

**FIAN INTERNATIONAL
BRIEFING**

DECEMBER 2015

By Florence Kroff¹



The right to food

**IN THE UNITED NATIONS
DECLARATION ON THE RIGHTS OF
PEASANTS AND OTHER PEOPLE
WORKING IN RURAL AREAS**

This briefing note on the right to food is part of a series of briefings published by FIAN International to feed into the negotiations on the draft declaration of the United Nations on the rights of peasants and other people working in rural areas.

This first series of briefings covers the following topics: rights to sovereignty over natural resources, development and food sovereignty, the right to food and the right to land and other natural resources.

All of these briefing notes are available on our website: <http://www.fian.org/>



¹ Florence Kroff is coordinator of FIAN Belgium – Christophe Golay, Denisse Córdova Montes, Priscilla Claeys and Sofia Monsalve also contributed to this briefing note with their careful reading and advice.

1. DEFINITION: THE RIGHT TO ADEQUATE FOOD AND NUTRITION

Today, there is an established interpretation of the concept of the right to adequate food and nutrition. It may be defined as the right, alone or in community with others, to be free from hunger and malnutrition,¹ to have physical and economic access at all times to adequate food (*in quality and quantity*) that is nutritious and culturally acceptable or means for its procurement² in a sustainable and dignified manner, while ensuring the highest level of physical, emotional and intellectual development. Moreover, all these dimensions are inseparable from nutritional well-being and health and must be interpreted in the context of food sovereignty, gender equality and women's rights.

Applied to peasants and people working in rural areas, this definition should include the right to *produce food while preserving sustainable access to food for future generations*.

This fundamental peasant's right must be considered in a **holistic and sustainable manner** (see below) and take into account all stages of production in the food system from seed to finished food product that is fit for consumption, through the various stages of the food chain.³ In practice, this means that it is not enough to guarantee that the food produced by peasants or to which they have access is nutritionally rich, but that the production process must be considered as a whole. If we focus separately either on the croplands that feed us or on our human bodies that eat the food, we risk limiting the realisation of the right to adequate food and nutrition to either simply increasing food production or developing compensatory food or financial assistance programmes. In the context of the indivisibility and interdependence of human rights, the right to food requires us to consider all stages of production from the perspective of human rights, as well as the various sectors that impact on the realisation of the right to food, particularly: economy, trade, finance, health, social protection and investment policies.

At the same time, the Declaration represents a unique opportunity to define and guarantee this right, not only for peasants, but also for all those working in rural areas: fisherfolk, pastoralists, foragers, farm workers, seasonal workers, landless people, etc.

This right is in essence an **individual right that may be exercised collectively** and enjoyment of it must be free of any discriminatory measures. Every peasant or person working in rural areas must be able to fully enjoy it in a manner that is intrinsically linked to their dignity as a human. At the same time, this right may be asserted collectively by a particular social group or community. This

collective dimension is all the more relevant from a holistic approach to the right to adequate food and nutrition for peasants and other people working in rural areas. Thus, for example, a community of fisherfolk that loses its access to certain fishing areas that meet the food needs of members of the rural community will be able to assert the right to food by recourse to this collective dimension (for more on access to productive resources, see the Note on Article 19 – Right to land and other natural resources).



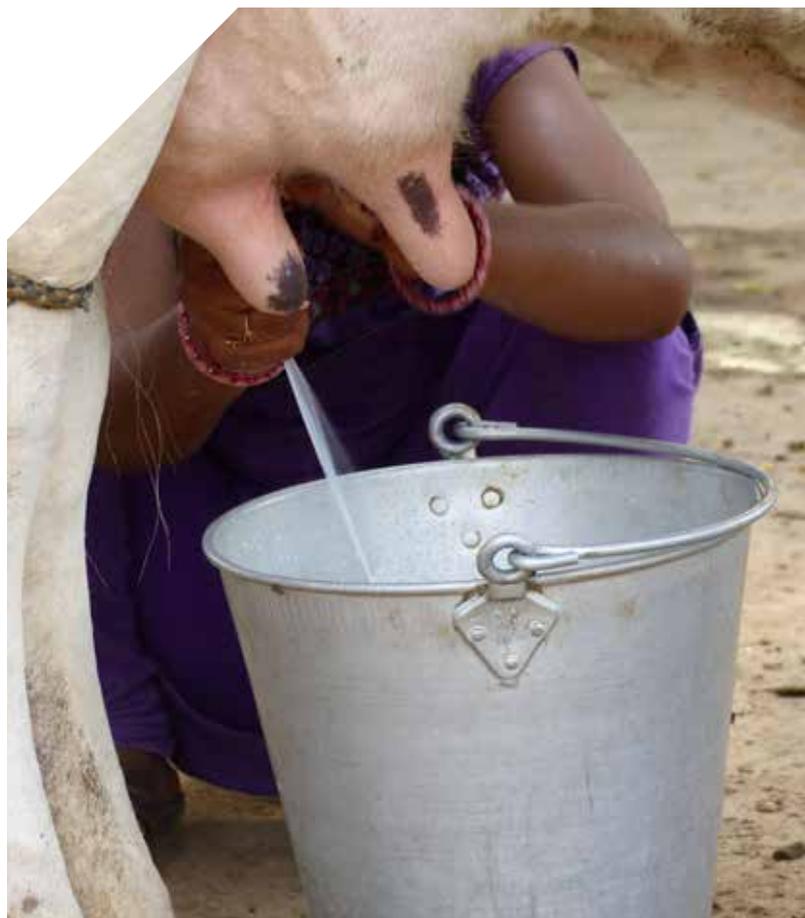
1 International Covenant on Economic, Social and Cultural Rights (1966), Article 11.2
2 Committee on Economic, Social and Cultural Rights, General Comment 12 on the right to adequate food (art. 11), May 12, 1999, E/C.12/1999/5 (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F1999%2F5&Lang=en)
3 FIAN International, Oral Statement - Item 4 - Articles 15-18, Geneva, 04 February 2015, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/Session2/FIAN.pdf>

2. NORMATIVE CONTENT OF THIS RIGHT

The CESCR identified various aspects of the right to adequate food,⁴ which may serve as a basis for considering the **different components** of the right to adequate food and nutrition for peasants and other people working in rural areas: **adequacy (in quantity and quality, cultural and nutritional), availability, accessibility (physical and economic) and sustainability.** In the context of this briefing note, we will only consider in detail some of these components, both here and in the rest of this document.

The **availability** of food as an essential element in the realisation of the right to food for peasants must be addressed. Availability of food implies that it must be possible either to obtain food directly from the land, fisheries or forests or other natural resources, or for there to be distribution, processing and functioning market systems to which the peasants and those working in rural areas have access. To meet their specific needs, it is essential to explicitly reaffirm their right to produce food to guarantee its availability. This dimension is closely linked to other rights in the Declaration, including the rights to sovereignty over natural resources, development and food sovereignty (see Note on Article 5 – Rights to sovereignty over natural resources, development and food sovereignty), the right to land and other natural resources (see Note on Article 19) and the right to the means of production (Article 21) and to seeds (see Note on Article 22 – Right to seeds). If they cannot produce their food, or in order to guarantee a balanced diet, peasants must have access to food offered for sale in markets or in shops.

Access to adequate, healthy, nutritious and culturally acceptable food must be both physically and economically guaranteed. Firstly, particular attention must be paid to the physically marginalised, such as children, the sick, the disabled or the elderly, who may have difficulty leaving their homes to stock up on food, but also to peasants and geographically isolated rural people. Secondly, spending on food must not hinder the exercise of other fundamental rights. The most marginalised or disadvantaged peasants and rural people must, where necessary, have access to social security programmes or other public programmes that guarantee this economic accessibility. It is also important to ensure that budgets allocated to these public programmes are not reduced irrationally, disproportionately, or contrary to the law, when for example, budget cuts are imposed.



Why recognise this right for peasants?

Because 80 percent of people suffering from hunger live in rural areas⁵ and 50 percent of people suffering from hunger are smallholder farmers;⁶

Because State support for small farmers, fishing communities and local enterprises is a key element of food security and the provision of the right to food;⁷

Because around 500 million small farms in developing countries feed nearly 2 billion people – representing one third of humanity;⁸

Because family farming produces over 70% of world food. And protecting the rights of these small farmers is crucial for the eradication of hunger for all;⁹

Because only peasant farming, artisanal fisheries and sustainable food production methods will stop the meteoric rise of obesity and malnutrition, while adequately feeding humanity.¹⁰

⁴ Committee on Economic, Social and Cultural Rights, General Comment 12 on the right to adequate food (art. 11), May 12, 1999, E/C.12/1999/5

⁵ Human Rights Council, Resolution A/HRC/RES/7/14 on the right to food, May 22, 2008, §10

⁶ Ibid.

⁷ Ibid.

⁸ IFAD, Food prices: smallholder farmers can be part of the solution, 2009. <http://www.ifad.org/operations/food/farmer.htm>

⁹ Hilal Elver, Family farmers produce over 70% of the world's food, their rights cannot be ignored, World Food Day – Thursday 16 October 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15172>

¹⁰ International Assessment of Agricultural Science and Technology for Development (IAASTD), 2008, reports available on the website: <http://www.unep.org/dewa/Assessments/Ecosystems/IAASTD/tabid/105853/Defa>

The issue of **sustainability**, in the case of peasants' right to food, takes on particular importance, both for the holders of that right (peasants and other people working in rural areas) and other members of society. The content of Guideline 8E of the Guidelines on the Right to Food is highly relevant here: *States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil and promote the sustainable management of fisheries and forestry.*¹¹ This component refers directly to the choice of agrifood model and the need to promote those models that correspond to the sustainability criterion.

Finally, in the context of the Declaration of the rights of peasants, and in order to reflect a **holistic approach** to the right to food, each of these dimensions must be considered in the context of **food sovereignty, gender equality and women's rights**. The food sovereignty perspective implies special attention to social and political processes, which must be participatory at all stages (development, adoption, implementation and monitoring). The gender equality and women's rights perspective implies the elimination of gender-based violence and discrimination, increased attention to the role of women in the food system, and the cessation of violations of women's rights throughout their lifetime (including in connection with their right to education and their right to self-determination in matters of sexuality, pregnancy and maternity).

11 Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, FAO (2004), Guideline 8E.



3. WHAT ARE THE OBLIGATIONS OF STATES?

The national and global agriculture and food governance contexts have evolved considerably since the adoption of the fundamental interpretative sources of the right to food (in particular General Comment No. 12 of the CESCR¹² and the Guidelines on the Right to Food¹³). The inclusion and definition of the right to food in the Declaration of the rights of peasants is another significant step in the right direction and represents an opportunity to shape how this right is interpreted.

State obligations to realise the right to adequate food are well known and have been clarified on many occasions by the CESCR and interpretative texts which have followed General Comment No. 12: **States must respect, protect and fulfil (facilitate and provide) this right**. Some aspects, however, need to be reinforced in the application of this right to peasants and other rural workers.

In view of the obligation of States to **respect** peasants' right to food, they must refrain from interfering in or limiting the access of peasants to resources needed for food production. States must, for example, choose policies that do not threaten local food production and quality. They must also refrain from discriminating against small food producers by promoting an agro-industrial export model. In order for the right to food to be respected for peasants and other people working in rural areas, they should be consulted and be able to participate not only in the development of legislation and programmes that impact on the realisation of their right to food, but also in the implementation thereof. Programmes combating hunger or targeting nutrition should not be disconnected from the adopted model of production and consumption and must take into account local realities and contribute to the realisation of other rights (right to food sovereignty, right to land, right to seeds, etc.).

The obligation to **protect** calls on States to ensure that non-state actors (individuals or corporations) do not deprive peasants of access to adequate food.¹⁴ In practice, the most common examples are those situations requiring States to protect local peasant communities faced with a company intent on investing in land occupied by the peasants to support the community (see Note on Article 19). Today, particular attention must be paid to negotiated clauses in trade treaties that grant rights to non-state actors that run counter to the realisation of the right to food for rural populations; an example of this are bans imposed on the protection of local production in the face of cheap food imports. Moreover, this new right will have to take into account the particular reality of other people working

12 Committee on Economic, Social and Cultural Rights, General Comment 12 on the right to adequate food (art. 11), May 12, 1999, E/C.12/1999/5

13 Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, FAO (2004).

14 Committee on Economic, Social and Cultural Rights, General Comment 12 on the right to adequate food (art. 11), May 12, 1999, E/C.12/1999/5, para. 15

in rural areas, such as agricultural workers, whose right to food must be protected by States when they are subject to illegal actions by their employers, actions that are still too often ignored.

The obligation to **fulfil** the right to adequate food and nutrition for peasants and other people working in rural areas may be subdivided into two distinct obligations: the obligation to facilitate and the obligation to provide. First, the obligation to **facilitate** means that the State must pro-actively engage in activities intended to strengthen peasants' access to and utilisation of resources and means to ensure their livelihood, including food security.¹⁵ In the context of the Declaration on the rights of peasants, this obligation is consistent with other rights in the Declaration. It also refers to several aspects such as the peasants' need for technical assistance to realise their right to produce quality food, or the public support necessary to deliver local fisherfolk and pastoralists' produce to local markets. The Guidelines on the Right to Food, particularly Guidelines 4 (Market systems) and 8 (Access to resources and assets) are useful in determining this obligation. Moreover, State compliance with this obligation is likely to have a positive impact not only on the realisation of the right to adequate food and nutrition for peasants, but more importantly, for the entire population, who will gain easier access to local, healthy, high quality and sustainable food. This obligation should also lead States to introduce land reforms where necessary for the realisation of this right (see Note on Article 19). Secondly, the obligation to **provide** is defined by the CESCR as the State's obligation to take steps to fulfil this right directly whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal. In times of climatic and economic crises, rural communities are often more affected than others, a fact which justifies the State having to act and adopt non-discriminatory social security policies that are accessible to them. Food aid programmes also fall within this category and should give priority to food products that promote peasant farming, artisanal fisheries and local food production.

Along with these three levels of obligation, States must take care to abide by applicable general human rights principles and particularly, in this context, the **principles of participation and non-discrimination**.

In this situation, the **principle of participation** of marginalised groups in political and decision-making processes should be highlighted and strengthened for peasants and other people working in rural areas. Implementation of this principle at the international (e.g. within the framework of the CFS, via the CSM)¹⁶ or national level (e.g. local food policy councils) are examples of the fulfilment of this obligation.¹⁷ This principle has to be linked with other rights in the Declaration, such as the freedom of thought,



¹⁵ Ibid.

¹⁶ CFS: Committee on World Food Security; CSM: Civil Society Mechanism.

¹⁷ P. CLAEYS et N. LAMBEK, Voluntary Guidelines on the progressive realization of the right to food: 10-year review. Creating an Environment for a Fully Realized Right to Food: Progress, Challenges and Emerging Alternative Policy Models. A Ten-Year Retrospective on Voluntary Guidelines 1-6, December 2014, https://www.academia.edu/9810592/Creating_an_Environment_for_a_Fully_Realized_Right_to_Food_Progress_Challenges_and_Emerging_Alternative_Policy_Models_A_Ten-Year_Retrospective_on_Voluntary_Guidelines_1-6

opinion and expression (Article 10) or the right to participation and information (Article 12).

The **principle of non-discrimination** must also be given particular consideration in defining State obligations inherent in the realisation of the right to food. Firstly, this principle is the basis of the need to adopt a Declaration to protect the rights of peasants, a group that has always been marginalised and systematically discriminated against. Secondly, this principle should guide States in the implementation of their obligations, particularly regarding the rights of rural women (see Note on Article 6 – Rural women’s rights), while repealing and prohibiting any discriminatory measures against them.

What are the sources of international law supporting recognition of this right?

- The International Covenant on Economic, Social and Cultural Rights (1966), Articles 11.1 and 11.2;
- General Comment No. 12 (1999) of the Committee on Economic, Social and Cultural Rights: The right to adequate food (Article 11 of the Covenant), UN Doc. E/C.12/1999/5;
- FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (2004);
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1995);
- Report of the Special Rapporteur on the right to food at the 25th session of the Human Rights Council, UN Doc. A/HRC/25/57
- The Convention on the Elimination of All Forms of Discrimination against Women (1979)
- The Convention on the Rights of the Child (1989)

4. POINTS REQUIRING ATTENTION AND RECOMMENDATIONS TO IMPROVE THE CURRENT VERSION OF ARTICLE 17 ON THE RIGHT TO FOOD

- To guarantee the holistic nature of peasants’ right to food, we recommend changing the title to include a reference to the notion of “adequate” as well as to nutrition: **Right to adequate food and nutrition**;
- When the right to food is applied to the particular group represented by peasants and other people working in rural areas, it is imperative to refer to the **right to produce** food to meet the needs of local communities and consumers, in a sustainable and dignified manner, in the context of food sovereignty.
- The notion of **cultural appropriateness** must also be retained when setting out the right to food as applied to peasants. Food is intrinsically linked to an individual’s practices, customs and traditions.¹⁸ Dietary and eating habits must be culturally acceptable. This aspect of the right, enshrined in numerous international instruments, must be highlighted in this context.
- Furthermore, the holistic nature of the right to food must be specifically applied to the concept of **nutrition**. Indeed, in its current version, Article 17.4 focuses too much on ad hoc medical interventions to combat malnutrition instead of guaranteeing a global approach to nutrition through national strategies, in consultation with peasants, that enable them to overcome hunger and malnutrition through their own production and consumption of their own food as well as by strengthening their own food systems in the framework of food sovereignty. The diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity, that is in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation,¹⁹ including ensuring adequate nutrition for women during pregnancy and lactation.

¹⁸ Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, FAO (2004), Guidelines 10.9 and 10.10.

¹⁹ Committee on Economic, Social and Cultural Rights, General Comment 12 on the right to adequate food (art. 11), May 12, 1999, E/C.12/1999/5, para. 9

- Finally, the current version of Article 17 still lacks a clear **gender approach**. Firstly, the impact of hunger and malnutrition is higher among women and girls, and secondly, the contribution of women to realising the right to food for their families, their community and society in general must be recognised, protected and strengthened.²⁰ As Olivier De Schutter points out in his report “Women’s rights and the right to food”, *discrimination against women as food producers is not only a violation of their rights, it also has society-wide consequences, because of the considerable productivity losses entailed.*²¹ Indeed, violations of the right to adequate food and nutrition are intrinsically linked to gender-based violence and discrimination, to the lack of attention paid to the role of women in the food system and violations of women’s rights throughout their lives.



United Nations draft declaration on the rights of peasants and other people working in rural areas (advanced version of 27/01/2015)²² – Extract

Article 17 – RIGHT TO FOOD

- 1. Peasants and other people working in rural areas have the right to adequate food and the fundamental right to be free from hunger. This includes the right to produce food and the right to adequate nutrition that guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
- 2. Ensure that peasants and other people working in rural areas have the right to physical and economic access at all times to sufficient, adequate and culturally acceptable food, that is produced and consumed sustainably, preserving access to food for future generations, and that ensures a physically and mentally fulfilling and dignified life for them, individually and collectively.
- 3. Peasants and other people working in rural areas have the right to produce and have access to adequate food that is culturally acceptable and, as a whole, contains a mix of nutrients necessary for physical and mental growth, development and maintenance and for physical activity, that is in compliance with human physiological needs throughout the life cycle and according to gender and occupation, including ensuring to women adequate nutrition during pregnancy and lactation.
- 4. States shall take appropriate measures to combat malnutrition of rural children, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious food. States shall also ensure that all segments of the society, in particular parents and children, are informed and have access to nutritional education and are supported in the use of basic knowledge of child nutrition, and the advantages of breastfeeding.

²⁰ Human Rights Council, Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter - Women’s rights and the right to food, A/HRC/22/50, 24 December 2012.

²¹ Idem, §6

²² Available on the website: <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/2ndSession.aspx>



CONTACT :

FIAN Belgium

Rue Van Elewyck, 35
1050 Brussels - Belgium
+32 (0)2 640 84 17
fian@fian.be - www.fian.be

FIAN International Secretariat

Willy-Brandt-Platz 5
69115 Heidelberg - Germany
+ 49 6221 65300-30
www.fian.org