

*EXISTING RIGHTS OF PEASANTS AND OTHER
PEOPLE WORKING IN RURAL AREAS IN
INTERNATIONAL LAW*



Adriana Bessa

Geneva Academy on Humanitarian Law and Human Rights
adriana.bessa@geneva-academy.ch

Second Session of the Working Group on the Rights of Peasants
and Other People Working in Rural Areas
Palais de Nations, Geneva, 2-6 February 2015

Outline



1. Exceptions to nature conservation measures
2. Right to keep traditional cultural practices
3. Right to land
4. Right to participate in decision making
5. Cultural rights and traditional knowledge
6. Free prior and informed consent (FPIC) and benefit-sharing
7. Right to seeds

Exceptions to nature conservation measures



- 1994 International Tropical Timber Agreement (revised in 2006)*
- 1995 Agreement for the Implementation of the UN Convention on the Law of the Sea**
- 2003 revision of the 1968 African Convention on the Conservation of Nature and Natural Resources
- IUCN categories for natural reserves

*65 ratifications

**80 ratifications

Exceptions to nature conservation measures



- 1995 Agreement for the Implementation of the UN Convention on the Law of the Sea, Article 24.2

AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF
THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA
OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND
MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY
MIGRATORY FISH STOCKS

24.2 (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

Right to keep traditional cultural practices



- 1992 Convention on Biological Diversity* – Articles 8(j) and 10(c)
- The 2009 ICJ decision in the Nicaragua v. Costa Rica case
- The 1999 PCA decision in the Eritrea v. Yemen case
- Practically all recent decisions involving indigenous peoples

*193 ratifications

Right to keep traditional cultural practices



- 1992 Convention on Biological Diversity – Articles 8(j) and 10(c)

8. (j) Subject to its national legislation, **respect, preserve and maintain knowledge, innovations and practices** of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

10. (c) **Protect and encourage customary use of biological resources in accordance with traditional cultural practices** that are compatible with conservation or sustainable use requirements;

Right to land



- 1998 UN Guiding Principles on Internal Displacement

Human rights monitoring bodies: right to property, right to culture

- 2007 decision of the IACtHR in the case Saramaka Peoples v. Suriname
- 2004 decision of the ECtHR in Dogan and Others v. Turkey
- Decisions involving indigenous peoples

Right to land



- UN Guiding Principles on Internal Displacement, Principle 9

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

Right to participate in decision making



- 1994 Convention to Combat Desertification*
- 2001 FAO International Treaty on Plant Genetic Resources for Food and Agriculture**
- 1972 UNESCO World Heritage Convention – Operational Guidelines

*195 ratifications

**127 ratifications

Right to participate in decision making



- 2001 FAO International Treaty on Plant Genetic Resources for Food and Agriculture, Article 9.2

9.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

- c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.

Cultural rights and traditional knowledge



- 1992 Convention on Biological Diversity – Articles 8(j) and 10(c)
- 2003 UNESCO Intangible Cultural Heritage Convention*
- WIPO negotiations on a new instrument for the protection of traditional knowledge and traditional cultural expressions

*161 ratifications

Cultural rights and traditional knowledge



- 2003 UNESCO Intangible Cultural Heritage Convention, Article 2

2. The “intangible cultural heritage”, as defined in paragraph 1 above, is manifested inter alia in the following domains:

- (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
- (b) performing arts;
- (c) social practices, rituals and festive events;
- (d) knowledge and practices concerning nature and the universe;
- (e) traditional craftsmanship.

FPIC and benefit-sharing



- 2001 FAO International Treaty on Plant Genetic Resources for Food and Agriculture
- 2010 Nagoya Protocol to the Convention on Biological Diversity*
- 2007 decision of the IACtHR in the case Saramaka Peoples v. Suriname

*55 ratifications

FPIC and benefit-sharing



- Nagoya Protocol, Article 6

Article

6

ACCESS TO GENETIC RESOURCES

1. In the exercise of sovereign rights over natural resources, and subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party.
2. In accordance with **domestic law**, each Party shall take measures, as appropriate, with the aim of ensuring that the **prior informed consent or approval and involvement of indigenous and local communities** is obtained for access to genetic resources where they have the established right to grant access to such resources.

Right to seeds



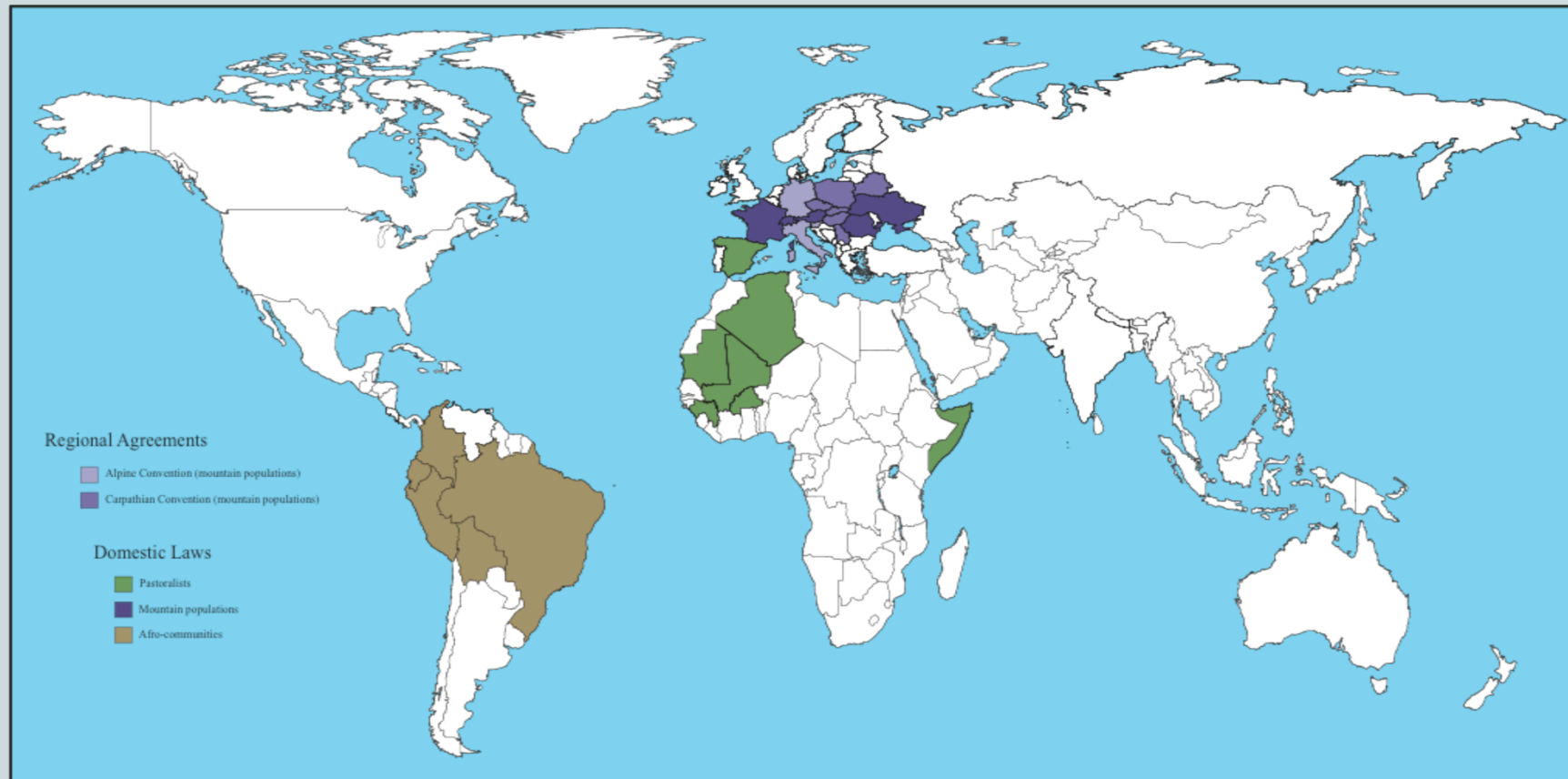
- **FAO International Treaty on Plant Genetic Resources for Food and Agriculture, Article 9.3**

9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

Regional & domestic practice: selected countries



Selected regional agreements and domestic laws: the formation of regional custom



Regional Agreements:
Alpine Convention: Austria, France, Germany, Liechtenstein, Italy, Switzerland, Slovenia and Monaco.
Carpathian Convention: Czech Republic, Hungary, Poland, Romania, Serbia, Slovak Republic and Ukraine.

Domestic laws:
Rights of pastoralists: Burkina Faso, Ethiopia, Guinea, Mali, Mauritania, Niger and Spain.
Rights of mountain populations: Austria, Bulgaria, France, Switzerland and Ukraine.
Rights of Afro-communities: Bolivia, Brazil, Colombia, Ecuador and Peru.

Conclusions



- Peasants' rights recognition: sparse and fragmented
- Emergence of international custom: global and regional
- The main challenges of the new declaration: to coordinate and to consolidate existing international instruments