Rights of Indigenous Peoples, along with various regional agreements and assessments provided by the UN Special Rapporteur on human rights obligations concerning the enjoyment of such an environment²¹. Another issue involved deliberations on whether sustainable biodiversity should be included.

3. Management and Control of Natural Resources.

Despite the growing global focus on natural resource management and control, there has been a noticeable absence of comprehensive legal analysis regarding the ownership and control of natural resources within the framework of international human rights law²². This

¹⁸ For further references on this issue, see e.g. P. CLAEYS, *Food Sovereignty and the Recognition of New Rights for Peasants at the UN: A Critical Overview of La Via Campesina's Rights Claims over the Last 20 Years*, in *Globalizations*, 2014, pp. 452–65.

¹⁹ UNGA, *The human right to a clean, healthy and sustainable environment*, A/RES/76/300, 28 July 2022.

²⁰ UNEP, UNDP, OHCHR, *Joint statement of United Nations entities on the right to healthy environment*, 8 March, 2021, available at: <https://www.unep.org/news-and-stories/statements/joint-statement-united-nations-entities-right-healthy-environment>

²¹ *Amplius*, see A. GIUNTA, *Looking back to move forward: the status of environmental rights under the UN Declaration on the Rights of Indigenous Peoples*, in *The International Journal of Human Rights*, 2019, p. 59 ff.

²² See P. CLAEYS, *The Right to Land and Territory: New Human Right and Collective Action Frame*, in O. DE SCHUTTER B. RAJAGOPAL (eds.), *Property Rights from Below: Commodification of Land and the Counter-Movement*, London, 2020, pp. 131-148.

gap in legal analysis is surprising given the growing importance of natural resources in the global context²³.

Legally, the administration and authority over natural resources are often seen as facets of state sovereignty, yet they also intersect with issues surrounding human rights and freedoms²⁴. This entails not only recognizing the rights of peasants to their lands and natural resources but also ensuring their meaningful participation in decision-making processes that affect their lives and livelihoods. In broad terms, Article 5 of the Declaration, endorsed by the UN General Assembly, is argued to encapsulate the ‘compromise’ reached between peasant communities and states concerning the management and utilization of natural resources within peasants’ territories. This underscores the necessity of addressing discrepancies between the customary practices of peasants and national legislation regarding resource regulation, particularly evident in cases involving subsoil resources. Moreover, Article 5 bears significant connections with the provisions on self-determination.

It is important to observe that the Declaration acknowledges the right of peasants and other individuals working in rural areas to be safeguarded against arbitrary displacement from their land or habitual residence, as well as from other natural resources essential for their livelihoods and adequate living conditions (Article 17, para. 4). Before the Declaration was adopted, the UN Declaration on Indigenous Peoples had already recognized the rights of indigenous communities to utilize and manage natural resources within their lands. However, while pertinent to peasant communities in general, this right was specifically relevant only to indigenous peasant communities. It is clear that peasant communities, regardless of their indigenous status, deserve equal rights to the natural resources on their lands, just like any other landowner according to national property laws. Furthermore, safeguarding the ownership and usage rights of peasant communities over their traditional resources is crucial for preserving their social, cultural, and economic integrity²⁵.

Hence, it is imperative to acknowledge that the protection of peasant communities’ rights to manage and govern their lands and natural resources is intricately tied to the preservation of their social and economic well-being. This correlation is underscored in the recent general comment on land by the UN Committee on Economic, Social and Cultural Rights (CESCR), which highlights the importance of granting access to and control over lands to vulnerable and marginalized populations, particularly indigenous and peasant communities²⁶. Such access is essential for upholding fundamental human rights, including the preservation of cultural identity and the right to food, particularly for those whose livelihoods depend directly on land cultivation or foraging.

The statements above indicate that acknowledging a ‘human right to natural resources’ for peasant peoples carries implications beyond simply applying common principles governing property regulations. This has relevance for understanding the provisions outlined in Article 5 of the Declaration and, consequently, for the authority of States to manage those resources.

²³ See E. MORGERA, K. KULOVESI (eds.), *International Law and Natural Resources*, London, 2016.

²⁴ See also L. COTULA, *Between Hope and Critique*, cit., pp. 473-521.

²⁵ See e.g. D. A. POSEY, G. DUTFIELD (eds.), *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples*, Ottawa, 1996, 33-41.

²⁶ See General Comment No. 26 on Land and Economic, Social and Cultural Rights, E/C.12/GC/26, 22 December 2022, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and>.

Article 17, paragraph 3 of the Declaration states that acknowledging the rights of peasant peoples to their lands and resources: 'shall provide legal recognition for land tenure rights, including customary land tenure rights, not currently protected by law'. This means that rights over natural resources should be recognized in favor of peasant peoples whenever their traditional land tenure system and customs include such rights. As a result, peasant peoples have the entitlement to own, manage, and control these resources.

Article 17 of the Declaration holds significant importance for the survival of peasant peoples.

In the following section, we will delve into the detailed implications of the final formulation concerning the authority of States to oversee and regulate the utilization of natural resources in the context of development projects impacting peasant peoples.

4. Implementation of Development Projects and Activities Affecting Peasants' Lands.

Exploiting natural resources should only proceed after thorough consultation in good faith with peasants and/or other rural workers who traditionally possess or utilize them. Formulated as such, Article 5, paragraph 2, b) of the Declaration raises the issue of the exact meaning of the phrase 'consultation in good faith'. The explicit reference to 'consultation' suggests that Article 5, paragraph 2, b) requires only consultation of peoples and not consent, a conclusion that is also indirectly confirmed by a comparison with the different language of Article 26 on cultural rights and traditional knowledge, which, on the contrary, refers to consent.

With that being said, given that Article 5, paragraph 2, b) stipulates the requirement for consultations to be carried out in good faith, states are obligated to enforce this through effective mechanisms and/or special measures. In essence, what Article 5, paragraph 2, b) implies is the necessity for a genuine exchange between the concerned parties (peasant peoples potentially affected by the project and the State), fostering mutual trust, to reach an agreement before proceeding with any project that affects peasant lands. If consent or agreement cannot be reached, then the State maintains the authority to make the final decision regarding the proposal at hand. The choice of the drafters of Article 5 to refer to consultation (in good faith) rather than informed consent as a requirement for States confirms that this Article does not grant peasant peoples the right to veto extractive activities on their lands.

However, the importance of striving to obtain the agreement of peasant peoples should not be overlooked. Nor should the broader framework of rights and the related obligations of States stipulated in the Declaration be disregarded. In light of these considerations, it is pertinent to examine some key considerations that elucidate the comprehensive framework governing the implementation of activities impacting peasant lands and other natural resources.

Firstly, the requirement to engage in consultations with peasant communities concerning projects impacting their lands and natural resources should be closely linked to their fundamental rights. This is because the right of peasant communities to be consulted should not be viewed as a compromise or substitutable for their fundamental rights to their lands and resources. If it becomes impractical to reach a consensus with the affected communities, the State is obligated to present logical and fair justifications for why an

agreement was unattainable, and detail the measures taken to address the requests and concerns of the peasant communities.

Furthermore, the significance of obtaining consent will be contingent upon the particular circumstances at hand. Consequently, when there is a direct impact on the lives or territories of peasant communities, there exists a strong presumption that the proposed course of action should not advance without the consent of these communities. It is worth highlighting that Article 5 of the Declaration underscores the utilization or exploitation of mineral, water, or other natural resources.

Indeed, it could be contended that in the instance of a development project with substantial ramifications for peasant communities, the duties of states to uphold cultural diversity, safeguard the integrity of peasant communities, and honor their self-determination will serve as limitations on the execution of the project. Aligned with this rationale, the Declaration delineates two precise scenarios necessitating consent: relocation and the storage or disposal of hazardous materials and toxic chemicals, including agrochemicals or agricultural or industrial pollutants.

More broadly, it is important to acknowledge that the issue of managing and controlling natural resources within peasant lands also needs to be considered in light of Article 3, paragraph 2 of the Declaration, which recognizes the right of peasant peoples to determine their own development strategies and priorities. As highlighted by the Constitutional Court of Colombia in a famous decision regarding a similar provision in the UNDRIP, the focus in these cases shouldn't be solely on «who has the power to veto whom»²⁷. As we'll explore further below, it requires the involvement of peasant peoples and engagement at broader levels.

In conclusion, it is crucial to recognize that although not explicitly outlined in the Declaration, notably in Article 5, there is a justifiable argument, based on a systematic interpretation of the UNDROP and its Preamble, that a state's power to appropriate resources for public use should be exercised in a manner that fully respects and protects all the human rights of peasant peoples. This inherently suggests that the State cannot exercise this authority if doing so would jeopardize the continued existence of peasant culture and society, potentially depriving them of their means of subsistence.

In the following section, we will delve into Article 5, paragraph 2, sub-paragraph c), which specifically acknowledges the responsibility of States to establish effective mechanisms aimed at ensuring the just and fair sharing of benefits resulting from the exploitation of natural resources traditionally held or used by peasants and other people working in rural areas. These mechanisms are crucial for ensuring that affected individuals and communities, particularly peasant peoples, participate in the benefits derived from the management of natural resources within their lands. As emphasized earlier, this provision assumes heightened significance in the context of addressing the complex issues surrounding the control and utilization of natural resources in peasant lands, where equitable access and fair treatment are essential for safeguarding the well-being and livelihoods of these communities.

5. Participation of Peasants in Benefits Arising from Exploitation Activities in their Lands

Article 5, section 2 mandates states to establish mechanisms ensuring the fair distribution of benefits arising from the activities outlined in Article 5. Notably, unlike its

²⁷ Constitutional Court of Colombia, T-129/11 of 3 March 2011.

counterpart in the UNDRIP, Article 5, para. 2 lacks provisions for addressing adverse economic, environmental, and cultural impacts stemming from these activities. However, the issue of redress is not overlooked in the UNDRIP; it is explicitly tackled in Article 12, paragraph 5, establishing a close link with Article 5, paragraph 2.

For the purpose of the present work, it's worth noting that the matter of addressing grievances related to natural resource management is closely tied to the participation of peasant communities in the benefits generated by activities carried out within their lands. This correlation is evident because a fair portion of these benefits may be considered, and has indeed been recognized by international institutions like the Inter-American Court of Human Rights (IACtHR), as a form of 'just compensation'²⁸. Applying its reasoning specifically to indigenous peoples, the IACtHR regarded public participation in benefits as a fundamental safeguard that must be fulfilled in cases involving restrictions on the property rights of this category of vulnerable subjects²⁹. Likewise, the Inter-American Commission on Human Rights (IACHR) has stated that the sharing of benefits could be interpreted as a fair and just recompense for the use of natural resources vital for the sustenance of the impacted community³⁰. Given this rationale, such reasoning could also clearly be deemed applicable to restrictions on the property rights of any vulnerable group, including peasants.

While the Declaration does not explicitly mention this issue, considering the aforementioned and similar practices, it can be contended that benefit-sharing arrangements are encompassed by Article 5, paragraph 2, and should be included in the consultations outlined in Article 5, paragraph 2(b).

6. Protection and Conservation of the Natural Environment

Given the profound bond between peasant communities and their lands, the Declaration highlights the importance of environmental protection. Article 18 explicitly recognizes the right of peasant peoples to preserve and uphold the environment and productivity of their lands. Moreover, Article 18 prohibits the storage or disposal of hazardous materials on peasant lands, irrespective of any eventual consent from the affected communities. As observed, this provision is crafted to address the urgent issues voiced by peasant communities throughout the drafting of the Declaration, concerning the negative impacts on their lives and livelihoods resulting from various activities carried out on their lands.

It is important to highlight that the discussions surrounding this Article took place against the backdrop of increasing global attention to environmental issues and a growing recognition of the detrimental effects of hazardous waste on human health. Notably, deliberations at the UN General Assembly leading to the Declaration on the right to a clean

²⁸ I/A Court H.R., Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309, paras. 196–198, also available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf

²⁹ *Ibidem*.

³⁰ IACHR, *Report on the Situation of Human Rights in Ecuador*, 24 April 1997, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, Chap. VIII (The Human Rights Situation of the Inhabitants of the Interior of Ecuador Affected by Development Activities).

and healthy environment in 2022, as well as the Paris Agreement³¹, emphasized the importance of participatory approaches to environmental concerns and public access to information, including issues related to hazardous materials and activities. In the specific context of farmers, both the Convention on Biological Diversity (CBD)³² and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)³³ have advocated for measures to safeguard farmers and their natural resources, particularly biological genetic resources, from environmentally harmful activities.

A core issue in the debate revolved around framing the right to a safe, clean, and healthy environment in Article 18 of the Declaration as a universally recognized human right. Notably, a delegation strongly opposed its establishment as a new human right. However, this position did not prevail, as it was ultimately rejected. Furthermore, requests to remove the reference to “right” in the title of Article 18 and to change “people” to “persons” throughout the article were also disregarded.

That being recalled, it is important to underscore that the duties of States under this Article are intertwined with the other rights and corresponding duties and obligations recognized in the Declaration, including those delineated in Article 5.

Article 18, paragraph 2, urges states to implement appropriate actions and measures, which unequivocally include assistance programs, to ensure that peasants and other rural workers have access to a safe, clean, and healthy environment without discrimination, encompassing biodiversity and ecosystems. States are also obligated to collaborate in addressing threats to the enjoyment of peasants’ rights arising from transboundary environmental harm.

In broader terms, it is widely acknowledged that there exists a profound relationship, even interdependence, between the enjoyment of human rights and the preservation of the environment³⁴. This connection primarily pertains to rights such as health and life, as well as rights related to housing, family, and food, among others. Additionally, this relationship extends to specific obligations that States may have under international environmental law. In practice, this acknowledgment has allowed for the consideration of environmental threats and damages even in the absence of explicit provisions guaranteeing the human right to a safe, clean, and healthy environment. This principle also applies to situations involving environmental threats or damages affecting peasant communities, which have been addressed using the aforementioned rights and principles, including consultation, participation in decision-making processes, and the requirement for prior impact assessments.

At the national level, the principles outlined in the Declaration have influenced the revision of Nepal’s ‘Peasant Rights Act’ of 1964. This legislation now recognizes the right of

³¹ The Paris Agreement was adopted on 12 December 2015 at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change held in Paris from 30 November to 13 December 2015.

³² The Convention was adopted by the Intergovernmental Negotiating Committee for a Convention on Biological Diversity, during its Fifth session, held at Nairobi from 11 to 22 May 1992. The Convention was open for signature at Rio de Janeiro by all States and regional economic integration organizations from 5 June 1992 until 14 June 1992, and remained open at the United Nations Headquarters in New York until 4 June 1993.

³³ The text of the Treaty is available at: <https://www.fao.org/plant-treaty/en/>

³⁴ See D. SHELTON, *Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?*, in *Denver Journal of International Law & Policy*, 2006, p. 129 ff.

peasant communities to a healthy environment, although it regrettably does not explicitly prohibit the storage of toxic wastes on peasant lands.

Referring to Article 11 of the San Salvador Protocol to the American Convention on Human Rights³⁵, the Inter-American Court of Human Rights (IACtHR) clarified that this provision mandates states to take actions to prevent ecological degradation and pollution, foster conservation efforts, and promote environmentally sustainable development and the responsible utilization of natural resources.³⁶ This might involve, as the same court has noted in previous rulings, conducting independent monitoring of endangered environments, conducting and disclosing environmental and social impact assessments before undertaking any activity, and disseminating information to communities affected by hazardous materials and activities³⁷.

Similarly, the African Commission on Human and Peoples' Rights (the African Commission) has affirmed that States are obligated to take proactive actions and measures to ensure an environment that does not undermine people's ability to exercise their fundamental human rights³⁸. This includes ensuring access to information, participation in decision-making processes, and access to remedies³⁹.

Similarly, in a case involving the liability of industries engaged in hazardous activities that result in environmental or human harm due to accidents, the Supreme Court of India addressed the issue by invoking principles of environmental liability and prevention⁴⁰. The court underscored the significance of the participation of affected individuals, citing the corresponding rights established in international law.

Clearly, Article 18 of the Declaration must also be interpreted in conjunction with the other articles of the Declaration, especially those concerning land rights and the right to freely dispose of natural resources. This is because considerations related to the environmental impact of proposed activities on peasant lands and the resulting effects on the livelihoods of affected communities should be integrated into the consultation and decision-making process mandated by the Declaration, aligning with the fundamental principles outlined in paragraphs 3, 4 and 5 above.

³⁵ *Amplius*, Amnesty International, *Nepal: Land for Landless Peasants Comments and Recommendations on Amendment to the Lands Act 1964*, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3112212019ENGLISH.pdf>

³⁶ I/A Court H.R., Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, para 207.

³⁷ See I/A Court H.R., Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, paras 86, 89, 99; I/A Court H.R., Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, paras 154, 208; I/A Court H.R., Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351, para 355. *Amplius*, see M. A. TIGRE, *Inter-American Court of Human Rights Recognizes the Right to a Healthy Environment* ASIL Insights, 2020, available at: https://www.asil.org/insights/volume/24/issue/14/inter-american-court-human-rights-recognizes-right-healthy-environment#_edn18

³⁸ See Communication 155/96, *The Social and Economic Rights Action Centre and another v. Nigeria*, Fifteenth Annual Activity Report (SERAC case), para. 52.

³⁹ *Amplius*, see e.g. S. BONTUR LUGARD, *The human right to a satisfactory environment and the role of the African Court on Human and Peoples' Rights*, in *KAS African Law Study Library*, 2021, pp. 402-413, available at: <https://www.nomos-elibrary.de/10.5771/2363-6262-2021-3-402.pdf>

⁴⁰ Supreme Court of India, *M.C. Mehta and Anr vs Union of India & Ors*, judgment 20 December 1986, also available at: <https://indiankanoon.org/doc/1486949/>

7. Integrating Climate Change Adaptation Actions and Measures into Land Use Planning by Peasant Communities

Climate change stands as an unparalleled menace to humanity, manifesting as a relentless force driving multifaceted injustices, violence, and devastation⁴¹. The impacts stemming from anthropogenic greenhouse gas emissions exhibit a devastating and escalating trajectory, characterized by spatial and socio-economic disparities that remain both unpredictable and uneven⁴². Arising within the framework of capitalist dynamics since the industrial revolution, alongside industrialization under state-led socialism, the ramifications of climate change exert a pronounced influence on rural areas and their inhabitants⁴³.

The rural milieu, once emblematic of symbiotic relations between communities and their natural milieu, now bears the brunt of climate-induced perturbations⁴⁴. Peasant livelihoods, intricately interwoven with local ecosystems, confront unprecedented challenges as erratic weather patterns, extreme phenomena, and environmental degradation imperil agricultural output and food security. In this milieu, the entitlement of peasants to actively contribute to climate change adaptation and mitigation strategies assumes heightened significance⁴⁵.

Peasants, as custodians of traditional knowledge and custodians of the land, possess invaluable insights into sustainable land stewardship practices and ecological resilience. Their profound connection to the environment equips them to devise innovative remedies for climate-induced predicaments while conserving cultural heritage and biodiversity. Furthermore, the production and management practices, particularly agroecology, emerge as crucial elements in cooling down the planet and restoring biodiversity.

Nonetheless, the trajectory toward sustainable development and climate resilience is strewn with hurdles, compounded by systemic inequalities and power asymmetries inherent in capitalist frameworks. Furthermore, climate change exacerbates preexisting vulnerabilities, disproportionately impacting marginalized rural communities and amplifying social disparities. Unequal resource access, limited adaptive capacity, and inadequate infrastructure compound the repercussions of climate change, intensifying impoverishment and undermining livelihoods. Consequently, addressing the underlying determinants of vulnerability and bolstering adaptive capabilities constitute pivotal facets of effective climate governance.

Appreciating the ‘nexus’ between environmental sustainability, social equity, and human rights assumes paramount importance in fostering inclusive and equitable climate action, aligning with the aspirations of the Sustainable Development Goals (SDGs) and the

⁴¹ See e.g. R. J. LAZARUS, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, in *Cornell Law Review*, 2009, p. 1153 ff.

⁴² See V RAMANATHAN, Y FENG, *Air Pollution, Greenhouse Gases and Climate Change: Global and Regional Perspectives*, in *Atmospheric Environment*, 2009, pp. 37 to 50.

⁴³ *Amplius*, see J.E. OLESEN, M BINDI, *Consequences of Climate Change for European Agricultural Productivity, Land Use and Policy*, in *European Journal of Agronomy*, 2002, p. 239 ff.

⁴⁴ *Ibidem*.

⁴⁵ *Amplius*, see S.J. LLOYD, Z. CHALABI, *Climate Change, Hunger, And Rural Health Through The Lens Of Farming Styles: An Agent-Based Model To Assess The Potential Role Of Peasant Farming*, in *The Lancet Planetary Health*, 2021, p. 12 ff.

Agenda 2030⁴⁶. The affirmation of entitlements enshrined in Article 18, paragraph 3 of the Declaration underscores the imperative of peasant involvement in decision-making processes⁴⁷, ensuring that climate policies resonate contextually and adhere to principles of social justice. By empowering peasant communities to sculpt their destinies, states can cultivate resilience, propagate sustainability, and propel climate justice for all, advancing the collective vision of a more equitable and sustainable future outlined in the SDGs and the Agenda 2030.

8. *Storage or Disposal of Hazardous Materials and Wastes in Peasant Peoples' Lands*

States bear a weighty responsibility in implementing actions and measures to prevent the storage or disposal of hazardous materials, substances, or waste on lands inhabited by peasants and other individuals engaged in rural activities, as mandated by the directives articulated in Article 18 of the Declaration. This imperative demands the establishment of comprehensive regulatory frameworks that encompass oversight and compliance mechanisms to ensure strict adherence to regulations. In doing so, states aim not only to protect rural environments from contamination but also to safeguard the health and well-being of rural communities against potential environmental hazards. Moreover, they must take into account the unique vulnerabilities and challenges faced by rural populations, such as limited access to healthcare and resources, which may exacerbate the impacts of environmental pollution.

Furthermore, in accordance with Article 18 of the Declaration, states are summoned to cultivate transnational collaboration to effectively mitigate the risks posed by transboundary environmental harm. This entails fostering cooperative alliances and agreements among nations to facilitate the exchange of critical information, resources, and expertise in combating environmental threats that transcend national borders. By bolstering international cooperation, states can enhance their collective capacity to address the complexities of transboundary pollution and mitigate its adverse effects on rural communities and ecosystems. Additionally, such collaboration enables states to share best practices and innovative solutions for sustainable environmental management, thereby contributing to the achievement of global environmental goals and targets.

In addition to preventing environmental harm caused by hazardous materials, states are also obligated to protect peasants and other rural workers from abuses perpetrated by non-state actors, including private individuals, organizations, and corporations, as articulated in Article 18 of the Declaration. This directive goes beyond mere enforcement of environmental regulations; it requires states to address the underlying structural inequalities and power imbalances that perpetuate non-state abuses in rural settings. This may entail implementing measures to strengthen the legal rights and protections of rural communities, enhancing access to justice and remedies for victims of environmental harm, and promoting

⁴⁶ UN General Assembly, Transforming our World: The 2030 Agenda for Sustainable Development, 21 October 2015, para. 23, available at: <http://goo.gl/89In0>

⁴⁷ See also the principle of 'common concern for humankind', articulated in the preamble of the 1992 UN Framework Convention for Climate Change (UNFCCC) and reiterated in the 2015 Paris Agreement. This principle affirms that combating climate change must be a collective endeavor and cannot be solved independently.

transparency and accountability in the conduct of businesses operating in rural areas. By addressing these systemic issues, states can create an enabling environment for sustainable development and social justice in rural communities.

The imperative to protect peasants and other rural workers against environmental hazards and non-state abuses finds its mooring in principles of human rights and environmental justice, as elucidated in Article 18 of the Declaration. This underscores the interconnectedness between environmental well-being, social equity, and human rights, emphasizing the importance of adopting a holistic and integrated approach to rural development. States must recognize the intrinsic dignity and agency of rural communities and ensure that their policies and actions are guided by principles of participation, empowerment, and accountability, as enshrined in Article 18.

Additionally, the enforcement of environmental laws serves as a mechanism for holding non-state actors accountable for their actions and averting harm to rural communities, as mandated in Article 18 of the Declaration. However, effective enforcement requires not only robust legal frameworks but also adequate resources, capacity-building endeavors, and stakeholder engagement initiatives to ensure compliance and accountability at all levels. States must invest in strengthening institutional capacities, providing technical assistance, and raising public awareness to support the effective implementation of environmental laws and regulations in rural areas.

9. *Final Remarks*

The obligation of states to consult with peasant communities and their representatives regarding projects and activities affecting them should be closely intertwined with the substantive human rights and freedoms of these communities. This obligation reflects a fundamental principle of participatory governance, wherein the affected individuals have a right to be involved in decisions that directly affect their lives and livelihoods. By ensuring meaningful consultation processes, states not only uphold the dignity and agency of peasant communities but also foster a more inclusive and democratic approach to governance. Furthermore, effective consultation mechanisms can help identify potential risks, mitigate adverse impacts, and enhance the overall effectiveness and legitimacy of development initiatives. Therefore, integrating the perspectives and concerns of peasant communities into decision-making processes is essential for promoting social justice, environmental sustainability, and human rights protection in rural areas.

It is imperative to acknowledge that safeguarding the rights of peasant communities to their lands and natural resources is paramount for ensuring their holistic well-being and sustainable livelihoods. These rights extend far beyond mere property ownership, encompassing a diverse array of socio-economic, cultural, and environmental dimensions⁴⁸. Peasant communities rely heavily on their lands not only for economic sustenance but also for cultural identity, traditional practices, and spiritual connection to their environment. Therefore, any infringement upon these rights and freedoms not only threatens their immediate livelihoods but also undermines their cultural heritage and social cohesion.

⁴⁸ Indirectly, this is confirmed by the wide spectrum of rights and freedoms encompassed in the UN Declaration on the Rights of Peasants.

Additionally, the integrity of peasant lands and natural resources is intricately linked to broader ecological concerns, such as biodiversity conservation, soil fertility, and water quality. Recognizing and upholding these rights is not only a matter of legal obligation but also a moral imperative to ensure the dignity, resilience, and flourishing of peasant communities within the fabric of society.

In addition to cases requiring the free, prior, and informed consent of peasant communities, the broader issue of natural resource management on peasant lands should be comprehensively addressed in light of the recognition of peasant communities' rights to determine their own development strategies and freely utilize their lands and other natural resources, as articulated in Article 3, Paragraph 2, and Article 5 of the Declaration.

Article 5, akin to Article 3, paragraph 2 of the Declaration, is intricately linked to the right to self-determination and outlines the parameters and prerequisites for the state's management of natural resources, aligning with the contemporary emphasis on human-rights-based and participatory forms of development. This provision is instrumental in enabling peasant communities to chart their own development trajectory and necessitates broad-based participation and engagement, extending beyond ad hoc consultations on specific projects. Unlike the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)⁴⁹, which shares several characteristics and contents, the Declaration explicitly addresses a crucial aspect, namely the involvement of peasant communities in the conduct of impact assessment studies concerning development plans and projects affecting them, forming an integral part of the consultation process envisaged in Article 5.

Given the special bond that peasant communities share with their territories and lands, the Declaration also places particular emphasis on safeguarding the natural environment and productive capacity of these territories and lands, generally proscribing the storage and disposal of waste and hazardous materials in such areas. Article 18 of the Declaration must be interpreted and applied in conjunction with other articles of the Declaration, particularly Article 5, as considerations pertaining to the impact of proposed activities on the environment of peasant lands and territories, and the subsequent repercussions on the lives and livelihoods of affected communities, are integral to the consultation and decision-making process mandated under the Declaration.

The articles examined in this study encapsulate and reinforce the overarching general principles that have evolved through the practice of UN Treaty Bodies and regional human rights courts over the years. By applying universal human rights provisions to the specific contexts of peasant communities, these articles bolster the protection of peasant rights under international law and stimulate various advancements at the national level. Some of these advancements have been cited and discussed in this study, underscoring the tangible impact of these legal instruments on shaping domestic policies and practices. Furthermore, these articles serve as valuable interpretative tools for UN Treaty Bodies, regional courts, and national judicial systems, aiding in the elucidation of the Declaration's provisions and their applicability in diverse legal contexts. This interpretive function helps to clarify the scope and implications of the Declaration, thereby contributing to its effective implementation and enforcement. It is noteworthy that these articles are not only relevant within the realm of international human rights law but also have the potential to resonate with stakeholders in the private sector. In particular, they may attract attention from corporations and other

⁴⁹ UN Office of the High Commissioner for Human Rights (OHCHR), The United Nations Declaration on the Rights of Indigenous Peoples, HR/PUB/13/2, August 2013, <https://www.refworld.org/reference/manuals/ohchr/2013/en/98094>

entities engaged in initiatives focused on corporate social responsibility. By aligning their actions with the principles enshrined in these articles, private sector actors can demonstrate their commitment to ethical business practices and contribute to the promotion of human rights in the context of rural development.

Expanding upon this, it is important to recognize that the articles discussed herein are not isolated provisions but rather integral components of a broader legal framework shaped by extensive negotiations and international consensus-building. Drawing upon established legal principles rooted in general international law, such as non-discrimination, self-determination, and participation, these articles embody fundamental human rights norms that transcend specific contexts and jurisdictions. The effective implementation of these provisions is not only crucial for upholding the rights of peasant communities but also indispensable for advancing broader societal goals of inclusive development and social justice. As communities continue to grapple with the adverse impacts of development projects, particularly those driven by large-scale exploitation of natural resources, it becomes increasingly imperative to ensure that legal frameworks are robustly enforced and that mechanisms for accountability and redress are accessible to all affected parties. In essence, the successful realization of the principles enshrined in these articles is essential for fostering equitable and sustainable development practices that prioritize the well-being of marginalized communities and mitigate the exacerbation of social disparities. By upholding these principles, states can fulfill their obligations under international law and contribute to the collective endeavor of building a more just and equitable world for all.