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OPINION

STATEMENT OF OPINION ON THE DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS

2 OCTOBER 2018



**Statement of Opinion on the Declaration on the Rights of Peasants
and Other People Working in Rural Areas**
was adopted at the plenary assembly of 2 October 2018 (unanimous adoption).

Since the 2008 food crisis, the particularly dire situation of peasants and rural workers has been at the heart of international current events. The special session of the Human Rights Council on 22 May 2008 on “*the negative impact of the worsening of the world food crisis on the realization of the right to food for all*” (S-7/1) highlighted the many challenges of food security, in particular in Third World countries. However, ten years later, the Human Rights Council was itself forced to reiterate this observation, specifying that “*70 per cent of hungry people live in rural areas*” and 50 per cent are “*small-scale farm-holders*”¹. On 9 April 2018, the Deputy High Commissioner for Human Rights highlighted that “*peasants and other people working in rural areas also faced challenges in regard to access to land and other resources, as well as discrimination, particularly against women. That situation was aggravated by globalization, free trade agreements and patents over seeds, which eroded the ability of small-scale farmers to use or exchange their own seeds, often indebting peasants by forcing exclusive purchase of those patented seeds. The situation was further aggravated by climate change, which particularly affected those who depend on the land. The 2030 Agenda for Sustainable Development would benefit all if it was delivered based on human rights*”².

Thus, the issue of peasants’ rights is located somewhere between human rights issues and sustainable development concerns, in keeping with the CNCDH’s recent opinions on CETA³, on development, the environment and human rights⁴ and on the human rights-based approach⁵. Mere market logic cannot prevail over the necessity of food sovereignty. It is the effectiveness of human rights that is at stake, while Article 11 Para. 2 of the ICESCR provides that State Parties “*recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed (...)*”⁶. By referring to a “fundamental right”, the Covenant sets apart the most essential and elementary right of being “free from hunger”, as a pillar of human rights protection to which the international community is beholden⁷. This implies an effort to ensure consistency with a true human rights diplomacy in the policies implemented, for both development and trade policies, within the different entities

1. Para. 18 of Resolution 34/12 of 23 March 2017 on the right to food, adopted by 45 votes to one, the United States, with only one abstaining, the Republic of Korea.

2. A/HRC/39/67, Para. 2, opening of the 5th annual session of the intergovernmental working group (see below).

3. CNCDH, *Opinion on international trade and investment agreements: Let us not sacrifice human rights for commercial interests - The example of the Comprehensive Economic and Trade Agreement between the European Union and Canada (CETA)*, Plenary assembly of 15 December 2016, JORF no. 0056 of 7 March 2017, text no. 65.

4. CNCDH, *Opinion on Development, the Environment and Human Rights*, Plenary assembly of 16 April 2015, JORF no. 0119 of 24 May 2015, text no. 50.

5. CNCDH, *Statement of Opinion on the Human Rights-Based Approach*, Plenary assembly of 3 July 2018, JORF no. 0161 of 14 July 2018, text no. 104.

6. See Emmanuel Decaux “Le droit à la vie et le droit à l’alimentation” (The Right to Life and the Right to Food) in Christian Tomuschat (ed), *The Right to Life*, Brill, 2010.

7. See Mohammed Bedjaoui’s general course, “L’humanité en quête de paix et de développement” (Humanity in Search of Peace and Development), *Collection of Courses of the Hague Academy of International Law*, RCADI volume 325 (2 vol), Martinus Nijhoff, 2008, in particular vol.II, p. 196 et seq.: “Éradiquer définitivement la faim en faisant des ressources alimentaires de base « un patrimoine commun de l’humanité »” (Definitively eradicating hunger by making basic food resources “the common heritage of humanity”).

concerned, UN, FAO, WTO, as the CNCDH has already advised in its study on diplomacy and human rights⁸.

In line with General Comment no. 12 (1999), adopted by the Committee on Economic, Social and Cultural Rights, on Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, successive special rapporteurs on the right to food, and particularly Jean Ziegler and Olivier De Schutter, have highlighted the importance of a “rights-based approach” by examining all concrete implications of the “fundamental right of everyone to be free from hunger” (Art. 11, Para. 2). In the same spirit, in 2010, and on the basis of a new study by Jean Ziegler⁹, the Human Rights Council entrusted its Advisory Committee with carrying out a study “on the advancement of the rights of peasants and other people working in rural areas”, which it submitted in 2012 following the works of a drafting group (A/HRC/19/75)¹⁰.

The Human Rights Council therefore decided, in its Resolution 21/19 of 11 October 2012, to set up an “open-ended intergovernmental working group” meeting every year since 2013 to establish a “draft declaration on the rights of peasants and other people working in rural areas”, of which an edited version, dated 12 February 2018, is included in the documents of the working group’s 5th session (A/HRC/WG.15/5/2). The 5th and last session of the working group, which was held in April 2018, having failed to finalise the draft declaration, entrusted its Chair-Rapporteur with presenting, after the final rounds of informal negotiations, a consolidated version to the Human Rights Council during its 39th session in the Autumn (A/HRC/39/67). The working group discussions have confirmed the expectations raised by this project across the globe, both those of all Third World States and of NGOs who have implemented a broad coalition, as well as the United States’ hostility of principle - which it is true, is not a State Party to the ICESCR - and the reluctance of the European Union, which seems divided between Portugal’s open position and the more negative attitude of Great Britain¹¹.

In light of the haze over the nature and scope of a consensus that it still sought - and in the absence of the United States who in the meantime withdrew from the Human Rights Council before the end of their term -, the 39th session of the Human Rights Council is faced with a moment of truth with the submission of the latest version of the project presented by the Chair-Rapporteur of the working group, on 10 September 2018 (A/HRC/WG.15/5/3). It is regrettable that this late submission does not allow us to enjoy a translation of a document as important as this one in the other official United Nations languages, and in particular in French, as this does not encourage real ownership of the text by all stakeholders concerned. However, in substance, the draft project does enable all Human Rights Council members

8. CNCDH, *Diplomacy and Human Rights, Les études de la CNCDH* (Studies of the CNCDH), 2008.

9. See in particular the study on discrimination in the context of the right to food, A/HRC/16/40.

10. Resolution 13/4 of 24 March 2010 (Para. 44) on the right to food (adopted by consensus). Creation of a drafting group within the AC: Preliminary report on the 6th session (A/HRC/16/63), consultations (Res.16/7 of 25 March 2011) and final report on the 7th session (A/HRC/19/75), with the Declaration attached in the Appendix (Ch. Golya).

11. Report, Para. 12 (EU), Para. 35 (USA).

to make an informed decision on a fundamental issue with a view to providing a concrete scope to the rights that have already been established in major legal instruments. The adoption of the draft Declaration (A/HRC/39/L.16) by Human Rights Council Resolution on 28 September 2018¹², has paved the way for discussions before the IIIrd Committee of the United Nations General Assembly, during its annual session. The CNCDH would like France to play a full part in these discussions, by contributing towards building a strong consensus on the draft declaration.

At this stage, the attitude of European States - who after having been hostile to the creation of the working group by the Human Rights Council¹³ sought refuge in abstaining - needs to change, even more so as they can no longer hide behind the American principle of hostility. European States cannot be “neutral” with regard to such issues which are intrinsically linked to the Sustainable Development Goals adopted in 2015. This must even less be the final response given by France in its capacity as a major agricultural player leading the fight for “food sovereignty” and adjustment to climate change, and targeting a new, more concrete and more effective approach to international solidarity. In a time when our country is preparing to present its candidacy for the Human Rights Council, a dynamic attitude on France’s part can only be praised by our partners in the South. Within the European Union, its political weight would be a deciding factor to strengthen the position of States which, like Portugal, appear particularly in favour of the ongoing project.

As the CNCDH has already underlined, in a letter from the Chair dated 8 February 2018 addressed to the Minister of Europe and Foreign Affairs, the “legal” arguments questioning the principle of a declaration on the rights of peasants are barely acceptable. The Declaration does not create any new rights, “collective rights” or new categories of rights in itself. Much like Article 12 of the *Convention on the Elimination of all Forms of Discrimination Against Women* or Article 24 of the *Convention on the Rights of the Child*, it places emphasis on effective access to basic rights, based on the very principle of non-discrimination, and targets the most vulnerable groups. It would be paradoxical to denounce basic community rights to better encourage the monopoly of multinationals, in particular in the field of commercial seed systems, or the farming of lands by foreign States. The issue of principle is to make human rights effective rights for all.

The CNCDH also considers that this project is in keeping with French policies on sustainable development, combatting poverty and food insecurity. This is in particular the goal that France has set for itself in *Framework and Programming Law* no. 2014-773 of 7 July 2014 on policy on development and international solidarity. This act provides that “*consistency is sought between the objectives of the development and international solidarity policy and*

12. Resolution A/HRC/39/L.16 on the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted on 28 September 2018 by 33 votes to 3 (Australia, United Kingdom, Hungary), with 11 abstaining. Switzerland voted in favour of the resolution, the other European States abstained.

13. Resolution 21/9 of 27 September 2012: “promotion and protection of the human rights of peasants and other people working in rural areas” Adopted 23 votes to 9 (USA and Members of the EU), with 15 abs. (Norway, Switzerland).

those of other public policies that are likely to have an impact on development, in particular agricultural (...) policies". This requirement is also a constitutional obligation for European Union (EU) Member States. Article 208 of the *Treaty on the Functioning of the European Union* makes the reduction and, in the long term, the eradication of poverty the primary objective of development cooperation.

Furthermore, France is also active on the international scene as a founding member of the *International Treaty on Plant Genetic Resources for Food and Agriculture* (IT PGRFA). For the CNCDH, it is therefore vital that France, the leading European country in terms of agricultural production and area, supports this draft declaration, even more so given that the first line of focus of the *Act for the balancing of trade relations in the agricultural sector and for healthy and durable food* - which was adopted by the National Assembly on 2 October 2018 following the General Assembly on Food - is to ensure France's food sovereignty¹⁴.

In conclusion, the CNCDH highlights the significance of national and international issues on the topic, where the wait-and-see approach has prevailed for too long, and underlines the importance of taking an unambiguous principled stance and attitude of solidarity with respect to Third Country States that support this declaration, in particular Francophone countries, and of acting as a driving force for our partners in a European context. In this respect, it is necessary to examine the legal nature of this project that strengthens "a rights-based approach" as recommended by the CNCDH, where the European Union prefers to speak of access to "resources". It being a declaration that has no intentions of becoming the starting point for a binding treaty and even less for the creation of a treaty monitoring body, France can make an explanation of vote or an interpretative declaration at its leisure to clarify the terms and limits of its constructive engagement. However, it must speak loud and clear in favour of a Declaration of principle that clarifies the scope of fundamental rights that have already been established in an abstract manner, as close as possible to grassroots level, and that in itself does not create new categories of rights and new obligations with regard to States. France - having become the champion of sustainable development and climate justice - must join the forefront of States mobilised on this vital issue to combat poverty and for the future of the planet, in accordance with human rights worldwide.

14. Draft law, adopted by the National Assembly under the conditions provided in Article 45, Paragraph 4 of the Constitution, for the balancing of trade relations in the agricultural and food sector and for healthy, durable food accessible to all, of 2 October 2018, T.A. no. 177. Available at www.assemblee-nationale.fr/dyn/15/dossiers/equilibre_relations_commerciales_agriculture?etape=15-ANLDEF.



Created in 1947 at the instigation of René Cassin, the **National Consultative Commission on Human Rights (CNCDH)** is the French national institution responsible for promoting and protecting human rights with level 'A' accreditation from the United Nations.

The CNCDH performs a three-pronged role that involves the following:

- enlightening the public decision-making process with regards to human rights;
- monitoring the effectiveness in France of rights protected by international human rights conventions;
- overseeing France's implementation of recommendations made by international committees.

The CNCDH is independent and operates based on the principle of the pluralism of ideas. This being the case, as the only institution that maintains continuous dialogue between civil society and French experts in the field of human rights, the Committee comprises 64 qualified individuals and representatives of non-governmental organisations with their roots in civil society.

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