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## Peasants' Rights as New Human Rights: Promises and Concerns for Agrobiodiversity Conservation

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### Abstract

Agrobiodiversity conservation is vital for food security, maintaining ecological balance, and preserving socio-cultural norms. There is substantial evidence to support that agrobiodiversity hotspots coincide with localized, small-scale peasant food systems. Preserving such food systems is necessary for protecting agrobiodiversity. The current legal framework over agrobiodiversity is fragmented and inadequate. A major portion of this framework is situated within intellectual property law and farmers' rights law, neither of which are designed to foster sustainable management of agrobiodiversity. In this context, the 2018 Peasants' Rights Declaration has the potential to fill the gaps in the existing framework. The paper critically analyses the Declaration by exploring some of its legal innovations in improving agrobiodiversity conservation. While some of these innovations are commendable, they are unlikely to be adopted by states owing to their radical nature. Their adoption would require a massive overhaul of the existing agricultural model and power structures embedded within it.

**Keywords:** Peasants rights; food sovereignty; biodiversity; agriculture; UNDROP

“Biodiversity” means all life. It includes all living organisms across different ecosystems and denotes the variability among different organisms, species in plant and animal life and ecosystems.<sup>1</sup> Agrobiodiversity is a crucial subset of biodiversity, and all food humans consume is a product thereof. The Food and Agricultural Organization (FAO) defines agrobiodiversity to include:<sup>2</sup>

domesticated plants and animals raised in crop, livestock, forest and aquaculture systems, harvested forest and aquatic species, the wild relatives of domesticated species, other wild species harvested for food and other products, and ... the vast range of organisms that live in and around food and agricultural production systems.

Maintaining a high degree of agrobiodiversity is essential for securing adequate, nutritious, and culturally appropriate food and protecting the environment. In 2019, the FAO

<sup>1</sup> Article 2, *Convention on Biological Diversity*, 5 June 1992, 1760 U.N.T.S. 69 (entered into force 29 December 1993) [CBD].

<sup>2</sup> J. BÉLANGER and D. PILLING, “Report on the State of the World's Biodiversity for Food and Agriculture” *FAO Commission on Genetic Resources for Food and Agriculture Assessments* (2019), online: FAO <<http://www.fao.org/3/ca3129en/CA3129EN.pdf>> at xxxvii [FAO Report].

released its first ever report on the state of biodiversity in food and agriculture.<sup>3</sup> According to this report, there is overwhelming evidence to support that biodiversity plays a key role in food security and nutrition,<sup>4</sup> and this diversity has been in sharp decline across different food systems in the world.<sup>5</sup> Only nine major food crops account for 66% of global food consumption, and only 200 crops contribute to global food output among the hundreds of thousands of plant varieties cultivated for food.

Amidst sharp declines and near-extinctions of plant varieties,<sup>6</sup> several agrobiodiversity hotspots still thrive in different parts of the world. These are most often found in diffused and localized peasant farms and home gardens rather than in large commercial farms.<sup>7</sup> Traditional farming undertaken by peasants (especially special groups such as indigenous peoples) contribute vastly to agrobiodiversity sustainable use and conservation.<sup>8</sup> Agrobiodiversity, in turn, plays an important role in food security, nutrition, and providing livelihoods for peasants.<sup>9</sup> Peasant systems hence need to be preserved for ensuring agrobiodiversity richness.

Despite overwhelming evidence on the importance of preserving agrobiodiversity and the crucial role that peasant food systems play in doing so, the current “mainstream” food and agricultural model is characterized by completely different features, such as hybrid high-yielding seeds, technological intensity, resource intensity, large-scale landholding by individuals or corporations, and cultivation for profit in the globalized commodity trade of agricultural products. Productivist-oriented large-scale agriculture has diminished agrobiodiversity due to its reliance on monocropping; terminator technology within hybrid seeds; and intensive use of chemical pesticides, weedicides and fertilizers.<sup>10</sup> Such an agricultural model is a chief driver of agrobiodiversity loss due to its dependence on massive land use changes and overexploitation of resources, and creates pollution.<sup>11</sup>

The legal framework pertaining to the use, sustenance, and conservation of agrobiodiversity can be found across several fields of study, and as such is fragmented. For instance, seed laws, access and benefit sharing laws, biodiversity law, intellectual property rights as they operate over plant genetic resources and traditional knowledge, and several other categories play an important role in governing agrobiodiversity. Thus, to *find* the law governing agrobiodiversity one would have to join bits and pieces of all these laws, as there is no singular body of law that focuses *solely* on it. Furthermore, to find the law managing and promoting agrobiodiversity conservation is even harder, as “agriculture” and “environment” have evolved as somewhat separate and compartmentalized law-policy fields. Cross-cutting issues, such as agrobiodiversity conservation, remain relegated to the sidelines in both spheres.

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<sup>3</sup> *Ibid.*

<sup>4</sup> Lori Ann THRUPP, “Linking Agricultural Biodiversity and Food Security: The Valuable Role of Agrobiodiversity for Sustainable Agriculture” (2002) 76(2) *International Affairs* 283.

<sup>5</sup> FAO Report, *supra* note 2 at 38–41.

<sup>6</sup> Alexandre ANTONELLI et al., “State of the World’s Plants and Fungi Report” *Kew Royal Botanical Gardens* (2020), online: Kew <<https://doi.org/10.34885/172>>.

<sup>7</sup> Joan MARULL et al., “Long-term Bio-cultural Heritage: Exploring the Intermediate Disturbance Hypothesis in Agro-Ecological Landscapes (Mallorca, c.1850–2012)” (2015) 24(13) *Biodiversity and Conservation* 3217.

<sup>8</sup> D. NYADANU et al., “Agro-biodiversity and Challenges of On-Farm Conservation: The Case of Plant Genetic Resources of Neglected and Underutilized Crop Species in Ghana” (2016) 63(8) *Genetic Resources and Crop Evolution* 1397.

<sup>9</sup> Hope SHAND, “Biological Meltdown: The Loss of Agricultural Biodiversity” *Reimagine! Race, Poverty and the Environment* (2017), online: Reimagine <<http://www.reimaginepe.org/node/921>>.

<sup>10</sup> Quaker United Nations Office, “The Small-Scale Farmer and Agricultural Biodiversity Dialogue to Action Series” (November 2016), online: QUNO <<https://quno.org/resource/2016/11/small-scale-farmer-and-agricultural-biodiversity-dialogue-action-series>>.

<sup>11</sup> Via Campesina, “The Right to Produce and Access to Land” (November 1996), online: SAFSC <<http://safsc.org.za/wp-content/uploads/2015/09/1996-Declaration-of-Food-Sovereignty.pdf>>.

In this context, the United Nations Declaration on Rights of Peasants 2018<sup>12</sup> (UNDROP) is a new entrant on the legal playfield *vis-à-vis* agrobiodiversity. Although the focus of this Declaration is not agrobiodiversity *per se*, it is unique in its holistic approach that connects agriculture with environmental protection through the link of “peasantness”. This Declaration is unique in many ways, yet its potential in promoting agrobiodiversity conservation requires examination. The UNDROP is a culmination of the efforts of numerous organizations and social movements involved in advocating for food sovereignty for peasants.<sup>13</sup> It is based on the importance of “peasantness” that serves social, cultural, economic, and environmental functions. It recognizes “peasants” as a special category of right-holders, and makes several references to traditional knowledge, rights over seeds, and sustainable use of biological resources.<sup>14</sup>

This paper is premised on the fact that peasant food systems need to be protected for, *inter alia*, conserving agrobiodiversity. The paper is organized into two sections: the first sets the context by exploring the UNDROP’s ingenuity in reframing agricultural governance by orienting itself around small farmers and peasants. By recognizing unique rights of peasants to produce food using their own seeds, the Declaration promotes agrobiodiversity conservation the peasant way. The second section critically evaluates the UNDROP to make the argument that while the Declaration’s legal innovations are commendable, they are unlikely to be adopted by states owing to their radical nature. A legal adoption of peasant rights as a special category of human rights, since the Declaration uses a rights language, would require a massive overhaul of the existing agricultural model and power structures embedded in this model. The paper takes a sceptical view of the Declaration’s contribution towards conservation of agrobiodiversity.

## I. Peasants’ Rights as a New Entrant to the Legal Framework Governing Agrobiodiversity

Many laws have a direct impact on agrobiodiversity, which are relevant for not only legal practitioners but also agricultural scientists and social scientists.<sup>15</sup> These laws include seed laws, biodiversity laws, laws governing traditional knowledge, access, benefit sharing, etc. The agrobiodiversity “legal framework” is a jigsaw combination of many pieces borrowed from other legal regimes that focus on something else other than agrobiodiversity *per se*. Among these laws, the influence of intellectual property rights (IPR) has remained predominant. In other words, much of the substantive content of the agrobiodiversity legal framework lies within the intellectual property space. This creates numerous problems; most relevant for this discussion is IPRs lack of concern for conservation. After all, this regime is meant to reward innovations of “new” plant varieties, rather than protecting “old” varieties.

The progressive introduction of IPR in the sphere of food and agriculture has led to common pool resources such as seeds of farmers’ traditional varieties and wild plant varieties to become privatized. Different forms of “seed enclosures” have developed over the past decades that prohibit or discourage farmers from saving and using their own seeds.<sup>16</sup>

<sup>12</sup> *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, UN General Assembly Resolution adopting the UNDROP, UN Doc. A/RES/73/165 (17 December 2018) [UNDROP].

<sup>13</sup> *Ibid.*

<sup>14</sup> Enrique J. JARDEL PELÁEZ et al., “Biodiversité et viabilité de l’agriculture paysanne dans la Réserve de Biosphère Sierra de Manantlán, Mexique” (2013) 3(3) *Revue d’ethnoécologie* 1.

<sup>15</sup> Juliana SANTILLI, *Agrobiodiversity and the Law: Regulating Genetic Resources, Food Security and Cultural Diversity* (London: Routledge, 2012), Chapter 1.

<sup>16</sup> Maywa MONTENEGRO DE WIT, “Stealing into the Wild: Conservation Science, Plant Breeding and the Makings of New Seed Enclosures” (2017) 44(1) *Journal of Peasant Studies* 169.

The operation of such enclosures has been a driver of depleting agrobiodiversity, as farmers are forced to make a switch to protected seeds.<sup>17</sup> Patents and plant breeder rights are examples of seed enclosures. Patents over plant genetic material including seeds are recognized in some countries, such as the USA.<sup>18</sup> Since the enactment of the Plants Patent Act 1930,<sup>19</sup> and the simultaneous growth of the biotechnology sector in the US, IPRs have spread across different food systems in the world. In the 1960s, the “successes” of the Green Revolution in some countries led to a rise in demand for high-yielding seed varieties. At the same time, owing to the reluctance of some European countries to introducing patents for plants, rights resembling patents and plant breeder rights were defined and developed by the International Union for the Protection of New Varieties of Plants (UPOV) Conventions.<sup>20</sup> The UPOV Conventions operate in seventy-seven member states, where commercial plant breeders are allowed to secure a patent-like right over plant varieties they “innovate”. In 2001, the Agreement on Trade Related Aspects of Intellectual Property Rights<sup>21</sup> (TRIPS Agreement) mandated World Trade Organization (WTO) member states to extend IPR protection to plant varieties.<sup>22</sup> This has further expanded the sphere of IPRs in agriculture to 164 member states of the WTO.

Farmers’ rights were introduced as an attempt to allay some of the issues that IPRs in agriculture brought with it. The International Treaty on Plant Genetic Resources for Food and Agriculture<sup>23</sup> (ITPGRFA), in its Article 9, defines “farmers’ rights” as rights to save, use, exchange, and sell farm-saved seeds.<sup>24</sup> What the ITPGRFA settled with was commendable in one sense, as it framed farmers’ privileges under UPOV as “rights”.<sup>25</sup> Notwithstanding this language of entitlement, the farmers’ rights framework is limited in imagination and scope because it only stands as a response to IPRs.<sup>26</sup> Farmers’ rights makes no provision for conservation, but acknowledges that traditional seed saving and exchanging practices result in conservation of agrobiodiversity.<sup>27</sup> To take India as an

<sup>17</sup> Tamara WATTNEM, “Seed Laws, Certification and Standardization: Outlawing Informal Seed Systems in the Global South” (2016) 43(4) *Journal of Peasant Studies* 850.

<sup>18</sup> See Zhen LEI, Rakhi JUNEJA and Brian D WRIGHT, “Patents versus Patenting: Implications of Intellectual Property Protection for Biological Research” (2009) 27(1) *Nature Biotechnology* 36.

<sup>19</sup> *The Plants Patent Act of 1930*, 35 U.S.C. 161.

<sup>20</sup> *International Convention for the Protection of New Varieties of Plants*, 2 December 1961, UPOV Doc. 221/E (revised at Geneva on 10 November 1972, 23 October 1972 and 19 March 1991) [UPOV].

<sup>21</sup> *Agreement on Trade-Related Aspects of Intellectual Property Rights*, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (entered into force 1 January 1995) [TRIPS].

<sup>22</sup> *Ibid.* Article 27(3)(b) states that: “... Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof...” (emphasis added).

<sup>23</sup> *International Treaty on Plant Genetic Resources for Food and Agriculture*, 3 November 2001, 2400 U.N.T.S. 303 (entered into force 29 June 2004) [ITPGRFA].

<sup>24</sup> *Ibid.*, Article 9.1 recognizes the enormous contribution that local, indigenous communities, farmers have made and will continue to make to the conservation and development of plant genetic resources; Article 9.2 (a): protection of traditional knowledge relevant to plant genetic resources; Article 9.2(b): right to equitably participate in sharing benefits arising from their utilization; Article 9.2(c): right to participate in making decisions; Article 9.3: right to save, use, exchange and sell farm-saved seed/propagating material.

<sup>25</sup> UPOV, *supra* note 20, Article 15(2); *Explanatory Notes on Exceptions to the Breeder’s Rights Under the 1991 Act of the UPOV Convention*, UPOV Doc. UPOV/EXN/EXC/1 (22 October 2009).

<sup>26</sup> Stephen A. MARGLIN, “Farmers, Seedsmen, and Scientists: Systems of Agriculture and Systems of Knowledge” in Frédérique APFFEL-MARGLIN and Stephen A. MARGLIN, eds., *Decolonizing Knowledge: From Development to Dialogue* (Oxford: Oxford University Press, 1996), 185 at 205–6.

<sup>27</sup> Peter HALEWOOD, “Trade Liberalisation and Obstacles to Food Security: Toward a Sustainable Food Sovereignty” (2011) 43(1) *University of Miami Inter-American Law Review* 115; Karine PESCHARD, “Farmers’ Rights and Food Sovereignty: Critical Insights from India” (2014) 41(6) *The Journal of Peasant Studies* 1085; Marcus TAYLOR, “Climate-smart Agriculture: What is it Good For?” (2018) 45(1) *Journal of Peasant Studies* 89.

example, its farmers' rights legislation is being increasingly rendered irrelevant given the current seed market and technological trends. More than 80% of seeds in the market are hybrid varieties, thereby leaving little or no incentive for the farmer to save, exchange, and sell his/her own varieties. The use of hybrid varieties has increased drastically,<sup>28</sup> thereby decreasing farmers' incentives to carry on such a practice. In this context, a rise in scientific methods of breeding replacing traditional ones, rights over traditional knowledge, and benefit sharing available under the farmers' rights legislation have increasingly been forgotten.<sup>29</sup>

The sustainability of food systems depends on preserving the agro-biogenetic variability. The farmers' rights regime, while recognizing the dangers of seed enclosures and recognizing the value of peasant farmers' seed saving practices, stopped short of a bold framing. They remain an ideal, and a highly specialized category of exceptions to IPRs. Farmers' rights are not "rights of farmers" due to their limited conceptualization.

The advent and spread of proprietary conceptions of agrobiodiversity marked a major departure from traditional farming practices and beliefs around agriculture and nature as a whole.<sup>30</sup> Other arenas of law do not quite match the influence of IPR in agrobiodiversity. For instance, seed laws across the world have seen trends of countries pushing towards greater standardization, certification, and commercialization.<sup>31</sup> These laws too are not directed towards promoting sustainable agriculture, let alone specifically conserving agrobiodiversity. In all cases, the laws work in tandem with the global neoliberal model of agriculture that encourages and perpetuates major environmental costs that remain unaccounted for.<sup>32</sup> Sustainability is a question of effective management of agrobiodiversity for current and future generations as well as conservation. Traditional farming practices involve sustainable management and conservation of biological resources as farmers stand to benefit the most from it. Farmers are also custodians of traditional knowledge associated with several plants that are crucial for maintaining an agro-ecosystemic balance. Under the current legal system, farmers are not incentivized or rewarded for sustainable and conservation of agrobiodiversity.

At the international level, the Convention on Biological Diversity (CBD) and the ITPGRFA both make clear references to sustainable management and conservation of biological genetic resources, and the special role that farmers play in achieving this.<sup>33</sup> Even though the CBD mentions IPR in connection with conservation of such resources,<sup>34</sup>

<sup>28</sup> Rajshree CHANDRA, "Farmers' Rights in India: 'Globally Sui Generis'" (2016) 6 South Asia Chronicle 119 at 129–31: Depending on the different sectoral crops, the share of commercial hybrid seeds *vis-à-vis* open pollinated traditional seeds is 70–88%. The use (and consequently the incentive to keep using) of traditional varieties is shrinking alarmingly.

<sup>29</sup> Protection of Plant Varieties and Farmers' Rights Act, 2001/53; see s. 26 (Determination of benefit sharing by Authority); s. 39 (Farmers' rights); and s. 41 (Rights of communities). As of the date of writing, not a single benefit sharing claim has been filed; see the Annual Reports (from 2013 to 2020) of the Plant Variety Journal India, e.g., Protection of Plant Varieties and Farmers' Rights Authority, "Annual Report 2019–20", online: Protection of Plant Varieties and Farmers' Rights Authority, Ministry of Agriculture and Farmers' Welfare, India <<https://www.plantauthority.gov.in/sites/default/files/eannualreport19-20.pdf>>.

<sup>30</sup> Christine FRISON, "Planting the Commons: Towards Redesigning an Equitable Global Seed Exchange" in Fabien GIRARD and Christine FRISON, eds., *The Commons, Plant Breeding and Agricultural Research: Challenges for Food Security and Agrobiodiversity* (London: Routledge, 2018), 272.

<sup>31</sup> Jack R. KLOPPENBURG, *First the Seed: The Political Economy of Plant Biotechnology, 1492–2000* (Madison: University of Wisconsin Press, 2004) at 336.

<sup>32</sup> William R. CLINE, *Global Warming and Agriculture: Impact Estimates by Country* (Washington, DC: Centre for Global Development, Peterson Institute for International Economics, 2007) at 90–4.

<sup>33</sup> CBD, *supra* note 1, Articles 8(j) and 15; ITPGRFA, *supra* note 23, Article 1.

<sup>34</sup> CBD, *supra* note 1, Article 16.

neither the CBD nor the ITPGRFA create any rights for farmers' traditional knowledge, nor entrusts any specific party with the obligation to conserve. Furthermore, IPR treaties like the TRIPS and the UPOV Conventions make no reference to sustainable management and conservation. This creates a vacuum at the national level, as environmental obligations are hardly prioritized *vis-à-vis* other obligations under the IPR system.<sup>35</sup>

With increasing IPR coverage within agriculture and other environmental law regimes not engaging with agrobiodiversity conservation, the UNDROPs entry into the field provides some unique insights into the question. Even prior to the UNDROP, claims over conserving traditional seeds, and traditional ways of farming have been articulated as human rights' claims.<sup>36</sup> Activism around seeds in numerous countries has highlighted the inadequacies of the current legal framework in protecting farmers against different forms of seed enclosures.<sup>37</sup> Such activism has led to creation of seed commons, seed banks, open-source seed systems, and recognizing special rights (beyond farmers rights) to produce food.<sup>38</sup> The UNDROP represents a culmination of many of these claims, made using the rights language. That is, the UNDROP articulates these struggles through the "right to seeds", recognized primarily in Article 19 of the UNDROP. It is relevant for agrobiodiversity conservation through its articulation of right to seeds, protecting seed commons, and overall preserving peasant food systems that are agrobiodiversity hotspots.

## II. Analysing the Undrop's Potential in Promoting Agrobiodiversity Conservation

The peasants' rights framework argues that in order to achieve environmentally sustainable agriculture, agriculture needs to be peasant oriented. The UNDROP hopes to promote agroecological conservation through the recognition and realization of peasants' rights, especially rights over seeds. To what extent will the UNDROP lead to agrobiodiversity conservation can be gauged through an assessment of some its legal innovations, and what their implementation in national contexts look like.

The Declaration recognizes the contributions of peasants and rural populations to food production, and the "special relationship" they have with land and resources; and recognizes their vulnerabilities to dispossession, unfair working conditions, and their political repression. By using the rights language, the Declaration identifies a special category of right holders and sets new standards for their individual and collective rights to land, natural resources, seeds, biodiversity, and food sovereignty. The Declaration assumes a holistic vision in protecting the rights of peasants, which most significantly includes their rights over seeds. With specific reference to environmental rights and provisions pertaining to agrobiodiversity conservation, Articles 18, 19, and 20 of the Declaration contain

<sup>35</sup> Vandana SHIVA, *The Violence of the Green Revolution: Third World Agriculture, Ecology and Politics* (London: Zed Books, 1991); MS Swaminathan - pioneer of the Green Revolution in India, calling it a failure: Sandhya JAIN, "Orphaning Green Revolution" *The Pioneer* (28 December 2018), online: Daily Pioneer <<https://www.dailypioneer.com/2018/columnists/orphaning-green-revolution.html>>

<sup>36</sup> Sangeeta SHASHIKANT and François MEIENBERG, "International Contradictions on Farmers' Rights: The Interrelations between the International Treaty, its Article 9 on Farmers' Rights, and Relevant Instruments of UPOV and WIPO" *Third World Network and The Berne Declaration* (October 2015), online: TWN <[https://www.twn.my/title2/intellectual\\_property/info.service/2015/ip151003/457628655560ccf2b0eb85.pdf](https://www.twn.my/title2/intellectual_property/info.service/2015/ip151003/457628655560ccf2b0eb85.pdf)>.

<sup>37</sup> Mohamed COULIBALY, Priscilla CLAEYS, and Anne BERSON, "The Right to Seeds and Legal Mobilization for the Protection of Peasant Seed Systems in Mali" (2020) 12(3) *Journal of Human Rights Practice* 479.

<sup>38</sup> Karine PESCHARD and Shalini RANDERIA, "'Keeping Seeds in Our Hands': The Rise of Seed Activism", (2020) 47(4) *Journal of Peasant Studies* 613, at 615.

wide-ranging rights to seeds, conservation and protection of the environment, and protection of traditional knowledge.

Peasants' rights over seeds include rights to save, exchange, donate, sell, use, and reuse farm-saved seeds of peasants' varieties, and to maintain, control, protect, and develop these seeds and property over these seeds.<sup>39</sup> States are obliged to respect, protect, and support peasant seed systems through supporting research ensuring the participation of peasants in research and development, and by investing more into research on and development of orphan crops<sup>40</sup> and seeds that respond to the needs of peasants in developing countries.<sup>41</sup> The current system described above with respect to rights to save, use, exchange, and sell seeds are protected by IPR, and are not human rights. The coming of the Peasants' Rights Declaration has changed this, as it has been framed within the human rights system.

### A. Bottom-up Radical Foundations of Peasants' Rights

Peasants' rights advocacy finds its ancestry in the food sovereignty movement and, as such, many core claims overlap in both these movements. Seed rights and the right to define one's food system are common to both movements.<sup>42</sup> Food sovereignty itself has been framed in the language of rights, and is defined as the "right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems".<sup>43</sup> Food sovereignty has been developed by Via Campesina as a countermovement that aims to counteract the negative outcomes of neoliberalism in food and agriculture, such as agricultural commodification, environmental degradation, decreasing control of farmers over their biogenetic resources, water stress, land fragmentation, and diminishing rural livelihoods.<sup>44</sup>

In the past, Via Campesina did make efforts to institutionalize food sovereignty rights by demanding an international convention on food sovereignty in 2003<sup>45</sup> and 2004;<sup>46</sup> however, since the 2007 Nyéléni Declaration, this attempt has *more-or-less* been abandoned.<sup>47</sup> Food sovereignty rights were since channelized in new directions. In 2008, Via Campesina proposed a draft Declaration on the Rights of Peasants, Men and Women in the United Nations (UN) Human Rights Council, upon the initiative of and building upon previous

<sup>39</sup> UNDROP, *supra* note 12, Articles 18 and 19.

<sup>40</sup> Orphan crops are a wide variety of crops like finger millet, teff, yam, roots, and tubers that tend to be locally or regionally important but are not traded around the world and have received little attention in agricultural or biological research.

<sup>41</sup> UNDROP, *supra* note 12, Article 19(7).

<sup>42</sup> Priscilla CLAEYS, "The Creation of New Rights by the Food Sovereignty Movement: The Challenge of Institutionalizing Subversion" (2012) 46(5) *Sociology* 844 at 847.

<sup>43</sup> *Declaration of Nyéléni*, Declaration of the International Forum for Agroecology, World Forum for Food Sovereignty, 27 February 2015, online: Nyéléni <<https://nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf>> [*Nyéléni Declaration*].

<sup>44</sup> Emma LARKING, "Mobilising for Food Sovereignty: The Pitfalls of International Human Rights Strategies and an Exploration of Alternatives" (2019) 23(5) *The International Journal of Human Rights* 758 at 759.

<sup>45</sup> "Our World is Not for Sale: Priority to Peoples' Food Sovereignty, WTO out of Food and Agriculture" *La Via Campesina* (2 September 2003), online: La Via Campesina <<https://viacampesina.org/en/peoples-food-sovereignty-wto-out-of-agriculture/>>.

<sup>46</sup> "Jose Bove meets Kofi Annan: Civil Society Raises Food Sovereignty Issue" *La Via Campesina* (13 June 2004), online: La Via Campesina <<https://viacampesina.org/en/jose-bove-meets-kofi-annan-civil-society-raises-food-sovereignty-issue/>>.

<sup>47</sup> Priscilla CLAEYS, "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" (2015) 12(4) *Globalizations* 452 at 456.

work done by the Indonesian peasant union, Serikat Petani.<sup>48</sup> In 2012, the Council adopted a resolution to establish a working group to negotiate a draft Declaration on Peasants' Rights. Several peasant organisations participated in the negotiations of this working group. And in December 2018, years of negotiation and preparations led to the final draft of the UNDROP being adopted by the UN General Assembly. The UNDROP contains, among other rights, the right to food sovereignty under Article 15.4, which is a reflection of the cross-fertilization between both these movements.

The adoption of the UNDROP has, for the first, time paved the way for identifying some of the concrete rights that a food sovereignty convention might have articulated. These rights are heavily debated,<sup>49</sup> yet their location has been made more certain. The framing of several food sovereignty claims, such as preserving traditional and indigenous food systems, preserving the peasant way of cultivation, resources rights over land, seeds, and traditional knowledge etc. in a language of human rights is significant.<sup>50</sup>

### B. Rights-Based Framing of Peasants' Claims

Peasants' rights comprise not only a reiteration of existing conventional human rights, but also propose 'new' rights that orient previously existing human rights towards peasants' claims. Given its radical underpinnings, peasants' rights are seen as act of radical democracy, decolonisation, and more broadly rights against capitalism.<sup>51</sup> These rights innovations being negotiated and agreed upon by states within the UN is commendable, given the strength of corporations and neoliberal institutions that force states to act otherwise. Solomon argues that collective rights to land and the rights over seeds 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>52</sup>

In the past, development programmes which used human rights language focused mainly on private property, and were linked primarily to global capitalist forces.<sup>53</sup> Rather than human rights being employed to secure and consolidate local communities' land tenure, they have been known to cause or facilitate dispossession. For example, government-led initiatives to formalize land rights in East African countries, such as Kenya, Tanzania, and Ethiopia were carried out in the name of formalising informal land rights by documenting the owners and access holders. These programmes led to many right holders alienating their rights, as formalization meant they now had a title

<sup>48</sup> Priscilla CLAEYS, "From Food Sovereignty to Peasants' Rights: An Overview of La Via Campesina's Rights-Based Claims over the Last 20 Years", Food Sovereignty: A Critical Dialogue, Conference Paper #24, September 2013, online: Transnational Institute <[https://www.tni.org/files/download/24\\_claeyes\\_2013-1.pdf](https://www.tni.org/files/download/24_claeyes_2013-1.pdf)>.

<sup>49</sup> Marc EDELMAN, "Food Sovereignty: Forgotten Genealogies and Future Regulatory Challenges" (2014) 41(6) *Journal of Peasant Studies* 959; Haroon AKRAM-LODHI, *Hungry for Change: Farmers, Food Justice, and the Agrarian Question* (Halifax: Fernwood Publishing, 2013); Henry BERNSTEIN, "Food Sovereignty via the 'Peasant Way': A Sceptical View" (2014) 41(6) *Journal of Peasant Studies* 1031.

<sup>50</sup> Robin DUNFORD, "Human Rights and Collective Emancipation: The Politics of Food Sovereignty" (2015) 41(2) *Review of International Studies* 239.

<sup>51</sup> Sophie VON REDECKER and Christian HERZIG, "The Peasant Way of a More than Radical Democracy: The Case of La Via Campesina" (2020) 164 *Journal of Business Ethics* 657; Katie SANDWELL et al., "A View from the Countryside: Contesting and Constructing Human Rights in an Age of Converging Crises" *Issue Brief* (December 2019), online: Transnational Institute <[https://www.tni.org/files/publication-downloads/web\\_countryside.pdf](https://www.tni.org/files/publication-downloads/web_countryside.pdf)> at 109.

<sup>52</sup> Margot SOLOMON, "Nihilists, Pragmatists and Peasants: A Dispatch on Contradiction in International Human Rights Law", Institute for International Law and Justice, New York University School of Law, IILJ Working Paper 2018/5 (MegaReg Series), 28 November 2018, online: IILJ <<https://www.iilj.org/publications/nihilists-pragmatists-peasants-dispatch-contradiction-international-human-rights-law/>>.

<sup>53</sup> Sandwell, *supra* note 51 at 5.

deed that could easily be transferred.<sup>54</sup> The use of rights towards fostering development has been interpreted as Western and colonial impositions which seek to replace local practices and traditions that operate informally.<sup>55</sup> Grassroots movements and activists have thus viewed the role of law, and specifically the role of human rights, ambivalently. Human rights when framed in elite spaces away from communities which will be impacted by them can work against their interests, and even when framed with their participation are still very hard to access.

Despite these limitations that human rights can pose, the human rights language has been used by many marginalized communities as a tool of resistance against capitalist forces. The rights language has been used to mobilize support, promote international solidarity, and defend against abuses and violence by several marginalized groups. By utilising the human rights framework, social movements reshape the institutions and understanding of human rights.<sup>56</sup> In this vein, Shawki argues that some elements of this process:

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>57</sup>

The UNDROP brings forth a more radical, democratic, and emancipatory conception of human rights and, therefore, it will be left on states, movements, and other actors as to how they make use of this document to advance peasants' rights in either one or more such directions.

The rights language has proven to be a powerful tool despite its many limitations.<sup>58</sup> Rights claims are understood as universal and have the capacity to integrate within its fold multiple ideologies from diverse ideological, political, and cultural origins.<sup>59</sup> This explains why human rights vocabulary has been used in diverse struggles, such as the civil rights movement, LGBTQI+ groups, labour rights, indigenous peoples, etc.,<sup>60</sup> yet human rights cannot break free from its Western, liberal, and individualist foundations.<sup>61</sup> Human rights have been critiqued for their statist orientation, as it is difficult for claimants to define and enforce obligations for private entities such as corporations, especially transnational enterprises.<sup>62</sup> Some scholars have pointed out that human rights

<sup>54</sup> Patrick MCAUSLAN, *Land Law Reform in Eastern Africa: Traditional or Transformative?* (Abingdon and New York, NY: Routledge, 2013).

<sup>55</sup> Saturnino M. BORRAS, "Agrarian Social Movements: The Absurdly Difficult but not Impossible Agenda of Defeating Right-Wing Populism and Exploring a Socialist Future" (2019) 20(1) *Journal of Agrarian Change* 1 at 3.

<sup>56</sup> Sofia MONSALVE-SUÁREZ, "The Human Rights Framework in Contemporary Agrarian Struggles" (2013) 40 (1) *Journal of Peasant Studies* 239.

<sup>57</sup> Noha SHAWKI, "New Rights Advocacy and the Human Rights of Peasants: La Via Campesina and the Evolution of New Human Rights Norms" (2014) 6(2) *Journal of Human Rights Practice* 306 at 321.

<sup>58</sup> Eric AGRİKOLIANSKY, "Les Usages Protestataires du Droit" in Olivier FILLIEULE, Eric AGRİKOLIANSKY, and Isabelle SOMMIER, eds., *Penser les Mouvements Sociaux. Conflits Sociaux et Contestation dans les Sociétés Contemporaines* (Paris: La Découverte, 2010), 225 at 225–32.

<sup>59</sup> Sally E. MERRY, "Changing Rights, Changing Culture" in Jane K. COWAN, Marie-Bénédicte DEMBOUR, and Richard A. WILSON, eds., *Culture and Rights: Anthropological Perspectives* (Cambridge: Cambridge University Press, 2012), 31.

<sup>60</sup> Doug McADAM, *Freedom Summer* (Oxford: Oxford University Press, 1990); Juanita ELIAS, "Transnational Migration, Gender, and Rights: Advocacy and Activism in the Malaysian Context" (2010) 48(6) *International Migration* 44.

<sup>61</sup> Sally E. MERRY, "Transnational Human Rights and Local Activism: Mapping the Middle" (2006) 108(1) *American Anthropologist* 38.

<sup>62</sup> Brewster KNEEN, *The Tyranny of Rights* (Ottawa, Canada: The Ram's Horn, 2009) at 66–75.

emphasize the appropriation of economic resources without any comment on the equality of outcome or welfare of society at large. Even group rights are framed as claims over resources for the group in question, without paying any attention to the common pool from which the resources are claimed.<sup>63</sup> These are caveats to the use of human rights, which have not dissuaded groups from framing their demands in the rights language. Critical human rights scholars have further pointed out such iterations redefine human rights more into something more pluralistic,<sup>64</sup> and redirect rights towards promoting non-Western conceptions of freedom.<sup>65</sup>

A good example of rights transforming into more grounded, non-Western versions is the reception that the right to food has received within the food sovereignty and peasant rights movements. The right to food has been contested as it overly focuses on the consumer of food rather than the producers of food.<sup>66</sup> The right to food could theoretically be secured by importing grain from across the world or producing it using high-technological inputs and hybrids, or through consolidation and grabbing of land by displacing thousands of peasants, all of which food sovereignty strongly opposes. While the right to food in a conventional sense has not been received well within these movements, the UNDROP does acknowledge, in the Preamble, the work of the UN Committee on World Food Security on the right to food. Further, Article 15.5 secures the right to food for peasants. The content of the right to food has thus transformed to include newer dimensions, such as the right to food that is produced the peasant-way.

In this way, while the UNDROP is an example of human rights being used as an emancipatory tool for a particular group,<sup>67</sup> the Declaration also stands to revolutionize the human rights framework itself. Shivji distinguishes this phenomenon by explaining that some rights born out of struggles from below cannot be theorized as legal rights in the absolutist sense.<sup>68</sup> They are not just claims, but a means of struggle in and of themselves. They are thus akin to “righteousness” rather than “rights”. As a soft-law source, the essence of the UNDROP can provide new righteous insight to existing human rights. Hence, notwithstanding a framing within the UN human rights institutional space, in a language of “rights” that the UN and its members can understand, peasant claims under the UNDROP stand more as expressions of righteousness rather than rights.<sup>69</sup> It is hence also arguable that these claims have limited or no *legal* content translatable at the national level.

### *C. Legal Innovations within the UNDROP: Limitations of using the Rights Language for Promoting Conservation*

The UNDROP’s attempts at circumventing the limitations of a rights-based framing are commendable. However, how will the provisions in the Declaration translate to

<sup>63</sup> John CHARVET and Elisa KACZYNSKA-NAY, *The Liberal Project and Human Rights: The Theory and Practice of a New World Order* (Cambridge: Cambridge University Press, 2008).

<sup>64</sup> Joe HOOVER, *Reconstructing Human Rights: A Pragmatist and Pluralist Inquiry into Global Ethics* (Oxford: Oxford University Press, 2016).

<sup>65</sup> Ratna KAPUR, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Oxford: Oxford University Press, 2018); for a review see: Ben GOLDER, “Critiquing Human Rights” (2021) 12(2) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 226.

<sup>66</sup> Claeys, *supra* note 42 at 849.

<sup>67</sup> Marc EDELMAN and Carwil JAMES, “Peasants’ Rights and the UN System: Quixotic Struggle? Or Emancipatory Idea whose Time has Come?” (2011) 38(1) *Journal of Peasant Studies* 81 at 84.

<sup>68</sup> Issa G. SHIVJI, *The Concept of Human Rights in Africa* (Dakar: Codesria, 1989) at 71.

<sup>69</sup> Peter VANDERGEEST and Nancy Lee PELUSO, “Territorialization and State Power” (1995) 24 *Theory and Society* 385 at 393: “Where different legitimating authorities conflict in the allocation of rights, the one that is more enforceable in practice (*de facto*) will have a greater influence on behaviour and resource use than (*de jure*) controls.”

transformative changes in agricultural law and policy? Such legal and policy reform is crucial to address the urgent agrobiodiversity conservation issues in the food system. Accordingly, this section analyses the UNDROP's environment related provisions. This section argues that its provisions do not adequately address the environmental concerns. Moreover, even if one were to take an optimistic reading of the UNDROP, the radical yet ambiguous nature of crucial provisions within the Declaration render it difficult to be adopted as law or policy at a domestic level to enact real change.

The question of agrobiodiversity conservation is raised in the Preamble of the UNDROP, where it recognizes the "contributions of peasants ... in conserving and improving biodiversity, which constitute the basis of food and agricultural production throughout the world".<sup>70</sup> Then Article 19 spells out peasants' right to seeds. It includes "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 states' obligations "to support peasant seed systems and promote the use of peasant seeds and agrobiodiversity" (Article 19.6). To gauge the potential of Article 19 and other provisions under the UNDROP in promoting agrobiodiversity conservation, this section divides the discussion into five parts: beginning with an analysis on seed rights as environmental rights.

### *1. Seed rights as environmental rights*

To gauge the potential of seed rights in promoting agrobiodiversity conservation, seed rights can be read as environmental rights of peasants. Environmental rights have evolved globally at the international and national levels as offshoots of both human rights and environmental law.<sup>71</sup> The UNDROP has been drafted as a specialized human rights treaty and endorsed by the UN Human Rights Council, however the potential, applicability, and impact of seed rights can be gauged better if they are understood as environmental rights. As such, seed rights under the UNDROP are a result of peasant activism against seed enclosures created by IPRs embedded within a larger neoliberal agricultural model. Environmental rights have also stemmed from environmental degradation being seen as a human rights violation,<sup>72</sup> where governments are held accountable against a higher standard than would otherwise be the case. Under Article 19, a similar tone is perceptible, where peasants assert seed rights and expect their governments to combat the negative impacts of IPRs on agrobiodiversity, which especially affect peasants, as the disappearance of traditional seeds threatens their own food security, environmental stability, and socio-cultural integrity.

When understood as environmental rights, seed rights have both the substantive and procedural elements as other environmental rights articulated in other specialized human rights treaties. The substantive element being that such rights are essential for peasants to enjoy other conventional human rights.<sup>73</sup> For instance, Article 24 of the African Charter<sup>74</sup> and Article 29 of the Declaration on the Rights of Indigenous Peoples recognizes a right to environment, and constructs this right as being essential for satisfaction of other socio-economic and cultural rights. Seed rights can be read in the same way as

<sup>70</sup> UNDROP, *supra* note 12, Preamble.

<sup>71</sup> Rachel PEPPER and Harry HOBBS, "The Environment is all Rights: Human Rights, Constitutional Rights and Environmental Rights" (2020) 44(2) Melbourne University Law Review 634.

<sup>72</sup> Dinah L. SHELTON, "Developing Substantive Environmental Rights" (2010) 1(1) Journal of Human Rights and the Environment 89.

<sup>73</sup> Francesco FRANCONI, "International Human Rights in an Environmental Horizon" (2010) 21(1) European Journal of International Law 41.

<sup>74</sup> *African Charter on Human and Peoples' Rights*, 27 June 1981, 1520 U.N.T.S. 217 (entered into force 21 October 1986).

seeds are an intrinsic element of peasant life, and the loss of control over seeds can arguably lead to a loss of peasantness. The Declaration hopes to foster empowerment of peasants to participate in the deliberative process of framing food and agricultural policy such that they be entitled to fashion laws, policies, and governmental decisions to suit their needs. This is the procedural element of seed rights as environmental rights, akin to environmental treaties on access to information and public participation. For instance, the Aarhus Convention 1998<sup>75</sup> reads procedural environmental rights as human rights. Food sovereignty rights and seed rights within the UNDROP can be read as procedural environmental rights wherein peasants “have a right to determine their own food and agricultural systems” (Article 15.4), and states have an obligation to “take appropriate measures to ensure that agricultural research and development integrates the needs of peasants and ... ensure their active participation in the definition of priorities and the undertaking of research and development”.

Accordingly, the UNDROP contains several provisions that are relevant to the environment. However, to what extent are these provisions translatable in policy terms is the larger question. There is a long history of using the human rights framework for environmental protection.<sup>76</sup> Both human rights law and environmental law, with special reference to use and protection of natural resources, have interwoven to see an increasing mention of environmental concerns in human rights instruments and vice versa, the use of a rights-based discourse, the constitutional status of some environmental human rights, the environmental claims before human rights tribunals, and so on. The growth and application of environmental rights, as markers of increasing interwovenness of human rights and environment, have not been free of challenges. Environmental rights continue to struggle reconciling with collective claims, indigenous and customary environmental conceptions, and unique environmental problems and conditions.<sup>77</sup> In this context, the seed rights within the UNDROP are even harder to frame, use, and implement as law.

## 2. Power relations in food and land

To implement the radical agenda of peasants’ rights requires states to fundamentally restructure their food and agricultural models that are entrenched in set power structures. In several countries, political power is exercised by land-owning elites who have massive investments in agriculture.<sup>78</sup> This land-agriculture-politics nexus is challenged by the very idea of peasants’ rights. It is thus one thing to sign a non-binding declaration as a mode of endorsement for an international cause of emancipation, but it is quite another matter to ratify a binding treaty on peasants’ rights if it ever were to come about. In many ways, the UNDROP follows the footsteps of UN Declaration on the Rights of Indigenous Peoples (UNDRIP),<sup>79</sup> wherein states were found willing to negotiate and sign a declaration for rights of indigenous peoples; however, states are evidently

<sup>75</sup> Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, 2161 U.N.T.S. 447 (entered into force 30 October 2001).

<sup>76</sup> Donald K. ANTON and Dinah L. SHELTON, *Environmental Protection and Human Rights* (Cambridge: Cambridge University Press, 2011).

<sup>77</sup> Louis J. KOTZÉ, “Human Rights, the Environment, and the Global South” in Shawkat ALAM et al., eds., *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015), 171 at 171.

<sup>78</sup> A. Haroon AKRAM-LODHI, “Land, Markets and Neoliberal Enclosure: An Agrarian Political Economy Perspective” (2007) 28(8) *Third World Quarterly* 1437; Jane HAYWARD, “Beyond the Ownership Question: Who Will Till the Land? The New Debate on China’s Agricultural Production” (2017) 49(4) *Critical Asian Studies* 523; Ben WHITE et al., “The New Enclosures: Critical Perspectives on Corporate Land Deals” (2012) 39(4) *The Journal of Peasant Studies* 619.

<sup>79</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, Resolution adopted by the UN General Assembly on 13 September 2007, UN Doc. A/RES/61/295 (2007) [UNDRIP].

uncomfortable with the core ideas of UNDRIP, such as self-determination. India for instance, while endorsing the UNDRIP does not recognize that its own tribal populations are “indigenous peoples”. It thus, conveniently locates the *problématique* somewhere else, such as in the USA, Canada, or Australia where the term has been historically used. This may repeat with the UNDROP, wherein “cunning states”, such as India, fail to recognize the issues of power-asymmetry within its own food and agricultural model.<sup>80</sup> Land rights under Article 17 of the UNDROP state that states shall “provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems”.<sup>81</sup> Further, the Declaration obliges states to protect peasants against eviction, recognize peasants’ legitimate tenure, and recognition of “natural commons and their related systems of collective use and management”.<sup>82</sup> The vagueness in the many terms used is not only a taxonomic problem. These rights, at their heart, contest the logic of capitalism and globalization.<sup>83</sup> They are expressions of alternatives to privatization and corporatization of land and the accumulation of natural resources that leads to forced displacements, land grabs, and financial speculative land investments. The realization of such rights would require more than a mere enactment or amendment of land laws, but a restructuring of the political economy of natural resource law itself.

Other resource rights within the UNDROP adopts similar tonality. These rights include the right to access natural resources and participate in their management (Article 5), the right to participate in preparation and implementation of policies affecting them (Article 10), the right to food sovereignty (Article 15.4), and the right to water (Article 21), which includes a right to water for livelihood (Article 21.2). Peasants and other people working in rural areas have the right to the conservation and protection of the environment and the productive capacity of their lands (Article 18). Land and resource rights under the UNDROP are expressed as states’ obligations. Its framing within the UN as a human rights declaration cannot escape this statist orientation.<sup>84</sup>

Reconciling the peasants’ rights radical agenda with the legitimacy and agency the UNDROP attributes to the state is problematic. The UNDROP provides an alternative paradigm to the dominant agricultural model. The right to food sovereignty on the one hand is claimed for peasants, communities, and peoples; a right that embraces a multiplicity of sovereignties.<sup>85</sup> Such a radical foundation challenges the monopoly of the government as defining “public interest”, and hence UNDROP’s emphasis on the state “as the only legitimate source of law making and applying” is irreconcilable with food sovereignty for peasants. Lowering of standards to merely “participation rights” is not a worthy goal of the UNDROP.

### 3. Contradictions in the rights framework

Some rights cannot be reconciled with others. The ambiguity of resource rights aside, Article 5 imagines a scenario of exploitation of natural resources which “peasants [] traditionally hold”, wherein a social and environmental impact assessment and consultations

<sup>80</sup> Shalini RANDERIA, “Cunning States and Unaccountable International Institutions: Legal Plurality, Social Movements and Rights of Local Communities to Common Property Resources” (2003) 44(1) *European Journal of Sociology* 27.

<sup>81</sup> UNDROP, *supra* note 12, Article 17.4.

<sup>82</sup> *Ibid.*, Article 17(5).

<sup>83</sup> Margot E. SALOMON, “The Radical Ideation of Peasants, the ‘Pseudo-Radicalism’ of International Human Rights Law, and the Revolutionary Lawyer” (2021) 8(3) *London Review of International Law* 425.

<sup>84</sup> Ellen Meiksins WOOD, “Capitalism and Social Rights” (2009) 140 *Against the Current*, online: <https://againstthecurrent.org/atc140/p2150/>.

<sup>85</sup> Rajeev PATEL, “Transgressing Rights: La Via Campesina’s Call for Food Sovereignty” (2007) 13(1) *Feminist Economics* 87.

in good faith should be conducted. It is the duty of the state to carry out such assessments and consultations, yet the Declaration does not explicitly speak of peasants rejecting any proposal of exploitation. However, Article 15.4 spells out a right to food sovereignty, which, under the food sovereignty discourse includes a “right to reject” any agricultural model.<sup>86</sup> The UNDROP does not go so far, but somewhat qualifies the right to food sovereignty by adding that this right “includes the right to participate in decision-making processes on food and agriculture policy”. The radical agenda of peasants see a compromise in their articulation of land and resource rights that are provided and secured by the state. In this respect, it is not clear whether the UNDROP stands in support of state sovereignty over natural resources and eminent domain or against its exploitative uses against peasants.<sup>87</sup>

#### 4. Lowering protections

Some rights provide a lower standard of protection than already enjoyed under other laws. Here again, while Article 5 states that it does not prejudice a higher standard of protection under any other domestic or international law,<sup>88</sup> clause (c) of paragraph 2 speaks of fair and equitable benefit sharing to be on “mutually agreed terms between those exploiting the natural resources and the peasants”. It does not in and of itself use the language of “free, prior, and informed consent” and even defends the right to development in its framing of Article 5.<sup>89</sup> With respect to Article 19 on rights to seeds, the Declaration goes so far to spell out a right to “maintain, control, protect, and develop their own seeds” and “participate in the making of decisions on matters relating to the conservation and sustainable use of plant genetic resources”.<sup>90</sup>

The peasants’ rights framework also does not adequately engage with the question of food security. The Declaration stands against capitalistic, mechanistic, and globalized agriculture. It does not, however, engage with the motivations and reasons that led to such a style of agriculture being widely adopted. For instance, in the 1960s, when Green Revolution technology was announced, there were few takers in the developing world, barring the notable exceptions of India and Indonesia. India was on the brink of famine and feared hunger of a colossal scale in the coming years. It had no option but to adopt large-scale technology-intensive agriculture that would solve its food shortage crisis.<sup>91</sup> Within only five years, India and Indonesia overcame its cereal deficit and became global exporters of grain. Today the world has the advantage of hindsight, and especially so with respect to the environmental impact of agro-technologies introduced by the Green Revolution. Yet, what about the benefits that mass-production has rendered? The peasants’ rights movement’s rejection of the food security agenda has not adequately answered this question.<sup>92</sup> Critical scholars have raised concerns over the romanticizing and essentialization of peasant farmers by the food sovereignty movement.<sup>93</sup> In most

<sup>86</sup> Nyéléni Declaration, *supra* note 43.

<sup>87</sup> Solomon, *supra* note 52.

<sup>88</sup> UNDROP, *supra* note 12, Article 28.

<sup>89</sup> *Draft United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, Report of the Open-Ended Intergovernmental Working Group, Human Rights Council, UN Doc. A/HRC/30/55 (2015), at 9 and 14; CBD, *supra* note 1, Article 15; Articles 5, 6, and 7, *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Benefit Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, 29 October 2010 (entered into force 12 October 2014).

<sup>90</sup> UNDROP, *supra* note 12, Articles 19.2 and 19.1(c).

<sup>91</sup> India’s Agriculture Minister (1994–6) who ushered the Green Revolution: C. Subramaniam, *The New Strategy in Indian Agriculture: The First Decade and After* (New Delhi: Vikas Publishing House, 1979) at 5; C. Subramaniam, *A New Strategy in Agriculture: A Collection of the Speeches by C. Subramaniam* (New Delhi: ICAR, 1972) at 31.

<sup>92</sup> Jeffrey McKelvey AYRES et al., eds., *Globalisation and Food Sovereignty: Global and Local Change in the New Politics of Food* (Toronto, Ontario: University of Toronto, 2014).

<sup>93</sup> Bernstein, *supra* note 49 at 1031; Edelman, *supra* note 49 at 960.

parts of the world, the profitability of small-scale agriculture is a serious issue, and how peasant food systems, even if they were meted out with legal protection, would find a way to be profitable is not addressed within the Declaration. Can the adoption of peasants' rights curb or reverse trends of low-profitability and depeasantization prevailing across the world?<sup>94</sup>

### 5. Problematic definition of peasants

Finally, defining peasants as a normative category is difficult. The identification of peasants as a special group marks a unique development of law, unlike any other category of people that human rights law has specialized in in the past. A specialization for groups such as “women”, “indigenous peoples”, “linguistic minorities”, or “disabled people” have several objective makers. This is not to say that there will never be any doubts over inclusion and exclusion. But a historical and scientific basis of distinguishing the group has been possible. With respect to peasants, definitions may lead to, or rely on, reification or “culturization” of the idea of who is a “peasant”. Political or economic distinctions are not enough, and this fuzziness around who is included within this category and who isn't is a question that the Declaration fails to address. The lack of clear parameters or definition of who is a peasant is a crucial flaw. To give an example of the farmers' protests in India's capital city, New Delhi introduced three farm laws in September 2020. These protests have been endorsed by food sovereignty and peasant organizations across the world.<sup>95</sup> However, the farmers that are protesting against the apparent corporatization of Indian agriculture comprise mainly landed elites from the states of Punjab and Haryana, the epicentres of the Green Revolution.<sup>96</sup>

The limitations that a human-rights-frame naturally pose for peasants' claims are significant, however commendable the attempts made at circumventing them. Articles 18 and 19 read together have the potential for promoting agrobiodiversity protection through the protection of peasant food systems. Yet the author takes a sceptical view of these rights being translated into law, for they are embedded in a radical agenda that lacks clarity on the nature and scope of natural resource rights, environmental rights that not as strongly framed as a radical agenda would have them do, and the question of who is a peasant. The UNDROP as an instance of rights from below, or an articulation of grassroots struggles against capitalist forces is indeed remarkable,<sup>97</sup> yet its relevance for furthering environmental protection through conservation of seeds is doubtful. In this sense, its entry into the field of agrobiodiversity protection through the human rights gate is a major development, yet its manifestation within the domestic contexts of states is difficult to imagine.

### III. Conclusion

The extent of legal innovation the UNDROP employs stands juxtaposed to the restrictions of its human rights-based framing. This paper has tried to highlight the fragmentation and inefficiency of the legal framework covering agrobiodiversity. Given the

<sup>94</sup> Farshad A. ARAGHI, “Global Depeasantization, 1945–1990” (1995) 36(2) *Sociological Quarterly* 337.

<sup>95</sup> “We Stood Together, and We Looked Beautiful! #ShineOnIndiaFarmers” *La Via Campesina* (27 January 2021), online: *La Via Campesina* <<https://viacampesina.org/en/we-stood-together-and-we-looked-beautiful-shineonindiafarmers/>>.

<sup>96</sup> Indranil DE and Sanjib POHIT, “Rich Farmers Dominate Farm Protests in India. It's Happening Since Charan Singh Days” *The Print* (30 September 2020), online: *The Print* <<https://theprint.in/opinion/rich-farmers-dominate-farm-protests-in-india-its-happening-since-charan-singh-days/513027/>>.

<sup>97</sup> Lorenzo COTULA, “Between Hope and Critique: Human Rights, Social Justice and Re-Imagining International Law from the Bottom Up” (2020) 48(2) *Georgia Journal of International and Comparative Law* 473.

overwhelming influence of IPR law over plant genetic resources and biological diversity, the urgent issues of protection and conservation of agrobiodiversity have been inadequately dealt with by international law. The current agricultural model stands largely opposed to the interests of peasant farmers, who are the chief actors in agrobiodiversity conservation.

In this context, the UNDROP poses as a possible solution to fill up the legal vacuum over agrobiodiversity. It uses the rights language and the international human rights institutional architecture to propose a holistic change of current food and agricultural systems. By focusing on the interests of peasants and preserving the peasant-way that in turn promotes judicious use of resources and protects agrobiodiversity, it frames several peasants' claims in the language of rights. The emancipatory dimension of celebrating and preserving "peasantness" is a landmark development in human rights law. The author explores UNDROP to assess its potential in promoting agrobiodiversity conservation through peasants' rights to seeds and other resource rights. There are obvious constraints that the rights-language pose, and this is especially true when human rights are used for furthering the environmental agenda. Despite the long history of the environmental and human rights nexus, this Declaration fails on some counts, making it difficult for its legal enactment and implementation. One, the UNDROP cannot escape the statist framing, and despite its radical foundations, depends on states for granting rights. There is a lack of clarity in crucial provisions on land rights and rights to allow (or disallow) exploitation of traditionally held resources. Some of the standards mentioned herein are not as strong as they could be. However, overall, the UNDROP as radical articulation of peasants' claims cannot be achieved without reordering rural power asymmetries and massively rearranging the architecture of agriculture itself. According to the author, all these factors render much of its noble content unusable in the domestic context.

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