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THE CONTROL OVER SEEDS

The confrontation between human rights and intellectual property rights

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Abstract

During the last decades, since the 1960s, the world has assisted to the growing phenomenon of the privatisations of seeds with the development of Intellectual Property Rights (IPRs) over seeds and plant genetic resources. This process started in the western enriched countries and rapidly the transnational corporations of these countries started to patent plant genetic resources from impoverished countries and societies. During this period the Economic, Social and Cultural rights (ESCR) recognised in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights have been developed and an international protection system has been set to respect, protect and fulfil the enjoyment of these rights by the citizens of the States.

Sometimes the application of the IPRs at international and national level can have serious consequences on the enjoyment of the ESCR, especially in the enjoyment of the Right to Food. The implementation of the economic neoliberal policies, supported by the enriched countries and some international organizations, as the World Trade Organization (WTO), has affected negatively to the impoverished populations of the developing countries. In reaction to these negative effects some remarkable initiatives have arisen from civil society to propose an alternative to this neoliberal model.

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List of abbreviations

AoA	Agreement on Agriculture
ATC	Agreement on Textiles and Clothing
CESCR	Committee on Economic, Social and Cultural Rights
CETIM	Centre Europe-Tiers Monde
CFS	Committee on World Food Security
ESCR	Economic, Social and Cultural Rights
FAO	Food and Agriculture Organization
FIAN	Foodfirst Information and Action Network
GATT	General Agreement on Tariffs and Trade
GC12	General Comment n. 12
IBRD	International Bank for Reconstruction and Development
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFAP	International Federation of Agricultural Producers
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
ITO	International Trade Organization
ITPGRFA	International Treaty on Plant Genetic Resources on Food and Agriculture
IU	International Undertaking on Plant Genetic Resources
MENA	Middle East and North Africa
MFN	Most Favoured Nation
MLS	Multilateral System of Access and Benefit Sharing
NGO	Non-Governmental Organization
LVC	La Vía Campesina
PGRs	Plant Genetic Resources
R2F	Right to Food
SPS	Sanitary and Phytosanitary Measures
TAMs	Transnational Agrarian Movements
TBT	Technical Barriers to Trade
TRIMs	Trade Related Aspects of Investment Measures
TRIPS	Trade-Related Aspects on Intellectual Property Rights
UDHR	Universal Declaration on Human Rights
UNGA	United Nations General Assembly

UNHRC	United Nations Human Rights Council
UPOV	International Union for the Protection of New Varieties of Plants
USA	United States of America
WB	World Bank
WTO	World Trade Organization
WWI	World War I
WWII	World War II

Introduction

The focus of this research will be to analyse how global social movements are trying to push for a more favourable legal frame to protect peasants' rights and if they are being able to influence international agendas to ensure control and management over seeds and plant genetic resources by peasants and small-scale farmers.

The control and management of seed and plant genetic resources is a national and international issue where a lot of different interests are in play. On one hand some international World Trade Organization (WTO) trade regulations are focused in this issue, mainly the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreements. On the other hand, the International Treaty for Plant and Genetic Resources for Food and Agriculture (ITPGRFA) recognizes Farmers' Rights and their rights over traditional seeds and plant genetic resources. With these two main frames, together with the fulfilment of the Right to Food (R2F) and the rising of the call Rights of Peasants and other People Working in Rural Areas, the conflict is served between transnational companies and farmers, peasants and other people working in rural areas, all of them trying to influence international agendas in this area to see their interests protected. And it is essential to add to this cocktail the presence and claim of transnational agrarian movements and their efforts to see Peasants' Rights recognized at an international level.

The fight for the control of these resources has many implications in the day-to-day life of peasants all over the world. This is due to the imposition of the use of certain resources for crops and the manner in which international legislation forces countries to enact laws that force peasants to buy seeds from private companies instead of allowing them to use their traditional seeds and plant genetic resources. Another problem is how transnational companies are patenting traditional peasants' seeds, consequently depriving peasants of economic benefits.

For this purpose I will analyse the international legal framework that regulates the use and management of seeds and plant genetic resources for food and agriculture. The conceptual frame chapter will clarify the concepts that are going to be present in this work. Firstly, I will analyse the Human Right to Adequate Food (Right to Food), which contains the main international legal dispositions and principles regarding this issue. Following the analysis of the Right to Food, the next point is dedicated to studying the rising of Farmers' Rights and the Rights of Peasants' and other people working in rural areas as new rights that are being developed in the international sphere. These rights are basic to understand the conflict over the control of seeds. In order to

understand the rise of farmers' rights it is important to have a look at the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Farmers' Rights were recognized at the ITPGRFA. This international treaty promoted by the United Nations Food and Agriculture Organization (FAO) tries to establish and promote the conservation and sustainable use of phylogenetic resources and a fair and equitable distribution of the benefits arising from their utilization. Peasants' Rights have a different development; their concept stemmed from transnational agrarian movements and is based on the concept of food sovereignty.

After the analysis of farmers' and peasants' rights, the next important factors to be analysed will be the international legal framework regarding trade and patents. There are two basic legal instruments that deal in two different ways with the control and management of seeds and plant genetic resources through the application of Intellectual Property Rights (IPRs) systems. The first is the World Trade Organization (WTO) Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement that has a huge influence on the use and control of seeds. This is due to the control that transnational companies exercise over the use of these essential resources for food and agriculture and as a result for the fulfilment of the Right to Food. In terms of national and international regulations of patents over plant and genetic resources, it is interesting to analyse how the International Union for the Protection of New Varieties of Plants (UPOV) works and the implication the implementation of this regulation has over peasants' and farmers' rights. All the previous analysis will be confronted in this research with the analysis of the different interests of the various stakeholders involved in the use and control of these resources, mainly peasants and transnational companies.

The final part of the present research will put an eye on the main initiatives taken by the global civil society regarding this issue and their impact at international level. The present work will analyse if the international campaigns headed by Transnational Agrarian Movements are having any impact on international agendas in order to see their claims incorporated in the international human rights system.

1. Conceptual Frame

This chapter will be dedicated to clarifying the concepts and definitions that will guide this work. As explained in the introduction, there are different international legal instruments and international concepts, already developed and under development, that are relevant for this study. It is the intention of the author to present in this chapter the definition of these concepts to have a clear

picture of what this work is dealing with, and at the same time to allow the reader to come back at any time to the chapter to know exactly what concepts this paper is dealing with.

The first concept that will be presented concerns the Right to Food as the main concept that regulates the international obligations that States have to respect, protect and fulfil in order to guarantee the full enjoyment of this Human Right by their citizens. The Right to Food is recognised at international level in two main instruments of the human rights legal framework. The first instrument where the right to food is recognised is the Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations in 1948. In Article 25, the UDHR recognises the right of everyone to an adequate standard of living, including food. The second instrument where the Right to Food is recognised is the International Covenant of Economic, Social and Cultural Rights (ICESCR) in Article 11. For the purpose of this work the Right to Food is understood as it was framed in the General Comment n.12 of the United Nations Committee on Economic, Social and Cultural Rights: “The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement”. Chapter 2 of this work will analyse in depth the Right to Food.

The second relevant concepts for the purpose of this work are the concepts of Farmers’ Rights and Peasants’ Rights and will be analysed in depth in chapter 3. They are not the same concept and do not have the same origins. Farmers’ Rights are framed in relation to property rights and have a top-down approach. In this work, Farmers’ Rights will be understood as “rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested in the international community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to all farmers, and supporting the continuation of their contributions” (FAO, 1989: Report of the Conference of FAO, Twenty-fifth Session, Rome, 11-29 November 1989, C 1989/REP). With regard to Peasants’ Rights, these have a stronger political meaning, are linked to the concept of food sovereignty and were born under a bottom-up approach. The peasants’ rights are still in a phase of negotiation at the United Nations Human Rights Council and there is no clear definition of peasants’ rights. Chapter 3 will analyse this question in depth. But what does exist is a commonly accepted definition of what it means to be a peasant: “the term peasant means any woman or man who engages in – or who seeks to engage in – small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways or organizing labour” (Draft Declaration on the rights of peasants and other people working in rural areas

(A/HRC/WG.15/3/2)).

Since this work deals with the conflict for the control of seeds in the predominant neoliberal economic system in the world, it is necessary to analyse the international legal framework that affects seeds in terms of privatization and patentability of these resources. The two main international instruments that will be analysed in chapter 4 are the World Trade Organization Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreements and also the International Union for the Protection of New Varieties of Plants (UPOV). These two instruments set the international plant breeders protection systems and the obligations the states parties to one of them have to translate into their national legislation. These two instruments have the aim, as we will see in chapter 4, of promoting research in agriculture with the idea that if intellectual property rights over plant genetic resources are protected, the investment in research will be higher.

The last concept relevant to understand the different visions regarding the control of seeds is the concept of Transnational Agrarian Movements as the expression of international social participation of peasants in a globalised world. Chapter 5 will be dedicated to the analysis of the historical development of peasant movements, their development and their adaptation to the neoliberal world that was born in the 1990s. Their claims, strategies, compositions, dynamics and incoherencies will also be analysed in order to have a complete vision of the relevant actors in the international arena for the control of seeds.

2. The Right to Food

In this chapter I will analyse the historical development and core content of the Human Right to Adequate Food under the international legal framework. This approach includes the main international legal instruments where the Right to Food is recognized: the Universal Declaration of Human Rights and the International Covenant for Economic, Social and Cultural Rights. After going through these two main international instruments I will base the analysis of the content of the Right to Food on General Comment number 12 of the United Nations Committee on Economic, Social and Cultural Rights, where the Committee elaborated the content of the Right To Food and the obligations for the States Parties regarding this particular right.

The first international instrument that recognizes the inherent human right to food is the Universal Declaration of Human Rights (1948). Article 25 states that “*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing,*

*housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*¹. As can be seen, the recognition of the right to food is included in the right to a standard of living and the Declaration does not contain a specific disposition regarding the right to food. The UDHR was not adopted as a binding instrument but it has an enormous moral force over the states as it was approved by the United Nations General Assembly (UNGA) and, as some authors remark, it has the normative force of almost a treaty.

The world had to wait until 1966 for an international instrument that expressly recorded in an independent and autonomous way the Right to Food. This happened with the adoption of the International Covenant of Economic, Social and Cultural Rights (ICESCR), an international instrument that is binding for the states that have ratified it (164 countries² at the moment). The ICESCR brought a stronger protection over several rights that were mentioned in the UDHR but that did not have specific protection in the international order. The ICESCR also established specific obligations for the parties to initiate policies that allow the fulfilment of the rights recognized in the Covenant in a progressive way. For the purpose of this research special attention must be given to Article 11.1³ of the ICESCR where the Right to Food is recorded.

Article 11 of the ICESCR reads:

“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food [...] The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full

1 UN, *Universal Declaration of Human Rights*, General Assembly Resolution 217 A (III) of 10 of December of 1948

2 United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mt_dsg_no=IV-3&chapter=4&lang=en, consulted on the 25th of February of 2016

3 ICESCR, Art.11.1 "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

use of technical and scientific knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world supplies in relation to need”.

The Right to Food was reinforced during the Vienna Declaration and Programme of action of the 1993 World Conference on Human Rights, where States were called upon “to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles...and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the right of everyone to a standard of living adequate for their health and well-being, including food...The World Conference...affirms that food should not be used as a tool of political pressure”.⁴

It has to be said that the Covenant did not enter into force until 1976 and at that moment the content of the Right to Food was not developed. The definition of the content of the Right to Food was not tackled until 1996 in the Roma Declaration about Food Security, where the participants asked the Committee on Economic, Social and Cultural Rights (CESCR) to elaborate its content. The CESCR addressed this petition with the formulation, 3 years later in 1999, of General Comment No.12⁵ (GC12) where the Committee dealt with the elaboration of the components of the Right to Food. It could be said that “this is currently the most authoritative interpretation of the right to food within the UN human rights system and reflects the present state of international law”⁶.

The nature of the obligation of the States under the Right to Food is defined in Article 2 of the ICESCR. The obligations are to respect, protect and fulfil. The content of these obligations has been developed by the Committee’s General Comment No. 3 (1990)⁷. With regard to the Right to Food, the GC12 defines them as follows:

- **Respect:** Paragraph 15 of the GC12 reaffirms that “the obligation to *respect* existing access to adequate food requires States Parties not to take any measures that result in preventing

⁴ UN, Doc. A/CONF.157/23 of 12 July 1993

⁵ UN, Doc. E/C.12/1999/ of 12 May 1999

⁶ Sollner, S ., “*The ‘Breakthrough of the Right to Food: The meaning of General Comment No.12 and the Voluntary Guidelines for the Interpretation of the Human Right to Food*”, Symposium IBSA – Indicators for the Right to Food, 22 and 23 of May 2006, Mannheim

⁷ CESCR. The nature of States Parties Obligations, Doc. E/1991/23 1 of January 1991

that access”⁸

- **Protect:** as Sollner explains “the obligation to protect requires measures by the state to ensure that enterprises or individuals do not prevent the access to adequate food. The full realization of the right to food obliges States parties to protect every human being against restrictions from third parties. States have to guarantee with all appropriate means the protection of the affected population”⁹.
- **Fulfil:** this obligation is understood as the obligation of the State to take the measures necessary to ensure opportunities for each person for the satisfaction of those needs that cannot be secured by personal efforts. “The obligation to fulfil (promote) [...] requires States parties to ensure that the right to food is taken into consideration in the conduct of public affairs and in any significant decision [...] The obligation to fulfil (promote) obliges the respective State party also to take steps to ensure there is appropriate education concerning adequate nutrition [...] Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, states have the obligation to fulfil (provide) that right directly”¹⁰.

As mentioned before, the Right to Adequate Food is part of the right to an adequate standard of living. Paragraph 6 of the GC12 warns that “The *right to adequate food* shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients”¹¹. The Right to Food is defined by the CESCR in paragraph 6 of the GC12 as follows: “*The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement*”. There are interesting dispositions in paragraph 6 that the CESCR develop in further articles of the GC12, especially in paragraph 8 where the content of the Right to Food is clarified. Paragraph 8 establishes the "core content" of the Right to Food as follows: "The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights".

There are three main notions to take into consideration inside the CESCR’s definition of the Right to Food: 1) adequacy; 2) availability, and; 3) accessibility.

⁸ Emphasis in the original

⁹ Sollner, S., idem

¹⁰ Sollner, S, idem

¹¹ Emphasis in the original

The notion of *adequacy* is central in the content of the Right to Food. Paragraph 8 of the GC12 states that adequate food must be “sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”. So it is possible to see the components of adequacy according to the interpretation of the CESCR: satisfaction of dietary needs, free from adverse substances and acceptability. The GC12 also states in paragraph 7 that “the notion of *sustainability* is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations”. The notion of sustainability is crucial in the fulfilment of the right to food because, from my point of view, it has to be present in all public policies that affect the Right to Food. This notion could have a big impact on national policies, not only in the agrarian sector but also in commercial policies where states can sign several commercial and trade agreements that have direct consequences in the fulfilment of the Right to Food for future generations.

Availability is defined by the GC12 in paragraph 12 as follows: “*Availability* refers to the possibilities either for feeding oneself directly from productive land and other natural resources, or for a well-functioning distribution, processing and market system that can move food from the site of production to where it is needed...”¹². Availability relates directly to food production and food distribution and is essential from a long-term perspective in the access, use and management of production means (land, water, seeds, fertilizers...) by peasants and farmers around the globe. Therefore, if peasants and farmers have no control over these factors, the fulfilment of their right to food will be in danger.

The last essential notion of the Right to Food is *Accessibility*. Paragraph 13 of the GC12 states that “*Accessibility* encompasses both economic and physical accessibility”¹³. Again, this concept is important when it is related to the means of production of a given community or population. According to Sollner, “food is economically accessible for a person or community if [they] have access to food as a result of its economic activity in the widest sense [...] direct food production based on access to natural productive resources (land, water, forest, pastures, fishing grounds) and other resources and means”¹⁴. Therefore, if someone does not have access to food by economic means, when there is no access to the means of production the Right to Food for individuals and communities will not be fulfilled. This situation, faced by many farmers, peasants and people living in rural areas, demands recognition of the entitlement to access “the means for its procurement such

¹² Emphasis in the original

¹³ Emphasis in the original

¹⁴ Sollner, S, idem

as natural resources and other resources”¹⁵ to see their Right to Food fulfilled.

3. Farmers’ and Peasants’ Rights

This chapter will deal with two relevant concepts for this work and with their historical development and contents: farmers’ and peasants’ rights. The first thing that has to be said is that they are not the same: they have different origins and different contents, but they are both extremely relevant for the issue this paper is dealing with. I will present the historical development of each concept and the main content of both. After this analysis it will be possible for the reader to understand how these concepts interact with the Right to Food, food sovereignty and the control over seeds. It must be said that at this moment the concept of peasants’ rights has not been yet recognized at an international level by the United Nations, but it is being developed by the United Nations Human Rights Council (UNHRC) since 2013, when the first session was held¹⁶. Despite the fact that it has not yet been recognized, its moral power is conditioning the conversations held by the States, civil society and private sector at the United Nations Food and Agriculture Organization’ (FAO) Committee on World Food Security (CFS), where several civil society organizations, such as La Via Campesina¹⁷, are pushing for the recognition of this concept and its protection¹⁸.

It is clear that Farmers’ Rights and Peasants’ Rights are not exactly the same. They have different origins and different contents, but they have a strong relationship. Both of them were created to try to address the discrimination suffered for centuries by the population living in rural areas. 70% of the people suffering from food insecurity in the world live in rural areas¹⁹ and the poverty indexes in impoverished countries are always higher in rural than in urban areas “The United Nations Millennium Development Project Task Force on Hunger has shown that 80 per cent of the world’s

¹⁵ Sollner, S, idem

¹⁶ See Un Human Rights Council <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/2ndSession.aspx>, consulted on 16 May 2016

¹⁷ In response to increasing pressure to privatize and liberalize agriculture on a large scale, as a result of decisions taken at international level, local peasants’ movements began to work together and in 1993 they created an international movement to protect their rights and to promote agricultural and land reforms in favour of small farmers. The international movements of peasants, La Via Campesina, was created in 1993 with a first international conference organized in Mons (Belgium). Today, La Via Campesina regroups 148 organizations in 69 countries and it is estimated that these organizations represent more than 200 million peasants worldwide. La Via Campesina described itself as “the international movement of peasants, small-and medium-sized producers, landless, rural women, indigenous people, rural youth and agricultural workers” and was created with the objective “to develop solidarity and unity among small farmer organizations in order to promote gender parity and social justice in fair economic relations; the preservation of land, water, seeds and other natural resources, food sovereignty, sustainable agricultural production based on small and medium-sized producers”. UN Human Rights Council, “*Peasant farmers and the Right to Food: a History of Discrimination and Exploitation*”, Prepared by Mr. Jean Ziegler, A/HRC/AC/3/CRP.5, of 4 of August 2009

¹⁸ See Civil Society Mechanism for relations to the UN Committee on World Food Security, <http://www.csm4cfs.org/the-csm/>, consulted on 15 May 2016

¹⁹ FAO “Food and agriculture world report”, Rome, 2014

hungry live in rural areas. Of the 1 billion people who suffer from extreme poverty in the world, 75 per cent live and work in rural areas. This situation was compounded by the global food crisis of 2008 and 2009. Today, 50 per cent of the world's hungry are smallholder farmers who depend mainly or partly on agriculture for their livelihoods. Some 20 per cent of those suffering from hunger are landless families [...]. As much as 70 per cent of the world's hungry are women and a great majority of them work in agriculture”²⁰. Because of this, the international community and several peasants movements around the world have been trying for the last decades to create and recognize a common definition for farmers' rights and peasants' rights.

As Karine Peschard states in her article, “Farmers' Rights and food sovereignty: critical insights from India”²¹ “it is important to distinguish farmers' rights from the emerging category of peasant's rights”. According to this author, and I agree with her, farmers' rights are framed in relation to property rights. The concept was born in the 1980s in the context of the debate around plant and genetic resources for food and agriculture (PGRs) and intellectual property rights, (IPRs) when certain international agencies, especially the United Nation Food and Agriculture Organization (FAO), realized that the international legal system needed to find a way to protect farmers from the sacking suffered since the 1960s with the appropriation of the PGRs by transnational companies. The concept farmers' rights “was subsequently developed within the ambit of the Food and Agriculture Organization (FAO). It refers to farmers' rights over crop genetic resources and associated knowledge”²².

On the other hand, the concept Peasants' Rights is more recent in international society. The first time the concept saw the light was in the International Conference held by La Via Campesina in Yakarta (Indonesia) where the international movement proclaimed La Via Campesina's Declaration of Rights of Peasants – Women and Men (2009). This is a more political concept built around the food sovereignty concept. “The concept of peasants' rights includes, but is not limited to, farmers' rights over crop genetic resources; it encompasses a much broader range of rights, such as the right to life and an adequate standard of living, land, freedom of association and access to justice”²³. But the main difference between the two concepts is, as Peschard states, that while farmers' rights are framed as intellectual property rights, peasants' rights are framed as human rights. This difference is so essential from a political point of view that a United Nations declaration on the rights of peasants

²⁰ UN Human Rights Council, “*Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*”, A/HRC/19/75, of 24 February 2010.

²¹ Peschard, K “*Farmers' Rights and Food Sovereignty: Critical Insights from India*”, The Journal of Peasants' Studies, November 2014

²² Peschard, K, idem

²³ Peschard, k, idem

and other people working in rural areas is currently under discussion at the United Nations Human Rights Council²⁴.

Both concepts are relevant for the purpose of the present work and I will go through their historical development and content in the following pages. The idea is to analyse the main literature around the two concepts to underline the reasons why these two concepts arose during the last decades. I will first analyse the reasons for the creation of the concept of farmers' rights and then I will look at the concept of peasants' rights due to their posterior chronological appearance.

Since the 1960s, the industry is creating patents and rights over seeds all over the world. This run for patents started in the USA and quickly spread to other nations and countries. It is known that the biggest biological diversity is on the soil of impoverished countries²⁵, but it is also well known that the most powerful companies are situated in enriched countries. This combination of factors led to a situation where companies from enriched countries are taking profit from impoverished countries where governments are induced to approve²⁶ national legislations that favour the appropriation of plant and genetic resources that are property of the peoples of this country. This has been happening for the last 60 years and no benefits were shared with these populations (indigenous people, farmers, peasants and other people working in rural areas)²⁷. As many scholars hold, farmers' rights arose to reaffirm traditional knowledge over the increasing phenomenon of international intellectual property rights over plant and genetic resources. The concept is not well-defined, as used to happen with the concepts that try to protect poor groups of people, like farmers in this case. In my opinion, when the international community tries to protect impoverished collectives against the abuses of the powerful, it is usually very difficult to create a commonly accepted concept. It happened with the long negotiations to approve the United Nations Declaration on Indigenous People Rights and with the number of ratifications of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In any case, the concept of Farmers' Rights usually refers to "rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested in the international community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to all farmers, and supporting the continuation of their contributions"²⁸. As we can see, this definition includes the

²⁴ HRC, idem

²⁵ See Winter, L., "Cultivating Farmers' Rights: Reconciling Food Security, Indigenous Agriculture and TRIPS", Vanderbilt, *Journal of Transnational Law*, Vo. 43:223, pag 223-254, 2010

²⁶ See Winter, L, idem

²⁷ See Winter, L, idem

²⁸ FAO, 1989: Report of the FAO Conference, Twenty-fifth Session, Rome, 11-29 November 1989, C 1989/REP.

importance of protecting the farmers' agricultural heritage and knowledge. It is framed under a property rights perspective, but from my point of view, it is closely linked with the Right to Food definition given by the CESCR. If we think about the best way to ensure food security it would be to allow farmers to produce their own food and to have control over this production. This could be only possible with the full control of plant and genetic resources.

I will now analyse the historical development of farmers' rights, with the focus on international agreements that recognized and elaborate this concept. It is important to keep in mind that this concept has an up-down development. It was born under the umbrella and initiative of the FAO, so it is not a bottom-up process that could collect the opinions and sensitivity of the farmers' social movements. This circumstance will have an enormous importance in the development of the peasants' rights concept.

The first international document that dealt with Plant and Genetic Resources was the International Undertaking on Plant Genetic Resources (IU), adopted by the FAO Conference in its Resolution 8/83. It is important to note that this is not a binding document as is the resolution of the FAO Conference. Article 1 of the resolution states that "plant and genetic resources are part of the heritage of mankind and subsequently should be available without restrictions"²⁹. It is true that this document does not directly mention farmers' rights, but it was the basis for FAO Resolution 5/89 that was annexed to the IU, and that for the first time named farmers' rights in an international agreement. It defined farmers' rights as "rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested in the international community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to all farmers, and supporting the continuation of their contributions"³⁰. As can be seen from the FAO Commission on Genetic Resources for Food and Agriculture, this resolution by "recognising Farmers' Rights [...] aim at achieving a balance between the rights of breeders (formal innovators) and farmers (informal innovators) and the rights of developing and developed countries"³¹. But despite the fact that this resolution settled the basis for the development of

²⁹ International Undertaking on Plant Genetic Resources, FAO, Res 8/83, art.1, FAO Conference 22nd Session (Nov. 23, 1983) available at [http://www.fao.org/docrep/x5563E/X5563e0a.htm#e.%20plant%20genetic%20resources%20\(follow%20up%20of%20conference%20resolution%20681](http://www.fao.org/docrep/x5563E/X5563e0a.htm#e.%20plant%20genetic%20resources%20(follow%20up%20of%20conference%20resolution%20681)

³⁰ FAO, idem

³¹ FAO Commission of Plant Genetic Resources for Food and Agriculture, <http://www.fao.org/nr/cgrfa/cgrfa-about/cgrfa-history/en/>, consulted on 17 May 2016.

farmers' rights, as most authors state, "it did not give the concept too much force"³², and it did not create the proper system to contribute to the realization of this set of rights. The IU tried to create an international fund to support the realization of farmers' rights, but ironically the funds were supposed to be given to the States and not directly to the farmers. Nevertheless, this fund did not have enough contributions to start to support countries.

The world had to wait almost 20 years since the Resolution 8/83 to see the adoption of an international legally binding document that recognized farmers' rights. This happened in 2001 with the adoption of the International Treaty on Plant and Genetic Resources for Food and Agriculture (ITPGRFA). This 20-year gap can be considered as the reflection of the difficulty of putting together the numerous interests that surround the regulation of plant and genetic resources. This circumstance complicated "the harmonization of interests, including those of efficient access to PGR countries' sovereignty over their PGR, and dealing with the concerns of farmers, breeders, and biotechnology firms"³³. As some authors hold, like Gerald Moore and Witold Timowski, the ITPGRFA arose in reaction to the increasingly restricted access to PGR internationally as a result of IPRs and other commercial incentives for the use of PGR. The ITPGRFA was adopted at the thirty-first session of the Conference of the FAO in Rome on 3 November 2001 and entered into force on 29 June 2004. It is the first legally binding document on the management of PGR for food and agriculture and the first legally binding document that recognize farmers' rights.

The ITPGRFA objectives are "the conservation and sustainable use of these resources and the fair and equitable sharing of the benefits arising from their use"³⁴. The Treaty names farmers' rights in its Preamble and in the central - but not legally binding for States - Article 9. The Preamble states that "The Contracting Parties, [...] affirming the past, present and future contributions of farmers in all regions of the world, particularly those in the centres of origin and diversity, in conserving, improving and making available these resources, is the basis of Farmers' Rights"³⁵. The Preamble also states that the rights recognised in the Treaty to save, use and sell farm-saved seeds and other propagating material, and to participate in decision-making and in the fair and equitable sharing of the benefits are fundamental for the realization of farmers' rights³⁶.

³² Winter, L, idem

³³ Winter, L, idem

³⁴ Andersen, R, "The History of Farmers' Rights: a Guide to Central Documents and Literature", The Fridtjof Nansen Institute, December 2005

³⁵ The International Treaty on Plant and Genetic Resources for Food and Agriculture, available at <ftp://ftp.fao.org/docrep/fao/011/i0510e/i0510e.pdf>, consulted on 23 May 2016

³⁶ See ITPGRFA, available at <http://www.planttreaty.org/es>, consulted on 26 May 2016.

Article 9 of the Treaty “explicitly states that the responsibility for the implementation of farmers’ rights as they relate to the management of PGR for food and agriculture, rest with the governments”³⁷. Some measures are suggested (protection of traditional knowledge; right to equitably participate in sharing benefits; the right to participate in making decisions), but the treaty leaves it up to each country to decide on the measures they are going to apply to implement farmers’ rights. This absence of concrete obligations for the States Parties makes it impossible for the Treaty Bodies to monitor the implementation of the Treaty in this aspect.

There are two other articles in the ITPGRFA that contain provisions related to farmers’ rights, and these two articles are legally binding for the States Parties of the Treaty. To be legally binding means that the Governing Body of the Treaty has the competence to deal with them and monitor their implementation by the States Parties. They deal with benefits that farmers should obtain to maintain plant and genetic resources. Article 13, which deals with the Benefit Sharing Mechanism in the Multilateral System, states in its section 3 that “The Contracting Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly or indirectly to farmers [...] especially in developing countries [...] who conserve and sustainably utilise plant and genetic resources for food and agriculture”³⁸. Article 18 deals with Financial Resources and its section 5 states that “The Contracting Parties agree that priority will be given to the implementation of agreed plans and programmes for farmers in developing countries, especially in the least developed countries, and in countries with economies in transition, who conserve and sustainably utilise plant genetic resources for food and agriculture”. These two articles try to address a historical claim of farmers - the due compensation for the use for commercial purposes of the plant genetic resources developed by them over the centuries. The IU tried to establish a fund to attend this fair claim but as it was said, this mechanism never worked. Following this idea, the ITPGRFA created this mechanism under its provisions.

As can be found on the Treaty’s webpage, “The Treaty’s truly innovative solution to access and benefit-sharing is its declaration that 64 of our most important crops - crops that together account for 80 percent of all human consumption - will comprise a pool of genetic resources that are accessible to everyone. On ratifying the Treaty, countries agree to make their genetic diversity and related information about the crops stored in their gene banks available to all through the

³⁷ Andersen, R, idem

³⁸ See art. 13.3 ITPGRFA, available at <http://www.planttreaty.org/es>

Multilateral System (MLS)³⁹. As it was said, the main objective is to establish a “novel system of governance for global commons, ensuring permanent access to a large pool of genetic resources for the development of new and improved plant genetic resource”⁴⁰. The Multilateral System of Access and Benefits Sharing (MLS) applies to the plant genetic resources listed in annex I to the Treaty (64 food crops in total) and the idea is that States Parties, which are sovereign over their national plant genetic resources, agree to share the access to these resources for some purposes (research, breeding and training for food and agriculture), and they agree to share the benefits arising from the utilization of this plant genetic resources. This benefits sharing works as follows: “Those who access genetic materials through the Multilateral System agree that they will freely share any new developments with others for further research or, if they want to keep the developments to themselves, they agree to pay a percentage of any commercial benefits they derive from their research into a common fund to support conservation and further development of agriculture in the developing world”⁴¹. This fund created by the Treaty finally recognizes in a practical and economic way the farmers’ rights to see their traditional knowledge finally paid. But, as the former Special Rapporteur on the Right to Food, Olivier de Schutter, stated in his report, *The Right to Food: Seed policies and the Right to Food: enhancing agrobiodiversity and encouraging innovation*, in June 2009 the Governing Body announced that projects in 11 developing countries received 50.000,00 USD each, and he considered that “this remains a very small sum in comparison to the needs”⁴². This problem of low funding for the MLS and the benefits sharing continues after 8 years since the creation of the mechanisms, as can be appreciated in Draft Resolution 1/2015 of the Sixth Session of the Governing Body of the Treaty held in Rome (Italy) in October 2015, where the Governing Body states that “it noted with concern the large shortfall of funding that had accumulated in the Benefit-sharing Fund in relation to the target established by the Governing Body, at its Third Session, for the period between July 2009 and December 2014”⁴³. This concern manifested by the Treaty’s Governing Body shows how the compensations to farmers with the benefit sharing mechanism is not working and how farmers’ rights are not being respected by the States Parties to the Treaty. It is important to bear in mind that the ITPGRFA wanted to consolidate this set of rights (farmers’ rights) at an international level with the adoption of this binding international treaty. From my point of view, this failure shows that the top- down approach in the recognition of farmers’ rights is the wrong approach to create a credible framework to make progresses in the establishment

³⁹ See <http://www.planttreaty.org/content/what-multilateral-system>, consulted on 26 May 2016

⁴⁰ Special Rapporteur on the Right to Food, “*The Right to Food: Seed policies and the Right to Food: enhancing agrobiodiversity and encouraging innovation*”, United Nations General Assembly, A/64/170, 23 July 2009.

⁴¹ See <http://www.planttreaty.org/content/what-multilateral-system>, consulted on 26 May 2016

⁴² Special Rapporteur on the Right to Food, idem

⁴³ ITPGRFA Governing Body Draft Resolution 1/2015, “*Measures to enhance the functioning of the Multilateral System of Access and Benefit-Sharing*”, ITPGRFA, Sixth Session Governing Body, 5-9 October 2015, Rome (Italy)

of an enforceable set of rights that protect the rural populations and collectives.

Another path was open for the promotion, protection and fulfilment of the rights of farmers, peasants and other people working in rural areas and this time the proposal had a bottom-up approach. Since the early '90s, agrarian movements all over the world started to advocate for the elaboration and recognition of an internationally commonly accepted definition of a set of rights of peasants and other people working in rural areas. This initially local campaign turned into a global campaign after the conclusion of the GATT Uruguay Round and its Agreement on Trade Related Aspects on Intellectual Property Rights (TRIPS) at Marrakech in 1994, where “developing countries, from one day to the next, found themselves under the obligation to provide some form of intellectual property protection on plants varieties”⁴⁴. After this development at the GATT and the creation of the World Trade Organization (WTO), the agrarian movements felt that they needed to have a global approach in the defence of their claims in part because they saw the TRIPS Agreements as “the first legal assault, at the global level, against people’s rights to control biodiversity”⁴⁵ and consequently “The response to this should be no less energetic, despite the tremendous power imbalances at hand”⁴⁶. And the response was truly energetic. In 1993, La Via Campesina was created to defend the life, land and dignity of peasant families around the world with its main concern focused on food sovereignty⁴⁷. This movement includes more than 164 peasant organizations in 73 countries and claims to represent more than 200 million peasants⁴⁸. Since its creation, La Via Campesina advocated for the promotion and protection of peasants’ rights and took positions at the international forums to work for the elaboration and adoption of a specific Convention on peasants’ rights. The Convention has not been adopted but the historical process to define what peasants’ rights are has enough power to consider it as a new form of development in the International Law of Human Rights.

La Via Campesina, as it was said, is working for the adoption of an international binding instrument for the recognition of the rights of peasants and other people working in rural areas. As I said before, this is a bottom-up process that began in 1999 when the first draft declaration on the rights of peasants was elaborated by Serika Petani Indonesia, a member of La Via Campesina. Since then, La Via Campesina elaborated several reports on violations of the rights of peasants in close

⁴⁴ GRAIN, “*Towards Our Sui Generis Rights*”, GRAIN, December 1997, available at <https://www.grain.org/article/entries/300-towards-our-sui-generis-rights>, consulted on 26 May 2016

⁴⁵ GRAIN, *idem*

⁴⁶ GRAIN, *idem*

⁴⁷ UN General Assembly, “*Final Study of the Human Rights Advisory Committee on the advancement of the rights of peasants and other people living in rural areas*”, UN Doc A/HRC/19/75, of the 12 of February of 2012.

⁴⁸ La Via Campesina, <http://viacampesina.org/es/index.php/organizaciainmenu-44/los-miembros-mainmenu-71> , consulted on the 26 of May of 2016

collaboration with two other NGOs, Centre Europe-Tiers Monde (CETIM) and Foodfirst Information and Action Network (FIAN). These reports were presented at side events of the UN Human Rights Commission. But the most important milestone was the adoption by La Via Campesina, after more than ten years of consultation, of the Declaration of the Rights of Peasants – Women and Men at the International Conference on Peasants’ Rights held in Jakarta in 2008. La Via Campesina’s Declaration marks the historical fight of peasants to see their rights recognized and for free and just societies and manifests the hope for progress in the recognition of these rights. The Declaration comprises and names a large number of rights, from civil and political rights to economic, social and cultural rights, some of them already recognized in other international human rights instruments. However, it also establishes new and specific rights that, from La Via Campesina’s point of view, are exclusive peasants’ rights such as the right to land, the right to seeds and the right to the means of agricultural production. It is possible to see the difference with the GC12 where land, seeds and means of production are components of the Right to Food. In La Via Campesina’s Declaration, they are framed as independent rights. But “for La Via Campesina, its declaration was a first step: its long-term objective was to secure [...] the adoption of a UN Convention on peasants’ rights”⁴⁹. This approach of La Via Campesina towards the elaboration and adoption of a UN Convention is clearly built with a strong human-rights oriented component. But we have to bear in mind that La Via Campesina has a strong political view about the international economic system, and this Declaration incorporates this view. This Global Campaign for an International Convention “should be understood in the context of the coalition’s broader attempts at normative shifts [...] (the) history of La Via Campesina describes an increasing interest in a struggle among models: changing the economics, technology, and practice of agriculture by offering alternatives”⁵⁰. What is behind this political point of view is the idea of Food Sovereignty⁵¹ in contraposition to the industrial agricultural model.

La Via Campesina’s Declaration is inspired by the UN Declaration on the Rights of Indigenous People in its structure and, perhaps more importantly, in its objective on the “progressive extension of the existing human rights regime and a continuation of the democratization of rights making”⁵².

⁴⁹ Geneva Academy, “*Negotiation of a United Nations Declaration of the Rights of Peasants and Other People Working in Rural Areas*”, Academy in Brief N° 5, Geneva Academy of International Humanitarian Law and Human Rights, January 2015 (Geneva)

⁵⁰ Edelman, M & James, C. “*Peasants’ Rights at the UN System: quixotic struggle? Or emancipatory idea whose time has come?*”, The Journal of Peasants Studies, Vol. 38, n° 1, January 2011, pp 81-108

⁵¹ “Food Sovereignty is the rights of peoples, communities and countries to define their own agricultural, labor, fishing, food and land policies which are ecologically, socially, economically and culturally appropriate to their unique circumstances. It includes the true right to food and to produce food, which means that all people have the right to safe, nutritious and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies”, see www.foodfirst.org/progs/global/food/finaldeclaration.html

⁵² Edelman, M & James, C, idem

The Declaration on the Rights of Indigenous People was adopted after 30 years of efforts to secure its approval, and it was only adopted after many years of advocacy and long-term campaigns that were borne at the grass root indigenous movements. This path from grass roots campaigns to the United Nations was not easy, in part due to the fact that “many powerful UN members have long opposed any extension of economic and social rights”⁵³. But Indigenous Peoples accomplished their goal and this is the path that agrarian movements want to follow. At a first moment, the strategy is to secure a non-binding declaration in the UN General Assembly and then the hope is to see a binding convention adopted in the future.

This strategy seems to be working. Currently the UN Human Rights Council finds itself celebrating the Third session of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas, celebrated from the 17th to the 20th of May of 2016⁵⁴. This current situation where the Human Rights Council is discussing the elaboration of a UN Declaration is partially possible because the peasants’ claims were supported since the adoption of La Via Campesinas’ Declaration by some institutions at the UN level, from FAO to the UN HRC.

FAO opened its institutions to agrarian organizations and participation in the UN policy-making process for the first time at the 1996 FAO World Summit in Rome. One of the most important consequences of this participation of the agrarian organizations was to set “in motion a process of redefining the right to food from access to adequate staples for consumption to culturally integrated food production”⁵⁵. After this shift several profound steps were taken to redefine the content and relevance of the Right to Food: the elaboration of General Comment No. 12 by the CESCR in 1999, the appointment of the first UN Special Rapporteur on the Right to Food in 2000 and the elaboration of the FAO Voluntary Guidelines to assist states in achieving the right to Food. And finally, “in 2009 the FAO’s Committee on World Food Security was opened to full civil society participation”⁵⁶.

All these improvements in the participation of the agrarian movements and in the opening of spaces to express themselves with their own voices were not restricted to FAO institutions and conferences. Coinciding with the 2008 global food crisis, in 2009 “the UN Human Rights Council and the UN General Assembly separately invited La Via Campesina to submit proposals for

⁵³ Edelman, M & James, C, idem

⁵⁴ See <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/3rdSession.aspx>

⁵⁵ Edelman, M & James, C, idem

⁵⁶ Edelman, M & James, C, idem

remedying this crisis”⁵⁷. Obviously, the contribution to the solution of the crisis presented by LVC was its Declaration and the shift of the industrial agrarian system towards one system based on peoples’ food sovereignty.

This current also had an influence on the second UN Special Rapporteur on the Right to Food, Olivier de Schutter, who started his mandate in 2008. “Between 2008 and 2014, he underlined that the rights of peasants and other people working in rural areas needed stronger protection. He highlighted the right to an adequate income, to seeds and to land and fisheries”⁵⁸. To this approach of the second Special Rapporteur on the RtF we have to bear in mind all the work done by the Human Rights Council and its Council Advisory Committee that since 2009 undertook this issue with the elaboration of important reports about the discrimination and exploitation of peasants and farmers. One of the main tasks of the HRC Advisory Committee was to focus its work on the right to food (the other issue they have a mandate over was the human right to education) and consequently they focused on the analysis of the situation of peasants and other people working in rural areas.

In 2009, the HRC Advisory Committee presented its first report on the Right to Food. The report, prepared by Mr. Jean Ziegler with the collaboration of Mr. Christophe Golay and Ms. Claire Mahon, presented in five parts “the description of the different categories of peasants and the way they are discriminated against and exploited in many parts of the world [...] the extreme vulnerability of women peasants [...] the main causes of violations of the right to food suffered by peasants [...] the lack of transformative and redistributive agrarian reforms and State policies in favour of peasants”⁵⁹. This report places special emphasis on the living conditions of peasants all over the world and on the hunger and poverty situations suffered by people living in rural areas. It also makes reference to the difficulties faced by this collective when they need to access productive resources such as land, water and seeds. Another extremely relevant point of this report was the dedication of a whole chapter to peasants’ movements, with special focus on La Via Campesina as the most relevant and representative global peasants’ movement, and also the reference to the Declaration of Rights of Peasants – Women and Men. Jean Ziegler acknowledges with this report the importance of transnational agrarian movements and their approach to the right to food. In my opinion, this report was an extremely important back-up to the claims of the peasants’ movements towards the recognition of the rights of peasants.

⁵⁷ Geneva Academy, idem

⁵⁸ Geneva Academy, idem

⁵⁹ Ziegler, J, “*Peasants Farmers and the Right to Food: a History of Discrimination and Exploitation*”, Human Rights Council Advisory Committee, A/HRC/AC/3/CRP.5, 4 of August of 2009.

The previous report division on the HRC where some countries were in favour of “tasking the Advisory Committee to produce a study on the global food crisis and the rights of peasants, mainly Latin-American countries, and other countries, particularly from the Western, were opposed”⁶⁰. Finally, the HRC adopted the Resolution 10/12 instructing the Advisory Committee to produce a report on the discrimination in the context of the right to food. In response to this request a preliminary study was prepared by the HRC Advisory Committee and presented to the HRC on 22 February 2010. In this preliminary study, the Advisory Committee concluded that peasants and other people working in rural areas were the main victims of human rights violations and discrimination, including in regard to the right to food⁶¹. In its conclusions, the Advisory Committee states that “to improve the realization of the right to food and combat discrimination [...] the concept of food sovereignty offers an important new form of cooperation and association between producers and consumers”⁶², and also states that “one of the most important new developments in the protection against discrimination in the context of the right to food was the adoption of the Declaration on the Rights of Peasants – Women and Men by La Via Campesina [...] (and) it is time to undertake a preliminary study on the significance and importance of a possible instrument on the rights of peasants and other people living in rural areas”⁶³. As it is possible to see this second report follows the path opened by the first one, recognising the merit of transnational agrarian movements in the promotion, protection and fulfilment of the rights of peasants and other people working in rural areas. One relevant fact is that the Advisory Committee annexed to this second report La Via Campesina’s Declaration on the Rights of Peasants – Women and Men.

In 2010, the HRC asked the Advisory Committee to prepare a preliminary study on ways and means to advance the rights of people working in rural areas. The Advisory Committee presented in February 2012 the “Final Study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas” (A/HRC/19/75). In this document the Advisory Committee concluded that “despite the existing human rights framework, peasants and other people working in rural areas are victims of multiple human rights violations that lead to their extreme vulnerability to hunger and poverty”⁶⁴. The report recommends

⁶⁰ Geneva Academy, *idem*.

⁶¹ See “*Preliminary Study of the Human Rights Council Advisory Committee on the Discrimination in the Context of the Right to Food*”, UN Human Rights Council, A/HRC/13/32, of 22 February 2010

⁶² UN Human Rights Council, ““*Preliminary Study of the Human Rights Council Advisory Committee on the Discrimination in the Context of the Right to Food*”, UN Human Rights Council, A/HRC/13/32, of 22 February 2010

⁶³ UN Human Rights Council, *idem*

⁶⁴ UN Human Rights Council, “*Final Study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*”, UN Human Rights Council, A/HRC/19/75, of 24 February 2012.

the adoption of a new instrument, initially a Declaration, to better protect and promote these rights, and the Advisory Committee annexes to the report a draft declaration as basis for further development.

The Human Rights Council took seriously all this previous work and its Resolution 21/19 initiated the consultation process for the elaboration of a draft declaration of the rights of peasants and other people working in rural areas. The work did not stop and in the third session of the Open-ended intergovernmental working group on the rights of peasants and other people working in rural areas, held between de 17 and 20 of May 2016, the HRC presented the Draft Declaration on the rights of peasants and other people working in rural areas (A/HRC/WG.15/3/2). This draft declaration defines peasants and other people working in rural areas in its Article 1.1 as follows: “the term peasant means any woman or man who engages in – or who seeks to engage in – small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organizing labour”.

The draft declaration expressly recognizes the right to food sovereignty, and a broad set of rights, some of them already recognize by other human rights instruments (right to life, nationality, freedom of movement, freedom of thought, freedom of association, right to participation and information, access to justice, right to work, right to food, right to water and sanitation, right to health, right to housing, right to education). But the main development of this draft declaration is the recognition of a specific set of rights of peasants and other people working in rural areas that can lead to an unprecedented development in the human rights law. In this sense the Draft Declaration recognizes Rural Women Rights (Art.6), right to information in relation to production, marketing and distribution (Art.13), right to land and other natural resources (Art.19), right to means of production (Art.21), a specific article on the right to seeds (Art.22), right to biological diversity (Art.23), and cultural rights and traditional knowledge (Art.29) that protects their genetic resources⁶⁵.

As it is possible to see the Rights of peasants and other people working in rural areas are still under development and it remains to be seen if a United Nations General Assembly is going to be adopted, but the evolution of these rights is happening really quickly. And the most important thing, in my

⁶⁵ UNHRC, “*Draft Declaration on the rights of peasants and other people working in rural areas*”, Human Rights Council Open-ended intergovernmental working group on the rights of peasants and other people working in rural areas, A/HRC/WG.15/3/2, 8 March 2016

opinion, is that this development is due to the transnational agrarian movements campaigns and advocacy. If this set of rights is adopted in the future, this legal framework will probably protect in a more equitable manner the rights of peasants and other people working in rural areas on seeds and plant genetic resources.

4. Trade Related Aspects of Intellectual Property Rights (TRIPS) and International Union for the Protection of New Varieties of Plants (UPOV)

This chapter will be focused on the analysis of the international legal framework regarding intellectual property rights (IPRs). I will centre this analysis on the history, origins and main rules of functioning of the two main instruments that regulate this issue - the WTO TRIPS Agreements and the UPOV - and how these two international instruments can influence the access to seeds by small-scale producers, farmers and peasants. The IPRs over seeds and plants have their roots in the USA and Europe “through the protection of breeders’ rights and patents”⁶⁶. This “legal development was [...] linked to the development of a commercial breeding sector and [...] to biotechnology”⁶⁷.

In order to understand the rise of intellectual property rights it is necessary to understand when and why the international community decided to create international institutions and an international legal framework to regulate international trade. This process started after World War II (WWII) when the Allied gathered at Breton Wood in 1944 with the idea of reforming the international trade system. This ambitious idea to reframe the international trade system can be understood if we bear in mind that the great economic depression of the ‘30s can be considered as one the main causes of WWII and that this economic crisis created a lot of human suffering in the western countries. The creation of this new legal order related to trade was also to prevent the nationalistic economic policies that contributed to the start of the war in 1939.

The Bretton Woods conference “envisaged three pillars to stabilize and strengthen the new global economy comprised the International Bank for Reconstruction and Development (IBRD), the International Monetary Fund (IMF) and the International Trade Organization (ITO)”⁶⁸. The IBRD was created to provide funds for the reconstruction to states. Today it is one of the five arms of the World Bank Group (WB), whose “current mission is to provide finance to fund, development and

⁶⁶ Golay, C, “*Legal Analysis on the rights of peasants and other people working in rural areas: the right to seeds and intellectual property rights*”, prepared for the third session of the UN HRC working group mandated to negotiate a Declaration on the rights of peasants and other people working in rural areas, Geneva Academy, 19 May 2016

⁶⁷ Golay, C, *idem*

⁶⁸ Joseph, S, “*Blame it on the WTO? A Human Rights Critique*”, Oxford University Press (2011)

combat poverty in developing states”⁶⁹. The WB focuses on funding concrete development projects in several sectors (health, agriculture, infrastructures,...). The IMF’s role was to “promote macroeconomic stability in global exchange rates and balance of payments”⁷⁰. One of its main tools to achieve its goals is to provide short-term loans to countries in need. The last organization created in Bretton Woods was the ITO that “was intended to supervise international trading rules and promote free trade among nations”⁷¹. However, the ITO never came into being.

Another instrument was signed at that time (1947) - the General Agreement on Tariffs and Trade (GATT) with the aim of establishing a system whereby contracting parties “committed to “bound” tariffs with regard to named goods”⁷². The GATT established three principles of functioning that were binding for the contracting parties: 1) the Most Favoured Nation (MFN) principle that “required a Contracting Party to treat the goods of all other parties equally”⁷³; 2) the principle of National Treatment that “obliged a Contracting Party to treat the goods of another Contracting Party the same as its own ‘like goods’ once the latter Party’s goods had legitimately entered the former Member’s market”⁷⁴; and 3) the principle of transparency that required Contracting Parties to publish their trade regulations. Since the ITO never came into being, the GATT became “the forum for continued negotiation on free trade rules. After several rounds of negotiations where these rules were negotiated, the Contracting Parties celebrated the Uruguay round between 1986 and 1994, the round that led to the creation of the WTO. After this round, the Contracting Parties celebrated the Marrakech Agreement in 1994 and established the WTO, transforming the GATT into a multilateral organization. The GATT Contracting Parties automatically became WTO members and were required to “adhere to all the WTO Agreements as a single undertaking without reservations”⁷⁵. These agreements that were incorporated in the WTO regime “significantly expanded the mandate and strength of the WTO beyond that of its GATT predecessor”⁷⁶. These agreements were the Agreement on Agriculture (AoA), Agreement on Textiles and Clothing (ATC), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), the Agreement on Technical Barriers to Trade (TBT), the Agreement on Trade-Related Aspects of Investment Measures (TRIMs), the General Agreement on Trade in Services (GATS), and finally the Agreement on Trade-Related Intellectual Property Rights (TRIPS). The last one, the TRIPS Agreement, is the most relevant for the purpose of this work. It has to be said that the WTO maintained the GATT’s three main

⁶⁹ Joseph, S, idem

⁷⁰ Joseph, S, idem

⁷¹ Joseph, S, idem

⁷² Joseph, S, idem

⁷³ Joseph, S, idem

⁷⁴ Joseph, S, idem

⁷⁵ Joseph, S, idem

⁷⁶ Joseph, S, idem

functioning principles that were explained before, and also that the WTO set up a strong dispute settlement mechanism whose decisions are binding for States Parties.

The TRIPS agreement was born in the midst of controversy between the enriched countries and the impoverished ones due to the high protection of the TRIPS in relation to the IPRs. As many authors remarks, the TRIPS “is one of the more controversial intellectual property agreements that have entered into force”⁷⁷, and other authors think that “the TRIPS agreement has generated the greatest concern over its effects on developing countries and human rights”⁷⁸.

The TRIPS agreement defines how patents law should protect intellectual property rights and “requires WTO members to provide for a minimum patent protection of 20 years for all inventions in almost all fields of technology”⁷⁹. It has to be said that protection for plants and animals is optional “but members of WTO must protect plant varieties either by patents, or by an effective *sui generis* system (a system of its own kind), or a combination of both (Art. 27(b.3))”⁸⁰. This point of plant and animal protection is the most relevant for the present work and the *sui generis* protection is another crucial point for the issue of seed and plant genetic resources use, control and management. The countries that decide not to protect plants and animals by patents under the WTO regime usually protect these resources using the model proposed by the International Union for the Protection of New Plants (UPOV). I will explain further on in this chapter the functioning of this mechanism.

The TRIPS agreement obliges WTO member states to grant innovators and inventors monopoly rights over the sale of their creations for a certain period of time and to enact laws that establish, at least, the minimal protection the agreement establishes. This protection over intellectual property rights also affects t plant resources and, as some authors like Larurence Helfer state, the TRIPS have done more to encourage this legal protection of plant variety than any other international agreement.

The aspects relating to patents can be found in Articles 24 to 27 of the TRIPS Agreement, dealing with different issues about patents (Patentable Subject Matter (Art.27), Rights Conferred (Art.28), Conditions on Patent Applicants (Art.29), Exceptions to Rights Conferred (Art.30), Other Use Without Authorization of the Right Holder (Art.31), Revocation/Forfeiture (Art.32), Term of

⁷⁷ Yu, P.K, “*The objecties and principles of the TRIPS Agreement*”, Houston Law Review, pp 46-88, (2009)

⁷⁸ Joseph, S, idem

⁷⁹ Golay, C, idem

⁸⁰ Colay, C, idem

Protection (Art.33), Process Patents: Burden of Proof (Art.34))⁸¹. This is the core content the WTO member states have to incorporate into their national legislation. As explained before, with regard to plant and animals states can decide to apply this protection system or to create a *sui generis* system(Art.27). The core content of the IPRs recognized by the TRIPS Agreement are included in articles 27, 28 and 33. I will go through the provisions of these articles to see the type of legal regime established.

Article 27 of the TRIPS Agreements defines the type of matters that are patentable and imposes the following obligations to states parties. The article provides that “patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application”. The main feature of this part of the articles is the definition of the characteristics this products or processes must possess: they have to be new, involve an inventive step and be capable of industrial application. The article also states that the patents “shall be available and patent rights enjoyable without discrimination as to” the place of invention, the field of technology or whether the products are imported or produced locally.

The second paragraph of Article 27 also establishes some exceptions that states parties can apply to their obligations. They can exclude from patentability: inventions, the prevention within their territory of the commercial exploitation of that which is necessary to protect “order public” or morality; diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and micro-biological processes. But the article clearly states that “However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof”.

With regard to the rights conferred to the rights’ holder, Article 28 defines the content the States Parties have to grant in their national legislations. The minimum set of rights states have to provide are: where the subject matter of the patent is a product, the right to prevent third parties from making, using, offering for sale, selling or importing the product; where the subject matter is a process, the right to prevent third parties, not having the owner's consent, from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process; and finally, regardless of whether the subject matter is a product or a process, patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

⁸¹ WTO https://www.wto.org/english/tratop_e/trips_e/t_agm3c_e.htm#5 , consulted 04 june 2016

As established in article 33, the previous set of rights over the patentable subject matter referred have to be provided for a minimum period of twenty years from the filling date.

As it is possible to see, the protection recognized by the TRIPS Agreement covers every aspect of the IPRs and leaves little space for States Parties to establish exceptions or to adapt the TRIPS obligations to their national realities. It is possible to understand with this normative content that impoverished countries could have some reticence with the application of the TRIPS knowing that “most patents are owned by people particularly companies, from the North”⁸².

It is important to bear in mind that TRIPS Agreements are binding for WTO States Members as a direct consequence of WTO membership. Each country that wants to join the WTO must sign and incorporate in its national legislation the TRIPS and, as mentioned before, the WTO has a strong dispute settlement mechanism. Any dispute regarding the application of the TRIPS Agreement is going to be heard at this WTO dispute resolution system, and trade sanctions can be imposed if any State Member does not incorporate the TRIPS provisions in its national legislation.

As stated before, the TRIPS Agreement establishes that WTO Members States can exclude from patentability plants under TRIPS dispositions (Art.27), but that if they do so they have to establish an effective *sui generis* system to provide protection to plant varieties. The *sui generis* system most states chose to establish is the International Union for the Protection of New Varieties of Plants (UPOV) and its International Convention for the Protection of New Varieties of Plants. The first UPOV Convention was signed in Paris in 1961 and entered into force in 1968. It was subject to posterior reviews in 1972, 1978 and 1991, date of the last revision. The 1991 Act of the UPOV Convention entered into force in 1998. As can be found in the 1961 version, the purpose of the Convention is “to recognise and to ensure to the breeder of a new plant variety, or to his successor in title, a right the content and the conditions of exercise of which are defined hereinafter”⁸³. Ultimately, the purpose of the UPOV Convention is to grant by States Parties to the Convention intellectual property rights to breeders of new varieties of plants under well-defined and clearly demarcated principles. Thus, “the Convention provides a *sui generis* form of intellectual protection specifically adapted to the process of plant breeding and developed with the aim of encouraging

⁸² United Nations Development Program (UNDP), “*Human Development Report 2005: International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*”, UNDP, New York, 2005

⁸³ UPOV Convention 1961, Art.1, available at http://www.upov.int/upovlex/en/conventions/1961/w_up610_.html#_1 consulted on 4 June 2016

breeders to develop new varieties of plants”⁸⁴.

The 1991 Act UPOV Convention defines plant breeders in its Article 1 as “the person who bred, or discovered and developed, a variety, the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or the successor in title of the first or second aforementioned person, as the case may be”⁸⁵.

The States Parties to the Convention have to establish a national legislation to protect the rights of plant breeders recognized in Article 14 of the Convention. The plant breeders’ rights in respect of the propagating material of the protected variety included in the Convention are the right to authorize the production or reproduction (multiplication), conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting, importing, and stocking for any of those purposes. Plant breeders also have the exclusive right to authorize the harvest of all or part of a plant when the grower acquires the propagating material without the breeder’s permission⁸⁶.

These breeders’ rights are applicable when the plant variety is new, distinct, uniform and stable, as stated in Article 5 of the 1991 Act to the UPOV Convention⁸⁷. The criteria of novelty is described in Article 6 of the 1991 Act to the UPOV, which states that to be regarded as new, a plant variety cannot have been sold or marketed with the breeder’s consent for a specific time period before the plant breeder’s right application is filed⁸⁸. It is important to notice that the novelty criterion “does not mean that the plant variety was not already known [...] novelty under the UPOV means that the variety was never commercialized in the formal market or listed in an official seed catalogue”⁸⁹.

The criterion of distinctness is developed in Article 7 of the 1991 Act to the UPOV Convention and states that for a variety to be considered distinct it has to be “clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application”⁹⁰. Distinctness may require the breeder to demonstrate clear differences between

⁸⁴ Cabrera Medaglia, J, “*The relationships between the access and benefit sharing international regime and other international instruments: the World Trade Organization and the International Union for the Protection of New Varieties of Plants*”, Sustainable Development Law & Policy, Volume X, Issue 3, Spring 2010, pp-24-33, American University, Washington College of Law.

⁸⁵ 1991 Act UPOV Convention, art.1, available at http://www.upov.int/upovlex/en/conventions/1991/w_up910.html#_1, consulted on the 4 of June of 2016

⁸⁶ 1991 Act UPOV Convention, art.14, idem

⁸⁷ 1991 Act UPOV Convention, art. 5, idem

⁸⁸ 1991 Act UPOV Convention, art. 6, idem

⁸⁹ Goley, C, idem

⁹⁰ 1991 Act UPOV Convention, art. 7, idem

varieties' qualitative and quantitative characteristics⁹¹.

The two last characteristics the 1991 Act to the UPOV Convention establishes are uniformity (Art.8) and stability (Art.9). In order to be considered uniform by the 1991 Act, the variety “shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics”⁹². And in order to be considered stable “The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle”⁹³. This two characteristics imply that the “UPOV Convention does not protect the varieties that peasants often breed and use, which tend to be inherently unstable and in permanent evolution”⁹⁴.

As it is possible to see in this chapter, the international protection of property rights is really advanced. These two international instruments, the TRIPS Agreements and the UPOV Convention, provide a strong and well-defined binding legal framework for the States. It is true that States can choose between the framework offered by the TRIPS and the framework offered by the UPOV Convention, but they are the only two options they have. Another important issue is that these two systems offered a strong protection to the industrial sector, but they do not offer specific protection to peasants' traditional plant resources, putting these populations in a weak position to negotiate with the states to see their rights recognized at the national legislations. And in order to have a complete view it is important to bear in mind the strong obligations these international instruments impose on the States Parties, and in the case of the WTO TRIPS Agreements the strong dispute settlement mechanism and the strong sanctions that can be imposed in the case that a member state does not comply with the provisions of the TRIPS.

5. Transnational Agrarian Movements

After looking at the main issues regarding the legal framework that affects the right to food, the rights of farmers, peasants and other people working in rural areas and the main international legal instruments that regulate international patents' rights, it is time now to look at how the agrarian movements react to this legal development. For this purpose this chapter will be dedicated to an analysis of the historical development of the Transnational Agrarian Movements (TAMs) and their

⁹¹ Winter, L, idem

⁹² 1991 Act UPOV Convention, art. 8, idem

⁹³ 1991 Act UPOV Convention, art. 9, idem

⁹⁴ Goley, C, idem

positions, claims and methods of advocacy and mobilization. In order to have a view of these aspects this chapter will follow the work developed by Saturnino M. Borrás Jr., the main author in the area of TAMs. Another reason to base this chapter on the work done by Borrás is that, as Borrás states, “surprisingly, given the dynamism and high profile of transnational agrarian movements, scholars have given them relatively less scrutiny”⁹⁵ This chapter will contain the theoretical approximation to TAMs.

5.1 TAMs’ historical evolution

TAMs are not new, as peasants are not a new social class in our societies and national and international economic order. As Phillip McMichael quotes the words of a Mexican peasant leader, “a campesino⁹⁶ comes from the countryside. There have always been campesinos. What did not exist before were investors, industrialists, political parties, etc. Campesinos have always existed and they will always exist. They will never be abolished”⁹⁷. It is true that the current and dominant economic system, neoliberalism, “has significantly altered the dynamics of agrarian production and exchange relationships within and between countries across the north-south divide”⁹⁸ and these changes have affected the ways poor peasants and small farmers get organized to fight for their rights. As Borrás and Franco state, the developing countries and nation-states have suffered and have been transformed by a “triple squeeze: ‘from above’ through globalisation where some regulatory powers have been increasingly ceded to international regulatory institutions, such as the World Trade Organization, the International Monetary Fund and the World Bank; ‘from below’ through the partial decentralization of central political, fiscal and administrative powers to local counterparts; and ‘from the sides’ through the privatisation of some functions”⁹⁹. These changes occurring during the last three decades, suffered by the countries and their societies, have caused an on-going adaptation process by social movements and consequently an adaptation of the agrarian movements that used to centre their actions and claims at a national and local level. Nowadays, TAMs focus their strategies on a global level. The agrarian movements that have been affected by this change of economic, social and political environment have adapted their strategies to face the new threats and opportunities created by these changes. In this sense they have to reorganize their advocacy and lobby work and their collective actions in two ways: firstly they “further localise (in

⁹⁵ Borrás Jr, S.M & Edelman, M & Kay, C “*Transnational Agrarian Movements: origins and politics, campaigns and impact*”, Journal of Agrarian Change, Vol. 8 Nos. 2 and 3, April and July 2008, pp 169-204

⁹⁶ Spanish in the original

⁹⁷ McMichael, P, “*Peasants make their own history, but not just as they please...*”, Journal of Agrarian Change, Vol. 8 Nos. 2 and 3, April and July 2008, pp. 205-228

⁹⁸ Borrás Jr, S.M & Edelman M & Kay, C, idem

⁹⁹ Borrás Jr, S. M & Franco J. C, “*Transnational Agrarian Movements Struggling for Land and Citizenships Rights*”, Institute of Development Studies, Working Paper, Vol. 2009, number 323, University of Sussex, 2009

response to decentralization)”¹⁰⁰ their actions and secondly they “internationalise (in response to globalization)”¹⁰¹ other actions. But before going into the current situation and strategies of TAMs, it is important to go through TAMs historical antecedents to understand the different TAMs and their different political and action approaches.

TAMs, peasants and small scale farmers’ alliances have increased in number in the last decades, specially “after the late 1980s, but their roots lie as far back as the late nineteenth and early twenty centuries”¹⁰². This means that their existence is not a phenomenon exclusively related with the globalisation process and the weakening of the states, or with “the growing reach of supra-national governance institutions”¹⁰³. They have a long history and tradition that have been evolving with the years and with the contribution of different ideologies and groups as “agrarian populism, Communism, eliteled reformisms and noblesse obliged, pacifisms and feminisms”¹⁰⁴.

After World War I, “two international movements vied for peasant support in central and eastern Europe: the agrarian Green International eventually headquartered in Prague, and the Moscow-based Peasant International or *Krestintern*”¹⁰⁵. The setting up of these two organizations has to be understood in a post-war context where “agrarian or peasant-led parties came to power in Bulgaria and Yugoslavia”¹⁰⁶, and also had a big influence on other countries like Hungary, Romania, Austria or The Netherlands. Their main common goals were “to shift the terms-of-trade in favour of rural areas, to implement land reforms and to break the power of the traditional landed groups”¹⁰⁷.

According to Borrás, the “most formidable agrarian movement was in Bulgaria, where in 1919 [...] Alexander Stamboliski’s Agrarian Union won the first post-war elections”¹⁰⁸. The reforms established by Stamboliski were oriented to improve peasants’ living conditions and their position in society by “modifying the tax system to favour the rural poor and distributing the few large estates to the peasantry”¹⁰⁹. Stamboski was active in its foreign policy, as Borrás explains, trying to attempt to secure support “for an international agricultural league that would serve as protection against the [...] ‘White International of the royalist and the ‘Red International of the

¹⁰⁰ Borrás Jr, S.M & Franco, J.C, idem

¹⁰¹ Borrás Jr, S.M & Franco, J.C, idem

¹⁰² Borrás Jr, S.M & Edelman M & Kay, C, idem

¹⁰³ Borrás Jr, S.M & Edelman M & Kay, C, idem

¹⁰⁴ Borrás Jr, S.M & Edelman M & Kay, C, idem

¹⁰⁵ Borrás Jr, S.M & Edelman M & Kay, C, idem

¹⁰⁶ Borrás Jr, S.M & Edelman M & Kay, C, idem

¹⁰⁷ Borrás Jr, S.M & Edelman M & Kay, C, idem

¹⁰⁸ Borrás Jr, S.M & Edelman M & Kay, C, idem

¹⁰⁹ Borrás Jr, S.M & Edelman M & Kay, C, idem

Bolshevists”¹¹⁰. In this way the Green International was created “in 1920 when agrarian parties from Bulgaria, Yugoslavia, Austria, Hungary, Romania, the Netherlands and Switzerland began to exchange delegations a set up a loosely organized league”¹¹¹ and established its Headquarter in Prague. The Green International was a Stamboliski’s initiative and relied on his leadership, but Stamboliski was overthrown in 1923 in a “bloody right wing coup”¹¹². In any case, the Green International managed to continue its work, trying to weave stronger relationships with other agrarian movements in Europe. During the second half of the 1920s, the Green International defined itself as “a centre of exchange of experiences, moral reinforcement and solidarity for peasants and agrarian parties”¹¹³.

In reaction to the Bulgarian disaster, the Communist International took the decision to create a Red Peasant International (Krestintern) and to “seek deeper ties with the agrarian parties”¹¹⁴. The international relations of the Krestintern were stimulated in order build relations with “the peasant toilers of the colonial countries”¹¹⁵, such as Vietnam and Japan.

With the arrival of the 1929 crisis, “the failure of various national agrarian parties and the rise of fascism all contributed to the demise of the Green International”¹¹⁶ and in the polarized Europe of the time “the project of a peasant or a farmers international did not re-emerge until after World War II with the founding of the International Federation of Agricultural Producers (IFAP)”¹¹⁷.

IFAP was founded “amidst post-World War II optimism about global cooperation”¹¹⁸ in 1946 by “associations of commercially oriented small-to-large scale farmers mainly from industrialized countries”¹¹⁹. One of its main objectives when the IFAP was founded was to support “the newly formed UN Food and Agriculture Organization (FAO)”¹²⁰. According to Borras, “IFAP’s leadership has always been dominated by farm leaders from industrialized countries”¹²¹ and it has “often backed centre-right political parties”¹²². IFAP had a strong institutional power, and in 2009, before

¹¹⁰ Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹¹ Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹² Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹³ Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹⁴ Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹⁵ Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹⁶ Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹⁷ Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹⁸ Borras Jr, S.M & Edelman M & Kay, C, idem

¹¹⁹ Borras Jr, S.M “*The Politics of Transnational Agrarian Movements*”, Development and Change, 41 (5), pp 771-803, International Institute of Social Studies, Oxford, 2010

¹²⁰ Borras Jr, S.M & Edelman M & Kay, C, idem

¹²¹ Borras Jr, S.M, idem

¹²² Borras Jr, S.M & Edelman M & Kay, C, idem

its dissolution in 2010, it claimed to represent “farm families grouped in 120 national organizations in 79 countries”¹²³, and considered itself “a global network in which farmers from industrialised and developing countries exchange concerns and set common priorities”¹²⁴.

IFAP was the main dominant farmers’ organization after WWII with strong institutional relationships with the FAO. Almost 50 years passed until another TAM appeared in the landscape with enough strength to influence the international agenda regarding agriculture policies. It was in 1993 when La Via Campesina (LVC), “an international movement of poor peasants and small-scale farmers from the global South and North”¹²⁵ was founded as a “critical response to the neoliberal globalisation threat”¹²⁶. In response to the neoliberal policies promoted by the Breton Woods institutions, LVC advocated a “pro-poor, sustainable, rights-based rural development and greater democratization”¹²⁷. Despite its only 23 years of existence, LVC has become a main actor in the international arena and in the “popular transnational struggles against neoliberalism, demanding accountability from (inter)governmental agencies [...] resisting and opposing corporate control over natural resources and technology and advocating ‘food sovereignty’”¹²⁸. One of the most important points of this TAM is that LVC has a “dual character – as a single *actor* and as arena of action”¹²⁹. These two characteristics mean that LVC is an actor with its own voice achieved by the internal consultation mechanism and with a solid political agenda created and agreed between its members all around the globe. But at the same time, due to its large number of members from different cultures and with particular interests, LVC is a place of debate and exchange of experiences between its members. Another important aspect of LVC is that it “has reframed the dominant market oriented discourse by bringing in the notion of rights based policies”¹³⁰. These efforts have had success as can be seen in the campaign for the adoption of a Declaration of the Rights of Peasants and other people working in rural areas (see before). Another important contribution of LVC is the “creation of a ‘new citizenship space’”¹³¹. LVC “activists are politically conscious of their ‘rights’ as global citizens, they use this space to hold accountable institutions they perceived to be ‘duty bearers’. It is new because it didn’t exist before. What existed before were institutional spaces used by NGOs and farmers [...]. It is distinct this space has been created, occupied and used by and for poor

¹²³ UN FAO, available at <http://www.fao.org/ag/againfo/themes/animal-welfare/aw-direc/search/detail/en/c/13127/> , consulted 11 June 2016

¹²⁴ UN FAO, available at <http://www.fao.org/ag/againfo/themes/animal-welfare/aw-direc/search/detail/en/c/13127/> , consulted 11 June 2016

¹²⁵ Borras Jr, S.M, idem

¹²⁶ Borras Jr, S.M, idem

¹²⁷ Borras Jr, S.M & Franco, J.C, idem

¹²⁸ Borras Jr, S.M & Franco, J.C, idem

¹²⁹ Borras Jr, S.M & Franco, J.C, idem

¹³⁰ Borras Jr, S.M & Franco, J.C, idem

¹³¹ Borras Jr, S.M & Franco, J.C, idem

peasants”¹³². All these processes led by LVC have been possible because LVC had created new concepts to be opposed to the neoliberal concepts of food security and rural development. The main accomplishment was the introduction of the concept of “food sovereignty” (see footnote No. 51) in the national and international agendas. LVC maintains that “food sovereignty is not just a vision but it is also a common platform of struggle that allows [us] to keep building unity in our diversity...Agrarian reform and food sovereignty commit us to a larger struggle to change the dominant neoliberal model”¹³³.

5.2 Current TAMs: an analysis of their ways of action and strategies

As explained, TAMs have a long history and their roots can be traced back to the beginning of the XX century. TAMs also have different forms and ways of action, so when we talk about TAMs there are some questions that have to be on the table in order to have a clear vision of these movements. According to Borras, the main questions are: “(i) representation and agendas; (ii) political strategies and forms of action, (iii) disaggregating and understanding impacts, (iv) TAMs as arenas of action between different (sub) national movements, (v) diverse class origins and (vi) ideological and political differences”.

When we talk about representation we are talking about the grade of reality of the TAMs’ statements saying that they represent a specific number of peasants and their worries and claims as individual peasants or as a social class. As we have seen, TAMs are gaining their place in the local, national and international decision-making spheres in response to the neoliberalism policies due to the fact that “the impact of neoliberalism [...] has had different varying impacts on different social classes, regions and sectors”¹³⁴. As it is possible to see in the different UN reports, such as those mentioned in this paper drawn up by Mr. Jean Ziegler, those who most suffer the negative consequences of neoliberalism are the rural poor. These rural poor joined, join and will continue to join together to create local and national associations or movements. And some of them have joined other national movements and associations and “have created transnational networks or movements”¹³⁵ that have started active strategies before other different powers to show their opposition to certain policies. It is at this point that it is important to bear in mind that “the question of representation within TAMs needs to be discussed carefully”¹³⁶.

¹³² Borras Jr, S.M & Franco, J.C, idem

¹³³ McMichale, P, “*Reframing Development: Global Peasant Movements and the New Agrarian Question*”, Canadian Journal of Development Studies, Vol. XXVII, n° 4, 2006, pp-472-483

¹³⁴ Borras Jr, S.M & Edelman M & Kay, C, idem

¹³⁵ Borras Jr, S.M & Edelman M & Kay, C, idem

¹³⁶ Borras Jr, S.M & Edelman M & Kay, C, idem

As in every social movement, “effective representation [...] should not be assumed to be automatic, or permanent and unproblematic”¹³⁷ and it can change over the years due to external or internal reasons of the movements. The importance of analysing the question of representation is based, as Borras maintains, on one main reason: TAMs claim to represent a group or groups of people, building a political position based on the strength and legitimacy that this representation gives TAMs. Borras establishes some ways to analyse and understand representation in TAMs.

The first way Borras offers to understand the question of effective representation is that “in most cases, by representation, TAMs are in fact talking about ‘partial representation’”¹³⁸, and this ‘partial representation can be seen from two perspectives: global and national. At an international level, as Borras explains, it is important to bear in mind that most TAMs do not have “any significant presence in large areas of the world”¹³⁹, such as China, Russia, the MENA region or central Asia; it is paradoxical that these areas “host the majority of the world’s rural poor”¹⁴⁰. At a national level, Borras clearly states that “no matter what, no single organization, movement or group of movements can fully represent the vast and diverse groups and interests in an entire country”¹⁴¹. From my point of view, these considerations are important in order to be able to calibrate the demands and claims TAMs make when they speak on behalf of peasants. It does not mean that they are not representative at all, but that they represent some political currents or some specific groups or group of groups.

The following way to analyse TAMs’ ‘effective representation’ that Borras proposes is to keep in mind that representation is not static. As Borras explains, “representation is constantly renegotiated within organizations or movements”¹⁴². This means that the degree of representation can change, increase, decrease or disappear over time. The case of IFAP is a clear example. After being founded in 1946 and having been one of the key players in the negotiations arena with international agencies, a movement that claimed to represent more than 120 groups in 79, for more than 60 years, collapsed and disappeared in 2010 due to internal problems¹⁴³.

The final factor Borras identifies is the difficulty to significantly represent groups of rural people

¹³⁷ Borras Jr, S.M & Edelman M & Kay, C, idem

¹³⁸ Borras Jr, S.M & Edelman M & Kay, C, idem

¹³⁹ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁴⁰ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁴¹ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁴² Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁴³ Wilson, B, at The Western Producer, available at <http://www.producer.com/daily/international-federation-of-agricultural-producers-collapses/>, consulted on 14 June 2016

“partly due to the restrictive definitions of ‘peasant’ or ‘farmer’”¹⁴⁴. The agrarian movement framework, as Borras explains, tends to be agriculture-centred with people of the land as defining the character of the common actors. But, as Borras states, the rural sector is broader, and if TAMs limits their approaches and demand-making strategies to “agriculture-oriented themes” they can exclude a significant portion of the rural poor. This situation, according to Borras, has happened in the case of cross-border migrant workers where there is a “persistent and troubling divide between the rapidly growing scale of transnational migration and the failure of the major TAMs to accord the issue a central place in their analysis and strategies”¹⁴⁵.

In order to further analyse TAMs, Borras also considers that it is important to have a look at their political strategies and form of action. TAMs use to achieve their goals due to the highly diverse these strategies are all around the globe, being possible to identify similarities and differences between the different TAMs. According to Borras, “understanding diversity and differences will lead us to appreciate better the accomplishments of TAMs’ unity building efforts”¹⁴⁶, and consequently to better understand their complexity.

The first possible case to analyse TAMs from this point of view is when “TAMs and other groups do not have clear and legible strategies and effective forms of action”¹⁴⁷. This analysis is focused on the similarities and differences between TAMs and other groups. According to Borras, TAMs look for counterpart organizations in other countries and when they don’t find any organization, movement or group that is similar to them, they tend to affirm that nothing is happening in the country. The problem could be that when TAMs search for counterparts, this “usually involves looking at the ideological make-up of a potential ally as well as its political strategies, methods and forms of collective action”¹⁴⁸. This means that TAMs are looking for similar organizations to build alliances, but agrarian movements can adopt several and diverse forms of organization and action because the tradition, political vision or many other issues are not the same in the different countries, political spaces and culture. According to Borras, the links between these diverse peasant initiatives could have great potential, but for this, traditional TAMs would have to revise their established conventional assumptions.

Another crucial point to understand TAMs diversity is to analyse the similarities and differences

¹⁴⁴ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁴⁵ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁴⁶ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁴⁷ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁴⁸ Borras Jr, S.M & Edelman M & Kay, C, idem

between TAMs in their political strategies and forms of action. It is important to see how different TAMs behave to achieve their political goals. Some of them “favour a combination of confrontation and critical collaboration with (inter) governmental institutions, while others favour uncritical collaboration and formal alliances”¹⁴⁹. For example, LVC has a well positioned and critical vision of Bretton Woods institutions without any type of collaboration with them, but at the same time LVC maintains formal collaboration with the FAO and IFAD. With regard to forms of action, some TAMs “have identified radical, direct actions as the most appropriate and effective ways of putting their issues on the official agendas”¹⁵⁰. These actions can go from land occupations to bulldozing or torching symbolic icons of transnational corporate greed. Other TAMs instead “do not engage in dramatic, confrontational forms of collective actions”¹⁵¹. Obviously, the question of which strategies are more effective depends, as always, on the goals of each TAM.

Another important issue to understand TAMs is to disaggregate their “impacts [...] in order to assess whether, how and to what extent their actions bring them closer to their goals”¹⁵². According to Borras, the most “palpable impacts have been in (re) framing debates and getting issues on the agenda”¹⁵³. The clear example of this is the creation and spread on the notion of “food sovereignty as an alternative to the current corporate-controlled and industrial food complex [...] developed by Via Campesina and [...] spread to the agenda of many other TAMs, environmental movements and even governmental and intergovernmental institutions”¹⁵⁴. This notion has gained a lot of support and as Diego Dominguez states, “food sovereignty has gained the attention of social science researchers and is even occupying curricular spaces in universities”¹⁵⁵, and not only.

TAMs are not only single actors, networks or movements with a collective agency, as they can be seen by external observers. TAMs are “important for agrarian movement activists in terms of movement-building processes”¹⁵⁶. As Borras defines them, they are “arenas of interaction between (sub-) national movements” where various actors come to interact and build together a specific TAM. This interaction has a double effect: to shape and reshape the TAM and to influence other actors. Obviously, some actors are more powerful than others in this process and it is important to

¹⁴⁹ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁵⁰ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁵¹ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁵² Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁵³ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁵⁴ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁵⁵ Dominguez, D, “*Food Sovereignty as a critical and alternative approach of the global agri-food system*”, Pensamiento Americano, Vol. 8, No 15, July-December 2015, Corporación Universitaria Americana, Barranquilla (Colombia), pp. 146 - 175

¹⁵⁶ Borras Jr, S.M & Edelman M & Kay, C, idem

bear this in mind when analysing TAMs.

Another fundamental factor of analysis to understand TAMs is their class origins and, as Borras states, “without a class analysis it is impossible to disaggregate and fully understand the processes and outcomes of development” and consequently to understand the popular reactions to it. So, class has to be considered “in any analysis of movement-building and agrarian change dynamics”¹⁵⁷. A TAM composed by rich farmers is not the same as a TAM composed by poor peasants to understand their political positions and claims, so “the extent of presence and domination of a particular class or classes within a large transnational movement matters”¹⁵⁸. It was not the same with the IFAP, dominated by middle-rich farmers of the north, that have a less critical position and behaviour than LVC, which is composed by poor peasant organizations and movements. The claims and forms of action are totally different depending on the TAMs’ class composition.

When we talk about TAMs we have to keep in mind that inside these movements there are political and ideological differences that play an important role in TAMs’ action. Borras suggests that these political and ideological tensions and dynamics can be seen from three perspectives: i) class-based, when groups dominated by particular classes have particular sets of interests and issues different from other groups with different social class composition; ii) differences in political strategies and calculations when groups of peasants from the same social class that function together in the same TAM oppose each other because of ideological or political differences; and iii) institutional turf battles and personality differences, as for example in the great competition between TAMs for funding from northern development agencies.

The last but not least criterion to fully understand TAMs is, according to Borras, their dynamics of alliance building. It being true, as Borras explains, that in the past peasants movements used to be involved in alliance with political parties (mostly communist or socialist) and workers’ organizations, nowadays these types of alliances have changed, in part because of the collapse of communist and socialist parties. Since the 1980s, agrarian movements have gained independence from political parties and joined TAMs to face neoliberal policies. Borras establishes three main types of alliances: i) NGO-peasant movement relations: in this relation, TAMs and NGOs have a symbiotic and positive relationship. TAMs represent more people than NGOs but they are short of resources and political representation at international level. NGOs have more access to international cooperation for development funds and can open the international consultative spaces for TAMs.

¹⁵⁷ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁵⁸ Borras Jr, S.M & Edelman M & Kay, C, idem

Also, as Borras states, “NGOs remain as the most reliable allies for TAMs”¹⁵⁹; ii) Sectorial alliances: joining strength from different agrarian movements for a specific goal, such as food sovereignty, is one of the strategies with more potential to achieve this common goal to different organizations; iii) Thematic advocacy alliances: according to Borras, this is the most common type of actually existing alliances; “these are usually multi-class and multi-sectorial alliances, cutting across the rural-urban and the global-south-north divides”¹⁶⁰, as for example the anti-Genetically Modified crops campaigns.

In conclusion, as it is possible to see, TAMs have deep roots in history and they have been the main instrument for poor peasants to put issues on the political agenda and to claim and fight for the recognition of their rights. But TAMs are not static and homogeneous, they have several differences from a political and strategical point of view and in their form of action. What seems clear is that TAMs are becoming a stronger actor in the international arena in opposition to the neoliberal policies that the Breton Woods institutions are spreading all around the globe. TAMs can be a counterweight to these policies if they are able to gain and maintain their presence and advocacy at local, national and regional level.

6. Control and seeds management

This chapter will be dedicated to the consequences of international seed policies and legal regulations over the livelihoods of peasants and small-scale farmers. After analysing in the previous chapters the legal framework regarding the Right to Food, the rights of farmers, peasants and other people working in rural areas, IPRs and the analysis of TAMs, it is time to analyse the practical effects of these policies and regulations. For this purpose I will base this chapter on the report presented by the former Special Rapporteur for the Right to Food, Olivier De Schutter, to the UN General Assembly - “Seed Policies and the Right to Food: enhancing agrobiodiversity and encouraging innovation” - and on two reports drawn up by the NGO GRAIN and by LVC, where these institutions analyse the effects of TRIPS and UPOV on the use, control and management of seeds by peasants.

After the previous chapters it can be said that there are numerous interests around the use, control and management of seeds due to the enormous economic potential of the use of seeds. There is a global market relating to seeds and the IPRs tend to protect the rights of breeders and companies because, as the former Special Rapporteur of the Right to Food states in his report, this protection

¹⁵⁹ Borras Jr, S.M & Edelman M & Kay, C, idem

¹⁶⁰ Borras Jr, S.M & Edelman M & Kay, C, idem

system, mainly the TRIPS and the UPOV regulations, “is essentially defended as a means to reward, and thus incentivize, research and innovation in plant breeding”¹⁶¹. This is the main justification for the existence of this system and, despite the fact that it is necessary to protect breeders’ rights, the reality in many countries is that this recently created international legal system for the protection of IPRs over plant genetic resources “has primarily benefited the better resourced groups in society and transnational corporations, rather than the most vulnerable ones”¹⁶².

With this scenario where so many interests are mixed and where different groups are fighting for the control of plant genetic resources, mainly the seeds market, it is important to refresh the obligations the States have in order to respect, protect and fulfil the Right to Food of their citizens. Only under a human rights framework could States build an equitable legal system where all interests and rights could be balanced. Article 11 of the ICESCR imposes three levels of obligations regarding the Right to Food, obligations that should have a direct impact on the development of national legislation regulating seed systems. The first one is the obligation to respect, which is translated into the obligation of States not to take measures that prevent the access to adequate food. With regard to the seeds system, “the introduction of legislation or other measures which create obstacles to the reliance of farmers on informal systems may violate this obligation, since it would deprive farmers from a means of achieving their livelihood”¹⁶³. The second obligation is the obligation to protect the right to food. According to the former Special Rapporteur for the Right to Food, “this obligation would be violated if a State failed to regulate the activities of patent-holders or plant breeders, so as to prevent them from violating the right to food of the farmers depending on those inputs in order to be able to continue to farm”¹⁶⁴. The third and last obligation of the States regarding the Right to Food is the obligation to fulfil, so they “must facilitate it by proactively strengthening people’s access to and utilization of resources and means to ensure their livelihood”¹⁶⁵.

The question here is that, acknowledging that the States have to apply these obligations to the regulation of both systems, commercial and traditional or informal seed system, the reality is that the international legal framework has led “to a commercial seed system on which farmers are increasingly dependent”¹⁶⁶. In consequence, the system has to be “regulated in order to ensure that farmers have access to inputs”¹⁶⁷ in fair conditions to preserve their livelihood and ways of living.

¹⁶¹ Special Rapporteur on the Right to Food, *idem* (see footnote 40)

¹⁶² Special Rapporteur on the Right to Food, *idem*.

¹⁶³ Special Rapporteur on the Right to Food, *idem*

¹⁶⁴ Special Rapporteur on the Right to Food, *idem*

¹⁶⁵ Special Rapporteur on the Right to Food, *idem*

¹⁶⁶ Special Rapporteur on the Right to Food, *idem*

¹⁶⁷ Special Rapporteur on the Right to Food, *idem*

This situation, as we will see further on in this chapter, is not always verified. Obviously, if the seeds system is drifting into a commercial one, it means that, in one way or another, the inputs this system commercializes are being privatized. From my point of view, it is legitimate for farmers and peasants to be worried when they see how international regulations and national legislations are “handing over exclusive rights to corporations to control the seed supply”¹⁶⁸.

I explained in previous chapters the functioning of the main international regulations regarding international patents rights and plant genetic resources, namely the WTO TRIPS Agreement, the UPOV and the ITPGRFA. But how does the implementation of this legal framework affect the realization of the Right to Food? And what are the direct consequences of the application of this legislation to the traditional seeds systems and livelihood of farmers, peasants and other people living in rural areas?

As the former Special Rapporteur on the Right to Food states we have witnessed “in recent years an important strengthening of intellectual property rights at the global level, at the request of developed countries and for the benefit of companies from these countries”¹⁶⁹. This scenario is being achieved, as previously stated, by the spreading and imposition of TRIPS and UPOV to developing countries through the obligation established by the WTO Treaty in Article 27 to protect IPRs over plants according to the TRIPS Agreements, or to establish an effective sui generis system to provide protection to plant varieties if they do not follow the TRIPS dispositions.

If States follow the legal framework proposed by the TRIPS Agreements it would mean that they have to concede 20 years of patent protection for patented seeds. According to the former Special Rapporteur, “the importance of patents in plants has grown”¹⁷⁰, together with the growth of the commercial agriculture system. The transposition of this legal framework to national legislations implies that “farmers cultivating patented seeds do not have any right over the seeds they plant [...] and they frequently are requested to sign agreements not to save, resow or exchange the seeds which they buy from patent-holders”¹⁷¹. When we are talking about poor farmers or peasants having to sign an agreement when they have access to patented seeds, we have to bear in mind two things. Firstly, the level of knowledge of a peasant or small-scale farmer on legislation in comparison with a corporation. And secondly, usually peasants or small-scale farmers have access to this kind of

¹⁶⁸ GRAIN, “UPOV 91 and other seed laws: a basic primer on how companies intend to control and monopolise seeds”, GRAIN (2015), available at <https://www.grain.org/article/entries/5314-upov-91-and-other-seed-laws-a-basic-primer-on-how-companies-intend-to-control-and-monopolise-seeds>

¹⁶⁹ Special Rapporteur on the Right to Food, idem

¹⁷⁰ Special Rapporteur on the Right to Food, idem

¹⁷¹ Special Rapporteur on the Right to Food, idem

seed through public agriculture programmes where the administration offers these inputs to farmers under an accessible price or credit. But not only, the TRIPS Agreements “set market rules that supposedly aim to prohibit discrimination [...] As a result, governments may no longer be able to implement procurement programmes under which state authorities buy seeds from local farmers”¹⁷². It is clear that with this kind of regulation established under the premise of not restricting market competence, the possibility of farmers and peasants to compete with corporations is a chimera. The consequence could be that corporations could absorb the whole seed market in a specific country, affecting the livelihood of farmers and peasants.

As previously said, States belonging to the WTO can choose to adhere to the legal framework offered by the TRIPS Agreements or can decide to establish a sui generis protection system over plant genetic resources. As the Special Rapporteur states, “most countries have been led to adopt UPOV-compliant domestic legislation”¹⁷³ as a sui generis system. And, according to the Special Rapporteur, “a number of developing countries have been pressured to adopt national legislation that is in compliance with the 1991 version of the UPOV Convention as part of trade agreements”¹⁷⁴. This fact reflects the importance of the commercial seed industry and the weak position farmers and peasants have to negotiate legislation to protect their traditional and informal seed system. It could be argued that small local seed producers could also be part of the seed industry, but “the fact is that governments are responding to pressure from big companies and the rules are clearly biased in favour of big companies”, not local seed producers”¹⁷⁵.

The 1991 version of UPOV establishes a minimum duration of the protection of original plant breeders’ rights of 20 years and prohibits a number of actions without the permission of plant breeders (see chapter 4 of this work). What does this mean for farmers? This means that: i) farmers “can legally get that seed if they buy it from a store that has permission to sell it from the company or institute that claims it as a property”¹⁷⁶; ii) farmers cannot “exchange in any manner among peasants, not even as a gift”¹⁷⁷ a privatised seed; iii) farmers and peasants have their “right to keep seed for the next season”¹⁷⁸ restricted or banned. These consequences of the application of the dispositions of the 1991 version of UPOV have been extreme in some countries. For example, in

¹⁷² La Via Campesina and GRAIN, “*Seed laws that criminalise farmers: resistance and fightback*”, La Via Campesina and GRAIN, 2015, available at <https://www.grain.org/article/entries/5142-seed-laws-that-criminalise-farmers-resistance-and-fightback>

¹⁷³ Special Rapporteur on the Right to Food, *idem*

¹⁷⁴ Special Rapporteur on the Right to Food, *idem*

¹⁷⁵ GRAIN, *idem*

¹⁷⁶ GRAIN, *idem*

¹⁷⁷ GRAIN, *idem*

¹⁷⁸ GRAIN, *idem*

Tanzania “if farmers use and exchange so-called protected seeds without the authorisation of the breeder, they face punishment under criminal rather than civil law. This means that on top of paying fines, they may be liable to imprisonment”¹⁷⁹.

But the consequences of the application of the UPOV 1991 legal framework do not stop there. With this legal framework there is a high risk for farmers and peasants of seeing their traditional seeds privatised through two main mechanisms: i) companies and breeding institutes “can take seeds from farmers’ fields, reproduce them, do some selection to homogenize them, and then privatise them as a variety they have discovered”¹⁸⁰; and ii) UPOV 1991 allows “breeders to extend rights over a specific variety to any other varieties that are similar to the one they have privatised”¹⁸¹. As a consequence of these actions, farmers and peasants can find that their traditional seeds have been privatised without their knowledge and consent and that they cannot use them anymore without the consent of the plant breeder. How can this be? This happens because the legislation says that a “seed cannot be privatised if it is “previously known”, “a matter of common knowledge” or has not been “sold by or with the consent of the breeder””¹⁸². So if the company claiming rights over a seed variety “has not previously sold this seed – even if the variety has been circulating in farmers’ market for years – it is still considered new and can be privatised”¹⁸³. With regard to the considerations of “previously known” and “matter of common knowledge”, these expressions do not refer “to what common people or peasants know, but to what is known to the seed industry [...] therefore something that is well known by farmers or peasants, but not acknowledged as existing by industry [...] can be privatised too”¹⁸⁴.

Another side effect of the application of the UPOV 1991 to farmers and peasants is the limits or bans on keeping, exchanging and selling seeds this legislation impose. It is a side effect because the UPOV is usually accompanied by another complementary legislation in countries that adopt the UPOV 1991. These side laws are usually referred to as “marketing and certification laws”¹⁸⁵. According to GRAIN, the consequences of these legislations could be: i) to force peasants and farmers “to keep seeds packaged and labelled, even their own seeds, and ban the marketing, exchange and transporting of unlabelled seeds”¹⁸⁶, what in practice could lead to, if the laws are strictly applied, punish the person who walks with a handful of seeds in their pocket; ii) to “ban the

¹⁷⁹ La Via Campesina and GRAIN, *idem*

¹⁸⁰ GRAIN, *idem*

¹⁸¹ GRAIN, *idem*

¹⁸² GRAIN, *idem*

¹⁸³ GRAIN, *idem*

¹⁸⁴ GRAIN, *idem*

¹⁸⁵ GRAIN, *idem*

¹⁸⁶ GRAIN, *idem*

marketing of seeds that are not certified or deemed homogeneous enough, which is a way of banning farmers' or peasants' seeds as they often do not meet such requirements"¹⁸⁷; iii) to "ban the marketing, gift or exchange of varieties that are not registered"¹⁸⁸, and as explained before, varieties can be registered only after fulfilling a set of requirements not usually fulfilled by traditional farmers' and peasants' seeds; iv) to "ban the exchange of seeds between farmers and/or peasants, even if they exchange their own seeds"¹⁸⁹, with the justification that "exchanging seeds is a way of selling, and therefore falls within the scope of marketing and seed privatization laws"¹⁹⁰.

From my point of view it is important to keep in mind that this legislation, especially the UPOV which a lot of countries have adopted, has been made to promote a specific seed system all around the globe, where seeds are been turned into a private commodity. In order to reach this objective the UPOV 1991 requires states to provide for effective legal remedies for the enforcement of breeders' rights (see chapter 4). In this way, the UPOV 1991 legal package also affects civil and penal laws in countries that adopt this legislation to protect only one seed system, putting pressure on alternative and traditional seeds systems and trying to condemn them to disappear. Despite the fact that legislation can change from country to country, GRAIN has gathered some usual cases regarding the fines and jail terms over seed saving and exchange by farmers and peasants that are interesting to see in order to understand how the privatisation laws operate to achieve their goals: i) "fines can be imposed for [...] reproducing a privatized seed and keeping it for the next season, for keeping your own seed unlabelled or unpackaged [...] (and) in a growing number of countries the punishment includes jail"¹⁹¹; ii) if a farmer "uses privatised seeds without the permission of the owner of that variety [...] their crops can be seized and destroyed, as well as the harvest and the products obtained from their harvest"¹⁹²; iii) also "tools and machinery used to managed the crops or the seeds can be seized as well"¹⁹³. These are only some of the real effects of the application of this regulation¹⁹⁴.

All these trends have to be read also in the context of the 2008-09 food crises suffered in the world, which confronted "Governments and the international community with important choices

¹⁸⁷ GRAIN, *idem*

¹⁸⁸ GRAIN, *idem*

¹⁸⁹ GRAIN, *idem*

¹⁹⁰ GRAIN, *idem*

¹⁹¹ GRAIN, *idem*

¹⁹² GRAIN, *idem*

¹⁹³ GRAIN, *idem*

¹⁹⁴ These effects of side laws to UPOV 1991 are extremely well documented by GRAIN in its report "UPOV 91 and other seed laws: a basic primer on how companies intend to control and monopolise seeds" with the recompilation of laws from different countries where this legislation has been applied. I strongly recommend reading this report carefully because due to its extension it is not possible to include more of it in this work.

concerning the direction of future agricultural development”¹⁹⁵. According to the former Special Rapporteur on the Right to Food, at least 1.5 billion individuals depend on small-scale farming for their livelihoods and ensuring that these farmers have access to improved varieties of seeds they have been a “central component of a model of agricultural development sometimes called ‘green revolution’”¹⁹⁶. One of the usual ways to support these farmers is the “provision of inputs, particularly seeds and fertilizers [...] since one of the reasons why small-scale farmers are poor and cannot move beyond subsistence farming is because of the high prices of the inputs and the lack of access to credit”¹⁹⁷. But these kinds of initiatives, which initially could seem as totally positive, have a dark side, as the former Special Rapporteur on the Right to Food points out in his report. The use of “commercial seeds varieties may improve yields in the short term, their higher performance often has been a response to inputs (fertilizers) and to water availability”¹⁹⁸. Obviously this can be a problem in areas where access to water is difficult due to the lack of infrastructures, but the former Special Rapporteur also points to another problem farmers and peasants can face when they use this kind of seeds. Those who acquire and use these inputs “with their own means, often encouraged to do so during an initial period of subsidized inputs, may find themselves trapped in the vicious circle of debts”¹⁹⁹. So it is not only that the commercial seed system is trying to impose a certain model of agriculture by laws, it is also that this model supported by countries to introduce commercial seeds can also ruin and bankrupt small-scale farmers when they accept the game. And if they try to reuse the commercial seeds acquired in this way, they can also suffer the consequences provided by the laws introduced to comply with the UPOV or TRIPS or other trade agreements, putting small-scale farmers and peasants in an extremely vulnerable position. According to Olivier de Schutter, the former Special Rapporteur on the Right to Food, States have two challenges: “they must ensure that the commercial seed systems [...] work for the benefit of the farmers most in need to have their income raised [...] and they must support farmers’ seed systems”²⁰⁰. This is because, and always following the excellent report drawn up by the former Special Rapporteur on the Right to Food in 2009, “the oligopolistic structure of the inputs providers’ market may result in poor farmers being deprived of access to seeds [...] essential for their livelihoods and it could raise the price of food, thus making food less affordable for the poorest”²⁰¹.

The former Special Rapporteur on the Right to Food brought into discussion another important aspect of the

¹⁹⁵ Special Rapporteur on the Right to Food, *idem*

¹⁹⁶ Special Rapporteur on the Right to Food, *idem*

¹⁹⁷ Special Rapporteur on the Right to Food, *idem*

¹⁹⁸ Special Rapporteur on the Right to Food, *idem*

¹⁹⁹ Special Rapporteur on the Right to Food, *idem*

²⁰⁰ Special Rapporteur on the Right to Food, *idem*

²⁰¹ Special Rapporteur on the Right to Food, *idem*

imposition of commercial varieties - the impact on crop genetic diversity and the maintenance of agrobiodiversity. We have to bear in mind that the seeds industry has recently been compared with the development of agriculture by mankind. This agriculture developed due to “the coexistence of an array of plants, presenting different traits making them resistant to specific diseases, to drought, or to variations of temperature”²⁰². It is obvious that this agricultural development is the main achievement of farmers and peasants that during millenniums selected the most appropriated seed for their environments. But, as the former Special Rapporteur on the Right to Food clearly states, “this crop genetic diversity is now under severe threat”²⁰³ because all efforts have been put into the development of a “limited number of standard high-yielding varieties”²⁰⁴. This is a serious warning because food security in the world depends on the resistance of crop varieties to climate change and the maintenance of biodiversity, but “the expansion of intellectual property rights can constitute an obstacle to the adoption of policies that encourage the maintenance of agrobiodiversity and reliance on farmers’ varieties [...] (because) they reward and encourage standardization and homogeneity”²⁰⁵.

In short, IPRs are created and promoted by enriched countries and imposed on impoverished countries with the justification that the protection of plants breeders encourage innovation and create economic development. But, as previously explained, the consequences on small-scale and peasants can be draconian, creating a situation where these small producers have no choice before the powers that advocate and develop legislation to preserve plants breeders’ rights. This legislation is no more than another tool to impose a certain world economic system that protects oligopolistic corporations that control the seed systems and that try to make the commercial seed system with privatized seed resources the only system possible. As I explained, this strategy of encouraging the TRIPS Agreement plant breeders’ protection system or the UPOV 1991 as the sui generis plant breeders’ protection system is often accompanied with side legislation that criminalises traditional seed systems. The effects of these actions is not only an economic one, with the impoverishment of small-scale farmers and peasants, but it could also be a huge breach of the right to food when States fail to accomplish their obligations (respect, protect and fulfil) with regard to the Right to Food. This is the way so many TAMs are trying to advocate at an international level for the recognition and protection of the Rights of Peasants and other People Working in Rural areas.

7. Are the claims to protect peasants’ rights in general and specifically the right to seeds being incorporated in the international human rights agenda?

The last chapter of the present work will be dedicated to the analysis of the influence of TAMs,

²⁰² Special Rapporteur on the Right to Food, idem

²⁰³ Special Rapporteur on the Right to Food, idem

²⁰⁴ Special Rapporteur on the Right to Food, idem

²⁰⁵ Special Rapporteur on the Right to Food, idem

mainly LVC, at an international level in the evolution of human rights norms. After the analysis of whether the impact of the advocacy strategies to adopt a broader human rights framework that recognises and protects peasants' rights is being effective or not, the chapter will present a proposal on the need to create a specific right to seeds of peasants and other people working in rural areas to consolidate their rights over plant genetic resources in contraposition with the IPRs framework.

A lot of groups try to influence or to translate their claims and grievances into human rights claims, but not all of them succeed. It can be for different reasons, from a weak popular representation to the non-recognition of this claim by the key actors and institutions on human rights movements, society or community. According to Noah Shawki, there are four stages that a claim has to go through in order to develop into a new human right, and two key actors, claimants and gatekeepers, inside these four stages, from NGOs to UN institutions. Let's first take a look at the four stages of classification proposed by Shawki. The first stage would be linked with the capacity of groups with grievances to "frame their claims as human rights"²⁰⁶. As Shawki states, to frame the claims as human rights is a political decision that not all movements, as in our case TAMs, decide to take or are in a position to take. In the case of La Via Campesina and its campaign about the Rights of Peasants and other People Working in Rural Areas, the decision is clear. The goal is to see an international binding instrument adopted by the States where these rights would be recognised. The second stage would be achieved when "gatekeepers accept and recognize new rights claims (and consequently) the rights can be placed on the international agenda"²⁰⁷. Gatekeepers shall be understood as "entities at the core of the human rights movement, whose support for a claim can boost it substantially"²⁰⁸. As can be seen, the support of gatekeepers is important and not all grievances can have their support. The third stage happens when "states and international bodies accept the new human rights and new conventions are adopted"²⁰⁹. As explained in chapter 3, the recognition of the Rights of Peasants and other People Working in rural areas would be in this stage due to the fact that the discussion on the formulation of the Declaration is being discussed at this moment at the UN Human Rights Council. The fourth and last stage would be the implementation of new rights at a domestic level. Examples of this path, as Shawki states, would be the adoption of the Convention of the Rights of the Child or the Declaration on the Rights of Indigenous Peoples. These two cases are examples of the recognition of rights of collectives with unique circumstances and needs to be protected, as is the case of the claim for the rights of peasants and other people

²⁰⁶ Shawki, N "New Rights Advocacy and the Human Rights of Peasants: La Via Campesina and the Evolution of New Human Rights Norms" *Journal of Human Rights Practice*, Vol. 0, Number 0, June 2014, pp. 1-21

²⁰⁷ Shawki, N, idem

²⁰⁸ Shawki, N, idem

²⁰⁹ Shawki, N, idem

working in rural areas.

The rising in the international agenda of the concepts of food sovereignty and rights of peasants and other people working in rural areas, and consequently the claims for the peasants' right to seeds and IPRs by the TAMs since the 1990s, is a paradigmatic case of the expansion of the agendas of human rights. But, why this trend? As previously said in this work, this trend is an answer to the negative effects of globalization and neoliberal policies over small-scale farmers and peasants. Or, in other words, to “the negative impacts on securing the right to adequate food”²¹⁰ of the policies promoted by the WTO and the Breton Woods institutions. As a respond to the changes promoted by those institution, La Via Campesina and other TAMs started advocacy campaigns for new rights “to challenge the prevailing development models that are grounded in neoliberalism”²¹¹. And it is important to bear in mind that “this challenge is most significant because it is not simply a critique, but an alternative”²¹². Maybe here is “secret” of the support these campaigns have gained all over the world in being a well-structured alternative to the neoliberal development model.

As explained in chapter 3, the advocacy campaigns for the Rights of Peasants and other People Working in Rural Areas can be understood as a success to create new human rights norms, at least until now. I say this because in the seven years since the adoption of the La Via Campesina Declaration in Yakarta in 2009 until now, this issue has arrived at the table of debate and discussion of the United Nations Human Rights Council, where a draft declaration is being discussed with the goal of being presented to the UNGA for its adoption in the near future. And of course the question of seeds is on the table of discussion. In the explanation of the rise of the Rights of Peasants and other People living in rural areas in this work it was possible to see the different supports this claim had. The claim had the support of several international NGOs, like the FIAN, and the support of the UNHRC Advisory Committee with the reports drawn up by Mr. Jean Ziegler. These reports hhave been analysed in this work. But let's take a closer look at the process and roles of the claimants and gatekeepers during this process, as well as the hot points and implications of using a human rights frame to see these claims recognized. The analysis of these hot points will be fundamental to value the grade of success of La Via Campesina in its effort to see the Rights of Peasants recognized and protected.

In terms of actors, it is clear that the main claimant in this process has been La Via Campesina as

²¹⁰ Shawki, N, idem

²¹¹ Shawki, N, idem

²¹² Shawki, N, idem

“one of the biggest organizations representing poor peasants and smallholders and other people who work in rural areas, but it is not the only representative of this constituency”²¹³. Because it is not the only representative, LVC has strived, together with other actors, to “build alliances involving all constituencies”²¹⁴. As explained in chapter 5, the construction of alliances is one of the main strategies of the TAMs to achieve their common goals. LVC has also built alliances with other organizations that are not representative of peasants and other people working in rural areas, as is the example of International Amnesty or Human Rights Watch that “are not directly involved in the process of defining the human rights of peasants, but their work to promote the protection and implementation of recognized rights has included advocacy on behalf of peasants”²¹⁵. Under the point of view of hatching alliances to achieve a specific goal, LVC have had a successful strategy in this sense.

Regarding the involvement of gatekeepers, in the “UN human rights’ institutions there appears to be a significant amount of support for food sovereignty”²¹⁶. As explained in chapter 3, the support of the UN HRC Advisory Committee supported LVC claims through the inclusion of its analysis of the situation of peasants in the world and presented the LVC Declaration as one of the possible solutions to improve this situation. The support of Jean Ziegler and Olivier de Schutter with their reports was an important push to the claims of LVC.

The last actors to be considered in this effort to see the Rights of Peasants recognised are the States. States can be allies to the TAMs’ claims or barriers to the recognition of this set of rights. In our case, States are divided. As Shawki states, “many of the states that support LVC’s efforts [...] are developing countries, while Canada, the European Union and the United States often oppose”²¹⁷ this campaign. In this aspect the efforts to see the rights of peasants over seed recognised do not have the clear support of all states. By chance, these countries that do not support the claims to protect the right of peasants over seeds are the same countries that promote the expansion of IPRs through the adoption of the WTO TRIPS Agreements or the UPOV 1991 framework.

As Shawki explains there was a favourable international context for the claims made by LVC in the early years of the 2000s. Food sovereignty was framed as an approach that could offer solutions to climate change or hunger. And, as Shawki states, “these claims [...] also received international

²¹³ Shawki, N, idem

²¹⁴ Shawki, N, idem

²¹⁵ Shawki, N, idem

²¹⁶ Shawki, N, idem

²¹⁷ Shawki, N, idem

attention because they coincided with critical events”²¹⁸, such as the 2008 global food crisis. All these circumstances favoured the rise of the claims for the rights of peasants. But it has to be said that the circumstances that accompanied the campaign of LVC were factors or consequences that this and other TAMs were announced years before as the effect of neoliberal policies.

As mentioned in chapter 3, the LVC Declaration and the draft Declaration that is being discussed at the UNHRC consider in their wording some rights that are already recognized by other international treaties, and recognize other new rights of peasants and other people working in rural areas that are completely new for the international system of human rights. And this is where the success of LVC in its attempt to protect the rights of peasants is going to be measured. As Shawki states, “although in some ways the international context is favourable to the agenda on peasants’ rights, in other ways it is not”²¹⁹. LVC had success putting the concept of food sovereignty on the table and on the agenda, and has also been successful simply with the achievement of the negotiations at the level of the UN HRC of a declaration of peasants’ rights. But the rights anchored to the food sovereignty paradigm “are not consistent with the dominant economic, agricultural and development models and policy framework”²²⁰. It is important to bear in mind that TAMs “has challenged the human rights paradigm and its emphasis on individuality (and) economic liberty”²²¹ with the proposal of collective rights, such as the right to seeds, and the right to reject “certain interventions, such as genetically engineered seeds”²²². And this also challenges the dominant model of agricultural development. It is in these points where the success of TAMs to see their claims recognised still has to be evaluated. This evaluation is not going to be possible until the process to agree on a Declaration on the Rights of Peasants and other People Working in Rural Areas ends with the adoption or not of this declaration by the UNGA.

But as previously mentioned, the creation of new human rights needs the support of key gatekeepers. Therefore, the support of these gatekeepers can be understood as an indicator of success of the TAMs advocacy campaigns. In relation to seeds, last year TAMs received a strong back up of scholars that support the inclusion of a right to seeds in the draft declaration on the rights of peasants that is being discussed at the UNHRC. In May 2016, the third session of the UNHRC working group mandated to negotiate the Declaration on the Rights of Peasants and other People Working in Rural Areas was held. In this third session, a number of recommendations of States,

²¹⁸ Shawki, N, idem

²¹⁹ Shawki, N, idem

²²⁰ Shawki, N, idem

²²¹ Shawki, N, idem

²²² Shawki, N, idem

representative of peasants, NGOs and panellists made in the second session regarding the need of recognise the right to seeds were resumed. The mere fact that these actors “stressed that recognition of the right to seeds in the UN Declaration was crucial for peasants and humankind”²²³ is a clear indicator that the advocacy strategies over this issue are having certain positive effects and are gaining support of key players.

These players are supporting the thesis that the right to seeds should be introduced and protected in the future declaration, but what are the proposals these players are putting on the table to support the TAMs claims? In other words, how are these players translating the TAMs claims regarding this issue? This question is important because, as Elisabeth Mpfu, on behalf of La Via Campesina, stated in her intervention before the Working Group for the elaboration of the Declaration on the Rights of Peasants and other People Working in Rural Areas, in its Third session held on 17 May 2016, Article 22 of the draft declaration - the one that deals with the right to seeds - “needs further additions to recognise unique peasants-food-resource relations and clearly include State obligations”²²⁴. Sofia Monsalve expressed, on behalf of FIAN international, the same concern in her intervention in the same forum when she said that indigenous and non-indigenous people have to have a tool “to defend and claim protection for their rights to seeds and biological diversity”²²⁵.

In response to these demands, certain key players have proposed potential core elements of peasants’ right to seeds. As Goley states, international law is fragmented regarding the issue of peasants’ right to seeds, and “the elaboration of the UN Declaration represents a unique opportunity to recognise the rights of farmers, local communities, indigenous peoples, fisher people, pastoralists, nomads, hunters, gatherers, landless people, rural women and rural workers in one single instrument”²²⁶.

As Goley explains, there have been several opinions expressed by States during the negotiation process of the Declaration on the Rights of Peasants and other People Working in Rural Areas. The issue of the right to seeds has been present since the first meeting of the working group mandated to

²²³ Golay, C, idem

²²⁴ La Via Campesina, “*UN Declaration on the Rights of Peasants and other People Working Rural Areas*”, presented on 17 May 2016 before the UN HRC Working Group mandated to negotiate a Declaration on the Rights of Peasants and other People Working in Rural Areas, available at <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/3rdSession.aspx>, consulted on 25 June 2016

²²⁵ Monsalve Suarez, S, on behalf of FIAN International “*Third session of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas*”. presented on 17 May 2016 before the UN HRC Working Group mandated to negotiate a Declaration on the Rights of Peasants and other People Working in Rural Areas, available at <http://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/3rdSession.aspx>, consulted on 25 June 2016

²²⁶ Goley, C, idem

negotiate the declaration, and some delegations “strongly supported peasants’ right to grow and develop their own varieties of seeds and to exchange, to give or to sell farm-saved seeds of peasants”²²⁷. The support of these delegations has to be understood as a support gained by TAMs only after long advocacy campaigns.

These trends in the negotiations of the draft declaration have been supported by state delegations, panellists and NGOs, as Goley remarks in his article, in the first, second and third sessions of the working group, making theirs the claims of the TAMs on peasants’ rights to seeds. In order to know if the claims made by LVC are being incorporated in the Draft Declaration that is being negotiated at the UNHR, it is important to compare the LVC Declaration of Rights of Peasants – Women and Men (Jakarta 2009) and the wording of Article 22 in the last draft presented to the UNHRC working group in Geneva in 2015.

<p>Declaration on the Rights of Peasants – Women and Men, LVC (Jakarta 2009). Art. V – Right to seeds and traditional agricultural knowledge and practice²²⁸</p>	<p>Declaration on the Rights of Peasants and other People Working in Rural Areas, UNHRC (Geneva 2015). Art. 22 – Right to Seeds²²⁹</p>
<ol style="list-style-type: none"> 1. Peasants (women and men) have the right to determine the varieties of seeds they want to plant. 2. Peasants (women and men) have the right to reject varieties of the plant which they consider to be dangerous economically, ecologically, and culturally. 3. Peasants (women and men) have the right to reject the industrial model of agriculture. 4. Peasants (women and men) have the right to conserve and develop their local knowledge in agriculture, fishing, livestock rearing. 5. Peasants (women and men) have the right to use the agricultural, fishing, livestock-rearing facilities. 	<ol style="list-style-type: none"> 2. Peasants and other people working in rural areas have the right to conserve, use, maintain and develop their own seeds, crops and genetic resources, or those of their choice. They also have the right to decide which crops to cultivate. 3. Peasants and other people working in rural areas have the right to save, store, transport, exchange, donate sell, use and re-use farm-saved seeds, crops and propagating material. States should take appropriate measures to respect, protect and fulfil these rights. 4. States should take measures to respect, protect and promote traditional knowledge relevant to plant genetic resources. 5. States should respect, protect and promote

²²⁷ Goley, C, idem

²²⁸ LVC, idem

²²⁹ UNHRC, idem

<p>6. Peasants (women and men) have the right to choose their own products, varieties, amount, quality, and the ways of farming, fishing, livestock rearing, individually or collectively</p> <p>8. Peasants (women and men) have the right to grow and develop their peasants varieties and to exchange, to give or to sell their seeds</p>	<p>peasant seed systems, and recognize the validity of peasants' seed certification systems.</p> <p>6. States should take steps to ensure that planting material of sufficient quality and quantity are available to peasants that need them at the right time for planting, and for an affordable price.</p> <p>7. States should ensure that agricultural research and development is directed towards the needs of peasants and other people working in rural areas. To this end, in accordance with Article 12.3 above, and in accordance with peasants' rights to participate in making decisions on matters related to the conservation and sustainable use of plant genetic resources, States should ensure that peasants' experience and needs are effectively reflected when priorities for agricultural research and development are defined.</p>
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As it is possible to see, some claims made by LVC in its Declaration have been incorporated in the draft declaration, but not all of them. For example, as Goley remarks, it is important to introduce in the draft declaration the right to “maintain, control, protect, and develop these seeds (farm-saved seeds of peasants’ varieties) and property over these seeds”²³⁰, and this is a crucial issue. Another crucial issue that is not recognised in the draft declaration is the “right to reject varieties” that the LVC Declaration proposed.

From my point of view, the current situation where TAMs, and specially LVC, are able to put on the international agenda peasants’ rights in general and specifically the right to seeds can be considered a success. The process is taking quite a long time since these TAMs started to frame their claims, build alliances, and implement advocacy campaigns in the 1990s. More than 20 years have passed but finally they have arrived at certain forums that can make a profound change to the international human rights system. But let’s be clear, the current point - the negotiation of a draft declaration at the UNHRC - can in itself be consider a success, but the path is still long. The declaration has not been adopted yet, and it is not sure that this is going to happen. If the declaration is adopted, it will

²³⁰ Goley, C, idem

be important to see how the TAMs claims are addressed and if these claims are effectively incorporated into the declaration. And after this, the declaration would have to be adopted by the UNGA and a process to elaborate a covenant started. So the current situation is good, but nothing guarantees that peasants' rights are going to be recognized by the international community and incorporated in the international human rights system.

Conclusions

The conflict for the control over seeds and other inputs for agricultural development is a reality nowadays. Several actors are playing the game trying to see their respective interests favoured by the international legal framework, and each of them uses the ways and tools they deem more appropriate for their goals. But, as previously explained, the conflict for the control of seeds is not circumscribed only to seeds. The main conflict is for the prevalence of different models of agricultural development, one oriented at a neoliberal understanding of agricultural development, and the other oriented at a food sovereignty-based model.

In this context, the Right to Adequate Food should be the main framework to base the development of the agricultural models by the countries. CESCR General Comment No. 12 establishes the minimal content of the Right to Food and the obligations the States have in order to ensure the enjoyment of this right by their citizens. As we have seen, the Right to Food affects States when they adopt seeds policies at a national level. States' obligations to respect, protect and promote, contemplated in the framework of the Right to Food, have implications at the time of setting up a seed system in the country. States should ensure that the traditional seeds systems, those farmers and peasants have been using for centuries, are supported and protected by the States' policies. Unfortunately, States do not always implement these kinds of policies oriented at the protection of impoverished people. States are oriented, pushed or strongly recommended to implement neoliberal policies that open their national markets to the privatisation of seeds by transnational corporations.

Neoliberal policies that favour the economic activity of transnational corporations is being translated into national legislations through two powerful means, as we saw in chapter 4: the WTO TRIPS Agreement and the UPOV. These two instruments are the main legal base for the privatisation of seeds through their plant breeders' protection systems. As explained in chapter 4, States parties to the WTO have to adopt the plant breeders' protection system established by the TRIPS Agreement or to adopt a sui generis protection system, which is usually the framework offered by the UPOV. The analysis of these two protection systems shows that their application by States prejudice the traditional seeds system used by peasants and small-scale farmers, putting them

in a weak position and confronting legislations that favour the privatisation of plant genetic resources. The result of the adoption and implementation of these protection systems is a big risk for the conservation of the traditional livelihoods of peasants and small-scale farmers all over the world. And it is important to keep in mind that these two protection systems are strongly supported by enriched countries, which introduce the adoption of these systems by impoverished countries as a conditionality to conclude trade agreements.

In reaction to the imposition of neoliberal policies regarding plant genetic resources and seeds, a recent phenomenon has arisen - the Transnational Agrarian Movements as a reaction of agrarian civil society to protect the rights of peasants and other people working in rural areas. TAMs are advocating for the recognition of peasants' rights to freely choose their way of living (food sovereignty). The fight of these TAMs has been relatively successful. They have pushed, in collaboration with International NGOs and some scholars, for the adoption of an international declaration in the framework of the UN that recognises this set of rights. The hope is to have an international binding instrument that protects the right of peasants over several issues in agricultural development, the right to seeds among them, that could serve as a counterweight to the neoliberal institutions and treaties in this area. The results can be considered as positive, but until this process ends the abuses made by transnational companies in relation to traditional seeds and plant genetic resources continues, affecting the livelihoods of peasants and small-scale farmers.

It will be interesting to see the evolution of human rights norms that are being created under the TAMs' initiative and the active participation of the representative of the global civil society. This is a new path in the international human rights system and the outcomes are promising. Maybe we will see in some years time a covenant on the rights of peasants that protects the right to seeds of peasants adopted and ratified by enough countries to come into force. Let's see if this happens and if the traditional powers of the human rights systems allow it.

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