

The Human Rights Council from Below A Case Study of the Declaration on the Rights of Peasants



Arne Vandenbogaerde

Localizing Human Rights Working Paper Series No. 1
General Editors: Koen De Feyter and Ellen Desmet
Antwerp: University of Antwerp (2015)

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Localizing Human Rights Working Paper Series

The Localizing Human Rights Working Paper Series consists of studies on the local relevance of human rights, particularly but not exclusively in non-Western contexts. They form part of a long-term interdisciplinary project, combining insights from law, political and social sciences. The localizing human rights research programme is coordinated by the Law and Development Research Group at the University of Antwerp (Belgium). General Editors of the Series are Professor Koen De Feyter, Chair of International Law at the University of Antwerp, and dr. Ellen Desmet, University of Antwerp and Ghent University. The studies are also available online on the website of the Law and Development Research Group.

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EXECUTIVE SUMMARY

This research forms part of the localizing human rights research project, coordinated by the Law and Development Research Group of the University of Antwerp (Belgium). This research programme focuses on how ‘users’ navigate through the complex architecture of human rights law and use it to their benefit. Various case studies investigate how urban and rural groups in the ‘Global South’ are using human rights in order to protect themselves from perceived threats to their human dignity. This research was carried out under the supervision of prof. Wouter Vandenhole, spokesperson of the Law and Development Research Group of the University of Antwerp.

Goals, Objectives and Limits of the Study

The starting point of this study is that global human rights need to be locally relevant in order to offer effective protection. A ‘local infusion’ into global human rights can be achieved in two ways, by interpreting existing norms in a locally relevant manner or through new normative developments that address local human rights needs. (De Feyter 2011: 36).

In this study we seek to ascertain whether local human rights issues and struggles can, and are, incorporated into the normative output of the United Nations Human Rights Council (HRC). In order to accomplish this goal the research set the following objectives:

- 1) identify the various avenues for bringing local human rights situations? to the Human Rights Council;
- 2) identify and monitor a local struggle with a trajectory to the HRC;

- 3) examine the preliminary impact of the issue on the output of the HRC; and
- 4) propose, if relevant, recommendations which could facilitate further integration of local struggles into the normative work of the HRC.

The choice to assess the standard-setting at the Human Rights Council, and not at other organizations in regional human rights systems in Europe, Africa or the Americas was primarily made from a legal perspective. Currently there is no other international organization that has the competence to enact and proclaim global human rights.

As a case study, this research analyzes the trajectory of the Declaration on the Rights of Peasants. The selection of a case study was not straightforward given the scarcity of readily available documented cases where local groups have succeeded in setting the agenda for the development of new international human rights norms. A potential explanatory factor for the absence of many well documented cases may be the fact that it is naïve to assume that local groups are aware of the HRC, let alone that they regard the HRC as an effective forum to voice their claims. Why should local groups invest their scarce human and financial resources in mechanisms that are not designed to offer redress at the local level? Furthermore, even if there is a will to do so, the sustained long-term lobbying at the international level is admittedly not a role local organizations can take up. It has been indicated that many organizations have withdrawn from the international arena since tending to local, national as well as international demands became too demanding. Lastly, several scholars have indicated the dangers and constraints of using the human rights system or discourse to advance one's

claims (e.g. the State-centered framework or the dominant individualist conception of rights). The organizations working on peasants' rights such as Serikat Petani Indonesia (SPI) and La Via Campesina are aware that attempts to institutionalize may lead to the transformation of the movement's struggle in technical debates, the demobilization of movement activists, and the loss of autonomy (Claeys 2012: 853).

Addressing the Human Rights Council is arguably most relevant if organizations want to amplify their claims in an overall strategy for change at the national and international level (especially if their State is sensitive to international scrutiny). Attention for the national or international level is certainly warranted if we agree that today the local cannot be separated neatly from the global anymore (and vice versa). Local struggles will most often contain global or international elements. International policies and decisions – decisions 'from above' – influence the enjoyment of human rights at the local level. In turn, decentralization at the local level forces rural and urban social movements to further localize their movement and struggle. One thus needs to conclude that, ideally, local organizations should attend to all levels in their struggles.

The case study starts with a claim to recognize the human rights of peasants made by SPI, a local organization in Indonesia, and ends with the establishment and first session of the UN Working Group responsible for drafting a Declaration on the Rights of Peasants. The research necessarily stops at the 'agenda-setting' stage of the localization process. The actual influence on the international norm-setting as well as the devolution process from the global to the local cannot be described in this study given the early stage of the negotiations.

Localizing Human Rights

It is at the local level that human rights act as a line of defence, and consequently prove to be vital or illusory. De Feyter has defined localization as:

Taking the human rights needs as formulated by local people (in response to the impact of economic globalization on their lives) as the starting point both for the further interpretation and elaboration of human rights norms, and for the development of human rights action, at all levels ranging from the domestic to the global (De Feyter 2006: 5).

Localization can thus occur in two ways and Oré Aguilar describes localization fittingly as a 'two-way highway' (Oré Aguilar 2011: 112). We can discern a process whereby human rights are translated and used into local struggles, as well as a process whereby local human rights claims are transformed into global norms – or at least influence their creation. According to the 'localizing human rights' perspective as developed by De Feyter and others, human rights (law) needs to be developed in accordance with the human rights needs as defined by community based organizations (understood as grassroots organizations managed by members on behalf of members).

One hypothesis is that there are four essential partners for a bottom-up approach to human rights: community based organizations, local human rights NGOs, international human rights NGOs and allies in governmental and intergovernmental institutions. Whenever organizations decide they wish to approach the Human Rights Council and its mechanisms they may face obstacles in terms of financial, administrative and human resources. The

organizations that use the HRC mechanisms should be highly professional, as considerable expertise is needed to use these channels effectively. Local organizations will therefore typically gain access to the Human Rights Council through international NGOs with a presence in Geneva. Geneva-based accredited NGOs are organizations that have greater expertise in engaging with a complex and political institution such as the HRC and they can offer some resources to local organizations. Besides the limitations in terms of resources and knowledge, the ability of local organizations to be active at the international level is greatly dependent on the political situation in their country.

The need to liaise and network is not inherently problematic yet some potential drawbacks can be identified. First of all, the possibility exists that no international NGO is interested in liaising and working together with the local communities concerned, be it for substantive or practical reasons. Secondly, finding common positions between the local and specialized (Geneva based) organizations may be difficult. Local groups may have very specific issues they want to address while the larger and more mainstream organizations tend to focus on general/structural issues. The various organizations may differ on which strategy to use to tackle a human rights issue. The power imbalances and absence of a level playing field between the local and international organizations may add to the difficulty of cooperation. The fact that local organizations typically have no direct access to the international level makes international NGOs function very much as gatekeepers and it has been indicated that mainstream NGOs do not readily expand their agenda (Bob 2009: 3).

Access to the Human Rights Council

The potential relevance of the Human Rights Council mechanisms for localizing human rights is determined by their mandates and the participation rights of civil society (and other stakeholders). We analyzed these mechanisms from a formal perspective, focusing on the rules and regulations that determine their mandate and the participation rights of civil society. We can conclude that the Advisory Committee and the Special Procedures stand out as avenues to propose new norms and instruments 'from below'. Other mechanisms have a monitoring role (the Universal Periodic Review (UPR)) or are less attractive due to their relatively weak mandate (the Social Forum).

The mandate of the Advisory Committee is to function as a 'think tank' of the Human Rights Council and as such it can propose new standards and instruments to the members of the HRC in order to improve the enjoyment of human rights. The Special Procedures have thematic or country specific mandates. Especially the thematic mandate holders have contributed in the past to standard-setting by performing studies, issuing guidelines, or clarifying existing human rights norms. The Special Procedures (and also the Social Forum) are easily accessible for international NGOs and other stakeholders such as grassroots organizations or local NGOs. There is no formal requirement that an organization has consultative status with the Economic and Social Council (ECOSOC) in order to approach and interact with a special procedure. The Advisory Committee as well as the UPR do have such a requirement and organizations must therefore be accredited or be included in the delegation of an organization with consultative status. This requirement can hinder organizations in accessing the Advisory Committee.

Other general challenges for local organizations to access the HRC are lack of resources and/or expertise, and possible reprisals from States. These challenges will often oblige local organizations to network.

The participation by civil society appears of great importance for the Advisory Committee and the Special Procedures as pressure by civil society is not only important to support their work but also because they have limited resources. This lack of resources increases the chances of civil society to influence the body or mandate holder. Much of the information the Committee and Special Procedures use is provided to them by civil society organizations and academics.

Moreover, the Human Rights Council should consider further ways of facilitating the involvement of civil society in its activities and mechanisms, in particular given the challenges that grassroots organizations may face in terms of reprisals, resources, expertise, and ECOSOC accreditation. One way of strengthening grassroots participation at the HRC could be to develop a mechanism similar to the International Food Security and Nutrition Civil Society Mechanism (CSM) of the UN Committee on World Food Security. Through this mechanism civil society organizations, including local groups are recognized not any longer as 'observers' but as official participants in the work of the Committee on Food Security. Through the CSM these organizations have a platform for sustained and coordinated engagement with the Committee on Food Security. Local groups are no longer at the perimeter of decision-making processes in this Committee. Perhaps a similar platform could be envisaged for the UN Advisory Committee.

The Road of the Declaration on the Rights of Peasants from the Local to the Global

La Via Campesina is an international movement which brings together millions of peasants, small and medium-size farmers, landless people, women farmers, indigenous peoples, migrants and agricultural workers from around the world. Serikat Petani Indonesia (SPI – Indonesian Peasants' Union), an Indonesian member of La Via Campesina, is spearheading the Declaration on the Rights of Peasants. La Via Campesina and SPI start from the perceived ineffectiveness of the existing human rights treaties against violations of peasants' rights. Yet, they appear to consider it not so much to be an implementation issue. They rather argue that even if existing international human rights instruments were better implemented, they would be insufficient to fully protect the distinctive rights of peasants. Only a new instrument, in particular a Convention, will ensure the protection of peasants' rights. SPI and La Via Campesina therefore seem less worried with implementation or enforcement. The problem according to them is that there are normative gaps in the current legal framework.

SPI and La Via Campesina have been working on peasants' rights since the late 1990s. Under the leadership of SPI, the movement promotes the adoption of a UN Declaration on the Rights of Peasants as a step towards a Convention on the Rights of Peasants. SPI brings together various local groups and spearheads their human rights agenda at the national (Indonesian) level. SPI's membership of La Via Campesina provided the peasants' union access to the international level. La Via Campesina in turn liaised with international NGOs such as FIAN in order to interact with the UN human rights mechanisms. The trajectory of the Declaration on the Rights of

Peasants demonstrates the usage of a broad range of available channels at the Human Rights Council, in particular the Special Procedures and the Advisory Committee. These actors adopted a common discourse on peasants' rights; the 'bottom-up approach' throughout this chain of actors or network was ensured through the constant participation of members of SPI and La Via Campesina. The fact that the connection with the local was not lost is exemplified by the draft Declaration adopted by the open-ended intergovernmental working group on the rights of peasants and other people working in rural areas in June 2013: the original Declaration of SPI was not significantly altered throughout the process.

Lessons learned

Analysing the literature on localizing processes, the mechanisms of the Human Rights Council, as well as the trajectory of the Declaration on the Rights of Peasants reveals some important lessons for the process of localizing human rights.

1. The Human Rights Council, through some of its mechanisms, enables civil society and other stakeholders to participate in its work. Organizations can submit written comments as well as orally intervene in the sessions. In addition, they can organize and speak in the side-events which are typically organized around meetings of the Human Rights Council. As far as formal participation is concerned, civil society actors appear to have adequate access.
2. Among the Human Rights Council's mechanisms the Advisory Committee and the Special Procedures are the two most relevant from a localizing human rights perspective on global standard-

setting. These mechanisms can namely support and push for new standard-setting. There is, however, no systematic commitment to learn from below. The Human Rights Council should consider further ways of facilitating the involvement of local movements in its activities and mechanisms, in particular given the challenges that these movements may face in terms of reprisals, resources, expertise and ECOSOC accreditation. One way of strengthening grassroots participation would be to develop a mechanism similar to the International Food Security and Nutrition Civil Society Mechanism of the UN Committee on World Food Security.

3. While adequate participation rights contribute to the potential impact of civil society and social movements on the HRC mechanisms, there appears to be another key determinant in increasing their impact. The lack of resources and support for mechanisms such as the Advisory Committee and the Special Procedures makes them much more dependent on external information and contributes to an open attitude (such as the UN treaty bodies). Both the Advisory Committee and the Special Procedures have explicitly acknowledged the importance of civil society and other actors in their work. Civil society organizations and other stakeholders thus appear to be the lifeblood of these UN mechanisms (Piccone 2012: 105).
4. SPI's access to and interaction with La Via Campesina, the international NGOs, and the UN mechanisms was considerable and constant through the whole process of bringing the declaration to the level of the Human Rights Council. The various actors involved appeared open to bottom-up networking and SPI and La Via Campesina were in charge of the peasants' rights

initiative. This appears essential for any localization process but certainly not current general practice.

5. The complexity of transnational advocacy, in particular attending to the local as well as the global, presents serious challenges for any organization. La Via Campesina is quite unique as an organization, which enhances its ability to access and impact key stakeholders such as international NGOs.
6. The hypothesis that the effectiveness of a network of organizations is of utmost importance for a successful localizing process is arguably confirmed in this case study and credit should be given to all actors in the peasants' rights campaign. In particular, the recognition of the peasants' rights initiative by international NGOs familiar with the functioning of the Human Rights Council's mechanisms was very important for La Via Campesina and SPI. International NGOs provided the movement with human rights training and access to the HRC mechanisms. The need to liaise with other civil society organizations can have drawbacks as common positions and priorities between organizations are often hard to find. In our case study, the representatives of Food first Information and Action Network (FIAN) and other NGOs such as the International Commission of Jurists (ICJ) and Centre Europe – Tiers Monde (CETIM) have a high degree of experience in working with UN human rights mechanisms. Over the years they have been able to build good working relations with the members of the UN mechanisms which facilitated the exchange of information and the adoption of a common discourse on the issue. This also reaffirms that it is not so much the formal rules that determine the effectiveness of NGOs,

but often rather ‘the status, the expertise, the communication skills, and the trust established in personal relationships between NGO representatives and government delegates’ (Willetts 2011: 62).

7. In addition to the effectiveness and expertise of the network, many circumstantial factors have contributed to the success of the peasants’ rights campaign. Examples include the fact that the former Special Rapporteur on the right to food and the former chairperson of the Social Forum were both supportive of La Via Campesina since the start; the fact that the special procedure on the right to food was sustained throughout the campaign; and the fact that both mandate holders later on became members of the Advisory Committee. An additional contextual factor was the food crisis in 2008, which gave the peasants’ claims a sense of urgency and prompted the UN Human Rights Council to continue to work on the issue.
8. The drafting process or norm-setting stage is the next crucial chapter in the campaign. Two main challenges are likely to arise in this stage. First, drafting processes are seldom expeditious and this might present a challenge to the civil society actors in terms of resources to support the campaign. Secondly, as the drafting will advance so will the need to build consensus among States. This typically involves making strategic choices, perhaps even to the detriment of some of the provisions in the draft Declaration. It is not unrealistic that the international NGOs will be much easier to convince to make compromises than La Via Campesina and SPI, which have drafted the original Declaration. The relationships in the network may thus become strained to a certain extent during

the drafting process. In order to find consensus some of the provisions and rights may need to be deleted from the Declaration. If this is the case then La Via Campesina and SPI may decide to distance themselves from the outcome.

9. In conclusion, and much related to the above point, whether or not new human rights standards will be produced remains to be seen. Adequate institutional arrangements only provide the opportunity to 'localize' in the agenda-setting. Certainly, our case study demonstrates that in terms of this agenda-setting local groups can have an impact through the mediation of the Advisory Committee. Yet, the question remains whether they will succeed in achieving norm-setting. Our case study cannot be considered successful yet, as a Declaration on the Rights of Peasants which reflects local needs is still to be adopted. The struggle for peasants' rights from the local to the global is one of the only documented examples available today. Follow-up research is needed on this norm-setting process as well as on other cases if we want to further expose the idiosyncrasies of localizing human rights processes.

ABBREVIATIONS

Advisory Committee	Human Rights Council Advisory Committee
CETIM	Centre Europe – Tiers Monde
CRC	Convention on the Rights of the Child
CSM	Civil Society Mechanism
Declaration	Declaration on the Rights of Peasants
ECOSOC	United Nations Economic and Social Council
ESC	Economic, Social and Cultural
FAO	Food and Agriculture Organization of the United Nations
FIAN	Foodfirst Information and Action Network
GA	United Nations General Assembly
HRC	United Nations Human Rights Council
ICC	International Coordinating Committee of La Via Campesina
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
NGO	Non-Governmental Organization
OEWG	Open-Ended Working Group
OHCHR	Office of the UN High Commissioner for Human Rights
SPI	Serikat Petani Indonesia
SPSU	Serikat Petani Sumatera Utara
SR	Special Rapporteur
Sub-Commission	Sub-Commission on the Promotion and Protection of Human Rights
UN	United Nations
UPR	Universal Periodic Review

WTO

World Trade Organization

1. INTRODUCTION

Localizing human rights research focuses on how ‘users’ navigate through the complex architecture of human rights law and use it to their benefit. This research programme is coordinated by the Law and Development Research Group of the University of Antwerp (Belgium). Various case studies analyze how urban and rural groups in the ‘Global South’ are using human rights in order to protect themselves from perceived threats to their human dignity. As such, case studies are being carried out in China, on the right to education of rural-urban migrant households in Chongqing (Chen, Desmet and De Feyter (forthcoming)); the Democratic Republic of the Congo, on the UNICEF-supported ‘Villages Assainis’ program in the Bas-Congo (see, a.o., Destrooper (2015)); and India, on the right to water and privatization in the slums of New Delhi. Between 2012 and 2017, the localizing human rights research line is embedded in a research network on “The Global Challenge of Human Rights Integration: Towards a Users’ Perspective”.¹

De Feyter has indicated that a ‘local infusion’ into human rights can occur in two ways, by giving or interpreting locally relevant content into existing human rights treaty norms but also by developing the law in a way that will improve its local effectiveness (De Feyter 2011: 36). In this study we analyze the latter option and seek to ascertain whether or not local human rights issues and struggles can be incorporated into the work and normative output of the Human Right Council (HRC). As a case study the research examines the

¹ This research has been funded by the Interuniversity Attraction Poles Programme initiated by the Belgian Science Policy Office, more specifically the IAP ‘The Global Challenge of Human Rights Integration: Towards a Users’ Perspective’ (www.hrintegration.be).

trajectory of the network of organizations (users) that have lobbied for a Declaration on the Rights of Peasants up to the level of the HRC.

Before we set out the structure of the study it is useful to briefly situate our research in some of the broader debates in the field of human rights and non-State actors.

The proliferation of non-State actors in international relations and law has led to a vast body of scholarly work on the role and impact of these actors. Scholarship in the field of international law has focused on a range of non-State actors, including armed opposition groups, corporations such as private security organizations and civil society organizations such as non-governmental organizations (NGOs). One aspect within this growing body of literature on non-State actors is the influence these actors have on standard-setting or law-making in international law, and in particular in international human rights law. Such impact flows from the fact that some of these non-State actors, particularly civil society actors (ranging from local groups to international NGOs), can participate to a great extent in international institutions. Although these actors do not have an overall right of participation, there is no doubt that today there is a general understanding and practice that civil society actors are to be included in international deliberative processes as observers or consultative parties. Although in theory States could set standards without consulting civil society actors, in practice this is not the case. Scholarly work has compellingly demonstrated that international law making processes have become less exclusive (see e.g. d'Aspremont 2011; Noortmann and Ryngaert 2010). Yet, the question remains to what extent these actors actually influence norm-setting processes. Several studies have considered the impact of international NGOs on the development of international human rights norms (see e.g. Breton-Le

Goff 2011; Türkelli et al. 2013; Vandenbogaerde and Vandenhole 2010). Such studies have demonstrated that while NGOs are effective ‘agenda-setters’ for the development of new norms, States remain the ultimate ‘law-makers’.

Important to note in the context of this research is that notwithstanding this thriving field of study the focus has been confined primarily to NGOs as civil society actors. Less attention has been paid to the role and impact of local groups in international standard-setting. Do they move from the local to the global in order to push for new norms?

The international drafting process of the 2007 United Nations Declaration on the Rights of Indigenous Peoples could be considered path-breaking. Indigenous peoples were not merely consulted, but actively participated in the drafting of this legal instrument. According to some, the principle that ‘people who are the subject of a rights document are entitled to participate in its framing’ has gained recognition in this process (Edelman and James 2011: 94). Another example is the extensive participation of victims of landmines in the drafting of the Ottawa Convention banning anti-personnel landmines (Anderson 2000; Cameron et al. 1998; Short 1999), or the participation of disabled persons (as persons directly affected) in the drafting of the Convention on the Rights of Persons with Disabilities (International Council on Human Rights Policy 2006: 31-32). These examples demonstrate that persons or local groups *participated* in the drafting of a new instrument. Yet, there are few cases documented where the origins of a new instrument or standard can be traced back to a local or grassroots organization. One potential explanatory factor is that the study of social movements has not received much attention in human rights research (Rajagopal 2011; Stammers 1999). As plausible reasons for such neglect Rajagopal and others have pointed to the limited transformatory potential of the human rights

discourse, and the fact that social movements often challenge the current state-centric discourse (Rajagopal 2011: 245-46). Other factors that might explain the absence of evidence are discussed in Chapter 3.

The research is also set against the UN human rights reform process, which culminated in the creation of the Human Rights Council. Its predecessor, the Commission on Human Rights, allowed greater civil society participation than any other UN body (Abraham 2006). The Human Rights Council has stated that NGOs and other civil society actors are an integral part of it. They can be granted participation rights in order to partake in the activities of the Human Rights Council and its mechanisms. They are able to attend and observe all sessions/meetings of the HRC (with the exception of the deliberations under the Complaints Procedure); submit written statements; make oral interventions; participate in debates, interactive dialogues, panel discussions and informal meetings; and organize “parallel or side-events” on issues relevant to the work of the HRC. Civil society thus enjoys a fairly wide range of possibilities to participate and impact upon the work of the HRC. These possibilities and the concomitant Human Rights Council mechanisms are discussed in Chapter 5, and juxtaposed - whenever relevant - to the earlier practices of the Commission on Human Rights.

Several other important discussions in international (human rights) law can be connected to this research as well. One can think of issues such as the debate about the overproduction of human rights norms (see e.g. Alston 1984) or the question whether the legitimacy of international law depends on the participation of all stakeholders (see e.g. Noortmann and Ryngaert 2010). In relation to our case study one could also envisage examining the idea of collective rights for peasants, the appropriateness of the proposed definitions of peasants as a category and of the rights of peasants, or even

whether some of the proposed new norms can be considered human rights at all. However, given the resource limits of this research these related issues will remain unaddressed.

The second chapter of the study is devoted to explaining the goal, objectives and methodology of the research. Here we also describe some limits of the research, most importantly the fact that we cannot answer whether or not the new norms proposed in the Declaration will eventually be adopted, transformed or rejected by the UN. This will only become clear in the following years, taking into account that some of the UN standard-setting processes have taken over fifteen years to be completed (e.g. the development of a complaint mechanism for the International Covenant on Economic, Social and Cultural Rights (ICESCR) had been under discussion since 1991 and was eventually adopted in 2008). In the third chapter we introduce the theoretical background for this research. The localizing human rights approach is explained and set against the work of La Via Campesina on a Declaration on the Rights of Peasants. The trajectory of the Declaration arguably illustrates the process of localization, and more in particular the “verticalization” of a local issue (De Feyter 2011: 27), whereby local groups inspire the further elaboration of human rights at the global level. Edelman and James (2011: 82) see it as an illustration of ‘both the progressive extension of the existing human rights regime and a continuation of the democratization of rights-making’. In Chapter four, we look at the various mechanisms of the Human Rights Council that can facilitate such a bottom-up standard-setting process. Once we have discussed the theory behind the research as well as the UN human rights mechanisms, we shift the focus to our case study. In Chapter five we briefly discuss the La Via Campesina movement’s origin, goals and objectives before we analyze in detail the

trajectory of the Declaration on the Rights of Peasants from rural Indonesia to Geneva.

2. RESEARCH GOAL, OBJECTIVES AND

METHODOLOGY

2.1. RESEARCH GOAL AND OBJECTIVES

The *goal* of this research is to ascertain whether local human rights issues and struggles can, and get, incorporated into the work and normative output of the Human Rights Council. In order to accomplish this goal the research has set the following *objectives*:

- 1) identify the various avenues for bringing local human rights cases to the HRC;
- 2) identify and track down a local struggle with a trajectory to the HRC;
- 3) examine the preliminary impact of the issue on the output of the HRC; and
- 4) propose, if relevant, recommendations which facilitate further integration of local struggles into the work of the HRC.

2.2. RESEARCH LIMITS

Oré Aguilar has graphically represented the process of localization of human rights (see Figure 1, Oré Aguilar 2011).² The various tracks correspond to

² Bob does not deal with the importance of localizing human rights and has rather argued that the rise of new rights involves four distinct activities: politicized groups frame long-

different sets of research questions. The figure also illustrates the key importance of cooperation between the actors at the different levels in order for a localization process to succeed.

Figure 1. The Process of Localizing Human Rights (Oré Aguilar 2011: 131)

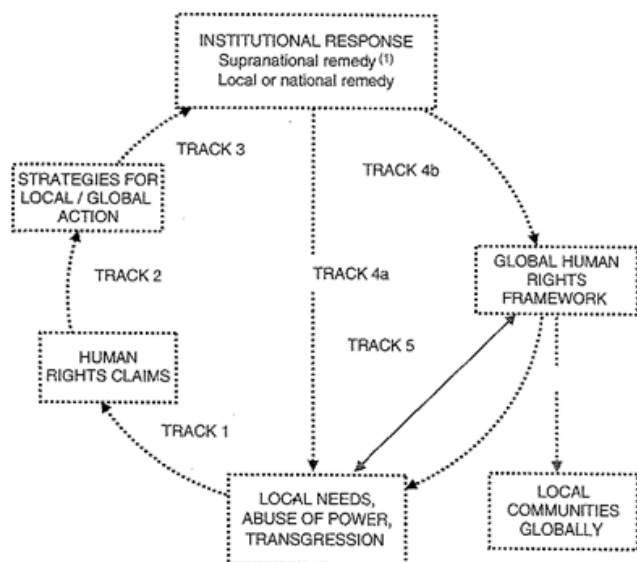


Figure 1 The process of localising human rights
⁽¹⁾ Regional court, UN monitoring body, decisions by international organisations, universal jurisdiction judgments.

Track 1 entails an analysis of the factors that have led a local group to formulate a human rights claim. Track 2 describes how claims get translated into action and how local groups engage in broader networks. Track 3 highlights the institutional response that is triggered by the action undertaken, and track 4 aims at assessing the local and global impact of this

felt grievances as normative claims; they place the rights at the agenda of international institutions by convincing major international NGOs; States under pressure from these organizations accept the new norms; and national institutions implement the norms (Bob 2009: 4).

institutional response. Track 4(a) discusses whether the local groups recognized the remedies and reparations afforded as relevant. Track 4(b) focuses on the 'return to the global', or the impact that local struggles may have on the international human rights architecture. Track 5 describes the devolution process whereby one assesses whether the enhanced global norms have relevance at the local level.

The research covers track 1 to track 4 of Aguilar's figure described above. The research starts with the human rights claim made by a local organization in Indonesia and ends with the establishment and first session of the UN Working Group responsible for drafting a Declaration on the Rights of Peasants.

At the international level multilateral law-making processes entail two steps or phases: agenda-setting and norm-setting. The research necessarily stops at the 'agenda-setting' stage. Agenda-setting involves 'the determination of whether a given issue will in fact be subject to law-making in the first place' whereas norm-setting refers to the determination of what specific norms make their way into the new instrument (Treaty, Declaration...)(Türkelli et al. 2013: 2). Track 4(b) in Aguilar's figure is thus only partially discussed. The study of the actual influence on the international norm-setting as well as the devolution process (track 5) cannot be described in this study given the initial stage of the negotiations. Whether the fact that the Declaration is now discussed at the HRC has produced any effects on the ground (track 4a) could also not be assessed.

The research will also not perform a thorough legal analysis of the Declaration. Its objective is not to assess the quality of the new norms proposed by the local group. It is equally beyond the scope of this research to assess whether or not these norms will be more effective than the current

norms in protecting peasants' rights. We will limit ourselves to some brief remarks on the arguments made by the proponents of the Declaration (see Chapter 3).

The choice to assess the standard-setting at the UN (Human Rights Council), and not at other organizations in regional human rights systems in Europe, Africa or the Americas was primarily made from a legal perspective. Currently there is no other international organization that has the competences to enact and proclaim global human rights. As De Feyter has noted 'there is little alternative to trying to amend procedures and practices within that organization [the UN] in order to open them up as much as possible to best practice of local human rights' (De Feyter et al. 2011: 29).

Not all the mechanisms of the Human Rights Council will be discussed. In particular, the Forum on Business and Human Rights and the Expert Mechanism on the Rights of Indigenous Peoples are not dealt with. While these are also mechanisms that can be used to advance human rights claims, they are less relevant for our study given their specific function and mandate. The Human Rights Council complaint procedure will also not be addressed because it represents the other way of infusing the local into the global, i.e. through a locally relevant interpretation of existing standards. As indicated earlier, this research is rather concerned with the creation of new norms from below.

2.3. SELECTION OF THE CASE STUDY

Standard-setting initiatives at the international level fail and succeed for several reasons. Some identified failures include the attempts to develop an international convention on housing rights (see e.g. Sub-Commission on

Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/1994/20, 1994: 27-35), and the development of a third optional protocol to the International Covenant on Civil and Political Rights on the right to a fair trial and remedy (see Commission on Human Rights, decision 1995/110). In addition to case specific reasons for such failures, there appears to be a general reluctance among States to engage in new standard-setting initiatives. Since the beginning of the 1990s many States had the understanding that 'the age of standard-setting has essentially drawn to a close and the era of increased attention to the implementation of internationally recognized human rights norms has begun' (Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/1994/20, 1994: para. 114). Such an argument was also raised during the first session of the Open-Ended Working Group (OEWG) on the Declaration on the Rights of Peasants. Various delegations declared that the focus should be on implementation of recognized human rights rather than the development of new standards.

Yet, standard-setting continues. Over the past years we have witnessed the adoption of new human rights instruments such as the Convention on the Rights of Persons with Disabilities or the International Convention on the Protection of all Persons from Enforced Disappearance, both in 2006. Many other standard-setting exercises such as on the right to international solidarity or the right to peace are on-going (see Chapter four).

The selection of a case study was not straightforward given the lack of many readily available documented cases where local groups have succeeded in setting the agenda for the development of new international norms. This lack of data is caused *inter alia* by the fact that scholars have not studied social movements from this perspective and the fact that movements do not

document in detail their successes, and certainly not their failures (at least not publicly). The failure by La Via Campesina to have a convention on the right to food sovereignty is arguably a case in point as there is no public material available that explains this. Perhaps the failure was due to the lack of support from international NGOs for the concept of food sovereignty. In addition, in general so-called 'transnational interventions' that push for legal and policy changes fail more often than they succeed (Borras Jr 2008: 270).

A potential explanatory factor for the relative absence of documented cases may be that it is naïve to assume that local groups are aware of the HRC, let alone that they regard the HRC as an effective forum to voice their claims. In other words, the lack of documented cases may be caused by the fact that local groups do not even attempt to address the HRC. The HRC does not address singular or local issues, but is rather concerned with matters that affect a large number of individuals around the world. Although most of the UN Special Procedures offer the possibility to file complaints, this is *de facto* a diplomatic rather than judicial mechanism. Why should local groups invest their scarce human and financial resources in mechanisms that are not designed to offer redress at the local level? Vandenhoe has voiced this concern earlier as he argued that local groups or communities will normally not be interested in influencing international standard-setting in order to obtain beneficial effects (Vandenhoe 2012: 86). Furthermore, even if there is a will to do so, the sustained long-term lobbying at the international level is admittedly not a role local organizations are able or willing to play. Edelman has indicated in 2003 that many organizations have withdrawn from the international arena since tending to local, national and international demands became too demanding (Edelman 2003: 214).

The user perspective of this research may thus start from a questionable or even untenable premise, i.e. that local or grassroots organizations/communities believe it may be useful to bring their claim to the international level. Local organizations or communities may well find that the challenges of approaching the HRC (in particular human and financial resources, see infra 4.2) outweigh the opportunities or benefits. Addressing the HRC is arguably most relevant if organizations want to amplify their claims in an overall strategy for change at the national and international level (especially if their State is sensitive to international scrutiny). Such attention for the national or international level is certainly warranted if we consider that today the local cannot be separated neatly from the global anymore (and vice versa). Local struggles will most often contain global or international elements. International policies and decisions – decisions ‘from above’ if you wish – influence the enjoyment of human rights at the local level. One thus needs to conclude that, ideally, local organizations should attend to all levels in their struggles (on this point, see Chapter 3). La Via Campesina and its network of member organizations has such a focus on the local and global, but it is quite unique in this respect.

International NGOs that work at the international level encounter the same problems of capacity when they try to address concerns at the sub-national or local level. In fact, the often displayed lack of attention of international NGOs for the local governance level might be based on a fiction ‘that the ‘state’ and the central government that represents it is responsible for all that happens in the territory’ (International Council on Human Rights Policy 2002: 38). This is convenient for international advocates (and of course is true from a strict international law point of view) but it does often not reflect the existing political structures and power dynamics on the ground. In sum,

international NGOs have little attention for local grassroots organizations and this contributed to the difficulty of finding a case study where a network of local and international organizations worked together to advance a local issue.

The search for and selection of a case study rested on two criteria: i) the issue had emanated from the grassroots level and ii) the issue had made a visible impact upon the work of the Human Rights Council. This research chose to analyze the trajectory of the network of organizations (users), including La Via Campesina, that have lobbied for the adoption of a Declaration on the Rights of Peasants at the international level. This choice of case study concurs with the relevant selection criteria proposed by Oré Aguilar (Oré Aguilar 2011). Her selection criteria for a case study on localizing human rights are the following (answers to her criteria are in italic):

- The case represents a wider problem experienced by other local communities.

The abuse that farmers experience is recognized as a worldwide problem. African, European, Asian and American farmers have many problems in common.

- The problem presented is a (direct or indirect) consequence of economic globalization.

Economic globalization and the ensuing global decision-making in relation to agriculture has affected (especially small-scale) farmers all over the world (Martinez-Torres and Rosset 2010).

- The affected local community is involved in the human rights claim.

The farmer organization, Serikat Petani Indonesia (SPI), that brought the issue to the regional and international level, is an active member of La Via Campesina and still involved in the deliberations at the UN level. The organization coordinates the rights of peasants' initiative within La Via Campesina.

- There is a presence of NGOs and international actors.

International NGOs such as Food first Information and Action Network (FIAN), the International Commission of Jurists (ICJ) and Centre Europe – Tiers Monde (CETIM) are involved in the work on the Declaration, as well as in several of the Human Rights Council mechanisms.

- Sufficient political space exists.

After the fall of the military government in Indonesia SPI has been able to bring forward its claims, including at the international level through La Via Campesina.

- The claim was formulated in human rights terms.

The Declaration clearly speaks of the 'human' rights of peasants.

- The case is an 'ex-post' or ongoing experience

The case is ongoing: it has just arrived at the Human Rights Council and it will take several years before a Declaration may be adopted.

2.4. DATA COLLECTION

Tracing back the trajectory of a standard-setting process is not a straightforward task. The various actors involved have 'partial and often quite personal perceptions of their role and that of their institutions [and]

these difficulties are only increased because most standards are adopted after many years of work, involving contributions by numerous different actors and institutions' (International Council on Human Rights Policy 2006: 6).

The data for this study have been taken from a literature review. Such method appeared satisfactory for the limited goal of uncovering the trajectory of the issue of the rights of peasants from the local to the global. Nevertheless, some field research was performed as the researcher attended the first OEWG on the Declaration on the Rights of Peasants in July 2013 in Geneva. No formal interviews were conducted but the researcher has consulted senior officials of international NGOs in the campaign.

3. LOCALIZING HUMAN RIGHTS

'Where after all do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: The neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.'

(Eleanor Roosevelt, remarks at the United Nations, March 27, 1958)

In this Chapter we discuss the theoretical framework of our case study. First we explain the localizing human rights approach and the implications this has for the work of civil society organizations (3.1). Next we briefly review the perceived need for new human rights standards by the proponents of a Declaration (3.2). The chapter ends with some remarks on the dangers social movements face when using the human rights system and language (3.3).

3.1. LOCALIZING HUMAN RIGHTS

This study aligns itself with the normative position that human rights need to be locally relevant in order to be useful in addressing the negative effects of globalisation at the local level. It is at the local level that human rights act as a line of defence, and consequently prove to be vital or illusory (De Feyter 2006: 12). Consequently, the idea of 'localizing human rights' as developed by De Feyter and others finds that human rights law needs to be developed in accordance with the human rights needs as defined by local groups. Baxi

believes such communities and peoples to be the principal drafters of international human rights (Baxi 2002). Such so-called 'discursive approaches' to human rights 'assume that social practice is, in part, constitutive of the idea of human rights itself, rather than simply the testing ground on which the idea of universal human rights encounters actual ethical or legal systems' (Goodale 2007: 8). Ife takes on an extreme position as he argues that the fact that human rights remain largely a discourse of the powerful over the powerless is a violation of one's human rights, namely the right to define one's rights (Ife 2010: 126). De Feyter has rather defined localization as:

Taking the human rights needs as formulated by local people (in response to the impact of economic globalization on their lives) as the starting point both for the further interpretation and elaboration of human rights norms, and for the development of human rights action, at all levels ranging from the domestic to the global (De Feyter 2006: 5).

Localization can thus occur in two ways and Oré Aguilar describes localization fittingly as a 'two-way highway' (Oré Aguilar 2011: 112). We can discern a process whereby human rights get translated and used into local struggles, as well as a process whereby local human rights claims are transformed into global norms - or at least influence their creation. An inclusive drafting or creation process of international norms enhances the chances of effectiveness of these norms (although such an inclusive process is arguably not a necessity). Ulrich largely agrees with De Feyter but has added another perspective on localizing human rights. He argues for an approach from the perspective of the duty-bearers, and more broadly from the perspective of the general public (rather than a specific group or movement claiming their rights) to which governments are, or should be accountable (Ulrich 2011).

Leaving aside the problem of defining the 'local' and the 'global', both levels should certainly not be understood in a strict binary fashion. They cannot be separated: in today's society there is hardly any longer a 'purely' local context. Global economic and political structures shape decision-making at the national and local levels and therefore the latter always contain elements of the global. Whatever the desirability of that development, the point we want to make here is that both levels are to be attended to. As Ife indicates: 'any understanding of human rights cannot afford to ignore either the local or the global' (Ife 2010: 147). A return to clearly identified local contexts as the basis for human rights is not possible, as these demarcated local contexts do no longer exist (Ife 2010). Localization should therefore not be understood as a call to romanticize the local over the global.³

Yet, matters become more complex for civil society actors if we consider that central governments rarely exercise direct power over the issues that are of concern at the local level. Local, municipal or regional governments often matter more in this respect (International Council on Human Rights Policy 2002). The simultaneous forces of globalization and decentralization have forced rural social movements to further localize and at the same time internationalize their movement and struggle (Borras 2010: 772). This is not easy for any organization. Local groups may prefer to work at the community and national level only.

In fact, in recent years the members of La Via Campesina have turned more to the local by developing grassroots strategies and reinforcing the movement from within, than to the global. Their struggle at the local level

³ The problems with the binary logic implied in the terms 'the local' and 'the global' have led some scholars to favor network analysis as a way to study transnational human rights advocacy. See Goodale (2007) and Keck and Sikkink (1998).

remains the most important one, especially given that members are well aware of the time it will take to realize change at the global level. This perhaps demonstrates the ambiguous attitude the movement has towards the international organizations such as the UN (Claeys 2012: 854). Many of its claims are actually directed against the involvement of international institutions in local agriculture. This certainly highlights that the preferred option is that 'human rights claims are dealt with in close proximity to the site where they emerge' (De Feyter 2011: 37). SPI, for example, is very active at the local and national level in Indonesia through *inter alia* protest letters, media pressure mobilization on the ground, the filing of complaints before the National Commission of Human Rights, and advocacy on new legislation such as the plan for a Farmers Protection and Empowerment Bill (Monsalve Suárez 2013: 277).

According to Oré Aguilar local communities can be understood as groups that are united by common needs and interests and that are based at the level of a geographical community (Oré Aguilar 2011: 114). Yet, local groups can also 'be rooted in a common experience, such as the sharing of a similar status within society' (De Feyter 2011: 15). The local groups in this research are the peasants who suffer from human rights abuses or are at risk of being so. The starting point is the group or organization of peasants that has started to claim rights on behalf of its members. Desmet has proposed the term 'direct (or primary) users' to describe 'individuals, groups of individuals, organizations or institutions who engage with human rights in an immediate way: they invoke human rights to prevent or stop a violation of human rights, or they give effect to human rights' (Desmet 2014: 129). One of the two categories under these direct users are the 'rights claimants'. These are the 'individuals, groups of individuals and legal persons who invoke human rights

in relation to their own situation. Rights claimants will often invoke human rights that are already more or less firmly recognised in international human rights law. They may, however, also allege a threat to or a violation of human rights in a way that does not seem to be supported by the current state of human rights law. Their struggles may then result in changes in or evolutionary interpretations of human rights law' (Desmet 2014: 129-130). In our case study these rights claimants are united in SPI at the national level, and in La Via Campesina at the international level.

As indicated before, the direct claimants such as SPI are not the only actors involved in the processing of localizing human rights. The initial hypothesis of the localizing perspective is that there are four essential partners for a bottom-up approach to human rights: community based organizations, local human rights NGOs, international human rights NGOs and allies in governmental and intergovernmental institutions (De Feyter 2006: 17). Yet, also other actors such as the media or academics can prove to be of importance for raising an issue to the national and international level.⁴ The cooperation between actors at different levels is critical to ensure that local human rights experiences influence the creation of international human rights standards.

The research therefore also includes the other relevant actors or network of actors that supported SPI and La Via Campesina in bringing their claim forward (the 'supportive users', Desmet 2014). There are a host of organizations that have been involved in lifting the issue to the HRC. Merry describes these intermediaries (NGOs, community leaders...) as 'knowledge

⁴ Scholars such as Bob (2009) and Shawki have identified the key actors in the emergence of new rights: the claimants and their champions; the gatekeepers, which include leading human rights NGOs as well as the Office of the UN High Commissioner for Human Rights and human rights intellectuals; States; and opponents of the new right(s) (Shawki 2014: 308).

brokers', and finds that 'these are people who understand both the worlds of transnational human rights and local cultural practices and who can look both ways' (Merry 2006: 1). In our study the main knowledge brokers are the La Via Campesina movement, as well as the international NGO 'FIAN International'. The establishment of such network does not happen automatically and involves strategic choices between the social movements and the international NGOs (see section 5.2).

The network between social movements and other organizations has been termed a 'transnational advocacy network' (Keck and Sikkink 1998). Yet, what distinguishes transnational advocacy networks in a localizing process is that the agenda of the network is set by the human rights experiences of the local partners in the network (De Feyter 2006: 18). In our case study, SPI and La Via Campesina were able to have a real and fundamental ownership of the process.

In addition to civil society actors, the Special Procedures and the Human Rights Council Advisory Committee have been indispensable in putting the issue on the agenda of the Human Rights Council. We will discuss the relationship with these actors in Chapter 5. The emphasis this study places on transnational networks should certainly not move the focus away from both the States and the international institutions they operate in (Goodale 2007: 21). Yet, as indicated before, considering the current stage of the drafting process this research can only focus to a limited extent on the deliberations and interactions between these different supportive users and duty-bearers in the context of the UN.

3.2. THE NEED FOR PEASANTS' RIGHTS

Why can the existing human rights framework not accommodate peasants' rights? Do we really need to integrate new norms into the current framework in order to ensure protection for peasants? There are many possible answers to that question, and we are not able to deal here with the 'riot of perceptions concerning over- and underproduction' (Baxi 2002: 76) of human rights standards, nor with the question whether human rights make a difference at all in combating inequalities around the world, or if they are rather a tool in the discourse of the powerful (Merry 2006; Stammers 1999). We will limit ourselves to indicating the 'new rights' in the Declaration and to some comments on the arguments of its proponents.

The Declaration on the Rights of Peasants proposes the following new fundamental rights for peasants: the right to land and territory (Article 4); the right to seeds and traditional agricultural knowledge and practice (Article 5); the right to the means of agricultural production (Article 6); the right to information and agricultural technology (Article 7); the freedom to determine price and market for agricultural production (Article 8); the right to the protection of local agricultural values (Article 9); the right to biological diversity (Article 10); and the right to preserve the environment (Article 11) (Human Rights Council, UN Doc. A/HRC/WG.15/1/2, 2013). These rights proposed by SPI and La Via Campesina reflect the perceived (legal) solutions to their struggles as peasants. Such claims are based on what has been coined a 'normative rights model' (as opposed to a positivist model), in that considerations about the well-being or interests of persons inform the imposition of special duties on others (De Feyter 2011: 18, referring to Meckled-Garcia and Cali 2006). Are the above claims human rights claims? If

human rights claims are qualified through the fact that they i) use human rights language, ii) identify a duty-holder, and iii) insist on accountability of that duty-holder (De Feyter 2011: 18) then they are most certainly human rights claims.

Various 'protection gaps' may exist in the current human rights framework. There can be a normative gap (new standards are needed to enable members of a group to protect their rights more effectively and clarify the duties of states at the same time), an application gap (the application or interpretation of existing standards is not far reaching enough), and a supervisory gap (there is no mechanism to monitor and enforce compliance). These gaps should not be confused with an implementation gap (the existing standards are not implemented), or a ratification gap (International Council on Human Rights Policy 2006: 7-10). La Via Campesina and SPI start from the perceived ineffectiveness of the existing human rights treaties in relation to violations of peasants' rights. Yet, they appear to consider it not so much to be an implementation issue. They rather argue that even if existing international human rights instruments were better implemented, they would be insufficient to fully protect the distinctive rights of peasants. Only a new instrument, in particular a Convention, will ensure the adequate protection of peasants' rights. The argument is that small-scale peasants are a distinct group that merit special protection and political recognition. SPI and La Via Campesina therefore seem less worried with implementation or enforcement. The problem according to them is that there are normative gaps in the current legal framework. Of course, the fight for international recognition of peasants' rights allows La Via Campesina to increase mobilization at the national and local level.

Much of the proposed rights in the Declaration could probably be realized by an effective and evolutionary approach to treaty interpretation, i.e. interpreting the existing norms such as the right to food, in light of the struggles of the peasant communities (on this see: Gómez Isa 2011: 60-64). Local practice and experiences in fact seem crucial to guarantee such a 'living interpretation' of human rights law.

Another alternative for peasants' rights organizations would be to use or develop norms outside human rights law. Farmers' rights have for example been included in the Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization of the United Nations (FAO), which attempts to protect *inter alia* the right to protection of traditional knowledge and the right to seeds in its Article 9, as well as in the Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, which promote tenure rights for small-scale peasants (FAO 2012). These standards might be able to capture some of the specific problems farmers are facing and therefore complement the human rights treaties.

3.3. THE DANGERS OF USING THE HUMAN RIGHTS SYSTEM

Some find that a more fundamental rationale motivates the struggle for a new instrument. Claeys argues that 'the movement's assertion of new rights contributes to shaping a cosmopolitan, multicultural, and anti-hegemonic conception of human rights' (Claeys 2012: 845). While a connection to the right to food for many human rights experts comes naturally in relation to La Via Campesina's struggle, the members of the movement felt it was imposed from the outside. Members of La Via Campesina wanted to advance their

own conception of human rights (Claeys 2012: 849). In order for a rights frame to be useful, La Via Campesina 'had to develop an alternative conception of rights that emphasizes the collective dimension of claims; that targets the various levels where food and agricultural governance issues ought to be deliberated; and that provides the tools to fight neoliberalism and capitalism in agriculture' (Claeys 2012: 847). The movement thus does not merely go beyond the law or *de lege lata* but, according to Claeys, seeks to some extent to reconceptualize human rights law and to legitimize a new form of globalization through human rights. Human rights are thus not only used to challenge power, but also to legitimize alternative conceptions of globalization. In this sense, human rights are considered as 'counter-culture' (Ulrich 2011: 338). Rajagopal has noted earlier that

[...] social movements pose a central challenge to international law in several areas. First, they seek to displace the liberal theory of international politics with a 'cultural politics' that seeks alternative visions of modernity and development by emphasizing rights to identity, territory and autonomy. Second, they show that the mainstream human-rights discourse is extremely limited which does not have the cognitive ability to 'see' much of the resistance of social movements (Rajagopal 2011: 271).

The advantage of using human rights discourse is of course that it facilitates not only the networking between local communities and transnational advocacy networks, but also the access to relevant international policy fora (Monsalve Suárez 2013: 243). Yet, as Rajagopal above, several scholars have indicated the dangers and constraints of using the human rights system or discourse to advance their claims, referring to, among others, the State-

centered framework or the dominant individualist conception of rights (Claeys 2013a; Merry 2009; Stammers 1999). Others have pointed to the loss of human rights' transformative effect once they become institutionalized in political and administrative cultures (Koskenniemi 1999; Ulrich 2011).

The attempts to institutionalize the claimed rights may cause 'the transformation of the movement's struggle in technical debates to be solved in specialized arenas, the demobilization of movement activists, and the loss of autonomy' (Claeys 2012: 853). The people who suffer from violations may disappear in the drafting by States, or as Upendra Baxi has phrased it so eloquently: 'their labour of suffering becomes embodied, often through heavily 'bracketed' texts, ripe for linguistic resolution experienced by the community of heroic rights producers' (Baxi 2002: 69).

Inter-State diplomacy still reigns over the field of human rights standard-setting. This is not surprising given the fact that only States can ratify human rights treaties. States supportive of the Declaration on the Rights of Peasants have indicated after the first OEWG that they will continue to support the need for a Declaration but they conceded that certain provisions could be modified in order to reach a consensus. Yet, if peasants' rights are presented as compatible with existing ways of thinking about human rights then these ideas may not induce change for the movement. Merry has indicated that 'this is precisely the problem human rights activists confront: If they present human rights as compatible with existing ways of thinking, these ideas will not induce change. It is only their capacity to challenge existing power relations that offers radical possibilities' (Merry 2006: 41).

Throughout the campaign the text of the Declaration was brought as much as possible in line with existing human rights language but its original structure and content was largely maintained. Such action is normal as the drafters of

new norms usually rely upon agreed language in order to convince sceptics, and forge consensus amongst States (despite their differences). Of course such action to used agreed language could also be a first step in transforming the particular claims of a movement. As De Feyter has noted in relation to the codification of international human rights law: ‘as codification progressed, the earlier norms set the direction [...] [P]roposals on new (aspects of) human rights had to fit within the confines of existing legal norms, and within the confines of existing legal techniques’(De Feyter 2011: 57). The Declaration will thus most certainly be ‘translated’ to some extent by the global level. Stammers is pessimistic in this sense and concludes ‘that the trajectory of institutionalization is always the same, from "change" to "order," from challenging the status quo to sustaining it’ (Stammers 1999: 998). As indicated before, we cannot confirm neither refute such trajectory yet in relation to the Declaration on the Rights of Peasants.

The negotiation process has only begun, and the text – if ever adopted – is bound to undergo further substantive changes. In particular the ‘more radical’ proposals will be under pressure. The search for consensus at the Human Rights Council most often leads to the acceptance of the lowest common denominator between the drafters (see e.g. Türkelli et al. 2013). The main challenge for the movement will certainly be to ‘institutionalize subversion’ (Claeys 2012). The preservation of the Declaration’s transformative aspirations in the Human Rights Council will certainly not be easy. Moreover, the members of La Via Campesina involved in the campaign for peasants’ rights’ believe that this campaign is only one way to advance their struggle and that institutionalization does not replace other approaches to the peasants’ struggle’ (Shawki 2014: 322).

For social movements, attending to both the local and the global level's expectations as 'knowledge brokers' is certainly not an easy task. Yet, one needs not only to anticipate such discussion, but also perhaps embrace it, as this is 'what is required in order to improve the universal relevance of human rights' (Benedek et al. 2007: 82). As one scholar has put it: 'Engaging with the theory and practice of social movements is necessary to convert human-rights discourse from its narrow, state-centred, elitist basis to a grassroots-oriented practice of the subalterns' (Rajagopal 2011: 271). The comment from Henry Saragih, leader of SPI well as La Via Campesina, on the critiques and dangers of using human rights language appears to echo such assessment:

I have to say that the role of human rights is quite essential in the future of social movements. We question not only the practice of the current international human rights system, but also central notions of human rights such as 'universality', 'equality', the notion of 'individuality', and the disavowal of collective rights. That's why besides notions of individuality, we also propose that rights should also have a dimension related to the collectivity/ communality (e.g. collective/communal land as our practice and the local wisdom of indigenous people). Rights are social conquests and, as such, all these criticism and debates about rights have enriched and improved the standards and procedures of human rights—now the time of challenging and improving human rights standards from the point of view of peasants, women and men, has come (Monsalve Suárez 2013: 279).

But does the HRC allow social movements to challenge and improve human rights standards? This research aims at clarifying whether the current human rights framework allows 'a return to the global', that is, standard-setting based on local needs. The 'global' in our case is the United Nations, more in particular the Human Rights Council mechanisms that may allow local groups to advance their claims and possibly influence standard-setting. These HRC mechanisms are examined in the next chapter.

4. THE MECHANISMS OF THE HUMAN RIGHTS COUNCIL

4.1. INTRODUCTION: THE HUMAN RIGHTS COUNCIL

'All victims of human rights abuses should be able to look to the Human Rights Council as a forum and a springboard for action.'

(Ban Ki-moon, UN Secretary-General, 12 March 2007, Opening of the 4th Human Rights Council Session)

The Human Rights Council is an intergovernmental body within the UN responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all. The HRC has substituted the former Commission on Human Rights in 2006. It is made up of 47 member States and meets at least three times a year in Geneva. Its membership is based on equitable geographical distribution. The members of the HRC serve for a period of three years and are not eligible for immediate re-election after two consecutive terms (General Assembly, UN Doc. A/RES/60/251, 2006). The Office of the UN High Commissioner for Human Rights (OHCHR) functions as the secretariat for the HRC.

In its resolution establishing the HRC, the UN General Assembly acknowledges that NGOs play an important role in the promotion and protection of human rights at the national, regional and international levels, and that the HRC needs to work in close cooperation with civil society (General Assembly, UN Doc. A/RES/60/251, 2006: 2-3). Yet, notwithstanding

these and other affirmations such as the above quote of the UN Secretary-General, the HRC is not created in order to accommodate local concerns. As we shall illustrate in the next sections, the various mechanisms allow the formal participation of civil society and other stakeholders in their work. Yet, they remain largely observers in a State-driven HRC.

4.2. THE NEED FOR ACCREDITATION AND NETWORKING

During the UN reform period in the mid-2000s there were renewed attempts of States to curtail the participation of civil society in the work of the future Human Rights Council. Yet, these attempts were defeated, and participation by civil society remains largely based on the former Commission on Human Rights' resolutions and practices on NGO participation (Piccone 2012: 107). In practice, attempts to limit the participation of civil society in the UN are ongoing.⁵ We can identify four general challenges that local organizations may face when seeking access to the HRC: lack of Economic and Social Council (ECOSOC) consultative status, lack of financial and administrative resources, an absence of expertise, and a lack of political space or existence of reprisals.

A first significant challenge is obtaining ECOSOC status. NGOs need such accreditation from ECOSOC to participate in the Human Rights Council. The UN Committee on Non-Governmental Organizations, the body which approves such status, has received much criticism. This Committee is not an independent body: States control it and State interests thus shape its policies. The accreditation process is first of all slow (at least two years), but more

⁵ See International Service for Human Rights, Accreditation procedure threatens to undercut civil society participation at UN meeting (2013), <http://www.ishr.ch/news/accreditation-procedure-threatens-undercut-civil-society-participation-un-meeting#sthash.vjiMI5vR.dpuf> (last accessed on 7 February 2014).

importantly not very transparent. Many NGOs and civil society organizations are for example being refused access under the pretext of ‘misbehaviour’, because they hold views States do not agree with.

Non-accredited organizations that decide to take their issue to the Human Rights Council will have to liaise and partner with already accredited organizations to gain access to the HRC. La Via Campesina for example has no ECOSOC consultative status and therefore needs to liaise with organizations that have such a status in order to participate in the UN. The need for ECOSOC status can thus be a barrier for movements when they either fail to receive ECOSOC status or fail to find support with organizations that enjoy such ECOSOC status (due to opposite strategies on an issue for example). Also, ECOSOC resolution 1996/31 does not refer to local organizations but to national, subregional, regional or international organizations. Moreover, these organizations have to demonstrate that their work is of direct relevance to the aims and purposes of the UN. This is not easy to prove if you are a local and single issue civil society organization.⁶ The implications of not having such status are thus important for the localization process. It must be noted, however, that non-accredited organizations do have some possibilities to attempt to influence the HRC. They can provide written submissions to the Universal Periodic Review sessions, participate at the Social Forum or liaise with the HRC’s various Special Procedures (see *infra* 4.3 – 4.7).

In addition to the need for ECOSOC status, organizations may face obstacles in terms of financial, administrative and human resources when they decide they want to approach the Human Rights Council and its mechanisms (see e.g. Merry 2009: 53-55; Nader 2007). Some of these challenges are quite

⁶ Thanks to Koen De Feyter for pointing this out.

basic such as securing the funds to get to Geneva or getting a travel visa, but they are difficult to overcome for small, local organizations around the world.⁷

A third challenge is the lack of expertise. The organizations that use the HRC mechanisms should be highly professional, as considerable expertise is needed to use these channels effectively. Local organizations will therefore typically gain access to the Human Rights Council through international NGOs with a presence in Geneva. Geneva-based accredited NGOs are organizations that have greater expertise in engaging with a complex and political institution such as the HRC and they can offer some resources to local organizations. The need to liaise is thus not inherently problematic yet there are some drawbacks (see hereunder in this section).

The last challenge concerns reprisals against local groups. The local groups are only the first link in the chain and will often need to rely on specialized NGOs to access the international level, in particular when the State is limiting the action of NGOs at the domestic level. The High Commissioner for Human Rights, Navi Pillay, has expressed her concerns about the intimidation of organizations by State authorities in Geneva (or at the country level). Since any (formal) activity within the HRC is in the public domain, organizations such as the NGO Group for the Convention on the Rights of the Child (CRC) tend to ask if a local NGO would be willing to submit information/deliver oral statements under its name. This way one avoids mentioning the local organization while still raising the issue. We thus find that besides the limitations in terms of resources and knowledge, the ability of local organizations 'to apply this [human rights] framework is greatly dependent

⁷ Note that for indigenous peoples there is a UN Voluntary fund that is established to assist representatives of indigenous communities and organizations to participate in the deliberations of the UN Working Group on Indigenous Populations.

on the political situation in the country and to what extent the powerful respect the rule of law and democratic control' (Monsalve Suárez 2013: 250). In our case study, for example, SPI was only able to bring its claims forward and discuss human rights openly at the national and international level after the fall of the military government in Indonesia. In sum, the above confirms that local organizations will have to rely on international NGOs to bring their issue forward. Cooperation between the various organizations is essential for a localization process to occur; it is indeed a key premise of the localizing approach (Liebel et al. 2012: 86).

There are obvious drawbacks of being dependent on other organizations. First of all, the possibility exists that no international NGO is interested in liaising and working together with local groups (be it for substantive or practical reasons). In our case study, La Via Campesina received crucial support from several NGOs, in particular FIAN International. But what if FIAN International would not have been there? While it may be implausible that La Via Campesina would not have found other allies, it demonstrates the importance of having either ECOSOC consultative status or being well connected with international NGOs. Secondly, finding common positions between the local and specialized (Geneva based) organizations may be difficult. Local groups may have very specific issues they want to address while the larger and more mainstream organizations tend to focus on general/structural issues. The various organizations may differ on which strategy to use to tackle a human rights issue. The power imbalances and absence of a level playing field between the local and international organizations may add to the difficulty of cooperation. Organizations acting in concert will often balance between autonomy and dependence and in

various instances transnational networks have been dissolved due to tensions within the network (Piccone 2012: 107).

Such tensions do not exist solely between NGOs and movements but can also arise within movements. During the foundational years of La Via Campesina for example, there was much debate about the inclusion of different organizations (see *infra* 5.1). Questions arose about the inclusion of one of the biggest farmer organizations as well as international NGOs because some feared this would compromise the policy space of the members (A. A. Desmarais 2007: 87-92).

The different avenues to gain access to the Human Rights Council can be more or less suited for an organization, depending on its structure, goals and objectives. In the following sections we explain the procedural and substantive aspects of a variety of mechanisms, which may allow local organizations to influence the standard-setting at the Human Rights Council: the Universal Periodic Review (4.3), the Special Sessions of the HRC (4.4), the Special Procedures (4.5), the Advisory Committee (4.6) the Social Forum (4.7), and other mechanisms (4.8).

4.3. UNIVERSAL PERIODIC REVIEW

4.3.1. BACKGROUND

The Universal Periodic Review (UPR) process entails the review of the human rights record of all UN member States. It is very much a State-driven process and consists essentially of a peer review by the 47 member States and the observer States of the Human Rights Council. The UPR is concerned with implementation. Its primary objective is the improvement of the human rights situation on the ground (Human Rights Council, UN Doc.

A/HRC/RES/5/1, 2007a: para. 4(a)).⁸ The UPR process does foresee some possibilities for 'other stakeholders' (as referred to in Human Rights Council, UN Doc. A/HRC/RES/5/1, 2007a) to participate. These other stakeholders include civil society organizations, but also for example academics and national human rights institutions.

4.3.2. PARTICIPATION BY CIVIL SOCIETY

NGOs with ECOSOC observer status can participate in the review in several ways. First of all, they can contribute to the process through a written submission to the Human Rights Council (in fact this is regardless of whether or not they have ECOSOC status). This information can be taken into account in the review process, but the possibility to have an impact is restricted by the fact that the OHCHR makes a ten-page summary of the submissions of all these 'other stakeholders'.⁹ This is why joint submissions are often the best option for civil society organizations. Secondly, the State under review may engage in consultations with other stakeholders, including civil society, in preparing its national report. This is a possibility, not an obligation. Thirdly, NGOs can lobby governmental delegations during the UPR sessions, in

⁸ The other objectives stated in Human Rights Council resolution 5/1 are:

- b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;
- (c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;
- (d) The sharing of best practice among States and other stakeholders;
- (e) Support for cooperation in the promotion and protection of human rights;
- (f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.

⁹ All the submissions are however made accessible on the OHCHR website in order to ensure transparency, see: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

particular the troika responsible for drafting the 'outcome report'. NGOs also organize side or parallel events during the sessions in order to further inform and influence the debates. Fourth, NGOs can attend the UPR Working Group sessions, where the review of the State takes place. There is no interactive dialogue between the States and the other stakeholders at this stage in the review process. NGOs and other stakeholders can make general comments at the regular sessions where the outcomes of the State reviews are considered. The participation of local, grassroots organizations to the UPR is possible at two levels. At the international level, with the cooperation of an NGO that has observer status and at the national level, through the national consultation process of the State under review.

4.3.3. RELEVANCE FOR LOCALIZING HUMAN RIGHTS

How effective is NGO lobbying in the UPR process? There is some evidence of good practices (see De La Vega and Lewis 2011) but more research needs to be done in order to assess whether, and to what degree, States take into account NGO information and engage in national consultations in the preparation of their reports.¹⁰

In any case the process is not aimed at setting any new human rights standards or norms. Local organizations that aim to change the norms and standards of international human rights law will not be able to use the UPR to that aim. At best, the problems can be highlighted but the review is based on existing norms and standards. Yet, if we look at the applicable legal sources, the UPR seemed to have made the binding/non-binding nature of

¹⁰ One could also look at the more general debate about the effectiveness of non-confrontational approaches to human rights implementation *vis-à-vis* the more confrontational approaches. See for example Dominguez-Redondo and Edward R McMahon (2013).

norms differentiation less significant (see Schabas 2011). Therefore softlaw norms - such as those contained in declarations - can be used in the review of a State's human rights record. The implementation of a future Declaration on the Rights of Peasants could thus be discussed in the UPR.

4.4. SPECIAL SESSIONS OF THE HUMAN RIGHTS COUNCIL

4.4.1. BACKGROUND

The Human Rights Council can hold special sessions at the request of a member of the Council with the support of one third of the its membership (General Assembly, UN Doc. A/RES/60/251, 2006: para. 10). The outcome of a special session is underdetermined. Special sessions can lead to the establishment of a commission of inquiry (see e.g. on Syria (Human Rights Council, UN Doc. S-17/1, 2011a) and North Korea (Human Rights Council, UN Doc. A/HRC/RES/22/13, 2013)) or to a request to the Special Rapporteurs or treaty bodies to work and report further on the issue (see e.g. the outcome of the special session on the Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights (Human Rights Council, UN Doc. S-10/1, 2009a)). In the majority of the cases a special session is held in order to address conflict situations in particular countries. Only two out of the nineteen sessions have been on more general, global issues, namely on the impact of the financial crisis on human rights and on the world food crisis.

4.4.2. PARTICIPATION BY CIVIL SOCIETY

In accordance with Human Rights Council resolution 5/1 'Members of the Council, concerned States, observer States, specialized agencies, other

intergovernmental organizations and national human rights institutions, as well as non-governmental organizations in consultative status may contribute to the special session in accordance with the rules of procedure of the Council' (Human Rights Council, UN Doc. 5/1, 2007a: para. 125). This means that NGOs in consultative status can submit written statements as well as intervene orally in the special session. This channel gives only limited access to grassroots organizations, namely through networking with an NGO with consultative status.

Only a member of the Human Rights Council can make an official request for a special session. Consequently, civil society and other stakeholders (e.g. non-member States, Special Procedures, treaty bodies, the High Commissioner and national human rights institutions) can only lobby delegations to call for a special session. The NGO Human Rights Watch for example lobbied member States of the Council for a special session on the human rights of migrants at sea (Human Rights Watch 2013). In our case study we found that the Special Rapporteur (SR) on the right to food successfully lobbied for a special session on the world food crisis (see *infra* 4.4).

4.4.3. RELEVANCE FOR LOCALIZING HUMAN RIGHTS

The Special Sessions mechanism is designed to prompt urgent action in case of emergencies and to highlight problematic, structural issues that affect the enjoyment of human rights. Organizations should therefore not attempt to undertake a standard-setting exercise through this procedure. Our case study demonstrates nevertheless that a special session can facilitate the discussion of an issue in another HRC forum. The first thematic special session was held after Cuba, on behalf of Olivier De Schutter, the former SR on the right to

food, called upon the Human Rights Council to hold a special session on the negative impact of the world food crisis. This session highlighted the plight and challenges of small-scale farmers and prompted the Human Rights Council, in particular its Advisory Committee, to take up the rights of peasants more seriously (see *infra* 5.4). A special session can thus be a useful element in an overall strategy geared towards the creation of new standards, in order to bring the issue under the attention of the Human Rights Council.

4.5. SPECIAL PROCEDURES

4.5.1. BACKGROUND

The Commission on Human Rights had developed an extensive web of Special Procedures in the form of thematic and country-specific special rapporteurs/independent experts, as well as Working Groups. These Special Procedures were maintained when the Human Rights Council was created in 2006.

While the country specific procedures can focus on all relevant issues (all the substantive rights, civil and political as well as economic, social and cultural (ESC) rights) in one particular country, the thematic procedures focus on one specific issue or right across all countries. The latter procedures can investigate the human rights situation in any given country, irrespective of the ratification of a human rights treaty by that country. Moreover, the Special Procedures can address human rights situations at the global, national and local level. The Human Rights Council creates Special Procedures with time-limited mandates. This implies that their existence and continuation is dependent on the political will of States. Special Procedures are revised regularly and can - and have - disappeared if States deem their

existence is no longer required (e.g. the working group on Chile). In this sense, these mechanisms are not as institutionally entrenched as the other UN mechanisms.

The Special Procedures perform different tasks such as i) undertaking country/fact-finding missions, ii) responding to communications (complaints) of human rights violations, iii) reporting to the HRC and General Assembly (GA), iv) focusing on specific emerging issues, and v) contributing to standard-setting by performing studies or issuing guidelines. These are the general activities of each Special Procedure.¹¹ The Special Procedures (in particular the thematic ones) not only perform a monitoring role but also have a role in shaping the normative content of human rights. Special Procedures such as the SR on the right to food and the right to health have for example worked on the normative development of extraterritorial obligations of States. The Special Procedures have also addressed the applicability of ESC rights to vulnerable, disadvantaged or marginal individuals and groups (Golay et al. 2011: 5). The SR on the right to food's work on peasants' rights has been essential in lifting the issue to the Human Rights Council (see *infra*, 5.4). Both the thematic and country specific individual mandate holders are independent experts and they are formally exempt from any state involvement when making their decisions.

4.5.2. PARTICIPATION BY CIVIL SOCIETY

Civil society can access the Special Procedures in various ways:

- Submitting individual cases to Special Procedures;

¹¹ There can be exceptions, for example the mandate of the Working Group on Business and Human Rights does not include the ability to receive and consider complaints.

- Providing information and analysis on specific human rights concerns;
- Providing support for Special Procedures' country visits;
- Working locally or nationally to advocate, disseminate, follow up and implement the work of Special Procedures;
- Inviting Special Procedures mandate-holders to participate in their own initiatives;
- Meeting individual mandate-holders throughout the year and participating in the annual meeting of Special Procedures mandate-holders (OHCHR 2008b: 108).

Mandate holders have expressed on various occasions the crucial importance of the support from civil society. Some scholars even argue that civil society organizations have become the lifeblood of the mechanisms (Piccone 2012: 105). In fact, civil society has been at the forefront of advocacy for the creation of new mandates (OHCHR 2008b: 119; Piccone 2012: 107). The Special Procedures' manual of operations emphasizes the important role for civil society in carrying out the work under the mandate:

Civil society in general, and international, regional and national NGOs in particular, provide invaluable support to the Special Procedures system. They provide information and analysis, help to disseminate the findings of the Special Procedures, and assist in follow-up activities [...]. Meetings with their representatives are appropriate in all aspects of the work of the Special Procedures including in their activities in Geneva and New York, on field missions, and more generally. It is thus appropriate for mandate-holders to give careful and timely consideration to

invitations from NGOs and academic institutions to participate in activities such as conferences, debates, seminars and regional consultations [...](OHCHR 2008a: para. 133) .

In order to support their mandates, SRs have sometimes linked their work to research projects. A member of the team of the former SR on the right to food, Olivier De Schutter, for example worked actively on the issue of peasants' rights as part of her doctoral research. The interaction with civil society, academics and other stakeholders is inevitably different for each mandate. The Special Procedures mandate holders' capacity to fulfill their mandate may vary in accordance with their interaction with civil society and other individuals or organizations.

The Special Procedures can lend legitimacy and support for proposals made by civil society organizations. The former SR on the right to food, Jean Ziegler, for example, influenced negotiations by supporting civil society proposals in the context of the drafting process of the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security. Special procedures can also be involved in standard-setting directly such the independent expert on human rights and international solidarity. This independent expert is mandated by Human Rights Council to develop a draft declaration on the right of peoples and individuals to international solidarity. Similarly, the UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights was requested to draft guidelines on foreign debt and human rights by the former Commission on Human Rights. The Human Rights Council consequently endorsed these guidelines in 2012

(see UN Doc. A/HRC/RES/20/10). It is thus not unusual special procedures are involved in standard-setting.

According to data collected by the OHCHR, fifty percent of the mandates have some form of interaction or relationship with grassroots groups (OHCHR 2008b: 120). There are no formal barriers for grassroots groups to contact mandate holders; there is for example no requirement that an organization has consultative status with ECOSOC in order to approach and interact with a Special Procedure.

4.5.3. RELEVANCE FOR LOCALIZING HUMAN RIGHTS

Biglino and others have argued that the above-cited abilities of Special Procedures equips them 'with a rather unique opportunity to bridge normative work and practical, operational aspects concerning the implementation of human rights "on the ground"' (Biglino et al. 2011: 31). Through their country visits thematic procedures can for example learn from local communities and local NGOs in order to detect gaps in the global protection system (De Feyter 2006: 19). Several authors have indicated the important contribution that Special Procedures have made to the clarification and development of international human rights, in particular in the field of development and human rights (Biglino et al. 2011; Piccone 2012). Scholars have noted that 'there is a general pattern in the work of ESC rights mandate-holders in as much as they attempt to underline and tackle the structural issues which lie at the basis of ESC rights violations' (Golay et al. 2011: 300).

Special Procedures offer the possibility for civil society to advance their issues, including the need for new norms and standards. They are easily accessible and usually have mandates that allow them to support and

propose new standards. The trajectory of the Declaration on the Rights of Peasants demonstrates that Special Procedures can help set the agenda and influence the course of action (see *infra* 5.4).

At the same time, Special Procedures are an ‘unstable’ channel as their helpfulness for civil society heavily depends on the expertise and willingness of the individual mandate holder. In addition, we indicated before that although the Special Procedures are part and parcel of the Human Rights Council they have time-limited mandates and do not cover all rights and/or potential human rights issues. This means that a push for new norms or standards must be able to be accommodated within an existing mandate. La Via Campesina was able to connect their issue relatively easy to the right to food but it may not always be so straightforward.

4.6. HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

4.6.1. BACKGROUND

The Human Rights Council Advisory Committee (Advisory Committee) replaces the former Sub-Commission on the Promotion and Protection of Human Rights and is made up of eighteen independent experts. The Advisory Committee functions as the think tank for the Human Rights Council (Human Rights Council, UN Doc. 5/1, 2007a: para. 65). Pursuant to resolution 5/1 of the Human Rights Council ‘the function of the Advisory Committee is to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice’ (Human Rights Council, UN Doc. 5/1, 2007a: para. 75). The Advisory Committee thus works at the direction of the Human Rights Council (Human Rights Council, UN Doc. 5/1, 2007a: para. 75). It is a body that only makes proposals to the

Human Rights Council on issues it was mandated by the latter to work on. It is expressly determined that the Advisory Committee shall not adopt any decisions or resolutions (Human Rights Council, UN Doc. 5/1, 2007a: para. 78).

Today, the Advisory Committee has several ongoing initiatives which put forward 'new' standards and instruments. In addition to the Declaration on the Rights of Peasants, the Advisory Committee for example also submitted a draft Declaration on the Right of Peoples to Peace to the twentieth session of the Human Rights Council. Following this submission, the Council, established an open-ended intergovernmental working group to negotiate a draft Declaration. The Advisory Committee, in collaboration with the independent expert on human rights and international solidarity, is also working on a draft Declaration on the Rights of Peoples and Individuals to International Solidarity (Human Rights Council, UN Doc. A/HRC/RES/15/13, 2010a). Future proposals include a study on the possibility of a World Court of Human Rights (Human Rights Council Advisory Committee 2013: para. 27), and a study on citizen safety and human rights (Human Rights Council Advisory Committee 2013: para. 28).

4.6.2. PARTICIPATION BY CIVIL SOCIETY

The Advisory Committee provides generous access to civil society. NGOs in consultative status with ECOSOC are entitled to participate in the meetings of the Advisory Committee through written and oral statements. In order to produce its studies, the Advisory Committee typically forms drafting groups consisting of four or five of its members. These drafting groups appear particularly accessible for NGOs and other stakeholders such as local organizations. During the drafting of a study or report the members of the

drafting group may seek comments from stakeholders, including civil society. In the case of the Declaration on the Rights of Peasants the drafting group on the right to food was very open to the organizations working on peasants' rights (see *infra*, 5.4).

4.6.3. RELEVANCE FOR LOCALIZING HUMAN RIGHTS

Some States argue that the Advisory Committee oversteps the borders of its mandate. In a recent interactive dialogue between the Human Rights Council and the chairperson of the Advisory Committee, the United States delegation for example stated that 'the Committee should not elaborate theoretical concepts designed to expand international law or recommend the establishment of new mechanisms or mandates'.¹² This criticism is, however, not new. The Advisory Committee's predecessor, the Sub-Commission on the Promotion and Protection of Human Rights, received the same criticism during its functioning. The mandate to draft a Declaration on the Right to International Solidarity for example was expressly given to the Advisory Committee by the Human Rights Council. In the case of the Declaration on the Rights of Peasants, the Human Rights Council never made such an explicit request. The fact that the Advisory Committee annexed the declaration of La Via Campesina to its final study on the rights of peasants was remarkable and unexpected, but the Advisory Committee arguably did not overstep its mandate. It argued that there was a need to protect the rights of peasants, and recommended that this be done *inter alia* through the adoption of a Declaration (see *infra* 5.4.). While the voting on the resolution to establish a

¹² See press release 'Human Rights Council holds interactive dialogue with the Chairperson of the Human Rights Council Advisory Committee', available at (2013): <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13742&LanglD=E> (last accessed on 14 January 2014).

working group to draft a declaration was not adopted by consensus, the majority of States agreed with the proposals of the Advisory Committee.

The Advisory Committee is an important channel to put new standards before the Human Rights Council. In light of recent criticism about the role of the Advisory Committee, it may well be given more precise and restricted mandates which will limit the space for new proposals. This has also been suggested by at least one delegation.¹³ However, as the former Sub-Commission argued, such a body must have a standard-setting role with regard to new norms as well as guidelines relating to implementation (Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2005/L.48, 2005). These and other functions cannot be performed by other mechanisms. According to the former Sub-Commission there is an ongoing need for standard-setting on primary rules in three contexts:

- a. First, there may be an entirely novel development, requiring a new legal regime to take account of the human rights implications of the development;
- b. The second context is where the factual situation changes and there is a need to develop standards to address a particular factual situation;
- c. The third situation is when a gap in the current standards or in the methods of monitoring is identified (Sub-Commission on the

¹³ See Statement by the United States at the interactive Dialogue with the Human Rights Council's Advisory Committee (2013): <http://geneva.usmission.gov/2013/09/18/interactive-dialogue-with-the-human-rights-councils-advisory-committee/> (last accessed on 14 January 2014).

Promotion and Protection of Human Rights 2005, UN Doc. E/CN.4/Sub.2/2005/L.48: para. 4).

4.7. SOCIAL FORUM

4.7.1. BACKGROUND

The Social Forum¹⁴ was established under the Sub-Commission on the Promotion and Protection of Human Rights as an intersessional forum on ESC rights. The mechanism was developed to accommodate the need for a new process within the United Nations system that enjoyed the participation of all relevant stakeholders (Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. 2003/14, 2003). Under discussion since 1997, the Social Forum was purposely created to address the impact of globalization on human rights, in particular ESC rights. It survived the reform of the charter-based system and became part of the Human Rights Council.

The Social Forum meets once a year for a three-day period on a theme chosen by the Human Rights Council. Past themes have been for example the advancement of the right to development, the adverse effects of climate change on human rights, and the impact of the financial crisis on the enjoyment of human rights. After the meeting, a Chairperson-Rapporteur submits a report with conclusions and recommendations to the Human Rights Council.

¹⁴ Not to be confused with the World Social Forum meetings, which are annual meetings of civil society organizations.

4.7.2. PARTICIPATION OF CIVIL SOCIETY

The Social Forum allows for the participation of a wide array of actors such as ‘non-governmental organizations, rural and urban associations from the North and the South, anti-poverty groups, peasants’ and farmers’ organizations and their national and international associations, social movements, voluntary organizations, youth associations, community organizations, trade unions and associations of workers, etc.’ (OHCHR 2012: 5). The second session of the Social Forum, for instance, was held in 2004 and enjoyed the wide participation of States, international organizations and civil society organizations including FIAN, CETIM and La Via Campesina (see infra 5.4).

In its first resolutions on the Social Forum the Human Rights Council reaffirmed

the unique nature within the United Nations of the Social Forum, which makes possible a dialogue and an exchange between the representatives of Member States, civil society, including grass-roots organizations, and intergovernmental organizations, and stressing that the current reform of the United Nations should take into account the contribution of the Social Forum as a vital space for open and fruitful dialogue on issues linked with the national and international environment needed for the promotion of the enjoyment of all human rights by all (Human Rights Council, UN Doc. A/HRC/RES/6/13, 2007b: preamble)

The Human Rights Council remains thus interested in the participation of all relevant stakeholders in the Social Forum. Civil society actors, including grassroots organizations, can participate by providing feedback on the

human rights work of international mechanisms, exchanging best practices, and submitting written and oral statements. During the Social Forum organizations can also organize side-events and interact with the Special Procedures and State delegations attending the meeting.

4.7.3. RELEVANCE FOR LOCALIZING HUMAN RIGHTS

The mandate under the Commission on Human Rights was ambitious, including

[t]o propose standards and initiatives of a juridical nature, guidelines and other recommendations for consideration by the Commission on Human Rights, the working groups on the right to development, the Committee on Economic, Social and Cultural Rights, the specialized agencies and other organs of the United Nations system (Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/SUB.2/RES/2001/24, 2001: para. 2(c))

The Social Forum has, however, less of a clear mandate after the 2006 reform of the UN system. The Human Rights Council simply requested the Social Forum ‘to focus’ on a specific issue and to recommend measures and actions to address the issue. The reports are presented at the Human Rights Council but there is no vote on those reports’ recommendations. The reports merely inform the Human Rights Council. This role is being reinforced by the fact that the UN reform and the establishment of the Human Rights Council have delinked the Social Forum from the Advisory Committee. Today, the Chairperson of the Social Forum is no longer a member of the Advisory Committee but a government representative. The UN reform has thus led to more State control on this mechanism.

Due to its formal detachment from the Advisory Committee the Social Forum has become arguably less attractive for organizations seeking to influence or create new human rights standards. Organizations can of course still bring forward proposals for new human rights instruments at the Social Forum.

4.8. OTHER MECHANISMS

Other mechanisms of the Human Rights Council are the Forum on Minority Issues, the Forum on Business and Human Rights, and the Expert Mechanism on the Rights of Indigenous Peoples. These mechanisms allow a wide range of stakeholders to participate (e.g. NGOs, grassroots organizations, academics and the private sector) by making oral and written statements during the sessions. The mechanisms are established to promote dialogue and cooperation on specific issues. The Working Group on Business and Human Rights is for example mandated to ‘discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices’ (Human Rights Council, UN Doc. A/HRC/AC/7/CRP.1, 2011b: para. 12). The mechanisms work in close cooperation with the related Special Procedures.

4.9. CONCLUSIONS

The relevance of the Human Rights Council mechanisms for localizing human rights is determined by both their mandates and the participation rights of civil society (and other stakeholders).

In this chapter we have analyzed these mechanisms from a formal perspective, focusing on the rules and regulations that determine their mandate as well as the participation rights of civil society. We have not pronounced ourselves on their *de facto* effectiveness in standard-setting. In other words, these mechanisms only provide *the opportunity* to ‘localize’, the effectiveness of the network of actors is of key importance in order to be successful (see *infra* next section).

With respect to the mandates of the various HRC mechanisms, we can conclude that the Advisory Committee and the Special Procedures stand out as avenues to propose new norms and instruments ‘from below’. Other mechanisms enjoy a monitoring role (the UPR) or are less attractive due to their relatively weak mandate (the Social Forum). The mandate of the Advisory Committee is to function as a ‘think tank’ of the Human Rights Council and as such it can propose new standards and instruments to the Council’s members in order to improve the enjoyment of human rights. The Special Procedures have thematic or country specific mandates. Especially the thematic mandate holders have contributed in the past to standard-setting by performing studies, issuing guidelines or clarifying existing human rights norms. An advantage of both the thematic and country specific procedures is that the individual mandate holders are independent experts and therefore formally exempt from any state involvement when making their decisions.

With respect to the participation rights of civil society and other stakeholders we find that the mechanisms of the Human Rights Council require that an organization has consultative status with ECOSOC in order to *formally* approach and interact with them. Local organizations must therefore be accredited by an organization with consultative status and this requirement

can hinder organizations in accessing the Human Rights Council. In our case study, the issue of accreditation did not pose any problems. Moreover, many of the mechanisms can be approached informally. The Special Procedure mandate holders or the members of the Advisory Committee can be contacted and lobbied outside of the Human Rights Council. Crucial is the involvement of the NGOs working in Geneva as they typically have good working relationships with these persons (see next section).

The participation by civil society appears of great importance for the Advisory Committee and the Special Procedures as they have limited resources. This lack of resources increases the chances of civil society to influence the body or mandate holder. Much of the information these mechanisms use is provided to them by civil society organizations and academics.

Yet, the Human Rights Council should consider further ways of facilitating the involvement of civil society in its activities and mechanisms, in particular given the challenges that grassroots organizations may face in terms of reprisals, resources, expertise and ECOSOC accreditation. International NGOs function still very much as gatekeepers as local organizations typically have no direct access to the international level. One way of strengthening grassroots participation would be to develop a mechanism similar to the International Food Security and Nutrition Civil Society Mechanism (CSM) of the UN Committee on World Food Security (CFS). This mechanism was installed after the reform of the CFS in 2009. Although still in its initial stages of development and facing many challenges, the CSM aims to support civil society organizations to influence policy processes and outcomes at the global level in relation to food security and nutrition. CSOs now have an institutionally embedded mandate to participate in the decision-making of

the UN Committee on World Food Security. De Schutter indicates that the reform of the CFS is grounded in 'the recognition that governments will only manage to make true progress towards food security if they accept to work in a bottom-up fashion, by learning not only from one another's experiences, but also from the experience of those who are on the frontline of combating hunger' (De Schutter 2013: 4). The CSM aims to be an inclusive mechanisms and gives priority to the organizations and movements of the people most affected by food insecurity and malnutrition, i.e. smallholder producers, fisherfolk, pastoralists, indigenous, urban poor, migrants, and agricultural workers.¹⁵

¹⁵ For a recent discussion of the CSM, its opportunities and challenges see for example Duncan and Barling (2012).

5. CASE STUDY: THE ROAD OF THE DECLARATION ON THE RIGHTS OF PEASANTS

In this chapter we discuss the trajectory of the Declaration on the Rights of Peasants from the local to the international level. The chapter commences by discussing the origin, structure and goals of La Via Campesina (5.1). Next we discuss the birth of the Declaration at the local, Indonesian, level (5.2). The third section then goes on to describe the adoption of the Declaration by La Via Campesina (5.3). The final section analyzes the interaction of the network of actors with the mechanisms of the Human Rights Council (5.4).

5.1. AN INTRODUCTION TO LA VIA CAMPESINA

5.1.1. ORIGIN AND STRUCTURE

In this research we particularly want to make a distinction between NGOs and grassroots (peasant) organizations such as La Via Campesina. Some grassroots organizations are very critical of international NGOs. They argue that international NGOs are not conduits for the people or world citizenry from the bottom-up, but that they are rather a vehicle for international elites to talk to other international elites and that the conversation is vertical, not horizontal (Anderson 2000: 118). A distinctive characteristic of movements such as La Via Campesina is indeed that they are accountable to their members. The member organizations of La Via Campesina are grassroots peasant organizations and their individual members. La Via Campesina is accountable to its base and decisions are taken democratically (Martinez-

Torres and Rosset 2010: 159; Menser 2008). In contrast, most mainstream NGOs are not member organizations, and are normally only accountable to their board and/or external funders. Yet, the distinction between grassroots movements and international NGOs is not always clear-cut, first of all because individuals can be members of NGOs as well as of movements, and leaders of peasants' organizations may likewise fail to represent, and be accountable to, their constituency (Borras Jr 2004: 24). In addition, the local may also influence the work of international NGOs. Amnesty International, for example, included ESC rights in its work after its local groups pressured the international secretariat to do so (Gómez Isa 2011: 47-48). Amnesty International's international secretariat is thus to a certain extent accountable to *its own* 'grassroots' activists yet as an international NGO it does not systematically support the human rights concerns of local groups.

The La Via Campesina movement was founded in 1993, against the backdrop of mounting protests against the General Agreement on Tariffs and Trade in Europe, Asia and the Americas (for a detailed history of the origin of La Via Campesina see Desmarais 2002; 2007; Edelman 2003: 204). The member organizations of La Via Campesina are highly heterogeneous (Borras Jr 2004: 9), but do share a common international outlook that is shaped by their individual experiences. De Feyter has argued that the grounding of human rights norms in local experiences and realities brings along more efficiency and gives 'the human rights movement the opportunity to emphasize similarities between the challenges facing different communities, while at the same time respecting and acknowledging local differences' (De Feyter 2006: 13). Such form of 'unity in diversity' is exactly the approach of La Via Campesina in its work. The members are united in their opposition to

neoliberal globalization and the agricultural policies and agribusinesses that surge from such vision (Claeys 2013b: 1).

La Via Campesina is an organization that unites peasants and family farmers in a structured and representative movement. Patel observes that 'la Via Campesina's approach to rights is transgressive, insofar as it orients itself not toward the institutions that enshrine, enforce, and police rights, but toward the people who are meant to hold them' (Patel 2007: 92). Grassroots farmer organizations have globalized their struggles from below by forming La Via Campesina (Martinez-Torres and Rosset 2010: 150). Today, la Via Campesina has a common identity and attempts to link the social struggles of peasants on the five continents.¹⁶ Edelman has demonstrated that such transnationalism is not a new phenomenon; since the beginning of the 20th century, agricultural organizations have been linking up and joining forces (Edelman 2003: 185-90). The roots of La Via Campesina reflect this long history of agrarian movements engaged in struggles for social change (Desmarais 2002).

According to Desmarais, three-quarters of the poor live in the countryside and depend on agriculture for their survival (Desmarais 2007: 19). The Human Rights Council Advisory Committee has used similar numbers, and stated that fifty per cent of these rural poor are small-scale farmers (Human Rights Council Advisory Committee, UN Doc. A/HRC/16/40, 2011a: para. 23; see also Ziegler et al. 2009).

Martinez-Torres and Rosset have identified various stages in the creation of the La Via Campesina movement and argue that in the fall of 2000 the movement started to assume a leadership role at the international level

¹⁶ Yet, large rural classes are not represented by La Via Campesina. There is currently no representation from China and Russia.

(Martinez-Torres and Rosset 2010: 162). During that period many international organizations and institutions started to recognize its legitimacy and the movement began to form alliances with these actors (such as the FAO).

Every three or four years La Via Campesina has an international conference to set out the general agenda of the movement. Between these conferences there are meetings of the International Coordinating Committee (ICC) as well as regional conferences. The ICC monitors the work of the movement and identifies plans of action across the regions. There are two members (a man and a woman) of each of the nine regions. These members are the most important link with the various peasant organizations around the world, and each important decision is made in consultation with the ICC members. The regional co-ordinators are to reflect the concerns and decisions of the organizations within their region (Desmarais 2007). This makes the decision-making process within the movement 'an extended, time-consuming, and sometimes long-winded affair' (Desmarais 2007: 28). The movement also has an international secretariat that rotates from country to country. The international secretariat of La Via Campesina was run from 2005 until 2013 in Indonesia by SPI. This gave at least the Indonesian members closer access to the movement's decision-making bodies. The former member and president of SPI, Henry Saragih, was also the general coordinator of La Via Campesina during that period. The actual work of La Via Campesina occurs through a variety of international working commissions, such as the commissions for 'agrarian reform', 'food sovereignty', and 'human rights'.

5.1.2. GOALS OF THE MOVEMENT

Movements such as La Via Campesina illustrate what is called in scholarly literature a 'globalization from below', as opposed to an imposed 'globalization from above'. Globalization from below has been defined differently by a variety of scholars. Falk refers to a global civil society linking 'transnational social forces animated by environmental concerns, human rights, hostility to patriarchy, and a vision of human community based on the unity of diverse cultures seeking an end to poverty, oppression, humiliation, and collective violence' (Falk, cited in Edelman 2001: 304). Douglas Kellner submits that 'globalization from below refers to the ways in which marginalized individuals and social movements resist globalization and/or use its institutions and instruments to further democratization and social justice' (Kellner 2002: 293). Others have forwarded the concept of 'localization' in order to describe such alternative form of globalization where the local is favoured over the global (Hines 2003). Both concepts capture the phenomenon where local struggles oppose the current form of economic globalization (not necessarily globalization as such). Douglas Kellner adds that local groups also benefit from globalization. Indeed, arguably transnational movements are also successful thanks to globalization, in particular its effects on communication and access to information and institutions, as well as on means of financing the movement. Globalization in this sense thus also presents opportunities for movements to fight for social justice and transformation.

The La Via Campesina movement identifies the main challenges at the structural international level. International institutions, such as the World Trade Organization (WTO), the World Bank and the International Monetary Fund, as well as transnational corporations are considered responsible for

destroying the livelihood of small-scale farmers around the globe (Via Campesina 2001). Having such opponents, it is imperative for the movement to be heard at the international level (Martinez-Torres and Rosset 2010: 153). The development of a global response to the problems facing peasants is the very reason for La Via Campesina's existence (Desmarais 2007: 33).

5.1.3. THE CONCEPT OF FOOD SOVEREIGNTY

The La Via Campesina movement is well known at the international level for being the driving force behind the concept of food sovereignty (Via Campesina 1996a). The concept was constructed as an alternative to the neoliberal practices in agriculture (Borras Jr 2008). The idea of food sovereignty presents 'a call for a mass re-politicization of food politics, through a call for people to figure out for themselves what they want the right to food to mean in their communities, bearing in mind the community's needs, climate, geography, food preferences, social mix, and history' (Patel 2007: 91). The idea of food sovereignty includes for example the right of peoples to define their own food and agricultural systems, and the right to protect them from low priced food imports.

Is the concept of food sovereignty a (human) right or rather a policy framework/political concept? Windfuhr and Jonsén (2005) for example consider it as an *alternative policy framework* to neoliberal policies. Indeed, food sovereignty advocates an explicit anti-capitalist or neoliberal view on agriculture. Yet, food sovereignty is also recognized as a *right of peoples*, and La Via Campesina (1996b) has defined food sovereignty even as 'the *right of each nation* to maintain and develop its own capacity to produce its basic foods respecting cultural and productive diversity' (emphasis added). A statement made by La Via Campesina in 2006 reads that food sovereignty 'is

the peoples', Countries' or State Unions' right to define their agricultural and food policy, without any dumping vis-à-vis third countries'.¹⁷

Scholars who study social movements would rather approach the idea of food sovereignty through the concept of 'framing'. Framing refers to the way social movements 'frame, or assign meaning to and interpret relevant events and conditions in ways that are intended to mobilize potential adherents and constituents, to garner bystander support, and to demobilize antagonists' (Merry 2006: 41). The call for food sovereignty functions as a 'collective action frame', more in particular a 'master frame' since it is sufficiently broad in interpretive scope, inclusivity, flexibility, and cultural resonance' (Benford and Snow 2000: 618-19). Moreover, the concept not only mobilizes the 'rights' master frame but also other frames such as the environmental frame or the cultural pluralist frame (Claeys 2012). Claeys finds that 'food sovereignty has integrated the movement's wide variety of struggles at the local and national levels – such as securing control over natural productive resources, protecting local knowledge and cultural identity, creating local markets, guaranteeing remunerative prices, and defending the right to land and territory' (Claeys 2013a: 3).

La Via Campesina and various other organizations have lobbied to enshrine the concept of food sovereignty in a binding treaty (Claeys 2013a). Yet, these attempts were unsuccessful and after 2007 plans for a treaty were no longer discussed. Like in many other cases, the reasons behind the failure do not seem to be documented. At the national level, there were some successes as food sovereignty was enshrined in several national Constitutions (Ecuador,

¹⁷ Available at: <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/food-sovereignty-and-trade-mainmenu-38/33-food-sovereignty>, (last accessed on 14 November 2013).

Bolivia, Nepal and Venezuela). Today, the focus on local food sovereignty practices is increasing, in fact some argue priorities have shifted to reclaiming control over land and natural resources, rather than fighting the international structural obstacles (Claeys 2013a: 5). Of course, such limited domestic recognition of food sovereignty cannot change the global? structural neoliberal policies that the concept seeks to address.

The concept of food sovereignty has also been met with scepticism by scholars (see Bernstein 2014) and some indicate ‘that the peasants’ rights initiative may induce a shift in how La Via Campesina’s struggle is framed in the future: not so much as an anti-capitalist struggle but as an anti-discrimination one. Will La Via Campesina put the emphasis on its transformative political project – and alternative societal project, food sovereignty – or on the distinctiveness of the peasantry?’(Claeys 2013a: 8). Yet, the struggle for the recognition of the concept of food sovereignty at the international level has apparently been integrated in the struggle for a Declaration on the Rights of Peasants, as the draft Declaration explicitly recognizes food sovereignty as a right of peasants (Article 5).

5.2. THE BIRTH OF THE DECLARATION: THE STRUGGLE OF SERIKAT PETANI INDONESIA

‘Many companies [were] grabbing the land. We went from village to village, then we contacted other student movements in Java, East Timor, and all over Indonesia... We started building a peasant movement.’

(Henry Saragih, member of SPI and former Secretary-General of La Via Campesina)

Serikat Petani Indonesia (SPI – Indonesian Peasants’ Union), an Indonesian member of La Via Campesina, is spearheading the adoption of the Declaration on the Rights of Peasants. SPI was founded following the establishment of peasant organizations at the local or village level in the mid-1980s in Indonesia (Lucas and Warren 2003: 102; Purwanto 2013: 1-2). Serikat Petani Sumatera Utara (SPSU– The North Sumatra Peasants’ Union) established the first contacts with La Via Campesina in 1996, and when SPI was created in 1998, the La Via Campesina membership of SPSU passed over to SPI (Purwanto 2013: 2). Currently, SPI counts around 700.000 individual members, spread out over the Indonesian provinces (Vidal 2013). Henry Saragih, until recently the Secretary-General of La Via Campesina, was one of the founders of both SPSU and SPI.

The rise of farmer organizations in Indonesia can be attributed to the increasingly difficult conditions that small-scale Indonesian farmers have been facing since the 1980s. Under pressure of the WTO, the Indonesian government decided to adopt a neoliberal policy towards agriculture. This meant a liberalisation of agricultural trade in favour of the corporate sector. Policies entailed for example the instalment of free trade zones, a halt to farmer subsidies, and the liberalisation of land laws and policies (Mansour et al. 2003: 28; Purwanto 2013). The farmers were faced with land ownership problems, detrimental price policies by the government, and the top-down imposition of production techniques and processes (the Green Revolution). Edelman also points to the massive oppression that peasants faced under the military dictatorship of Suharto, including the seizure of their land for large-scale production (Edelman 2012: 9).

While before the fall of Suharto meetings of peasant activists did take place (Bachriadi 2009: 2), the end of the dictatorship, or the ‘post-New Order era’,

allowed the peasant communities to voice their concerns openly (Monsalve Suárez 2013: 277). This demonstrates the importance of so-called 'political opportunity structures' for local movements. After the fall of the Suharto regime farmers started to reclaim the land that had been taken from them. Grassroots struggles became increasingly tied to calls for democratisation, regional autonomy and good governance (Lucas and Warren 2003: 99). De Feyter has argued that the choice to resort to human rights may have many reasons but what is certainly required is 'an awareness of human rights as well as a belief that the appeal to human rights may be effective' (De Feyter 2011: 16). He further finds that 'the likelihood that such awareness will arise is much higher if the organization is connected to other organizations [...]' (De Feyter 2006: 14). The discourse on human rights became part of the struggle of Indonesian peasants through interaction with NGOs and student organizations and 'while the language of the movement for "civil society" may have been little more than jargon for some farmers, many local groups actively joined in the students' struggle for political reform in Jakarta in early 1998 and incorporated many of the issues associated with the global NGO movement into their platforms' (Lucas and Warren 2003: 99).

An Interregional Workshop on Advocacy for Land Cases in Bandung in 1993 brought together seventy NGOs and farmers' organizations, including the most prominent one, SPSU. Lucas and Warren note that the workshop was important because farmers were exposed to the human rights language of NGOs and to ideas about the structural importance of building strong farmer organizations to fight the New Order policies (Lucas and Warren 2003: 102). The SPSU had been discussing peasants' rights with its members since 1993, and saw the formation of an alliance between various farmer movements

(the Peasant Rights' Movement). After two more meetings the SPI was established in 1998.

The farmer organizations worked towards developing a Peasants' Rights Charter through a series of meetings and seminars with peasant communities (Mansour et al. 2003: 28-30). In these meetings, peasants asked themselves what all the rights talk around them meant for them (Claeys 2012: 850). In 2001, SPI approached the National Human Rights Commission in order to support their initiative and organize a 'National Conference on Agrarian Reform to Protect and Implement the Rights of Peasants'. At the conference, a Declaration on the Fundamental Rights of Peasants was adopted. This Declaration can be considered a milestone, as previously the peasant struggle had always suggested short-term, non-structural demands as a response to problems faced by peasants (Lucas and Warren 2003: 103; Purwanto 2013: 8). The Declaration contained sixty-seven rights, such as the right to land and the right to access to natural resources (Lucas and Warren 2003: 102; for the 1999 draft of that Declaration see: Mansour et al. 2003: Annex 5). This Declaration served as a prototype for the first attempt of La Via Campesina to draft a Declaration on the Rights of Peasants (Edelman 2012: 9) (see 5.3).

When faced with the fact that international institutions, in particular the World Bank, were influencing the fate of the farmers, SPI understood the necessity to undertake international action (Purwanto 2013: 3). From 1993 onwards, the movement started to contact organizations outside of Indonesia. One of the former leaders of the SPI has explained that 'we learned from below, not [from] theory, the everyday problems of people. We learned that land is the key struggle in the world, that the system is designed for the rich, and that what was happening in Indonesia was part of a global,

structural problem' (Vidal 2013). This illustrates the sort of 'boomerang pattern' described by Keck and Sikkink (Keck and Sikkink 1999: 93-94), where access to the international level is sought to induce change at the national and local level. The difference here is that the organizations seek something more than compliance; they want to shift the norms themselves (Edelman and James 2011: 91).

As will be discussed in the next section, in 2002 SPI presented the peasants' rights issue to the La Via Campesina regional conference and by doing so the Declaration entered into the international limelight.

5.3. LA VIA CAMPESINA'S DECLARATION ON THE RIGHTS OF PEASANTS

The idea of peasants' rights was and still is driven first and foremost by SPI. The members in the other regions appear to have less ownership over the whole idea of peasants' rights and the Declaration raised some criticism within the movement, as some members found it led the movement away from the idea of food sovereignty.¹⁸ Many Latin American members of the movement are more familiar with the concept of food sovereignty and consequently hesitated to adopt the peasants' rights idea (Claeys 2013b). In Claeys' view, the appropriation of the idea of peasants' rights by activists in

¹⁸ La Via Campesina is of course not spared from tensions between its members. Borras has pointed out three dimensions of internal challenges for the movement: class-differences between the movements' members, ideological differences, and the growing but still limited representation of the rural poor (for example in China) (BorrasJr2008: 258). Members may also disagree about the strategy the movement must follow. A compromise had to be sought for example between those members that wanted to abolish the WTO and those that wanted to push for reform, instead of abolition, of the latter organization (Borras Jr 2004: 10).

all regions, in particular in Latin America, is still to be achieved (Claeys 2012: 850).

In 2000, at La Via Campesina's conference in Bangalore, the members of the movement discussed the definition of concepts, thematic strategies and concrete actions regarding human rights. The movement stated that:

Via Campesina will consider as human rights - inalienable and universal- all those which are registered in the main declarations and international conventions, and that concern social, gender, political, economic, cultural problematic, occurring in rural communities all over the world (Via Campesina 2000)

The movement thus did not reject the international human rights 'architecture' but added that:

La Via Campesina will also adopt proposals of actions about new international legal tools related to human rights. As an organization representing the interests of the peasant and small farmer at international level, it is imperative that la Via Campesina draft, socialize and campaign on legislation to be adopted at international level which protects the rights of the peasant and small farmer [...] there should be special legislation which enshrines and protects the rights of the peasant and small farmer (Via Campesina 2000)

It was believed imperative that an organization like La Via Campesina which draws on real life experiences and expertise drafts and proposes legislation

which is truly meaningful to the peasant and small farmer.¹⁹ There was thus a belief that existing human rights law did not sufficiently address the challenges peasants were facing but also that human rights could be advantageous in advancing their struggle. It was a strategic choice to adopt the human rights language. It has been noted that ‘there is a sense that the process of institutionalization [the recognition of peasants’ rights by the UN] itself can be a good opportunity for mobilization, movement building, and inter regional dialogue and consensus building’ (Shawki 2014: 322). Political mobilisation appears a crucial goal, as members of La Via Campesina are aware that the adoption of the Declaration will not deliver immediate change at the local level.

In 2001, La Via Campesina issued a statement together with many other organizations (including SPI) in which they advocated for, amongst other things, ‘an international, legally binding treaty that defines the rights of peasants and small producers to the assets, resources and legal protections they need to be able to exercise their right to produce’ (Via Campesina 2001).

In 2002, a draft Declaration on the Rights of Peasants, based on the Declaration of SPI, was presented at the La Via Campesina regional conference in Jakarta (Via Campesina 2002). The 2002 Declaration contained ten main articles which contained in turn numerous provisions.²⁰ These ten main rights were:

- 1) Right to live and proper standard of living
- 2) Right to the agrarian resources

¹⁹ Towards farmers' rights, available at: <http://www.viacampesina.org/en/index.php/our-conferences-mainmenu-28/3-bangalore-2000-mainmenu-55/35-towards-farmers-rights> (last accessed on 25 February 2014).

²⁰ Note that the Declaration was translated into English and contained some language mistakes.

- 3) Rights on the Seeds and Agriculture
- 4) Rights for Capital and Means of Agricultural Production
- 5) Rights to Access the Information and Agriculture Technology
- 6) Rights for Freedom to Determine Prices and Markets for Agriculture Production
- 7) Rights for the Protection of Agricultural Values
- 8) Rights for Biological Diversity
- 9) Rights for Environmental Preservation
- 10) Rights for Freedom of associates

This was the start of a six-year long process of discussion within and amongst member organizations of La Via Campesina. During that period La Via Campesina also worked with FIAN International on monitoring and reporting violations of peasants' rights and participated at the UN Human Rights Council (see infra, next section). In 2008, a working group composed of members of the La Via Campesina Human Rights Commission as well as Indonesian and European lawyers affiliated with human rights NGOs, including advisors of the Human Rights Council Advisory Committee, met in Bilbao to rewrite the 2002 draft Declaration 'to make it legally, politically and stylistically more compatible with existing international law' (Edelman 2012: 10). La Via Campesina's Human Rights Commission submitted a reworked Declaration to its members at the International Conference on Peasant Rights in Jakarta in June 2008. During the International Conference of La Via Campesina in Maputo in October 2008, the members formally adopted the text. The International Coordinating Committee in Seoul then adopted the final text in March 2009. This final text contains structural modifications and

some additions compared to the SPI draft such as the inclusion of a definition of peasants (see Edelman 2013), but its substantive provisions have been largely left unchanged (see Annex 1). The approved Declaration follows the same structure as the 2007 United Nations Declaration on the Rights of Indigenous Peoples, which gives reason to believe that the interaction with the UN and international human rights experts has at least led to a polishing of the initial text.

After the adoption of the Declaration on the Rights of Peasants in 2009, La Via Campesina intensified its efforts by starting a global campaign to promote the Declaration at the national, regional, and international level.²¹ In the next section we discuss the actions of the network of international actors involved in bringing the Declaration to the agenda of the Human Rights Council.

5.4. BUILDING SUPPORT WITH NGOs AND THE UN MECHANISMS

During the first years of its existence, La Via Campesina had tense relations with the NGO that helped constituting the movement. The differences of opinion between that NGO (the Paolo Freire Stichting)²² and the peasant leaders about *inter alia* the aim of La Via Campesina and the role of NGOs in the movement, ultimately proved even to be insurmountable. Similarly, when La Via Campesina entered the international arena, tensions would

²¹ Global Campaign on the International Convention on the Rights of the Peasants, available at: <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/610-global-campaign-on-the-international-convention-on-the-rights-of-the-peasants> (last accessed on 21 February 2014).

²² The Paolo Freire Stichting was a Dutch NGO which main purpose was to perform farmer-driven research in the field of alternative agricultural policies. The NGO wanted to create a platform for research rather than a social movement.

surface time and again between the movement and other NGOs (Desmarais 2007: 93). La Via Campesina refused, for example, to sign the NGO Declaration at the 1996 World Food Summit. They argued that the document did not address or reflect the concerns of peasant families. La Via Campesina was sending a clear message according to one commentator: NGOs could no longer speak 'on behalf of' or 'as representatives of' peasants and farmers, nor decide solely on what would be said regarding peasants (Desmarais 2007: 101). The Declaration on the Rights of Peasants must also be regarded as a strategic tool to push for more political space and identity for small-scale peasants at the international stage.

While the movement has refused to work with organizations such as the WTO or the World Bank, it is now working with the FAO. On the 4th of October 2013 the movement even formalized an agreement with the FAO in order to cooperate in areas of common interest. Yet, the relationship between both has been tense at times (e.g. the support of the FAO for genetically modified organisms and the outrage of La Via Campesina for doing so (Borras Jr 2004: 18-19)) and both certainly do still not agree on every issue. In this context the challenge for 'transnational social movements such as La Via Campesina is how to continue to engage with pro-reform actors within these institutions rather than the institution as a whole, so as to create cleavages within these agencies, isolating the anti-reform actors, while winning over, expanding and consolidating the ranks of pro-reform actors' (Borras Jr 2004: 19).

Notwithstanding the initial tense relations between La Via Campesina and NGOs, the movement was in need of the research and lobby activities of NGOs at the international level. In 1999, La Via Campesina started a global campaign on agrarian reform with FIAN, an international NGO with national

sections that has been documenting violations of peasants' rights since the end of the 1980s. One of the successes of this campaign was that agrarian reform was henceforth linked to the human rights of peasants (Borras Jr 2004: 26; see also in general Coomans 2006). In 2000, La Via Campesina recognized the need to engage more with the international human rights mechanisms. The movement emphasized the importance to:

[e]stablish networks with existing human rights organizations which already work through existing human rights instruments and mechanisms, for example at the UN commission and sub-commission on human rights. This is important in order to gain expertise in this field as well as in order to lessen the burden on Via Campesina itself (Via Campesina 2000)

Some of the very first actions at the UN level occurred in concert with FIAN and the Geneva-based NGO CETIM (Centre Europe – Tiers Monde) in 2001. La Via Campesina and CETIM issued a joint statement on peasants' rights before the now defunct UN Commission on Human Rights. In their statement they urged the Commission to enact a convention on the rights of peasants since 'peasants and small farmers are the rightful guardians of a rich, diverse and unpolluted environment and as such there should be special legislation, which enshrines and protects the rights of peasants and small farmers' (Third World Centre 2001).

In 2002, La Via Campesina used the first meeting of the Social Forum of the Human Rights Council to voice its concerns about peasants' rights. SPI was active at the Social Forum as a member of La Via Campesina. NGOs, such as FIAN and CETIM participated in support of the peasant struggle. A representative of the former Special Rapporteur on the right to food Jean Ziegler also participated in the meeting. The demand to draft and enact a

Universal Declaration²³ on Peasants' Rights was made by La Via Campesina (Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2002/18, 2002: para. 24). In a resolution adopted at the session, the president of the Social Forum was asked to prepare a study on rural poverty for the Social Forum's second session.

The then Special Rapporteur on the right to food, Jean Ziegler, dealt extensively with the issue of agrarian reform in one of his reports to the General Assembly in 2002. The SR expressed support for the concept of food sovereignty as defined by La Via Campesina and indicated the importance of social movements for bringing the issue of land reform into the spotlight (Ziegler 2002: paras. 20, 26). The SR played an important role in highlighting the issue of land reform to the UN Commission on Human Rights. The content of his report shows that the SR had a favourable stance towards La Via Campesina, FIAN and other civil society organizations. Later, he also took such a stance as a member of the Human Rights Council Advisory Committee (see further in this section).

The second session of the Social Forum took place in 2004. Yet, at the meeting there were no representatives of La Via Campesina and the reports show no evidence of discussion on a possible declaration for the rights of peasants. Participants rather contemplated the need for a binding instrument to address extreme poverty (Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2004/26, 2004).

During the abovementioned campaign on agrarian reform, La Via Campesina and FIAN worked together to produce reports on the violations of peasants'

²³ It is difficult to assess whether, in legal-technical terms, they were arguing for a legally binding instrument or a declaration at that point. The claim for a convention or declaration occurs seemingly aleatory. Yet, according to La Via Campesina, a Convention is certainly perceived as the ultimate goal. The Declaration is only a first step.

rights (see e.g. FIAN International and La Via Campesina 2004, 2005; La Via Campesina and FIAN International 2006). They also lobbied international institutions and developed an emergency network to respond in case of human rights abuses (Desmarais 2002: 108-09; La Via Campesina 2000). The organizations also started using the State reporting procedure under the ICESCR to advocate for the rights of peasants (see e.g. Coomans 2006: 16-17). SPI, through La Via Campesina, supported this work and provided numerous cases of violations in Indonesia (FIAN International and La Via Campesina 2004: 34-39; La Via Campesina and FIAN International 2006: 21-23). The annual reports of La Via Campesina and FIAN were presented at side-events of the UN Commission on Human Rights in 2004, 2005 and 2006 (Golay 2013: 5).

In their 2004 report, La Via Campesina and FIAN pleaded for a yearly resolution on peasants' rights of the Commission on Human Rights, as well as for the development of an International Convention on the Rights of Peasants. In their 2005 report, the organizations repeated their calls for an international convention, and also called for the elaboration of a General Comment by the Committee on Economic, Social and Cultural Rights on the rights of peasants. FIAN also participated in the Commission on Human Rights and conducted training sessions in Geneva for members of La Via Campesina's Human Rights Commission. These sessions introduced the members of La Via Campesina to the functioning of the UN human rights institutions as well as to the possibilities of gaining access to these institutions.

It was not until 2008 that the UN started to respond more seriously to the plight of peasants. The creation of the Human Rights Council and its Advisory Committee, as well as the work of the then newly appointed Special

Rapporteur on the right to food, Olivier De Schutter, proved to be windows of opportunities for initiating more substantive debates (Golay 2009: 108).

In addition, the global food crisis of 2008 heightened the attention for (small-scale) peasants even more. At that juncture of time, the situation of peasants started to worsen as a result of the increasing appropriation of land or land grabbing, leading to evictions of peasants from their land, the appropriation of seeds, and large-scale biofuel projects. Similar to the food crises in the 1970s and 1990s, the international community was called to respond and the various UN institutions and civil society actors working on hunger delivered statements on the root causes and solutions for the crisis. La Via Campesina presented the recognition of the rights of peasants as one solution to the agrarian crisis.

Only three weeks into his mandate as a SR on the right to food, Olivier De Schutter was able to convince the Human Rights Council to hold a Special Session on the food crisis.²⁴ On this and other occasions the SR on the right to food recognized the need to address the concerns of small-scale farmers (see e.g. De Schutter 2008, 2009).

After the 2008 Special Session, La Via Campesina, CETIM, FIAN and other NGOs issued a joint statement in view of a High Level Conference at the FAO some weeks later.²⁵ The organizations *inter alia* requested 'the HRC to investigate the issue of peasant rights, as already mentioned by the former Special Rapporteur on the Right to Food, by mandating its advisory committee to conduct a first study to better identify the needs for specific entitlements of peasants as one of the most vulnerable groups to HR and

²⁴ In his first statement the SR had urged the HRC to hold such a session, see De Schutter(2008).

²⁵ High-level Conference on World Food Security and the Challenges of Climate Change and Bioenergy, 3 to 5 June 2008, Rome.

right to food violations as well as to identify gaps in the protection of these rights and entitlements, and concrete proposals to address and redress these gaps' (FIAN International 2008).

In its resolution 7/14, the Human Rights Council emphasized 'that 80 per cent of hungry people live in rural areas, and 50 per cent are small-scale farm-holders, and that these people are especially vulnerable to food insecurity, given the increasing cost of inputs, and the fall in farm incomes; that access to land, water, seeds and other natural resources is an increasing challenge for poor producers; and that support by States for small farmers, fishing communities and local enterprises is an element key to food security and provision of the right to food' (Human Rights Council, UN Doc. 7/14, 2008: para. 10). In accordance with this resolution, the Advisory Committee focused on the enhancement of the realization of the right to food.

At its first session in August 2008, the Advisory Committee therefore established a drafting group on the right to food (drafting group), including the former SR on the Right to Food, Jean Ziegler, as well as the former president of the Social Forum, José Bengoa (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/2008/1/2, 2008). During that session, CETIM and La Via Campesina organized a press conference and a public debate on a Convention for the Rights of Peasants. On behalf of La Via Campesina, CETIM intervened orally during the session of the Advisory Committee and stated *inter alia* that they would 'seek the support of governments, parliaments and human rights institutions for developing the convention on Peasant Rights' (Third World Centre 2008: 4).

The drafting group suggested to the Advisory Committee to conduct a study on the rights of peasants and the Advisory Committee submitted this proposal for approval to the Human Rights Council (Human Rights Council

Advisory Committee, UN Doc. A/HRC/AC/2008/1/2, 2008: 18). At the Human Rights Council, there was a lively debate on whether such a study should be undertaken. Several Latin American States were in favour of tasking the Advisory Committee with a study on the global food crisis and the rights of peasants, but other, particularly Western, States opposed such a study (Golay 2013: 7). In the end, the Human Rights Council struck a compromise between proponents and opponents by requesting 'the Advisory Committee to undertake a study on discrimination in the context of the right to food, including identification of good practices of anti-discriminatory policies and strategies' (Human Rights Council, UN Doc. Resolution 10/12 2009b: 34). Such a general request did not demand, but certainly allowed the Advisory Committee to discuss the discrimination peasants were facing.

At the Advisory Committee's third session in August 2009, Jean Ziegler and his team (Christophe Golay and Claire Mahon) presented a background paper as a contribution to the study requested by the Human Rights Council. This paper, entitled 'Peasant Farmers and the Right to Food: a History of Discrimination and Exploitation', described the discrimination farmers faced around the world (Ziegler et al. 2009). It also included a large section recounting the birth and work of La Via Campesina, including the concept of food sovereignty and the recent adoption of a Declaration on the Rights of Peasants (Ziegler et al. 2009: paras. 59-66).

In 2009, Paul Nicholson, a representative of La Via Campesina, was given the opportunity to present at a panel session on the right to food of the UN Human Rights Council. He repeated herein La Via Campesina's claim for an international convention on the rights of peasants and argued that without

such a convention, the right to food could not be realized (Third World Centre 2009).²⁶

One month later, La Via Campesina was able to address the UN General Assembly in one of its thematic dialogues. The opportunity arose after La Via Campesina's Nicaraguan affiliate had successfully lobbied the former president of the GA – Miguel D'Escoto (Edelman 2012: 10). During this thematic dialogue on the food crisis and the right to food, the representative of La Via Campesina (and SPI), Henry Saragih, reasserted that the 'Declaration on the Rights of Peasants – Men and Women' and the subsequent adoption of a UN Convention on the Rights of Peasants could form the basis of a solution to both the discrimination against peasants and the food crisis (Edelman 2012: 11). These interventions were well received by the stakeholders and it was increasingly clear that peasants' rights should become an integral part of the work of the Advisory Committee (Golay 2009: 109). The international context, in particular the food crisis, thus created the perfect setting for La Via Campesina's claims to be taken up by the UN charter-based human rights mechanisms.

In January 2010, at the fourth session of the Advisory Committee, the drafting group presented its report on discrimination in the context of the right to food. La Via Campesina was also able to intervene in this session, and urged the Advisory Committee to undertake further standard-setting on the rights of peasants.²⁷ In annex to their report the drafters attached La Via

²⁶ See: La Via Campesina at the Human Rights Council - Presentations by Panellists in Discussion on Realization of the Right to Food (2009): <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/663-via-campesina-at-the-human-rights-council18> (last accessed on 5 April 2015).

²⁷ Rights of Peasants: ending the discrimination against peasants, available at: <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights->

Campesina's Declaration on the Rights of Peasants. The Advisory Committee adopted the report and its conclusion, which read as follows:

One of the most important new developments in the protection against discrimination in the context of the right to food was the adoption of the Declaration on the Rights of Peasants – Women and Men by La Via Campesina, in June 2008. The analysis made by the authors of the declaration has gained pertinence since the world food crisis. The Advisory Committee believes that it is time to undertake a preliminary study on the significance and importance of a possible new instrument on the rights of peasants and other people living in rural areas, including from traditional fishing, hunting and herding activities. It therefore asks the Human Rights Council to request the Advisory Committee to undertake such a preliminary study (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/4/2, 2010a: para. 86)

The Advisory Committee also recommended that the Human Rights Council considers 'requesting the Advisory Committee to undertake a study on the rights of peasants and other people living in rural areas, including those engaged in traditional fishing, hunting and herding activities' (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/4/L.3,2010d: para. 3). The inclusion of the Declaration and the explicit praise for the work of La Via Campesina is remarkable; it was a milestone in La Via Campesina's peasants' rights campaign. Only rarely do Human Rights Council bodies express in such an explicit way their support for a civil society organization and its work.

[mainmenu-40/841-rights-of-peasants-ending-the-discrimination-against-peasants](#) (last accessed on 21 February 2014).

Some of the members of the Advisory Committee were very supportive of La Via Campesina: the former SR on the right to food, Jean Ziegler, and the ex-president of the Social Forum and ex-member of the Sub-Commission on Human Rights, Jose Bengoa, were since long aware of and sympathetic to the struggle of La Via Campesina.

Subsequent to the report the Advisory Committee, La Via Campesina issued a press release in which it called upon the members of the Human Rights Council to adopt the Declaration annexed to the report. In the run-up to the presentation of the Advisory Committee's report to the Human Rights Council in 2010, the Geneva Academy of International Humanitarian Law and Human Rights and CETIM organized a meeting titled 'A New Initiative to Protect the Rights of Peasants' in order to further lobby the Human Rights Council members. The meeting was attended by members of civil society including FIAN, the General Coordinator of La Via Campesina and SPI member (Henry Saragih), the ICJ, the SR on the right to food (Olivier De Schutter), a member of the Advisory Committee (Jean Ziegler), academics, as well as state delegations. Such attendance again demonstrates the considerable reach the international NGOs had within the UN mechanisms. The SR on the right to food presented his latest report and highlighted the importance of the peasants' rights initiative in order to protect small-scale farming.²⁸ Ziegler even argued at the meeting 'that it is important to finally arrive at a Convention of the Rights of Peasants, followed by a Protocol that

²⁸ United Nations Non-Governmental Liaison Service (UN-NGLS), The Road towards a Declaration on Peasants' Rights in the framework of the Right to Food (2010), available at: http://www.un-ngls.org/spip.php?page=article_s&id_article=2272 (last accessed on 17 January 2014).

will explain specific and detailed obligations for States in this regard and that will formalize peasants' rights'.²⁹

The Cuban delegation took the initiative to sponsor a resolution in the March 2010 session of the Human Rights Council which expressed support for the report of the Advisory Committee. Henry Saragih of La Via Campesina and SPI, who also spoke on behalf of CETIM, addressed the members of the Human Rights Council during the session and urged them to take further action on the recommendations of the Advisory Committee.

However, the Human Rights Council was not willing to adopt the Declaration. It requested the Advisory Committee 'to continue to work on the issue of discrimination in the context of the right to food and, in that regard, to undertake a preliminary study on ways and means to further advance the rights of people working in rural areas, including women, in particular smallholders engaged in the production of food and/or other agricultural products [...]' (Human Rights Council, UN Doc. A/HRC/RES/13/4, 2010b: para. 44). The Human Rights Council thus followed the recommendation of the Advisory Committee. The mandate of the Advisory Committee was now more detailed: it had to focus on the rights of people working in rural areas. The issue of peasants' rights was now firmly on the agenda of the Advisory Committee and the drafting group on the right to food was again charged with drafting the report (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/5/L.1, 2010b).

²⁹ United Nations Non-Governmental Liaison Service (UN-NGLS), *The Road towards a Declaration on Peasants' Rights in the framework of the Right to Food* (2010), available at: http://www.un-ngls.org/spip.php?page=article_s&id_article=2272 (last accessed on 17 January 2014)

At the Advisory Committee's sixth session in January 2011, the drafting group presented a preliminary report 'on the advancement of the rights of peasants and other people working in rural areas'. It reiterated the need to develop a new instrument to protect peasants' rights (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/6/CRP.2, 2010c: para. 72), and argued that La Via Campesina's Declaration could serve as a model (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/6/CRP.2, 2010c: para. 67). The drafting group received important inputs from members of the Geneva Academy of International Humanitarian Law and Human Rights who were in charge of coordinating and editing the documentation of the report (Bengoa 2012). Such input demonstrates the need for information of the Advisory Committee as well as the impact of academics throughout the Declaration's trajectory in the UN.

The drafting group's preliminary report was presented at the March 2011 session of the Human Rights Council. La Via Campesina lobbied the State delegations and intervened orally with the help of FIAN at the session on the right to food,³⁰ as well as at the high-level segment of the meeting.³¹ La Via Campesina, FIAN international, CETIM and the Indonesian Human Rights Committee for Social Justice also organized a parallel event on 'the need of increased protection of the human rights of peasants'. Several state delegations (Luxembourg, Ecuador, Indonesia, South Africa) and representatives of La Via Campesina and FIAN International took the floor in

³⁰ Intervention, UN Human Rights Council, 16th session, March 15, 2011, available at: <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/1029-intervention-un-human-rights-council-16th-session-march-15-2011> (last accessed on 17 January 2014).

³¹ La Via Campesina at the Human Right Council, available at: <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/1011-la-via-campesina-at-the-human-right-council> (last accessed on 17 January 2014).

support of protecting the rights of peasants.³² The SR on the right to food, Olivier De Schutter, and Advisory Committee member Jean Ziegler attended this event too. The former restated again the need for a new human rights instrument and identified four reasons for adopting a new instrument: it is needed in international law; it will improve the fight against hunger; it is one of the best ways to ensure that subsistence agriculture will not be replaced by industrial agriculture; and it will increase access to the means of production in rural areas. These reasons were reiterated by the drafting group on the right to food in its final report (see hereunder) to the Advisory Committee on the advancement of the rights of peasants and other people working in rural areas (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/8/6, 2012: para. 70).

Upon recommendation of the Advisory Committee, States delegations and NGOs were given the possibility to react to the preliminary report. Ecuador, Germany, the Republic of Korea, Switzerland and CETIM sent their comments (Human Rights Council, UN Doc. A/HRC/19/75, 2012a: para. 4). At the Advisory Committee's seventh session in August 2011 a representative of SPI intervened orally and encouraged 'the Advisory Committee to develop a draft declaration on the rights of peasants and other people working in rural areas *which could be annexed in the final study*' (emphasis added).³³ On behalf of the drafting group, Jean Ziegler delivered a background paper which summarized the views and comments of States and other stakeholders

³² United Nations Non-Governmental Liaison Service (UN-NGLS), The Need of Increased Protection of the Human Rights of Peasants, available at: <http://www.un-ngls.org/spip.php?article3307> (last accessed on 17 January 2014).

³³ Oral Intervention seventh session of UN Human Rights Council Advisory Committee, available at: <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/1075-oral-intervention-7th-session-of-un-human-rights-council-advisory-committee> (last accessed on 20 February 2014).

on the preliminary study. Just as in the preliminary report, Ziegler expressed his gratitude to Christophe Golay of the Geneva Academy of International Humanitarian Law for the substantive input during the drafting of the paper. This shows again that the members of this academic institution were an important driving force behind the peasants' rights process in the Advisory Committee. Ziegler's background paper concluded that 'the great majority of States and all other stakeholders, including the UN Special Rapporteur on the right to food, Olivier de Schutter, supported the conclusions and recommendations of the Advisory Committee' (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/7/CRP.1, 2011b: para. 25).³⁴ During the Advisory Committee's session, La Via Campesina, FIAN and CETIM organized another side-event to further highlight the importance of adopting a new instrument. They could again count on the support of members of the Advisory Committee, in particular Mr Bengoa, who stated during the event that 'we need to convince States that this is the time for peasants, it is a necessity, to a new instrument to protect the rights of peasants'.³⁵

At the Advisory Committee's eighth session in February 2012, the final draft of their study was considered. La Via Campesina as well as FIAN intervened orally in this discussion.³⁶ The Advisory Committee adopted the final draft

³⁴ Apparently only one State, Germany, said that it could not support the conclusions of the Advisory Committee (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/7/CRP.1, 2011b: para. 10)

³⁵ La Via Campesina, Peasants Need a New Instrument to Protect their Human Rights, available at: <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/1076-peasants-need-a-new-instrument-to-protect-their-human-rights> (last accessed on 20 January 2014).

³⁶ La Via Campesina, Oral Intervention of FIAN International and La Via Campesina in the 8th session of the UN Human Rights Council Advisory Committee, available at: <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/1180-oral-intervention-of-fian-international-and-la-via-campesina-in-the-8th-session-of-the-un-human-rights-council-advisory-committee> (last accessed on 20 January 2014).

report, with the Declaration on the Rights of Peasants annexed to it (Human Rights Council Advisory Committee, UN Doc. A/HRC/AC/8/6, 2012). The Declaration was now included in a UN document, and presented as a Declaration that had been drafted by the Advisory Committee. In this respect the control of SPI and La Via Campesina over the Declaration was gone. A relevant feature of the Advisory Committee's draft Declaration is the reference to the applicability of the Declaration to 'other people working in rural areas'. This expands the scope of the Declaration beyond small-scale peasants to other people such as pastoralists, nomads or fishermen. La Via Campesina's members are small-scale farmers, not fishermen or nomads. Such extension to other groups arguably hampers the possibility for La Via Campesina to establish a unique 'peasant identity'. Yet, except for this expansion and for some provisions that had been moved from one article to another, the Declaration was still very much a copy of the Declaration of SPI and La Via Campesina. In addition to the Declaration, the Advisory Committee recommended 'the creation of a new special procedures mandate on the promotion and protection of the rights of peasants and other people working in rural areas' (Human Rights Council, UN Doc. A/HRC/19/75, 2012a: para. 65).

FIAN International together with La Via Campesina organized a parallel event to the 19th session of the Human Rights Council in March 2012, on 'Land Grabbing and the Urgent Need to Protect the Rights of Peasants'. The event was attended by several State delegations, including Angelica Navarro, Ambassador of Bolivia to the United Nations who was to become the chairperson of the OEWG on a UN Declaration on the rights of peasants and other people working in rural areas. She concluded that 'States have an

obligation to protect the rights of rural people and peasants'.³⁷ Henry Saragih on behalf of La Via Campesina and FIAN also intervened in this session of the Council to reiterate the importance of the findings of the Advisory Committee.

At its 21st session in September 2012, the Human Rights Council adopted a resolution in which it decided:

to establish an open-ended intergovernmental working group with the mandate of negotiating, finalizing and submitting to the Human Rights Council a draft United Nations declaration on the rights of peasants and other people working in rural areas, on the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views and proposals (Human Rights Council, UN Doc. A/HRC/21/L.23, 2012b: para. 1)

The content of this paragraph was discussed until the last moment since some States were not convinced of the utility of elaborating a new instrument. According to opponents such as the United States the focus should be on better implementation of existing rights. A consensus was found by adding that the report, in particular the Declaration in annex, was without prejudging relevant past, present and future views and proposals (Human Rights Council, UN Doc. A/HRC/21/L.23, 2012b: para. 1). Nonetheless, the resolution, headed and sponsored by Bolivia with the support of South Africa, Ecuador and Cuba, received a number of negative

³⁷ La Via Campesina, Land grabbing shows the urgent need to protect peasants' rights, <http://viacampesina.org/en/index.php/main-issues-mainmenu-27/human-rights-mainmenu-40/1197-land-grabbing-shows-the-urgent-need-to-protect-peasants-rights> (last accessed on 16 June 2014).

votes including from the United States and all European states with a seat in the Human Rights Council.³⁸

The adoption of the resolution on the OEWG concluded the agenda-setting phase supported by La Via Campesina and other organizations. The norm-setting stage is yet to begin.

5.5. CONCLUSIONS

De Feyter has forwarded the hypothesis that 'a bottom-up approach to human rights is dependent on the existence of a network consisting of four partners: local groups or community based organizations, local human rights NGOs, international human rights NGOs and allies in governmental and intergovernmental institutions' (De Feyter 2006: 17). In our case study not all these actors were involved, in particular local NGOs did not participate. SPI groups the various community-based organizations and spearheads their human rights agenda at the national (Indonesian) level. SPI became a member of La Via Campesina, a social movement, which provided SPI access to the international level. La Via Campesina in turn liaised with international NGOs such as FIAN in order to interact with the UN human rights mechanisms. The movement was able to forge alliances with key stakeholders in these mechanisms. The trajectory of the Declaration on the Rights of Peasants demonstrates the usage of a broad range of available channels at the Human Rights Council, in particular the Special Procedures

³⁸ Adopted by a recorded vote of 23 to 9, with 15 abstentions. The voting was as follows: *In favor*: Angola, Bangladesh, Benin, Burkina Faso, Cameroon, Chile, China, Congo, Costa Rica, Cuba, Djibouti, Ecuador, Guatemala, India, Indonesia, Kyrgyzstan, Malaysia, Peru, Philippines, Russian Federation, Thailand, Uganda, Uruguay; *Against*: Austria, Belgium, Czech Republic, Hungary, Italy, Poland, Romania, Spain, United States of America; *Abstaining*: Botswana, Jordan, Kuwait, Libya, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Qatar, Republic of Moldova, Saudi Arabia, Senegal, Switzerland.

and the Advisory Committee. La Via Campesina, the SR on the right to food and the Advisory Committee formed a so-called transnational advocacy network (Keck and Sikkink 1998) by adopting a common discourse on peasants' rights through side-events and participation at the annual sessions of the Advisory Committee. These events also facilitated the exchange of information which permitted La Via Campesina and the international NGOs 'to educate' or inform the human rights mechanisms.

The 'bottom-up approach' throughout this chain of actors or network was ensured through the constant participation of members of SPI and La Via Campesina. The fact that the connection with the local was not lost is exemplified by the draft Declaration itself: the original Declaration of SPI has not been altered significantly throughout the agenda-setting process. If such local relevance will be maintained during the norm-setting remains to be seen.

6. OVERALL CONCLUSIONS

The review of the literature on localizing processes and on the mechanisms of the Human Rights Council, together with the analysis of the trajectory of the Declaration on the Rights of Peasants reveal some important lessons for the process of localizing human rights.

1. In general, the mechanisms of the Human Rights Council allow civil society and other stakeholders to participate in their work. These organizations can submit written comments as well as orally intervene in the sessions of these mechanisms. In addition, they can organize and speak in the side-events which are typically organized around meetings of the Human Rights Council. As far as formal participation is concerned, civil society actors appear to obtain access. Cooperation of international NGOs with ECOSOC accreditation is essential however as most local organizations such as SPI do not have such accreditation. In our study, La Via Campesina was easily taken in the delegation of accredited NGOs based in Geneva. Yet, this might not always be so easy. What if the movement would have had different strategies and positions from the NGOs in Geneva? For example, the NGO FIAN was not willing to support La Via Campesina in its campaign for a Convention on the Right to Food Sovereignty. Other general challenges to access the HRC are lack of resources and/or expertise, and possible reprisals from States. These challenges often oblige local organizations to network with international NGOs based in Geneva.

2. Analysing the mandates of the Human Rights Council's mechanisms we can single out the Human Rights Council Advisory Committee and the Special Procedures as the two most relevant HRC mechanisms for localizing

human rights. These mechanisms can namely support and push for new standard-setting.

Our review of the HRC mechanisms shows the potential of the Advisory Committee as a think-tank for the Human Rights Council that can indicate the need of, as well as propose new human rights standards. The Advisory Committee was able to present La Via Campesina's Declaration on the Rights of Peasants to the HRC members. It took into account the local or grassroots experiences when proposing the new standards and as such accommodated standard-setting initiatives from below. The Advisory Committee continues the work of the former Sub-Commission on Human Rights. Indeed, research has confirmed that much of the standard-setting by the former Commission on Human Rights originated from studies or draft proposals from the Sub-Commission, the predecessor of the Advisory Committee (see Shelton 2008). Just before its abolition the Sub-Commission underlined 'that there is a need for a representative independent expert body that is able to think collectively, free from specialized mandate constraints and political considerations, in order to initiate and pursue new and innovative thinking in human rights standards and implementation' (Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2005/L.48, 2005: 6). Shelton also notes that without such a body 'the Council will lack the expert advice or stimulus to act' (Shelton 2008: 27). In turn, Special Procedures, in particular the thematic procedures, are able to connect the normative work with the implementation of human rights on the ground. They have mandates that allow them to identify local needs and consequent normative gaps (e.g. through country visits) and they can engage in standard-setting by issuing guidelines or supporting initiatives from below as in our case study.

There is, however, no systematic commitment to learn from below. The Human Rights Council should consider further ways of facilitating the involvement of local movements in its activities and mechanisms, in particular given the challenges that these movements may face in terms of reprisals, resources, expertise and ECOSOC accreditation. One way of strengthening grassroots participation would be to develop a mechanism similar to the International Food Security and Nutrition Civil Society Mechanism of the UN Committee on World Food Security.

3. While adequate participation rights contribute to the potential impact of civil society and social movements on the Human Rights Council's work, there appears to be another key determinant in increasing this impact. Civil society organizations and other stakeholders are often vital in providing substantive input. The Special Procedures as well as the Advisory Committee have explicitly acknowledged the importance of civil society and other actors in their work.

Support from civil society first of all legitimizes the work of the HRC mechanisms. States often criticize the recommendations of independent experts of the Advisory Committee or Special Procedures. Support and pressure by civil society can support these recommendations and help reduce the criticism. The mechanisms' legitimacy is thus strengthened by the work of civil society.

A second factor that renders civil society organizations so vital for the HRC mechanisms is the latter's lack of resources and support from States. This makes them much more dependent on external information and hence more sensitive to it (this is also the case for the UN treaty bodies). In our case study the impact of SPI and La Via Campesina on the Advisory Committee has been the most explicit. Case in point is the fact that the drafting group relied

heavily on the work of La Via Campesina, including the appropriation of the Declaration. In addition, not only civil society can make an impact, we have indicated that academics from the Geneva Academy delivered important inputs into the reports of the Advisory Committee's drafting group on the right to food. This raises questions on the impact and appropriate role of academics - and individuals more general - in such processes.

Willetts has indicated before that a small decision-making body, a limited public profile of the discussion or issue, the technicality of the subject, and the degree of experience of an NGO representative increase the possibility for NGOs to make an impact on the body (Willetts 2011: 62). All these determinants appear to apply to our case study.

4. SPI's access to and impact on La Via Campesina and the international NGOs was considerable and constant through the whole process of bringing the Declaration to the level of the Human Rights Council. Notwithstanding the challenges, the various actors involved appeared open to bottom-up networking and SPI and La Via Campesina remained in charge of the peasants' rights initiative. This is essential for any localization process but certainly not current general practice (see De Feyter 2006: 17). The impact of SPI on La Via Campesina and on the international level is remarkable. As a local organization from Indonesia, SPI led the peasants' rights' campaign in La Via Campesina and as such remained deeply involved throughout the agenda-setting process. A key factor seems to have been the role of Henry Saragih, who was the leader of SPI as well as the coordinator of La Via Campesina throughout the campaign. Many community leaders will of course not find themselves in such a privileged position.

5. The complexity of transnational advocacy, in particular attending to the local as well as the global, presents serious challenges for any

organization. La Via Campesina is quite unique in this respect, because often an organization will not be directly connected to all the different levels. This has considerably increased La Via Campesina's ability to access and impact key stakeholders. Moreover, we have indicated that the cooperation of different actors (NGOs, social movements) with often different strategies and goals is not straightforward. International NGOs still function very much as gatekeepers given that local organizations typically have no direct access to the international level. Sofia Monsalve has indicated that

[t]he ways of using the human rights framework are highly diverse and depend on contextual factors like the normative force and recognition that the human rights framework commands in the political and legal culture of a given country; the existence of alliances with human rights activists and law professionals which are able to understand the dynamics of social movements and of connecting law and politics; and the level of organization of a movement and its ability to forge broad alliances with different social actors and to simultaneously operate in different arenas (Monsalve Suárez 2013: 251)

SPI and La Via Campesina have demonstrated that they can forge strategic alliances with international NGOs as well with local organizations, and that they can link the local to the global through these alliances.

6. The hypothesis that the effectiveness of the network is of utmost importance for a successful localizing process arguably holds true in our case study, and credit should be given to all actors in the peasants' rights campaign. The support for the peasants' rights initiative by international NGOs familiar with the functioning of the Human Rights Council's

mechanisms was crucial for La Via Campesina and SPI. International NGOs provided the movement with human rights training and access to the UN mechanisms. The representatives of FIAN and other NGOs such as the ICJ and CETIM have a high degree of experience in working with UN human rights mechanisms. Over the years they have been able to build good working relations with the members of the UN mechanisms which facilitated the exchange of information and the adoption of a common discourse on the issue. This reaffirms that it is not so much the formal rules that determine the effectiveness of NGOs, but often rather 'the status, the expertise, the communication skills, and the trust established in personal relationships between NGO representatives and government delegates' (Willettts 2011: 62). Without the expertise and continuing support of organizations such as FIAN International there would probably be no open-ended working group discussing the adoption of a Declaration on the Rights of Peasants. Their support in the coming years will arguably be vital in order to sustain the efforts throughout the drafting process of the Declaration.

7. In addition to the effectiveness and the expertise of the network, many circumstantial factors have surely contributed to the success of the peasants' rights' campaign. A contextual factor was the 2008 food crisis, which gave the peasants' claims a sense of urgency and prompted the UN Human Rights Council to continue to work on the issue. In fact, Shawki has indicated that 'over the last decade the claims of the agrarian movement have been resonant with international priorities, thereby increasing the 'fit', adherence, and coherence of these new rights claims' (Shawki 2014: 318). In addition, many key individual actors were involved throughout the whole agenda-setting process. For example, the former SR on the right to food and the former chairperson of the Social Forum (both supportive of La Via

Campešina since the start) became later on members of the Advisory Committee. In addition, the Special Procedure on the right to food was sustained throughout the campaign and both mandate holders were very supportive of the claims of La Via Campešina. Members of the Geneva Academy of International Law also provided, and continue to provide, support to the initiative. In other words, there was – and still is – a continuity of supportive key actors at the Human Rights Council, in particular the Advisory Committee. This again demonstrates the importance of individuals in law-making processes.

8. The drafting process or norm-setting stage is the next crucial chapter in the peasants' rights' campaign. Two main challenges are likely to arise in this phase. First, drafting processes are seldom expeditious and this might present a challenge to the civil society actors in terms of resources to support the campaign. Secondly, as the drafting advances, the need to build consensus among States will equally increase. At present there is none. The vote from the resolution establishing the working group and the interventions by States during the first session shows powerful (groups of) States opposing a Declaration on the Rights of Peasants and Other People Working in Rural Areas. Consensus may be difficult to obtain since the Declaration stands in opposition to the current consensus of a market-oriented development paradigm (Shawki 2014: 319).

From other standard-setting processes we have learned that 'a willingness to be in dialogue, be adaptive and, when possible, compromise is key when entering into a process with member States of the UN' (Gelbspan and Prioste 2013: 101). This typically involves making strategic choices, perhaps even to the detriment of some of the provisions in the Declaration. It is not improbable that the international NGOs will be easier to convince to

comprise than La Via Campesina and SPI, who have drafted the Declaration. The relationships in the network may thus become strained to a certain extent during the drafting process. The danger lies in the fact that the more reformist and progressive norms may need to be sacrificed in order to reach consensus. If this is the case then La Via Campesina may decide to distance itself from the outcome. In this respect, Sally Engle Merry has noted that it is probably more common for people to adopt human rights frameworks pragmatically and strategically than through conversion or a shift in rights subjectivity (Merry 2006: 44). The member organizations of La Via Campesina might as well consider dropping the rights discourse if this turns out to be trivializing their struggle.

9. Finally, and much related to the above point, whether or not new (human rights) standards will be created remains to be seen. Adequate institutional arrangements only provide the *opportunity* to 'localize' and set the agenda, these arrangements do not guarantee a substantial impact. De Feyter has argued that 'in the end it is the effectiveness of the networking by the various actors (community-based organizations, local and international NGOs and governmental and inter-governmental actors) that will establish a global system that is more open to a bottom-up approach' (De Feyter 2006: 19).

La Via Campesina's Declaration was taken as a starting point for the discussion on a Declaration on the Rights of Peasants at the OEWG. In the working group, SPI and La Via Campesina have no exclusive ownership over the Declaration as States, rather than independent experts or civil society organizations, take control over the standard-setting process.

At the norm-setting stage, civil society actors are certainly in a less powerful position. Mann has indicated that in this respect 'La Via Campesina likens the

human rights arena to a boxing ring in which the ‘heavy-weights’ of the UN compete, at an undeniable advantage, against the ‘feather-weights’ – peoples’ movements and the countries of the Global South’ (Mann 2011: 20). Perhaps important to note is that also between the main drafters, i.e. the States, there is considerable inequality. The delegation of Bolivia, which is heading the drafting process, does not have the same resources as other nations to influence the process. With *inter alia* the European Union and the United States opposing, adopting a Declaration will certainly be a challenge.

In conclusion, our case study demonstrates that in terms of agenda-setting local groups can have an impact through the mediation of the Advisory Committee. However, our case study cannot be considered successful yet, as a Declaration on the Rights of Peasants which reflects local needs is still to be adopted. The struggle for peasants’ rights from the local to the global is one of the only documented examples available today. Follow-up research is needed on this norm-setting process as well as on other cases, if we want to further expose the idiosyncrasies of localizing human rights processes.

ANNEX: DECLARATION ON THE RIGHTS OF PEASANTS

Document adopted by the La Via Campesina International Coordinating Committee in Seoul, March 2009

The Declaration

Affirming that peasants, men and women, are equal to all other people and, in the exercise of their rights, should be free from any form of discrimination, including discrimination based on race, color, sex, language, religion, political or other opinion, national or (sic) Affirming that peasants, men and women, are equal to all other people and, in the exercise of their rights, should be free from any form of discrimination, including discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, wealth, birth or other status,

Acknowledging that the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Program of Action, affirm the universality, indivisibility and interdependence of all human rights, civil, cultural, economic, political and social,

Emphasizing that in the International Covenant on Economic, Social and Cultural Rights, States have undertaken to ensure the realization of the right to an adequate standard of living for ourselves and our family, including the right to food, and our right to be free from hunger through the genuine agrarian reform,

Emphasizing that according to the United Nations Declaration on the Rights of Indigenous Peoples, all Indigenous peoples, including peasants, have the right to self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development, having the right to autonomy or self-government in

matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions,

Recalling that many peasants all over the world have fought throughout history for the recognition of the rights of peasants and for just and free societies,

Considering that the current agricultural conditions threaten the lives of peasants, worsening the environment, decreasing peasants' productivity and decreasing the livelihood of the peasants,

Considering that peasants' conditions are worsening because of governments' exclusion of peasants from policy decision making, because of the use of military, and/or paramilitary groups to displace peasants and allowing transnational corporations to exploit natural resources,

Considering that capitalist globalization imposed through some international agreements has had a strong negative impact on the peasant sector,

Considering that peasants struggle with their own resources and with other groups who support the peasants' demands for life, environmental protection and increasing productivity,

Considering the increasing concentration of the food systems in the world in the hands of few transnational corporations,

Considering that peasants constitute a specific social group which is vulnerable so that the realization of the rights of peasants require special measures to truly respect, protect and fulfill the human rights of peasants enshrined in international human rights law;

Acknowledging that small-scale peasant agriculture, fishing, livestock rearing can contribute to mitigate the climate crisis and to secure a sustainable food production for all;

Reminding States to comply with and effectively implement all their obligations as they apply to peasants under international instruments, in particular those related to human rights, in consultation and cooperation with the peasants,

Believing that this Declaration is an essential step forward the recognition, promotion and protection of the rights and freedoms of peasants, including

the elaboration and adoption of an International Convention on the Rights of Peasants,

Recognizing and reaffirming that peasants are entitled without discrimination to all human rights recognized in international law,

Solemnly adopts the following Declaration on the Rights of Peasants:

Article I

Definition of peasants: rights holders

A peasant is a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food and/or other agricultural products. Peasants work the land themselves, rely above all on family labour and other small-scale forms of organizing labour. Peasants are traditionally embedded in their local communities and they take care of local landscapes and of agro-ecological systems.

The term peasant can apply to any person engaged in agriculture, cattle-raising, pastoralism, handicrafts-related to agriculture or a related occupation in a rural area. This includes Indigenous people working on the land.

The term peasant also applies to landless. According to the UN Food and Agriculture Organization (FAO 1984) definition[1], the following categories of people are considered to be landless and are likely to face difficulties in ensuring their livelihood:

1. Agricultural labour households with little or no land;
2. Non-agricultural households in rural areas, with little or no land, whose members are engaged in various activities such as fishing, making crafts for the local market, or providing services;
3. Other rural households of pastoralists, nomads, peasants practicing shifting cultivation, hunters and gatherers, and people with similar livelihoods.

Article II

Rights of peasants

1. Women peasants and men peasants have equal rights.
2. Peasants (women and men) have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.
3. Peasants (women and men) are free and equal to all other people and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular to be free from discriminations based on their economic, social and cultural status.
4. Peasants (women and men) have the right to actively participate in policy design, decision making, implementation, and monitoring of any project, program or policy affecting their territories.

Article III

Right to life and to an adequate standard of living

1. Peasants (women and men) have the right to physical integrity, to not be harassed, evicted, persecuted, arbitrarily arrested, and killed for defending their rights.
2. Women peasants have the right to be protected from domestic violence(physical, sexual, verbal an psychological)
3. Women have the right to control their own bodies and to reject the use of their bodies for commercial purposes. All forms of human (women and girls) trafficking are inhuman and have to be condemned.
4. Peasants (women and men) have the right to live in dignity.
5. Peasants (women and men) have the right to adequate, healthy, nutritious, and affordable food, and to maintain their traditional food cultures.
6. Peasants (women and men) have the right to the highest attainable standard of physical and mental health. Therefore, they have the right to

have access to health services and medicine, even when they live in remote areas. They also have the right to use and develop traditional medicine.

7. Peasants (women and men) have the right to live a healthy life, and not be affected by the contamination of agrochemicals (such as chemical pesticides and fertilisers that are creating fertility problems and contaminating breast milk).

8. Peasant (women and men) have the right to decide about the number of children they want to have, and about the contraceptive methods they want to use.

9. Peasants (women and men) have the right to the full realization of their sexual and reproductive rights.

10. Peasants (women and men) have the right to safe water, transportation, electricity, communication and leisure.

11. Peasants (women and men) have the right to education and training.

12. Peasants (women and men) have the right to an adequate income to fulfill their basic needs and those of their families.

13. Peasants (women and men) have the right to adequate housing and clothing.

14. Peasants (women and men) have the right to consume their own agricultural production and to use this to satisfy their families' basic needs, and the right to distribute their agriculture production to other people.

15. The right of peasants (women and men) to life and the fulfillment of their basic needs should be protected by the law and by the state, with the assistance and cooperation of others, without discrimination of any kind.

Article IV

Right to land and territory

1. Peasants (women and men) have the right to own land, collectively or individually, for their housing and farming.

2. Peasants (women and men) and their families have the right to toil on their own land, and to produce agricultural products, to rear livestock, to hunt and gather, and to fish in their territories.
3. Peasants (women and men) have the right to toil and own the non-productive state land on which they depend for their livelihood.
4. Peasants(women and men) have the right to safe water and adequate sanitation.
5. Peasants (women and men) have the right to water for irrigation and agricultural production in sustainable production systems controlled by local communities.
6. Peasants (women and men) have the right to manage the water resources in their region.
7. Peasants (women and men) have the right to support, by way of facilities, technology and funds, from the state to manage the water resources.
8. Peasants (women and men) have the right to manage, conserve, and benefit from the forests.
9. Peasants (women and men) have the right to reject all kinds of land acquisition and conversion for economic purpose.
10. Peasants (women and men) have the right to security of tenure and not to be forcibly evicted from their lands and territories.
11. Peasants (women and men) have the right to agricultural land that can be irrigated to ensure food sovereignty for growing population.
12. Peasants (women and men) have the right to benefit from land reform. Latifundia must not be allowed. Land has to fulfill its social function. Land ceilings to land ownership should be introduced whenever necessary in order to ensure an equitable access to land.
13. Peasants (women and men) have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article V

Right to seeds and traditional agricultural knowledge and practice

1. Peasants (women and men) have the right to determine the varieties of the seeds they want to plant.
2. Peasants (women and men) have the right to reject varieties of the plant which they consider to be dangerous economically, ecologically, and culturally.
3. Peasants (women and men) have the right to reject the industrial model of agriculture.
4. Peasants (women and men) have the right to conserve and develop their local knowledge in agriculture, fishing, livestock rearing.
5. Peasants (women and men) have the right to use the agriculture, fishing, livestock rearing facilities.
6. Peasants (women and men) have the right to choose their own products, varieties, amount, quality and the ways of farming, fishing, livestock rearing, individually or collectively.
7. Peasants (women and men) have the right to use their own technology or the technology they choose guided by the principle of protecting human health and environmental conservation.
8. Peasants (women and men) have the right to grow and develop their peasants varieties and to exchange, to give or to sell their seeds
9. Peasants (women and men) have the right to food sovereignty.

Article VI

Right to means of agricultural production

1. Peasants (women and men) have the right to obtain funds from the State to develop agriculture.
2. Peasants (women and men) should have access to credit for their agricultural activity.

3. Peasants (women and men) have the right to obtain the materials and tools for agriculture.
4. Peasants (women and men) have the right to water for irrigation and agricultural production in sustainable production systems controlled by local communities.
5. Peasants (women and men) have the right to transportation, drying, and storage facilities in marketing their products.
6. Peasants (women and men) have the right to be actively involved in planning, formulating, and deciding on the budget for national and local agriculture.

Article VII

Right to information and agriculture technology

1. Peasants (women and men) have the right to obtain impartial and balanced information about capital, market, policies, prices, technology, etc, related to peasants' needs
2. Peasants (women and men) have the right to obtain information about national and international policies.
3. Peasants (women and men) have the right to obtain technical assistance, production tools and other appropriate technology to increase their productivity, in ways that respect their social, cultural and ethical values.
4. Peasants (women and men) have the right to full and impartial information about goods and services, and to decide what and how they want to produce and consume.
5. Peasants (women and men) have the right to obtain adequate information at the national and international levels on the preservation of genetic resources.

Article VIII

Freedom to determine price and market for agricultural production

1. Peasants (women and men) have the right to prioritize their agricultural production for their families and societies' needs
2. Peasants (women and men) have the right to store their production to ensure the satisfaction of their basic needs and those of their families.
3. Peasants (women and men) have the right to foster traditional local markets.
4. Peasants (women and men) have the right to get beneficial price for their production.
5. Peasants (women and men) have the right to determine the price, individually or collectively.
6. Peasants (women and men) have the right to get a fair payment for their work, to fulfill their basic needs and those of their families.
7. Peasants (women and men) have the right to get a fair price for their production.
8. Peasants (women and men) have the right to a fair system of evaluation of the quality of their product, nationally and/or internationally.
9. Peasants (women and men) have the right to develop community-based commercialization systems in order to guarantee food sovereignty.

Article IX

Right to the protection of agriculture values

1. Peasants (women and men) have the right to the recognition and protection of their culture and local agriculture values.
2. Peasants (women and men) have the right to develop and preserve local knowledge in agriculture.
3. Peasants (women and men) have the right to reject interventions that can destroy local agricultural values.

4. Peasants (women and men) have the right to be respected for their spirituality as individuals and as peoples.

Article X

Right to biological diversity

1. Peasants (women and men) have the right to the protection and preservation of biological diversity.
2. Peasants (women and men) have the right to plant, develop and conserve biological diversity, individually or collectively.
3. Peasants (women and men) have the right to reject patents threatening biological diversity, including on plants, food and medicine.
4. Peasants (women and men) have the right to reject intellectual property rights of goods, services, resources and knowledge that are owned, maintained, discovered, developed or produced by the local community. They can not be forced to implement those intellectual property rights (sic).
5. Peasants (women and men), individually or collectively, have the right to maintain, exchange, and preserve genetic and biological diversity as the richness of resources from the local community and the indigenous community.
6. Peasants (women and men) have the right to reject certification mechanisms established by transnational corporations. Local guarantee schemes run by peasants' organizations with government support should be promoted and protected.

Article XI

Right to preserve the environment

1. Peasants (women and men) have the right to a clean and healthy environment.
2. Peasants (women and men) have the right to preserve the environment according to their knowledge.

3. Peasants (women and men) have the right to reject all forms of exploitation which cause environmental damage.
4. Peasants (women and men) have the right to sue and claim compensation for environmental damage.
5. Peasants (women and men) have the right to reparation for ecological debt and the historic and current dispossession of their territories.

Article XII

Freedoms of association, opinion and expression

1. Peasants (women and men) have the right to freedom of association with others, and to express their opinion, in accordance with traditions and culture, including through claims, petitions, and mobilizations, at the local, regional, national and international levels.
2. Peasants (women and men) have the right to form and join independent peasants' organizations, trade unions, cooperatives, or any other organizations or associations, for the protection of their interests.
3. Peasants (women and men), individually or collectively, have the right to expression in their local customs, languages, local culture, religions, cultural literature and local art.
4. Peasants (women and men) have the right not to be criminalized for their claims and struggles.
5. Peasants (women and men) have to right to resist oppression and to resort to peaceful direct action in order to protect their rights

Article XIII

Right to have access to justice

1. Peasants (women and men) have the right to effective remedies in case of violations of their rights. They have the right to a fair justice system, to have effective and non-discriminatory access to courts and to have legal aid.

2. Peasants (women and men) have the right not to be criminalized for their claims and struggles.

3. Peasants (women and men) have the right to be informed and to legal assistance.

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The Human Rights Council (HRC) can enact and proclaim global human rights standards. To date the impact of local communities on such international standard-setting remains unclear. This study maps the existing channels through which local communities gain access to the HRC's mechanisms and investigates whether such "input from below" has been taken up by the HRC. As a case study the research studies the trajectory of the network of organizations that have lobbied for a Declaration on the Rights of Peasants at the HRC.

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