



# Human Rights Rituals: Masking Neoliberalism and Inequality, and Marginalizing Alternative World Views

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## Abstract

The role played by ritual in the field of human rights has not been widely remarked or analysed. Here I argue that the triumph of human rights as the predominant language for making social justice claims in the international sphere is partly attributable to the power of certain linguistic and embodied rituals. I suggest that these rituals veil the material factors at stake when human rights are invoked internationally, obscuring the relationship between neoliberalism, material inequality, and human rights. I compare the vision of justice propounded through the rituals of human rights with that proposed by the peasants' movement, *Vía Campesina*. *Vía Campesina's* vision is grounded in material realities and confronts neoliberal policies head on. I consider how it unsettles the rituals of human rights, and whether it can be preserved in the form of a UN Declaration on the rights of peasants.

**Keywords:** Human rights, inequality, neoliberalism, ritual, *Vía Campesina*

## Résumé

Le rôle des rites dans le domaine des droits de la personne a rarement été relevé ou analysé. Dans cet article, nous affirmons que le triomphe des droits de la personne comme langage prédominant des revendications de justice sociale dans l'arène internationale se doit, en partie, au pouvoir de certains rites linguistiques et corporels. Nous postulons que ces rites voilent les facteurs matériels en jeu lorsque les droits de la personne sont invoqués dans l'arène internationale, masquant le lien entre néolibéralisme, inégalité matérielle et droits de la personne. Nous comparons la vision de la justice présentée par l'entremise des rites de droits de la personne et celle proposée par le mouvement paysan, *Vía Campesina*. La vision de *Vía Campesina* s'ancre dans les réalités matérielles et affronte les politiques néolibérales de front. Nous examinons comment elle perturbe les rites des droits de la

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personne, et si elle pourrait être préservée sous forme d'une déclaration des Nations Unies sur les droits des paysans.

**Mots clés :** Droits de la personne, inégalité, néolibéralisme, rituel, Vía Campesina

## Introduction

Consider two contrasting visions of a just and peaceful world. The first is set out in the international bill of rights and takes realization of the human rights specified there as a precondition for its achievement:

[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...<sup>1</sup>

[T]he ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his [human] rights...<sup>2</sup>

The second vision was articulated in 2013 by the international peasants' movement, Vía Campesina, and does not mention human rights:

We must never be afraid to imagine a much better world, one without the WTO, one that is based on Economic Justice, that has Food Sovereignty at its heart and...that relates to Mother Nature in a respectful and sustainable manner.<sup>3</sup>

In the international sphere, the first vision dominates. States globally have committed to protecting human rights, and claims of social harm or injustice are couched in the language of human rights in order to attract attention. The triumph of the human rights vision has been widely noted.<sup>4</sup> The language and practice of international human rights has also been closely critiqued, including on the basis that human rights depoliticize matters that are in fact political and contested, and conceal the material interests at stake.<sup>5</sup> Here I argue that the success of human

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<sup>1</sup> Preamble, Universal Declaration of Human Rights (UDHR); *International Covenant on Civil and Political Rights* (ICCPR) and *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

<sup>2</sup> Preamble, ICESCR: instead of "human," ICESCR says "economic, social and cultural rights, as well as...civil and political rights." The ICCPR uses the same phrasing but in reverse order. The ICCPR also inserts the phrase "civil and political freedom and" before "freedom from fear and want."

<sup>3</sup> Vía Campesina, "La Vía Campesina demands an end to the WTO," Letter from Vía Campesina to the members of "Our World is Not For Sale," 6 December 2013. Available at <http://www.viacampesina.org/en/index.php/actions-and-events-mainmenu-26/10-years-of-wto-is-enough-mainmenu-35/1538-la-via-campesina-demands-an-end-to-the-wto-peasants-believe-that-the-wto-cannot-be-reformed-or-turned-around>, accessed 14 March 2017.

<sup>4</sup> See, for example, Joseph Slaughter, *Human Rights, Inc.* (New York: Fordham University Press, 2007), 2, and Sally Engle Merry, *Human Rights and Gender Violence* (Chicago and London: The University of Chicago Press, 2006), 2, 4. Karen Engle notes that despite initial wariness of international human rights, in the 1980s and 1990s many indigenous campaigners began expressing their claims in this language ("On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights," *The European Journal of International Law* 22, no. 1 (2011) 141–163, 142).

<sup>5</sup> Susan Marks, "Human Rights and Root Causes," *The Modern Law Review* 74, no. 1 (2011) 57–78; Slavoj Žižek, "Human Rights and its Discontents," Lecture at Bard College, 15 November 1999, available at <http://www.lacan.com/zizek-human.htm>, accessed 14 March 2017.

rights as the international language of social justice, and the way they operate to depoliticize what are inherently contested matters, depends in part on ritual. Although the bureaucratic, routine and ritualized nature of the UN human rights system has attracted considerable scholarly attention, focus has only recently turned to the work done by ritual in the mechanisms and texts of human rights.<sup>6</sup>

I begin by discussing the prevalence of ritual in the international human rights system. I show that rituals help naturalize the idea that human rights represent a universal and politically neutral moral consensus and are indeed a precondition of “freedom, justice and peace in the world.” By veiling the material factors at stake when rights are invoked, rituals also disguise how international human rights facilitate a neoliberal global order of vast economic inequalities. I consider how international human rights relate to neoliberalism by exploring the challenge that economic and social rights in particular appear to present to it. I then turn to the alternative vision of social justice offered by Via Campesina. While this vision does not reference human rights, Via Campesina has been participating in the rituals of international human rights through a campaign for a UN Declaration on the rights of peasants. My analysis suggests that if this campaign is successful, there is a danger it will entrench the human rights vision of justice and sideline Via Campesina’s alternative vision, which targets more directly some of the neoliberal drivers of injustice.

## The Rituals of International Human Rights

Rituals are distinguished by repetition: internal elements of a ritual often recur, and rituals themselves can only be described as such on the basis of repeat performances. They use symbolism to communicate at the level of affect, and while they often allow space for spontaneous effervescence or improvisation, rituals also contain and limit such irruptions.<sup>7</sup> Although commonly associated with religious settings, rituals may be secular.<sup>8</sup> Collective rituals constitute and reconstitute social norms and values and, in doing so, divert attention from alternative normative frameworks or “ways of seeing,” depriving these alternatives of legitimacy.<sup>9</sup> While they may instigate new social relations as well as strengthen existing social ties,<sup>10</sup>

<sup>6</sup> Two recent works were the outcome of a project developed by Hilary Charlesworth: *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (ed. Hilary Charlesworth and Emma Larking, Cambridge, UK: Cambridge University Press, 2014) and a forthcoming edition of the journal *Humanity* on the rituals of human rights. More generally, interesting work has been done on the role of ritual in transitional justice mechanisms and truth commissions. See Danielle Celemajer, “Mere Ritual? Displacing the Myth of Sincerity in Transitional Justice Rituals,” *International Journal of Transitional Justice* 7 (2013) 286–305 and Anne Orford, “Ritual, Mediation and the International Laws of the South,” *Griffith Law Review* 16, no. 2 (2007) 353–374.

<sup>7</sup> See Moore and Myerhoff’s list of the formal properties of collective ritual (Sally F. Moore and Barbara G. Myerhoff, “Introduction: Secular Ritual: Forms and Meanings,” in *Secular Ritual*, ed. Sally F. Moore and Barbara G. Myerhoff (Assen/Amsterdam, The Netherlands: Van Gorcum, 1977) 3–24, 7–8). See also Steven Lukes, “Political Ritual and Social Integration,” *Sociology* 9 (1975) 289–308, 290–91 and Oscar G. Chase, *Law, Culture, and Ritual: Disputing System in Cross-Cultural Context* (New York and London: New York University Press, 2005) 114–116.

<sup>8</sup> Moore and Myerhoff, *Secular Ritual*.

<sup>9</sup> Lukes, “Political Ritual and Social Integration,” 301.

<sup>10</sup> Hilary Charlesworth and Emma Larking, “Introduction: The Regulatory Power of the UPR,” in *Human Rights and the Universal Periodic Review*, 1–21, 9; Moore and Myerhoff, “Introduction: Secular Ritual,” 5; Lukes, “Political Ritual,” 301–302.

it is part of the nature of rituals to conceal the political and contested quality of communal bonds. Struggles for power and meaning, and the material interests behind them, are hidden by a performance of sociality. Participants themselves are enrolled through the power of symbolism and sensory effects and by the performative demands placed on them.<sup>11</sup>

Through rituals employing textual reiteration, symbolic language, and ceremonial performance, the idea that justice in the world can only be achieved via human rights, and that these rights represent a politically neutral moral consensus, is established and entrenched. The belief that there exists a global community already committed to rights realization is communicated and naturalized, even in the face of pervasive rights violations. This argument may be greeted with scepticism by scholars engaged in critiquing human rights. They may point out, quite correctly, that the universality of human rights has long been debated, and that the Western genealogy of the rights now enshrined in international law is widely acknowledged. But while this historical literacy is not confined to academic circles, it does little to impede the triumph of human rights. The language and international recognition of human rights has shown a tremendous capacity to inspire and enrol people even in the context of widespread criticism.

The fact that this capacity is indebted to ritual becomes apparent if we notice how the core human rights instruments set out the basic tenets that comprise the doctrine of human rights, authorize what is said and done in their name, and invoke a community of believers—the “human family” of the international bill of rights. The preambular passages all rehearse similarly lofty phrases, reminding us that “contempt for human rights” “outrage[s] the conscience of mankind,” that human rights are “the highest aspiration of the common people,” and that “the peoples of the United Nations” “reaffirm...their faith in fundamental human rights.”<sup>12</sup> Like music, these phrases strike a chord and appeal to emotional sensibilities; but they also function to short-circuit critique.

Universality is written into all of the core rights instruments and treaties, beginning with the *Universal Declaration of Human Rights* (UDHR). UN Secretary-General Ban Ki Moon claims that the UDHR “has become a yardstick by which we measure respect for what we know, or should know, as right and wrong.”<sup>13</sup> This assertion of a moral consensus is supported by the fact that the UN General Assembly proclaimed the Declaration “a common standard of achievement for all peoples and all nations.”<sup>14</sup> According to the Vienna Declaration, “[t]he universal nature of [human rights and fundamental freedoms] is beyond question.”<sup>15</sup> Like these claims to universality and moral consensus, human dignity, freedom, and

<sup>11</sup> Charlesworth and Larking, “Introduction: The Regulatory Power of the UPR,” 9.

<sup>12</sup> Preamble, *Universal Declaration of Human Rights* (UDHR).

<sup>13</sup> Ban Ki Moon, “Foreword” to the 60<sup>th</sup> Anniversary Edition of the UDHR, 2008.

<sup>14</sup> Preamble, UDHR. See also the Vienna Declaration, repeating that the UDHR “constitutes a common standard of achievement for all peoples and all nations” (preamble).

<sup>15</sup> Art. 1.

equality are repeatedly invoked by the instruments of international human rights.<sup>16</sup> At the same time as international human rights law proclaims and sacralises the dignity of the human person, it affirms the sovereignty of states and the right of peoples to self-determination.<sup>17</sup> It ignores, and thereby conceals, the tensions between these disparate commitments to individuals, states, and peoples. The presupposition of a global moral consensus concerning human rights is presented as consistent with political pluralism and divergent national and sub-national policy orientations. The fact that state sovereignty and the self-determination of peoples may be obstacles in some instances to individual rights protection and to international co-operation is not acknowledged.<sup>18</sup> Instead, the peoples of the United Nations are described as having a “common interest” and “common ends,”<sup>19</sup> and co-operation is supported by a form of lawfulness that, being universal, is capable of operating impartially in the interests of all. The UN Charter and the UDHR claim to establish the foundations for an international system based on justice, where justice is equated with respect for international law and recognition of human rights.<sup>20</sup>

Each of these explicit commitments appears in the instruments of international human rights as an expression of social relations and values that are both self-evident and a realization of humanity’s highest aspirations. They are articles of faith that, through reiteration, also affirm and entrench participants’ shared faith in human rights, as well as creating the community of believers that the system claims merely to recognize.<sup>21</sup> The ritual invocation of “mankind,” “the human family,” “the common people,”<sup>22</sup> and “we, the peoples of the united nations”<sup>23</sup> is at

<sup>16</sup> The “dignity and worth of the human person” is recognized in the preambles to the UN Charter, the UDHR, the Vienna Declaration (“recalling” the UN Charter), and the *Convention on the Elimination of all Forms of Discrimination Against Women* (citing the UN Charter). The preambles to the UDHR, ICCPR and ICESCR tell us that all human share “equal and inalienable rights” – and, in the case of ICCPR and ICESCR, that these rights “derive from the inherent dignity of the human person” (see also the preamble to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“CAT”). The statement that “[h]uman rights and fundamental freedoms are the birthright of all human beings” is repeated in the preamble and arts. 4, 6, and 8 of the Vienna Declaration, and the preambles to the UN Charter, UDHR, *International Convention on the Elimination of Racial Discrimination* and CAT.

<sup>17</sup> The UN Charter “reaffirm[s] faith” not only in human rights but also “in the equal rights...of nations large and small” (preamble), and the UN itself is “based on the sovereign equality of all its Members” (art. 2 (1)) and see art. 1 (2) – the purposes of the UN include the development of “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.” ICESCR and ICCPR share the same first article, specifying that “[a]ll peoples have the right of self-determination” (art. 1(1), ICESCR and ICCPR).

<sup>18</sup> For a fascinating historical account of how the drafting of the UDHR was influenced by the desire among some states to ensure that recognition of individual rights would not impinge on state sovereignty, and also to sideline recognition of minority rights, see Mark Mazower, “The Strange Triumph of Human Rights, 1933–1950,” *The Historical Journal*, 47, no. 2 (2004), 379–398.

<sup>19</sup> UN Charter preamble and art. 4 (1)

<sup>20</sup> UN Charter, preamble; art. 1(1); Vienna Declaration, preamble, “recalling the Charter.” See also Charter art. 2(3) “All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.” UDHR, preamble: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

<sup>21</sup> See Shane Chalmers, “The Beginning of Human Rights: The Ritual of the Preamble to Law,” forthcoming in *Humanity*.

<sup>22</sup> Preamble, UDHR.

<sup>23</sup> Preamble, UN Charter.

odds with the material facts of the system's founding moments and glosses over the rifts that persist within it. In her account of the post-World War II development of international law more generally, Pahuja notes the unequal influence exerted by the Great Powers and the structural significance of the fact that the UN's political institutions—including the human rights bodies—were separated from its economic institutions.<sup>24</sup> This has meant that political institutions can be assessed by reference to human rights while global trade and financial institutions have been immune from such scrutiny.

Drawing power from its authorizing texts, the human rights world is ritually enacted through formal events such as the marking of anniversaries, and entrenched through the adoption of further texts that clarify and amplify doctrinal matters.<sup>25</sup> The human rights vision is ritually embodied in the operations of the UN treaty bodies and, to varying degrees, in the other human rights mechanisms, which are governed by a carefully staged and publicized calendar of annual events. Treaty body sessions are conducted in imposing surroundings—often the Palais Wilson in Geneva—and the Human Rights Council's Universal Periodic Review gains ritual authority from its surroundings beneath the magnificent domed roof of Salle XX in Geneva's Palais des Nations.<sup>26</sup>

Human rights preambles are lyrical, but the substance of human rights treaties as well as the language and practice of implementation is largely technical and bureaucratic, allowing a performance of rational impartiality and lawfulness. Considerations of state reports, while less formal than many court proceedings, are solemn events that are carefully scripted and staged.<sup>27</sup> The written products of the Committees, as well as the material provided to them, are also consistent in form, tone, and style. Like the treaties themselves, they repeat certain key phrases like incantations: the Committee “urges, encourages, invites, requests, recommends”; sometimes it is “concerned” and occasionally “extremely concerned.”<sup>28</sup> When the human rights bodies engage with states, material realities and power imbalances are disguised in civilized conformity to rituals that formally allow equal space to unequal participants.<sup>29</sup> This means, for example, that the Committees allocate the same time to the review of each state party's report regardless of the size of the country or the issues it faces.

<sup>24</sup> Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge, UK: Cambridge University Press, 2011), 10–43. For a discussion of the influence of the Great Powers, see also Mazower, “The Strange Triumph of Human Rights.”

<sup>25</sup> The Vienna Declaration, for example, the product of the 1993 World Conference on Human Rights, claims to provide “a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights” and thereby “to enhance and thus promote a fuller observance of those rights, in a just and balanced manner” (UN General Assembly, A/CONF.157/23, preamble).

<sup>26</sup> Walter Kälin, “Ritual and Ritualism at the Universal Periodic Review: A preliminary appraisal,” in *Human Rights and the Universal Periodic Review*, 25–41, 25.

<sup>27</sup> See Kelly, “Two Cheers for Ritual,” forthcoming in *Humanity*; see also the analysis of the rituals of the Universal Periodic Review in Charlesworth and Larking, “The Regulatory Power of the Universal Periodic Review”; Jane Cowan, “The Universal Periodic Review as a Public Audit Ritual,” and Julie Billaud, “Keepers of the Truth,” both in *Human Rights and the Universal Periodic Review*, 42–62 and 63–84.

<sup>28</sup> As Kelly notes in relation to the Committee against Torture (“Two Cheers for Ritual”).

<sup>29</sup> Jane Cowan, “The Universal Periodic Review as a public audit ritual,” 60; Kelly, “Two Cheers for Ritual.”

Focusing on economic and social rights helps illustrate the achievements of these rituals. Against the universality and political neutrality exalted by the human rights vision of the world, the recognition of economic and social rights is contested. As indicated earlier, contention about the status of human rights has always simmered below the surface rituals, but while no state today openly denies the fundamental nature of civil and political rights, disputes that marked the original elaboration of economic and social rights in international law continue. During the early days of international human rights drafting, debates over how economic and social rights would be recognized were passionate and divisive, with opponents of strong recognition characterizing such rights as “leftist” and as requiring “more or less totalitarian control of the economic life of [a] country.”<sup>30</sup> Although it now has nearly as many state parties as ICCPR, ICESCR has only recently acquired an enforcement mechanism providing an individual complaints procedure.<sup>31</sup> This mechanism has attracted few ratifications, and its adoption was attended by similar controversy as attended the drafting of ICESCR.<sup>32</sup> The existence of such controversies do little, however, to dent the ritual presentation of a universal moral consensus in support of human rights.

### Neoliberalism and the Human Rights World View

Because it takes individuals as the primary subjects of rights and UN member states as their duty-bearers, the human rights vision of a just and peaceful world relies on the agency of states.<sup>33</sup> It sidelines the role of non-state-based political formations in social justice arrangements. It has largely ignored—and certainly been powerless to constrain—the pervasive influence on human wellbeing of the corporate sector and transnational financial and trade institutions.<sup>34</sup> As a result, some theorists suggest that

<sup>30</sup> Representative of the Union of South Africa, in a debate surrounding the draft Universal Declaration, quoted in Philip Alston and Gerard Quinn, “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights,” *Human Rights Quarterly* 9, no. 2 (1987) 156–299, 181.

<sup>31</sup> 165 ratifications by comparison with the ICCPR’s 169: Office of the High Commissioner for Human Rights, “Status of Ratification: Interactive Dashboard,” <http://indicators.ohchr.org/>, accessed 14 March 2017. The Optional Protocol to ICESCR was adopted in December 2008 and came into force in May 2013.

<sup>32</sup> 22 countries have ratified the Optional Protocol.

<sup>33</sup> David Kennedy, “The International Human Rights Movement: Part of the Problem?” *Harvard Human Rights Journal* 15 (2002) 101–125, 113; Marks, “Human Rights and Root Causes,” 71. Along similar lines, B.S. Chimni characterizes human rights as grounded in “methodological individualism” and “methodological nationalism” (“The Rituals of Human Rights Bodies: A View from the Global South,” paper delivered at “The Rituals of Human Rights” Workshop, Australian National University, 26 June 2014, 1, 5 and 6, available at <http://regnet.anu.edu.au/research/publications/6120/rituals-human-rights-workshop-working-paper-no-6-rituals-human-rights>, accessed 14 March 2017).

<sup>34</sup> Kennedy, “The International Human Rights Movement,” 109–110, and see Samuel Moyn’s discussion, “A Powerless Companion: Human Rights in the Age of Neoliberalism,” *Law and Contemporary Problems* 77 (2014) 147–169, 164–167. Regarding the weak influence of the UN Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, see Hans Morten Haugen, “Trade and Investment Agreements: What Role for Economic, Social and Cultural Rights in International Economic Law?,” in *Economic, Social and Cultural Rights in International Law*, ed. Eibe Riedel, Gilles Giacca, and Christophe Golay, (Oxford, UK: Oxford University Press, 2014), 227–259, 241. In 2014, a UN Working Group was mandated to draft “an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights” (UN Doc. A/HRC/26/L.22/Rev.1, 25 June 2014). Negotiations within the Working Group are continuing. See Jolyon Ford, “The Risk of Regulatory Ritualism: Proposals for a Treaty on Business and Human Rights,” CEG Working Paper 118, Global Economic Governance Program, University of Oxford, April 2016.

it facilitates a neoliberal market order in which disparities in economic power are the norm.<sup>35</sup> This argument is supported by the fact that international human rights treaties do not oppose or challenge material inequality,<sup>36</sup> and while they trumpet the indivisibility of all rights, in practice civil and political rights are prioritized.<sup>37</sup>

Having said this, I want to examine the relationship between neoliberalism and human rights by focusing on ICESCR.<sup>38</sup> By referencing rights to a broad range of economic and social goods such as food, education, and housing, ICESCR appears to challenge the neoliberal disdain for non-market-based forms of redistribution. Although it does not treat material inequality as a problem in itself, and does not require immediate fulfilment of the rights it contains, the steps that states are required to take towards implementing economic and social rights must be “to the maximum of their available resources.”<sup>39</sup> The Committee that oversees ICESCR (the “Committee”) argues on this basis that ICESCR imposes “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the [Covenant] rights.”<sup>40</sup> It continues: “...a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic form of education is, *prima facie*, failing to discharge its obligations under the Covenant.”<sup>41</sup>

The Committee has called on states to implement wide-ranging redistributive policies to ensure their “core obligations” are met, and it has expressed support for traditional and micro credit schemes,<sup>42</sup> as well as some modest proposals for land redistribution.<sup>43</sup>

<sup>35</sup> Mutua describes human rights as “the moral guardians of global capitalism” (in Ben Golder, “Beyond Redemption? Problematising the critique of human rights in contemporary international legal thought,” *London Review of International Law* 2, no. 1 (2014) 77–114, 101). Golder suggests more cautiously that human rights are “coincident in crucial respects with neoliberal discourse...and function...within the logic of capital” (105, emphasis in original). While Moyn suggests that human rights and neoliberalism have shared a “kindred trajectory,” he rejects claims that human rights have played a causal role in “abetting the free market victory of the neoliberal age.” In his view, the most apt characterization of the relationship is of human rights as a rather “powerless companion” that has proved inadequate to the task of “civilising” neoliberalism (“A Powerless Companion,” 156, 151 and generally).

<sup>36</sup> Moyn points out that this is “a basic and rarely made point: in their legalized forms, human rights do not purport to provide an egalitarian agenda.” (“A Powerless Companion,” 161).

<sup>37</sup> See Philip Alston, Report of the Special Rapporteur on extreme poverty and human rights, A/HRC/29/31, 27 May 2015, para. 50.

<sup>38</sup> I do not deal with cultural rights in this analysis.

<sup>39</sup> Art. 2(1).

<sup>40</sup> General Comment #3, “The nature of States parties obligations” (1990) para. 10. The Committee also argues that the obligation on states to take steps towards realization of economic, social, and cultural rights imposes immediate obligations to take “deliberate, concrete and targeted” action towards rights realization (General Comment #3, para. 2, and see paras 1 and 9).

<sup>41</sup> General Comment #3, para. 10.

<sup>42</sup> In relation to securing the right to social security (art. 9), the Committee has said that “community-based or mutual schemes” are “acceptable” (General Comment #19, “The right to social security” (2008) para. 5, and see paras 45 and 46), and it also emphasizes that “non-contributory” schemes are necessary – in other words, schemes that cover even those who are unable to contribute to social insurance (paras 4 (b), 23 and 50).

<sup>43</sup> The Committee has targeted “land grabbing” as a problem, but Rolf Künneemann and Sofia Monsalve Suárez point to the fact that the concept of land grabbing has been restrictively defined – “many definitions of land grabbing only recognize areas upwards of 5,000 hectares” (“International Human Rights and Governing Land Grabbing: A View from Global Civil Society,” *Globalizations* 10, no. 1 (2013) 123–139, 128).



In all of these respects, the Committee appears to be using human rights in opposition to neoliberalism. Ultimately, however, social and economic rights in international law conform to rather than confront the neoliberal paradigm. This is because the full implementation of economic and social rights presupposes a market-based growth and development model. ICESCR includes a right “to the continuous improvement of living conditions.”<sup>44</sup> It imposes obligations on states “to achieve steady economic, social and cultural development” in support of the right to work,<sup>45</sup> and to “improve methods of [food] production...by making full use of technical and scientific knowledge...and by developing or reforming agrarian systems.”<sup>46</sup> It recognizes the “right of everyone...to enjoy the benefits of scientific progress and its applications.”<sup>47</sup>

Charlesworth argues that it has historically been “[a]n assumption of the international law of development...that underdevelopment is caused by a failure to meet the model of a capitalist economy. Development [has meant] industrialisation and westernisation.”<sup>48</sup> While the meaning and form of development that should be pursued under the guise of human rights is contested,<sup>49</sup> neoliberalism has powerful supporters. Through the influence of large corporations and their shareholders and government backers, as well as the major development banks, the neoliberal paradigm now dominates.<sup>50</sup> While the rituals of human rights veil these material realities, they can be seen in how ICESCR’s “agrarian reform” provision has been implemented and in struggles for land reform more generally. Under the guise of agrarian reform, the World Bank and other international financial institutions have promoted a market-based model where privately-held land that is not under cultivation is transferred to landless rural workers.<sup>51</sup> The land holdings in question are enormous in scale, and the history of their acquisition can usually be traced to colonial conquest or gifting from unrepresentative governments. Disregarding this history, transfers to the landless facilitated by the World Bank have often been dependent on the provision of monetary compensation to landowners disproportionate

<sup>44</sup> Art. 11(1).

<sup>45</sup> Art. 6(2).

<sup>46</sup> Art. 11(2)(a).

<sup>47</sup> Art. 15(1)(b).

<sup>48</sup> Hilary Charlesworth, “The Public/Private Distinction and the Right to Development in International Law,” *Australian Year Book of International Law* 12 (1988–9) 190–204, 196–197, and see the discussion that follows.

<sup>49</sup> See the historical overview in United Nations, Office of the High Commissioner for Human Rights, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (New York and Geneva: OHCHR, 2013).

<sup>50</sup> This dominance is theorized by David Harvey in *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005), 1–4.

<sup>51</sup> Christoph Golay, “The Rights of Peasants” (CETIM Critical Report No. 5, Issue: Right to Food (Geneva: Europe – Third World Centre, September 2009), 4–5, available at [http://cetim.ch/en/publications\\_cahiers.php](http://cetim.ch/en/publications_cahiers.php), accessed 13 October 2015; Jean Ziegler, Christophe Golay, Claire Mahon, and Sally-Anne Way, *The Fight for the Right to Food: Lessons Learned* (Great Britain: Palgrave MacMillan, 2011) 38 and 147–149. For an analysis of how the World Bank, along with other development banks and international organizations, have influenced agrarian reform in the aftermath of the 2008 world food crisis, pushing market-based models that increase the vulnerability of small scale farmers, see Philip McMichael and Mindi Schneider, “Food Security Politics and the Millennium Development Goals,” *Third World Quarterly* 32, no. 1 (2011), 119–139.

to the value of the land. Under such schemes landless workers have been provided with credit to purchase land but the inflated costs of the land have left them with crippling debts.<sup>52</sup>

The Committee, in its oversight of ICESCR, does not simply assimilate development and the realization of economic and social rights.<sup>53</sup> Nor does it assume that development requires market-based reform or conversion. But it does consider development in some form to be a prerequisite for realizing economic and social rights, and it takes for granted that development depends on economic growth, which presupposes the expansion of markets.<sup>54</sup> Furthermore, although the Committee cautions that the benefits of development must be directed to the least well-off, and claims in robust terms that “development activities which do not contribute to respect for human rights, either directly or indirectly, are not worthy of the name,”<sup>55</sup> it does not characterize redistribution as a genuine alternative to development. This is notable in light of the fact that the world currently has sufficient resources to meet the basic needs of all human beings.<sup>56</sup> It is less remarkable when viewed from the perspective of political realities, reflecting what might be considered achievable goals in the context of the Committee’s role overseeing ICESCR. It demonstrates, however, that the apolitical moralism of human rights and the rituals through which they are entrenched operate to obscure material realities. They neutralize contestation over the redistributive role of the state and the impact of neoliberal policies on human wellbeing.

The ritual invocation of cooperative relations between states similarly disguises the influence of power politics, at the same time as any prospect of rights implementation is beholden to it. Because ICESCR requires parties to move towards the realization of economic and social rights not only individually but also “through international assistance and cooperation,”<sup>57</sup> the Committee argues that the “available resources” for implementing economic and social rights must be assessed with reference to resources potentially available to a state via international assistance. Yet in implicit deference to political realities, the Committee asks no more of wealthy countries than that they dedicate 0.7% of their Gross National Income to Overseas Development Assistance.<sup>58</sup> Instead of highlighting the dissonance

<sup>52</sup> Christoph Golay, “The Rights of Peasants,” 4–5; Jean Ziegler, Christophe Golay, Claire Mahon and Sally-Anne Way, *The Fight for the Right to Food*, 38 and 147–9.

<sup>53</sup> See General Comment #2, “International technical assistance measures” (1990) para. 7, recognizing that some forms of development can be counter-productive in human rights terms.

<sup>54</sup> The Committee describes development as *itself* a human right: General Comment #3, para. 8.

<sup>55</sup> “Comment” on “Human rights and development,” para. 1 (found at the end of its “Statement on Globalisation and its impact on the enjoyment of ESC rights” (1998), at 94 of the report of its 18<sup>th</sup> session).

<sup>56</sup> In relation to food, see Ziegler *et al.* *The Fight for the Right to Food*, 3, citing the UN’s Food and Agriculture Organization. Against the idea that we need to produce more food in order to feed the world’s hungry, Mark Bittman suggests, “[c]laiming that increasing yield would feed the poor is a bit like saying that producing more cars or private jets would guarantee that everyone had one.” (“Don’t Ask How to Feed the 9 Billion,” Opinion, *The New York Times*, 11 November 2014.)

<sup>57</sup> Art. 2(1). See Olivier De Schutter *et al.* concerning the continuing controversy over whether the obligation of international assistance is legally binding (“Commentary on the Maastricht Principles on extraterritorial obligations of States in the area of economic, social and cultural rights,” *Human Rights Quarterly* 34 (2012): 1084–1169 at 1094).

<sup>58</sup> “Statement in the context of the Rio+20 Conference” (2012), para. 6 (a).

between a resource- and food-wealthy world and the levels of social and economic deprivation that subsist within it, ICESCR entrenches the idea that implementing the rights it contains will miraculously produce a world free from want. In doing so, it conceals the fact that a neoliberal global order is a structural impediment to such a world. Neoliberal policies produce vast economic inequalities and facilitate the concentration of social and political power in the hands of the few—thereby also impeding the realization of civil and political rights.<sup>59</sup> ICESCR's capacity to constrain neoliberal policies is limited by political realities, but these realities are hidden behind rituals of universality, moral consensus, political neutrality, and international co-operation.

### Vía Campesina—Political Struggles and Rights Rituals

What, then, to make of the campaign for a supposedly new suite of rights, many in the economic and social arena, pursued by Vía Campesina? Founded in 1993, largely through the initiative of Latin American peasant and landless workers organizations,<sup>60</sup> Vía Campesina is a networked movement representing around 200 million “peasants, small and medium-size farmers, landless people, women farmers, indigenous people, migrants and agricultural workers” through roughly 164 different local and national groups.<sup>61</sup> The movement claims to be “independent of any political, economic or other type of affiliation.”<sup>62</sup> Rejecting the apolitical moralism characteristic of the human rights vision, however, Vía Campesina describes itself as “a political project.”<sup>63</sup> Since its foundation, its primary political goal has been “food sovereignty.” Although this concept accords a significant role to the state,<sup>64</sup> it is oriented towards local as well as national empowerment and challenges the international power politics that human rights rituals veil through their invocation of sovereign equality, self-determination, and political neutrality. Vía Campesina defines food sovereignty as “small scale production benefiting communities and their environment,” as well as a commitment to “giv[ing] a country the right to protect its local producers from cheap imports and to

<sup>59</sup> Regarding economic inequalities, see Alston, “Report of the Special Rapporteur,” paras 8–9 (income inequality), para 10 (wealth inequality), and Oxfam International, “An Economy for the 1%: How Privilege and Power in the Economy Drive Extreme Inequality and How This can be Stopped,” Oxfam Briefing Paper, 18 January 2016. Regarding the impact of economic inequalities on civil and political rights, see Alston, “Report of the Special Rapporteur,” para 21.

<sup>60</sup> Maria Elena Martínez-Torres and Peter M. Rosset, “La Vía Campesina: the birth and evolution of a transnational social movement,” *The Journal of Peasant Studies* 37, no. 1 (2010) 149–175, 151–157.

<sup>61</sup> “The International Peasants’ Voice,” Vía Campesina website, “Organization” page, published 9 February 2011, <http://viacampesina.org/en/index.php/organisation-mainmenu-44>, accessed 14 March 2017.

<sup>62</sup> “The International Peasants’ Voice.”

<sup>63</sup> The blurb for “The Jakarta Call” on the movement’s website states that the documentary “highlights the cultural diversity and the values of solidarity and unity converging in this political project.” “The Jakarta Call,” documentary featuring Vía Campesina’s 6<sup>th</sup> International Conference, Jakarta, June 2013 (Harare: La Vía Campesina, Zin TV and Alba TV, 10 April 2014).

<sup>64</sup> As McMichael discusses in the context of trade protectionism (Philip McMichael, “Peasants Make Their Own History, But Not Just as They Please...,” *Journal of Agrarian Change* 8, nos 2 and 3 (April and July 2008), 205–228, 220), and see Emma Larking, “Mobilising for Food Sovereignty: The Pitfalls of International Human Rights Strategies and an Exploration of Alternatives,” forthcoming in *The International Journal of Human Rights* 21 (2017).

control production. It ensures that the rights to use and manage lands, territories, water, seeds, livestock and biodiversity are in the hands of those who produce food and not of the corporate sector.”<sup>65</sup>

In the early years of the campaign, *Vía Campesina* distinguished the concept of food sovereignty from the much narrower idea of a human right to food. The right to food may be realized by handouts from the state or international donors but, in this form, does nothing to remedy structural problems such as the conversion of farming land for urban developments or industrial uses and consequent land evictions, or price volatility in international food markets that deprive people of the capacity to support themselves through sustainable food production.<sup>66</sup> *Vía Campesina* aims to achieve food sovereignty by taking aim at “destructive neoliberal processes,”<sup>67</sup> by popular mobilizations, “confrontation with oppressors,” “active resistance,” “and building up alternatives.”<sup>68</sup> It has demonstrated what Martínez-Torres and Rosset describe as “deep distrust...of methods that channel and “calm” dissent,” such as “conflict resolution,” “stakeholder dialogue,” and “consultation” with entities like the World Bank and the WTO.<sup>69</sup> When it announced in 2013 that it was cutting ties with an activist organization on the basis that the group aims to reform the WTO, *Vía Campesina* emphasized, “[w]e are not negotiators and we should not be limited to what we can or cannot demand within the context of...negotiations.”<sup>70</sup>

Despite this, *Vía Campesina* has invested considerable resources for more than a decade pursuing dedicated recognition for peasants in a UN rights declaration.<sup>71</sup> In doing so, it has become entangled in the complex negotiations and ritual performances that surround the elaboration of any international human rights instrument. A number of NGOs and human rights academics are working with *Vía Campesina*

<sup>65</sup> “The International Peasants’ Voice,” *Vía Campesina* website, “Organization” page, published 9 February, <http://viacampesina.org/en/index.php/organisation-mainmenu-44>, accessed 14 March 2017.

<sup>66</sup> Former *Vía Campesina* coordinator, Henry Saragih argues that fulfilment of food-related rights has traditionally been premised on securing “access to food,” “whereas the *right to produce food* is much more fundamental to fulfilling the rights to food” (in Marc Edelman and Carwil James, “Peasants’ rights and the UN system: Quixotic struggle? Or emancipatory idea whose time has come?” *The Journal of Peasant Studies*, 38 no. 1, (2011): 81–108, 85, their emphasis). See also Priscilla Claeys, “The Creation of New Rights by the Food Sovereignty Movement: The Challenge of Institutionalizing Subversion,” *Sociology* 46, no. 5 (2012): 844–860, 848–849. In its campaign materials, *Vía Campesina* sometimes invokes the “right to food,” but it has been consistent in claiming that this right can only be realized on the basis of a major overhaul of the industrial food system and by empowering small-scale food producers.

<sup>67</sup> *Vía Campesina*, “The International Peasants’ Voice.”

<sup>68</sup> *Vía Campesina*, “Gaining support for the peasant’s way – La *Vía Campesina* at UN’s leading food security institutions,” *Vía Campesina* website, published 11 October 2013, <https://viacampesina.org/en/index.php/main-issues-mainmenu-27/food-sovereignty-and-trade-mainmenu-38/1501-gaining-support-for-the-peasant-s-way-la-via-campesina-at-un-s-leading-food-security-institutions>, accessed 14 March 2017; and blurb to “The Jakarta Call.” For a detailed account of *Vía Campesina*’s food sovereignty activities, see Larking, “Mobilising for Food Sovereignty.”

<sup>69</sup> “La *Vía Campesina*: the birth and evolution,” 158.

<sup>70</sup> “La *Vía Campesina* demands an end to the WTO.”

<sup>71</sup> See Christoph Golay, “Legal reflections on the rights of peasants and other people working in rural areas” (Background paper prepared for the first session of the working group on the rights of peasants and other people working in rural areas, 15–19 July 2013, Geneva Academy of International Humanitarian Law and Human Rights) 5, and Marc Edelman, “Linking the Rights of Peasants to the Right to Food in the United Nations,” *Law, Culture and the Humanities* 10, no. 2 (2014): 196–211, 198 and 203–208.

on its campaign,<sup>72</sup> and many are encouraging it to support a Declaration that is couched in recognisable “UN language” and that mirrors the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”).<sup>73</sup> Yet critics of UNDRIP—which was adopted by the UN General Assembly in 2007 after more than two decades of negotiations—highlight how rights contained in earlier drafts were watered down. They emphasize that despite including some collective rights, UNDRIP ultimately entrenches state sovereignty and individualistic forms of human rights that are consistent with neoliberal development models.<sup>74</sup>

The original text of the Declaration that *Vía Campesina* settled on in 2009, and which it subsequently presented to the Human Rights Council and the UN General Assembly,<sup>75</sup> participates in textual human rights rituals. Its preamble has paragraphs invoking the community of human rights believers as well as the community’s core beliefs: “affirming,” “acknowledging,” and “emphasising” prior rights commitments such as those contained in the UDHR. But the Declaration is also idiosyncratic. Unlike most human rights organizations and advocates, whom Marks (following Klein) critiques for failing to engage with the systemic causes of exploitation and rights violations,<sup>76</sup> *Vía Campesina* repeatedly references specific causes of violations and their explanatory contexts. These extracts from the Declaration’s preliminary material and preamble are indicative:

Millions of peasants have been forced to leave their farmland because of land grabs...

Land is taken away from peasants for the development of large industrial or infrastructure projects, [and for] extracting industries...

As a result, land is increasingly concentrated in few hands...

Monocultures for the production of agrofuels and other industrial uses are promoted [benefiting] agribusiness and transnational capital; this has devastating impacts on forests, water, the environment and the economic and social life of peasants...

<sup>72</sup> *Vía Campesina* was assisted in the drafting of its original Declaration by the UK-based “International Institute for Environment and Development.” In promoting the Declaration at the Human Rights Council, it has been assisted by FIAN (the Food First Information and Action Network), with international secretariats based in Hamburg and Geneva, and the Geneva-based Centre Europe Tiers-Monde. (Edelman and James, “Peasants’ rights and the UN system,” 93; Claeys, “The Creation of New Rights,” 853.)

<sup>73</sup> Claeys, “The Creation of new rights,” 853; Edelman, “Linking the rights of peasants,” 205–206; and see Christophe Golay, “Negotiation of a United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas,” Academy In-Brief, No. 5, Geneva: Geneva Academy, January 2015, 4–5.

<sup>74</sup> Engle, “On Fragile Architecture,” 142, and see Aileen Moreton-Robinson, “Virtuous Racial States,” *Griffith Law Review* 20, no. 3 (2011): 641–658. See also n. 96, below.

<sup>75</sup> *Vía Campesina*’s original Declaration is available at <http://viacampesina.org/en/index.php/publications-mainmenu-30/1016-declaration-of-rights-of-peasants-women-and-men>, accessed 14 March 2017. The Declaration is also annexed to the Human Rights Council’s “Preliminary study of the Human Rights Council Advisory Committee on discrimination in the context of the right to food” (22 February 2010, A/HRC/13/32, annex), but the introductory material has been omitted. Regarding the original presentation of the Declaration to the Council and General Assembly, see: 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,” 24 February 2012, A/HRC/19/75, para 71.

<sup>76</sup> Marks, “Human Rights and Root Causes.” My analysis in this section was initially inspired by Marks’s critique of the language of human rights.

## 14 Emma Larking

Food is increasingly used for speculation purposes...

Peasants have lost many local seeds. Biodiversity is destroyed by the use of chemical fertilizers, hybrid seeds and genetically modified organisms developed by the transnational corporations...

The violations of peasants' rights are on the rise because of the implementation of neoliberal policies promoted by the World Trade Organization, Free Trade Agreements (FTAs), other institutions and many governments in the North as well as in the South...

The body of the Declaration contains rights that relate closely to the wrongs articulated in the preliminary and preambular material, and that vest considerable power in the hands of peasants. It also calls on states to act in the interests of peasants and to resist the authority of international organizations such as the WTO. The Declaration includes the rights of peasants to:

- use and develop traditional medicine (III, 6);
- ...
- live a healthy life, and not be affected by the contamination of agrochemicals... (III, 7);
- ...
- manage the water resources in their region (IV, 6);
- ...
- manage, conserve, and benefit from the forests (IV, 8);
- ...
- reject all kinds of land acquisition and conversion for economic purpose (IV, 9);
- ...
- benefit from land reform. Latifundia [private ownership of very extensive parcels of land] must not be allowed. Land has to fulfil its social function. Land ceilings to land ownership should be introduced whenever necessary in order to ensure an equitable access to land. (IV, 12).

In 2012, the Human Rights Council's Advisory Committee released its own *Declaration on the Rights of Peasants and Other People Working in Rural Areas*, drawing heavily on Via Campesina's original.<sup>77</sup> A Council Working Group, chaired by Bolivia, has now elaborated an Advanced draft to form the basis of further negotiations.<sup>78</sup> The mandate of the Working Group was renewed by the Human Rights Council in September 2015 for two years,<sup>79</sup> and the drafting process will likely continue beyond this, subject to further mandate renewal. Negotiations over

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<sup>77</sup> Human Rights Council, "Final study" A/HRC/19/75, annex.

<sup>78</sup> "Draft Declaration on the Rights of Peasants and Other People Working in Rural Areas Presented by the Chair-Rapporteur of the Working Group," A/HRC/WG.15/3/2, 8 March 2016 ("Advanced draft"). The drafting process is conducted under a Human Rights Council resolution: "Resolution of the Human Rights Council on the promotion and protection of the human rights of peasants and other people working in rural areas," UN Doc. A/HRC/RES/21/19, 11 October 2012.

<sup>79</sup> A/HRC/30/L.19 (28 September 2015)

the text take place in what are described as “informal” consultations as well as formal sessions of the Working Group. All negotiations are, however, conducted in the majestic Palais des Nations in Geneva, with formal sessions convened beneath the imposing domed roof of Salle XX where the Universal Periodic Review is also staged.

The Advanced draft departs significantly from *Vía Campesina*’s original. The agents and causes of rights violations listed in the preliminary and preambular material in *Vía Campesina*’s original have disappeared from the Advanced draft’s preamble, which does not mention extractive industries, tourism, transnational corporations, the WTO, or FTAs. While “large scale development projects” are cited as a reason for land evictions,<sup>80</sup> mention of agrofuels, agribusiness, speculation on food prices, trade dumping, food subsidies, and deregulation of the agricultural sector have all gone. The result is that the preamble’s references to “poverty and malnutrition,” and “the hazardous and exploitative conditions under which [peasants] have to work”<sup>81</sup> give the impression that these phenomena come out of nowhere—as if they are, as in Marks’s articulation, “random, free-floating bad events.”<sup>82</sup> The Advanced draft does include, however, an article calling on states (where “they are in a position to regulate”) to ensure that “private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of the rights of peasants.”<sup>83</sup> Another article says that states will take measures to realize the purpose and objects of the Declaration “in partnership with relevant international and regional organisations and civil society, in particular organisations of peasants and other people working in rural areas.”<sup>84</sup> It adds that such measures could include “the management of markets at the global level, including information about and coordination of global grain stocks to limit price volatility and the attractiveness of speculation.”<sup>85</sup>

In these respects, the Advanced draft disrupts the standard textual rituals of human rights. In other respects, though, it participates in and bolsters these rituals. The title of *Vía Campesina*’s original is “Declaration of the Rights of Peasants—Women and Men,” and references to peasants throughout the draft are followed by a bracketed “women and men,” emphasizing the movement’s commitment to gender equality and to a focus on the significant role of women in small-scale food production.<sup>86</sup> The Advanced draft removes the bracketed phrase “women and men” from the title and the body of the Declaration. In its place, it calls for gender equality and recognizes “rural women’s rights” in dedicated articles.<sup>87</sup> These articles vest states with responsibility for improving peasant women’s position and characterize the problems

<sup>80</sup> Preamble, para. 4.

<sup>81</sup> Preamble, paras 4 and 9.

<sup>82</sup> Marks, “Human Rights and Root Causes,” 59.

<sup>83</sup> Art. 2(6).

<sup>84</sup> Art. 2(7).

<sup>85</sup> Art. 2(7)(e).

<sup>86</sup> For a discussion of the gender focus within *Vía Campesina*, see Martínez-Torres and Rosset, “La *Vía Campesina*: the birth and evolution,” 159 and 167.

<sup>87</sup> Art. 4, “Gender equality”; art. 6, “Rural women’s rights.” The position of women is also mentioned in art. 8 “Rights to a nationality and legal existence,” art. 17(3), “Right to food,” and art. 19(2), “Right to land and other natural resources.”

they face as rooted in discrimination.<sup>88</sup> This emphasis on the role of states and identification of rights violations as caused by discrimination characterizes the Advanced draft more generally. Thus an article in the first part, dealing with “fundamental principles,” says that “peasants... have the right to be free from any kind of discrimination” and calls on states to “take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination against peasants...”<sup>89</sup>

As noted earlier, recourse to states as duty bearers is a feature of the political paradigm that structures international human rights. Describing particular groups as being vulnerable to “discrimination” is also typical of human rights instruments and strengthens rituals of moral consensus and political neutrality, deflecting attention from systemic drivers of exploitation. Resort to the concept of discrimination in such contexts implies that the problem of exploitation is one of intolerance.<sup>90</sup> This ignores the fact that marginalizing groups such as women or peasants makes it easier to extract their labour cheaply. A materialist analysis, by contrast, suggests that certain productive relations are exploitative and that discrimination serves to legitimate these exploitative relations.<sup>91</sup> Seen in this light, discrimination is neither a spontaneous psychological tendency towards intolerance nor a phenomenon that states are ideally positioned to redress.

In the Advanced draft, the concept of discrimination directs attention to the “victims,” reminding the human rights “family” that peasants too “are equal... in dignity and rights,” and so entitled to freedom from discrimination.<sup>92</sup> A different approach would be to study the beneficiaries of rights violations, given that “the conditions which create vulnerability to hunger and malnutrition... exist at least in part because they benefit some groups of people.”<sup>93</sup> The contribution of financial investors and speculators to the global food crisis of 2008 is now widely recognized but less, if any, attention is paid to the other people who profit from speculative investments and the institutional arrangements that support them, including members of pension funds, holders of insurance policies, and customers of banks.<sup>94</sup> Highlighting the beneficiaries of rights violations involves challenging the rituals of universality, moral consensus, and political neutrality through which international human rights are entrenched and on which they rely.

In the transition from the *Vía Campesina* draft to the Advisory Committee’s draft, the rights to land capable of being irrigated and “to reject all kinds of land

<sup>88</sup> Art. 4: (1) “States recognise that peasant women and other women working in rural areas often experience multiple and intersecting forms of discrimination”; (2) “States shall take all appropriate measures...”; (3) “States shall ensure that...”; Art. 6: (1) “States shall take into account the particular problems faced by peasant women...”; (2) “States shall take all appropriate measures to eliminate discrimination against peasant women...”

<sup>89</sup> Arts 3(3) and (4).

<sup>90</sup> See Marks’s discussion of Žižek’s argument that in contemporary society the concept of racism operates to conceal the underlying problem of material and political exploitation (“Human Rights and Root Causes,” 72–73), as well as her claim that “[t]ransitive concepts such as exploitation, marginalisation, dispossession and displacement are generally more telling, because more basic to the understanding of social systems, than intransitive concepts” such as “discrimination” (76).

<sup>91</sup> As Marks argues in “Human Rights and Root Causes” (72–73 and 76).

<sup>92</sup> Art. 3.

<sup>93</sup> Marks, “Human Rights and Root Causes,” 69, and see 76.

<sup>94</sup> Marks, *ibid.*



acquisition and conversion for economic purpose” were excluded. The right to reject land acquisition and conversion was replaced with an article stating that peasants should not be “forcibly” evicted from their land and that relocation should only take place with “free, prior and informed consent.”<sup>95</sup> This locution is used in UNDRIP and it has been restrictively interpreted in other contexts as a “consultation” rather than a “veto” right.<sup>96</sup> In the move from the Advisory Committee’s draft to the Working Group’s Advanced draft, the “free, prior and informed consent” clause has been included as a procedural requirement in a number of articles but has disappeared in relation to land.<sup>97</sup> It has been replaced with an article protecting peasants from “arbitrary” displacement and calling on states to protect peasants from such displacement in a manner that is “consistent with international human rights and humanitarian law standards.”<sup>98</sup>

Is anything lost by replacing a “right to reject” land acquisitions with protection from arbitrary displacement in accordance with human rights? Answering in the negative assumes that human rights operate impartially to advance the interests of all human beings, neither tethered to nor hindered by any particular political or economic paradigm or by material context. The fact the language of human rights beguiles, and so successfully implies universal, impartial, and apolitical protection for all human beings, points to the successful work achieved by ritual.

## Conclusion

Claeys argues that in pursuing a UN rights declaration as well as food sovereignty more generally, *Vía Campesina* is demanding “new” rights and a “rupture with existing conceptions of human rights.”<sup>99</sup> This is true of *Vía Campesina*’s original draft, but as the claimed rights are further elaborated, they are increasingly conforming to a neoliberal paradigm in which social and economic rights may ameliorate some social harms but do nothing to prevent major inequalities in the distribution of goods and resources. In the transition from the Advanced draft to

<sup>95</sup> Art. 4(5).

<sup>96</sup> See Jackie Hartley, “Indigenous Peoples and FPIC: When does the “c” mean consent?” *Regarding Rights* blog, <http://asiapacific.anu.edu.au/regarding-rights/2014/03/21/indigenous-peoples-and-fpic-when-does-the-c-mean-consent/>, accessed 14 March 2017; and in relation to the contested interpretation of “free, prior and informed consent,” Tara Ward, “The Right to Free, Prior and Informed Consent: Indigenous Peoples’ Participation Rights within International Law,” *Northwestern Journal of International Human Rights* 10, no. 2 (2011): 54–84. Australia, New Zealand, Canada and the US originally opposed UNDRIP partly on the basis that the “free, prior and informed consent” article went too far and could constitute a veto power. Moreton-Robinson argues this objection was disingenuous as the prior consent requirement is qualified by article 46, providing that nothing in UNDRIP “may be interpreted as...authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States” and that “[i]n the exercise of the rights enunciated...human rights and fundamental freedoms of all [i.e., non-indigenous as well as indigenous people] shall be respected” (“Virtuous Racial States” at 644).

<sup>97</sup> It appears in arts 2(4) (States’ obligations to include peasants in policy development and other decision making); 5(6)(b) (with reference to the exploitation of “natural resources” traditionally owned or used by peasants); and 20(5) (with reference to the storage or disposal of hazardous materials on peasants’ land).

<sup>98</sup> Art. 19(4). Another feature of the Advanced draft is the inclusion of an “implementation” article providing, as in ICESCR, for progressive rather than immediate realization of the rights recognized (art. 2(1)).

<sup>99</sup> Claeys, “The Creation of New Rights,” 848.

a final draft and ultimately perhaps to a UN declaration, the rights specified by *Vía Campesina* will likely be modified further. The irruption that *Vía Campesina*'s original Declaration represented will be contained and muted. As has occurred with UN recognition of the rights of indigenous peoples, UN support for peasants' rights will "displace or defer" a focus on structural and systemic issues.<sup>100</sup>

A UN Declaration on the Rights of Peasants will give institutional expression to those claims made by peasants that are considered legitimate from the perspective of the human rights vision for the world. The rights recognized are likely to be anodyne by comparison with those articulated in *Vía Campesina*'s original draft, and the harms suffered by peasants will be abstracted from the particular contexts that render them both possible and rational.<sup>101</sup> A UN Declaration could also be used as implicit justification for the repression of other *Vía Campesina* activities and mobilizations. Land occupations and resistance to land grabbing and development projects may be deprived of moral legitimacy on the basis that peasants have universally recognized rights and that these activities do not fall within them.<sup>102</sup> As Chimni points out, "the existence of official forums to protest the violation of human rights is supposed to negate the need for "unofficial" resistance."<sup>103</sup>

In many of its activities, *Vía Campesina* challenges the rituals of human rights. It presents a view of the world that highlights conflicts for power and material forms of oppression, offers alternatives to state-centric thinking, and confronts head on—and therefore, in McMichael's account, "de-naturalises," and in my account, "de-ritualises"—the neoliberal paradigm.<sup>104</sup> Its vision for a better world, as quoted at the beginning of this article, specifies who it opposes (primarily the WTO), the form of justice it seeks (economic), the mode of production it pursues (based on food sovereignty), and the social life it supports (one that relates to nature respectfully and sustainably).

The international human rights system provides a global platform that *Vía Campesina* has used strategically and very successfully to date. It has raised the profile of peasants and drawn attention to the injustices inflicted on them. If, however, a Declaration on the rights of peasants is adopted by the Human Rights Council and the UN, this could be a pyrrhic victory. A UN Declaration may entrench the human rights world view while marginalizing *Vía Campesina*'s alternative vision for a just and peaceful world.

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<sup>100</sup> Engle, "On Fragile Architecture," 142.

<sup>101</sup> See Marks, "Human Rights and Root Causes," 59.

<sup>102</sup> Larking, "Mobilising for Food Sovereignty."

<sup>103</sup> "The Rituals of Human Rights Bodies," 4.

<sup>104</sup> McMichael, "Peasants Make Their Own History," 225.