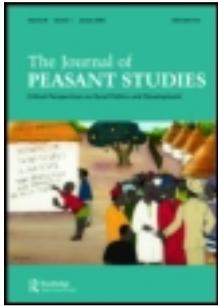


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GRASSROOTS VOICES

The Human Rights Framework in Contemporary Agrarian Struggles

Sofía Monsalve Suárez, Guest Editor

Editor's introduction

Important demands of contemporary rural social movements, such as the food sovereignty vision, have been increasingly framed as rights issues and by a rights discourse: Food sovereignty¹ is 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. Food sovereignty promotes transparent trade that guarantees just incomes to all peoples as well as the *rights* of consumers to control their food and nutrition. It ensures that the *rights* to use and manage lands, territories, waters, seeds, livestock and biodiversity are in the hands of those of us who produce food.

Historically this might not be new. Emiliano Zapata, the agrarian leader of the Mexican Revolution, framed the demands of the Mexican peasantry and indigenous peoples at the beginning of the twentieth century using a rights discourse as well (Zapata 1986). So what is different today? In this issue of the Grassroots Voices we want to shed light on the questions of why and how agrarian movements are now employing the human rights framework in their struggles; what have been the impacts of using it; and what are the limitations of using this framework to advance the cause of the rural poor.

To answer these questions, we requested representatives of different grassroots and social movements to tell about their experiences using a human rights framework. The selection of contributors was heuristic and sought to cover a wide range of issues, regions and levels of operation (local, national, international).

The first two contributions are testimonies about concrete agrarian conflicts and the way the affected communities are using human rights to defend themselves and advance their demands. In the first one, Peter Baleke Kayiira, an Ugandan grassroots leader, tells about the violent eviction his community suffered due to the fact that the government allotted their lands to a foreign investor. He explains how they have been using human rights to seek redress for the all damages inflicted upon them. In the second contribution, Sandra Maribel Sánchez, a Honduran journalist, portrays the story of a women's land occupation. She shows what role the legal strategy has played in this struggle and the larger gender impacts this women-led land occupation has had on the internal affairs of the peasant organizations.

I'd like to thank Priscilla Claeys and Sandra Ratjen for their invaluable comments which were of great help to better structure the insights of the contributors to this Issue.

¹This definition of food sovereignty has been taken from the Declaration of the Forum for Food Sovereignty, Nyéléni (2007).

The next two contributions focus on policy issues and how human rights can challenge, for instance, damaging trade policies, as Bashiru Jumah and Armin Paasch demonstrate in their study about the impact of trade liberalisation on the right to food of rice farming communities in Ghana. Riccardo Bocci and Luca Colombo elaborate in their paper on the role of farmers rights and progressive legal frameworks to regain the development of seeds, revalorize traditional peasant knowledge in Italy and Europe and ensure peasant innovation sufficient space to be developed vis-à-vis the threats posed by industrial agriculture.

The last three contributions revolve around the specific issues and perspectives of different rural constituencies when using a human rights framework. In an interview, Henry Saragih, the International Co-ordinator of La Via Campesina, presents their initiative for an International Convention on the Rights of Peasants and explains how this proposal came about particularly in the Indonesian context. Jackie Sunde and Chandrika Sharma, both working with the International Collective in Support of Fishworkers (ICSF) in South Africa and India respectively, provide in their article an overview of the way in which fishworker's and small-scale fisher movements have struggled for recognition of their human rights. Their paper explores some of the challenges, concerns and limitations of adopting and implementing a human rights-based approach to development in fisheries. Taghi Farvar, former Secretary General of the World Alliance of Mobile Indigenous Peoples (WAMIP), explains in an interview how nomadic pastoralists in Central Asia are using the UN Declaration on the Rights of Indigenous Peoples to advance their struggle for the right to territory and to defend their customary institutions and natural resource management practices.

What is the human rights framework?

Before dealing with the above mentioned questions, it is worth explaining first what are human rights and what distinguish them from other rights.

By definition, a human right is a right that is inherent to human beings without any discrimination based on sex, origin, race, place of residence, religion, or any other status. Human rights are universal, interdependent, indivisible and interrelated and seek to protect human dignity. They are derived from the needs and aspirations of ordinary people, express universal ethical and moral values, and empower each human being, their communities and peoples with entitlements and enforceable claims vis-à-vis their own governments as well as other governments. To resist oppression is at the very core of the human rights idea. Human rights explicitly address power imbalances and raise the question of the legitimacy of the powerful (UDHR 1948).

Over the past 50 years, a series of important human rights treaties have come into being. Noteworthy among them are the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). The purpose of these treaties and other human rights law generated by states is to facilitate the implementation of human rights by describing the content of the rights, the right holders, the duty bearers, the types of state obligations; and by introducing certain procedures to promote implementation. In the strict sense, human rights refer to the rights enshrined in these treaties. But the existing treaties, or in other words the existing positive laws, do not exhaust human rights.

As the treaties are the results of historically and politically contingent processes, they do not cover all needs and aspirations of oppressed groups. They should be regarded as work in progress. A particular case in point here is the right to natural resources which has not clearly been recognised as a universal human right yet. Both indigenous peoples and now peasants and fisherfolk fundamentally question the idea of turning natural resources into commodities. Thus they are calling for state/social regulation to keep community-based control of natural resources as a matter of right. The recently adopted UN Declaration on the Rights of Indigenous Peoples has recognized the rights to land and territory of indigenous peoples, and peoples as subjects of collective rights. These two features alone are watershed achievements in developing a human rights canon beyond Western ideas.

Rights, without the epitome 'human', refer on the contrary to specific, exclusive, non-universal entitlements that persons, legal or natural, can have with respect to different matters, e.g. property, labour, an economic activity, and according to the respective law regimes, e.g. commercial, civil, customary, environmental law. Generally speaking these rights are exclusive in their enjoyment.

Human rights are generally associated to civil rights such as the right to be free from torture only. When it comes to economic and social human rights though, it is very common among grassroots people, policy makers and academics not to distinguish between human rights and other rights. Both sets of rights are certainly interconnected but they are not the same thing. To illustrate the difference and the relationship that can exist between these two types of rights, it is useful to briefly examine one concrete example. Suppose the right to land was officially recognized by the UN Committee on Economic, Social and Cultural Rights (CESCR).² What would be the difference between the human right to land and land rights? The first one would probably enshrine an entitlement to land for all those whose living directly depends on it. The states party to the ICESCR would then have the obligation to respect, protect and fulfil this right, which would mean that they have the obligation to respect and not destroy existing access to land; to protect existing access to land from interferences of third parties; and to fulfil and facilitate getting access to land for all those who do not have it and depend on it for their living. Moreover, sustainable use of land, conservation of soil fertility and biodiversity in order to guarantee access to land to future generations would also be an important component of a right to land. States would have to bring their domestic legislation in compliance with this right, which can include the incorporation of the right in the

²CESCR is the body in charge of interpreting and monitoring compliance with the International Covenant on Economic, Social and Cultural Rights. In 2002 it issued its General Comment 15 on the right to water, a right that had not been explicitly recognized as a human right before. Whether the right to land can be recognized as a human right remains a contested matter. Some argue that land cannot be considered a human right because it is not a 'universable' right, which means that we all do not need land for our living whereas we all need food, housing, water, health, etc. There is consensus though that land is indispensable for the enjoyment of a full range of human rights for rural people and that land is part of the normative content of the right to adequate food and housing. The former UN Special Rapporteur on the Right to Housing, Miloon Kothari called the UN Human Rights Council for the recognition of land as a human right (Kothari 2007). Olivier de Schutter, the current UN Special Rapporteur on the Right to Food, has recently echoed this call (De Schutter 2010a). For a comprehensive view on human rights aspects related to land and natural resources, see Annex II to the CSO Proposals to the FAO guidelines on land and natural resources tenure (2011), OHCHR (2010) and Monsalve Suárez (2008b).

constitution. By contrast, land rights refer to specific property or use rights to land which are recognized and enforced by statutory or customary law. Land rights regulate tenure rights among land owners and users but they do not imply a claim of individuals and groups or communities vis-à-vis the state to respect, protect and fulfil the right to land. Depending on the national legislation, individuals and groups or communities can have different degrees of recognition of customary and of use rights to land, of protection from expropriation of land rights by the state, and from dispossession by third parties in disputes over land rights. A human right to land would address existing gaps in recognition and protection of land rights according to the state's obligations mentioned above. Moreover, and more importantly, it would provide an entitlement to get access to land for the landless, an entitlement that except for some customary systems, land rights by definition simply exclude.³

Finally, to use the human rights framework means to refer to the existing human rights treaties, and to apply litigation, monitoring, accountability and advocacy strategies based on the provisions contained in these treaties.

Why are agrarian movements using the human rights framework?

When asked why his dispossessed community decided to employ a human rights framework, Peter Kayiira's answer is quite simple: 'In a situation like ours there were only two alternatives: retaliating against the violation committed against us; or advocating for redress which at all costs must include land restitution. The latter was a better option as the former would be too dangerous and costly to us. We chose this approach after weighing the implications of both alternatives. After all it is always too difficult to convince others of your plight if you are violent. Such an effort could very easily be criminalised by government and therefore easily smashed or suppressed!'

In an emergency situation such as a violent eviction, harassment or arbitrary imprisonment of agrarian leaders, resorting to human rights and/or fundamental rights enshrined in national constitutions can save lives and help to protect people from major abuses. In these cases, it is self-evident why it is absolutely crucial for a community or a social movement to apply human rights instruments. On the other hand, as the quotation from Kayiira reveals, the human rights framework is perceived as an alternative strategy of resistance to violent protest or armed struggle which is likely to gather the support of other sectors of society in the face of government repression.

The contribution by Sánchez highlights how human rights helped a group of landless women to do something which had been unthinkable before in Honduras: to organize as poor single mothers to reclaim a piece of state land invoking the universal human right food. This experience illustrates the emancipatory force that human rights can display for poor women not only vis-à-vis the state but also vis-à-vis male dominated peasant organizations.

Several contributions (Kayiira, Jumah and Paasch, Bocci and Colombo, Saragih and Sunde and Sharma) elaborate on the need to apply human rights as a strategy to

³Talking about fisheries, Sunde and Sharma make the point in this Issue that a 'rights-based' approach to fisheries management can be predicated on models of economic efficiency and private property rights and it is being promoted as a panacea to the problems of overcapacity and overfishing facing world fisheries. Sunde and Sharma rightly stress that despite the overlap in the use of the term 'rights', this approach makes no reference to human rights and is determined by a market-driven approach to governance of marine fisheries resources.

challenge unjust laws and international law regimes working against the rural poor. The last three decades of neoliberal globalization have brought about deep changes in the national and international legal frameworks related to agrarian issues. First, the decision making arenas have moved to an important extent from national parliaments and governments to international financial institutions with de facto powers to impose policies upon national governments as conditionalities to development loans and the like. The cases of Uganda, Honduras and Ghana in this Issue illustrate this. Second, the World Trade Organization (WTO) and their provisions on trade-related aspects of intellectual property rights established a framework for trade policies with a mandate to review national policies in order to ensure coherence with WTO rules and disciplines. Third, mandatory regulations related to labour, social and environmental standards to be met by private actors and companies and enforced by the state have started to be replaced by self-regulatory and voluntary schemes, e.g. corporate social responsibility, with different forms of multi-stakeholder monitoring of compliance. Moreover, private business and corporations have set up their own shadow systems of business -particularly in the financial world- which allow them to evade social and environmental regulations and any public control (Hildyard 2008); and international investment protection regimes which strengthen the legal value of individual contracts by making their non-compliance a breach of international law, and giving investors the possibility to sue host governments in arbitration mechanisms operating to a large extent under secrecy norms (Peterson 2009).

All these three interrelated process have put in place corporate-friendly regulatory frameworks which have dismantled state support and protection of peasants, small-scale fishers, rural workers and other rural constituencies and have effectively paved the way to dispossess them from their livelihoods in favor of commercial interests (Borras et al. , 2008). People on the ground increasingly face the challenge to defend themselves from powerful foreign actors like transnational companies, foreign states and international institutions. As the case of the Mubende community shows, grassroots communities are recurring to the human rights framework to address the responsibility of foreign companies involved in human rights violations like forced evictions and the obligations of the home states of these companies to regulate the behaviour of their companies abroad. The international nature of the human rights framework facilitates for local communities networking with transnational advocacy networks and accessing international relevant policy fora which might have an impact in their local struggle. The limitations of applying a human rights strategy which relate to both the contexts in which it is applied and to the current coverage or development of the human rights framework itself, will be discussed later.

In any case, people's organizations are using the UN Human Rights System and the regional human rights systems to denounce actual violations of human rights such as widespread forced evictions and non-implementation of agrarian reform policies in contexts of hunger⁴ and policies causing systematic violations as well. The

⁴See particularly the parallel reports submitted by civil society organizations, including peasant organizations or NGOs with close ties to them, to the UN Committee on Economic, Social and Cultural Rights at <http://www2.ohchr.org/english/bodies/cescr/sessions.htm>. See for instance the recent reports on Colombia, Madagascar, Democratic Republic of Congo, Philippines, Kenya and Brazil.

monitoring bodies of the ICESCR, the Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Special Procedures of the Human Rights Council, the Special Rapporteurs on the Rights to Food⁵, Housing and Human Rights Defenders, and the Advisory Committee to the Human Rights Council have been particularly receptive to these complaints. The UN Human Rights System has been extremely important in underlining the legitimacy of the claims raised by poor agrarian movements.

On the other hand and to respond to new international governance structures and legal frameworks working against them, agrarian movements are increasingly resorting to human rights as an alternative international legal framework to the *lex mercatoria* (Santos and Rodríguez Garavito 2005, Borras and Franco 2009). Besides mobilizing the public as in the case of the big rallies against WTO and protest actions such as the destruction of GMO fields, radical rural social movements are also using international human rights law as part of their strategy to counter the corporate-friendly regulatory frameworks. Bocci and Colombo elaborate in their contribution about the importance of what they call ‘a militant legal strategy seeking to overcome the multiple obstacles posed by legislation and norms protecting the interest of the seed industry’ as an integral element of the struggle of Italian and European peasants for their seeds and knowledge. In this sense and as mentioned above, the UN Human Rights System has been instrumental in developing an alternative understanding of international regulatory frameworks and international governance structures on food and agriculture issues. Moreover, rural social movements perceive that they can appropriate the human rights discourse to articulate their own aspirations and conceptions of rights in the process of building new international normative standards. It is because of these experiences that La Via Campesina decided to launch its initiative for the adoption of an International Convention on the Rights of Peasants, as Henry Saragih explains in this Issue. Similarly, fishworkers’ movements are advocating for the adoption of an international human rights based instrument to protect their distinct rights as Sunde and Sharma explain in their contribution. On land, agrarian reform and fisheries issues, rural social movements articulated in the International Planning Committee for Food Sovereignty (IPC) have had the opportunity to influence FAO’s work in these fields and hope to be able to expand the terrain gained in order to build an alternative international policy framework which facilitates the implementation of the food sovereignty vision using the human rights framework vis-à-vis corporate-friendly legal frameworks (McKeon, forthcoming; Brem-Wilson 2010, Monsalve Suárez 2008a).

How are agrarian movements using the human rights framework?

The first thing to remark here is that some movements are using the human rights framework explicitly as the cases from Uganda, Honduras, Ghana, La Via Campesina and ICSF show. Kayiira and Sánchez explain how grassroots groups are employing human rights to give more legitimacy domestically to their claims but also

⁵The two Special Rapporteurs on the Right to Food, Jean Ziegler and the current one, Olivier de Schutter have greatly contributed to framing agrarian issues in human rights categories covering a wide-range of issues including land, agrarian reform, seeds, agro-ecology, the corporate control over food systems, and agricultural workers issues.

to use administrative and other legal procedures, including bringing their cases to court. The Ugandan case has relied more strongly on using the human rights framework given the involvement of a foreign company. In this sense, human rights have also facilitated the establishment of an advocacy campaign in Germany, the company's home country, and the political dialogue with German members of parliament and other decision makers invoking the concept that Germany carries extra-territorial human rights obligations, and has therefore the obligation to regulate the behaviour of its companies abroad so that they do not affect the enjoyment of human rights in other countries. The Honduran case, differently, has concentrated on claiming constitutional provisions in favour of agrarian reform while the reference to human rights has been rather subsidiary at least for litigation purposes.

The case of Italian and European peasants and their struggle over seeds is interesting for our discussion now because it does not build on the human rights framework explicitly. Nevertheless, the issues raised in the defence of the peasants' seeds and the associated knowledge are undoubtedly related to the right to adequate food, the right to work, to develop own's one culture and knowledge and the right to self-determination and to freely dispose over natural resources. Other movements, such as the Movement of the Landless (MST), have used the reporting mechanism of ICESCR to internationally denounce the introduction of GMOs in Brazil. In general, in Europe and certainly in the US, which has not ratified ICESCR yet, courts and governments tend to ignore the human rights treaties, particularly when it comes to economic, social and cultural rights. In their perception, their constitutions and social, labour and agricultural legislation are sufficiently well developed so that there is no much need to refer to international standards. On the other hand, the justiciability of economic, social and cultural rights is questioned in these countries and their tribunals generally consider that it is the role of the parliaments only to rule on social and economic matters. Probably because of this, an explicit reference to human rights has been of little use for the European 'militant legal strategy' to protect peasants' seeds and promote peasant and community-centred agricultural knowledge. They have rather built on local, regional and international positive legal developments like the International Treaty on Plant Genetic Resources for Food and Agriculture.

Another important aspect about how agrarian movements are using the human rights framework is pointed out by Farvar in his interview: nomadic pastoralists in Iran and other countries of Central Asia have been using the UN Declaration on the Rights of Indigenous Peoples, because it is the only human rights instrument which deals with key issues of concern for nomadic pastoralists like the right to territory and to resources, the right to free, prior and informed consent, and the right to determine the organizations that represent them. The main point to make in this respect is that different rural groups are trying to claim rights which have been recognized so far for indigenous peoples only as Farvar explains for the case of pastoralists. In Latin America, Afro-descendants have also claimed to have a special collective relationship with their lands and have successfully claimed before national courts and the Inter-American Court of Human Rights rights enshrined in the ILO Convention 169 on the rights of Indigenous Peoples (Hoffmann 2002). The preamble of La Via Campesina's Declaration on the Rights of Peasants (2009) refers to UN Declaration on the Rights of Indigenous Peoples, and states that all indigenous peoples, including peasants, have the right to self-determination and that by virtue of

that right they freely determine their political status and freely pursue their economic, social and cultural development. The CSO proposals to the FAO Guidelines on Governance of Land and Natural Resources Tenure (2011) elaborate in detail how to transfer indigenous peoples' rights like the right to self-determination and, derived from it, the right to self-govern lands and other natural resources, the right to territory, and the right to free, prior and informed consent in relation to all measures which might affect the enjoyment of the lands and other natural resources, to other social groups. The UN Special Rapporteur on the Right to Food has stated that the right to free, prior and informed consent should apply at least to all groups whose living directly depends on land and natural resources (De Schutter 2010b).

The existing literature on agrarian movements and law (Franco 2005a,b, Houtzager 2005, Meszaros 2011) does not specifically distinguish between the different law regimes that agrarian movements can apply as this Issue is trying to do. Nevertheless, it is important to put the present discussion on human rights and agrarian movements on the broader framework of agrarian movements and law in general because the human rights framework, as several contributions in this Issue make clear, is not applied in isolation from domestic law or other law regimes.

In his analysis of the interaction of the Brazilian MST with the law, Meszaros distinguishes two phases: the first one characterized by a defensive conception of legality from the beginning of the movement in 1979 up until 2000, followed by an offensive conception of legality which appreciates the potentialities of law from 2000 until the present (Meszaros 2011). In the first decade of MST's existence, its leaders had a deep distrust of state institutions and law, paying consequently little attention to legal instruments and putting an emphasis on transgressive collective action (Houtzager 2005). While MST was making progress in occupying idle lands, it came to discover that they were not able to present an adequate defense in court when landlords counter-attacked by judicializing land occupations and by demanding imprisonment of the land occupations' leaders. From the 1990's onwards MST started to invest in a legal strategy together with progressive lawyers' networks and human rights defenders. Gradually, MST went through the learning experience that legal action could be expanded and enhanced without compromising the movement's strategic political objectives, and that law could not only be used to defend the movement from attack but to put others on the defensive. In fact, Houtzager (2005) shows how MST's interaction with the law has been able to bring about substantial legal change, for instance changing the way the judiciary should look at land conflicts, namely moving away from criminal and civil codes protecting private property to linking the social function of property with the realization of fundamental rights and thus redefining property rights legally and in practice and contributing to the process of constitutionalizing law. Moreover, the definition of social conflict also changed, for instance, understanding direct action as civil disobedience and not as criminal offence, and coming thus closer to the realities on the ground.

The interaction between social movements and law is deeply embedded in and contingent on specific historic, social, political, economic and legal contexts. Without generalizing MST's path, the two moments coined by Meszaros can be used to characterize in a continuum the ways the contributors to this Grassroots Voices Issue are applying the human rights framework: in a defensive way as in the case of the Mubende community in Uganda, gradually moving to a more offensive strategy as in the case of the women's land occupation in Honduras and the rice growing

peasants in Ghana; up to an overtly offensive way as in the case of the Italian peasants' struggle to regain control over seeds.

Given the scale of the current wave of violent evictions and dispossession of land as it has been documented by various human rights organizations (FIAN and La Via Campesina 2004–2006, COHRE, 2006, Amnesty International 2008–2010, Brot für die Welt et al. 2010;,) and the alarming tendency to criminalize grassroots leaders,⁶ the defensive way to apply the human rights framework is probably the most common one. In the great majority of cases, human, constitutional and/or fundamental rights are used vis-à-vis national authorities and actors, but increasingly also vis-à-vis powerful foreign actors like transnational companies, foreign states and international institutions.

On the way to a more offensive strategy to apply human rights, one can observe the cases of agrarian movements conducting non-violent occupations of land and other forms of direct action as their main strategy for an agrarian reform from below (Rosset 2006). As in the case of the women's land occupation in Honduras, or in the very well known case of the MST, human and constitutional rights are used to back forms of direct action which are considered criminal offenses against private property according to the legal frameworks protecting the interests of powerful social actors. A legal strategy based on human and constitutional rights can contribute greatly to transforming the legal and political framing of the conflict in favor of the landless 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. By doing this, it exposes the fact that at the core of the conflict lies the state's failure to implement the constitutional provisions obliging the state to conduct agrarian reform as the Honduran case illustrates.

The experience of the rice-growing farmers in Ghana also shows that human rights can be instrumental in challenging complex agricultural trade policies which have been severely affecting peasants. As Jumah and Paasch argue, case-based empirical evidence provides a much stronger basis for questioning prevailing trade policies than macroeconomic data-based arguments alone. Human rights allow us to question unfair policies and to challenge the current legal trade regime, thus contributing to putting the responsible actors of such policies on the defensive by arguing that they have breached obligations of international human rights law; concretely in the case at hand, 1) the government of Ghana for having cut market protection despite the evident damage caused by rice imports to the standard of living of rice farmers; as well as for having cut existing support to rice farmers; 2) the

⁶According to the former UN Special Representative on Human Rights Defenders, Ms Hina Jilani, the second most vulnerable group of human rights defenders are those working on land rights and natural resources. She recorded that in the Philippines alone, more than 14 defenders working on issues of land rights and agrarian reform have reportedly been killed during 2006 (Jilani, 2007). Ms Jilani also drew attention to the fact that defenders working on land rights often organise themselves in the form of social movements which are usually broad grassroots-based movements with a more horizontal organisational structure than for instance most NGOs (Non Governmental Organizations). According to her, these movements and the defenders who are actively involved in those movements have faced several specific challenges. She particularly highlighted the accusations of not being properly registered and therefore deemed illegal. The reason behind the non-registration often is that the movements do not have the organisational structures that are needed to enable registration with the authorities, such as a permanent headquarters or a secretariat. Another continued challenge is that defenders engaged in social movements are accused of 'forming criminal gangs' and the like.

IMF for having pressured the Ghanaian government to remove support and protection for poor rice peasants over the 1980s and 1990s; 3) and finally, the exporting rice countries, especially the US, for having applied dumping practices through subsidies and export credits and the misuse of food aid contributing to the displacement of domestic rice and to the losses of income of the rice peasants in Ghana.

The struggle of the Italian and other European peasants to maintain and/or regain control over their seeds goes further in spelling out what it means to employ an offensive rights-based strategy: local movements of peasants, consumers and scientists have come together to overcome the threats posed by industrial agriculture in terms of dispossessing peasants of their seeds, and of losing traditional varieties and risking further destruction of agro-biodiversity. Bocci and Colombo explain how starting from seeds, they soon came to understand that it is about who defines innovation and how in rural areas. By practicing their ability to select and maintain varieties, to produce and multiply seeds on the ground, European peasants have challenged the prerogatives of the scientific community – and the related corporate interests - that seek ownership on innovation in agriculture. These social movements struggling for recovering and valorization of traditional knowledge have profoundly shifted the understanding of agriculture innovation, putting peasants, their communities and participatory research at its core. They have already got significant achievements in terms of progressive legislation at all levels including the international one: ‘We have to start addressing collective rights and move from the concept of ownership to that of the recognition of the community and its protection in relation to the outside world. In fact, farmer’s rights in the International Treaty on Plant Genetic Resources for Food and Agriculture are in the course of being established on the basis of these ideas’, state Bocci and Colombo.

The initiative on the International Convention on the Rights of Peasants and the human rights based international instrument on small-scale fisheries, as presented by Saragih and Sunde and Sharma, can also be considered part of an offensive strategy to use rights since they also aspire to become key pieces of an alternative international legal framework in favor of the poor.

For future research it would be interesting to inquire about the factors that determine whether agrarian movements use the human rights framework and other legal frameworks in a defensive or in an offensive way, in other words, what the requirements to undertake an offensive legal strategy are. Based on the experiences at hand, particularly on the experience of the Italian peasants, it can be preliminarily said that an offensive legal strategy requires larger and more complex levels of organization because it builds on broader alliances among different actors, for instance, peasants, consumers, law professionals, policy makers and scientists; and on the capacity to simultaneously operate at different levels and arenas of action.

What are the impacts of using the human rights framework?

The impacts of using the human rights framework greatly vary depending on the context and how a certain struggle is framed. In general, the effective use of the human rights framework and other legal frameworks by the poor depends on a full range of contextual enabling factors such as awareness of rights and ability to claim them; linkages with law professionals and advocacy networks; making creative use of legal pluralism and of the opportunities offered by different sources of applicable law at every scale, as well as the expansion of the legal canon beyond individual rights;

resources to be able to have access to courts; effective rule of law; and ability to combine legal and illegal, as well as non-legal strategies, to mobilize different kinds of pressure from below and to integrate a legal strategy into a broader campaign or political strategy (Franco 2005a, b, Santos and Rodríguez-Garavito 2005, Cotula and Mathieu 2008). These factors identified in the existing literature can be confirmed by the experiences presented in this Issue.

The experience of the Honduran women's land occupation is one of the most successful cases presented in this Issue. They are currently working their lands and doing pretty well. The legal issues were about to finally be solved but the turbulences of the Honduran coup de état have come in between. On the other hand, Sánchez highlights in her contribution the longer lasting effects of empowerment because the women have achieved respect and recognition in their communities and also from male peasant leaders. The awareness of rights, the ability to claim them, the support of the national peasant organizations to claim the rights in courts, the combination of legal and illegal action, and the ability to integrate the legal strategy in the broader political campaigns of the Honduran peasant movement were major factors of success in this experience. It is difficult to distill the specific impact of the human rights framework in situations like this, but in this case it can be said that it contributed to empowering landless women and to changing the framing of the land conflict from the criminal offence of 'invasion' to the government's failure to comply with constitutional provisions on agrarian reform.

Italian peasants have also been successful in defending a space to continue developing peasant varieties of seeds, to revalorize peasant knowledge and to protect agrobiodiversity. The militant legal strategy has been important in this struggle because the regulatory framework on seeds was completely biased in favor of the seed industry making illegal peasants' practices of saving and exchanging seeds out of the market. The achievements have not brought about the desired systemic changes though. Bocci and Colombo argue that the insufficient interest of mainstream farmers' organisations in demanding implementation of the progressive legislation in place in a broader scale is the main responsible factor.

The struggle of the Mubende community for redress continues. Unfortunately it has changed little on the ground. The impact of using the human rights framework in this case has been to offer a way of resistance in a situation which was seen as lost. In this case, awareness of rights, linking with law professionals and national and transnational advocacy networks supporting them have been crucial.

In the case of Ghana and trade issues, the human rights framework, particularly its monitoring element, has had the effect of opening up the national policy debate on agricultural trade policies and their impact on peasant farmers. This debate is usually conducted in terms of highly aggregated and abstract data and seldom in terms of the concrete impacts on the lives of concrete people and of assessing who has taken which decisions and in the benefit/detriment of whom. Policy makers and international organizations generally dismiss this type of discussions as 'political'. Human rights provide a methodology to discuss 'political' issues on the basis of a universal accepted normative standard.

For the Iranian nomadic pastoralists, it was crucial to find a human rights instrument which went beyond the legal canon based on individual rights: the UN Declaration on the Rights of Indigenous Peoples. Using this Declaration has facilitated the organizing work of pastoralist activists and helped them framing pastoralist's issues in policy dialogues with the government.

In his interview, Saragih briefly points to one not negligible impact of applying a human rights based advocacy strategy in Indonesia: it decreases violence in land conflicts. Coming from the historic experience of decades of brutal repression against peasants, Saragih furthermore highlights the major impacts of being able to use the human rights framework in his country: the possibility of organizing peasants and of mobilizing them to defend their rights.

What are the limitations of using the human rights framework?

Several contributors elaborate explicitly on the limitations of applying the human rights framework. Kayiira points out the high level of ignorance regarding human rights among the people, the prevalence of high levels of illiteracy, which hinders people's access to relevant information, particularly since many documents are available in English only; the lack of resources to sustain political-legal actions which are time consuming and long. Apart from these limitations related to resources, Kayiira also emphasizes that even if people manage to go to court to claim their rights, the prevalence of high levels of corruption in the judicial system renders all efforts useless. Moreover, the ability to apply this framework is greatly dependant on the political situation in the country and to what extent the powerful respect the rule of law and democratic control.

Sunde and Sharma refer to similar limitations as Kayiira but also add other type of limitation. They highlight the shortcoming of the mainstream human rights frameworks in identifying clearly how gender discrimination shapes women's distinct experience of their rights and their ability to make claims on the state. In particular, they are concerned about the way the language of human rights is being appropriated and 'depoliticised' by international institutions, large multinational corporations and conservation bodies as well as by the international financial institutions. The fear is that the human rights language might be used to promote those aspects of good governance that maximize economic efficiency or meet narrow conservation goals while at the same time these institutions do not accept the jurisdiction of human rights instruments that hold them accountable to the poor.

Farvar reminds us in his interview that an explicit reference to human rights in countries like Iran can be rather counter-productive and will trigger immediate persecution by state authorities. This is obviously a serious limitation. Interesting it is though that the UN Declaration on the Rights of Indigenous Peoples is not perceived as a human rights instrument in Iran.

Saragih also points out limitations of the mainstream human rights framework when it comes to guaranteeing the rights of peasants. He refers to gaps in interpretation and implementation of existing standards, but beyond this, he raises the issue of accountability of transnational companies and free-trade agreements. In the case of transnational companies we are indeed dealing with border human rights issues: do transnational companies directly carry human rights obligations or not?⁷ There is clearly a normative gap in this respect. On the other hand, and indirectly, Saragih is also posing the question of the enforcement of the human rights regime

⁷For a recent discussion about this issue, see FIAN's views (2011) on the recently adopted Guiding Principles on Business and Human Rights adopted by the UN Human Rights Council.

vis-à-vis commercial and investment law. It is well known that WTO and the international investment protection regime have at their disposal strong sanction mechanisms, whereas the UN Human Rights System unfortunately still lacks them. Additionally, commercial and investment law regimes still do not accept the primacy of international human rights law.

Conclusion

Besides organizing the poor, mobilizing them and conducting direct actions of protest, it is less visible but not therefore less significant that rural social movements are also applying legal strategies as an integral part of their broader political strategies. Here the human rights framework plays a prominent role, particularly when it comes to challenging other international legal frameworks working against the rural poor, or to defending local communities from abuses of international actors. The ways of using the human rights framework are highly diverse and depend on contextual factors like the normative force and recognition that the human rights framework commands in the political and legal culture of a given country; the existence of alliances with human rights activists and law professionals which are able to understand the dynamics of social movements and of connecting law and politics; and the level of organization of a movement and its ability to forge broad alliances with different social actors and to simultaneously operate in different arenas. The impacts of using the human rights framework greatly vary and can range from contributing to the empowerment of oppressed groups to stand up for their rights, decreasing violence in land conflicts, changing the way conflicts over resources are framed, opening up space for policy dialogue centered on people's lives, fighting against agrarian legislation biased in favor of corporate interests and formulating alternative legal frameworks. The limitations of the human rights framework relate to the context in which this framework is applied but also to the current status of development of the framework itself. Both can change and it is up to each movement to pragmatically decide if the existing limitations can be overcome and if it is worth investing in it. Since law is one of the means *par excellence* of exercising power, any people's movement trying to change power relationships cannot avoid dealing with legal issues. For an agrarian movement, therefore, the question is not whether to use legal strategies, but rather which legal strategy to use.

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The struggle of the Mubende community against land grabbing, Uganda

A testimony of Peter Baleke Kayiira

The rights-based approach is a new intervention that has come to provide options to the rampant violent land wrangles, which in some cases have been bloody, that are the order of the day in sub-Saharan African countries, particularly Uganda, where the more powerful members of the society forcefully usurp the land of the poor with impunity. Formerly land wrangles/clashes were common among families, communities or ethnic groups. In such instances the government was there to curb the situation by helping the clashing parties obtain solutions to their problems amicably or through the National Legal Framework. This was in line with the government's international obligation to respect, protect and provide for the people's human rights. It is quite disappointing in Uganda today to see that the government has turned away from these obligations and to the contrary is now directly involved in forceful land grabbing with impunity!

Background

In a bid to fight poverty in the country, the Government of Uganda (GoU) developed a strategy referred to as the Poverty Eradication Action Plan (PEAP) of 1997. This is the country's strategic paper laying out national structural adjustment programs that were supposed to help the Nation to move out of the poverty. Following the PEAP, a plan for Modernization of Agriculture (PMA) was also drawn in 1998. This emphasizes the country's need to make structural adjustment in agriculture with the aim of moving the country away from the current 90% small farmer subsistence agriculture to large-scale commercial farming. This is thought to be achieved mainly through Foreign Direct Investment (FDI). Later a national body to take charge of investment in Uganda, the Uganda Investment Authority (UIA),

was founded by an act of parliament. An investment code to guide the UIA was also enacted. The UIA is responsible for attracting foreign investors to the country and allocating them land for production, among other things. According to the UIA, an investor is defined as: a Ugandan citizen doing business worth not less than 200,000 USD; an Ugandan citizen doing a joint business with a foreigner worth not less than 300,000 USD; or a foreigner doing business worth not less than 400,000 USD.

The biggest problem the UIA has had with the foreign investors has been that they apply for ‘serviced land’, which means land connected to a good road network, with a good supply of clean water and connected to the national power grid. The problem is that 92% of Ugandan arable land is held under small-scale subsistence farming. Peasant farmers produce mainly food crops accounting for 71% of the total agricultural GDP. If you take the definition of an investor given by the UIA, none of the small-scale subsistence farmers conducts business which is even a tenth of the definition. Thus the land occupied by these small-scale subsistence farmers is perceived as ‘virgin idle serviced land’ ready for FDI.

The main obstacle to this arrangement is that under the constitutional provisions and the other laws governing the country, land belongs to the people. Thus, for GoU to acquire land for FDI is not an easy undertaking. Given this situation GoU has resorted to forced military grabbing of small farmers’ land, reallocating it to foreign investors at no cost at all and without an alternative for survival being provided to the forcefully evicted indigenous small holder farmer families!

The scandal with the Neumann Kaffee Gruppe

Pursuant to the above, GoU entered into an investment deal with the Neumann Kaffee Gruppe (NKG), a Germany-based coffee growing and trading company, to establish the first ever coffee plantation in Uganda. In their agreement, GoU had to handover to NKG an agreed chunk of serviced land without encumbrances. Such land was later found in our place of residence. After all the preliminaries had been finished between GoU and NKG, GoU acting through H.E the President’s representative in the District, the Resident District Commissioner (RDC), started to conduct meetings warning the population about the imminent eviction. The first meeting was on June 18, 2001, during which all of us residents in the land that had been allocated to the investor were given notice to start vacating the land to create space for the foreign investor. We were given a deadline of August 31, 2001 for voluntary vacating. Anyone who remained behind after that deadline would have to face the consequences.

We couldn’t tolerate this kind of arrangement as we really saw that it was a gross violation of our human rights. We hired a lawyer to address our dissatisfaction with the arrangement of GoU on our behalf. They addressed several letters to the Attorney General (AG) of Uganda on our behalf but GoU was adamant!

On August 7, 2001, the RDC Mubende convened a last meeting with us, the imminent evictees, at Kitemba trading centre. In that meeting he issued an ultimatum to us to vacate the surveyed land to be allocated to the foreign investor two weeks earlier than originally announced. The land at stake comprises Block 99 Buwekula (9.6 square miles) and part of block 103 Buwekula (two square miles). Thus the whole chunk of land that was to be made vacant for the investors was 11.6 square miles. On August 17, 2001, GoU deployed heavily armed contingents of the Uganda People Defense Force (UPDF) to militarily evict us, 401 families. The total

indigenous population evicted was 2,041 people. Among the structures demolished were shops, bars, restaurants and six churches. Our only primary school, Kitemba primary school, was also grabbed with the land and our children could no longer go to school! The school building now serves as the plantation's headquarters offices. Children spent a complete year out of school before a replacement alternative school was constructed. But the new school is not a full primary school as was the former one.

During the process of eviction we were whipped or kicked, grass thatched houses were set on fire, the more durable iron roof houses were demolished, and household property and animals were looted while the whole land was covered by booms of guns from the reckless firing of live ammunitions that accompanied the eviction process. We were forced to flee the land to save our dear lives! We took refuge in the nearby forests that boarded the plantation land. Thus the eviction was brutal, abrupt and without compensation or any form of alternative for survival!

Although GoU and NKG claim it is an investment, to us the indigenous community this is real 'economic piracy'! NKG are pirates, they took all our wealth at no cost other than violence! One can even refer to this kind of violation as a crime against humanity. Which means taking up arms against a community on discriminatory basis? We are yet to find out more about this.

The Uganda National Constitution of 1995 has a bill of rights imbedded in chapter four. It clearly spells out the constitutional rights of the citizens. In particular article 26 recognizes the right to own property individually or in association with others. It also spells out the restriction under which the government can take possession of private property for public interest. Article 237 clearly spells out how land in Uganda can be owned. 237 (8) recognises the ownership of the tenants on registered land. It also refers to article 26 if land is to be taken away from the rightful owners.

To supplement this we have the African Charter on Human and Peoples' Rights of 1981. Article 21 reads: 1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

One may ask: What were the specific human rights which were violated in our case?

All human rights are universal, indivisible, interdependent and inter-related; and therefore inseparable as they are linked to one another. It is easy to spell out a human right individually but it cannot stand alone. For instance in our case one may say it was the right of ownership of property (land) which was violated. But then this is linked to many other rights, particularly the right to food. One hundred percent of our food is derived from land. Thus the violation of the right of ownership of property (land) leads to the violation of our right to food. The right to food is linked to the right to life. Others include the right to education, the right to housing, the right of the minorities to be heard, the right to clean environment, etc.

In accordance to the provisions of the 1995 constitution of Uganda, article 237 (9), a land act, was passed by parliament in 1998. Under the provision of this act

different land tenure systems are provided for. The sections of interest in our case are section 3, (4)b, section 29, section 39(1) and (4). All the legal references quoted above were enough to impede GoU from doing what they did to us.

Why the rights-based approach?

In a situation like ours there were only two alternatives: retaliating to the violation committed against us; or advocating for redress which at all costs must include land restitution. The latter was a better option as the former would be too dangerous and costly to us. We chose this approach after weighing the implications of both alternatives. After all it is always too difficult to convince others of your plight if you are violent. Such an effort could very easily be criminalised by government and therefore easily smashed or suppressed!!

To the contrary the rights-based approach seeks to secure equal rights for all people; thus confronting or critically engaging the powerful is inevitable. This means resisting oppression, making claims, persuading and negotiating with the powerful to influence policy and building the necessary public opinions through advocacy and campaigning methods. In the extreme, civil litigation can serve as a final resort. Immediately after the eviction we started an advocacy campaign that is still ongoing claiming for redress, including restitution to our right of tenure on the land at stake. The campaign has moved from the local to the international level, where we are greatly being helped by several organizations. In addition to the advocacy campaign, we filed a civil suit against GoU and NKG (KCPL) on 15/8/2002. The advantages of using the rights-based approach are many, but I want to highlight a few as follows:

- It is a peaceful and civilised way of influencing change to the desired status.
- It is a democratic process where oppressed people can express their choice and demand their rights from whomever is responsible.
- It is people-centred thus creating awareness and empowering those living in oppression to stand up against such oppression.
- It helps to build confidence in minority groups of society that they can influence change. In so doing it builds their capacity for handling cases of future violations/abuses of their human rights.
- In many cases of violation / abuse of human rights, redress can be sought either at the national, regional or international level; in case of an omission those responsible can be ordered to deliver and in case of a commission a restitution can be ordered, paying compensation for all damages.
- The documented evidence collected for one case of violation / abuse can be kept for further reference of abuse of a similar nature.
- It is always easy to find allies to your struggle thus spreading the campaign further therefore making the oppressed group stronger. The press is also very crucial in this regard.

The process has also got a number of limitations but I will cite a few that are applicable to our case:

- The biggest limitation to the rights-based approach is the high ignorance of human rights among the people, the rights holders. This makes many people live

in apathy, at the beck and call of those in power or the more powerful members of society, especially the elite and the rich.

- The rights-based approach is greatly dependant on the political situation in the countries where it is to be applied. Therefore in many dictatorial regimes or pseudo-democratic regimes like Uganda, the rights-based approach might not be able to deliver the expected results.
- Even though in some cases of violations / abuses you can go to court to claim your rights, the major constraint during such litigation processes is the prevalence of high levels of corruption among the judicial systems.
- Poverty is another big factor that limits the rights-based approach. Most of those in such oppressed groups are minorities who are economically disempowered to meet the financial obligations of these long processes. Thus many cases of violation/abuse of human rights pass unnoticed.
- There is lack of information flow which is worsened by the prevalence of high levels of illiteracy. The meagre information about human rights is in print and in English. This creates a language barrier even to those who would be able to read in their own local languages. Regional and international regulatory tools are almost inaccessible.
- Consequential costs of our actions are also another limitation on their own. Those who violate / abuse human rights do it from an informed point of view. They therefore put mechanisms in place to suppress any effort geared towards finding redress to the violation /abuse. They keep vigilant to identify whoever comes up to spearhead a redress campaign. I will give an example. Since the announcement of the eviction I have been leading our group. After the eviction I led our group to find redress for the catastrophe that befell us. Our campaign reached the national level but government was still adamant. In May 2004 FIAN launched their report about our case. They invited two of us to Germany to bear witness to the report about our case. This prompted the investor (NKG) to complain to GoU about the negative campaign about the company in Germany. As a way of suppressing our campaign, GoU decided to imprison me on trumped up charges of embezzlement and causing financial loss to a government institution. Since I am a primary school head teacher who accounts for all funds in the school, the two charges were very well manufactured. The court could not offer me bail because I was by law not a legible applicant for court bail. I therefore served a remand period of 157 days, and later, the judge acquitted me on 28 June 2005 for no case to answer after the state had produced seven witnesses, all of whom were hostile to the state. That is but just only one of numerous cases of intimidation, murder or assassination that rights advocates suffer!
- Finally I can also say that the process is always long and time consuming. It requires repetition of actions; doing it over and over again, with different strategic approaches until you realise change or redress.

Is the rights based approach a waste of energy in legal procedures which are tedious, bureaucratic and controlled by legal experts and at the end of the day demobilising? On the one hand this can be right but on the other hand it is not. As I mentioned earlier on, there are two alternatives to realising your human rights in case of a violation: the peaceful one and the violent one. In that way one has to weigh their capacity for both alternatives and choose the most appropriate accordingly.

Why should this strategy be demobilising? To say this makes those who would come up to advocate for human rights hesitant. We also must set precedence for future reference. I only say let us try and fail but not fail to try.

Finally, the rights-based approach is an option to influence change in a peaceful and civilised manner. Furthermore the success of an oppressed group in one corner of the world can be shared to command the success of another oppressed group in another corner of the world.

Peter Baleke Kayiira is primary school head teacher and leader of the Mubende community in Uganda.

Pursuing a dream – The chronicle of a women’s land occupation in Honduras

Sandra Maribel Sánchez

‘We came here because we need land. We have a lot of children and have to feed and sustain them . . . we need land to farm, and that’s why we are here and why we endure what we have to.’

These are the words of Pedrina Santiago, aged 54, mother of 15 children and leader of the group of female peasants known as ‘Superación’, who on June 10, 2001, together with another two hundred women from ten other peasant associative businesses from the north of Honduras, occupied uncultivated land belonging to a regional center of the Autonomous National University of Honduras (UNAH) and demanded the land be awarded to them by the state.

She said that the decision to occupy the land was taken because they felt desperate and powerless as they did not have sufficient resources to feed and educate their children.

‘That’s why we went to find our mother earth, a piece of land we can farm to obtain the food we need to save our children from starvation. And that’s why we are going to stay here, no matter what we are confronted with,’ she said defiantly.

Her comrades, who all play a similar role in this story, are just like her. Most of them are single mothers, living in poverty with limited educational opportunities and burdened with the enormous responsibility of bringing up and educating their children but with an iron will to defend the land they consider theirs. They were tired of having to rent land to produce their food on and, aware of the 69 acres of idle land which were granted to the Regional University Center of the Atlantic Coast (CURLA) by the National Agrarian Institute (INA) in 1992 for research and educational purposes, the women peacefully occupied the land, invoking the realization of the universal human right to food.

More than an individual case

Pedrina and her comrades live in a rural area of Honduras, a developing country in the heart of Central America with a population of seven million, among whom, according to the official 2006 statistics, 62.1% are classified as poor and 42.3% as

extremely poor. Even though only just above half of the population of Honduras currently lives in rural areas, 71% of national poverty is concentrated in these areas, i.e. areas such as the one where the women claiming a piece of land to farm live in.

The criterion for measuring poverty in Honduras is the peoples' ability to acquire the basic food basket or all the products which ensure satisfaction of the minimal food requirement for a person to survive, all people with an income which is not sufficiently high to acquire this basic food basket, are classified as poor. This criterion also applies to the women of the 10th of June Movement, a name chosen to commemorate the day when the group occupied the land.

Blanca Portillo, leader of the 'Bellezas del Campo' peasant associative business, remembers the women's situation and the condition of the land when they occupied it. 'Before we came here, we were associating in housewives' clubs and were farming rented land where we sowed yuca, corn and beans. Then people advised us to get organized in groups and told us that this land was lying idle.' She remembers that they discussed the case, decided to get organized, occupy the unproductive land, known as Jardín Clonal, and use it for farming because they thought it unjust that the university was not using the land while the women and their families were suffering hunger or had to rent land for farming.

'When we came and occupied the land, it was full of poisonous snakes and other animals. Bit by bit we cleared the land until we managed to have it as it is now,' she said cheerfully. At first there were eleven groups of women, five of them belonging to the National Peasants' Association of Honduras (ANACH) and six to the National Central of Farm Workers (CNTC), all agreeing that the land occupation should proceed peacefully in order to avoid unnecessary risks.

The eviction

From the beginning of the occupation in June 2001, the women took up action at the National Agrarian Institute (INA) to demand that the land be awarded to them because the university was failing to use the land efficiently. They received an almost immediate reply. The then director of the INA, Aníbal Delgado Fiallos, dictated a resolution in favor of the women, confirming that the land was idle.

The university, however, appealed to the National Agricultural Council (CNA), and the council's verdict went in favor of the university and against the women. However, the women persevered and appealed to the Supreme Court of Justice, which in February 2003 ordered the CNA to repeat their vote. The CNA once again decided in favor of the educational institution. The authorities of CURLA requested then an eviction through the local court, which was forcefully carried out on February 6th, 2002. The action not only resulted in the women having to leave the land but also in the destruction of their housing and other belongings.

Isabel García, a member of the 'El Buen Samaritano' peasant associative business, mother of five children, remembers what the women went through that day. 'The police arrived and forced us out. They did not hit us because we did not resist the eviction. However, they did not allow us time to get anything out and burnt the houses we had built, with all the contents. They even burnt the blankets we had been wrapped in.' She admits that she suffered a lot in the six years she stayed in the Jardín Clonal but also says that the women have given each other mutual strength and have grown through the adversity, and that, despite all the problems they had to deal with, they still felt optimistic. 'I have never participated in a land occupation

before. They call us squatters but we don't see ourselves as such because we are simply women in need who have to get food from the land,' she concluded.

More than laws required

Theoretically the case of the Jardín Clonal should have been resolved without major setbacks in favor of the women of the 10th of June Movement, as the main motivation for their peaceful occupation of the land is the production of food for their families and both the right to food and the right to access to land are legally protected by the state. Article 16 of the Constitution of the Republic of Honduras establishes that after coming into force all international treaties signed by Honduras become an integral part of national law and are thus legally binding. The Honduran Constitution contains an entire chapter on land reform, declaring it to be an integral process and an instrument to transform the country's agricultural structure, aiming at replacing large and small land holdings by a system in which the property, renting and exploitation of land ensures social justice in farming areas and increases production and productivity of the farming sector. Furthermore, there is a land reform law, aiming at efficient participation of the peasants in the process of the economic, social and political development of the state with the same conditions other sectors of the population enjoy.

However, this law, which in the 1970s and 80s helped to allocate land to thousands of peasants and was the driving force behind an important transformation of the Honduran agrarian sector, was effectively annulled in its most relevant aspects when the Law on Modernization and Development of the Agricultural Sector was approved in March 1992. This law repealed or modified a big part of the provisions ensuring farm workers' access to land and contributed to a process of land concentration. This led to extreme conflicts in the agricultural sector, as the agricultural policy pursued did not meet the land needs and demands of the population which did not have farmland. This is the background to what the women of the 10th of June Movement have been suffering for as long as six years - an ongoing violation of their right to a piece of land for the production of their food, even though national and international legislation obviously provide legal solutions to their situation.

'We've been here for several years and we need the INA to solve the problem as quickly as possible because there are moments when we feel unprotected by the authorities even though we know that we have justice and law on our side,' said Isabel García, coordinator of the women's group, firmly convinced that they will win their fight for the land. Like her female comrades and the five men who decided to stay with the women, she is convinced that they are not demanding a gift but merely demanding the realization of a right they are entitled to, a right that can be claimed and a right to be protected by the state. They know that legal possession of the land will open doors to technical and financial aid, and that they will then be able to care for their families and themselves.

Sharing the same conviction, the leaders of the National Central of Farm Workers (CNTC), the organization which the women belong to, have fully supported them and are pushing for the approval of a new land reform law which establishes not only the women's right to ownership of the land but also the same right to technical assistance and credits as men have. Carlos Obdulio Suazo, former General Secretary of the CNTC, stressed the persistent fight maintained by his comrades over the last years. Despite the setbacks they were confronted with, they

maintained their resistance and were not discouraged by the fact that some agricultural institution decisions had gone against them. 'If the final decision of the INA is taken in favor of the women, this will be an unprecedented triumph. The women have managed to maintain their resistance over a long period, with unity and high spirits, despite the moments when it had seemed that all their sacrifice for the land was in vain,' he said.

La Vía Campesina intervened in the conflict when the case for claiming possession of the Jardín Clonal land was basically rejected and there was no hope for a solution as the Supreme Court of Justice had ordered the National Agricultural Council to review its decision and the council confirmed its decision against the women's claim. La Vía Campesinas's leader, Rafael Alegría, explained that within their national campaign for integral land reform they contracted a legal advisor to support the Coordinating Council of Peasant Organizations of Honduras (COCOCH) and to revise the more complicated and problematic cases involving peasant groups. 'One of the ten cases revised was that of the Jardín Clonal, in which our comrades have been fighting for the land for several years,' he said. 'We analyzed the case and came to the conclusion that the action first chosen by the INA was not successful because the INA hoped that the university would hand the land over voluntarily – which never happened and never will. The case meant a lot to us because we admired the women's courage. We decided together to present a new claim, this time in the name of the six groups continuing the fight, and demanded the expropriation of the land on the basis of Articles 13 and 14 of the Land Reform Law.' The new case was opened in April 2006 and, according to the legal representative, the admission procedure, which should normally have been resolved in no more than three days, took over a month. The Director of INA, Francisco Fúnez, however confirmed that the previous case decision was now invalid and that expropriation would now be initiated through the new legal process.

This second route of action has not been easy either. Rafael Alegría described how the first problem they encountered was the resistance of the INA administrative staff when they presented the new claim. The staff did not want to admit the claim saying that in their opinion the case had been decided and closed. The case files though proved different. The first claim had demanded the land be given back and the current claim was demanding expropriation because the university had failed to use the land for the purposes it had obtained it for. Alegría complained that the difficult aspect of this case was not so much the legal aspects but the attitude of the INA staff. 'The biggest problem with the INA is that it does not work towards defending the peasants' right to land. The staff is totally demotivated and does not want to do things properly as required by law. They don't consider that the longer they take, the longer their comrades have to wait to exert their rights,' he complained.

Respect and admiration

For the members of the 10th of June Movement the long years of constant resistance have produced a benefit reaching far beyond just the documents proving their property title to the land – they have earned recognition, respect and admiration from the entire society. Eva Monge, member of the 'El Jazmín' peasant associative business, weighed the development they have experienced as people. 'Before, I was shy and more humble. But now, in the group, I feel that I have become independent. I feel that being with the other women has made me more courageous. Before, I was

scared of speaking in front of people, and now I am not scared of anyone. We have suffered a lot in the last years, but God has given us the strength to carry on and we have grown through the adversities and all the problems we have had to confront, and that makes me happy.'

When occupying the land they claim to be entitled to, the women have suffered all sorts of difficulties, insults, threats, accusations of being professional squatters, intimidation by the university guards officially there to keep the land in order, unjust verdicts by the authorities legally obliged to protect them, eviction by the police, the hardships of nature, which on several occasions destroyed their entire crop and showed how merciless it could be, and even accusations brought before the Public Ministry. 'They charged us because we supposedly had committed an environmental crime and were guilty of usurpation by taking the land and cutting down the cocoa trees growing there. The reason we cut the trees down was because they were damaged and did not produce healthy fruit ... we cut them down to sow corn, bananas and yuca and to produce the food we need to survive. They reported us to the authorities to scare us and made us leave the land, but they did not succeed,' Blanca explained. The Public Ministry dropped charges after having the case investigated through the Environmental Prosecutor, who confirmed that the trees cut down could not be used as wood and were suffering from a disease which damaged their fruit, and that all the cocoa growing in the zone was affected.

Far-reaching changes

The women's perseverance in their fight for land produced conditions in which radical changes within their organization, the CNTC, could be set off. To begin with, the first strategy included activities to motivate women to join peasant associative businesses as active members and not only as household comrades of the male members. The women peasants' fight has had such an impact that new peasant associative businesses with an exclusively female membership are being established alongside the businesses with only male members. According to the General Secretary of the National Central of Farm Workers (CNTC), they coordinate their action but maintain their own organizational structure and independence.

According to the new CNTC statutes and regulations, all newly organized businesses have to be composed equally of men and women, and women have to enjoy equal rights, including participation in the Board of Directors. The CNTC presides over about 597 peasant associative businesses, of which only fourteen are formed exclusively of women. This represents an enormous challenge for both the board of directors and the women associated.

The statutes were reformed because they were not flexible enough to allow these changes and needed to allow equal incorporation of women in the directive organs. 'We have gone through about four years of this formal integration process and have achieved good results,' Carlos Obdulio Suazo pointed out.

In the past, the only post women could aspire to was the Women's Secretary. Now women can be nominated for all posts and the positions on the boards of directors are increasingly taken up by women. In some boards women are in the majority and thus carry majority decisions. There are even some regional boards of directors where the general secretary is a woman.

In this process of increased female leadership some women have gone beyond their own peasant associative business and organization and have joined community

organizations such as community councils, local development committees or municipal emergency committees. Even the Law on Modernization and Development of the Agricultural Sector, which is rejected by the majority of peasants' organizations because they consider it a step backwards in the land reform process, meant a small step forward for the women's fight for land because it reformed Article 79 of the Land Reform Law, which only awarded property titles to women if they were unmarried or widowed and had to support a family. After the reform, land can also be awarded to unmarried women above 16, even if these don't have a family to support. Though many may have thought that the progress made in claiming land rights for women may have led to domestic conflict for those joining in claims and may have dissuaded women from pursuing their fight for land, the thoughts expressed by Lorenzo Mejía, aged 31 and partner of Lilian Hernández, active member of the 10th of June Movement, suggests that the mentality of the male peasants is changing too. 'I decided to stay with the women because we are poor and have no land to farm and nowhere to live with our three children. I am with the women to give them strength. What they are aiming for turns out to be a big challenge and we have to support them and stand together in the struggle. In all this time I have learned that the most important thing is our mutual support and that we are always there for each other,' he said.

Perhaps the most far reaching achievement of all the time the women fought in Jardín Cloan was that they learned that joining the organization gave them power and made them develop a critical conscience, which in the future may prevent others deciding for them.

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The right to food in trade policies – the case of rice farmers in Ghana

Bashiru Jumah and Armin Paasch

Rice production and rice policies have an immediate relevance for food security in the world. Rice is the main source of calories for half of the world's population and the main source of income for two billion people. Although only 6.5 percent of global rice consumption is traded internationally, world trade in rice can have a serious impact on the development of national rice markets. Following the recent price explosion for food staples, food riots have taken place in more than 30 countries since the beginning of the year 2008 and reminded us of the close links between international markets and food security. Rice is the commodity most affected by the price explosion.

In 2007, when the food price crisis was just about to start, the Ecumenical Advocacy Alliance (EAA) asked FIAN, the international human rights organisation for the right to food, to conduct empirical case studies on the impact of trade liberalisation on the right to food of rice farming communities in Ghana, Honduras and Indonesia (Paasch *et al.* 2007). Studies of the Food and Agriculture Organisation (FAO) had registered 408 cases of import surges for rice in 102 countries, most of them in Africa, the Pacific Islands and Central America between 1983 and

2003 (FAO 2007). Although many studies from international NGOs such as Oxfam (Oxfam 2005) and Third World Network (Khor 2006) had already indicated a negative impact of trade liberalisation on food security, only few of them had documented empirical evidence at the community level. And none of them had applied a human rights approach in analysing the responsibilities for such damage.

This paper summarizes the results of the case study conducted in Ghana in 2007 by FIAN and the SEND Foundation, an international social advocacy group based in Ghana. Beyond the empirical results, the authors show how the human rights impact assessment was used in the national and international debate on trade and agricultural policies to demonstrate that consumers do not benefit from the liberalization of markets in basic food commodities and that small producers do not benefit a great deal from commodity prices rises. The paper concludes that on both levels the human rights framework adds strength to the analysis and contributes to the empowering of marginalised farmers to confront problematic trade policies both by Northern and Southern governments, from the local up to the international level.

Approach and methodology

The case study summarized in this article comprised an overview of the development of rice imports and domestic rice production at a macro-level and an analysis of the domestic rice policies including border measures. It includes an analysis of possible dumping practices by countries of origin of rice imports and possible pressure that other countries may have exerted on Ghana, through bilateral or multilateral trade agreements or IGOs, to adopt certain rice trade policies. And they include, as a core component, qualitative analysis of the possible impact of increased rice imports on the incomes, livelihoods and food security in selected rice producing communities. Finally, the studies conclude with an analysis of states' behaviour from the perspective of the human right to food.

The main challenge of the studies is the verification of possible causal links first between sharp increases of rice imports and hunger or malnutrition in the communities, and second between high imports and certain trade and agricultural policies. This verification of causalities up to a violation of the right to adequate food requires a careful assessment of other additional factors which might have worsened access to food of the rice farmers, such as natural disasters, violent conflicts or wars, possible changes in land tenure arrangements or deteriorated access to infrastructure, farm inputs, credits or extensions services. Another challenge for the human rights analysis is to distinguish between the responsibilities of different states for these trade policies. In many cases, the responsibility is shared by national governments, IGOs and other external state actors. Only if such causality can be verified and clear state responsibilities can be identified is it possible to document a violation of the right to adequate food.

Production decline amidst a growing market

Whereas until recently, rice had been a niche product for urban elites, demand has grown remarkably over the last ten years in Ghana. This development could have opened a window of opportunity for growth in domestic rice production and reduction of poverty among the estimated 800,000 Ghanaian rice producers, who are predominantly smallholders. However, the opposite is the case. From 1998 to 2005,

the area planted with rice diminished from 130,000 to 120,000 ha and the annual paddy production level from 281,000 to 237,000 Metric tonnes (Mt) (MOFA 2002). Studies have indicated that incomes of the farmers have been declining over recent years, with alarming effects in terms of poverty and food insecurity. This crisis hits a part of the population that is highly affected by poverty and vulnerable to hunger. The incidence of poverty is almost 60 percent among food crop farmers, 70 percent of them being women.

The explanation for this paradoxical development is that the growing demand for rice in Ghana has been captured entirely by imports, mainly coming from the US, Vietnam and Thailand. From 1998 to 2003, imports rose from 250,000 Mt to 415,000 Mt, an increase of nearly 70 percent. The market share of local rice fell from 43 percent in 2000 to only 29 percent in 2003. An 'import surge', according to the FAO, occurred especially between 2002 and 2003, when the volume of rice imports grew by 154 percent, while the volume in domestic rice paddy production declined from 280,000 to 239,000 Mt, representing a 16 percent decline (Assuming-Brempong 2006 and FAO 2006).

Deregulation under the auspices of the IMF

The main reasons for the import surges seem to be the low level of world market prices for rice between 2000 and 2003 and the low CIF prices of the imported rice, which have consistently been below the wholesale price of domestic rice in Ghana on average (Action Aid 2005). While local rice with poor processing quality is often sold more cheaply in the market, imported rice generally beats the local kind because of its better price-quality relation. High-quality imported rice is generally cheaper than high-quality local rice. Another advantage of imported rice lies in better marketing channels of the highly concentrated rice import business, which make it available everywhere, while local rice can hardly be found in some urban markets and almost completely fails to reach big consumers such as restaurants and hotels any more.

The study shows strong evidence that three policy reasons have contributed to the boost of imports:

- 1) The removal of import controls and the introduction of a low applied tariff on rice imports of 20 percent in 1992 led to import increases over the 1990s (Assuming-Brempong 2006). The attempt of the Ghanaian government and the parliament in 2003 to increase the rice tariff from 20 to 25 percent (and the tariff for chicken from 20 to 40 percent) through Act 641 to respond to increased imports was obstructed by external actors, especially the IMF. The implementation was suspended only four days after it had started. The IMF report on the Article IV Consultations on the Ghana Poverty Reduction Strategy reveals that, during these consultations, the authorities committed that tariff increases would not be implemented 'during the period of the proposed arrangement' (IMF 2003a). Indeed, on May 9, the Executive Board of the IMF concluded these Article IV Consultations and approved a three-year arrangement under the Poverty Reduction and Growth Facility amounting to SDR 185.5 million (258 million USD) and an additional interim assistance under the Initiative for Highly Indebted Poor Countries of SDR 15.15 million (about 22 million USD) (IMF 2003b). And on May 12, just three days after the approval of the IMF loan, the suspension of the implementation of Act 641 was issued. Thus, the same

consultations that led to the approval of the loan also ‘convinced’ the Ghanaian government to cut the tariffs back to the previous level.

- 2) The second policy reason is the high margins of dumping⁸ for rice imported from the US, Vietnam and Thailand. According to calculations commissioned by Oxfam on the three main countries of origin for 2003, the export prices were far below the home market prices (‘normal values’) of selected rice varieties imported to Ghana. For the US rice varieties, the highest margins of dumping were found on average (Ayine 2006). US dumping was also evident while comparing export prices with production, the former being 34 percent below the latter in the year 2003. Dumping is an important reason for the fact that, in terms of prices, imported rice can compete with and often is even cheaper than Ghanaian rice (Oxfam 2005).
- 3) The progressive removal of support to the Ghanaian rice sector between 1983 and the late 1990s resulted in extremely poor national infrastructure for the production, processing and marketing of rice, leading to serious supply constraints of the domestic rice sector in terms of quantity and quality (JICA 2006). The government removed support which formerly facilitated access to credits, seeds, fertilisers, the use of machinery at favourable conditions and marketing. These policies, to a large extent, followed the SAPs introduced by the IMF and the World Bank since 1983 (Khor et al. 2006).

Evident violations of the right to food

The micro-level study on the effects of imports was conducted in Dalun, a rice farming community with 10,000 inhabitants in the Tolon Kumbungu District of the Northern Region, located at about 50 kilometres from the region’s capital Tamale. All the market women interviewed stated that, especially since 2000, imported rice has taken over the Tamale market to a large extent. As a result, the quantity of rice bought by Tamale market women in Dalun and the surrounding villages and sold in Tamale has diminished dramatically by around 75 percent. This information coincides with that provided by the local miller, whose processing volume declined in a similar dimension, and the farmers’ experience that they are selling much less paddy than before. Farmers additionally suffered a dramatic decline in real producer prices since 2000. While from June 2000 to June 2003, the Ghanaian currency Cedi lost 46 percent of its value, the nominal prices fell considerably according to some farmers and remained stagnant according to others. In both cases the drop in real prices is dramatic. This had a direct negative impact on the incomes of farmers because the real costs of production only decreased moderately at the same time.

As a result, rice farming families are increasingly suffering malnutrition and food insecurity. All the interviewed peasants report that their families are suffering hunger. They do not have stable access to adequate food because, in the period before harvest, most of them have to reduce meals in number, size and quality. Health problems among the children who are most affected by this shortage of food are mentioned frequently in the interviews. And the incomes of peasants have declined in a way that they are burdened with debt and lack money reserves. In case

⁸In the context of trade, dumping is generally defined as the practice of exporting a product to another country at a price which is below the price for the same good in the domestic market.

of a loss of yield due to unexpected shocks such as droughts or pests, the health of peasant families and especially of the children would be heavily affected. In addition, peasants report that they have to spend a larger share of their income to purchase food and, especially in the same 'period of hunger', have to reduce their expenditures required to enjoy other basic human rights such as the rights to health and education.

To conclude, there is strong evidence that a combination of import liberalisation, dumping and the removal of domestic state support has significantly increased malnutrition and food insecurity and thus led to a violation of the human right to adequate food of peasant families in Dalun. Three actors are mainly responsible for these policies and have breached their obligations and/or responsibilities under the right to food: 1) the state of Ghana breached its obligation to protect the right to adequate food of rice peasants in Dalun and elsewhere by cutting market protection in 1992 and by not increasing protection later despite the evident injuries caused by imports. By cutting existing support to rice farmers, Ghana also breached its obligation to respect the right to food of the peasants, and its obligation to fulfil the right to food by applying policies that do not create an environment that enables these families to feed themselves. 2) The IMF breached its responsibility to respect the right to adequate food by pressuring the Ghanaian government to remove support and protection for poor rice-producing peasants over the 1980s and 1990s and by pressuring the government to suspend Act 641 in 2003. And consequently, the member states of the IMF thereby breached their obligation to respect the right to food of the rice peasant families in Dalun and elsewhere. 3) And finally, the exporting rice countries involved in dumping practices, especially the US, have breached their obligation to respect the right to food of rice peasant families. Its subsidies, export credits, and the misuse of food aid have contributed to the displacement of domestic rice from the markets of cities like Tamale and to the losses of income of the rice-producing peasants in Dalun.

Consumers do not benefit

The case studies in Ghana, Honduras and Indonesia revealed that the external and internal pressure on the governments to reduce or not to increase tariffs on rice has been very high. The main argument brought forward is the interest of (poor) consumers in low prices. Case studies, however, do not confirm the expectation that consumer prices would decrease as a result of liberalisation. In Indonesia, consumer prices for rice even increased in the period of the liberalised market. In Honduras and Ghana, decreasing import prices and producer prices are not reflected in low consumer prices either. The main reason in both cases seems to be the oligopolistic structure of the market, largely neglected by proponents of liberalisation.

While the consumers had not benefited from liberalisation in the period empirically covered in the study, the recent developments make this even more obvious. The soaring prices for rice in international markets are reflected most immediately in those countries that have opened their markets most for imports. A striking example is Honduras, where the number of rice producers has dropped from 25,000 in the late 1980s to currently 1,300 and the production level has fallen dramatically from 47,200 to 7,200 Mt between 1990 and 2000, largely as a result of liberalisation. Between August 2007 and August 2008 local rice prices in Honduras climbed by 53 percent (FAO 2009: 31). Poor urban consumers were exposed to sharp food insecurity, and the diminished number of

farmers was not able to fill the new gap in rice supply. In the case of Ghana, according to a World Bank report, prices for rice and maize have increased by 20 to 30 percent between the end 2007 and spring 2008 (Wodon et al 2008).

Ghanaian rice producers, according to the report, seem to benefit from this increase to some extent. However, after two decades of structural adjustment in this sector, they currently represent only 3.9 percent of the population and only cover 20 percent of the national consumption. The consequence is that domestic prices followed the international ones and food insecurity is sharpened, especially among poor urban consumers. For maize, in contrast, the effects of the price increase are more ambiguous according to the report. Around 28 percent of the population are still maize producers, and most maize is still produced in the country. This means that more people benefit from higher prices, and the country is less vulnerable to external price volatility. All in all the World Bank recently predicted that, because of the financial and economic crisis, the number of poor people in Ghana might increase by 500,000. Eighty percent of the country's poverty is concentrated in the three northern regions.

National and international follow up process

Following the completion of the research on the impact of trade liberalization on the right to food of rice farmers in the community of Dalun in the northern region, SEND Ghana in collaboration with the EAA and the Christian Council of Ghana, organized a validation session on the report in the community of Dalun. The session was facilitated by SEND Ghana through the presentation of the key issues from the report. The discussions confirmed the main issues highlighted in the report as an accurate reflection of the situation on the ground. Additionally the farmers also shared their feedback that fed into national level advocacy on the report.

As part of the processes of advocacy engagements on the right to food report following the validation exercise, SEND Ghana under the auspices of the Ghana Trade and Livelihoods Coalition (GTLC) organised the first ever farmers forum in the northern region in Dalun to provide the platform for the farmers to share the concerns ahead of the national farmers day celebrations. Additionally, SEND Ghana made a presentation at a regional seminar organised by the World Bank/IMF and the World Council of Churches. The research work was presented as a case study to support the negative impact of trade liberalisation on small communities and their right to food. The case study was acknowledged to be very useful in terms of helping to get a true picture on the ground with regards to real impact on resource poor communities. The case study also brought to the fore the need to pay more attention to micro level investigations studies in order to give more meaning to macro level analysis. The World Bank and the IMF, at least, pledged to work much more closely with grassroots organisations in order to get different perspectives for their analysis.

According to the president of the Peasant Farmers Association of Ghana, Adam Nashiru, the human rights approach to advocacy following the right to food research has contributed greatly in improving the situation of rice farmers for e.g. in getting government to take on board some of their concerns. According to Nashiru, the new government of President John Atta Mills, under the Expanded Rice Program, is supporting farmers to increase production. According to him, the programme can have a far reaching effect if the government is able to procure and

supply combine harvesters to farmers. Additionally the government has introduced a fertiliser distribution system to farmers at subsidised rates through the use of coupons. The implementation of this program is however beset with some difficulties as the coupons are in most cases in short supply hence farmers cannot access the fertiliser.

Moreover the government has promised to rehabilitate irrigation schemes and abandoned rice mills in the country with particular focus on the Nasia rice mills in Tamale, close to the village of Dalun. Additionally, the Japanese government has also designed a package to support farmers to revamp the rice sector by supporting them with tractors. The revamping of the Aveyime rice project is part of the process towards improving the rice sector. According to Adam Nashiru, the government promised a reduction of rice imports, which would be one of the main preconditions for a successful recovery of domestic rice production.

At the international level as well, the rice studies, for the three countries, were used to strengthen the struggles of poor rice farmers against unfair trade policies. The studies were presented to and discussed with delegates and ambassadors of these countries in the UN and the WTO in Geneva. They were presented officially by an EAA delegation to the World Bank in New York. And they were presented during a session of the Human Rights Council in Geneva. Consequently, the delegate of Luxemburg used the reports to challenge the government of Ghana on its trade policies during a regular plenary session of the UN Human Rights Council. The rice studies were also presented in an expert workshop held by UN Special Rapporteur on the Right to Food, Olivier de Schutter, who mentioned the results in one of his official reports on the World Trade Organisation. The approach and methodology used in these studies is currently serving as one contribution in the debate about systematic and institutionalized Human Rights Impact Assessments (HRIA) for trade and investment agreements.

Human rights strengthen the struggle of smallholders

The human right argument has gained a lot of attention in Ghana and it is being used by most CSOs in Ghana notably SEND Ghana, ISODEC, General Agricultural Workers Union (GAWU), the Peasant Farmers Association of Ghana etc. It has been very useful in adopting this approach because one is able to link country processes to global debates, standards and frameworks. The challenge in using this newly emerging human right approach to trade is the lack of acceptance during interface engagements. It requires repeated explanations to ground the issue. For example during the IMF/ WB/ World Council of Churches meeting in Accra, an official of the IMF stated that he does not believe in the rights issue and that the institution itself is gradually coming to terms with this approach.

The advantages of the human rights approach in trade policies are manifold. Beyond current ideological and theoretical arguments that dominate the debate on the links between trade liberalisation and food security in the official arena and even within civil society, human rights studies focus on concrete farming communities. Case-based empirical evidence provides a much stronger basis for questioning prevailing trade policies than theoretical arguments alone. Furthermore the rights approach allows for a monitoring of state behaviour on the ground of international law that is already recognised by the same states. International law can strengthen the position of marginalised people more than the reference to moral value of equity

alone. In multilateral, regional and bilateral trade negotiations, the human rights argument can even strengthen the position of those southern governments who try to resist the pressure of northern governments to open their markets for imports by north-based Transnational Companies (TNC). At the same time, the human rights analysis goes beyond the north south dimension in trade discussions. It holds all governments accountable for their policy decisions in the area of trade, those from the Global North and the Global South.

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Peasants' struggles for seeds in Italy and Europe

Riccardo Bocci and Luca Colombo

Introduction

Farmers' rights (FRs) carry very broad meanings. A range of different and conflicting international rules deal with or affect FRs. Since the beginning of the

negotiations on this issue within the FAO context in 1983, other fora unrelated to the specific agricultural context had an impact on its elaboration. In 1994 the Convention of Biological Diversity recognised indigenous knowledge in article 8j and even the pre-1991 UPOV Convention includes provisions somehow legitimising FRs. Wording is nevertheless very important: what FAO considers as a ‘right’, UPOV names it a ‘privilege’. The 1991 version of the UPOV (International Union for the Protection of New Varieties of Plants) convention shrinks the approach and this privilege clashes with the provisions foreseen in article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) finally approved in 2001. The full implementation of FRs is further affected by the WTO related TRIPs agreement that, despite some ‘flexibilities’ (as the idea of ‘sui generis’ protection included in article 27.3 bis), pushes the adoption of UPOV 91 in developing countries as a standard rule for plant variety protection (Rajotte and Tansey 2007).

The ITPGRFA, ratified by 121 Parties and gradually implemented since its entry into force in 2004, represents the key battleground on FRs. Its article 9 recognises the rights of farmers to save, use, exchange and sell farmsaved seeds and propagating material, thus including pertinent protection of traditional knowledge. Sharing benefits arising from the utilisation of genetic resources, and the participation in decision making processes on related matters are equally included in the Treaty rights approach. These provisions are based on the principle that current farming systems have inherited a (still) remarkable range of agrobiodiversity thank to the ‘conservation-through-use’ work carried out by generations of peasants. FRs thus arose from this recognition and moral gratitude.

Though farmers’ rights have gained international legal consideration, governments are still uncertain about how to implement this Treaty provision and even in the few cases of advancements in the legislative framework, reflecting the need to encourage and protect agrobiodiversity on farmers’ fields, governments fail to truly support farmers’ work. The latter is the case for Italy.

Italy has some of the most forward-looking legislation on peasants’ seeds due to the combination of national and regional norms aimed at protecting local varieties and landraces while acknowledging and granting peasants farming activities, in some regional cases addressing collective rights. Nevertheless, full implementation of measures targeting on-farm conservation and encouraging the development of a more sustainable use of agrobiodiversity still has to materialise in many regions and still needs a stronger commitment from national agricultural bodies.

What accounts for this combination of ambitious legislation and lack of effective implementation? We argue that this incoherence is due to the ability of a group of militants to effectively lobby for the approval of progressive legislation and the simultaneous lack of interest on the part of mainstream farmers’ organizations in translating this legislation into concrete measures.

Italy: small scale farming, typical and ‘biodiverse’ produce in a commodified agrifood sector

Despite being portrayed as the country of a diverse cuisine and the cradle of the Mediterranean healthy diet, most of the food manufactured and eaten in Italy comes from the importation or growing of agricultural commodities whose standardisation is essential for industrial processing. Mainstream players in the food value chain and

farmers' organisations historically supported this development and paid little or no attention to the diversity of food systems, farming methods and seeds.

It is not by chance that Italy, whose reputation of loose compliance to the laws is somehow deserved, is strangely the most law-abiding country on seeds legislation, as shown in an International Seed Industry (ISF) survey covering 14 developed and developing countries (Le Buanec 2005). According to this survey, 90% of soybean, 80% of barley, 90% of durum wheat and 70% of soft wheat seeds were purchased in Italy by farmers from an industrial seed supplier, while just 17% for wheat and 21% for barley in Canada, 58% for wheat in France and 65% for wheat seeds in the US are acquired from the formal seed market, the rest being seed saving at farm level and 'brown-bagging' or 'illegal sales', to use the seed industry wording. Full reliance on the formal seed market in Italy responds to historical reasons, namely the European Common Agricultural Policy national application, the myth of technological progress in agriculture, seed laws imposing strict rules for the entry of varieties in the official catalogue and the responsibility held by the Consorzi Agrari (the main agricultural inputs provider until early '90s) in complicity with major farmers' organisations: modern plant breeding has thus resulted in a separation of farming from breeding activities.

Europe and, in particular, Italy are witnessing a rapid decline of both plant and animal agrobiodiversity, mainly due to a series of economic and institutional factors which, instead, have encouraged the adoption of 'modern' varieties. The market for seeds (production, sale and exchange) is very restricted in Europe and the dependence of farmers on seed industries is becoming increasingly marked. Nonetheless, in Europe the proportion of seeds produced on the farm is not negligible, and for the seed industry it constitutes a gap to fill (Le Buanec 2005, Grain 2007). Estimates on loss of market value in the 14 above mentioned countries are about 6.7 billion dollars plus 470 million dollars lost royalties: it is arguable that the world battle on compliance with seed legislations and intellectual property regimes, forged in developed countries, is also meant to secure this potentially rich and by now oligopolistic market.

Modern varieties, mainly designed by seed firms for an industrial model of agriculture, respond to technical requirements, such as the compliance with the specifications for the registration to the official catalogues according UPOV standards (e.g. DUS criteria, Distinctness, Uniformity, Stability; for the species concerned, particularly the major crops, the DUS requirement is supplemented by an assessment of the Value of Cultivation and Use (VCU) that guides genetic progress in a single direction, most often defined in terms of yield in intensive agriculture). These criteria are not compatible with an agroecological way of farming.

The ever-faster race between sources of resistance to diseases and the development of new pathogens is a sign of accentuated imbalance in the ecosystem, reinforced by industrial production techniques (COAG 2007). The regulatory system has accompanied the scientific paradigm promoting stable and homogeneous varieties exposing farming activities to parasitic and climatic uncertainties and eventually weakening food systems.

This process led to global neglect of agrobiodiversity on the farm and of farmers' know-how in selecting and multiplying seeds in highly industrialised farming systems. The same applies to Italy, but due to the orographic and social characteristics of Italian rural areas, peasant agriculture survived and local varieties did too. It has to be stressed that Italian agriculture is still largely dominated by small

farms: the average national size is 7.4 hectares and farms with less than 10 hectares represent 85% of the total. Farmers' knowledge still exists in Italy, mainly in those marginal areas not yet overwhelmed by agricultural modernization, and innovation is still produced in rural areas mixing past and present, reusing agrobiodiversity for new challenges and needs.

A new way of farming. A new way of breeding

It is only fairly recently that scientists have been rediscovering an interest in a holistic vision of the environment where concerns about agricultural output have to come together with those of the environment (Loreau et al., 2001, Altieri 2004, Banks 2004). In this sense agroecology, the conceptual basis for organic and peasant agriculture, can renew the scientific discourse (Altieri 1995).

Starting from seeds, we very soon come to understand that in reality we are dealing with innovation in rural areas: who produces this innovation and how? Peasant innovation and even participatory research lead towards a collective system and take on a community dimension. Exchange through the circulation of seeds and thus knowledge is the basis for creating innovation (Brush 2004).

Within a (formal or informal) community whose bonds are territorial or ethical (such as the organic movement), varieties are shared, conserved, cultivated and improved. In this regard, the value system has to be inverted in order to protect and promote these new forms of rural innovation: we have to start addressing collective rights (Onorati 2005, Salazar et al., 2006) and move from the concept of ownership to that of the recognition of the community and its protection in relation to the outside world. In fact, farmers' rights in the ITPGRFA are in course of being established on the basis of these ideas (Andersen 2008).

The peasant movements in Europe also raise a political question. Affirming their ability to select and maintain varieties, to produce and multiply seeds, they challenge the prerogatives of the scientific community that pretends ownership on innovation in agriculture. 'Farmers' knowledge' is bringing out a more holistic and local scientific approach based on rigorous observation of natural processes and grounding on adaptive and evolutionary ecological systems (Chable and Berthelot 2006). Integrating farmers' requirements, knowledge and practices, into agricultural research needs to relocalise it, passing from a centralised model to a de-centralised, participatory one (Ceccarelli 1994, Cleveland and Soleri 2002).

Participatory breeding developing peasant varieties represents both a way of capitalizing the heritage of the peasant communities and the creation of new varieties. The innovative aspect of this peasant selection is nothing more than a return to selection and production -and also exchange- of seeds belonged to the peasants that were part of their farming activity. The researcher's role is to accompany the peasant to help him to reappropriate the seed.

The promotion of Participatory Plant Breeding strategies to help farmers to fulfil their needs, facilitating them in accessing the genetic resources and restoring sustainable farming systems bridges two of the most relevant ITPGRFA articles: this is the boundary separating the sustainable use of plant genetic resources (art. 6) from that of Farmers' Rights (art. 9). Article 9.2(a) concerning the protection and sharing of traditional knowledge can be related to article 6.2 (e) promoting the use of local varieties and underutilised species. As pointed out by Regine Andersen (2008) the major problem in the most industrialized countries

lies not in the ‘misappropriation’ of traditional knowledge but in its recovery and valorisation.

Networking peasants and breeders

In this difficult context, a movement to regain the development of seeds in rural areas is appearing. Some pioneers, among them farmers rejecting industrialized agriculture and more often practising organic agriculture, are proposing a different option. In Europe, since the beginning of this century, they have been organizing themselves in networks: the *Réseau Semences Paysannes* in France, the *Red de Semillas* in Spain and the *Rete Semi Rurali* in Italy. Their members are farmers, consumers and scientists working together in order to reconsider the scientific, technical and legal aspects of seed production. These new varieties are designated ‘peasant varieties’, a concept that encompasses two main aspects: the seed, the reproductive part of the plant linked to its *terroir*, and the variety, shaped by history and coevolved with farmers.

In Italy, the *Rete Semi Rurali* [Rural Seeds Network] arose as an informal group of researchers, peasants and agronomists in 2001, and has produced an information bulletin on its members’ activities. This network has worked particularly at the level of the regional governments, which for nearly 10 years now have been enacting regional laws to safeguard local agricultural biodiversity (Bocci and Onorati 2006). The legislative work has produced the law on conservation varieties which was approved by the government in 2007 and its implementing decree approved in 2008 (Bocci 2009). In 2007 the informal group took on legal status in the form of a network of associations, which now has ten members, including organic farmers’ groups. In 2008 the RSR has signed a three year programme with the Ministry of Agriculture on the implementation of the ITPGRFA in Italy. In that way the Italian Ministry of Agriculture has intended to formally include civil society organisations in this process, enlarging a project until now dedicated to finance *ex situ* conservation and research activities.

The characteristics of these European networks can display some common features: they bring together different civil society actors concerned about cultivated biodiversity (associations, farming unions, institutions etc.); they arose in the early years of the century and they rapidly expanded their outreach, in terms of members and campaigns (partnership research projects, biodiversity fair, publications, training etc.); they have a capacity to communicate with the wide public and to share their concerns; they also belong to other civil society networks.

Starting from their initial activities – preserving farm seeds (France) or safeguarding ancient varieties (Italy and Spain) – the networks’ aims and activities have broadened. They have opened up to research and to varietal innovation produced by the peasants themselves. This development is particularly marked in France, where public research has also embarked on the peasant initiative through participatory plant breeding, particularly for organic farming.

The networks also shared the common need to strengthen the work at European level to better cope with the negative impact of European legislation and co-ordinate the different activities undertaken at the national level, convening annual meetings to identify joint political objectives and swap ideas and experiences on more technical and scientific aspects through peer-to-peer exchanges. In 2005, the French network decided to hold a European meeting on agrobiodiversity. For this purpose a

European steering committee was put in place with the responsibility of inviting experts and selecting the different themes. This meeting took place in Poitiers in November 2005 and was the starting point of a series of conferences under the title 'Let's liberate diversity', which is now a sort of common slogan of the movement. In the following years, meetings were held in Bullas (Spain 2006), Halle (Germany 2007) and Ascoli (Italy 2008)

Through these events, the European Seed Network broadened its social basis to other countries such as Russia, Poland, Latvia, Hungary, Romania, Bulgaria, Slovenia and Georgia. Speakers from Chile, Iraq, Iran, Israel, Mali, Tunisia and the USA further provided a perspective from outside Europe.

These initiatives pointed out the following concerns around agrobiodiversity:

- The paramount importance of building new relationships between farmers and researchers aimed at better integrating on farm and ex situ (seed banks) management of genetic resources;
- The emergence in different countries of new form of rural communities, based on collective forms of organising themselves, sometimes inspired by tradition, in other cases rebuilding around a new vision of society.
- The valorisation and sustainable use of genetic resources remain the central issues of their work whose funding still represents a common weakness
- The obstacles put in place by norms and legislation, which could ban access to seed collections, hinder on-farm processing or encourage crop contamination by GMOs. Despite the legislative debate complexity, actors on the ground have no choice but to delve into it in order to defend themselves. The exchanges allow the comparison of different national contexts, occasionally offering alternative perspectives to deadlocks presented by national legislation.

The commodification of seeds is part of the on-going commodification of food, in 'a chicken-and-egg' situation. The new paradigm seed networks are setting aims to reverse this trend by reconnecting in an all-embracing cycle the seed, the grain and the traditional or experimental relationship peasants have with seeds and food. Mainstreaming further their approach within the larger farming community and *vis-à-vis* an already responsive public opinion must be paralleled with a deeper political penetration in order to achieve more far-sighted legislative frameworks and practices on both conventional and local varieties. Since seeds express *per se* both a technological package and an entire food chain, renewing their role and function is meant to serve a more just and sustainable agri-food system.

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Interview with Henry Saragih, International Co-ordinator of La Via Campesina

Sofía Monsalve Suárez

Henry Saragih is chairman of the Indonesian Peasant Union (SPI) and has been leading La Via Campesina since 2004. He comes from North Sumatra and as a student was actively engaged in the 1990s against the Suharto dictatorship. He started helping and organizing farmers to defend themselves when their land was taken over by plantation forest companies and later became one of the founding members of SPI.

SMS: When did you start to use the human rights discourse in your struggles for land and resources?

HS: Serikat Petani Indonesia (SPI) started to use the human rights discourse in 1998, right after the birth of the organization. Indonesia went through 32 years of the Suharto regime. This regime was constantly violating people's rights, especially through its military-led government. At that time, most of the violations committed by the Suharto regime were related to civil and political rights. Many peasants were criminalized, kidnapped, tortured and even killed because of their struggle for land and resources. At that time, we could see human rights violations in the most brutal way: the military burning down villages, beating and shooting at people, sending people to jail because they were fighting for their rights. Peasants, at that time, had a glimpse of hope to find a way, a strategy to overcome all these violations committed by the state. Indonesia's Constitution of 1945 enshrined certain basic rights, such as the non-discrimination principle, the right to work and live in human dignity, the right to education and social welfare. Claiming freedom of speech, of freely expressing opinions, and the freedom of association and of being involved in peoples' organization, was an important part of the resistance struggle. Longing for these freedoms reached their peak in 1998 and the people's power was able to overthrow the Suharto regime. After that, human rights began to be openly and widely discussed. Once we were able to build peasant unions again, many organizations have been promoting and upholding rights ever since—especially SPI with its initiative on the recognition of the rights of peasants.

SMS: How have you been using human rights tools? Please give examples.

HS: After 1998's reformasi, there have been significant changes in the human rights situation in Indonesia. Now in this era we can exercise our human rights, especially freedom of speech. This is important, as now we can speak and discuss freely about some basic rights.

There are many laws and regulations that were not implemented in Suharto New Order's time, and they include some basic rights that we fought for. As I said before, this includes the very basic constitution of our republic, Indonesia's Constitution of 1945. Another law that we would like resurrect and that contains some basic rights (including rights to land) is the Basic Agrarian Law of 1960. We have also been using both international covenants on human rights, the one on Economic, Social and Cultural Rights, and the other one on Civil and Political Rights. In many of our peasant struggles post 1998 we particularly have referred to the right to adequate food. Using current laws and regulations in combination with international norms we have developed legal strategies to fight for some of the biggest agrarian cases in this era, such as Cikupa, Kedung Ombo and Asahan cases. We documented them and filed our complaints to the National Commission of Human Rights. Through protest letters, pressure in the media and mobilization on the ground we also paved the way for political solutions at the House of Representatives in several of these cases.

SMS: What have been the impacts of using them? What have you achieved by using it in your country? Please give examples

HS: Using human rights advocacy for building social movements is new for Indonesia—as you may see it only began in 1998. But I can say that some improvements have been achieved. Human rights in general have been mainstreamed

nowadays. This is an achievement in itself because the movement in 1998 was quite focused on this matter. At the international level, we can see that Indonesia is one of the most pro active country in this field in the region—I can say that the government learned a lot from the 1998 advocacy.

Regarding the human rights situation of peasants in particular, I think it's still moving. We can say that there are some cases solved, but there are many still untouched. In some cases, we succeeded to defend our land; as in Asahan, Jambi, Manggarai and Wonosobo. Some cases are still in investigation, and in our opinion the officials are not acting expeditiously. Nonetheless, from 2000 until now we have observed that in the cases in which we are able to develop an advocacy strategy, violence decreases. But aside that fact, there are approximately 2,810 agrarian cases in Indonesia, and therefore we need unorthodox and speedy resolution of all them. We now face growing numbers of people criminalized and there are serious problems of discrimination—especially regarding access to justice for peasants.

If we look on the agrarian sector in conjunction with peasants' human rights, there have been changes in policy as well. There are some new laws, including (but not limited to) Sustainable Food and Agricultural Land Protection Law, National Program on Agrarian Reform, and there's now a plan for Farmers Protection and Empowerment Bill, which we would like to based on our Declaration of the Rights of Peasants-Women and Men. Nonetheless, there have been so many gaps in the implementation of laws and programs—even when the content is good. We still need many improvements—because there are also many bad policies that we need to review and change.

SMS: Why are you promoting an International Convention on the Rights of Peasants?

HS: Peasants still represent almost half of the world's population. The great majority of them have to face massive and systematic violations of their rights. And despite the scale of this situation, and the importance of peasants in feeding our communities and the world population, world public opinion seems to be blind to the plight of peasants. We are being increasingly and violently expelled from our lands and alienated from our sources of livelihood. Mega development projects such as big plantations for agro-fuels, large dams, infrastructure projects, industrial expansion, extractive industry and tourism have forcibly displaced our communities, and destroyed our lives. We cannot earn an income which allows us to live in dignity. A mix of national policies and international framework conditions are responsible for driving us to extinction. I'm talking about the processes of privatization of land, which have led to a re-concentration of land ownership; the dismantling of rural public services and those that supported production and commercialization by small and medium producers; the fostering of highly capitalized and high-input agro-exportation; the push toward the liberalization of agricultural trade and toward policies of food security based on international trade. In many countries, we are losing our seeds at great speed, our agricultural knowledge is disappearing and we are being forced to buy seeds from TNCs in order to increase their profits.

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. The Peasant Charter adopted by FAO and the UN General Assembly in 1979 was not able to protect peasants from international liberalization policies. There are major gaps in

the interpretation and implementation of treaties such as the International Covenant on Economic, Social and Cultural Rights and the Convention on Biodiversity particularly when facing patterns of violations of our rights related to the crimes committed by TNCs and to the damages inflicted by Free-Trade Agreements (FTAs). In order to address these patterns of violations, we need specific provisions and mechanisms to fully protect our rights. That's why we need the International Convention on the Rights of Peasants (ICRP). Other groups like migrant workers, women and indigenous peoples have already developed their own conventions. The ICRP will spell out the individual and collective rights of peasants, which will have to be respected, protected and fulfilled by governments and international institutions. We are struggling for the ICRP with other social movements and our allies like the Indonesian Committee for Social Justice, FIAN International and CETIM for more than 9 years now. Within the current context of global food crisis, the call for an ICRP acts as a counter proposal to the current destructive neoliberal policies and practices. It would be a real alternative from the peasants, a real offering to the humanity, civilization, and also the sustainability of the planet earth.

SMS: There are critical voices which question the role of rights in social struggles for several reasons. According to the critique, the rights discourse remains deeply entrenched in Western views like individual property, commoditization of nature and cultural and spiritual values, certain notions of body and torture, among others. Thus using the rights discourse bears the risk of paving the way for expanding the privatization and commoditization of life. Other critics have called attention to the fact that social movements might fall into the trap of wasting energy in legal procedures which are tedious, bureaucratic, controlled by legal experts and at the end of the day demobilising. What is your opinion about this critique?

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

Note: La Via Campesina's initiative for an ICRP is already being discussed by the UN Human Rights System. The Fourth Session of the Advisory Committee of the UN Human Rights Council, which met in Geneva on 25–29 January 2010 adopted the report titled 'Preliminary study on discrimination in the context of the right to food'.⁹ This report describes the marginalisation of peasants, rural women and traditional fishing, hunting, and herding communities. It also explains the work of La Via Campesina in establishing the rights of peasants and fully adopts La Via

⁹The report is available at <http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/session4/docs/A-HRC-13-32.pdf>

Campešina's Declaration on Rights of Peasants, including it in the report's annexes. In March 2010, the UN Human Rights Council requested the Advisory Committee to continue to work on the issue of discrimination in the context of the right to food and, in that regard, to undertake a preliminary study on ways and means to further advance the rights of people working in rural areas, including women, in particular smallholders engaged in the production of food and/or other agricultural products, including from directly working the land, traditional fishing, hunting and herding activities. The Advisory Committee presented its preliminary study to the Council at its sixteenth session in 2011.¹⁰

Recognizing a rights-based approach to development in fisheries: Struggles of small-scale fishing communities to secure their human rights

Jackie Sunde and Chandrika Sharma¹¹

Introduction

The fisheries sector makes significant contributions to local and national economies and is a critical source of food security worldwide. Small-scale fisheries currently contribute over half of the world's marine and inland fish catch, nearly all of which is used for direct human consumption (FAO 2005). They employ over 90 percent of the world's 41 million fishers and support another approximately 84 million people employed in jobs associated with fish processing, distribution and marketing. At least half of the people employed in small-scale fisheries are women (FAO 2009). For small-scale fishing communities, fishing is not just about livelihoods and income—their social and cultural relationships and identities are deeply embedded in fisheries.

Small-scale fisheries are known to be relatively more sustainable. This is largely due to the diversity and seasonality of the gear employed, the minimal by-catch generated, and, importantly, the lower levels of energy consumed per hour of fishing effort. Even though the sector is rapidly changing today, and is relatively more technology- and capital-intensive, small-scale fisheries still provide the model on which to sustain fisheries and fishery dependent livelihoods into the future. Despite these obvious social and economic advantages, this sector is yet to be given adequate recognition nationally or internationally. Fishworkers across the world have struggled, and continue to struggle, seeking recognition of their rights, as well as of the contribution that they can make to fundamental human rights imperatives such as the right to food, to poverty alleviation and sustainable resource management.

Claiming human rights

Small-scale fishing communities have sought recognition of a range of human rights—political, civil, social, cultural and economic—in their struggle to secure their livelihoods. These rights have included: the right to participate in decision-making;

¹⁰The report is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/110/48/PDF/G1111048.pdf?OpenElement>

¹¹This paper has been prepared with extensive inputs from ICSF members and secretariat, in particular, John Kurien and Sebastian Mathew.

preferential access to inland and coastal fishery resources; recognition of traditional and indigenous knowledge; tenure security to coastal lands; recognition of women's work in the sector; safe and fair working and living conditions; access to health and social security; access to credit and financial support; regulation of foreign fishing fleets, including those fishing under fisheries access agreements; ban on destructive and unsustainable fishing gear and practices such as bottom-trawling; ban on pollution of water bodies and coastal areas; and strict regulation of intensive aquaculture, particularly of shrimp and salmon. The strategies used for staking their claims have varied. They range from advocacy, lobbying, and representations to the State, to mass-based action, such as protest marches, hunger strikes, defiance campaigns, as well as class action litigation. The slogans used by fishworker campaigns tell their own story: 'No to the entry of foreign fleets in our waters' (Conapach, Chile, 1984); 'Protect water, protect life' (National Fishworkers' Forum, India, 1989); and 'Fishers' Rights are Human Rights' (Coastal Links, South Africa, 2003).

In 1984 fishworkers and their supporters from several countries gathered in Rome in an international forum to articulate their collective demands (ICFWS 1984). The language used to articulate rights has changed since then, but the demands made in Rome reflected clearly the perceived indivisibility of social, economic and cultural rights, and civil and political rights, rooted in the material reality of the sector. Fishworkers have, implicitly if not explicitly, invoked a human rights framework in their struggles since the beginning of collective action, directing their demands at governments and citing their rights to life and livelihoods as the basis.

From 2002 onwards, fishworkers, at national, regional and international levels have begun to argue for their rights using a human rights framework. This emerging articulation of a 'rights-based approach', based on human rights, was given substance through several articles published in SAMUDRA Report¹² over the period 2007 to 2009, which began to challenge very directly the way in which the term 'rights-based' is being used in fisheries. Rights-based approach to fisheries management, predicated on models of economic efficiency and private property rights, are being mooted by some national governments, particularly of Australia, Iceland and New Zealand. International institutions, such as the Food and Agriculture Organization (FAO) of the United Nations and the World Bank are touting it as a panacea to the problems of overcapacity and overfishing facing world fisheries. Despite the overlap in the use of the term 'rights', this approach makes no reference to human rights and is determined by a market-driven approach to governance of marine fisheries resources.

This conceptualisation of a human rights-based approach to development in fisheries found synergy with the 'rights based framework', commonly referred to as the Right-Based Approach (RBA), emanating from the UN Commission on Human Rights in the early 2000's, which has now been widely recognised and adopted¹³.

¹²SAMUDRA Report is the newsletter brought out by the International Collective in Support of Fishworkers (ICSF). See www.icsf.net.

¹³126: 'We resolve to integrate the promotion and protection of human rights into national policies and to support the further mainstreaming of human rights throughout the United Nations system, as well as closer cooperation between the Office of the United Nations High Commissioner for Human Rights and all relevant United Nations bodies'. 2005 World Summit Outcome: Sixtieth Session of UN General Assembly. Accessed online at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>

Nonetheless, the understanding of what constitutes a ‘human rights-based approach’ within the small-scale fishworkers’ movement is very fluid and still includes a wide range of interpretations. It was given impetus and definition over the past years with a series of regional and international civil society workshops¹⁴, where the voices of small-scale fishworkers articulated what the contours of a human rights-based approach to development in fisheries should constitute (Das 2007, Mathew and Koshy 2008, O’Riordan 2008).

At the Civil Society Preparatory Workshop in Bangkok in October 2008¹⁵, immediately prior to the FAO Global Conference on Small-scale Fisheries (4SSF)¹⁶, participants articulated a wide range of rights to give content to a human-rights based approach to development in fisheries (see box). The workshop was jointly organised by the World Forum of Fisher Peoples (WFFP), the International Collective in Support of Fishworkers (ICSF), the International NGO/CSO Planning Committee on Food Sovereignty (IPC), the Sustainable Development Foundation, Thailand, and the Federation of Southern Fisherfolk, Thailand. Notably, several of the rights considered as important by small-scale fishworkers are already recognised in existing international law, including customary law, as discussed elsewhere (see Sharma 2008).

Rights claimed in the Bangkok Statement¹⁷

- rights of fishing communities and indigenous people to their cultural identities, dignity and traditional rights, and to recognition of their traditional and indigenous knowledge systems;
- rights of access of small-scale and indigenous fishing communities to territories, lands and waters on which they have traditionally depended for their life and livelihoods;
- rights of preferential access to fisheries resources under national jurisdiction; rights of fishing communities to use, restore, protect and manage local aquatic and coastal ecosystems;
- rights of communities to participate in fisheries and coastal management decision-making; rights of women to participate fully in all aspects of small-scale fisheries, eliminating all forms of discrimination against them and securing their safety against sexual abuse;
- rights of women of fishing communities to fish resources for processing, trading, and food, particularly through protecting the diversified and decentralized nature of small-scale and indigenous fisheries;
- right of women to fish markets, particularly through provision of credit, appropriate technology and infrastructure at landing sites and markets;

¹⁴Regional workshops were organized in Siem Reap, Cambodia in 2007 for Asia, in Zanazibar, Tanzania in 2008 for Eastern and Southern Africa, and in Punta de Tralca, Chile in 2008 for Latin America. See SAMUDRA Reports No. 47 and 50 reports and statements from these meetings

¹⁵See <http://sites.google.com/site/smallscalefisheries/Civil-Society-Workshop>

¹⁶See www.4ssf.org

¹⁷The civil society statement finalized in Bangkok on 13 October 2008 is reproduced in SAMUDRA Report 51, December 2008, pp 7–9.

- rights of fishing communities to basic services such as safe drinking water, education, sanitation, health and HIV/AIDS prevention and treatment services;
- rights of all categories of workers in the fisheries, including self-employed workers and workers in the informal sector, to social security and safe and decent working and living conditions; and
- rights of fishing communities to information in appropriate and accessible forms.

The series of workshops clearly helped capture fishing communities' own articulations of what they perceive as their rights—rooted in their everyday experiences, deepening clarity about the indivisibility of human rights. They helped movements deepen their understanding of the fact that the notion of 'citizenship' for poor fishing communities is inextricably tied to a range of political and civil freedoms, but that these freedoms only find meaning and expression through social, cultural and economic rights.

The above processes also provided the impetus for civil society organisations to lobby for a specific article on small-scale fisheries in the FAO Code of Conduct for Responsible Fisheries, an important international fisheries management instrument, at the recently-held Twenty-Eighth Session of the FAO Committee on Fisheries (COFI) (Mathew 2009). This is in the belief that such an instrument can help provide a comprehensive framework within which to address small-scale fisheries-related issues, bringing together existing legal instruments that recognise the rights, including social, economic and cultural rights, of fishworkers, and their own articulations of their rights. It can also provide an important boost to organizations seeking supportive action from their government.

Human rights-based approach to development in fisheries: Concerns, limitations and challenges

As fishworker and support organizations have increased their engagement with the human rights-based approach to development in fisheries, several concerns, perceived limitations and challenges related to providing content to, and implementing this approach, have come to the fore.

An important concern is the tension between individual rights and collective or community rights. The focus on individual rights at times translates into limitations in fisheries legislation and policy, which fail to recognise customary fishing rights, as well as the community-based nature of many practices in fishing communities. Few fisheries instruments accommodate the pluralistic nature of lived legal norms. 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. There is need for wider recognition that at times the equal worth and

dignity of all can only be assured when the recognition and protection of individuals' rights is contextualised into the larger socio-cultural group of which they are members.

Recent mobilization and advocacy work has also brought the unique spatial location of small-scale fishing communities into sharper focus. While issues facing fishing communities are largely similar to those facing poor peasants, small-scale producers and indigenous peoples, the location of fishing communities in the coterminous space between land and water and the largely 'common property' nature of the resource on which they depend for their livelihood, lends a distinctiveness to their context. This often means that the 'rights' of fishing communities to coastal and aquatic spaces are not so clearly recognised. There is similarly little recognition that fisheries forms the basis of their identities and that the right to fish is linked to their sense of entitlement to citizenship. This link between identity and the right to fish is perhaps best captured in the words of a fisher in South Africa whose rights to fish were taken away in 2002: 'When they took away my right to fish, it was as if they took me away'. This unique spatial location of fishing communities and the nature of the resource on which their livelihood depends, poses a special challenge in developing the content of a human rights-based approach to development in fisheries—as also in ensuring that this is attuned to the lived realities and the distinctive nature of the sector.

Fishworkers and support organizations have also highlighted several concerns about the way in which, in some countries, civil and political rights are still regarded as higher order rights, with basic social and economic rights failing to receive adequate attention. The indivisibility of human rights is not given recognition in practice. Further, feminists have critiqued mainstream human rights frameworks for neglecting to identify clearly the way in which gender discrimination shapes women's distinct experience of their rights and their ability to make claims on the state (Tsikata 2004).

Of considerable concern is the fact that the language of human rights is now being used extensively by mainstream international governance institutions, large multinational corporations and conservation bodies as well as by the international financial institutions like the World Bank. In many respects key human rights concepts have been 'depoliticised'. Whilst the work of these institutions is geared towards increasing social accountability, fishworker organizations have questioned the way in which human rights language has been appropriated. They fear that it will be used to promote those aspects of good governance that maximize economic efficiency or meet narrow conservation goals. Such an approach will promote the interests of certain sections of society, without extending the jurisdiction of the human rights framework to the ethics and activities of these self same institutions.

Fishworkers have also drawn attention to the fact that in some countries fishing communities face discrimination from both state and non-state actors, despite the fact that basic human rights are enshrined in their national legislation, and despite the fact that there is a strong international framework and universal commitment to the adoption of a human rights-based approach to development. Poor implementation of such commitments continues to be an issue of increasing concern, closely linked to the fact that many communities lack access to information and justice, rendering many of the protective aspects inaccessible for fishworkers. At the same time the ability of fishworkers to make human rights claims inevitably rests on the

nature of the state in particular contexts, and the strength of democratic practice at local and national level.

Conclusion

Fishworker and support organizations have been working for the adoption of a human rights-based approach to development in fisheries, recognising that this can be a critical tool in the struggle to protect and promote rights of fishing communities worldwide, while highlighting the concerns, limitations and challenges to the development and implementation of such an approach. There is recognition that the adoption of such an approach is not an end in itself—the process of seeking its adoption and of ensuring its implementation is equally important. The process, to the extent that it enhances awareness amongst fishworkers of their rights and their ability to claim their rights through collective action, can be empowering. It can also ensure the successful implementation of the approach itself. It is in the mobilization and actions of fishworkers, in holding their local and national governments to account to their human rights imperatives, that they will be able to realize their full freedoms, be able to define themselves as citizens, and affirm their right to sustain life and livelihood. For this to become reality considerable effort towards strengthening the mass base of organizations at the local and national levels, as well as their awareness of their rights, is needed. It is important to return to the mass mobilization and conscientization strategies and tactics that characterized much of the organizing work within fisheries in the earlier decades. This has to be combined with the more recent emphasis on advocacy and lobbying, and technical drafting of human rights language, in order to ensure that it is the voices and actions of fishworkers themselves that give meaning and substance to a rights-based approach.

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Interview with Taghi Favar on the experiences of nomadic pastoralists fighting for their right to territory in Central Asia

Maryam Rahmanian

Taghi Farvar was Secretary General of the World Alliance of Mobile Indigenous Peoples. He has also chaired the Commission on Environmental, Economic and Social Policy of the International Union for Conservation of Nature. He has extensive field experience in Africa, Asia and Latin America and works for the Iranian NGO Cenesta.

MR: Starting with the nomads of Iran, on the issue of rights, what are you doing?

TF: We are using the UN Declaration on the Rights of Indigenous Peoples. We have translated it and given it to nomadic communities. They are now preparing a letter to the President in which they will remind him that Iran has signed this declaration and ask for its concrete implementation on specific points.

MR: Before this Declaration were you using the rights discourse?

TF: The basic problematique is that the 700 tribes which controlled and continue to control a large part of Iranian territory (about 1.6 million km sq of land in total, 0.9 million km sq are rangelands so it's the largest part of the country). One quarter of the country is desert. Their way of life is different, their language is often different, they have their own customary laws governing the use of natural resources. Before the agrarian reform of 1963 most of this was under some sort of customary law. The tribe as a whole, including confederation of tribes, had a territory which included wintering and summering grounds and the migration routes that connected the two.

MR: Since 1963, when was the first time that the rights discourse came into the struggle?

TF: From the tribe's point of view it's always been there. They had the rights to govern the land, but in 1963 with the alienation of natural resources the ownership, governance and management of land was passed to the government which had no experience in this. It was handed over to the technocrats who had no idea how to do it. They applied academic models which ended up degrading the lands. Since then, there has been resistance and that is why they started talking about their rights. But there was no one trying to help them to get organized to be able to exert in a coherent and systematic way the expression of their rights and the quest for their fulfillment. First of all, nomads are not individuals, they are collectives. The government disregarded the social organization of the nomads. These organizations had a clear role on the management of land and ecosystems, but also resolving conflicts between people. Before, each tribe was defending its own rights, sometimes through violence but often through customary processes. Then the government formalized and legalized rights of access to land through grazing permits but this seemed somehow false to the nomads themselves. They were not given titles to the land, but a permit to graze a specific piece of land, for a specific number of animals. They got stuck between different government offices and departments who were not

well coordinated. The concept of 'natural' or customary rights to grazing lands which used to be organized socially, became regulated legally. So it was a very vulgar way of talking about rights.

This continued till after the Islamic Revolution, about the 1980s, when the Organisation for Nomadic Peoples' Affairs was created as a department directly under the Prime Minister. It should have been passed to the President's Office when the prime minister's office was dissolved so that means that the head of it would have been a Vice President of the Republic.

But Rafsanjani turned it into a weak organization under the Ministry of Agriculture which had as its sole aim the destruction of nomads through their sedenterisation. He told the organization that he did not expect to see a single nomadic household within 20 years and told them that it was their task to carry this out. So the issue of their rights was eliminated also. The issue of rights became focused on the right to sedentary housing, the right to a bit of land for agriculture.

MR: What were the nomads doing in terms of their own organization?

TF: The customary institutions began to recede and become weaker as a result of these policies. In parallel, their rights were increasingly abused and irrelevant. What I want to stress is that for nomadic peoples, the issue of their collective rights is inseparable for the discussion of their rights. And within the framework of their collective rights, their individual rights. And the customary institutions that protected and had stewardship of these rights and intervened in the case of any conflicts.

So because the customary institutions were weakened and the official organization was governmental, weak and tasked with destroying nomadism. This meant that there was so soon no one to defend the rights of the nomads, not even their legal rights let alone their customary rights. I don't know of any nomad that has gone to court to defend their right to land and has been successful, if they go to court at all. Corruption is also an issue. There have been many well-funded government projects for the re-allocation of nomadic lands to other uses, such as agriculture and some people have definitely benefited personally from this.

Then in 2003 when nomads, facilitated by a national NGO, Cenesta, started to get organized and the organization took the shape of institutions modeled after their customary institutions as the nomads wanted it. They began to revitalize and formalize their councils of elders and register them as officially recognized organizations. They therefore started to be recognized for the first time as legal persons and customary tribes.

MR: So now that they are legally recognised, how are they fighting for their rights?

TF: They started at the level of the sub-tribe to register their organizations. Then they started federating at a higher level: sub-tribes started to come together at the level of the tribe, etc. so their priority was to come together first, and then fight for their rights once they were more numerous and better organized. In the Qashqai tribe, two of the six tribes are already registered and to are in the process. Their ultimate aim is to have a single national organization uniting all the tribes and confederations. Other tribes have started following a similar process: the Shahsavani, the Bakhtiari, the Sangesari, etc.

As they get organized they join each other in posing issues to the government and to the society at large which is framed by rights. For example, for the first time they are finding the means to participate in regional and national dialogues on policy. Cenesta helps them to do this.

MR: The main right that is abused is the right to territory. What is their strategy to get secure access to territory? Are there any concrete successes?

TF: This has happened in two ways. First, there are constant incursions against the tribal territory, sometimes affecting one tenthold, sometimes an entire sub-tribe. And until they started to organize themselves recently, the only way to defend their rights was through violence. But we've managed to help them organize themselves and use the councils of elders as customary institutional mechanisms for conflict management, with a lot of success.

MR: Inside or outside the tribe?

TF: Often internal problems, but sometimes with outsiders, like the government. Sometimes cases of violence and murder have been avoided or resolved. The government has also sat down with the councils to solve their problems.

What I see now is a movement being formed. Once the national organization is created they will be a movement in every way. Let's remember that nothing like this has ever happened in Iran before. The natural groupings, coming together, organizing themselves, and getting access to policy, legislation, project and conservation issues.

Second, when the tribe sat down together they were being taken for a big ride, that their integrity over their own territory was eroded and the government was having all sorts of national projects without any consultation with them, e.g. ranching projects. The nomads rejected these imposed ranching projects because they were imposed and alien, based on a sedentary model of livestock raising. So they said that the only system that we know works is our traditional system of range management. They sat down and worked out exactly what they wanted to achieve and what role they wanted the government to have, a supporting role and not a dictating role. They made the link between the territory and the social group and its customary institutions. They made a plan based on the management of the entire territory, not just the parcels with individual grazing permits. And in parallel Cenesta was working, with the nomads wherever possible, on the mindset of the range management experts. From the lowest to the highest levels of governments. We tried to point out the lack of logic of their system of management and the benefits of the customary ones for environmental sustainability.

So they produced project proposals based on these ideas: territory based range management projects. After lots of discussions with the government with our help, the officials finally agreed to try the idea of supporting a nomad-supported project, rather than trying to impose on them a government defined project.

MR: It sounds like Cenesta and the nomads are trying to make environmental arguments, or claiming that traditional systems can help solve conflicts. It's a pragmatic approach. How much are you really talking about rights as human rights, as things that they have automatically because they're human and not because there are any conditions.

TF: No, we're talking about the need for access to territory, the need to rescind the law of nationalization of the rangelands. So it's a matter of restitution of their lands. So far, the government has recognized territories and the social organization. And that they should do the planning, according to traditional knowledge. Some offices have actually accepted these rights. Whenever you talk about territory you're talking about rights. Right now the best case is that in at least one case the government is ready to put money for these territory-based range management projects. And they're trying to spread this to the national level by insisting that the territory-based approach be included in the country's next five-year development plan.

MR: Which legal instruments at the national or international level do they want to use?

TF: The tribes are saying that the UN Declaration on the Rights of Indigenous Peoples is the crucial instrument and that's why they have decided to invest energy in it. Also, the UN Permanent Forum on Indigenous Issues, one of their members in the last term from 2008 till 2010 was from Iran. We are in touch with the woman and in principle she has agreed to a joint publication of the UN Declaration with Cenesta and the national nomadic organization which is about to be formed. The government cannot deny the Declaration because they have signed it.

MR: Are there any other instruments useful to you?

TF: The Convention N° 169 of the International Labour Organization, but Iran is not a signatory to it so a bit less useful. Good since it talks about 'tribal peoples'. We are also using the IUCN resolution on mobile indigenous peoples. The Dana Declaration on Mobile Peoples and Conservation. The Segovia Declaration. As they keep coming, we use them. The issue of pastoralism is always being seen in different light as the world progresses, such as climate change. We use these texts by translating them, promoting them and using them to open a debate.

MR: How about the UN Declaration on Human Rights?

TF: We find some of the more recent instruments like the Declaration on Indigenous Peoples Rights more applicable. It makes direct reference to some of the most key issues, like territory and rights to resources, prior informed consent, rights to determine the organizations that represent them. That was for us a big problem: the legitimacy of indigenous institutions. The UN Declaration gives them legitimacy, it says that they don't have to follow western democratic procedures if they have their own ways.

MR: What are the limitations of these instruments?

TF: One of them is the political sensitivity to the expression, 'human rights'. Some parts of the government tend to look at you as political activists, inspired by Western issues. Which is fine, but I think the concept of human rights is becoming more domesticated in Iran. We try to stay true to the rights-based approach, but also to couch our demands in the discourses that are dominant in the government, then making it explicit as much as possible, as early as possible in as many ways as

possible. And the approach has worked. If we had started by explicitly going on about human rights we would all be in jail now.

MR: What about the criticism that the rights discourse is used to expand the privatization of life and is based on western values such as individualism?

TF: This is another major reason why we have emphasized the UN Declaration. Rights, for indigenous peoples, is very much about collective rights, cultural rights, identity rights, and especially reflected in rights over territory. This is why this instrument is the one we have favoured over the others, which may bring up important issues, but they do not have as central the issues which we are dealing with now. The rights of minorities, for example, usually refer to individual rights. Collective rights are most strongly defended in the UN Declaration.

MR: The full implementation of the Declaration will cause huge challenges. What is the thinking among nomadic communities?

TF: They want it implemented and so do we. But I think the overall approach is a pragmatic one. We don't want to make a big fight now at this moment over rights as a whole issue. We're trying to get the most significant rights recognized, the rights that determine whether they can go on existing or not, such as territory which includes your life ways, includes migration, identity, culture. We've started talking about the issue of schools for instance. The nomadic schools in Iran were pioneered by an employee of the US's 4 Point Programme (under President Truman) and modeled on the schools set up by the US government for the American indigenous 'Indians'. It's beautiful because it's migrating, but it's horrible because it alienates the children from their own culture and identity. We've had wonderful experiences of building a school system based on local culture and livelihoods in Lorestan, for example, so we know it works. But we're trying to make sure that the base is a sufficiently strong social organization. The stronger they are, the more possible it becomes to open the discourse broader and broader. Nomads have until now always been a military strength in this country and there might be those that are concerned that this will happen again. What we say to them is that the aim now is sustainable livelihoods, sustainable development, conflict resolution, etc. In this stage, the movement is new and too weak to do radical things and be very provocative and talk explicitly about controversial things. It needs to gain strength by doing practical things, achieving things practically.