

Peasants' Political Rights:

Consultation and Enhanced Participation

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The recognition of the peasantry's value at the international level has been a long and arduous process. Despite being the primary producers of the food, we consume, peasants continue to face precarious living conditions. In this context, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) seeks to protect their rights through a reinforced framework, tailored to the diverse national realities. Against this backdrop, this article explores political participation as a key mechanism for the comprehensive realization of peasant rights.

The analysis unfolds in three main sections:

1. **Conceptual Framework and International Context:** The first section provides a critical overview of political participation for vulnerable populations within United Nations frameworks, focusing on the tension between legal norms and customary rights. It grounds the discussion in the challenges of peasant participation, as outlined in Article 10 of the UNDROP, using the 2024 Call for Contributions from the UN Working Group on Peasants and Other People Working in Rural Areas as an empirical reference.
2. **Scope and Legal Foundations of Reinforced Participation:** The second section delineates the scope of the right to reinforced participation for peasant communities, as established by the UNDROP. It offers a reflective analysis of relevant international legal standards, illustrated with examples from Colombia. Reinforced participation is defined as the right of peasant communities to demand affirmative measures within decision-making processes and public policy formulation, particularly when such processes may affect the enjoyment of their rights. The section also examines how these measures are institutionalized through constitutional and legal mechanisms specifically designed to ensure effective peasant participation.



- 3. Social Movements and the Colombian Experience:** The third section presents a concise overview of the dynamics of peasant social movements in Colombia and their efforts to strengthen political participation. It highlights the role of environmental democracy in transforming the legal system and advancing the recognition of an expansive right to participation. The article concludes by proposing a standard for reinforced participation based on the Colombian experience—one that could be applied internationally to substantively realize the right of peasants to participate on equal terms.

1. Participation of Vulnerable Populations: A Dialectic Between Legality and Customary Rights

This section provides a concise state-of-the-art review of political participation within United Nations frameworks, with a particular focus on vulnerable populations. It seeks to clarify key questions: Is political participation primarily an individual right, or has it evolved into a collective entitlement within national contexts? Is there a notion of “enhanced participation” in global discussions? What are “enabling environments,” and how critical are they for the realization of political participation?

Additionally, this section examines the challenges of peasant participation considering Article 10 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).

1.1 Enhanced Participation in the UN System and the Limited Implementation of UNDROP

The Human Rights Committee (HRC) of the United Nations (UN) is the body responsible for monitoring the International Covenant on Civil and Political Rights (ICCPR). In carrying out its work, the HRC refers to participation rights as the way in which citizens actively participate in the public and political life of their countries. These rights are enshrined in the ICCPR, which was adopted by the UN General Assembly in 1966 and entered into force in 1976.



In this context, the right to participate in public affairs is based on Article 25 of the ICCPR, which establishes the scope and general guidelines for participation in decision-making on public affairs. Article 25 structures this right through a non-discrimination clause, according to which States must ensure that there is no discrimination in access to political participation, whether on grounds of race, color, sex, language, religion, political opinion, national or social origin, economic position, birth, or any other social condition. As we will see later, this clause protecting structurally vulnerable groups, accompanied by the principle of material equality, opens the door to the idea of “enhanced” participation.

In addition, Article 25 develops the scope of the right to participation in three paragraphs. The first establishes the right to participate directly or through representatives in the conduct of public affairs, that is, it establishes the right to participate in public decisions. The second establishes what is perhaps the best-known meaning of participation, namely the right to participate in universal and secret elections, either as a candidate or as a voter. And the last one establishes the right to participate in the exercise of public office. This article will focus on developing the right of participation of the peasantry, mainly in terms of their participation in the management of public affairs.

This right was developed in the jurisprudence of the HRC through various rulings. One of the most important is General Comment No. 25 (1996). This instrument is consistent with subsequent developments and specialized literature (Heyns, Christof, and Viljoen, 2002; Nowak, Manfred, 2005; Landman, Todd, 2006; and Joseph, Sarah, and Melissa Castan, 2013) on political participation, pointing out the connection between the aforementioned Article 25 and the following set of interrelated rights: freedom of expression (Article 19); freedom of assembly and association (Articles 21 and 22); the right to equality and non-discrimination (Article 21); and the right to freedom of thought, conscience, and religion (Article 19). 25 and the following set of interrelated rights: freedom of expression (Article 19); freedom of assembly and association (Articles 21 and 22); the right to equality and non-discrimination (Articles 2 and 26); the right to information (Article 19 and General Comment No. 34); protection against arbitrary interference (Article 17); and finally, procedural guarantees and access to justice (Article 14).

It is worth noting that the Human Rights Committee, through General Comment No. 25¹, reaffirmed that this right is not limited to individual elections, but includes expanded [collective] participation in decision-making at the local, national, and international levels. Specifically, paragraph 6 of OG 25 mentions that citizens participate in the management of public affairs by exercising their powers under i) the right to direct individual participation; or ii) by attending community or collective forums such as popular assemblies that are

1 General Comment No. 25. Article 25 – Participation in public affairs and the right to vote. 57th sesión HRI/GEN/1/REV.7 AT 194 (1996).



empowered to make decisions on local issues or on the affairs of a particular community. It is clarified that this procedure must be carried out through bodies created to represent groups of citizens in such consultations.

As for enhanced participation rights, we can say that these are those that derive from the recognition of individual or collective prerogatives to groups that, due to structural conditions of exclusion, cannot exercise participation rights under conditions of material equality, that is, as the rest of the population that does not suffer from these same exclusions would. Indigenous peoples and ethnic populations are an example of this.

Based on the famous paragraph 1 of Article 6 of ILO Convention 169 (1989)², three dimensions of the right to participation of indigenous peoples were recognized: one, the right to participate under the same conditions as members of the majority society; two, the right to prior consultation; and three, the right to promote their own initiatives and institutions. Similarly, Articles 10, 18, 19, and 32 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)³ ratified the right of indigenous peoples to be consulted in good faith by States to obtain their free, prior, and informed consent to any development project, intervention in their territory, or public policy that affects them.

This right to enhanced participation is so robust in the Universal Human Rights System that the United Nations General Assembly, through Resolution 71/321 of 2017, sought to extend indigenous participation to meetings of the competent bodies of the United Nations on matters that concern them. In this regard, it should be remembered that although most of the indigenous population falls within the peasant conceptualization of UNDROP (Article 1 - 2018)⁴, not all peasants and rural workers in the world identify as indigenous.

Regarding peasants, the United Nations General Assembly, through UNDROP, recognized that this population may also be affected by structural conditions that limit their participation in conditions similar to those of the majority. Notably, Article 2.3 recognizes, without prejudice to the regulations applicable to indigenous peoples, a right and a duty of States to hold “consultations” with peasant communities and organizations.

The right of participation for peasants in the UNDROP is particularly reinforced for

2 ILO Convention 169 https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@americas/@ro-li-ma/documents/publication/wcms_345065.pdf

3 UNDRIP - United Nations Declaration on the Rights of Indigenous Peoples. https://www.un.org/esa/socdev/unpfii/documents/DRIPS_es.pdf

4 UNDROP - United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas <https://digitallibrary.un.org/record/1650694?ln=es&v=pdf>



peasant women (Article 4) and explicitly extended to issues such as: natural resource management (5.1), the defense of human rights (8.2), participation in the formulation of public policies (10.1) or in decision-making (10.2) that affect these communities, especially those related to their land (11.2), their health in the workplace (14.1), agri-food policies (15.4), environmental policies (19.1), and scientific policies focused on agricultural production (25.3), among others.

However, as we have seen, political participation in general terms is a central issue for the realization of several other sets of rights, and the Office of the United Nations High Commissioner for Human Rights has been expanding its reflection on this issue over the last decade. Let us see how the Office's actions have addressed the area of enhanced participation for particularly vulnerable individuals.

In 2018, the Office launched a draft set of *guidelines for States on the effective implementation of the right to participate in public life*⁵. This draft highlights the recognition of the negative impact of discrimination on the effective exercise of the right to participate in public life. It therefore invites States to adopt legislative and policy measures, including temporary special measures, as well as the institutional arrangements necessary to promote and ensure the equal participation of marginalized or discriminated persons and groups at all levels of decision-making processes and institutions. It highlights the minimum stages of the participation process before, during, and after decision-making.

In 2021, the Human Rights Council adopted the *Resolution on Equal Participation in Public and Political Life*⁶. It recognizes the effects of the COVID-19 pandemic on public participation, considering that many channels of participation have moved online, which poses difficulties for those sectors of the population—mainly rural—that have limited or no access to the Internet. It also reaffirms access to information and intersectional discrimination as the main barriers to be overcome, urging all States to improve the political participation of all women.

The Office will revisit the issue in 2022 with a report that seeks to take stock of “*Good practices and difficulties faced by States in using the guidelines on the effective implementation of the right to participate in public life.*”⁷ In this report, in addition to the problem of discrimination, a move is made towards a less identity-based position by recognizing in paragraph 51 that: “People in situations of marginalization are often excluded from consultations on public policies, as well as from decisions that affect them.”

5 UN. A/HRC/39/28 <https://docs.un.org/es/A/HRC/39/28>

6 UN. A/HRC/RES/48/2 <https://docs.un.org/es/A/HRC/RES/48/2>

7 UN. A/HRC/49/42 <https://docs.un.org/es/A/HRC/49/42>



The recognition of the complexity of participation in public life and policies was materialized in the thematic report *Civil Society Space*⁸. This document expands the scope of political participation toward the definition of “enabling environments,” which would be conceptualized as “civic spaces⁹.” The report in question is particularly concerned with ways of measuring the vitality of these civic spaces. Under the above assumption, this report guides the definition of the subjects of participation, clear rules for participation, and access to stable indicators to assess the coherence of participation.

As we have observed, and by way of a provisional conclusion, it could be said that although the Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) was adopted in 2018, several contemporary or subsequent resolutions or reports addressing the issue of enhanced participation in public life do not explicitly refer to peasants or rural workers, despite the fact that they are already recognized as a subject of enhanced protection.

A notable exception is General Comment 26 of the Committee on Economic, Social and Cultural Rights, which, in 2022, specifically analyzed the importance of land rights for peasants and decisively addressed the issue of participation, transparency, and consultation as essential principles for realizing land rights. We will return to this instrument in the last section of the article.

1.2 Global Demands for Peasant Political Participation

Building on the above, this section examines civil society contributions to the UN Working Group on Peasants and Other People Working in Rural Areas (WG) during the 2024 consultation process. These contributions provide empirical insights into the implementation of Article 10 of UNDROP.

The systematization exercise carried out by the Working Group on Peasants and Other People Working in Rural Areas allows us to identify civil society contributions with reference to each of the articles of the UNDROP mentioned in each of them. Those interested in this link can go to the [WG's 2024 Consultations Display Power Bi](#).

⁸ UN A/HRC/57/31 <https://docs.un.org/es/A/HRC/57/31>

⁹ “Civic space is an environment that allows individuals and groups to participate effectively in all aspects of their societies. It is based on formal and informal channels for dialogue and debate that inform decision-making and policy development, as well as on practices, behaviors, and social norms, among other elements. A dynamic civic space requires an open, safe, and secure environment, free from any act of intimidation, harassment, or reprisal, whether online or offline. A/HRC/57/31 Paragraph 6 pg. 3.



As mentioned at the outset, the article directly related to the political participation of peasants and other people working in rural areas in the UNDROP is number 10. Civil society participation in the 2024 consultations of the UN Working Group on Peasants showed that Colombia and the Philippines were the countries that most often raised concerns about political participation in terms of Article 10.

The process of systematizing civil society contributions to the WG in 2024 also makes it possible to group the number of times this article was invoked in relation to the geographical areas in which the Working Groups are distributed in the UN special procedures. In this way, a descriptive exercise allows us to see the following concerns regarding political participation by geographical area.

Africa: This was the geographical area with the highest number of contributions and countries that highlighted the problem of political participation in terms of the UNDROP (9 countries)¹⁰. Beyond the weak attention paid by public policy to small farmers and family workers, it is striking that these contributions repeatedly pointed to linguistic barriers as the main constraint to political participation in 2024, given that significant sectors of their rural populations speak indigenous languages other than the three official languages into which the Declaration is translated by the UN system (English, French, and Spanish).

Asia: Nepal's contribution shows that despite the efforts of non-governmental organizations to disseminate the UNDROP, the situation described in the contributions shows that the authorities are not informed about the Declaration and that farmers do not have easy access to it either. The case of the Philippines is interesting because, according to the contribution, there is a tendency in the political sector of this country to argue that UNDROP is unnecessary because policies already exist to encourage small-scale production; however, there is no significant interest in developing the political participation of vulnerable sectors of the peasantry and agricultural workers.

Eastern Europe: Although several contributions from this region also reported problems with the official languages of the UN in accessing the UNDROP, countries such as Albania, Romania, and Ukraine resolved this internally by producing their own translations. However, the contributions from the above countries also agree on the enormous problems of small farmers' participation in decision-making that affects them. The case of Ukraine is also interesting because it suggests that the state of emergency caused by the war with Russia has led to an imbalance in public policy and participation in rural decision-making in favor of large landowners.

Western Europe and other states: This region, through contributions from countries such

10 Lesotho, Eswatini, Burkina Faso, Kenya, Ethiopia, Madagascar, Malawi, Zimbabwe, and South Africa



as Germany, Sweden, and France, highlighted the weak influence of small farmers and those involved in agroecology in decision-making processes in participatory spaces, as well as the capture of political representation in agriculture by trade union structures aligned with state policies.

Latin America and the Caribbean: The case of Guatemala shows that although political participation exists through “consultations,” these are not binding, and final decisions generally prioritize the interests of companies and large landowners. In Cuba, the difficulty for farmers to participate outside of state-guided guidelines is highlighted. In the case of Colombia, a first contribution describes the various spaces for participation that have been created for farmers because of constitutional reform that recognized this segment of the population as subject to special protection. A second contribution points to the absence of effective citizen participation mechanisms that allow farming communities to decide on their territories.

If we review global developments in political participation alongside the current state of peasant demands, we can see the extent to which the “collective participation” of peasants encompasses more complex issues such as “representation.” Similarly, the political participation of peasants in decisions that inevitably affect them leads us to discuss the possibility of peasants being “consulted” from a collective point of view. For the above reasons, we propose to analyze a case study on Colombia at the end of this text, seeking to understand the extent to which enhanced political participation is necessary for peasants and how it could be standardized globally in harmony with Article 3 of the UNDROP. We will continue to explore the international foundations and scope of enhanced peasant participation.

2.

Enhanced Participation of the Peasantry: Definition, International Foundations, and Scope

This section aims to define, substantiate, and propose the scope of the right to enhanced participation for peasant communities, grounded in relevant international legal frameworks and illustrated through the Colombian case. First, it conceptualizes enhanced participation as the result of affirmative action measures that, through a differentiated approach in decision-making processes, seek to make universal participation rights effective despite structural discrimination. Second, it identifies the types of decision-



making processes that require a higher degree of peasant involvement and where a differentiated approach is essential. Finally, it argues for the creation of new mechanisms and consultative processes to ensure a special level of participation, particularly in cases where decisions may significantly affect the enjoyment of peasant rights.

2.1 What Is Enhanced Participation? Political Subjectivity, Substantive Equality, and the Right to Be Heard

Some classic studies recognize the multilinearity and multidimensionality of the peasant subject. In other words, they recognize that i) there is no single way of being a peasant, but rather there are diverse lines of historical and territorial development of peasant communities; and ii) they propose that there is also no single way in which peasant identity manifests itself, for example through family food production, but rather there are multiple dimensions in which the fact of being a peasant manifests itself (Shanin, 1979). However, this does not mean that there are no certain common features shared by peasant communities around the world that allow us to identify them as such. In his work, Shanin (1979, pp. 12-13) suggests that one of the defining characteristics of the peasantry could be the tendency to submit to the position of “subjects” through dynamics of domination by actors “foreign” to their territories.

Although this view comes from a classic reading, it unfortunately continues to be relevant today. At least this is recognized by two of the most important soft law instruments on peasant rights, the UNDROP and General Comment 26 (GC26) of the UN Committee on Economic, Social and Cultural Rights (CESCR).

According to the recitals of UNDROP, for example, it is clear to the United Nations General Assembly that, in general, peasants live in oppressive situations and suffer constant violations of their rights in their territories due to poverty, hunger, and malnutrition. In particular, the preamble to this declaration recognizes that there are factors that make it difficult for this population to “make their voices heard” and “defend their rights,” especially those related to their lands and the natural resources on which they depend.

However, the CESCR in GS 26 goes much further. Although this body recognized conditions of vulnerability like those identified by UNDROP, the CESCR attempts to explain the reasons for this vulnerability, in particular investigating the causes of land management practices that affect the rights of populations such as peasants. In this regard, phenomena such as financialization, megaprojects or large-scale exploitation projects, tourism, and even the improper implementation of environmental conservation and climate change mitigation projects are highlighted.



Both diagnoses have as their common denominator the lack of recognition of the political capacity of peasants to “make themselves heard” or, in other words, to participate in decisions that affect them, especially when projects, works, or activities impose decisions on their land and on the natural resources on which communities depend. It seems that they have been reduced solely to the role of objects. Mere recipients of the political decisions of others, especially states and companies. According to another classic (Huizer, 1979), the absence of effective political participation by peasants is the cause of the failure of rural development policies that limit themselves to viewing the peasantry as a mere object of modern state policies.

That is why it is vitally important to recognize the political dimension of the peasantry. The assertion that peasants are subjects of rights, as stated in UNDROP and OG26, requires that this recognition be accompanied by tools that enable peasants to cease being “subjects” of “outsiders” and begin to be agents of their own interests.

In this regard, as we have seen, the Colombian legal system offers a very interesting example for thinking about a legal doctrine of the participation rights of peasants with their own character. By virtue of Legislative Act 01 of 2023, the Political Constitution of Colombia, in its article 64, recognizes the multidimensionality of peasants. Among the dimensions recognized for peasants in Colombia is the political dimension. This implies that, individually or collectively, they exercise their status as peasants in political terms. In other words, the Colombian Constitution recognizes them as subjects in the national political discussion and they have the capacity and the right to participate in political discussions, both at the national level and in their territories.

The same Article 64, in its third paragraph, recognizes a broad catalog of rights for the peasantry. Most of these are clearly inspired by the UNDROP. The set of these prerogatives has a common purpose declared by the Constitution itself: the realization of equality for peasants. It is worth clarifying that equality is a central principle, not only in the Colombian legal system, but also a general principle of law, which is decisive for the enjoyment of human rights. This is enshrined in the main instruments of international human rights law, which recognize the right to equality and prohibit all forms of discrimination. Among the most relevant are: Articles 1, 2, and 7 of the Universal Declaration of Human Rights; Article 26 of the International Covenant on Civil and Political Rights; Articles 2.2 and 3 of the International Covenant on Economic, Social, and Cultural Rights; Articles 1 and 24 of the American Convention on Human Rights; Article 3 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, also known as the Protocol of San Salvador; Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and Articles 2 and 3 of the African Charter on Human and Peoples' Rights.

The principle of equality has at least three meanings: formal equality, equal treatment,



and substantive equality. Formal equality refers to the fact that all persons, in principle, should be equal before the law. Equal treatment is embodied in the prohibition of discriminatory acts, i.e., violations of the principle of formal equality whose purpose is to disregard human rights are prohibited. And substantive equality refers to the obligation of States to progressively guarantee the material conditions for the exercise of equality.

The material component of equality requires States to take affirmative action decisions so that groups that, due to their factual situation, cannot exercise equality, can enjoy it. To guarantee this material form of equality, States are obliged to deploy differentiated treatment to overcome the historical discrimination experienced by marginalized or particularly vulnerable groups. This idea of material equality is consistent with the interpretation of the obligations contained in the ICCPR and the ICESCR, as set out respectively by the Human Rights Committee in paragraph 10 of its General Comment 18 and the Committee on Economic, Social and Cultural Rights in paragraph 8 of its General Comment No. 20.

In other words, returning to the case of the peasantry, recognition of the dimensions and rights of the peasantry aims to overcome the structural conditions of exclusion that prevent them from exercising their rights in the same way as any other person. Therefore, the right to enhanced participation is a tool that, through affirmative action measures, seeks to ensure that peasants can exercise their political dimension without the structural discrimination that affects them preventing them from functioning on equal terms.

In short, the right to enhanced participation is a prerogative that allows the peasant population to demand that States take affirmative action in any decision-making process that may affect them. Through this special treatment, States must ensure that this population is no longer subjected to actors who illegitimately affect the enjoyment of their land rights through restrictive and exclusionary decision-making processes.

2.2 Legal Foundations of Enhanced Participation: Expansive Participation and Land Rights

As discussed in Section 1, participation is not limited to electoral processes. Article 25 of the ICCPR recognizes three dimensions: (a) participation in public affairs; (b) the right to vote and be elected; and (c) access to public service. General Comment No. 25 clarifies that participation includes the right to influence public policy formulation and implementation, and that this right may be exercised through civil society organization and public dialogue.

According to the Human Rights Committee, which, in its capacity as the authorized



interpreter of the ICCPR, issued General Comment 25 in paragraph 5, this right implies the duty of the executive and legislative branches to ensure that the formulation and implementation of public policies respects the right of citizens to participate in public administration. Likewise, paragraph 8 also states that such participation may be exercised by virtue of citizens' capacity to organize themselves to take part in public debate and dialogue, under conditions that guarantee the right to freedom of expression, assembly, and association. According to the Committee, how the right to participate is exercised shall be determined by the constitution and by law.

This expanded idea of participation in the conduct of public affairs has had a strong impact on the domestic constitutional doctrine of the countries bound by the covenant. An example of this is Colombian constitutional doctrine and its idea of expansive participation. According to the Constitutional Court, the principle of participation implies a "mandate of optimization" to progressively promote new mechanisms for participation (C-150/15), so that the right to participation is not static, but continually extends to more and more areas of citizens' lives.

From very early on, the Colombian Court understood that social conflict was changing and expanding into new horizons as life itself developed. Therefore, it ensured that democracy should also be capable of expanding to channel social differences within constitutional channels (C-089/94). For Colombia's highest constitutional court, "it is therefore a matter of progressively maximizing the mechanisms that allow access to political power, and the exercise and control of that power, as well as interference in decision-making" (C-179/02).

This is of great importance in relation to the right of enhanced participation of rural communities, since, as we have said, this right should be understood as a broad power that allows them to demand positive discrimination from the State in all current decision-making procedures. We would even add that this could imply expanding the scope of participation to administrative or legislative procedures in which rural communities have not normally been considered as actors with political capacity or "dimension", for example in fiscal management processes, or to make institutional adjustments, which may involve the creation of special procedures to guarantee this right of enhanced participation of peasant communities in decisions that may affect their territories.

Based on the above, it is possible to affirm that the right to enhanced participation allows peasants to demand from the State: i) affirmative action measures within the decision-making or public policy formulation procedures already carried out by the executive and legislative branches; and ii) that these measures be implemented through the creation of constitutional or legal bodies, instruments, or procedures specifically designed to make their participation effective in matters that may most intensely affect the enjoyment of their rights. We will analyze each case.

- *Affirmative action measures in decision-making or public policy formulation processes.*

In the first scenario, it is worth noting that, by recognizing the political dimension of the peasantry, it is consequently recognized as an actor engaged in dialogue with all other actors in society. This is explicitly provided for in UNDROP and OG26, which enshrine the right of peasants to participate in decision-making (Art. 10.2, 11.2) (Par. 20-21); according to these instruments, States must promote their participation, directly or through their representative organizations, in decision-making processes that may affect their lives, their land, and their livelihoods. Therefore, the political opinion of organized peasants must be considered in all matters that may affect them directly or indirectly. OG26 establishes that this right should even extend to processes in which investments in land are decided (para. 28).

In terms of public policy formulation, for example, UNDROP establishes that peasants have the right to participate actively and freely, directly or through their representative organizations, in the preparation and implementation of policies, programs, and projects that may affect their lives, their land, and their livelihoods (Art. 10.1). This right is particularly reinforced in the case of agri-food policies (Art. 15.4). In this regard, the declaration recognizes that the peasant population has the right to define its own agri-food systems, that is, it recognizes the right to food sovereignty. Additionally, it determines that this right also encompasses participation in broader decision-making processes on agri-food policy. OG26 adds the importance that agrarian reform policies should be developed through participatory processes (Paragraph 37).

This right is further reinforced in the case of peasant women, who have been excluded not only because of their peasant identity, but also because they are women. In this regard, UNDROP and OG26 establish that States must adopt measures to eradicate all forms of discrimination suffered by them. It establishes that they shall have the right to participate in the formulation and implementation of development plans at all levels (Art. 4.2.a), to organize themselves (Art. 4.2.e), to manage their lands (Par. 14) and natural resources (Art. 4.2.h).

Regarding the management of natural resources, UNDROP establishes that peasants have an important right to participation. It states, for example, that they have the right to participate in the management of those resources that they traditionally maintain or use (Art. 5.1). This includes participation in determining the modalities for sharing the benefits derived from the exploitation of these resources (Art. 5.2.C). Emphasis is placed on participation in the benefits derived from plant genetic resources (Art. 19.1.b). OG26 also recognizes the importance of natural resources for the effective enjoyment of the rights of peasants, fishermen, and pastoralists, and urges States to consider this situation as part of their obligations under the ICESCR (Para. 35).



Given the conditions of violation of the rights of peasants and given the recurrent victimization of the peasant population engaged in the defense of human rights, the General Assembly decided to ratify that peasants have the right, individually and collectively, to participate in peaceful activities against violations of human rights and fundamental freedoms (8.2). This right is very important in contexts of armed conflict because peasant communities can be caught in the middle of confrontations and the contending actors often discredit their participation in activities carried out in defense of human rights and international humanitarian law, considering that they are being used by the opposing side.

Recognition of their political dimension and their right to enhanced participation is a tool for overcoming this diminished view of rural subjects and allowing them to participate actively in the defense of their own rights and interests. On this issue, OG26 establishes the need for States to consult with human rights defenders when implementing policies for their protection (para. 55). We will return to the right to consultation later.

The UNDROP also recognizes the right of peasants to enjoy the highest attainable standard of physical and mental health. To this end, it promotes their participation in decisions affecting their lives and livelihoods, including involvement in formulating occupational health and safety policies related to their work in rural settings (Art. 14.1). General Observation (GO) 26 on this matter notes that the use of pesticides, fertilizers, plant growth regulators, as well as animal waste and other microorganisms, has contributed to the emergence of various diseases (Para. 9).

Regarding environmental policy development broadly, UNDROP establishes peasants' right to participate in the formulation and implementation of such policies. Specifically concerning climate change policies, the Declaration entitles peasants to contribute to the design and application of both national and local policies (Art. 18.3). Furthermore, it establishes their right to meaningful participation in decisions regarding the conservation and sustainable use of plant genetic resources for food and agriculture (Art. 19.1.c). GO26 on this issue begins by acknowledging that inadequately designed and implemented conservation policies adversely affect peasants' land rights (Para. 2.e). Consequently, the CESCR (Committee on Economic, Social and Cultural Rights) not only affirms peasants' and other land-dependent groups' right to participate, but also to be formally consulted on such initiatives (Para. 58).

Concerning scientific policies focused on agricultural production, UNDROP establishes State obligations to promote equitable and participatory collaborative initiatives between agriculture and science. This aims to better address challenges faced by peasants (Art. 25.3), within the framework of recognizing and valuing their traditional knowledge and innovations, particularly in agricultural production (Arts. 20.2, 26). In this regard, GO26 defines the protection of traditional land uses as a State obligation (Para. 35).

Finally, the UN General Assembly **called upon** all specialized agencies, funds and programmes of the United Nations system and other intergovernmental organizations to contribute to the **full observance** of the Declaration through development assistance and cooperation. In this context, UNDROP urged these entities to explore means of ensuring **peasant populations' participation** in matters affecting them (Art. 27.1). Beyond constituting an invitation to thematically prioritize participation as a subject of study, this provision further exhorts such organizations to **guarantee minimum participation standards** within their respective mandates, particularly regarding their competencies in implementing UNDROP. Undoubtedly, this constitutes a matter of concern for peasant populations worldwide.

Regarding intergovernmental organizations, **GO26** acknowledged the existence of **extraterritorial obligations** for States to respect and protect peasants' **land rights** (Paras. 41-45). Specifically, the Committee emphasized that these organizations' operations must not infringe upon land rights, notably highlighting the **right to participate** in decisions concerning such lands.

Table No. 1

Affirmative Measures for Peasants in Decision-Making

ISSUE	SCOPE	UNDROP	OG26
Decision-making, esp. land	Right to participate in decisions affecting life, land, livelihoods	10.2, 11.2	20,21,28
Public policies	Active involvement in policy design/implementation	10.1, 15.4	37
Peasant women	Reinforced rights due to intersectional discrimination	4.2	14
Natural resources	Management of traditionally used resources; benefit-sharing	5.1, 5.2.c	35
Human rights defense	Right to peaceful activism, esp. in conflict zones	8.2	55
Occupational health	Participation in rural health/safety policies	14.1	9

ISSUE	SCOPE	UNDROP	OG26
Environment/climate	Input on environmental/climate policies; phyto-genetic resources	18.3, 19.1	2,58
Scientific research	Equitable science-peasant collaboration; traditional knowledge valuation	20.2, 25.3	35
International bodies	Peasant participation in UNDROP implementation	27.1	41,45

Source: Own elaboration.

- *Creation of public policy instruments, consultation bodies, and special procedures for consulting with rural communities.*

However, the second scenario for the development of the political dimension of the peasantry assumes that, in exercising their right to enhanced participation, these individuals demand affirmative action measures consisting of the creation of instruments, bodies, or procedures designed to realize their right to participate on equal terms.

To make regulatory provisions on equality and participation effective, it is often not enough to formally include peasants in the spaces of political participation from which they have traditionally been excluded. The asymmetries and disadvantages to which rural people and organizations have been structurally subjected mean that, despite their formal integration into decision-making processes through the adoption of a differential rural approach, in certain cases the established decision-making processes are insufficient to realize the participation of rural people on materially equal terms.

Cultural differences, lack of access to information, digital divides, corruption, and lack of transparency sometimes cause ordinary processes to be unbalanced against peasants. Therefore, in such cases, despite the creation of a differential approach for peasants, the structural conditions of the design and execution of decision-making processes can make this inclusion a mere formality. This risk is especially serious in decisions where peasants risk the effective enjoyment of their land rights, on which their physical and cultural survival ultimately depends.

In this regard, OG26 clearly recognizes that cultural factors and access to information (para. 20), as well as corruption in land administration (para. 52), can be serious constraints on the enjoyment of the rights protected by the ICESCR. The UNDROP also notes in its preamble that, globally, it has been observed that peasants have difficulty accessing competent state institutions to assert their rights.

Likewise, in addition to recognizing these structural situations that affect peasants, UNDROP stipulates that States must guarantee them access to relevant, transparent, timely, and sufficient information, in an appropriate language and format, to promote their empowerment and ensure their effective participation in decision-making on issues that may affect their lives, their land, and their livelihoods (Art. 11.2). Similarly, OG26 also determines that the principles of participation, transparency, and consultation are essential for the fulfillment of the obligations imposed by the ICESCR, especially in relation to land, and establishes that it is the duty of States to develop relevant laws, policies, and procedures to ensure transparency, participation, and consultation in decision-making on land (Par. 20).

It is therefore necessary that efforts to strengthen the right of participation of peasants be expanded to include the creation of mechanisms that are appropriate to the circumstances of peasants, thus constituting tools that allow peasants to have effective resources to “make themselves heard,” especially about the care and protection of their lands. In general terms, these obligations and mandates can be fulfilled in various ways. Without attempting to be exhaustive, and merely by way of illustration, we propose three types of possible institutional adjustments based on the Colombian experience.

The first type involves the creation of public policy instruments that facilitate the participation of peasants and their inclusion in public policy decisions. One of the precedents for this type of tool has to do with the design of tools and technical inputs for the statistical characterization of the peasantry. Although the Colombian government initially refused to include the peasantry in its statistical operations, arguing, among other things, difficulties in conceptualizing the peasant subject, in response to a lawsuit brought by peasant organizations from across the country, the Colombian Supreme Court of Justice called on the competent entities to conduct studies to help characterize the situation of the peasant population and, based on that data, to formulate and implement public policies to realize the right to material equality for peasants (Dejusticia, 2018).

In compliance with these orders, the Colombian Institute of Anthropology and History convened a group of experts who prepared a technical concept to define the peasantry in Colombia (ICAHN, 2020). This concept was the basis that allowed the National Department of Statistics, with the support of the Institute of Intercultural Studies of the Javeriana University of Cali, to carry out a sociodemographic characterization of the



Colombian peasantry (DANE, 2023), which has served as information to make peasant communities visible in the discussion of public affairs.

In the same vein, Legislative Act 01 of 2023 advanced the creation of public policy instruments for the peasantry, not only to characterize a baseline, but also as a tool for monitoring spending and investment aimed at serving the peasant population located in rural and dispersed rural areas. In the long term, this tracker will provide peasant organizations with accurate data that will enable them to demand progressivity and not regressivity in the allocation of budgets intended to satisfy the rights of this population at the national, regional, and local levels.

2.3 Reinforced Peasant Consultation Instruments and Procedures

While the instruments discussed above are essential for monitoring state compliance with obligations under the ICESCR and UNDROP, they are not sufficient on their own to guarantee the right to participation. Effective participation requires the direct involvement of a broad and representative spectrum of peasant organizations that reflect the political and cultural diversity of rural communities.

The second type of institutional adjustment involves the creation of specialized participatory bodies to facilitate structured dialogue between organized peasant communities and public authorities. Although Colombia has a long tradition of such mechanisms, a recent milestone was the establishment of the National Unified Table (Mesa Unica Nacional) through Decree 870 of 2014. This space was created in response to rural mobilizations and brought together organizations from the Agrarian, Peasant, Ethnic, and Popular Summit. Regional platforms were also established, such as the Cauca Peasant Table (Mesa Campesina del Cauca), created by Resolution 1071 of 2018, to promote dialogue and monitor government commitments with peasant organizations in southwestern Colombia.

Although these scenarios represented significant advances for the inclusion of rural communities in the planning and implementation of public policies at the time, there were problems in implementing the agreements reached, meaning that on many occasions the commitments made by the national executive were not implemented with the speed and efficiency expected by rural communities.

Despite these and other important precedents that are not referenced, a new body was recently created because of the recognition of peasant rights derived directly and explicitly from the UNDROP and Legislative Act 01 of 2023, which amended the Political Constitution of Colombia. According to Decree 1004 of 2024, the National Joint Commission for Rural Affairs is the body for dialogue and consultation between the national government and the rural population for the coordination of public policies



related to the rural population, with the aim of promoting the realization of this population's right to equality within the framework of its recognition as a subject of rights and special constitutional protection. The Commission is made up of the ministers of the interior, agriculture, environment, culture, and equality, and the director of the National Planning Department. It also includes up to 54 representatives of rural communities.

Its key functions include coordinating policies, regulatory projects, and mechanisms aimed at guaranteeing rural rights in a wide range of areas, such as access to land, territoriality, basic services, rural infrastructure, agroecology, and food sovereignty. It is also responsible for coordinating important bills, such as the adaptation of institutions and guidelines for Comprehensive Agrarian Reform and Rural Development. The Commission coordinates budget prioritization and the design of tools such as the peasantry budget tracker, as well as the plan for the recognition of peasant territorialities. In addition, it coordinates policies on illicit crop substitution and the peasant population in protected areas. The Commission monitors agrarian policy, discusses, and coordinates solutions to conflicts, and coordinates the inclusion of measures for the peasantry in the National Development Plan.

And although these types of bodies are fundamental for participation and coordination in decisions that impact the peasant population, certain doubts remain about the consensual nature of their design, since it will be necessary to reach consensus among all participants. This could pose serious problems in cases where the issues under consideration could seriously affect one or more peasant communities and on which there is no consensus. For this reason, it is necessary to create specific procedures for cases that pose a serious risk to the peasantry.

That is precisely the third type of institutional adjustment we suggest. Those that involve the design of specific procedures for consulting the peasantry on decisions that could seriously and irreversibly impact the enjoyment of their rights, especially those that depend on the land they inhabit. To begin with, it is worth noting that consultation is a right and a principle that goes beyond the scope of ethnic groups, that is, it is a right whose sources and scope are not limited to ILO Convention 169 (C169/ILO) but is a principle and a right widely recognized by international law (Quesada, 2013).

In other words, although in Latin America we are accustomed to ILO C169 being the only normative source of the right to consultation, the truth is that this right has also been included in other normative sources of international human rights law. However, because of the diversity of sources, the right to consultation also has a diversity of subjects and content. This means that not all expressions of the right to be consulted are the same, do not have the same holders, and do not have the same scope. Therefore, it is worth analyzing some of their differences.



In general terms, consultation has developed as a prerogative derived from shared concerns about environmental justice and democracy. For example, the 1998 Aarhus Convention, which aims to contribute to guaranteeing the right to live in a healthy environment and under which European states are obliged to guarantee the rights of access to information, participation in decision-making, and access to justice in environmental matters, has served as a framework for the development of a generic form of consultation.

Article 6 of this agreement establishes detailed procedures for informing citizens in advance of activities that may affect the environment, in non-technical language, with the obligation of States to consider the results of the public participation process. Article 8 establishes that during the drafting of regulations or legally binding instruments that may influence the environment, the participation of the general public must be guaranteed, either directly or through consultative bodies designed for this purpose.

Therefore, in compliance with the provisions of that regional agreement, European governments can create mechanisms to carry out such consultations. The Regional Government of Castile-La Mancha, in Spain, for example, created advisory bodies, i.e., non-decision-making bodies, to facilitate meetings between public administrations and social sectors interested in environmental protection. These include the Advisory Council on the Environment, the Climate Change Commission, and the Regional Councils on Hunting, Fishing, Agriculture, and Water, which advise, inform, and propose measures for the sustainability, conservation, and rational management of natural resources (Castilla-La Mancha, 2025).

Similarly, the 2018 Escazú Agreement, which applies in the Latin American context, requires States Parties to establish appropriate consultation spaces in which various groups can participate (Art. 6.13). In these consultative scenarios, States are obliged to promote the valuation of local knowledge, dialogue, and the interaction of different visions and knowledge. All of this is a prerogative included within the rights of access to environmental information, public participation in environmental decision-making processes, and access to justice in environmental matters (Art. 1).

Specifically in the context of the right to land, we can see that for OG26, the obligations derived from the ICESCR not only consider the duty to develop procedures that guarantee the principle of consultation, but also give it an “essential” place in the implementation of the commitments made by States (Par. 20). In total, OG26 refers to six issues in which consultations related to ESCR and land are appropriate.

Table No. 2

Consultation Requirements Under OG26

ISSUE	SCOPE	OG26
Land decisions	Prior consultation for registration/administration/transfer decisions	20,21
Evictions	Consultation before eviction or disruptive land-use changes	20,24
Legitimate tenure	Consult affected groups when designing protective measures	27
Second occupants	Consultation + adequate housing if evicted	50
Corruption	Consultation as a tool against corrupt land management	53
Human rights defenders	Consult defenders when formulating protection policies	55

Source: Own elaboration.

In line with what we have seen so far, the CESCR has recognized that certain social groups depend essentially on access to land for the effective exercise of their rights protected by the ICESCR, and therefore deserve special attention from States. These groups include women (para. 13), indigenous peoples (para. 16), and rural populations (para. 18). For these populations, the Committee identifies, on the one hand, the right to be informed and to participate actively in decision-making processes; and on the other, the obligation of States parties to the ICESCR to establish adequate mechanisms to ensure transparency, effective participation, and informed consultation in matters relating to land (para. 20).

The Committee emphasizes a general clause or principle of consultation according to which decisions on land must be consulted, especially in cases involving a risk of territorial loss because of public decisions, requiring a reinforced standard of protection. This higher standard applies in situations involving evictions or changes in land use that could deprive people—especially peasants—of the means of production essential for an adequate life. In such situations, consultation must be carried out in advance (paras. 20 and 24). In cases involving possible evictions, the Committee also stipulates that consultation processes must actively consider all viable alternatives with the aim of avoiding, or at least mitigating, the need to carry out the eviction (para. 24).

In other decision-making contexts where there is no imminent risk of land loss, for example, in decisions related to land registration, administration, or transfer, the Committee establishes that at least prior contact with the affected persons must be guaranteed before decisions affecting their land rights are adopted (para. 21).

In land restitution processes involving the eviction of current occupants, the Committee establishes an additional consideration when the latter act in good faith and are in a vulnerable situation. In such cases, the state's duty to consult is complemented by the obligation to offer alternative housing solutions and access to social services that guarantee an adequate standard of living (para. 50).

Finally, the Committee also recommended that consultative procedures be carried out in the formulation and implementation of public policies. It highlighted the need to consult on the formulation of public policies for the protection of traditional systems of legitimate land tenure, paying special attention to the rights of women that may be ignored in such non-state systems, and policies for the protection of human rights defenders in relation to land. Regarding the implementation of public policies, it emphasized that consultations are a tool for preventing corruption in all its forms.

Finally, the United Nations General Assembly also recognized, through UNDROP, the right of peasants to be consulted on matters of interest to them. For the Declaration, the standard of consultation is specified in three specific areas.

Table No. 3

Matters Requiring Consultation with Peasants as a Mechanism to Realize the Right to Participation under UNDROP

MATTER	SCOPE	UNDROP LEGAL BASIS
Decisions that may affect peasant rights	According to UNDROP, States shall consult and cooperate in good faith with peasants and rural workers through their representative institutions prior to adopting decisions affecting their rights. They must guarantee active, free, informed, and meaningful participation , considering their inputs, seeking their support, and acknowledging power imbalances among involved parties.	2.3

MATTER	SCOPE	UNDROP LEGAL BASIS
Authorization for use of natural resources	The General Assembly urged States to ensure three conditions before authorizing decisions on natural resources traditionally used by peasant populations: (1) social and environmental impact assessments , (2) good faith consultations , and (3) fair agreements on equitable benefit-sharing from exploitation.	5.2.a
Measures against forced labor, slavery, servitude, and exploitation	To prevent peasants from being subjected to forced labor, trafficking, or slavery, UNDROP requires States to adopt protective measures in consultation and cooperation with peasants . These measures must shield them from economic exploitation, child labor, and debt bondage, with particular attention to vulnerable groups .	13.6

Source: Own elaboration.

The UNDROP also establishes a general clause or principle of consultation in favor of peasants in all matters that may impact the enjoyment of the rights recognized in the 28 articles of the Declaration. This right is activated prior to the approval or application of laws, international agreements, or any other decision that could potentially have these effects (Art. 2.3). Although the active subject of this right is rural people, as defined in Article 1.1 of the Declaration, the protection of this prerogative implies recognition of its organizational dimension, since dialogue and possible agreement will take place with the institutions or organizations that represent them.

The UNDROP aims for the consultative process to result in the peasant population's support for the proposed measures, that is, in consensus. However, the suggested standard for these processes does not necessarily imply such a level of agreement. Instead, it proposes that States consider the contributions of peasants and ensure that their participation is active, free, effective, meaningful, and informed.

In other words, it can be said that the enhanced participation of the rural population in consultation processes reaches such a level of "enhancement" if the rural population can participate actively, that is, if they are not merely passive recipients of socialization or dissemination of information but have the capacity to interact with that information



and actively propose alternatives to the projects, works, or activities under consultation.

Such participation will be free if the peasant population, as well as the organizations that represent it, do not suffer coercion, threats, pressure, or negative consequences for participating or for the way in which they do so. Furthermore, participation will be effective if, even if consensus is not reached, some of the proposals presented by peasant organizations are incorporated into the initiative being consulted, transforming it because of participation. Such transformations cannot be cosmetic or simulated but must be in good faith and therefore significant. Finally, the consultation must be informed, insofar as rural people have access to all information in a manner appropriate to their social, territorial, and cultural particularities, and especially to the power imbalances that affect them.

3.

A Standard for Enhanced Peasant Participation Based on the Colombian Experience

Having outlined the scope of political participation in international frameworks and examined the specific implications of enhanced participation under UNDROP and General Comment No. 26, this section presents the Colombian experience as a case study. It analyzes how social movements have mobilized to demand meaningful participation and how these efforts have contributed to the formulation of a normative standard that could be applied beyond the national context.

3.1 Struggles for Environmental Justice and Democratic Participation

To understand the Colombian experience, it is essential to recognize the historical exclusion of the peasantry as a political subject. This marginalization was evident in the original text of the 1991 Constitution, which failed to explicitly recognize peasants, and in the repeated rejection of constitutional reforms aimed at affirming their rights. Colombia's abstention during the UNDROP vote further illustrates this neglect.

Despite this, progress has been made in the country with the current government's official declaration to implement the UNDROP, which expands the instruments available



to challenge the development model that has devastated rural life (Tacha, 2019), and with the amendment of Article 64 of the Constitution, which recognizes rural people as subjects of rights and special protection, including their political dimension¹¹. As mentioned, this includes many of the rights of the UNDROP, among which we highlight the right to enhanced participation, to land, to territory, to basic goods and services, to natural resources and biological diversity, and to technical assistance. In addition, the economic, social, cultural, political, and environmental dimensions of the peasantry and their relationship with the land, which distinguishes them from other social groups, were recognized.

However, the road to achieving these advances has not been easy, and the social movement has played a fundamental role. It is important to highlight the experience related to the demands and needs for participation of peasant movements in Colombia, which have been realized, for example, in the use of legal instruments such as popular consultation, used to limit the implementation of extractive projects in their territories and, thereby, preserve their roots and ways of life. The experience with popular consultation is especially relevant, as the appropriation of this participatory mechanism led to a transformation in the scope and recognition of the right to participation in the country, which may be key to its application in other contexts.

This experience arose in response to the state's imposition of many mining and hydrocarbon projects throughout most of the country, through the discretionary granting of titles and concessions, without the participation of the public, much less the rural population, despite being one of the social groups most directly affected. Between 2001 and 2011, 40% of Colombian territory was under concession or in the process of being granted for extractive activities (Peace Brigades International, 2011). This situation, in turn, led to the violation of other rights, as it allowed corporate interests to advance over the territories without the rural communities being able to influence decisions that potentially radically transformed the natural environments on which they depended.

Faced with this situation, the rural communities affected by extractivism appropriated the mechanism of popular consultation, created by Article 103 of the 1991 Constitution and regulated by Law 1757 of 2015, to defend their territories and their rural way of life. This mechanism of citizen participation makes decisions adopted by popular vote binding. Thus, between 2013 and 2018, various communities and social processes—several of them linked to the National Environmental Movement, which we will discuss in detail later—mobilized and activated legal channels to influence decisions about the future of their territories. Ten municipal referendums were held, in which citizens were asked whether they agreed with the implementation of certain extractive activities.

11 Amendment to Article 64 of the Constitution, through Legislative Act 01 of 2023



In 2013, consultations were held in the municipalities of Piedras (Tolima) and Tauramena (Casanare). In 2017, seven popular consultations were held in the municipalities of Cabrera (Cundinamarca), Cajamarca (Tolima), Cumaral (Meta), Arbeláez (Cundinamarca), Pijao (Quindío), Jesús María, and Sucre (Santander). In 2018, the last consultation was held in the municipality of Fusagasugá (Cundinamarca).

Among these processes, the popular consultation in Cajamarca, voted on March 26, 2017, is noteworthy, as it represented a milestone for citizen participation in Colombia in terms of what an organized rural community can achieve in defending its rights. Under the leadership of the Cajamarca Environmental and Peasant Committee, Anaime, and the Cajamarca Youth Socio-Environmental Collective, the citizen participation mechanism of the citizen-initiated referendum was used for the first time, and a gold mining project of the magnitude of La Colosa was suspended by a citizen decision. More than 6,000 people (98.78%) expressed their decision to maintain the municipality's historic rural vocation, which has made it known as Colombia's "agricultural pantry" and inspired other popular consultations that would follow.

In addition, at least 11 autonomous and legitimate consultations were held in other municipalities¹², which originated in the municipalities of the Colombian Massif (north of Nariño and south of Cauca) where communities decided to hold their own referendums as a political and symbolic exercise in decision-making about the vocation of their territories in the face of the threat of extractivism and as an exercise in protest against the obstacles presented to the financing and convening of formal referendums (García-Herreros, 2023). These consultations have been part of a long process of dispute over territorial autonomy that has led to the creation of the Territorios Campesinos Agroalimentarios (TECAM), which seek to enable rural communities not only to oppose external threats, but also to directly plan the future of their territories. Currently, the TECAMs¹³ are recognized by the Colombian state as a peasant territoriality under the terms of Article 64 of the Constitution and represent a meeting point between legitimacy and legality in the struggle for food production under dignified conditions and good peasant living (Duarte et al. 2024).

Returning to the social appropriation of the popular consultation participation mechanism, it is important to mention that it functioned as a channel between citizens and institutions to address demands for binding participation by rural communities in the face of extractivism, given the magnitude of the impact on their ways of life. Although the popular consultation does not provide for deliberative scenarios, as it focuses on voting on the question, in practice it led to extensive discussion and citizen mobilization

12 The autonomous and legitimate popular consultations were democratic initiatives of resistance and protest, managed by citizens outside of state procedures, and therefore have no enforceable legal effects.

13 Decree 780 of 2024.

prior to the vote, in which the discussion on the viability of the central government's extractive projects was transferred to the citizenry, mainly of peasant origin.

In addition to this, the active use of the referendum to limit extractive projects, largely by the affected peasant population, as well as the corresponding processes of mobilization and citizen discussion that accompanied it, led the Constitutional Court to discuss whether citizens had the possibility of deciding on the vocation of their territories, where a profound process of progressive expansion of the scope and content of the right to environmental participation took place.

Between 2013 and 2017, the Constitutional Court issued important rulings such as T-135 of 2013, C-123 of 2014, T-445 of 2016, C-273 of 2016, C-035 of 2016, C-389 of 2016, and SU -133 of 2017. These rulings recognized, among other things: the State's ownership of the subsoil, understanding that municipalities are also part of the State; the competence of municipalities to convene and carry out popular consultations on mining and hydrocarbon exploitation issues; the power of municipalities to prohibit mining activities within their territory; the right of all citizens to participate in projects that may affect the environment; the special right of communities affected by extractive projects to participate actively and effectively in all stages of such projects; and the right of citizens to participate in popular environmental consultations.

During this period, ruling C-077 of 2017 was also handed down, consolidating the recognition of the rights of rural workers up to that point in what was called *Corpus Iuris*, aimed at guaranteeing their subsistence and promoting the realization of their life project. This body includes, among others, the rights to a dignified life, a minimum standard of living, work, territory, food, freedom of association, and participation, which is not developed in detail in this ruling.

Throughout this jurisprudential evolution, the Court broadened its recognition of the universal and expansive nature of the democratic principle, including new areas of application beyond representative mechanisms, deepening its validity, and recognizing its application in contexts of social conflict.

This expansion of democratic guarantees was not a simple concession by the State in the face of the conflict generated by extractivism, but rather the result of the articulation between peasant mobilization and youth mobilization in the cities, generating profound processes of citizen deliberation. We cannot speak of concessions when the mobilization to expand the conditions for participation was framed within a dispute with the state over the financing, convening, and recognition of the results of this legal mechanism. Although popular consultations were provided for in the existing regulations, the national government used all available means to prevent their use as a limit on extractive projects.



Among the strategies used, it is worth recalling the statements made by President Juan Manuel Santos and state officials, who openly spoke out against popular consultations on extractive issues¹⁴. For its part, the Ministry of Finance refused to guarantee the financing of popular consultations, arguing a lack of resources (Muñoz and Peña, 2019) and the National Agency for Legal Defense of the State requested the annulment of ruling T-445 of 2016, which consolidated the jurisprudential line establishing that citizens could prohibit extractive activities in their territories through popular consultation.

It is important to mention that this dispute took place in a context of media pressure and criticism of the Constitutional Court for the progressive nature of its rulings, which were portrayed as an obstacle to the country's development and a source of legal uncertainty for investment¹⁵.

It is in this context that the Constitutional Court, through ruling SU-095 of 2018, curtailed the use of popular consultation as the only effective mechanism for the rural population to decide on their territories. The Court disregarded its own precedent set in 2017, determining that popular consultations are not a suitable mechanism for deciding on subsoil activities, thereby generating regression in relation to democratic principles.

Despite the Court's regression, popular consultations represented a milestone in the scope of citizen mobilization to transform existing participation mechanisms, in which justice and environmental democracy for their territories were disputed. This was an exercise in environmental democracy, understood as collective decision-making that is participatory and ecologically rational, considering long-term social interests and the deepening of existing civil rights (Mason, 1999).

It was precisely through the processes of peasant and youth mobilization around the popular consultations that complex issues were brought up for discussion using common language, which allowed for a shared understanding, respecting the different ecological and social conditions of the participants. This was especially true because

14 In 2013, Santos stated: "The position is clear: these referendums are illegal and have no legal effect. The subsoil belongs to all Colombians. There is no room for discussion here." *El Espectador*, "We can win in the first round": Santos, December 21, 2013, available at: <https://www.elespectador.com/noticias/politica/se-puede-ganar-primera-vuelta-santos-articulo-465498>.

15 Major media outlets with extensive reach in Colombia, such as *Semana Magazine* and *El Espectador*, published the following articles, among others, that reflect this pressure: *Semana Magazine*, "The Constitutional Court versus Business Owners," October 15, 2016, available at: i) <https://www.semana.com/nacion/articulo/fallos-del-la-corte-constitucional-impactan-el-desarrollo-economico-en-las-regiones/499115>; ii) <https://www.semana.com/economia/articulo/mineria-reclama-mayor-seguridad-juridica-en-medio-de-elecciones/565226>; iii) <https://www.elespectador.com/economia/mineria-asediada-por-inseguridad-juridica-articulo-692890>; iv) <https://www.elespectador.com/noticias/nacional/consulta-minera-en-cajamarca-no-tiene-la-capacidad-de-cambiar-la-ley-gobierno-articulo-686515>.



the overwhelming votes against extractive activities were the result of extensive information and citizen discussion processes around the benefits and harms of mining and hydrocarbon extraction in their territories, including the social dimension, in which the defense of food production was consolidated, and the environmental dimension, in which the defense of life, water, and territory was championed.

In this way, we understand the dispute surrounding achieving binding participation through popular consultations as an exercise in environmental democracy, since this process has not only integrated democratic elements, but has also placed the relevance of environmental justice at its center, on the understanding that these are two mutually reinforcing political processes, since the strengthening of democracy requires favorable ecological and social conditions (Mason, 1999).

In this sense, the need for participation and the guarantee of rights for rural communities in the face of the imposition of extractivism in Colombia has arisen from a commitment to binding mechanisms that guarantee participation in a more adequate way than purely democratic perspectives, as it highlights the importance of territories and nature for the subsistence and development of rural ways of life. Furthermore, it takes into account their environmental dimension, that is, the interdependence and co-production that these communities have with the ecosystems they inhabit, which demonstrate the importance of autonomy as the basis of rural ways of life and a fundamental element of their struggles (Van der Ploeg, 2013).

Therefore, as we will see later, the commitment to the creation of new mechanisms promoted by the National Environmental Movement following the SU-095 ruling of 2018 arises from the understandings around democracy and environmental justice that were built in the process of defending popular consultations and that were deepened in the Environmental Democracy Bill.

3.2 Toward a Normative Standard for Enhanced Peasant Participation

In the context described above, marked by a strong social movement and clear demands in response to the violation of the rights of the rural population and the lack of their participation in decision-making on issues that affect them, the National Environmental Movement—which brings together 107 organizations from approximately 48 municipalities and 17 departments in Colombia—led and promoted by the Cajamarca Youth Socio-Environmental Collective (Cosajuca) and with legal support from the Siembra Socio-Legal Center, decided to embark on a path toward proposing a legislative initiative that would establish specific mechanisms for the participation of the peasantry in decisions related to the development of mining and hydrocarbon projects; that is, decisions that ultimately seriously and irreversibly impact the enjoyment of their rights, especially those



who depend on the land they inhabit.

This organizational process involved the consolidation of a proposal initiated in 2020, which has undergone several years of deliberation, dialogue, discussion, agreement definition, and collective construction, as well as multiple feedback spaces with key actors from academia, civil society, and the Congress of the Republic. The proposal is based on the recognition of the multidimensional nature of the peasantry and the diverse experiences of peasant populations excluded and violated by the imposition of extractive projects, as well as the disregard for popular consultations. However, it is based on a common premise: peasant communities lack specific mechanisms for participation in decisions about their territories.

That said, the proposal took shape in what is known as the “Environmental Democracy Bill” and proposes participation mechanisms based on existing mechanisms in the Colombian legal system, such as open councils and public hearings, but which establish special conditions and characteristics not only to consult the peasant population, but also to make their decisions binding in certain specific scenarios. The initiative is based on a comprehensive understanding of environmental democracy as the very foundation of the state as guarantor of the rights of the rural population, and not as a simple set of participatory procedures.

This proposal arises, in part, from multiple territorial processes involving rural populations that have had to face the absence of material equality to which we have previously referred. Based on this reality, a demand is being made for the recognition of their rights and their political dimension, with the aim of demanding greater participation, not only in the terms established by international regulatory instruments—promoting that “essential” place for the peasantry in the procedures that guarantee the principle of consultation, as indicated in OG26—but also through additional elements aimed at recognizing the sovereign power that resides in the people and the need to move toward forms of participation with a binding character.

Therefore, without ignoring the fact that the legislative initiative proposes specific measures for the enhanced participation of the peasantry in specific scenarios, such as the development of mining and hydrocarbon projects, the truth is that the reflections that have been generated around its construction provide elements to move towards a standard of enhanced participation of the peasantry in those cases where the enjoyment of their rights is seriously and irreversibly impacted.

This standard falls within what we have been referring to as positive discrimination measures that lead to institutional adjustments related to the creation of specific procedures for consulting the peasantry, and it contemplates the following aspects:



- *Informed and comprehensive understanding of peasant territory*

As has been pointed out in multiple scenarios, including Article 11.2 of the UNDROP, effective participation is only possible to the extent that there is prior, clear, sufficient, verifiable, accurate, appropriate, necessary, available, accessible, and free information for peasant communities and other actors who must be involved in the decision-making process. Talking about a comprehensive understanding implies that the information to be accessed, analyzed, discussed, and considered comes from a complete and early reading of the territory, in terms of land use planning and from a social and cultural understanding of it.

For example, when deciding on the development of an extractive project, the decision has commonly been based on the mining and energy potential of a given territory. However, based on this proposal, and in line with the UNDROP, what is being proposed is the need for consultation processes to understand the different dimensions of the territory (environmental, cultural, social, political, and economic) and analyze the implications of the decision on each of them, especially in relation to the rural population that inhabits it.

In this logic, it must be considered that it is not only a matter of increasing the degree of participation in consultation processes based on scientific information, because that does not guarantee more appropriate and transparent decisions (Jasanoff, 1996). On the contrary, it is a matter of rethinking decision-making mechanisms so that discussions and analyses revolve around the knowledge of environmental and territorial risks that the communities that inhabit the territory also possess, and so that spaces of trust can be created that can contribute to meeting the democratic mandates of rural communities.

In other words, decisions about an extractive project—or any other action that could affect the territory and seriously and irreversibly compromise the enjoyment of peasant rights—cannot be based solely on the existence of resources available for exploration and exploitation, nor on the potential economic benefits derived from a particular activity. It is necessary to identify the territorial context broadly and understand the real impact of the decision in all its dimensions.

This must be accompanied by specific recognition of the political dimension of the peasantry and the special protection to which it is entitled, so that the structural discrimination that has affected it does not prevent it from operating on equal terms. Therefore, when considering the different dimensions of the territory, it is essential to pay special attention to the particular relationship that peasants have with the land, as well as to their forms of peasant territoriality and the historical, cultural, organizational, geographical, and demographic conditions that distinguish them from other social groups.



- *The existence of deliberative processes to ensure enhanced participation*

Enhanced participation implies a change in the way in which the mechanisms and instruments of participation established in different instances have traditionally been conceived. It is not a simple procedural requirement aimed at legitimizing decisions—based, in many cases, on the simple socialization of information or even of previously adopted decisions—but rather a process that must be approached from the complexity inherent in a democratic process.

This means recognizing that participation includes the creation of consultation mechanisms for deliberation free from interference, the existence of autonomous spaces for rural communities, the existence of spaces for dialogue between the various institutional actors and rural communities, the coexistence of diverse positions and opinions, the promotion of horizontal dialogue with the rural population, and the active search for consensus, while also recognizing legitimate differences in local and national priorities and needs.

In this logic, and again addressing the political dimension of the rural population, rural men and women must be recognized as actors in dialogue who actively participate in deliberative processes. This deliberation takes the form of dialogue between the various actors relevant to the discussion, based on comprehensive and integrated information about the territory—in the terms described above—and in scenarios that transform the passive and merely receptive role that has historically been imposed on the peasantry in spaces for participation. Instead, an active and decisive role is proposed, based on the recognition of the special protection attributable to the peasantry and its particular peasant territorial conception.

- *Enhanced participation in terms of the right to decide*

Enhanced participation by rural communities must transform the way in which decisions are made and who has the power to make them. Discussions have mainly focused on procedural issues relating to the framework for state action, for example by pointing out that certain authorities have certain powers and that communities do not have those powers. However, it is important to understand that the analysis must be based on rights, not on the distribution of state powers. In other words, the basis lies in the rights of the peasant population and in the constitutional principle that sovereignty resides in the people.

It is a right to decide, especially in the context of participatory democracies, in which democracy is understood as an expansive principle that must be extended to different spheres of social, political, economic, and cultural life, and in which democracy, in its



participatory expression, must be active and effective. As noted in the previous section, the level of “reinforcement” of the participation of the rural population cannot be restricted solely to the socialization of impacts, but rather seeks to advance the positions and opinions of communities so that they have effects and consequences on decisions.

From this perspective, UNDROP’s aspiration to have consultative processes that result in the rural population’s support for the proposed measures, i.e., consensus, is limited. The aim should be to have scenarios in which rural communities not only play a leading role in decision-making, in terms of contributing to consensus, but also eventually have the final say, after that deliberative process, with the particularities already mentioned.

For example, based on international and national reflections related to prior consultation and the free, prior, and informed consent of ethnic communities, and the recognition of the precautionary principle in environmental matters, the bill also contemplates cases in which citizen decisions must be binding: (i) when the decision to be made involves the transfer or relocation of communities; (ii) when there is storage or deposit of hazardous materials or toxic waste in the territory; (iii) when it involves measures with a high social, cultural, and environmental impact that threaten the livelihoods of communities; and (iv) when there is no scientific certainty about the environmental and public health impacts of the activity.

These types of criteria are just some of those proposed for the binding nature of the decisions adopted by rural communities as part of the standard, and should be considered regardless of the sector, project, or activity planned. Ultimately, however, the aim is to identify those scenarios in which the impacts on the rural population are so serious and irreversible that it is not enough to guarantee consultation and their active role in the process.

That said, the proposed standard of enhanced participation draws on the UNDROP’s general clause or principle of consultation in favor of rural communities in all matters that may impact the enjoyment of the rights recognized in the 28 articles of the Declaration, and on OG26’s statement on the obligations derived from the ICESCR with regard to the “essential” role of such consultation but proposes an even broader scope.

In this regard, the extent of peasant participation must be proportional to the potential threat to their autonomy and survival. In particular, the reinforced nature of participation implies that in the event of serious impacts that threaten the disappearance of a particular peasant population or seriously threaten its autonomy, the standard can be none other than that of mandatory compliance by the State with the peasants’ decision.

Ultimately, this is a matter of reinforced participation by the peasantry in consultation processes, which reaches such a level of “reinforcement” when the rural population has



a space for dialogue based on an informed and comprehensive understanding of the territory; when it actively participates as a political subject and dialogue partner in the deliberative process; and when, in accordance with the principle of popular sovereignty of democratic States, it exercises the right to actively propose alternatives that can be effectively adopted. In other words, they have the right to have their participation be binding, based on that informed deliberative process, in cases where the enjoyment of their rights is seriously and irreversibly impacted.

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