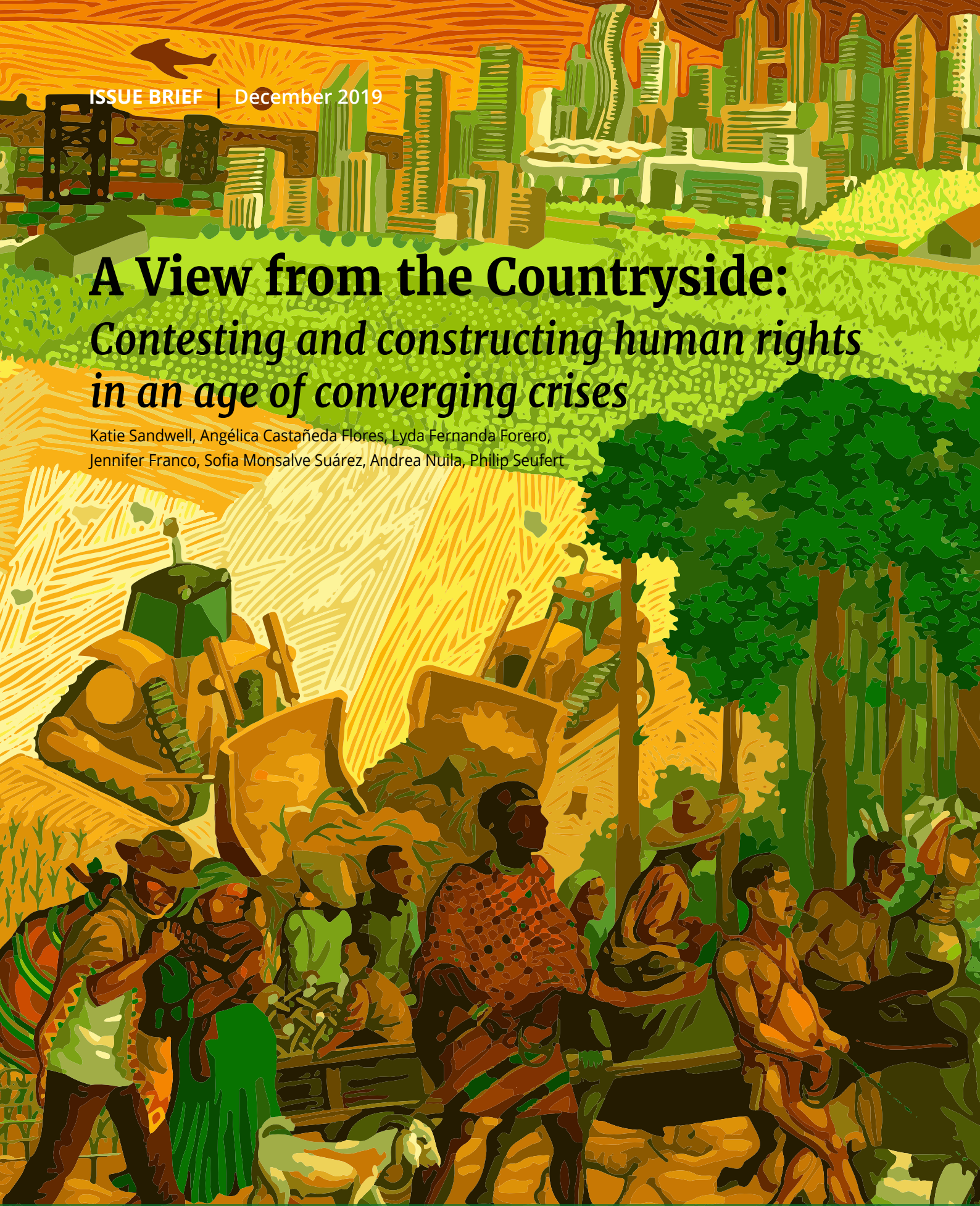


# A View from the Countryside: Contesting and constructing human rights in an age of converging crises

Katie Sandwell, Angélica Castañeda Flores, Lyda Fernanda Forero,  
Jennifer Franco, Sofia Monsalve Suárez, Andrea Nuila, Philip Seufert



Authors: Katie Sandwell, Angélica Castañeda Flores, Lyda Fernanda Forero, Jennifer Franco, Sofia Monsalve Suárez, Andrea Nuila, Philip Seufert

Cover: "Pangamkam" (Landgrab) by Federico boyD Dominguez. Image previously used by the Journal of Peasant Studies.

Design: Bas Coenegracht

Acknowledgements: The authors would like to thank Saturnino M. Borrás and Tchenna Maso for their extremely helpful comments, feedback, and guidance on this piece. We would also like to thank Donna Hornby and Carolijn Terwindt for several illuminating conversations on these topics. Finally, the authors would like to extend special thanks to all of the participants in the Emancipatory Rural Politics Initiative Human Rights Group meeting of December 2018 for their important role in shaping these ideas. Any remaining errors are entirely the responsibility of the authors.

Contents of the report may be quoted or reproduced for non-commercial purposes, provided that the source of information is properly cited. TNI would appreciate receiving a copy or link of the text in which this document is used or cited. Please note that for some images the copyright may lie elsewhere and copyright conditions of those images should be based on the copyright terms of the original source. <http://www.tni.org/> copyright

December 2019

# Abstract

In the face of the interlinked global financial and climate crisis, there is an urgent need to understand and use human rights frameworks in radical ways. Climate change itself poses massive threats to human rights, but so too do mainstream technical and economic climate ‘solutions’, and rising authoritarian voices and movements around the world. The battle for resources and territories, including land, water, fisheries, and forests is becoming increasingly intense, with land-intensive renewable energy projects and the drive to marketise carbon and biodiversity posing a paradoxical additional threat to nature and to the livelihoods of rural and indigenous people around the world.

At the same time, harsh political experience with actors who deploy human rights language in self-serving ways has left many marginalised groups understandably critical of the concept. Some actors have come to see human rights as a captured discourse, as likely to serve as a mechanism for displacing them as to protect their homes, territories, and communities. Many of the contradictions around human rights are particularly intense in rural areas, giving rise to criticisms that the language and mechanisms of human rights are fundamentally elite and urban-biased.

However, although there are many valid criticisms of human rights and of the political uses to which they have been put in the last 70 years, rejection is far from the only response. Many actors are also using the language, mechanisms, and instruments of human rights in new ways, pointing the way towards more radical visions and possibilities which are more able to respond to their struggles. We will explore a few of the main critiques of human rights in some detail and suggest two ways in which the distinctive experiences of rural people might help to cast light on the weaknesses of mainstream human rights frameworks, while pointing the way towards more radical visions. Finally, we will end by looking at two new international human rights mechanisms with special impacts for rural communities, and exploring how people’s uses of these may point in the direction of a re-grounded, revitalised, and re-radicalized vision of human rights.

Introduction	4
Some critiques of human rights	6
How do human rights connect to political action?	6
What do human rights have to say about power?	8
Are human rights in conflict with cultural traditions?	9
A more radical conception is possible	11
A view from the countryside	12
Some features of the countryside	13
1. Land and resource based livelihoods	13
2. Uneven state penetration & lack of access to courts	15
Envisioning rural rights	17
1. Rights to resources	17
2. Rights outside the state?	18
How are rural actors leading the way in reclaiming human rights?	19
Rights against capitalism: the UN Declaration on the Rights of Peasants	19
Rights-based resource governance: the Tenure Guidelines	23
Conclusion: re-grounding rights?	25

## Introduction

As the threats of climate change become increasingly clear, there is a growing rush to answer these challenges with market-based solutions. A range of mechanisms have been proposed and implemented to tackle rising global greenhouse gas (GHG) emissions. Instruments like REDD++<sup>1</sup>, the International Partnership for Blue Carbon<sup>2</sup>, and the EU Emissions Trading Scheme (EU ETS)<sup>3</sup> aim to reduce net global GHG emissions. However, these tools have rested on the creation of new commodities (in the form of carbon credits) and markets (for trade in carbon credits and other environmental offsets), or on the creation of different kinds of financial incentives for governments or private companies to ‘protect’ and ‘restore’ ecosystems.

*“A political assessment of both the risks and the possibilities associated with human rights language and institutions is more critical than ever”*

Too often these solutions, where they have been deployed, have undermined the lives and livelihoods of rural working people, relied on the destruction of rural and indigenous territories, and cut rural people off from the resources<sup>4</sup> on which they depend for their physical and cultural survival.<sup>5</sup> Many of the world’s poor – who are still overwhelmingly rural<sup>6</sup> – therefore face a double threat: from climate change itself and the increasingly extreme weather events associated with it, and from officially sanctioned ‘solutions’ to the climate crisis. These solutions treat them as expendable populations and their homes and territories either as sacrifice zones,<sup>7</sup> subject to degradation by large-scale infrastructure projects, or as ‘conservation’ zones, whose existence is premised on excluding the current inhabitants.<sup>8</sup> Major resource and conservation projects of all kinds, from hydro-electric dams, to biofuel plantations, to conservation and carbon sequestration projects, can pose clear and present threats to rural working people.<sup>9,10</sup> A deepening trend towards ‘resolving’ conflicts over resources through mechanisms such as consultation, corporate social responsibility, and multi-stakeholder mechanisms, which are ill-equipped to address the power imbalances embedded in these situations, has in many cases served to further deepen inequalities, consolidate power, and facilitate dispossession.<sup>11</sup>

At the same time, increasing global inequality, linked especially to the global financial crisis, has been implicated in the rise of authoritarian populist<sup>12</sup> or right-wing populist<sup>13</sup> regimes around the world. In some cases leaders have drawn important support from marginalised and exploited rural areas by promising to redress injustices and exclusions.<sup>14</sup> These regimes, however, are frequently hostile to human rights, especially civil and political rights. Although they often offer rhetoric in support of marginalised rural communities, and have in some cases implemented social and economic programmes that offer material support to these areas, they may also pose new threats and challenges to those who oppose them, including human rights and territorial defenders and environmental activists.<sup>15</sup> Many of these regimes are engaged in systematic attempts to discredit and dismantle existing human rights language, institutions, and instruments which might provide critical protections to people in their countries.<sup>16</sup>

In this context, a political assessment of both the risks and the possibilities associated with human rights language and institutions is more critical than ever. As scholars, activist-scholars, and activists within social movements struggle to make sense of the current political moment and the ambivalence of some key actors within emancipatory rural social movements about human rights, a number of explanations have been proposed. As Borras has noted, there are certain uncomfortable parallels between right-wing populist movements and progressive, leftist, or agrarian movements: both



right-wing populist mass movements and agrarian movements share a profound frustration based on histories of dispossession, and a current moment characterised by deepening social, economic, and environmental crisis.<sup>17</sup> In this context frustration may be directed towards the state or the establishment for failing to protect (rural) communities from dispossession and violence carried out in the name of ‘modernisation,’ ‘development’ and, more recently, ‘sustainability’. This frustration can also encompass the human rights regime, which most states and international actors claim to be bound by and acting in accordance with. Whatever else it may be, the international human rights regime has been a part of the emerging global governance system which seems to have left so many people behind.

Development programmes which use human rights language but focus primarily on individual property rights have been criticised for facilitating dispossession,<sup>18</sup> while specific interpretations of other rights and freedoms have come into conflict with local traditions and practices, leading some to see human rights as a colonial imposition, leading to the loss of traditional social orders.<sup>19</sup> Others argue that the mechanisms of international human rights law are fundamentally linked to the forces of global capitalist exploitation.<sup>20</sup> Activists and organisers within some rural social movements therefore see human rights instruments and institutions as, at best, elite spaces that they struggle to access or benefit from because of the resources required.<sup>21</sup> At worst, these can be seen as a tool for oppressing communities, undermining cultural values, legitimating violence and dispossession, reinforcing neo-colonial power, and clearing the way for corporate profits.

However, this interpretation is far from unanimous. Human rights language and instruments can also be critical tools for marginalised communities. Activists have used human rights language and instruments to win important victories, mobilise international solidarity, protect communities and territorial defenders against abuses, reduce violence in conflicts over rights, and shape public discussions about entitlements. Many activists in rural communities have worked to seize human rights language and instruments, re-grounding them in their own experience and re-shaping the institutions and understandings of international human rights in order to support their struggles.<sup>22</sup> Within rural social movements many actors argue that human rights instruments, while imperfect, constitute one critical alternative to a global legal order that is otherwise geared towards facilitating corporate profit through the trade and investment regime,<sup>23</sup> and offer an opportunity for transforming discussions about the allocation of resources at the local, national, and international level.

In March 2018, critical scholars, activists, and activist scholars participating in the Emancipatory Rural Politics Initiative met in The Hague to discuss some issues related to these tensions.<sup>24</sup> The new network’s first conference - Authoritarian Populism and the Rural World - explored questions about the rise of authoritarian populism, and focused particularly on the social and political processes in the rural world that are giving rise to alternatives to both nationalistic and neo-liberal authoritarianisms. Participants noted that discussions of human rights – both critiques and explorations of its emancipatory potential – were comparatively absent from these initial conversations. In order to explore the relationships between human rights, authoritarianism, and resistance more deeply, the network organised a workshop of rural-focused scholars and activists in Amsterdam in December 2018. The three-day meeting generated deep critiques of human rights, some of which will be developed in the following sections, but also concluded with a strong conviction of the radical possibilities of human rights, and the urgent

*“Many activists in rural communities have worked to seize human rights language and instruments, re-grounding them in their own experience [...] to support their struggles.”*

need to reclaim this powerful language for progressive and emancipatory purposes, re-ground it in the lived experience of rural activists, and reimagine it as a tool for struggle.

This paper aims to explore and build on some of the insights arising from discussions in the context of the ERPI Human Rights Group meeting. In the sections that follow we will briefly elaborate a few of the major critiques of human rights, pointing to some of the critical issues facing mainstream human rights today, and briefly proposing an alternative framework for understanding human rights work. We will then explore how and whether taking an explicitly rural-focused view might be a fruitful tool for deepening discussion about human rights. What can 'a view from the countryside' show us about the weaknesses and omissions of contemporary mainstream human rights framings, and how does this same view help to reveal potential radical alternatives within human rights discourse and practice? We will end with two short examples of how rural movements are reclaiming human rights language.

## Some critiques of human rights

*“Human rights are, have always been, and likely always will be contentious – they are continually being interpreted, disputed, and transformed.”*

In the past 70 years, since the proclamation of the Universal Declaration of Human Rights in 1948, human rights language has played an important role in shaping the way that we think and talk about the duties that states owe their citizens. Human rights are distinctive because of their universality: a human right differs from other kinds of rights in that it is inherent to human beings simply in virtue of their being human, and without discrimination in relation to characteristics like nationality, sex, race, or religion. A series of international treaties have established the beginning of a consensus about existing rights, and the obligations of states in relation to them. The Universal Declaration of Human Rights (UDHR), The International Covenant on Economic, Social, and Cultural Rights (ICESR), and the International Covenant on Civil and Political Rights (ICCPR) have been particularly foundational. While the term 'human rights' technically refers to the rights enshrined in these and other conventions, these are not exhaustive – the international human rights system is continuing to evolve, and can be understood as a 'work in progress'.<sup>25</sup>

Human rights are, have always been, and likely always will be contentious - they are continually being interpreted, disputed, and transformed. Major critiques arise from both sides: from those struggling to implement human rights more deeply and authentically, taking seriously their implications for justice and redistribution, and also from those who, perhaps equally mindful of those consequences, seek to limit or undermine the potential of human rights. It is beyond the scope of this paper to explore all, or even most, of the current critiques of human rights in depth. However, understanding some of the criticisms of how and why human rights have failed marginalised communities will be critical to understanding how we might reconstruct and defend a more radical vision of human rights. We will therefore very briefly introduce three broad and interrelated concerns about human rights which may have special resonance for progressive movements and rural struggles.

### How do human rights connect to political action?

Some activists and militants within social movements, as well as activist scholars and engaged academics, have argued that the pursuit of human rights claims, especially through legal mechanisms, is not an effective strategy for social change. Legal battles can be time consuming and expensive, requiring resources that communities may

not have. Furthermore, granting a right 'on paper' does not automatically lead to any change in reality. A focus on legal, rather than substantive, gains can lead people to expend a huge amount of energy without any material improvement in their circumstances, and can take energy away from other strategies.

Struggles at the international level can be especially fraught. A political recognition of a fundamental human right at the international level does not necessarily guarantee victory in any particular struggle on the ground. Even human rights that are clearly and decisively recognised at the international level must then be incorporated into domestic laws and instruments, like charters or constitutions, by the national governments who are ultimately responsible for respecting and protecting them. Governments must, further, determine how a commitment to protecting and respecting a recognised human right will translate substantive entitlements: the right to food, for instance, can be satisfied in a wide range of different ways. Even after a specific right (like an individual right to access social security, food aid, or welfare payments under certain circumstances) is recognised at the national level, this must then be implemented through a variety of instruments and institutions, with conflict resolution processes to settle disputed cases. None of these steps are automatic, and a failure, from the perspective of marginalised communities, can occur at any stage.

Often the work of claiming a right involves navigating complex networks of formal and informal institutions, social networks, etc. where existing power relations can play a major role. Particularly in contentious cases, for example when one part of a community is trying to enforce their rights against a perceived abuse by other community members, a range of economic, gendered, generational, racial, and other power imbalances will influence how a rights claim is interpreted or realised.<sup>26</sup> A great many separate power struggles may be involved in trying to get a specific right – to water, to land, to food, to health – recognised in a meaningful way at the local level.

Governments may be either unable – due to lack of effective control over parts of their territory, or due to lack of resources – or unwilling – due to corruption or internal power struggles – to intervene to ensure the realisation of rights in practice. Where urgent action is required, for example to address climate-related emergencies, governments may defend decisions that 'place the needs of the many before the needs of the few' by forcing already-marginalised communities to shoulder disproportionate costs. Forcing a government to recognise, let alone defend or enforce, rights for these communities can be a long struggle. Success is rarely quick, and never guaranteed.

Given the great distance between international or national acknowledgement of a principled (human) right and the resolution of a particular local struggle, communities may conclude that their energy is better spent in mobilising and organising directly around a more tangible goal. In the words of Chidi Anselm Odinkalu:

...people are acutely aware of the injustices inflicted upon them. Knowledge of the contents of the Universal Declaration will hardly advance their condition. What they need is a movement that channels these frustrations into articulate demands that evoke responses from the political process. This the human rights movement is unwilling or unable to provide. In consequence, the real life struggles for social justice are waged despite human rights groups—not by or because of them.<sup>27</sup>

Whether by a conscious decision or not, communities may turn away from rights-based advocacy. They may fight for specific political ends using non-rights-based language, or may undertake different kinds of actions to directly seize resources or demand entitlements without reference to rights. Given the reality of limited time and resources, human rights language and mechanisms may seem to offer a dangerous distraction to movements, diverting energy away from direct demands and towards a struggle which may never yield tangible outcomes.

## What do human rights have to say about power?

Particularly in subaltern countries of the global South, ostensibly human rights-based 'development' work has been critiqued for neo-colonialism, or a tendency to re-instate or re-entrench global geopolitical power imbalances between historic central or colonising states and their one-time peripheries or colonies. At the international level, human rights arguments have been used to advance the political agendas of powerful states, which seemingly commit human rights violations with impunity, while justifying interference in other sovereign states on human rights grounds.<sup>28</sup>

At the domestic level, development agencies and powerful governments have implemented human rights selectively, often prioritising rights to due process, democracy, private property, etc., over social and cultural rights, and sometimes using human rights frameworks to oppose redistributive efforts and liberation struggles. Human rights language and instruments are often not used in service of social justice.<sup>29</sup> Thus, human rights discourse and institutions may be counter-productive, serving to protect and legitimate power structures that they should be dismantling.

Critics of mainstream human rights organisations and discourse have argued, further, that conventional human rights practices are legalistic and state focused. Discussing the case of human rights commissions in the wake of mass political violence in Sri Lanka, V. Nesiiah and A. Keenan argue that a focus on the state as the ultimate enforcer of all rights claims can have the effect of:

... domesticat[ing] more complex (and potentially more radical) demands on the social structure into claims that have to be mediated through individual rights claims. This further entrenches the power of the state by making state-citizen relationships penetrate and assimilate or transform all political claims.<sup>30</sup>

At the same time, the focus on legal violations and 'exceptional' abuses can obscure the structural and systemic drivers of human rights abuses, naturalising structural violence and deprivation, and making acts of overt state violence appear discontinuous from and unrelated to, for example, economic policies to which they are intimately related.<sup>31</sup> In this way, human rights violations are conceived as malfunctions in the existing global order, which can be fixed by appropriate adjustments, or the better implementation of existing rules. A radical vision of human rights, on the other hand, would pose the questions of when and whether abuses are, in fact, the product of an existing system functioning as intended, and how the system can be transformed to prevent them.

This radical conception has been, to some extent, undermined by a commitment to 'neutrality' and 'impartiality' in human rights organisations and instruments. This tendency emerged partially out of the Cold War crisis of legitimacy and the need to enshrine human rights as 'beyond' or 'outside' political struggles, but has made it difficult



for mainstream human rights organisations to grapple with inherently political questions of distribution and justice.<sup>32</sup> This commitment to a neutral, individual, apolitical model of human rights has led to many kinds of violence and injustice being excluded from the domain of human rights. In this way, structural violence can be legitimated by being made ordinary or placed outside the realm of 'exceptional' abuses.<sup>33</sup>

The interests of international funders and the urban elites involved in much formal human rights work have further perpetuated a model of human rights which embraces a narrow liberal vision of the self, and obscures questions of distributive justice.<sup>34</sup> In this way, the protections afforded by human rights are whittled down to a minimum, and complex questions of accountability, social justice and redistribution are excluded from the discussion.

*“A radicalised vision of human rights which grapples with questions of power and justice, could be a critical tool for both political action and self-reflection within movements for social change.”*

Advocates often envision human rights as tools to support the most powerless and marginalised, to guarantee at least minimal protections for the 'weak' against the 'strong'. However, many marginalised groups find the tools inadequate for this purpose, and have seen them co-opted by more powerful actors in order to facilitate oppression. A liberal-individual model of human rights, which identifies human rights abuses or violations as aberrations abstracted from broader contexts of structural violence, which locates all authority and power for the protection of human rights at the level of the state, which is blind to local contexts and circumstances, and which avoids questions of social justice, democratisation, and redistribution will continue to fail the most marginalised. For as long as this remains the dominant vision of human rights, the concepts and language of human rights will fail to resonate in communities and movements involved in struggles for substantive redistribution, social justice, and changes to the distribution of power. A radicalised vision of human rights which grapples with questions of power and justice, however, could be a critical tool for both political action and self-reflection within movements for social change.

## Are human rights in conflict with cultural traditions?

Finally, critics have argued that human rights language and institutions have been deployed in ways that do real violence to traditional customary systems and other existing social structures, clearing the path for neo-liberal development and leaving communities less able to defend themselves against elite interests. Governments, NGOs, development organisations, and inter-governmental bodies interpret human rights through their practices and programmes as well as through laws and jurisprudence. These interpretations have often prioritised the rights of individuals over collective rights. While international instruments do recognise the importance of collective and community rights in certain contexts, and especially with reference to the rights of indigenous people's,<sup>35</sup> this recognition has been comparatively recent<sup>36</sup> and is not fully implemented in many settings. In discussing the use of rights claims by small-scale fishers, for example, Sunde and Chandrika note:

In particular, the prior existence of local institutions and systems through which entitlements to use resources are obtained, is not always adequately addressed in statutes that tend to emphasize the individual rights of citizens. Some of these gaps have been addressed to a limited extent by the acceptance of human rights instruments that protect the rights of indigenous people. However, these dimensions are yet to be integrated in the national frameworks of many countries.<sup>37</sup>

This issue has been widely documented in relation to land. The right to food and the right to an adequate standard of living for small scale farmers and other groups are recognised to be closely related to access to land,<sup>38</sup> and attempts to guarantee these rights have often been carried out by imposing a particular model of land and property rights. Large-scale titling efforts have been undertaken with the support of international aid organisations and with the goal or effect of replacing traditional and customary systems with private, formal, transferable titles to land.<sup>39</sup> This was often premised on the idea that existing tenure arrangements were inefficient, insecure, chaotic, confusing,<sup>40</sup> or standing in the way of economic development.<sup>41</sup> 'Legibility,' either to the relevant government bodies<sup>42</sup> or to foreign investors<sup>43</sup> has often been prioritised in policy-making, and the functions and benefits of traditional tenure arrangements in communities ignored.

This experience has been echoed in a wide variety of contexts, and has helped to give rise to a perception that human rights have been imposed in ways that are top-down and culturally inappropriate. As Sunde and Chandrika elaborate in their discussion of fishers' rights, these types of interventions often obscure the distinction between property rights and human rights. While protecting property rights, whether individual or collective, may be one way of protecting people's human rights, it is rarely sufficient for the full realisation of these rights.<sup>44</sup>

While critiques of the focus on formal, private, and individual rights, particularly to land, have been taken on board in the development of newer instruments like the Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (TGs), the Small Scale Fisheries Guidelines (SSFs) and the recent UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), it takes time for these new (and voluntary) instruments to impact domestic laws, policies, and practices. At the same time, there are still significant voices within international development advocating for the superiority of private, individual, formal land titling as a means for guaranteeing people's access to land and thereby their associated human rights.<sup>45</sup> Communities who witnessed the damage done by context-blind policies implemented on the basis of human rights justifications have good reason to be suspicious of human rights frameworks.

*“Human rights claims do not appear in a vacuum: they arise in, influence, interact with, and are interpreted and made effective within local contexts and existing power relationships.”*

Furthermore, some critics fear that the tension between human rights and community values may be more fundamental. Because human rights are premised on the basic equality of individuals, they are sometimes interpreted as implying the primacy of a certain kind of individual subject, who exists prior to and independent of their social, communal, and familial relationships. This model of individualism is often associated with liberalism and is contrasted with traditions that see individuals as fundamentally embedded within existing social and metaphysical structures. In discussing rural backlash against redistributive reforms in KwaZulu-Natal, Haynes and Hickel argue that many believe 'By equalizing individuals across boundaries of gender and generation, liberalism dismantles kinship hierarchies and reduces the world to a state of sterile sameness that opens the door to serious misfortunes.'<sup>46</sup>

This critique is sometimes presented in terms of the colonial, Western, or otherwise historically contingent content of human rights which claims to be universal. Stammers summarises: 'the reification of initial liberal formulations of natural rights as supposedly universal, timeless truths only serves to obscure their particular historical origin in the western liberal tradition...'.<sup>47</sup> The international human rights regime, and human rights advocates around the world, have arguably worked to address this

criticism with an increasing focus on indigenous and community rights, and a more nuanced understanding of the role of individual rights. Nonetheless, human rights language is still employed to advance liberal, and indeed neo-liberal, agendas. Individualistic visions of civil and political rights continue to play an important role in shaping mainstream human rights discourses, practices, instruments, and institutions.

At the same time, though, this critique can also point to the radical potential of human rights, including civil and political rights. Human rights claims do not appear in a vacuum: they arise in, influence, interact with, and are interpreted and made effective within local contexts and existing power relationships. Where human rights are used as a tool by marginalised or disenfranchised groups in order to challenge existing power structures and defend their own rights against historical injustices, they may be *accurately* perceived as hostile to or disruptive of the existing social order. In this context, their challenge to existing relationships and power structures can be revealed as a strength rather than a weakness.

### A more radical conception is possible

*“Some ways of conceptualising, using and articulating human rights have failed to realise their radical potential.”*

Deep and serious criticisms of human rights have been advanced. But, as most of the authors cited above are careful to note, the conception of human rights being critiqued here is not exhaustive. More radical understandings are possible, which may be equipped to respond to these critiques of what Nesiah and Keenan call the ‘Dominant Human Rights Framework’<sup>48</sup> and what Odinkalu characterises as ‘human rights institutions, which, as organizations of human beings, are necessarily imperfect.’<sup>49</sup> The problem is not that ideas of justice and human dignity are alien, outdated, or obsolete. Rather it is that some ways of conceptualising, using and articulating human rights have failed to realise, or have actively undermined, their radical potential.

This is, not least, because human rights language and institutions are not only a tool but a terrain for struggle. Powerful actors including local and global elites stand to benefit from a narrower conception of human rights, which is compatible with neo-liberal capitalism. These actors have used legal, economic, procedural, and juridical means with varying degrees of success to advance just such a vision of human rights and embed it in the structures and mechanisms of international human rights law, as well as in widely used human rights language.

However, this effort has not been unopposed. Powerful grassroots movements around the world are also struggling for more radical conceptions of human rights, and they have had important successes at the local, regional, and international level. Human rights are constituted in struggles and they can, at different moments and in different hands, serve to either undermine or legitimate the existing distribution of power and resources.<sup>50</sup> In the words of Lorenzo Cotula, rights-claiming can be fruitfully understood as a ‘practice of contestation’.<sup>51</sup> By refusing to give up the concepts and institutions of human rights as a space for struggle, social movements, many of them rural, are fighting to advance a vision of human rights which:

- Insists on the basic equality and humanity of all people;
- Asserts the foundational importance of human beings over economics, and challenges us to shape our economies around human beings rather than the reverse;
- Raises questions about the roles and significance of non-humans, including the significance of territories and natural systems;

*“Powerful grassroots movements around the world are struggling for more radical conceptions of human rights”*

- Suggests that we as a society have a basic obligation to protect all other human beings in critical ways, insisting that suffering and inequality not be naturalised as ‘misfortunes’ but problematised as systemic injustices;
- Defines limits on what we can do to the few in the name of the many, providing a needed counterpoint to utilitarian economic and climate solutions;
- Grounds these discussions in local communities and norms, exploring non-legal and non-statist ideas of justice and emancipation;
- Takes seriously the substantive challenges that such a framework poses to ‘business as usual,’ including and especially in the face of the dramatic changes likely to be necessary to address the global climate crisis.

Such a re-conception is not only valuable in struggles against powerful actors external to movements. Radical, progressive, and justice-oriented movements have, in many historical political contexts, ended by committing human rights abuses against their opponents or, at times, their supporters. A re-grounded vision of human rights could play a critical role within movements, prompting deep and careful discussion about under what circumstances and to what extent an individual’s interests or freedoms can be sacrificed for a political goal.<sup>52</sup>

While not immune from criticism, these emerging views of human rights may constitute an important response to the critiques raised above. They illustrate the possible advantages of continuing to struggle for a renewed and re-grounded conception of human rights rather than abandoning it as a captured, statist, or neo-liberal discourse, or as fundamentally secondary to struggles for justice and redistribution. A full elaboration and defence of the multiple, diverse conceptions of human rights arising in the context of social movements and being employed by activists around the world is far beyond the scope of this paper. However, we would like to briefly explore two ways in which agrarian social movements may have particular insights to offer this re-conceptualisation effort, grounded in the particular experiences of rural spaces under the conditions of 21<sup>st</sup> century global capitalism.

## A View from the countryside

Alternative and radical understandings of human rights are not the exclusive purview of the countryside. Human rights are being put to radical uses in urban areas around the world, notably by slum and shack dwellers’ movements, sex workers’ and domestic workers’ unions, and other subaltern groups struggling for the recognition of their human rights. Nonetheless, we would like to pose the question of whether there are aspects of rural space and the rural experience which help to cast light on both the weaknesses of the so-called dominant human rights framework, and the possibilities for a more radical and progressive construction of human rights. Are there aspects of rural spaces and the life experiences of rural working people that create unusually fertile ground for rethinking human rights?

Scholars of rural and peasant studies have documented a range of different ways in which peasants, indigenous people’s, and other rural working people and communities are using human rights. Movements of indigenous people’s and rural working people have struggled for the creation of major new human rights instruments like The ILO Convention 169, the UN Declaration of the Rights of

Indigenous People's (UNDRIP), and the UN Convention on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), which have challenged the way that the international human rights system conceives human rights. What do these kinds of challenges owe to their rural heritage, and does taking rural experiences seriously point the way towards further tools for the creation of a more radical vision of human rights?

Before exploring these questions it is important to note that rural spaces are neither *homogeneous* nor *uniform*. Rural spaces are not homogeneous in the sense that within any given rural space there are a range of different experiences, all with equal claims to being 'characteristically rural'. As in urban spaces, there are critical differences in rural people's experiences on the basis of class, race, gender, generation, ethnicity, religion, and other forms of diversity. This social differentiation is fundamental to rural space, and awareness of it is critical to understanding conflicts, including conflicts over resources and rights. This diversity must be foregrounded from the outset. Recognising the range of different rural experiences, and the inequalities of power and privilege within rural spaces, will be critical to making sense of conflicts about human rights in the rural world, and to identifying the kinds of questions that must be asked in order to formulate a radical and re-grounded notion of human rights.

At the same time rural spaces are not uniform: there is not one kind of rural space. Different countrysides are shaped by historical, natural, geographic, ecological, and cultural factors which give them tremendously different characters. Globally, 'the rural' is at least as diverse and distinct as 'the urban' - arguably more so. Furthermore, rural and urban spaces interpenetrate, with flexible and shifting boundaries, deep and complex linkages, and regular migration between them.

*“Are there aspects of rural spaces and the life experiences of rural working people that create unusually fertile ground for rethinking human rights?”*

Yet, we argue, there is enduring analytical value in the distinction between rural and urban, also in discussing human rights. Rural communities, very generally and without pretending to an exhaustive definition, can be characterised by a higher degree of dependence on land-based resources than their urban counterparts, a potential for different cultural and social relationships with land, and a general trend towards less uniform state penetration, or more limited access to state and judicial infrastructure. These are tendencies, not absolute, and the way in which these factors are experienced, valued, and understood will vary dramatically based on the position, characteristics, and power of the person experiencing them. Nonetheless we wish to suggest that these characteristics may, across the board, have an impact on the ways in which human rights are viewed, understood, and used. Further, we hope that exploring these factors may help us to see more clearly the political choices involved in certain interpretations and deployments of the human rights frameworks, and the political possibilities of re-grounded human rights.

## Some features of the countryside

### 1. Land and resource based livelihoods

Compared to urban dwellers, rural people's livelihoods are far more likely to depend directly on land, territories and land-based resources, including fisheries and forests. Where people engage in paid work, this is often in sectors linked to resource use or extraction (extractive industries, fisheries, forestry, agriculture, tourism). In comparison with the manufacturing and knowledge work that typically characterises urban economies, these occupations depend directly on the local availability of resources. At the same time, the concept of 'resources' itself may be contested in these



communities: many rural and indigenous people's have deep relationships with the land, oceans, waters, and forests which are understood as territories or landscapes charged with meaning and significance and enmeshed in meaningful relationships with human beings. These are not merely 'resources' passively waiting to be extracted but are construed as cultural and spiritual spaces or entities, which play a critical role in cultural survival, religious traditions, and the creation of meaning.

In addition to being more directly dependent on resources and territories, many people in rural areas are involved in some uses of resources which are outside of formal capitalist markets. This is not to suggest that rural people are engaged solely or primarily in subsistence production, that they are independent of markets, or that they do not sell their labour. However many rural people including peasants, indigenous people, pastoralists and small-scale fishers, depend for some portion of their livelihood on unenclosed resources like forest products, shoreline resources, or plants harvested from common areas. Critically, this does not mean that these resources are unmanaged or unregulated: in many instances these resources are regulated through customary systems of ownership, use, and management which have very often been ignored, underestimated, or dismissed by state elites. The significance of traditional systems of governing both resources and markets will be discussed further below.

Own-provisioning, reliance on traditional and bottom-up resource governance, and engagement with local and traditional markets that do not fit the ideal of a formal capitalist market are not *unique* to rural areas and these may be especially important in the slums and shanty-towns that make up a growing proportion of the urban world.<sup>53</sup> However, these processes are important in rural spaces, and they tend to be less central features of urban life, especially in the cities of the global North. These distinctive features of the agrarian political economy potentially impact the way that human rights are experienced and used in these spaces. Insofar as human rights have been shaped by their origins in urban spaces, they may fail to capture or address some critical elements of the rural experience, and fail to respond to some of the struggles and conflicts that emerge in these spaces. Even if we are sceptical about the degree to which human rights emerge from, and are shaped by their origins in, the context of urban wage labour and capitalist markets, the fundamental role of access to resources in rural livelihoods, and the increasing pressure on these resources globally, creates a unique set of urgent challenges for rural communities which should shape their use and interpretation of human rights.

Regarding the political economy of rural spaces, rural working people's reliance on wage-labour has also historically been different from in urban spaces. Jan Douwe van der Ploeg, in discussing 'the peasant condition' describes features including 'minimizing monetary costs, [...] cooperative relations that provide an alternative to monetary relations and market exchange, and a struggle for autonomy, which includes non-money forms of obtaining inputs and labor.'<sup>54</sup> Interestingly, the patterns of seasonal, precarious, and informal labour that are traditionally associated with rural labour markets are increasingly also features of urban life<sup>55</sup> suggesting that insights gleaned from this context might have much broader relevance in coming years.

As mentioned above, human rights historically proceeded from a vision of an individual who is prior to relationships with family, community, and landscape. Rural people often articulate their identities in connection with their landscapes and livelihoods. For instance, Sunde and Chandrika cite the case of a South African fisher whose rights to fish were taken away in 2002, who expressed the loss in these terms: 'When they

*“Resource grabbing has been related with either eviction/displacement of rural people, or their incorporation into new capitalist structures under highly adverse conditions.”*

took away my right to fish, it was as if they took me away.<sup>56</sup> This represents a fundamentally different relationship between identity, labour, and resources than is usually assumed in discussions of urban labour markets, although it is one that some urban workers may recognise. This deeper and broader vision of identity, which embraces landscapes, livelihoods, and community, has been the basis of past critiques levelled by rural people against the existing infrastructure of human rights. We can fruitfully ask whether there are further and deeper challenges still to be launched from this perspective, and whether taking such a vision seriously could help to establish a more radical and profound vision of human rights.

At the same time, the importance of resources in rural spaces also means that rural spaces around the world are being targeted as new sources and sites of accumulation and particularly of what David Harvey has described as ‘accumulation by dispossession’.<sup>57</sup> Since the global food and finance crisis of 2007/08 there has been a particularly intense focus on rural spaces, with both national and international corporations increasingly accumulating rural land and land-based resources.<sup>58</sup> This has been driven by increased land speculation as land comes to be seen as one of few reliable investments,<sup>59</sup> by an increasing focus on ‘sustainable’ commodities like biofuels,<sup>60</sup> and by the creation of new commodities like carbon credits in the name of GHG emissions reduction.<sup>61</sup> Obviously this dynamic is not unique to the countryside; emerging markets around the world today are to various degrees subject to an intensification of the operations of global capital.<sup>62</sup> But the grabbing of resources in rural areas is unusually intense and sustained, and may have even greater impacts on rural people due to their greater degree of dependence on resources. Resource grabbing has been related with either eviction/displacement of rural people, or their incorporation into new capitalist structures under highly adverse conditions. This unusually intense pressure on resources, combined with their central space in rural livelihoods and communities, potentially shapes the way that human rights are needed, perceived, and used.

## 2. Uneven state penetration & lack of access to courts

States exercise certain kinds of power and control within their borders: over people, land, resources, markets, and more. This power is not uniformly exercised within geographic boundaries – the state has more influence over the day to day lives of people, and more power to control their behaviour, in some areas than others.<sup>63</sup> This is not binary, but can be understood on a spectrum: even highly authoritarian states rarely have total power in any space, and in the modern world virtually no spaces are free of any kind of state control. At the same time, state power is not neutral: it produces winners and losers, and defends the interests of some groups and individuals against others.

Rural areas are very often characterised by an uneven or relatively low degree of state power, characterised by James Scott as ‘state penetration’<sup>64</sup> and often discussed by international organisations and development agencies as access to ‘services and infrastructure’. It is undeniably true that state services, including transportation infrastructure, security, education, health services, and access courts and legal procedures, can be vital to rural people’s well-being and the full realisation of their human rights. However, as Scott and others have recorded, people’s experience of this and their relationship to the state may be deeply ambivalent.<sup>65</sup> Further, where state penetration is not uniform, the different state functions do not necessarily overlap: the military or police apparatus, for example, may be well developed while health or education infrastructure is weak or lacking.<sup>66</sup> At the same time, the legitimacy of the state

may vary dramatically: state interventions are much more likely to be welcome where they are seen to be controlled by robust accountability mechanisms, such that they serve both the interests and the desires of the community. Where this is not the case, increased state penetration in order to provide more services may appear as a kind of ‘devil’s bargain,’ even where the services themselves are sorely needed. When states intervene to provide services in ways that don’t consider the human rights of rural people, the provision of the services may be experienced as more problematic than their absence.

*“Sophisticated, embedded methods of managing and distributing resources are often invisible or illegible to states.”*

At the same time, as mentioned above, many rural communities are characterised by alternative sources of authority, outside the central state. Once again, this feature is not unique to rural communities, nor is it common to all communities: a relative absence of state power does not automatically produce another legitimate source of authority. Nonetheless, in many rural communities, traditional structures exist for managing land, resolving conflicts, allocating resource rights, providing social support, educating children, and a range of other functions that are, in other contexts, the responsibility of the state. Where these alternative sources of authority are involved in resolving conflicts and setting down rules to govern people’s relationships with and obligations to each other, scholars may use the term ‘legal pluralism’ to describe the situation.<sup>67</sup>

Traditional and customary systems often play a key role in the management of both resources and markets. Historically, these kinds of ‘moral economies’<sup>68</sup> everywhere precede the ‘free markets’ of modern capitalism, and in much of the world they coexist with what we might call formal markets.<sup>69</sup> Today they are especially critical in rural areas. However, these sophisticated, embedded methods of managing and distributing resources are often invisible or illegible to states. Too often, this means that they are also invisible to, or poorly understood by, the legal, regulatory, and welfare mechanisms that are entrusted with protecting and promoting human rights.

Because mainstream human rights conceptions and international human rights law unambiguously locate the state as the main guarantor of rights, the relevance and significance of human rights claims may be called into question in spaces where the presence of the state is relatively weak, contested, reduced to military, security, and monetary functions, or absent altogether. While international law recognises that states have the obligation to respect, protect, and promote human rights within their borders, the implicit assumption that state power is equally present in all areas of a territory disregards important complexities in local environments and experiences which may shape how people view human rights, and how these might be understood and implemented.

Communities that are relatively isolated (either geographically or by other kinds of restrictions) from the state legal apparatus may rely more heavily on other conflict resolution mechanisms, whether formal or informal. These structures may interact in complex ways with formal legal structures and instruments.<sup>70</sup> International human rights law is relatively clear that, in situations of legal pluralism, the state retains its human rights obligations, and may choose to exercise them by taking measures to ensure that religious and customary law is interpreted in line with international human rights law.<sup>71</sup> However, for local communities, this may create both strategic questions about whether the state is best positioned to protect their rights in these circumstances, and deeper theoretical questions about whether *all* human rights obligations genuinely belong to the state, even where other sources of state-like authority are present.

## Envisioning rural rights

The above considerations shape the way that human rights are understood and used in rural areas. Together they play a role in helping to explain both – on the one hand - why and how many rural working people continue to embrace human rights ideas and involve these in their strategies of resistance and struggle, as well as – on the other hand - what concerns have kept others from embracing the language and instruments of mainstream human rights. Human rights do not fall pre-formed like snowflakes from the sky; nor do they automatically arise how we please and whenever we want them to. Rather, they are perceived and must be envisioned and fought for in deeply challenging settings, by real people embedded in the very institutions and social structures that they may be seeking to change, but that others are invested in maintaining.

Both why human rights strategies succeed when they do, and how they fail when they do, are important and instructive. Both kinds of investigation and analysis are needed to understand how, when and where – under what conditions – it may be possible to construct in reality stronger, more radical and inclusive visions and versions of human rights in rural areas and beyond. This calls for much deeper empirical investigation by and with communities struggling for human rights. But it is hoped that this initial framing of questions about how and why the rural context may shape human rights can point the way towards new and fruitful questions for investigation. Below, we briefly explore two responses to the situations outlined above, before examining two concrete cases of human rights instruments shaped by rural social movements.

### 1. Rights to resources

Ignoring questions of redistribution in relation to human rights has never made sense. Given the centrality of resources in rural areas, though, this illogic has been especially clear in these spaces. For this reason the neo-liberal focus on guaranteeing (only) certain (limited) kinds of civil and political rights without significant attention to wealth (re) distribution has often not resonated in the countryside. As noted above, rural people's livelihoods are more likely to depend directly on their ability to control resources, and the ways in which they access and control the resources they need and/or value are often more complex and overlapping than the conventional Western individual freehold private property notion of ownership that has long fuelled capitalist expansion in and penetration of the countryside. In statutory as well as customary systems, recognition of resource rights and control of resources may mediate access to other rights. Conversely, membership in a community (or polity) can also determine what rights to resources one may have. In short, rights to livelihoods and other human rights are closely intertwined.

Because access to resources has been incorporated more recently and less regularly into mainstream human rights frameworks, these frameworks have often been received with scepticism in rural areas. In addition, the historical focus on individual property rights, and the lack of a substantive discussion of the role of landscapes, territories, and nature except as resources, has meant that some critical areas of political concern have not been captured by human rights discourses. Finally, where questions of access to resources have been incorporated in ways that do not fully recognise their cultural significance and the close relationship between identity, livelihood, and territory, concerns have arisen about the way that individuals are understood in human rights frameworks.

*“How is it possible to construct stronger, more radical and inclusive visions and versions of human rights in rural areas and beyond?”*

Rural-driven human rights processes related to natural resources, such as the TGs and UNDROP discussed below, have begun from a different starting point. The question of access to resources has not been treated strictly as a question of individual rights, nor has it been separated from the question of civil, political, and cultural rights. Rather, in both of the instruments mentioned, the cultural role of resources occupies a central space and many of the formulations of specific human rights related to land are based not around individual access but around mechanisms for democratic community management, situating the individual within a broader context.

## 2. Rights outside the state?

The uneven and contested nature of state penetration in many rural areas does not undermine the legitimacy of human rights in these spaces. However, it does raise questions about the usefulness of state-based advocacy strategies, and potentially even the legitimacy of an entirely state-based understanding of human rights. Nuanced empirical explorations and histories of rural spaces reveal that the vision of the state which seems to underpin international human rights law is a kind of utopian fiction, rarely realised in reality. Is this a necessary and useful legal fiction, or could a more nuanced and less naive vision of the state also point the way towards a re-grounded vision of human rights? If alternative authorities are present, do they have a role to play in the realisation of human rights, and what is their relationship to the state?

In discussing specifically the question of territorialisation - the process of 'excluding or including people within particular geographic boundaries, and [...] controlling what people do and their access to natural resources within those boundaries'<sup>72</sup> - Vandergeest and Peluso point out that 'Where different legitimating authorities conflict in their allocation of rights, the one that is the most enforceable in practice (*de facto*) will have a greater influence on behavior and resource use than *de jure* controls.'<sup>73</sup> Arguably, the same is true for *human* rights claims - where there are multiple conflicting sources of legitimacy or authority, the state may be comparatively ineffectual as an enforcer of right claims.

In practical and strategic terms, people use human rights language not just in order to direct claims at the state, but also to mobilise support within their communities, and to re-frame public discussions. There are significant political reasons for continuing to assert the ultimate responsibility of states for respecting, protecting, and fulfilling human rights within their borders. It is important that discussions about deepening and re-grounding human rights not undermine these responsibilities. Yet, in spaces where the state is weak or absent, or where other conflicting authorities are present, we may see more clearly some of the political opportunities related with human rights. Realising that the state is not unitary, and that it very often does not have a monopoly on the legitimate use of power in a community, opens the door to strategies that use human rights as a lever or a tool to transform power relations in a variety of ways beyond mobilising the state to defend rights claims.

Human rights claims are often made in communities and operationalised at the local level. Human rights language and concepts can provide a framework for discussing the obligations which people have to each other in communities. Legal positivist readings of human rights see this as, at best, a metaphorical use of human rights. However, these kinds of usages may also be critical to developing a more radical and



embedded notion of human rights. The strategies used by human rights advocates in rural communities reveal a nuanced understanding of the role of non-state power in realising rights. It is worth exploring and interrogating the ways in which human rights are being used and might be used to shape and explore people's entitlements, duties and obligations in contexts where the mediating role played by the state is minor, even if the state continues to be regarded as ultimately responsible for human rights.

## How are rural actors leading the way in reclaiming human rights?

Rural actors use human rights in a variety of different ways in framing struggles, mobilising allies, engaging in popular education, and making use of associated tools and instruments. Monsalve identifies a continuum of human rights strategies used by agrarian social movements, from 'defensive' to 'offensive'.<sup>74</sup> Defensive strategies rely on relatively well established rights claims to protect activists and human rights defenders from violence, eviction, and other attacks – they may play an important role in reducing violence associated with rights conflicts.<sup>75</sup> More offensive strategies may use human and constitutional rights to defend civil disobedience and direct action like land occupations, contributing to 'transforming the legal and political framework of conflict... from a private/individual dispute over land rights to be tackled by private/civil law to a collective/social conflict involving the public interest and constitutional principles'.<sup>76</sup> Other actors have gone still further, for example struggling for seed sovereignty '[by] struggling for recovering and valorisation of traditional knowledge, have profoundly shifted the understanding of agriculture innovation'.<sup>77</sup> These struggles seek to fundamentally shift the international human rights architecture, re-forming it into a shape more suited to supporting the rights, and the demands, of grassroots movements. Lorenzo Cotula has identified a similar distinction between 'reactive' and 'constitutive' forms of rights-claiming.<sup>78</sup>

We would like to briefly explore two cases where movements have used human rights framing in their struggles and engaged with international human rights mechanisms in ways that have impacted the global human rights architecture. Because international human rights law, and customary law more generally, is continually evolving, the final impact of these actions cannot yet be assessed. However, minimally, they show that a different vision of human rights is possible, and that this alternative vision can interact with and potentially transform the 'dominant' framework.

### Rights against capitalism: the UN Declaration on the Rights of Peasants

La Via Campesina (LVC), a transnational agrarian movement made up of peasants and small scale farmers around the world, was officially launched in 1993.<sup>79</sup> Since then, it has grown to include 182 member organizations in 81 countries, representing more than 200,000,000 people.<sup>80</sup> It is often referred to as 'the world's largest social movement'<sup>81</sup> and, since its inception, the central target of LVC's mobilizations and political action has been overturning the neo-liberal global order and developing an alternative built around the concept of 'food sovereignty'.<sup>82</sup> Since the late 1990s, there has also been a growing interest within LVC in articulating some of their demands for alternatives to neo-liberalism using the language of 'peasants' rights'. Claeys traces

the origins of this idea within the transnational organisation of LVC to a local process initiated by Indonesian member organisation Serikat Petani Indonesia.<sup>83</sup> The LVC Working Committee on Human Rights took up the issue and drafted, through a consultative process, a Declaration on the Rights of Peasants, Men and Women, which was adopted in 2008.<sup>84</sup> From there, LVC, with support from The Centre Europe Trois Monde and FIAN International, began a process of lobbying and advocacy to put the issue of an International Convention on the Rights of Peasants on the agenda of the UN.<sup>85</sup>

Henry Saragih, the International Co-ordinator of LVC during the initial years of this struggle explained:

Even though human rights law is supposed to be universal, in practice the national and international human rights system have largely ignored violations of the human rights of peasants. We see the limitations of the current human rights system [...] In order to address these patterns of violations, we need specific provisions and mechanisms to fully protect our rights.<sup>86</sup>

*“Struggles seek to fundamentally shift the international human rights architecture, re-forming it into a shape more suited to supporting the rights, and the demands, of grassroots movements.”*

In 2012, the UN Human Rights Council adopted a resolution to establish an intergovernmental working group to negotiate a draft UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).<sup>87</sup> After years of intergovernmental negotiations, in which some peasant representatives were able to provide comments and act as observers in certain discussions, the Declaration was adopted by the UN General Assembly on 17 December 2018, with 121 votes in support, 8 against, and 54 abstentions.<sup>88</sup>

According to Edelman and James in 2012, ‘...the Campaign’s strategy is to secure passage in the General Assembly of a non-binding Declaration as a first step towards a Convention’.<sup>89</sup> If passed such a Convention would be legally binding on signatories, although states would have the option to apply reservations or interpretive notes when ratifying, which could weaken key elements of such an instrument. While Declarations are not legally binding on member states, they can nonetheless play an important role in shaping norms. Provisions of Declarations can be accepted as part of customary international law, taking on legal force through a slow process of emerging international consensus.<sup>90</sup> Thus, although UNDROP is an instrument of soft law, without binding force or a formal monitoring or enforcement mechanism, it can nonetheless become an important element of the international human rights system and potentially play an important role in transforming practices around the world.

The process of negotiating the Declaration was an important demonstration of the role that social movements can play in shaping international human rights norms.<sup>91</sup> The outcome of the process was difficult to foresee and questions still remain about both the ways that the existing document can be leveraged to impact national and international norms and local practices, and about the possible future of a process for a UN Convention on the Rights of Peasants and Other People Working in Rural Areas.

Writing in 2013, Noha Shawki identified some important features of LVC’s 2008 Declaration (which formed a partial basis for the UN text). She argued that certain elements ‘... go well beyond affirmation and reformulation and can be seen as instances of extension and innovation [...] They seek to strengthen the international legal status of certain human rights norms in ways that can challenge economic paradigms and existing power relations.’<sup>92</sup> In other words, LVC’s Declaration was

not limited to reiterating existing rights and elaborating how they apply in the special circumstances of peasants, although this kind of reiteration is an important and standard feature of UN Declarations.<sup>93</sup> Rather the Declaration, both in its original internal form and in the form ultimately adopted by the UN, pushes for the recognition of new rights. In the words of Edelman and James, 'Other rights enumerated [in the 2008 declaration]... were indicative of an effort to push existing norms beyond their current bounds...'.<sup>94</sup>

Observers writing early in the process identified several of these more radical elements as potential sticking points, likely to attract opposition from some states. Edelman and James, writing in 2011, identified the right to land and 'the right of peasant communities to reject a range of practices' as particularly challenging, arguing that the declaration in its original form would pose serious threats to key elements of the current international order, and extend significant rights to political and economic autonomy to large (new) groups of people.<sup>95</sup> In relation to rights related to the exchange of traditional seeds and determination of prices and markets for agricultural commodities, Shawki warned, '[these rights] exhibit a relatively poor "fit" with the pre-existing international rights framework and with the dominant economic development models'.<sup>96</sup> Likewise, in 2012 and 2015, Priscilla Claeys identified several potential obstacles to the acceptance of UNDROP or a similar instrument, mentioning that 'the assertion of new rights to resources—such as the right to land—is likely to constitute a stumbling block in the negotiations, either because of the collective nature of the rights claimed, or because of their lack of consistency with existing standards, and because of the challenges that their implementation would represent'.<sup>97</sup>

These concerns and qualifications were well-grounded and there are differences between La Via Campesina's own Declaration and the UN Declaration which resulted from multiple years of international negotiation. While the original document formulated by LVC and adopted in 2008 played an important role in initiating this UN process, and while some important elements of that initial Declaration are preserved in the UN Declaration, it is important to note that the final document is not a product of LVC but of years of negotiations between UN member states. A conscious political decision was taken to place this process in the hands of governments with the goal of gaining a document with genuine international standing, as a product of negotiations by state parties. LVC and their allies were involved in the process using all mechanisms available to civil society and exerted important pressure to keep some of the key radical elements of the Declaration,<sup>98</sup> but the resulting Declaration must be understood as a compromise. Years of concerted political effort at every level contributed to opening a space at the international level where the voices of peasants and other affected communities could be heard. This is, in itself, a significant achievement. The Declaration must be understood, therefore, as both a product and a tool of political processes: it is an imperfect instrument, but one created in part through the struggles of rural communities and social movements, and with the capacity to further advance those struggles in the future.

A number of critical and controversial features of the Declaration survived the negotiation process, due in no small part to mobilisations by LVC and their allies both inside and outside UN spaces.<sup>99</sup> Importantly, the right to access resources and participate in their management (Art 5), the right to participate in preparation and implementation of policies affecting them (Art 10), the right to 'choose freely the way they earn their living,' (Art 13), the right to food sovereignty (Art 15.4), 'the right to land, individually

and/or collectively' (Article 17), 'the right to save, use, exchange and sell their farm-saved seed or propagating material' (Article 19.1);- 'the right to maintain, control, protect and develop their own seeds and traditional knowledge' (Article 19.2), and the right to water for livelihoods (Art 21.2) are all preserved in the Declaration. Although the language and framework surrounding these is weaker than desired in some cases, and although some of the rights identified in the original document are missing (the 'right to refuse,' for example, does not appear in those terms), these nonetheless represent critical victories for social movements. At the same time and contrary to some expectations, the wording of some key principles, notably the rights to food sovereignty and water, are arguably stronger in the UN Declaration than in the preceding document.<sup>100</sup> The articulation of all of these rights can provide important legitimacy to rural struggles against extractivism and intellectual property regimes, and for a vision of food sovereign and democratically controlled societies.<sup>101</sup>

Observers, however, have raised further concerns about the UN Declaration. In her 2018 examination of a draft under negotiation during the UN process, Margot E. Salomon identified several more radical elements of the UN Declaration which she described as 'rights against capitalism'.<sup>102</sup> She argued, however, that the presence of these radical elements was compromised by the simultaneous use of other contradictory framings and articulations throughout the document, which provide tools and opportunities to 'legitimate and sustain the terms of globalization against which peasants strive.'<sup>103</sup> She also identified ways in which the Declaration 'requires a continuation of, rather than a break with, the logic of commodification underpinned by exclusive property rights.'<sup>104</sup> These are significant concerns and, for these and other reasons, the degree to which the Declaration will be able to support peasant struggles remains to be seen. However, in light of the intensive negotiation process, the lobbying power of corporations, and the continuing strength of neo-liberalism in international governance, the survival of some key 'rights against capitalism' within a document of this standing must be recognised as an important victory. Whether and to what extent the presence of other, less radical, framings and articles will undermine the ability of advocates to deploy the more radical elements within the document remains an open question.

Observers of the process of the UN Declaration have also raised questions about the identification of 'peasants' as a special group through such a Declaration.<sup>105</sup> There are concerns that the definition of peasants may lead to, or rely on, increased reification and 'culturization' of the concept of 'peasant,' against more political and economic definitions.<sup>106</sup> The process of defining 'peasants,' especially along the kind of cultural lines which are necessary to interpret the concept for the UN system and strengthen their claim to rights as a distinct group, risks excluding some groups, and ultimately acting as a barrier to the kinds of alliances necessary to effect social and political change.<sup>107</sup> While the adoption of language around 'other people working in rural areas' - intended to refer to fisher folk, pastoralists, indigenous people's, and landless workers - may address some of these concerns, potential risks remain. In an exploration of the topic during the earlier part of the UN process surrounding the Declaration, Claeys cautioned that the framing of the Peasants Rights Declaration could be potentially less radical in its content than food sovereignty, as 'The first requires a total revamp of global governance of trade in agriculture and constitutes a direct opposition to the (inimical) WTO framework. The second requires that the (inoffensive) UN human rights system acknowledge the existence of a new group right.'<sup>108</sup>

These are significant concerns raised by scholars and activist-scholars who are sympathetic to La Via Campesina's political aspirations. They point to genuine challenges which were present during negotiations and which will remain relevant during the struggles to implement and operationalize the idea of peasants' rights in ways which are not exclusionary and do not generate new marginalisations. It will be critical for movements, advocates, and professionals working with the Declaration to keep these conceptual and practical challenges in mind, and to remain mindful of the political compromises involved in pursuing a Declaration of this kind. The Declaration represents work in progress and should not be treated as the ultimate word on peasants' rights or their aspirations under international law.

*“It would be a mistake to understate the potentially radical content of the Declaration.”*

However, it would be a mistake to understate the potentially radical content of the Declaration. As Salomon argues, some of the rights mentioned, including the collective right to land and the right to seed and genetic resources 'reflect articulations that contest the logic of (transnational) capitalism, of private property, contract, accumulation, and the exploitation of people and natural resources'.<sup>109</sup> The true question now will concern how movements and other actors can make use of this document as a tool to advance a more radical, democratic, and emancipatory conception of human rights. In particular it will be critical to defend against uses that contribute to potential 'divide and conquer' tactics by recognising special rights for narrowly-defined peasants without addressing fundamental injustices in the global food and agricultural system, or which seek to reduce the Declaration's claims to calls for consultation and compensation. These struggles over implementation and interpretation face all international instruments. In order to better understand the ways in which social movement actors have engaged with them to date, it is helpful to consider the case of the Tenure Guidelines.

## Rights-based resource governance: the Tenure Guidelines

The Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (henceforth TGs or Tenure Guidelines) have demonstrated some of the ways in which non-binding instruments can act as tools for local communities to advocate for more democratic control over resources and potentially effect real changes in power relations. The TGs have a nearly unique history among human rights instruments, and stand as 'the first global exhaustive tool on the tenure of land and natural resources developed through an open inter-governmental process with the full and effective participation of a vast array of relevant actors'.<sup>110</sup>

From the outset, the formulation process set out by the UN Food and Agriculture Organisation (FAO) established conditions for the participation and inclusion of social movements in the process of developing the Guidelines.<sup>111</sup> The International Planning Committee on Food Sovereignty (IPC) played a key role in advocating for and supporting the participation of social movements in the process.<sup>112</sup> The IPC is a unique platform for more than 6000 organisations of small-scale food producers, rural workers, and grassroots social movements and support organisations established in 2003.<sup>113</sup> The IPC has a formal relationship with the FAO and plays a key role in strengthening the participation of social movements in this space, aiming to transform both the content and the structure of FAO decision-making.<sup>114</sup> Between 2009 and 2012 the IPC coordinated and facilitated a process of self-organised



consultations, and the development of a common proposal for the TGs. The resulting document did not adopt all of the Committee's recommendations, and represents a compromise document with key shortcomings and provisions in support of market-based mechanisms. Nonetheless, it is an important document that introduced radical, human-rights based language to discussions of land tenure and it was welcomed with measured enthusiasm by civil society advocates.<sup>115</sup>

The TGs were adopted by the CFS in May 2012, after long negotiations. This history may have helped social movements to both shape these instruments for their use, and to quickly recognise and seize on their potential usefulness in local struggles. The production of documents like a People's Manual on the Guidelines on Governance of Land, Fisheries and Forests<sup>116</sup> may have also helped this process. Research in the years following the launch of the TGs has shown that communities engaged in resource struggles are making use of these documents in order to pressure their governments for greater accountability, and ultimately to demand more effective democratic control over resources on which they depend for their livelihoods.<sup>117</sup> Of particular importance in this context is the TGs' deliberate emphasis on the needs of the most vulnerable – by emphasising the importance of attending to and protecting the rights of marginalised people and resource users, the TGs acknowledge the importance of existing power relations.

In addition to making numerous references to human rights in respect to resource use and tenure rights, the TGs express a vision of democratic control over natural resources that analysts have argued is intimately related to human rights in the context of resources. In the words of Franco et al: 'At the very least, access to human rights is a necessary condition for achieving democratic land control,'<sup>118</sup> and 'land is inextricably connected to the enjoyment of a whole series of already recognized human rights.'<sup>119</sup>

***“The Tenure Guidelines can help to transform the uneven power relationships and lack of accountability that result in land and resource grabbing.”***

Examining the impacts of the TGs, Franco and Monsalve stress the importance of governance instruments in protecting people's access to land, particularly in the context of the global land grab, and in light of the fact that 'Having legal rights is no guarantee that one's land, fishery or forest resources won't be grabbed, while gaining legal recognition for one's claims does not come easily.'<sup>120</sup> They argue that the TGs can help to transform the uneven power relationships and lack of accountability that result in land and resource grabbing. The TGs help to provide relevant information about people's rights, but can also be deployed as a tool for investigation, reflection, and action, giving oppressed groups a powerful analytic tool with mobilising potential for organising and demanding democratic control of resources.<sup>121</sup> In the years since 2012, several studies have documented the ways in which the TGs are being used to do just this.<sup>122</sup> While they are not a guarantee of immediate success in land and resource struggles, the TGs may provide a valuable tool that movements can use to analyse and assess the current political terrain, tip the balance of power, garner more political support at the local and international level, and mobilise social support for their claims.

The TGs, like UNDROP, contain elements that can be used in support of more conservative or even, potentially, regressive understandings of land rights. As Salomon identifies features of UNDROP that perpetuate the existing logic of transnational capitalism, Brent et al show that the TGs contain elements which can be used to either 'promote efficient land markets' or promote corporate

friendly 'win-win' solutions.<sup>123</sup> Actors are mobilising to use the TGs in ways that are compatible with the interests of corporations, or that envision them as a more moderate tool to mitigate the worst impacts of resource grabs, while eschewing their radical potential.<sup>124</sup> Nonetheless the authors argue that, if correctly employed, 'the [TGs] may serve a number of functions, including opening up spaces for greater participation by marginalised groups in policymaking spaces in order to challenge the co-optation of human rights discourse to further business as usual.'<sup>125</sup>

The TGs are still relatively new, and the long-term outcomes of these struggles remain to be seen. Nonetheless, preliminary research shows that this tool, in spite of its non-binding character, can offer a powerful form of leverage for movements. By elaborating guidelines for human-rights compliant management of resources, the document directly acknowledges the relevance of these natural resources for meeting human rights obligations. The TGs legitimise communities' struggles for resources, specifically emphasise the need to pay special attention to the most vulnerable, and provide added support for communities to make human rights claims related to resources. Whether the TGs will evolve into customary international law will depend on the decisions of both states and national supreme courts, and the extent to which these both act in accordance with the TGs and publicly express that they understand these to be binding legal obligations. However, whether they continue to move in this direction of formal legitimacy or not, these Guidelines are already providing valuable legitimacy for movements. The TGs and their commitments to human-rights based resource governance helps to provide an international context for grassroots movements' efforts to develop and advocate for alternative kinds of policy-making that take seriously their rights to the resources on which they depend.

## Conclusion: re-grounding rights?

Rural people's human rights are under threat from a variety of causes, including dispossession by local and international capital, oppression by authoritarian states, and urgent threats from increasing extreme weather events. Their close relationship with land-based natural resources simultaneously makes them especially vulnerable to organised dispossession (where this has not already occurred) and provides a possible material, political and spiritual basis for resisting dispossession. Simultaneously, the uneven penetration of the state in many rural areas, and the presence in some rural spaces of alternative sources of authority and regimes of legal pluralism, suggests a more nuanced vision of the state than seems to be present in mainstream understandings of human rights.

Taking seriously these two facets of rural experience – the centrality of land and resources on the one hand and the complex and sometimes ambivalent nature of the state on the other – reveals weaknesses in the dominant or mainstream institutions and discourses of human rights. At the same time, however, these realities and the ways in which activists within rural social movements have engaged with them reveal possibilities for reclaiming and re-grounding human rights. Because these conditions are not unique to rural space but are also present in varying degrees throughout society, the relevance of this 'view from the countryside' extends far beyond rural areas. The uses to which human rights are being put by progressive rural social movements can help to illuminate a new understanding of human rights with relevance in many other spaces.

In order to realise the possibilities of these developments it is critical to go beyond a simplistic notion of human rights. Neither a perspective that sees human rights as falling, fully-formed from the sky, nor a legal positivist construction that views them as artefacts of treaties, will do this work. Rather, it is necessary to see human rights as born out of struggle, with the capacity to bolster progressive projects, or to support a damaging status quo, depending on how they are deployed and by whom. While human rights have been used to entrench and protect existing power structures, they are also a tool whose universality and neutrality means that they can be used to undermine existing and unjust orders.

*“Human rights are born out of struggle, with the capacity to bolster progressive projects, or to support a damaging status quo, depending on how they are deployed and by whom.”*

Rural actors are engaging with human rights in creative ways, and in extremely challenging circumstances. Actors are already making use of human rights law, instruments and language in a range of tactical, strategic and insurgent ways. Tactical defences of traditionally ‘liberal’ rights like the right to free expression, or due process, may play an important role in preserving the possibility of political struggle, especially under oppressive or authoritarian regimes. Meanwhile other strategic and insurgent uses of the languages, concepts, and institutions of human rights are aiming at transforming the balance of power in society. These strategies are not mutually exclusive, and are not pursued in isolation. Finally, some actors within rural social movements are searching for unifying frameworks which can support the internationalisation of local resistance and alternatives, in the face of the increasingly globalised networks of oppression and exploitation. A nuanced, re-grounded vision of human rights, as a product of and tool for struggle, may play a role in building such a framework.

The work that activists and activist-scholars are already doing to re-shape the understanding of human rights at local, national and international levels suggests the outline of a radical vision of human rights which can respond to some of the criticisms levelled against the mainstream or dominant human rights framework. This vision is already being built, with rural communities and movements playing an important role. More and deeper engagement, as well as empirical explorations of how and how successfully these concepts are being employed on the ground, and of the role they are playing in local struggles, can help to reveal new possibilities for the future of human rights.

## Endnotes

- 1 <https://redd.unfccc.int/>
- 2 <https://bluecarbonpartnership.org/the-partnership/blue-carbon-and-the-partnership/>
- 3 [https://ec.europa.eu/clima/policies/ets\\_en](https://ec.europa.eu/clima/policies/ets_en)
- 4 The term 'resources' is contested, as it implies a reductionistic and economistic understanding of nature, landscape and territory which many indigenous and rural people argue is inappropriate and fundamentally at odds with the way that they relate to the non-human world. The term will be used in this paper as shorthand for the wide range of land, water, fisheries, forests and other landscape elements on which people depend for their survival, but the problematic nature of the term should be kept in mind.
- 5 Baarbesgaard, M. 2016, Blue Carbon, Transnational Institute: Amsterdam [https://www.tni.org/files/publication-downloads/final\\_tni\\_issue\\_brief\\_blue\\_carbon-1.pdf](https://www.tni.org/files/publication-downloads/final_tni_issue_brief_blue_carbon-1.pdf); World Forum of Fisher Peoples' 2015 Statement: No to blue carbon, yes to food sovereignty and climate justice! <http://worldfishers.org/2015/12/11/no-to-blue-carbon-yes-to-food-sovereignty-and-climate-justice/>; World Forum of Fisher Peoples, Afrika Kontakt, and Transnational Institute, 2016, *Human Rights vs. Property Rights: Implementation and Interpretation of the SSF Guidelines*, Transnational Institute: Amsterdam; David J. Kelly, 'The Case for Social Safeguards in a Post-2012 Agreement on REDD', 6/1 Law, Environment and Development Journal (2010), p. 61, available at <http://www.lead-journal.org/content/10061.pdf>; Carol Hunsberger, Esteve Corbera, Saturnino M. Borras Jr., Jennifer C. Franco, Kevin Woods, Courtney Work, Romulo de la Rosa, Vuthy Eang, Roman Herre, Sai SamKham, Clara Park, Seng Sokheng, Max Spoor, Shwe Thein, Kyaw Thu Aung, Ratha Thuon & Chayan Vaddhanaphuti 2017: Climate change mitigation, land grabbing and conflict: towards a landscape-based and collaborative action research agenda, *Canadian Journal of Development Studies / Revue canadienne d'études du développement*.
- 6 About 80% of people living in extreme poverty live in rural areas. De La O Campos, A.P., Villani, C., Davis, B., Takagi, M. 2018 *Ending extreme poverty in rural areas – Sustaining livelihoods to leave no one behind*. Rome, FAO. 84 pp. Licence: CC BY-NC-SA 3.0 IGO. <http://www.fao.org/3/CA1908EN/ca1908en.pdf>
- 7 Klein, N., 2015. *This changes everything: Capitalism vs. the climate*. Simon and Schuster.
- 8 Zaitchik, A., 2018 How Conservation Became Colonialism, *Foreign Policy*, 16 July 2018 <https://foreignpolicy.com/2018/07/16/how-conservation-became-colonialism-environment-indigenous-people-ecuador-mining/>; Fairhead, J., Leach, M. and Scoones, I., 2012. Green grabbing: a new appropriation of nature?. *Journal of Peasant Studies*, 39(2), pp.237-261.
- 9 The term 'rural working people' is a somewhat generic term employed, among others, by the UN Declaration on the Rights of Peasants (which will be discussed further below). We use it here in an effort to refer, in general terms, to a wide range of people living and working in rural areas including, but not limited to, peasants, pastoralists, fisher-peoples, landless workers, and indigenous peoples. In using this term we do not intend to obscure important historical and political differences between these groups, their relationships to land and resources, or the diverse ways in which these dynamics may impact them. However, we will not explore these differences in depth here, focussing instead on some challenges which may be shared between multiple groups.
- 10 For discussion of just a few cases, please see: Franco, J.C. and Borras Jr, S.M., 2019. Grey areas in green grabbing: subtle and indirect interconnections between climate change politics and land grabs and their implications for research. *Land Use Policy*, 84, pp.192-199; Fairhead, J., Leach, M. and Scoones, I., 2012. Green grabbing, *J. Peasant Stud.*; Barbesgaard, 2016, *Blue Carbon*; Barbesgaard, M., 2018. Blue growth: savior or ocean grabbing?. *The Journal of Peasant Studies*, 45(1), pp.130-149.
- 11 Borras Jr, S. and Franco, J., 2010. From threat to opportunity: Problems with the idea of a code of conduct for land-grabbing. *Yale Hum. Rts. & Dev. LJ*, 13, p.507; McKeon, N. (2017). Are equity and sustainability a likely outcome when foxes and chickens share the same coop? Critiquing the concept of multistakeholder governance of food security. *Globalizations*, 14(3), 379-398. For further discussion in the context of resource appropriation see e.g.: Fairhead, J., Leach, M. and Scoones, I., 2012. Green grabbing: *J. Peasant Stud.*; Franco, J., Park, C.M.Y. and Herre, R., 2017. Just standards: international regulatory instruments and social justice in complex resource conflicts. *Canadian Journal of Development Studies/Revue canadienne d'études du développement*, 38(3), pp.341-359.; Franco, J.C. and Borras Jr, S.M., 2019. Grey areas in green grabbing, *Land Use Policy*.
- 12 Akram-Lodhi, A.H., 2018, March. *The promise? Using and misusing authoritarian populism*. In ERPI 2018 International Conference Authoritarian Populism and the Rural World, Conference Paper (No. 6).
- 13 Borras Jr, S.M., 2019. Agrarian social movements: The absurdly difficult but not impossible agenda of defeating right-wing populism and exploring a socialist future. *Journal of Agrarian Change*.
- 14 Borras, 2019. Agrarian social movements, *J. Agrar. Change*; Borras, S.M. 2018, *Understanding and Subverting Contemporary Right-wing Populism: preliminary notes from a critical agrarian perspective*, ERPI Working Paper Conference Paper 47., ERPI 2018 International Conference: Authoritarian Populism and the Rural World [https://www.tni.org/files/article-downloads/erpi\\_cp\\_47\\_borras.pdf](https://www.tni.org/files/article-downloads/erpi_cp_47_borras.pdf); Scoones, I., Edelman, M., Borras Jr, S.M., Hall, R., Wolford, W. and White, B., 2018. Emancipatory rural politics: confronting authoritarian populism. *The Journal of Peasant Studies*, 45(1), pp.1-20.
- 15 For an in depth discussion of the complex relationships and antagonisms between right-wing and agrarian populisms see: Borras, 2019. Agrarian social movements, *J. Agrar. Change*.
- 16 To list a very few examples: Rodrigo Duterte has withdrawn the Philippines from the International Criminal Court – and in fact claimed that the Philippines never legally joined the treaty that underpins the Court - in responses to international concerns about human rights abuses against people who use drugs <https://www.aljazeera.com/news/2019/03/philippines-officially-international-criminal-court-190317171005619.html>; Jair Bolsonaro

- has announced his intention to abolish Brazil's Human Rights Ministry <https://www.theguardian.com/world/2018/dec/06/outcry-over-bolsonaros-plan-to-put-conservative-in-charge-of-new-family-and-women-ministry>; the government of Donald Trump has, after widespread criticism of its immigration policies, among others, established a Commission to provide 'fresh thinking about human rights...' <https://www.aclu.org/blog/human-rights/pompeos-new-human-rights-commission-no-good>.
- 17 Borrás, 2019. Agrarian social movements, *J. Agrar. Change*. pp. 15.
  - 18 Musembi, C.N., 2007. De Soto and land relations in rural Africa: breathing life into dead theories about property rights. *Third World Quarterly*, 28(8), pp.1457-1478.
  - 19 Haynes, N. and Hickel, J., 2016. Introduction: Hierarchy, Value, and the Value of Hierarchy. *Social Analysis*, 60(4), pp.1-20.
  - 20 Hinkelammert, F., 2004. The Hidden Logic of Modernity: Locke and the Inversion of Human Rights. *Worlds & Knowledges Otherwise*, 1, pp.1-27 [https://globalstudies.trinity.duke.edu/sites/globalstudies.trinity.duke.edu/files/file-attachments/v1d1\\_HinkelammertF.pdf](https://globalstudies.trinity.duke.edu/sites/globalstudies.trinity.duke.edu/files/file-attachments/v1d1_HinkelammertF.pdf); Salomon, M.E., 2018. Nihilists, Pragmatists and Peasants: A Dispatch on Contradiction in International Human Rights Law. IILJ Working Paper 2018/5, *MegaReg Series*, [https://www.iilj.org/wp-content/uploads/2018/11/Salomon-IILJ\\_2018\\_5-Megareg.pdf](https://www.iilj.org/wp-content/uploads/2018/11/Salomon-IILJ_2018_5-Megareg.pdf)
  - 21 C. Odinkalu, 1999, 'Why More Africans Don't Use Human Rights Language', *Human Rights Dialogue* 2.1., [https://www.carnegiecouncil.org/publications/archive/dialogue/2\\_01/articles/602](https://www.carnegiecouncil.org/publications/archive/dialogue/2_01/articles/602)
  - 22 Monsalve, S, 2013, Grassroots Voices: The human rights framework in contemporary agrarian struggles, *The Journal of Peasant Studies* 41:1, 239-290; Franco, J.C., Monsalve, S. and Borrás, S.M., 2015. Democratic land control and human rights. *Current Opinion in Environmental Sustainability*, 15, pp.66-71; Ruth Hall, Marc Edelman, Saturnino M. Borrás Jr., Ian Scoones, Ben White & Wendy Woford (2015) Resistance, acquiescence or incorporation? An introduction to land grabbing and political reactions 'from below', *Journal of Peasant Studies*, 42:3-4, 467-488, DOI: 10.1080/03066150.2015.1036746
  - 23 Gonzalez, E., Vargas, M., and Hernández Zubizarreta, J., 2016, Business and Human Rights: The Failure of Self-Regulation, Amsterdam: Transnational Institute, <https://www.tni.org/en/article/business-and-human-rights-the-failure-of-self-regulation>
  - 24 <https://www.iss.nl/en/research/hosted-iss/emancipatory-rural-politics-initiative>
  - 25 Monsalve, S., 2013, Grassroots Voices, *J. Peasant Stud.*
  - 26 Cousins, B., 1997. How do rights become real?: Formal and informal institutions in South Africa's land reform. *IDS Bulletin*, 28(4), pp.59-68.
  - 27 C. Odinkalu, 1999, 'Why More Africans Don't Use Human Rights Language'.
  - 28 Hinkelammert, F., 2004. The Hidden Logic of Modernity, *Worlds & Knowledges Otherwise*.
  - 29 For an overview and discussion of key critiques regarding the relationship between social justice and human rights frameworks see Cotula, L. (forthcoming), Between hope and critique: Human rights, social justice and re-imagining international law from the bottom up, *Georgia Journal of International and Comparative Law* 48(2).
  - 30 V. Nesiiah and A. Keenan, 2004, 'Human Rights and Sacred Cows: Framing Violence, Disappearing Struggles' in N. Gordon (ed), 2004, *From the Margins of Globalization: Critical Perspectives on Human Rights*, Lanham: Lexington Books, 261, 280.
  - 31 Marks, S., 2011. Human rights and root causes. *The Modern Law Review*, 74(1), pp.57-78.; Nesiiah & Keenan, 2004, Human Rights and Sacred Cows pp. 261.
  - 32 Marks, 2011, "Human Rights and Root Causes" *Mod Law Rev.*
  - 33 Nesiiah & Keenan, 2004, Human Rights and Sacred Cows pp. 261.
  - 34 C. Odinkalu, 1999, 'Why More Africans Don't Use Human Rights Language'; Nesiiah & Keenan, 2004, Human Rights and Sacred Cows.
  - 35 ILO Convention 169 and the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) are particularly key in their recognition of collective rights.
  - 36 ILO Convention 169 entered into force in 1991 and UNDRIP was adopted in 2007.
  - 37 Sunde, J. and Chandrika, S., 2013. Recognizing a rights-based approach to development in fisheries: struggles of small-scale fishing communities to secure their human rights. *Journal of Peasant Studies*, 40(1), pp.280-285.
  - 38 De Schutter, O., 2010. The emerging human right to land. *International Community Law Review*, 12(3), pp.303-334.
  - 39 Franco, Monsalve, and Borrás, 2015. Democratic land control and human rights. *Curr Opin Env Sust*; Musembi, 2007, De Soto and land relations in rural Africa, *Third World Q.*; Cousins, B., 2009. Capitalism obscured: the limits of law and rights-based approaches to poverty reduction and development. *The Journal of Peasant Studies*, 36(4), pp.893-908.
  - 40 Hornby, D., Kingwill, R., Royston, L. and Cousins, B. eds., 2017. *Untitled: securing land tenure in urban and rural South Africa*. University of KwaZulu-Natal Press. pp 9-10.
  - 41 Musembi, 2007, De Soto and land relations in rural Africa, *Third World Q.*
  - 42 Hornby et al., 2017. *Untitled: securing land tenure in urban and rural South Africa*. pp 9-10.
  - 43 Musembi, 2007, De Soto and land relations in rural Africa, *Third World Q.*
  - 44 Sunde & Chandrika, 2013. Recognizing a rights-based approach to development in fisheries, *J. Peasant Stud.*
  - 45 Musembi, 2007, De Soto and land relations in rural Africa, *Third World Q.*; Cousins, 2009, Capitalism obscured, *J. Peasant Stud.*
  - 46 Haynes, N. and Hickel, J., 2016. Introduction: Hierarchy, Value, and the Value of Hierarchy. *Social Analysis*, 60(4), pp.1-20
  - 47 Stammers, N., 1999. Social movements and the social construction of human rights. *Hum. Rts. Q.*, 21, p.980-1008 pp.990.
  - 48 Nesiiah & Keenan, 2004, Human Rights and Sacred Cows.
  - 49 C. Odinkalu, 1999, 'Why More Africans Don't Use Human Rights Language'.
  - 50 Stammers, 1999. Social movements and the social construction of human rights. *Hum. Rts. Q.*; Franco, Monsalve, and Borrás, 2015. Democratic and control and human rights. *Curr Opin Env Sust*.



- 51 Cotula, L. (forthcoming), Between hope and critique, *Ga. J. Int'l & Comp. L.* 48(2).
- 52 F. Hinkelammert argues that incredible historical and contemporary violence has been justified by the claim that perpetrators of human rights violations forfeit their own human rights and are subject to any possible retribution, and argues for an emancipatory vision of human rights which removes this possibility. See Hinkelammert, F., 2004, *Worlds & Knowledges Otherwise*.
- 53 Davis, M., 2006, *Planet of Slums*, London:Verso.
- 54 Van der Ploeg, Jan Douwe, 2008, *The New Peasantries: Struggles for Autonomy and Sustainability in an Era of Empire and Globalization*, London: Earthscan cited in Edelman, M., 2013. *What is a peasant? What are peasantries?*: A briefing paper on issues of definition. first session of the Intergovernmental Working Group on a United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, Geneva, July, pp.15-19.
- 55 Davis, M., 2018, *Old Gods New Enigmas*, London:Verso.
- 56 Sunde & Chandrika, 2013. Recognizing a rights-based approach to development in fisheries, *J. Peasant Stud.* pp. 284.
- 57 Harvey, D., 2005, *The New Imperialism*, OUP Oxford.
- 58 Transnational Institute (TNI), 2013, *The Global Land Grab: A Primer*, Transnational Institute: Amsterdam <https://www.tni.org/files/download/landgrabbingprimer-feb2013.pdf>
- 59 TNI, 2013, *The Global Land Grab*.
- 60 *ibid.*
- 61 Fairhead, Leach, and Scoones, 2012. Green grabbing, *J. Peasant Stud.*
- 62 See for example, <http://longreads.tni.org/housing-in-kiev/>
- 63 Vandergeest, P. and Peluso, N.L., 1995. Territorialization and state power in Thailand. *Theory and Society*, 24(3), pp.385-426.
- 64 Scott, J.C., 2010. *The art of not being governed: An anarchist history of upland Southeast Asia*. Nus Press.
- 65 *ibid.*
- 66 For an exploration of the differential penetration of different kinds of state power, and the potential risks of increased state infrastructure, the case of producers of illicit crops in remote areas can be informative. See for example Jelsma, M. 2018 *Connecting the Dots: Human rights, illicit cultivation and alternative development*, Transnational Institute: Amsterdam [https://www.tni.org/files/publication-downloads/tni-2018\\_connecting\\_the\\_dots.pdf](https://www.tni.org/files/publication-downloads/tni-2018_connecting_the_dots.pdf)
- 67 von Benda-Beckmann, F., 2002. Who's afraid of legal pluralism?. *The Journal of Legal Pluralism and Unofficial Law*, 34(47), pp.37-82.
- 68 Thompson, E.P., 1971. The moral economy of the English crowd in the eighteenth century. *Past & present*, (50), pp.76-136; Scott, J.C., 1977. *The moral economy of the peasant: Rebellion and subsistence in Southeast Asia*. Yale University Press.
- 69 Hornby et al., 2017. *Untitled: securing land tenure in urban and rural South Africa*.
- 70 For example see Musembi, 2007, De Soto and land relations in rural Africa, *Third World Q.*; Franco, J.C., 2008. Making land rights accessible: social movements and political-legal innovation in the rural Philippines. *The Journal of Development Studies*, 44(7), pp.991-1022.
- 71 Quane, H., 2013. Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?. *Oxford Journal of Legal Studies*, 33(4), pp. 675-702.
- 72 Vandergeest & Peluso, 1995, Territorialization and state power *Theory Soc.* pp. 388.
- 73 *ibid.*
- 74 Monsalve, S., 2013, Grassroots Voices, *J. Peasant Stud.*
- 75 *ibid.*
- 76 *ibid* pp. 247.
- 77 *ibid* pp. 248.
- 78 Cotula identifies 'reactive' and 'constitutive' strategies of human rights advocacy as two interlinked and overlapping modes of advocacy. He argues that in 'reactive' strategies social movements use existing human rights concepts and instruments to respond to social injustices while, 'constitutive' advocacy strategies attempt to more fundamentally reconfigure human rights themselves in order to realise longer-term human rights goals. For a full discussion of this framework and its application to UNDROP see Cotula, L. (forthcoming), Between hope and critique, *Ga. J. Int'l & Comp. L.* 48(2).
- 79 Edelman, M., & James, C., 2011, Peasants' rights and the UN system: quixotic struggle? Or emancipatory idea whose time has come?. *The Journal of Peasant Studies*, 38(1), 81-108.
- 80 La Via Campesina, no date, *Who Are We*, accessed 10 July 2019 <https://viacampesina.org/en/who-are-we>
- 81 Provost, C., 2013, La Via Campesina Celebrates 20 Years of Standing Up for Food Sovereignty, *The Guardian*, <https://www.theguardian.com/global-development/poverty-matters/2013/jun/17/la-via-campesina-food-sovereignty>
- 82 Borras, S., 2008, La Via Campesina and its Global Campaign for Agrarian Reform, *Journal of Agrarian Change*, Vol. 8 Nos. 2 and 3, April and July 2008, pp. 258-289.
- 83 Claeys, P., 2013. From Food Sovereignty to Peasants' Rights: an overview of La Via Campesina's Rights-based claims over the last 20 years. Paper presented at *Food Sovereignty: A Critical Dialogue* [https://www.tni.org/files/download/24\\_claays\\_2013-1.pdf](https://www.tni.org/files/download/24_claays_2013-1.pdf); Claeys, P., 2015. Food sovereignty and the recognition of new rights for peasants at the UN: A critical overview of La Via Campesina's rights claims over the last 20 years. *Globalizations*, 12(4), pp.452-465.
- 84 Claeys, P., 2018. The rise of new rights for peasants. From reliance on NGO intermediaries to direct representation. *Transnational Legal Theory*, 9(3-4), pp.386-399; Claeys, 2015, Food sovereignty and the recognition of new rights for peasants, *Globalizations*; ; Claeys, 2013. From Food Sovereignty to Peasants' Rights, *Food Sovereignty: A Critical Dialogue*; La Via Campesina, 2009, Declaration of the Rights of Peasants – Women and Men <https://www.eurovia.org/wp-content/uploads/2016/03/EN-LVC-declaration-of-rights-of-peasants.pdf>
- 85 Claeys, P., 2018. The rise of new rights for peasants. *Transnational Legal Theory*; Edelman, & James, 2011, Peasants' rights and the UN system, *J. Peasant Stud.*; Shawi, N., 2014. New rights advocacy and the human rights of peasants: La Via Campesina and the evolution of new human rights norms. *Journal of Human Rights Practice*, 6(2), pp.306-326.

- 86 Monsalve, S., 2013, Grassroots Voices, *J. Peasant Stud.*, pp. 279.
- 87 United National Human Rights Council - 21st session of the Human Rights Council (2012) *Promotion of the human rights of peasants and other people working in rural areas* ( A/HRC/21/L.23) [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/21/L.23](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/21/L.23)
- 88 UN General Assembly, 73rd Session, 55th Plenary Meeting, Monday 17 December 2018, New York. A /73/ PV.55 <https://digitallibrary.un.org/record/3795602>
- 89 Edelman, & James, 2011, Peasants' rights and the UN system, *J. Peasant Stud.*
- 90 *ibid.*
- 91 For a detailed exploration of the novel role played by social movements in this process see Claeys, P., 2018. The rise of new rights for peasants. *Transnational Legal Theory.*
- 92 Shawki, 2014, New rights advocacy and the human rights of peasants, *J. Hum. Rights Pract.* pp.321.
- 93 Edelman, & James, 2011, Peasants' rights and the UN system, *J. Peasant Stud.*
- 94 *ibid.* pp. 93.
- 95 *ibid* pp. 99-100.
- 96 Shawki, 2014, New rights advocacy and the human rights of peasants, *J. Hum. Rights Pract.*
- 97 Claeys, 2015, Food sovereignty and the recognition of new rights for peasants, *Globalizations* pp.460.
- 98 Claeys, P., 2018. The rise of new rights for peasants. *Transnational Legal Theory.*
- 99 Claeys, P., 2018. The rise of new rights for peasants. *Transnational Legal Theory* ; CETIM (no date) Rights for Peasants, <https://www.cetim.ch/rights-for-peasants/> retrieved 29 September 2019.
- 100 For instance, the UN Declaration elaborates the right to water in a number of points, clarifying responsibilities for states in relation to customary water governance, ecological restoration, and prioritising human needs over other uses of water (Art 21.1-21.5). The right to food sovereignty is likewise elaborated in the UN Declaration, stating 'Peasants and other people working in rural areas have the right to determine their own food and agriculture systems, recognized by many States and regions as the right to food sovereignty. This includes the right to participate in decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures.'(Art 15.4). In both cases these elaborations may be based on contributions by advocates during the international negotiation process, and may be drawn from articulations of these rights made elsewhere by LVC. Nonetheless their introduction to the document during the negotiation of the UN Declaration suggests that the process of negotiation does not always and only weaken the positions and stances adopted by social movements.
- 101 Lorenzo Cotula has framed several of these rights, collectively, as amounting to a 'right to produce,' identifying this as an important difference from earlier human rights instruments which generally emphasise access and consumption. See Cotula, L. (forthcoming), Between hope and critique, *Ga. J. Int'l & Comp. L.* 48(2).
- 102 Salomon, M.E., 2018, ILLJ Working Paper 2018/5, *MegaReg Series.*
- 103 *ibid* pp 9.
- 104 *ibid* pp 11.
- 105 Claeys, 2015, Food sovereignty and the recognition of new rights for peasants, *Globalizations*; Shawki, 2014, New rights advocacy and the human rights of peasants, *J. Hum. Rights Pract.*; Claeys, P., 2012, The creation of new rights by the food sovereignty movement: The challenge of institutionalizing subversion. *Sociology*, 46(5), 844-860; Edelman, & James, 2011, Peasants' rights and the UN system, *J. Peasant Stud.*
- 106 Edelman, & James, 2011, Peasants' rights and the UN system, *J. Peasant Stud.* p 95.
- 107 Claeys, 2015, Food sovereignty and the recognition of new rights for peasants, *Globalizations.*
- 108 Claeys, 2012, The creation of new rights by the food sovereignty movement, *Sociology.*
- 109 Salomon, M.E., 2018, ILLJ Working Paper 2018/5, *MegaReg Series*, pp 8.
- 110 International Planning Committee for Food Sovereignty (IPC), 2016, *People's Manual on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security*, <http://www.foodsovereignty.org/wp-content/uploads/2016/06/peoplesmanual.pdf>
- 111 Franco, J. and Monsalve Suárez, S., 2018. Why wait for the state? Using the CFS Tenure Guidelines to recalibrate political-legal struggles for democratic land control. *Third World Quarterly*, 39(7), pp.1386-1402.
- 112 *ibid.*
- 113 IPC, no date, About Us <https://www.foodsovereignty.org/about-us/> Accessed 10 July 2019.
- 114 Franco & Monsalve Suárez, 2018. Why wait for the state? *Third World Q.*
- 115 *ibid.*
- 116 IPC, 2016, *People's Manual on the Tenure Guidelines.*
- 117 Franco & Monsalve Suárez, 2018. Why wait for the state? *Third World Q.*
- 118 Franco, Monsalve, and Borrás, 2015. Democratic land control and human rights. *Curr Opin Env Sust.* pp. 67.
- 119 *ibid.* pp. 68
- 120 Franco & Monsalve Suárez, 2018. Why wait for the state? *Third World Q.* pp.1391
- 121 *ibid.*
- 122 *ibid*; See also: Transnational Institute, 2017, Using the Tenure Guidelines for Action Research: A Primer, <https://www.tni.org/en/publication/using-the-tenure-guidelines-for-action-research>
- 123 Brent, Z.W., Alonso-Fradejas, A., Colque, G. and Sauer, S., 2018. The 'tenure guidelines' as a tool for democratising land and resource control in Latin America. *Third World Quarterly*, 39(7), pp.1367-1385. pp. 1376.
- 124 *ibid* pp. 1374.
- 125 *ibid* pp. 1380.



The Transnational Institute (TNI) is an international research and advocacy institute committed to building a just, democratic and sustainable planet. For more than 40 years, TNI has served as a unique nexus between social movements, engaged scholars and policy makers.

[www.TNI.org](http://www.TNI.org)



New exclusionary politics are generating deepening inequalities, jobless 'growth', climate chaos, and social division. The Emancipatory Rural Politics Initiative (ERPI) is focused on the social and political processes in rural spaces that are generating alternatives to regressive, authoritarian politics. We aim to provoke debate and action among scholars, activists, practitioners and policy-makers from across the world who are concerned about the current situation, and hopeful about alternatives.



**FIAN**  
INTERNATIONAL

FIAN International was founded in 1986 as the first international human rights organization to advocate for the realization of the right to adequate food and nutrition. FIAN's mission is to expose violations of people's right to food wherever they may occur.

[www.fian.org](http://www.fian.org)



