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The challenge of interpretation and implementation of the Voluntary
Guidelines on the Responsible Governance of Tenure of Land, Fisheries and
Forests in the Context of National Food Security in Latin America

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**The challenge of interpretation and implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in Latin America:
Agenda for discussion and moving forward¹**

Zoe Brent, Alberto Alonso-Fradejas, Saturnino M. Borras Jr., Gonzalo Colque and Sergio Sauer

¹ We are grateful for the support of the United Nations Food and Agriculture Organization (FAO) to conduct this research.

I. Introduction

In the decades since the formation of the United Nations, numerous international declarations have contributed to the construction of a global normative framework for human rights, each with their own processes of negotiation and impact. The approval of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in 2012 marked a historic victory. For years peasant, indigenous, pastoralist and food sovereignty activists had been fighting for and negotiating over the right to have rights which honor and respect the diverse and complex systems of tenure and social relations that shape peoples' connections to the places they inhabit, cultivate, steward, fish and are spiritually connected to. The high level of participation of civil society organizations and social movements in the negotiation of every word of this text sets this global policy document apart from the majority of other initiatives of this nature, to date. Because of this investment by civil society, we argue that there is greater transformative potential in the implementation process, and likelihood that the actual practices of nation-states may be altered. The establishment of these tenure guidelines (hereafter TGs) is therefore an important step in the recognition of the rights of marginalized peoples and solidifies a new normative framework based in human rights.

As implementation efforts gain traction we see a proliferation of research providing helpful insights into the points of convergence and divergence between the TGs and existing policy frameworks in the region (Landívar García *et al.* 2013, del Castillo Pinto and Castillo Castañeda 2014, Vadillo *et al.* 2014, McKay *et al.* forthcoming and Tramel *et al.* forthcoming). A number of courses, seminars and workshops have taken place in an effort, often led by the FAO, to build awareness and understanding of the new instrument.² These works provide essential context and information in the roll out of the TGs, and the rapid uptake across a wide range of sectors and political perspectives demonstrates the relevance of the new framework in the region. Indeed, governments are beginning to engage and a range of civil society and private sector actors are also taking up the TGs language and committing to supporting their implementation. But at this stage the institutional landscape for the TGs is still very much in flux, and subject to influence and pressure from civil society, private sector groups and corporate interests. Thus, we argue that implementation of the TGs is highly a contested and political process. This paper seeks to provide a general big picture analysis of the context in which the TGs are being implemented.

Section (II) begins by reviewing some key human rights concepts and background information about the TGs and the applicability of the instrument in Latin America. We suggest that the institutional characteristics of the region make it a prime location for uptake of the TGs. Section III then explores some of the general trends in Latin America in terms of land and natural resource control, arguing that the TGs are a highly relevant and important tool for protecting the existing tenure rights of marginalized communities, promoting better distribution of access and control, and restoring tenure rights that have been lost by displaced or dispossessed people. Section IV explores some of the most notable responses by governments and modes of using the TGs in relation to policy frameworks in the region. While the regional focus of this paper is necessarily broad and prone to some degree of generalization it is also able to capture the uneven and rapidly evolving institutional landscape, which leads us to suggest that we are currently seeing a political opening, where states are receptive to and potentially influenced by different interpretations of the TGs. This makes understanding the overlaps, divisions, and points of tension between different civil society and private sector visions about what the TGs are, how they should be used

² For example: In Brasilia a workshop called, *Directrices Voluntarias sobre la Gobernanza Responsable de la Tenencia de la Tierra, la Pesca y los Bosques en un contexto de la seguridad alimentaria nacional y los retos hacia su implementación*. Took place on the 28th and 29th of August, organized by the Ministerio del Desarrollo Agrario de Brasil (MDA), the FAO-Brasil International Cooperation Program, the FAO and the Reunión Especializada de Agricultura Familiar (REAF) of Mercosur. And courses organized by [CEPES in Peru](#) or the Universidad del Externado in Bogota, Colombia aimed to provide information to the public about the guidelines.

and by whom, especially urgent. Thus section V provides an initial mapping of the three broad political tendencies we identify in this contested political terrain. Finally in section VI we offer some conclusions and recommendations for moving forward with implementation efforts in the way that best upholds the spirit and objectives of the TGs.

II. Human rights context and key concepts

Contextualizing soft law

The TGs are part of a growing area of human rights norms, referred to as soft law, in reference to their voluntary or non-binding nature. This particular soft law document builds on precedents established by the, similarly voluntary, Guidelines on the Right to Food. Initially, in an attempt to frame food security as a matter of human rights, the International Planning Committee on Food Sovereignty (IPC) called for a *binding* code of conduct on the right to food. However facing pushback by a group of states led by the US, the initiative to develop what is a standard binding instrument used by the FAO, was redesignated to a set of voluntary guidelines. After the 2002 World Food Summit, an intergovernmental working group was established to elaborate this set of voluntary guidelines to achieve the progressive realization of the right to adequate food. Later in the reform process of the Committee on World Food Security (CFS) in 2009, those guidelines became a centerpiece of the new CFS, and part of the normative foundation from which the TGs emerged (Monsalve Suárez and Aubry 2014).

In spite of this robust normative framework and history, it is true that the voluntary nature of the TGs as “soft law” calls into question their relevance and usefulness for actually protecting, promoting or restoring the rights of marginalized communities. It is useful to contextualize these questions with a broader understanding of the diverse nature of soft law, and of how and when it impacts state behavior. Drawing on Monsalve and Aubrey’s (2014) thoughtful analysis to develop the table below, it becomes clear that not all soft law is created equal.

	Tenure Guidelines	Right to Food Guidelines	FATF Recommendations
<i>Process</i>	Highest level of participation by civil society and legitimacy	High level of inclusiveness and legitimacy <ul style="list-style-type: none"> • Extensive negotiations involving not only states but also civil society orgs and UN international orgs. • Adopted through consensus by the intergovernmental decision-making body of the FAO, a specialized UN agency whose membership is almost universal 	Low level of inclusiveness and legitimacy <ul style="list-style-type: none"> • Exclusively technical negotiation with private actors and international financial institutions. • Adopted by an intergovernmental body originally established by the G7 and whose membership does not exceed 36 states,
<i>Content</i>	Strong language calls on states to adopt certain behavior.	Strong language calls on states to adopt certain behavior. Guidelines provide practical guidance to states in their implementation of the right to adequate food in the context of national food security, at the domestic level and in accordance with core human rights principles	Strong language calls on states to adopt certain behavior. Recommendations build on pre-existing international norms and standards adopted with a view to combating money laundering and terrorist financing
<i>Type of law</i>	Soft law, treated as voluntary	Soft law, treated as voluntary	Soft law, treated as binding
<i>Follow-up</i>	Weak follow-up mechanism Voluntary reporting. Naming and shaming campaigns by CSOs. CSO led monitoring initiatives.	Weak follow-up mechanism <ul style="list-style-type: none"> • Voluntary reporting. • Naming and shaming campaigns by CSOs. • CSO led monitoring initiatives. • UN Committee on Economic, Social and Cultural Rights and the UN Special Rapporteur on the Right to Food have occasionally used the Guidelines in their work 	Elaborate and strong follow-up system. <ul style="list-style-type: none"> • FATF’s common assessment methodology used in peer review mechanism and assessment processes of the International Monetary Fund and of the World Bank • FATF produces Guidance, Best Practice Papers, and other advice to assist countries committed to the implementation of its Recommendations.
<i>Impacts on State behavior</i>	Weak influence <ul style="list-style-type: none"> • Opened dialogues between CSOs and governments to address failure to meet guidelines. • Informed national laws and policies. 	Weak influence <ul style="list-style-type: none"> • Opened dialogues between CSOs and governments to address failure to meet guidelines. • Informed national laws and policies. • Encouraged more participatory policy spaces related to food security 	Strong influence <ul style="list-style-type: none"> • “<i>Good [assessment] ratings are seen as crucial for developing countries as they are a green light for aid, trade and investment</i>”.³ • They can even have serious impacts on individuals and their civil rights as in the cases of CSOs suspected to be funding terrorism.

This table demonstrates that the legitimacy of a governance instrument does not necessarily correlate to the strength of the follow-up mechanism - indeed there appears to be an inverse relationship. What also becomes clear is that the conceptual division between binding and voluntary does not appear so sharp in reality. These insights not only highlight the very political and contested nature of both binding and voluntary instruments, the impact of which is deeply shaped by the interests of powerful actors. They also suggest further reflection is needed on the type of monitoring and enforcement mechanisms that are most likely to protect, promote and restore the rights of those most marginalized communities. As Monsalve and Aubrey ask:

³ (Hayes 2013)

Is hard-law always the answer to the regulatory and policy framework needed at international level? This might not be the case. Let's assume the FAO, WHO and other UN agencies were as powerful as the WTO in demanding compliance with their normative instruments. Would this not lead to an even greater shrinking of the national space/sovereignty for decision-making? Is this not problematic in terms of democratic control and legitimacy? (Monsalve Suárez and Aubry 2014, 5).

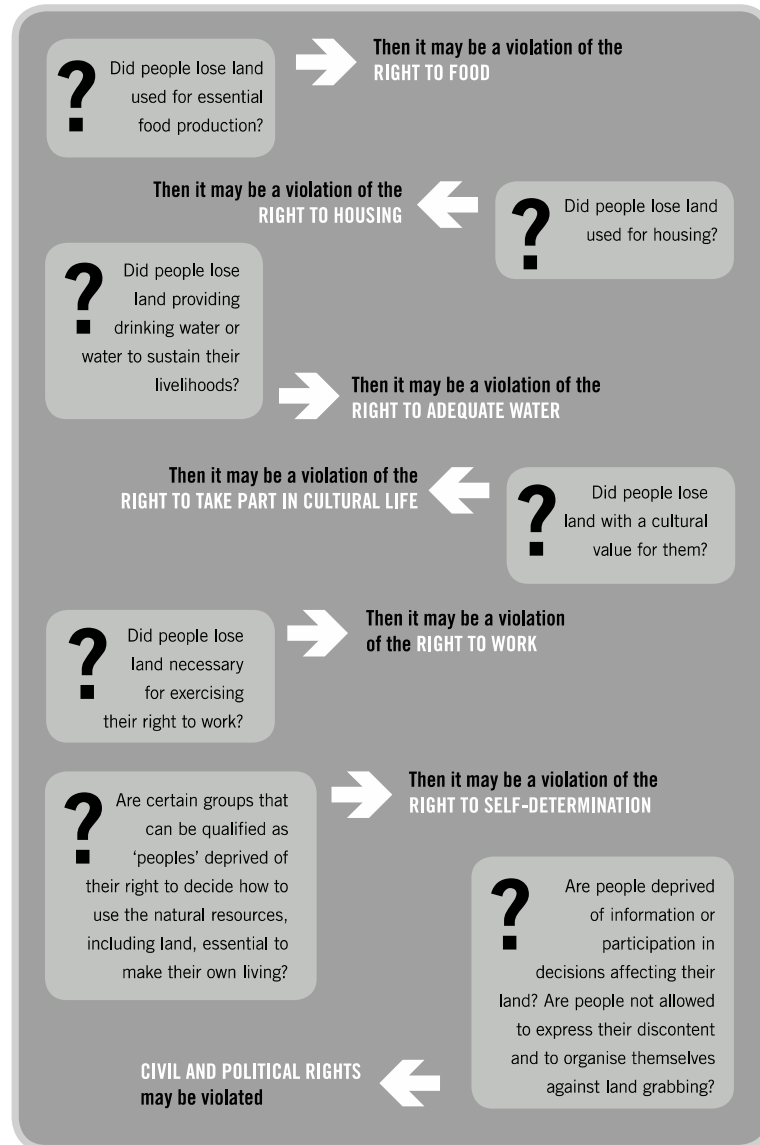
Linking the TGs to other human rights frameworks

In addition to the insights about soft law provided above, it is important to note that the TGs do refer to binding human rights obligations and provide guidance on how to ensure they are upheld (Seufert 2013, 182). Moreover, the rights addressed in the TGs in many cases are essential for respecting other human rights and should be read as part of a web of human rights declarations and documents that make up the normative framework, which is especially relevant to land and resource control. These include (but are not limited to):

- Article 11 of the International Covenant on Economic, Social and Cultural Rights (pertaining to the right to food and housing);
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- The United Nations Declaration on the Rights of Indigenous People (UNDRIP);
- The Pinheiro “Principles on housing and property restitution for refugees and displaced persons” (“Pinheiro Principles”);
- The United Nations “Basic Principles and Guidelines on Development-based Evictions and Displacement”; and of course,
- The Universal Declaration of Human Rights (UDHR)
- Convention relating to the Status of Refugees and its Protocol and International Humanitarian Law (IHL).

In a more visual format, the graphic below demonstrates this interconnected nature of human rights.

Figure 1: How land is linked to different human rights



Source: Monsalve Suárez *et al.* 2015, 25

Human rights are indivisible. Therefore these guidelines must be understood as part of this larger constellation of human rights norms, declarations and obligations. This is clearly outlined in the text.

Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights (Article 4.8)

Human rights in Latin America

When viewed in the context of broader architecture of human rights, the TGs both reinforce and are strengthened by the uptake of human rights norms by nation states. Therefore the position of human rights (including but not limited to the TGs) in the regional policy landscape also seriously impacts the potential power and uptake of the TGs. Latin America has a well-developed regional institutional architecture

supporting human rights, which provides a receptive climate for the TGs, which build on the same principles.

The past three decades have seen a wave of constitutional reforms in Latin America, which have laid the foundation for a deepening commitment to human rights. During this time, “almost all countries either adopted new constitutions (Brazil in 1988, Colombia in 1991, Paraguay in 1992, Ecuador in 1998 and 2008, Peru in 1993, Venezuela in 1999, and Bolivia in 2009, among others) or introduced major reforms to their existing constitutions (Argentina in 1994, Mexico in 1992, and Costa Rica in 1989)” (Uprimny 2011, 1587). Colombian legal scholar, Uprimny claims that the, “common feature of Latin American constitutional reforms is the openness of the domestic legal system to international human rights law, particularly the special and privileged treatment of human rights treaties” (Uprimny 2011, 1592).

One feature of this shift, which gives particular leverage to the work of implementing the TGs is the widespread acceptance of the Block of Constitutionality Doctrine, “which has acquired a special meaning in Latin America” (Uprimny 2011, 1592). This Doctrine establishes a set of norms, which can be invoked with the same weight as the constitution itself. “Usually, this set of norms encompasses 1) the Constitution *stricto sensu*, 2) international declarations of human rights, such as the Universal Declaration and the American Declaration, and 3) human rights treaties ratified by the States” (Góngora-Mera 2011, 162). Monsalve Suárez suggests that this means, guidelines and frameworks which are based on human rights norms should be taken into account to guide State’s action and to interpret its obligations (2014, 42).

Ultimately, it is the responsibility of states to promote, protect and fulfill these indivisible rights for all within their territories and to uphold their extraterritorial obligations as outlined in the Maastricht Principles (FIAN International 2013). The TGs provide a blueprint for states to improve their adherence to these obligations. But, importantly, they are also a tool for civil society to evaluate this work, and strengthen their demands on states to improve human rights and tenure rights for those most marginalized groups. That said, the capacity of public interest groups and CSOs to take advantage of the advocacy potential created by these commitments - when governments accept them - is heavily dependent on their own capacity to independently monitor whether governments actually do what they say they are going to do.

Human Rights in practice: implementation and interpretation

It is also important to recognize that the process of implementation will necessarily imply some degree of interpretation. For example, in the case of “legitimate tenure rights”—all rights that are not legally recognized yet (Article 5.3)—are to be defined at the national level. In order to navigate the politics of interpretation, we highlight two key points to keep in mind.

First, the objectives outlined in Article 1 of the TGs provide important insights into the points that must be considered to ensure effective implementation going forward. As stated,

*These Voluntary Guidelines seek to improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, **with emphasis on vulnerable and marginalized people**, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development (Article 1.1., stress added).*

At every step in the process of implementation, one must therefore ask, are those most marginalized groups benefiting? Given the role of civil society and the social movements that represent some of the most historically marginalized groups (peasants, indigenous peoples, pastoralists) in the negotiation of the TGs, it is justified that these actors also play a role in interpreting how they are implemented. In this

regard, it is important to see the implementation of the TGs as a process that opens up democratic spaces for participation by the people the guidelines intend to benefit—“vulnerable and marginalized people”.

Second, the *pro homine* principle, which underpins the entire philosophy of human rights norms, states that legal text should be interpreted in the manner that best promotes human dignity. The Inter-American Commission on Human Rights also underscores this principle as a central concept guiding its work throughout the region.⁴ A key assumption in the context of the TGs, that marks the point of departure for this research, is that human dignity is best promoted by ensuring democratic resource control. In the case of land tenure rights, for instance, “democratic land control and human rights become inseparable or, arguably, democratic land control is a political economy way of saying ‘human right to land’” (Franco et al. forthcoming, 1). The objectives of the TGs quoted above suggests that because the focus is on “improving” governance of tenure, the TGs are relevant to all contexts, as there is always room for improvement in making resource control (more) democratic. However, drawing on Franco *et al.* (2015, 39-40), we identify three scenarios where the TGs are especially relevant for improving tenure rights in Latin America:

1. Communities seek to ***promote*** better distribution and access to land, fisheries and forests (egalitarian distribution; see Article 15)
2. Communities seek to ***protect*** existing tenure rights (democratic access; see Article 4, 5, 7,8,9)
3. Communities seek ***restitution*** of tenure rights (people who were expelled, displaced; see Article 14 and 25)

III. The Need for the TGs

Contemporary agrarian transformations in Latin America have recast land and resource property access, control and ownership in the region in quite profound ways. This has resulted in new forms of access and control issues, overlapping with persistent old ones. While it is safe to assume that despite repeated and varying land reforms from one country to another have delivered partial and uneven outcomes in terms of resource access, the absolute number of landless people is likely to have multiplied. We argue that the TGs provide an important normative framework and tool for holding states accountable in situations where there is a need to (1) *protect*, (2) *promote* or (3) *restore* resource tenure rights. We also argue that the urban question represents a challenge and a strategic opportunity to further extend the scope and relevance of the TGs in the region. This section briefly outlines these three broad contexts in which we can see that there is great need to protect, promote and restore tenure rights of marginalized communities throughout Latin America.

Given the stated objectives of the TGs, it is important to ask, who is vulnerable and marginalized? According to Monsalve Suárez, “the massive and systemic violations of human rights, rarely perceived by governments, judicial bodies or public opinion, are perhaps the most flagrant display of social, economic and cultural oppression to which practically all contemporary societies have submitted the peasantry” (Monsalve Suárez 2014, 30). Moreover, the FAO reports, “In a disconcerting paradox, more than 70 percent of the world’s food-insecure people live in rural areas in developing countries. Many of them are low-paid farm labourers or subsistence producers who may have difficulty in meeting their families’ food needs” (FAO 2014a, vi). Guillou and Matheron claim that 50% of those going hungry globally are poor peasants, 22% are landless peasants and 8% are people “living in communities with traditional lifestyles, such as nomadic herders, family fishermen or forest dwellers (Guillou and Matheron 2014, 176-177). In Latin America the pattern holds. According to the FAO Regional office, “The worst pockets of poverty and food insecurity in the region are found in the rural areas” (FAO 2015). Given these circumstances, and

⁴ <http://www.oas.org/en/iachr/mandate/what.asp>

the explicit focus of the TGs on food security, the tenure situation for rural food producers is of particular concern.

1. The need to promote better distribution

As indicated in a 2014 FAO study, which builds on a collection of country case studies throughout the region, increasing patterns of concentration highlight the need for better distribution of land access and control in Latin America.⁵ Additionally, previous studies also indicate an increase in foreign ownership and control of land, again suggesting the need for better distribution of land resources among those rural inhabitants, who are most vulnerable to food insecurity. Redistribution in this context becomes key to increasing food security as explained in a recent FAO, IFAD and WFP report. “The greater the inequality in the distribution of assets, such as land, water, capital, education and health, the more difficult it is for the poor to improve their situation and the slower the progress in reducing undernourishment” (2015, 28).

There are a variety of dominant systems of land tenure, which have developed in Latin America, and have created distinct challenges for advancing democratic land control today at a regional level. The colonial and liberal reforms of the 19th century legacy of large estates, or *latifundia* system set up deeply unequal patterns of land access and control. However the way labor was organized within these large estates varied across sub-regions and has shaped different dynamics of landlessness and land control today. For example, today we see a higher proportion of commercial family farms in the settler regions of the Southern Cone, than elsewhere in the Andes or in Central America, where labor intensive plantation systems have relied more on slaves, farmworkers, sharecroppers or contract farmers (Berdegúe and Fuentealba 2011, 11). Although the TGs are not retroactive, the history of land tenure in the region has created the current conditions in which the TGs are relevant now and needed to promote better distribution of access and control of land and natural resources.

In response to unequal land distribution and marginalization of peasants and rural people, the region saw a wave of campaigns for land reform in the 1960s-70s, with mixed success. By the 1980s, land reform had disappeared from policy agendas and neoliberal structural adjustment plans pushed for the development of land markets. This dramatically reshaped how the issue was brought back into policy prescriptions in the 1990s, largely due to the leadership of the World Bank as “market-led agrarian reform” (Deininger 1999; Borras 2007, 6). This shift was especially strong in Latin America and has been described as follows:

The traditional policy instrument of state-mandated redistributive land reform is decidedly off the agenda in most Latin American countries. Contemporary land policy is primarily comprised of two instruments: 1) land titling, including the assignment of individual, marketable land titles to the beneficiaries of earlier redistributive reforms; and 2) negotiated or market-assisted land reform (Carter and Salgado 2001, 246–247).

Despite different histories of land tenure and land reform, today land concentration and economic inequality are widespread, albeit more exaggerated in some countries than others. In a comprehensive review of regional studies Berdegúe and Fuentealba paint a picture of severe disparity:

The 20% richest of the rural population earn between 10 and 50 times more than the 20% poorest ranges (CEPAL, 2010); in 9 of 16 countries for which there is data, this measure of income distribution is worsening (Berdegúe, 2010). The majority of the countries for which there is data have Gini coefficients of rural income that are higher than 0.5, thus confirming

⁵ See also, and especially for the political dynamics around land control, the extraordinary collection of, again, 17 countries edited by Almeyra, Conheiro Borquez, Mendes Pereira and Porto- Gonçalves (2014) *Capitalismo: Tierra y poder en America Latina (1982-2012)*.

rural LAC the most unequal rural sector in the world (Schejtman and Berdegué, 2009) (Berdegué and Fuentealba 2011, 7).

Compiling data from agricultural censuses, Chiriboga (1999) “estimated that in 15 LAC countries there were about half a million corporate farms, controlling roughly 55% of the farm land in LAC. The rest, that is, the smallholder sector according to this analyst, would be made up of about 6 million commercial family farms (42% of the land) and 11 million subsistence farms (3% of the land)” (cited in Berdegué and Fuentealba 2011, 11). Moreover, these figures don’t capture the strong connection between food insecurity and landlessness, emphasized by the Human Rights Council.

Approximately 20 per cent of the world’s hungry are landless. Most work as tenant farmers or agricultural labourers. Tenant farmers usually have to pay high rents and have little security of possession from season to season. Agricultural labourers usually work for extremely low wages that are insufficient to feed their families, and often have to migrate from one insecure, informal job to another (2012, 5).

Further exacerbating the challenge of getting access to land among insecure food producers is the presence of foreign capital also competing for already concentrated land rights. Reflecting on the compilation of country studies coordinated by the FAO, Gómez reports that, “the levels of concentration and foreignization of land and resources currently observed have increased noticeably from those observed in the 1960s when the need for agrarian reform in the region was generally justified” (2014, 2). This increase has been especially notable in Argentina, Brazil, Colombia, Chile, Ecuador, Guatemala and Peru, but these studies also highlight that concentration and foreignization rates vary by country across the region (Gómez 2014, 7-8).

The TGs establish a normative framework that justifies and validates demands for redistributive reforms in the face of land concentration and foreignization. “Redistributive reforms can facilitate broad and equitable access to land and inclusive rural development. In this regard, where appropriate under national contexts, States may consider allocation of public land, voluntary and market based mechanisms as well as expropriation of private land, fisheries or forests for a public purpose” (Article 15.1).

2. The need to protect existing tenure rights

Many of the rural communities that currently have control over their lands remain vulnerable to new and ongoing threats of displacement. There are a number of factors that threaten to undermine the democratic access and control over land, fisheries and forests in the future. In the wake of the 2007-08 global financial and food price crisis, new actors and dynamics are emerging, which build on historic processes of concentration of natural resource control:

- 1) Just as **(re)concentration** has on the whole increased since the 1960s, current trends suggest that the ongoing expansion of particular sectors, as depicted in table 1 below, threatens to displace more vulnerable communities and continue exacerbating historic patterns of concentration.

Table 1: Land and capital concentration, by country and sector in Latin America

Country	Sectors where recent significant (land & capital) concentration has occurred
Argentina	Soya, wheat, livestock, sugarcane, tobacco, fruit, conservation
Bolivia	Soya, livestock, forestry
Brazil	Soya, sugarcane, poultry, livestock, fruit, forestry
Chile	Fruit, dairy, wine, seeds, poultry, conservation
Colombia	Oil palm, sugar beets, sugarcane, soya, rice, corn, forestry
Ecuador	Banana, sugarcane, oil palm, forestry
Paraguay	Soya, corn, wheat, livestock
Peru	Fruits, vegetables, sugarcane, oil palm
Uruguay	Soya, dairy, wheat, rice, livestock, forestry
Mexico	Corn value chain, sugarcane, fruits, flowers, coffee, barley, tequila
Costa Rica	Banana, pineapple, oil palm
Guatemala	Sugarcane, oil palm, forestry
Nicaragua	Livestock, rice, oil palm, sugarcane, citrus, tourism, forestry
Panama	Banana, coffee, rice, oil palm
Dominican Republic	Sugarcane, banana, fruits, vegetables
Guyana	Sugarcane, livestock, rice, pineapple, forestry
Trinidad & Tobago	Sugarcane, cacao, fruits

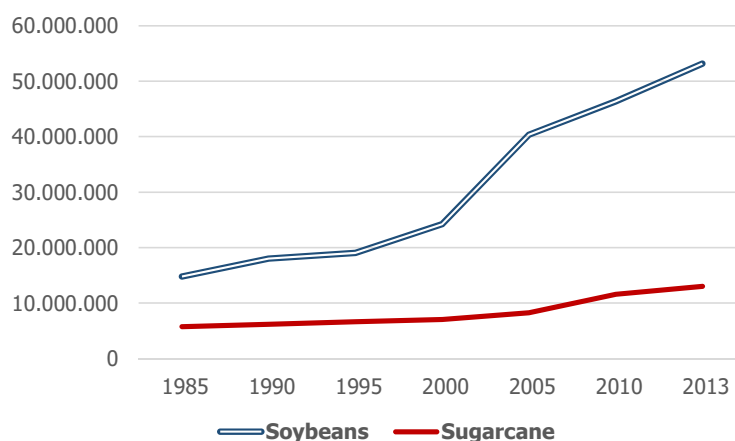
Source: 17 FAO country studies (see Annex 1), plus the summary paper (Gomez 2011), in Borrás et al. 2012, 848. (2011).

One of the contributing factors driving this ongoing process, especially throughout the southern cone, has to do with the rapid growth of oilseed cultivation, most notably soy (Gómez 2014, 9). Research on the expansion of the soy frontier, for example suggests that the process of concentration is contested and at times violent, leading to the displacement of rural communities. According to a 2013 study by the Ministry of Agriculture, Ranching and Fishing (MAGyP), nearly a quarter of Argentina’s farming families are engaged in some kind of dispute over their land. Forty-eight percent of the 857 cases identified are conflicts over parcels of 500 hectares or less (Bidaseca *et al.* 2013). Here, small-scale farms on less than 5 hectares make up 14% of the total farms but occupy less than 1 tenth of 1 percent of land (Berdegué and Fuentealba 2011, 13).

2) Expansion of **flex crops**

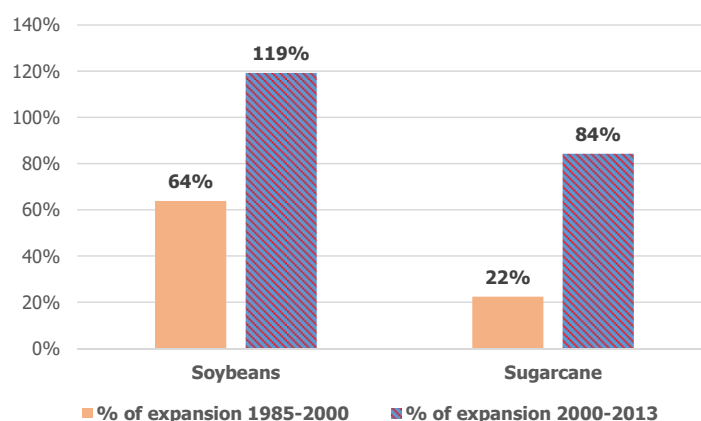
Understood in more broad terms, the soy boom is part of a regional phenomenon some scholars are calling the expansion of “flex-crops” (Borrás et.al. 2010, 2013) with multiple uses (feed, food, fuel, industrial raw materials, biomass, etc.) that can be flexibly interchanged according to market signals. Other flex crops include: oil palm, industrial tree plantations or sugar cane, which have similarly contributed to land concentration and foreignization (Gómez 2014, 16). In the Andean and Central American regions, research on the expansion of African oil palm reveals violence and links to illicit economies (Alonso-Fradejas 2012, Ballvé 2013, Grajales 2013). Figures 2 and 3 below show the cases of soybeans and sugarcane to show, on one side, how these flex crops have expanded in Latin America during the last 30 years, and, on the other side, how the rate of expansion has been higher within current land rush in the context of converging multiple financial, food, energy and environmental crises from the year 2000 on.

Figure 2: Growth of the amount of land harvested with soybeans and sugarcane in Latin America, 1985-2013 (in hectares)



Source: Authors’ own elaboration from FAOSTAT, accessed on September 26 2015

Figure 3: Rates of acreage increase in soybeans and sugarcane for the periods 1985-2000 and 2000-2013 (in %)



Source: Authors’ own elaboration from FAOSTAT, accessed on September 26 2015

Flex crops are part of a trend in Latin America driving a dramatic “re-primarization of economies”, with both left leaning “post-Washington consensus” (Bolivia, Venezuela, Argentina, Ecuador, Brazil) and neoliberal governments (Colombia, Chile, Peru, Guatemala) doubling down on production of natural resource-based commodities for export (Gudynas 2012, Svampa 2013). Much of this production is going to China, which has taken advantage of new opportunities for increasing trade, especially with those governments seeking to reduce their dependence on the US. For Latin American Leftist governments - rich in primary commodities – to get distance themselves from relations with the US and US hegemony, and towards new economic opportunities with a ‘more political ally’ in China framed as south-south relations. This trade is primarily concentrated in primary goods, extractive and agriculture.

There is more research to be done to understand the dramatic changes precipitated by the increasing role of China in the region, however, equally important is the continued influence of old hubs of capital, northern governments, IFIs and multinational corporations. As well as the impact of translatina capital flows within the region, with the notable impact of Argentinian or Brazilian firms (as explored for example by Craviotti 2015, McKay and Colque 2015 respectively).

- 3) The 2014 FAO report highlights dual processes of **land grabbing** and the expansion of flex crops (itself a land grabbing driver) to help identify the drivers behind these agrarian transformations.

Land grabbing will be understood here as ‘capturing *control* of relatively vast tracts of land and other natural resources through a *variety of mechanisms* that involve *large-scale capital* that often *shifts resource use orientation into extractive character*, whether for international or domestic purposes, as capital’s response to the convergence of food, energy and financial crises, climate change mitigation imperatives, and demands for resources from newer hubs of global capital’ (Borras et al. 2012: 851, stress added). This broad and structural understanding of land grabbing sets the analytical lenses over three relevant dimensions of the phenomenon namely, the *scale and nature* of the land grabbing interests, their *extractive rationale* and their ultimate resolution to capture *control* over land resources.

Table 2: Presence of land grabbing in selected Latin American countries and the Caribbean*

Presence of recent large investments in land			Presence of land grabbing (domestic & foreign capital)			Country with major land investors into other countries in the region
High	Medium	Low to None	High	Medium	Low To None	
Argentina	Costa Rica	Trinidad & Tobago	Argentina	Panama	Costa Rica	Argentina
Bolivia	Guatemala		Bolivia	Mexico	Dominican Republic	Brazil
Brazil	Panama		Brazil	Nicaragua	Guyana	Chile
Chile			Chile		Trinidad & Tobago	Colombia
Colombia			Colombia			Panama
Ecuador			Ecuador			Mexico
Paraguay			Guatemala			Costa Rica
Peru			Paraguay			
Uruguay			Peru			
Mexico			Uruguay			
Nicaragua						
Dominican Republic						
Guyana						

*Based on close reading of the 17 FAO country studies and the summary paper by Gómez (2011) – using as analytical lenses the three defining features of land grabbing: 1) control over resources is grabbed; 2) it is large –scale in terms of land acquired and/or capital involved; and 3) it represents a new investment opportunity in response to convergence of multiple crises: food, energy/fuel, climate change, financial. Source: (Borras *et al.* 2012, 856)

According to the Human Rights Council Advisory Committee on the Advancement of the Rights of Peasants and other people working in rural areas, some of the primary causes of violations of the human rights of people in living and working in rural areas are expropriation of land, forced eviction and displacement (Human Rights Council 2012, 8). From a “land control” perspective, land and resource grabs do not always and necessarily entail physical dispossession of people on the ground. Yet, coercion and distressed sales due to indebtedness and/or pressing cash needs play a major role in so called “legal land grabs”. Indeed, although we have seen a productive focus on agrarian commodities throughout the region, this has also coincided with decreasing rural populations. In short, increased mechanization and industrialization used to produce specialized crops for export requires very often less labor and more land.

While unpacking the drivers and impacts of these processes is important, communities on the frontlines of these agricultural frontiers are searching for ways to protect their tenure rights to

land that they still, inhabit, work and/or control. In this context the TGs provide an important practical tool for strengthening claims to protect and restore land and resource tenure rights. Sections 7, 8 and 9 of TGs provide detailed descriptions of how States should better protect community tenure rights, which are highly relevant in response to these dynamics. For example,

States should protect indigenous peoples and other communities with customary tenure systems against the unauthorized use of their land, fisheries and forests by others. Where a community does not object, States should assist to formally document and publicize information on the nature and location of land, fisheries and forests used and controlled by the community. Where tenure rights of indigenous peoples and other communities with customary tenure systems are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims (Article 9.8).

That said, little mention is made of **urban land issues**, or urban marginalized populations that have grown in tandem with increased rural land concentration. The word urban only appears once in the text of the TGs, stating, “States should strive towards reconciling and prioritizing public, community and private interests and accommodate the requirements for various uses, such as rural, agricultural, nomadic, urban and environmental” (Article 20.3). This limited mention, does not however mean that the TGs are irrelevant to vulnerable urban populations. It all depends how the TGs are taken up and used, by whom and for what ends. The first mention of the word “land” in Article 1.1, contains a footnote, which reads, “There is no international definitions of land within the context of tenure. The meaning of the word may be defined within the national context” (1.1 footnote). In recognition of the fact that, “The Voluntary Guidelines encompass broadly, both urban and rural tenure relations, however further details have to be developed to adequately guide the urban constituencies to respond to challenges of rapid urbanization and food security” the FAO, IFAD, UNEP and UN-HABITAT have begun organizing some exploratory workshops like the side event on “Food security and the rural-urban nexus: using the Voluntary Guidelines on tenure to achieve sustainable urbanization and improved resource efficiency” in New York in 2014 (cited from the concept note for the event, 2014).

3. The need to restore lost tenure rights

Some countries in Latin America have experienced (or continue to do so) specific historic events, such as civil war and/or violence related to illicit economies, which have led to waves of massive internal displacement. Especially in such cases the issue of how to ensure restitution of land rights to those populations that have been displaced is an especially sensitive and urgent political challenge.

Currently Colombia ranks second in the world in terms of the highest number of internally displaced peoples. According to statistics from the United Nations, in 2014 there were 5.7 million internally displaced people. Between 1980 and 2010 a total of 6.6 million hectares were abandoned by force and only 500,000 of them have been recuperated by their previous owners. (Garay et al. 2011, 8–11, citado en Grajales 2013a). Sixty percent of the abandoned parcels were smaller than 10 hectares, frequently occupied by peasants under precarious tenure conditions (Gómez et al. 2015, 5). The issue of land restitution is therefore central in public debates about how to build a post-conflict society.

Beyond land restitution policies, ongoing processes of displacement, or distressed sales which may be too gradual to trigger government response, still leave many communities searching for a way to restore the tenure rights they lost. Article 14 speaks directly to this issue. “Where appropriate, considering their national context, States should consider providing restitution for the loss of legitimate tenure rights to land, fisheries and forests” (14.1).

In sum, this brief review of the regional trends highlights ongoing processes of concentration, foreignization, land grabbing, expansion of flex crops, and displacement (both due to civil war and gradual processes of dispossession). In this context communities are searching for ways to promote better distribution of resource control, protect existing tenure rights, and restore tenure rights that have been lost. The TGs provide a guiding, human rights-based normative framework for such demands, and a blue print for democratic policymaking, implementation and monitoring.

IV. Institutional climate for the TGs: How are the TGs being used and how can the TGs contribute to strengthening what is *there* and to *fill in the gaps*?

What the contemporary regional resource rush broadly discussed above entails is that the already difficult challenge to protect, promote and restore democratic resource access of poor people has become even more complicated. We are seeing new problematic tenure dynamics super-imposed upon the old, so to speak. The challenge to protect becomes even more widespread and urgent because more indigenous peoples' territories are now threatened by encroachment. Efforts to promote redistribution remain incredibly marginalized in policy spaces. The challenge to restore lost access became an extremely contested process as now there are other powerful entities occupying or wanting to control peoples' original land and resources, and there are no more spare state lands to accommodate possible alternative restoration sites.

The key question then is how can the TGs: (i) help break the impasse in land and resource policy making where there is a need for new policies, (ii) revive dormant but potentially powerful land and resource policies and laws in places where there are existing ones but are kept dormant, (iii) help fill in the gap in situations where relevant policies and laws exist but need some form of reinforcement, (iv) provide a counterpoint in cases where the existing laws are contradictory to the tenets of democratic resource access?

Let us start engaging with these questions by analyzing broad trajectories of political responses to the TGs by Latin American state actors. The TGs are a tool to hold states accountable and guide the way they govern resource tenure. All 19 Spanish or Portuguese speaking nations in Latin America are members of the CFS and have endorsed the TGs. Nonetheless, as the TGs are rolled out we can begin to see a range of responses by different states and ways of using the instrument. We see variation across different situations where there is a need to protect, promote or restore resource tenure rights as well as differences depending on the nature of existing (or absent or contradicting) policy frameworks. In this brief report we do not pretend to provide an exhaustive analysis of every variable. Rather we highlight some of the responses that are especially notable in the region. Despite the variation between state perspectives and regulatory frameworks, we argue that there is a political opportunity in the context of an increasing attention to agrarian and natural resource politics. This means that it is important to unpack the flexible and multiple ways that the TGs can and are being deployed depending on the context. Preliminarily, and broadly, we identify three main ways: 1) as legitimacy; 2) as social policy for regional integration and; 3) as a point of reference.

1. TGs as legitimacy: Active incorporation into policy language to give credibility to government's agenda

As Tramel and Caal Hub (this volume) explain, the Guatemalan government has incorporated the language of the TGs into its new agrarian policy, and brought the framework center stage in national policy debates. However, despite the uptake of TGs language, the policy falls short of the TGs' objectives. One notable component where we find that the law diverges from the spirit of the TGs is the section that deals with restitution. Section 2.3 of the Agrarian Policy addresses *restitution of rights, compensation and land acquisition for high impact conflicts*. As Tramel and Caal Hub explain, restitution programs here

focus on compensation and verification of lost tenure rights with formal titles. They argue that such policies “have proven unsuccessful in the past” And importantly there is “no mention of, a) those displaced by the civil war, and b) people now landless due to agrarian and environmental extractivist projects”. Many of those displaced in the civil war were indigenous communities with no formal titles, or who lost their titles when fleeing their homes. This approach to restitution runs counter to the spirit of the TGs which state, “where possible, the original parcels or holdings should be returned to those who suffered the loss, or their heirs, by resolution of the competent national authorities” (Article 14.2). Moreover, the omission of those displaced by civil war and landless people due to the expansion of agrarian or extractivist projects, undermines the following point in the TGs: “concerns of indigenous peoples regarding restitutions should be addressed in the national context and in accordance with national law and legislation” (Article 14.3).

Interviews with government officials reveal that the TGs were used in the new agrarian policy for two reasons in Guatemala. According to Adrian Zapata (former Executive Secretary of the Rural Development Cabinet), first, even though the content of the guidelines is general, it is specifically relevant and appropriate to the Guatemalan context today, “in order to attempt to resolve the land problem” (personal communication, 2015). Second, he argues, the TGs were used for tactical political reasons: “para que nadie nos dijera que estamos con el capital atrás. Y que estamos con la FAO atrás. Esa fue la razón táctica” (ibid.). The challenge now, he continues is that “la política no se aplica.” This potentially opens up opportunities for political leverage and monitoring unlike any other country in the region. It also demonstrates that without engagement from civil society there is a risk of the TGs being watered down and used to bolster particular political agendas.

2. TGs as regional social policy: Public commitment to implementation via regional networks or organizations

In the face of growing resistance to neoliberal policies and the subsequent failure of the US led Free Trade Agreement of the Americas (FTAA) in 2005, South American governments in particular have sought to forge deeper ties of regional integration on the basis of broader social, political and development goals that mark a shift from the market-led policies of the Washington Consensus. Some scholars have referred to this as a kind of “post-hegemonic regionalism” (Ruggirozzi & Tussie, 2012), where initiatives like MERCOSUR, which is principally a market integration effort, are also taking up the challenges of poverty and inequality (Saguier and Brent 2015). As part of a new wave of regionalism focusing on social issues, we also see expanding policy spaces oriented towards family farming. In this context we are beginning to see evidence that the TGs are being inserted into such spaces and used as yet another means of weaving together this brand of post-hegemonic regionalism. This is perhaps best captured by the experience of the MERCOSUR Special Meeting on Family Farming (REAF).

In a meeting of REAF held in Brasilia in June 2015, the governments of Argentina, Bolivia, Brazil, Chile, Ecuador, Paraguay, Uruguay, Venezuela pledged to support implementation the TGs. The minutes from the meeting recording this commitment state that, “in addition to strengthening national implementation processes of the Guidelines, new positions at the regional level must be constructed at the same time, especially within the Community of Latin American and Caribbean States (CELAC) and Union of South American Nations (UNASUR), both of which should pledge to emphasize the VGGTs in their work. They [states] agreed that *the Guidelines should be used to guide the multilateral and bilateral cooperation between states and between states and civil society*” (REAF 2015, 3 emphasis added). In this way, we suggest that the TGs may serve to strengthen the social policy architecture of regional blocs like this, and allow for governments with different approaches to the issue to influence each other. Brazil, for example

has played a key role in hosting meetings and workshops to discuss the TGs⁶ and has expressed a number of commitments to implementation of the TGs through existing national institutions, like the National Council for Rural Development (CONDRAF in Brazilian acronym),⁷ especially in its Committees of Agrarian Reform and Governance of Land and of International Affairs. Also, the National Security Council Food and Nutrition (CONSEA in Brazilian acronym)⁸ is to discuss and adopt the TGs in its proposals for food security. In 2014, MDA/INCRA stated that the TGs

...are important to the debate on the National Plan for Sustainable and Solidary Rural Development (PNDRSS in Brazilian acronym), which is under discussion in CONDRAF. This Plan will be guided by the promotion of socio-economic and environmental development; family farming; the democratization of access to land and other natural resources; the territorial approach as a strategy to promote quality of life, management and social participation. The four axes are articulated to meet women's autonomy, youth autonomy and emancipation, and the promotion of ethnic development (MDA, 2014: 4).

The TGs also shall guide the work of the Inter-ministerial Working Group for the Improvement of Land Governance, created in 2013, “which brings together various agencies of the Executive branch and the Judiciary at the federal level and bodies and institutions operating in Brazilian land governance such as the World Bank and FAO” (MDA, 2014: 4).

Though perhaps to a lesser extent, in Central America, the TGs are emerging as a means for deepening integration and exchange as well. Costa Rican ambassador to the UN, Fernando Sánchez Campos, pushed for the formalization of the institutional relationship between the Tropical Agricultural Research and Higher Education Center (CATIE), and the FAO, which resulted in the signing of a memorandum of understanding between the two institutions, in April of 2014, in order to establish better cooperation for the implementation of the TGs. CATIE is a regional organization, with headquarters in Costa Rica. Its governing bodies include a Council of Ministers from the regular member countries: Belize, Bolivia, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Dominican Republic and Venezuela. Sánchez explains his motives for encouraging closer collaboration between the FAO and CATIE: “no solo por la importancia de esta relación en sí misma, sino además con el objetivo de que a través de este mecanismo nuestro país incremente su participación como receptor y como emisor de cooperación Sur–Sur y triangular en el campo de la agricultura sostenible” (Sánchez Campos 2014).

In both of these examples, we see how the TGs are being used as a mechanism for strengthening regional alliances, which break from previous patterns of exclusively trade-based relations in the context of the Washington-Consensus.

3. TGs as a point of reference for identifying weaknesses in existing policies, but with limited state engagement in contexts of already strong human rights based policy frameworks

As mentioned, the government of Bolivia joined MERCOSUR countries in the REAF meeting in Brasilia

⁶ <http://www.fao.org/americas/noticias/ver/en/c/282150/>

⁷ The CONDRAF is a ‘collective body – member of the MDA – to propose guidelines for the formulation and implementation of public policies, being a space for consultation and coordination between different levels of government and civil society organizations, for sustainable rural development, agrarian reform and family farming’ (Art 1, Decree no. 4.854, 2003).

⁸ The CONSEA is an ‘advisory body’ directly related to the President of the Republic and part of the National System of Food and Nutritional Security, mainly responsible for formulating guidelines and priorities for food security in Brazil (Decree no. 6.272, of 2007).

to publicly commit to implementing the TGs. On one hand this demonstrates how countries like Brazil may be influencing the public positioning of other governments through political blocs like MERCOSUR. On the other hand, little progress has been made in-country in terms of TGs implementation, but this may be seen as due to the already well developed policy framework promoting human rights of marginalized communities in Bolivia. In this case, the TGs are seen by Bolivian tenure rights scholars, like Alcides Vadillo et al. of Fundación Tierra, as a point of reference that can be used to provide a baseline and bolster weak points in already existing policies. For example, Vadillo et al. point out one such weak point, “En Bolivia, la responsabilidad de las empresas agroindustriales e inversionistas es uno de los temas pendientes y ausentes en la agenda pública sobre el problema de la tierra” (Vadillo *et al.* 2014, 28). Rather than adopting the TGs as a new framework they suggest the instrument “podría coadyuvar en identificar las falencias y necesidades de mejorar la ley que conocen desde la práctica. Es decir, tienen un rol estratégico para cualquier proceso de discusión previo a la revisión de las medidas legislativas.” (Vadillo *et al.* 2014, 28).

Similarly, after a comparative study of the TGs and the Ley de Víctimas, which deals with land restitution in Colombia, Adriana Fuentes (former advisor to the Land Restitution Unit of the Colombian government) concludes that the Colombian law is more stringent than the TGs (personal communication, 2015). Thus far the Colombian government has not publicly committed to implementation. However, McKay et al. (forthcoming) argue that provisions to assess the righteousness of restitution claims based on the good faith (Buena Fe) of the judiciary opens space for improvement following the TGs.

Land has been a central feature of peace talks in Colombia between the government and the FARC, as well as in the post-armed conflict policy climate in Guatemala. Thus as land and natural resources continue to draw contestation throughout the region, policymakers are seeking solutions. This makes for a relatively friendly climate for the TGs (at least discursively) and creates a strategic political opportunity for non-state actors to take advantage of the regional political climate and use the TGs to push for social change.

Notwithstanding the (potential) positive outcomes that might emerge from these 3 major ways the TGs are currently being understood and deployed (discursively or in real terms) in Latin America, we argue that the TGs can help identifying *gaps*, *deficiencias* and *contradictions* in current regulatory frameworks around the needs to *promote*, *protect* and *restitute* the tenure rights of the most vulnerable and marginalized. Table 3 below presents a far-from-comprehensive series of examples of how this might be done in selected countries and cases, some of which are discussed in this text along with other paradigmatic examples from the region.

Table 3: Using the TGs to assess gaps, lack and contradictions in regulatory frameworks to promote, protect and restore

	Partially available/ dormant	Lacking	Contradicting
Promote redistribution	<ul style="list-style-type: none"> - Women’s land access regulations (Guatemala, Honduras) - Dormant Agrarian Reform Law in Honduras (1975, Decree 170) - Dormant Laws on public food marketing boards (various countries) 	<ul style="list-style-type: none"> - State-led, pro-poor redistributive land reforms (Guatemala, Honduras, Colombia, Paraguay, Brazil) - Tenancy reform regulations (various countries) 	<ul style="list-style-type: none"> - Derogation of public institutions in support of family farming (various countries) - Forced eviction of tenants without option to buy the land they till (various countries)
Protect existing tenure rights	<ul style="list-style-type: none"> - Specific Ruling on the Recognition and Declaration of Communal Lands (Guatemala) 	<ul style="list-style-type: none"> - Agrarian Code (Guatemala) - Regulations to make land corporate 	<ul style="list-style-type: none"> - Market Assisted Land Reforms (Guatemala, Honduras, Brazil) - Land titling programmes

	<ul style="list-style-type: none"> - Maximum land holding laws for foreigners (Peru, Argentina) - Regulations to make land transfers transparent (Mexico, Chile) - Enforcement of Free, prior and Informed Consent (various countries) 	investors accountable in land acquisitions (various countries)	<ul style="list-style-type: none"> delinked from support in agricultural production, transformation and commercialization (various countries) - Mining and oil exploration/exploitation concessions overlapping small-scale producers' farmland and forest communities' tenure rights (Guatemala, El Salvador, Honduras, Colombia, Ecuador, Bolivia, Argentina etc.) - Deep sea port and /or mass tourism development that exclude access rights of small-scale fisherfolks (Honduras, Ecuador)
Restitute lost tenure rights	<ul style="list-style-type: none"> - 2014 Agrarian Policy (Guatemala) - Land Restitution Law (Colombia) 	<ul style="list-style-type: none"> - Regulations on restitution of land and resource tenure rights lost because of distressed sales (all countries in Latin America) 	<ul style="list-style-type: none"> - Laws on Protected Areas that do not restitute tenure rights to forest communities established prior to declaration (various countries) - Mining and oil exploration/exploitation concessions overlapping small-scale producers' farmland and forest communities' tenure rights (idem)

Source: Authors' own elaboration

The inherent tension within the state, as noted by Jonathan Fox (1993), between the need to facilitate capital accumulation and maintain political legitimacy makes the political terrain of implementation contradictory, dynamic, and underscores the point that the TGs will not be implemented by governments alone. Borras and Franco explain this tension: “[The state] will push and push hard for large-scale land deals and on most occasions is even the one directly engaged in the actual land grabbing—but occasional ‘brakes’ will be applied when the character and extent of accumulation and dispossession processes threaten the legitimacy of the state [...] It is in this broader and historical context that we should understand the political dynamics around the Food and Agriculture Organization (FAO) Tenure Guidelines” (Borras and Franco 2013, 1729–1730).

V. Political tendencies among non-state actors

What is unique about the TGs was the participation by social movements representing “the most and marginalized” in the negotiation and approval process of the guidelines. However, policies do not self-interpret nor do they self-implement (Franco 2008; Franco et. al. forthcoming). In the negotiation process compromises were made, ambiguities remained in the final text, and just as every word in the document was the result of intense negotiations, the way the TGs are interpreted and implemented is also a site of contestation.

In short, the document contains a contradictory mix of philosophical and political positions, ranging from a conservative ‘market-based mechanisms’ perspective to a radical ‘human rights and social justice’ perspective. Now that the Tenure Guidelines are approved, the work of implementation and monitoring has begun. Different actors will use and interpret the Tenure

Guidelines differently. Thus implementing and monitoring the Tenure Guidelines will be a contested and political process (Monsalve Suárez and Brent, 2014).

As the previous section demonstrates, uptake and interpretation of the TGs by states is mixed, evolving and uneven, within and between different state actors. Nonetheless there are political opportunities and some receptive public spaces for TGs implementation. We argue that the way such openings are leveraged will largely depend on how the TGs are interpreted and used by non-state actors. Our preliminary analysis indicates that there is in fact a great deal of variation among motivations for using the TGs which, broadly cast, align with the three political tendencies identified by Borrás et al. in their mapping of political responses to land grabbing. In their original framing, they identify three tendencies represented in the figure below.

Table 4: Three political tendencies in response to land-grabbing

<p>1) Regulate to Facilitate Land Deals</p> <p><i>Proponents of this tendency favor large-scale land deals as essentially a desirable phenomenon.</i></p>	<p>2) Regulate to Mitigate Negative Impacts</p> <p><i>Many groups in this camp assume that land deals are “inevitable” and thus seek to mitigate their negative impacts and maximize their opportunities.</i></p>	<p>3) Regulate to STOP and Roll Back Land Grabbing</p> <p><i>This camp deploys international governance instruments in order to “expose and oppose,” stop and rollback land grabbing.</i></p>
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Source: (Borrás et al. 2013)

In the case of the TGs, proponents of tendency 1 are motivated by a desire to facilitate commercial land (and here we add fisheries and forests) deals, which are viewed as beneficial for development, investment and economic growth. In the words of USAID, “responsible private investment is necessary to enhance food security, promote economic growth and lift millions of people out of poverty” (USAID 2013). The TGs are seen as a tool for improving the governance and formalization of tenure rights. According to a leading WB land specialist, Klaus Deininger, as originally outlined by Borrás et al., “Governance, in this case, is based on two most fundamental assumptions in neoclassical and new institutional economics: clear property rights and functioning of free market forces” (Deininger, 2011, as cited in Borrás et al. 2013a, 169). Consistently in line with this perspective the recent World Bank initiative, the Land Governance Assessment Framework LGAF, provides a diagnostic tool for country level analysis of specific problems related to tenure governance and policy recommendations. In short, with a goal of regularizing tenure rights and facilitating ongoing opportunities for investment advocates of tendency 1 are using the TGs as a means of creating more clear property rights and functional land markets.

In contrast, proponents of tendency 2 appear to be motivated by a desire to mitigate negative social and environmental impacts of tenure rights transfers, and see reform of corporate land and natural resource procurement policies and more secure tenure rights as a way to do that. “However, in contrast to the first current, which deploys these instruments clearly to strategically advance land deals, the second tendency deploys these governance instruments based on urgent tactical considerations: to mitigate negative impacts and maximize opportunities” (Borrás et al. 2013, 170). In this view the recognition by private sector actors that disputes over tenure rights may put investments at risk is a strategic opportunity to promote the TGs as a guide for companies to circumvent such disputes and facilitate uptake.

Indeed, investors and market researchers have highlighted the fact that the increasingly contentious nature of natural resource control is bad for business. A report by *The Munden Project* prepared for the Rights

and Resources Initiative details three main findings in this regard, “1. Far from being an “externality”, land tenure can be a real threat to stable returns [...] 2. The financial risks posed are multiple, ranging from slippage in construction times and unexpected cash flow loss due to suspensions to expropriation of assets following the loss of insurance coverage. The escalation of risk can be extremely rapid and irreversible [...] 3. Initial modeling suggests that a typical investment encountering land tenure problems may incur an order of magnitude increase in cost” (2012, 5). In this context, corporate actors who have previously been criticized for involvement in land grabbing (see the case of Coca-Cola below), are now taking an interest in how frameworks like the TGs can help them develop strategies for continuing to expand their business and minimize such risks, through more transparent land deals or even by exploring alternatives to large-scale land acquisitions.

The motivations behind tendency 1 and 2 are different: one is strategic based on the long term belief that more corporate investment and engagement with international commodities markets is good for development; and the other based on a short-term tactical assessment of the perceived best possible outcome for communities facing fast and long-lasting shifts or losses in tenure rights. In practice this tactical move leads to a focus on finding compromises with the private sector. In the context of increasing social mobilization and other forms of “pressure from below” criticizing corporate actors for tenure rights violations, by agreeing to private codes of conduct, or best practices, companies regain credibility from such regulations, thus facilitating ongoing projects. The TGs as a code of conduct, and a language with which companies articulate commitments, tracked by NGOs, becomes a “win-win” solution that satisfies the motivations of both tendencies 1 and 2. By definition this engagement leads to interpretations of the TGs, which contribute to a deepening convergence in modes of governance and proposed outcomes that both tendencies can agree on (We elaborate these points below).

Meanwhile, proponents of tendency 3 view the TGs as a tool to expose and roll back what they often consider as the violation of legitimate tenure rights, by radically opposing the forms of production and corporate actors that are fueling concentration, ongoing threats of dispossession and displacement or loss of control over their lands and natural resources.

The fundamental assumption in this current is that the contemporary expansion of production for food, biofuels, feed, and others is not really meant to solve the world’s hunger, poverty, and environmental degradation, but to further capital accumulation for the insatiable corporate hunger for profits [...] This camp’s starting point is a stand against capitalism, often bringing in a strong anti-imperialist and anti-neocolonial dimension in its position. It sees the rise of flex crops more from a ‘threat’ perspective (Borras et al. 2013a, 170-171).

Anchoring this tendency is the international peasant movement, La Vía Campesina, along with allied groups in Latin America, many of whom participate in the regional body of the International Planning Committee on Food Sovereignty (IPC), called the *Alianza por la Soberanía Alimentaria*. We find that given the high level of participation and influence by social movement groups in this tendency, in the process of negotiations of the TGs, much of the implementation work on the ground now in Latin America reflects this perspective.

In practice these three tendencies are dynamic, messy, at times overlapping and ever changing. Nonetheless, pulling them apart here for analytical purposes, sheds light on the very different approaches to governance that such political tendencies facilitate, thus shaping TGs implementation in distinct ways.

In each of the three tendencies described, processes of implementation have contributed to the development of handbooks, or practical guides, which highlight the diverse interpretations of the TGs *in situ* that we might expect from actors in each camp. We can appreciate the differences by looking at the real policy proposals put forward in contexts where communities are seeking to protect, promote and

restore tenure rights. Specifically we draw examples from LGAF reports to reflect the perspectives of tendency 1, from the Interlaken Group’s Guide for Companies to the TGs for insights into tendency 2 and from the Peoples’ Manual for a reflection of tendency 3 views. When compared side by side as in the table below we can identify some of the key divisions that differentiate these tendencies.

1. While tendency 1 and 2 provide policy proposals based on already formulated interpretations of the TGs, tendency 3 asks questions in an attempt to encourage those communities facing tenure rights violations to articulate their own rights based on critical engagement with the TGs, implying that their knowledge as rights holders is an important part of governance and ensuring state accountability.
2. Tendency 1 and 2 *selectively* engage with the TGs, focusing on securing and formalizing rights or finding ways to resolve barriers to entry for companies, with less emphasis on equal or democratic access and control. These camps work to find interpretations of the TGs that promote efficient property markets *and* responsible production. In contrast tendency 3 frames the TGs broadly as one element in a larger toolbox of instruments intended to promote democratic access and control. Emphasis here is placed on empowerment of marginalized communities, and democratic access and control, with little regard for functioning land and resource markets.

Table 5: Different policy proposals and interpretations of the TGs in contexts where there is a need to promote, protect and restore tenure rights

Promote better distribution of tenure rights	
Tendency 1	“Policies stipulating the right of each citizen to a residential land plot, though seemingly attractive from an equity perspective, are difficult to apply because land is not available [...] Although broad distribution of land to the population played an important role in the post-transition economy, the small size of individual land plots has limited the income that can be generated from such plots. As the economy develops, land markets will assume an increasingly important role, and eliminating obstacles to their efficient functioning will be important” (Deininger <i>et al.</i> 2012, 77)
Tendency 2	<p>“As governments move to implement the VGGT, companies can expect their existing land holdings to be subject to review by civil society organizations and national authorities. In some countries or regions where a “governance vacuum” exists, a company will be expected to hold itself to the highest international standards despite the lack of local or national government oversight in the area. The VGGT provide companies with a reference point to help guide decision-making regarding the company’s impact on tenure rights.” (The Interlaken Group and Rights and Resources Initiative (RRI) 2015, 5)</p> <p>No direct mention of distribution or redistribution is made in the Guide for Companies document. Moreover, in addition to the practical suggestions provided for companies faced with common situations in regards to tenure rights, the guide also includes “Section 6: Essential Reading for Business and Investors: Selected Articles from the VGGT”. Sections 14 on Restitution and 15 on Redistributive Reforms of the TGs are omitted from the articles included in the essential reading list for companies.</p>
Tendency 3	<p>“El concepto de reformas redistributivas fue alterado de manera que incluyera los mecanismos de mercado de acceso a la tierra. En sentido estricto, las compra-ventas voluntarias de tierra no son reformas redistributivas” (Ortega-Espés <i>et al.</i> 2015, 19)</p> <p>“La construcción o el fortalecimiento de alianzas permite a las comunidades y organizaciones ser más fuertes al defender sus derechos, resistir a la pérdida del acceso y control de los bienes naturales y hacer sus propuestas para la gobernanza y el manejo de la tierra, la pesca y los bosques. Esas alianzas pueden contribuir a estimular debates sobre temas como la reforma agraria, el acaparamiento de los bienes naturales o el</p>

	modelo de producción de alimentos en sectores más amplios de la sociedad.” (Ortega-Espés <i>et al.</i> 2015, 58)
Protect and respect existing tenure rights	
Tendency 1	“Enforcing the rights of Andean peasant and Amazonian native communities will require quick action to formalize these rights, to define clear territorial boundaries, and to improve these groups’ representation to the outside world.”(Deininger <i>et al.</i> 2012, 3)
Tendency 2	“Developing robust outgrower schemes is one way a company can secure its raw materials without acquiring or leasing the land. In order to act in a manner consistent with the VGGT, the company should ensure that the smallholders forming part of its production model have the required access to inputs, credit, and land. Producers using outgrower models will want to ensure that tenure rights of the local communities are secure in order to avoid disruptions and conflict in their supply chain.” (The Interlaken Group and Rights and Resources Initiative (RRI) 2015, 8) “The company backs out of investments or operations if they could lead to forced evictions” (The Interlaken Group and Rights and Resources Initiative (RRI) 2015, 13)
Tendency 3	“¿Garantiza el marco jurídico nacional el reconocimiento y la efectiva protección de los derechos consuetudinarios? Si no lo garantiza, las Directrices urgen al Estado a reformar las leyes y políticas de manera que los derechos consuetudinarios tengan pleno reconocimiento y protección. Si los derechos consuetudinarios son reconocidos legalmente, pero de manera parcial o muy débil, o si no se cumple lo que dice la ley, es necesario identificar dónde están los problemas de protección efectiva de los derechos consuetudinarios para urgir al Estado a que los resuelva [...]”(Ortega-Espés <i>et al.</i> 2015, 29) “El resguardo de los derechos de tenencia por parte de las comunidades campesinas, indígenas, pesqueras y pastoriles implica que ellas tengan conocimiento de las normas, leyes y tratados que las amparan. En ese sentido, las Directrices resultan una herramienta más en el conocimiento de los Derechos por parte de las comunidades. ¿Qué se puede hacer para mejorar el conocimiento de estos derechos?”(Ortega-Espés <i>et al.</i> 2015, 53)
Restore tenure rights that have been lost	
Tendency 1	Not dealt with
Tendency 2	“Most countries grant the power of eminent domain to state authorities. This gives them the ability to expropriate lands for public purpose (also known as compulsory acquisition). Each country will define public purpose according to their national laws and priorities. A company’s project might be deemed to have a public purpose for which expropriation can be permitted. Nonetheless, the company must ensure that the process is handled according to the law and does not infringe on the human rights of those affected. Compensation is due to those that have been displaced.” (The Interlaken Group and Rights and Resources Initiative (RRI) 2015, 8) “The company establishes a process to evaluate grievances and historic land claims within or around the site and provide just and prompt compensation when relevant.” (The Interlaken Group and Rights and Resources Initiative (RRI) 2015, 8)
Tendency 3	“La restitución es uno de los temas transversales que se aborda en varios lugares de las Directrices. Aquí es importante analizar si el Estado tiene un programa efectivo de restitución, rehabilitación y reparación de las víctimas de desplazamiento forzoso; y si el programa incluye a comunidades con sistemas tradicionales de tenencia, es decir, a personas que probablemente no tenían títulos de propiedad sobre sus bienes naturales antes del desplazamiento. (Ortega-Espés <i>et al.</i> 2015, 41)

Source: Author’s own elaboration

Monitoring, accountability and governance process regarding the TGs

The TGs provide a normative framework for responsible governance, thus creating a set of standards that all parties involved in disputes over tenure rights can be held accountable to. This dynamic of

accountability differs from that which is stressed in self-monitored, third-party monitored certification schemes or corporate behavior change as a strategy for minimizing reputational risk. In the latter case, corporate actors are held accountable to clients. However, as Fox points out accountability is political and, “involves challenging who is accountable to whom, as clients become citizens and bureaucrats become public servants” (Fox 2007: 2).

The text of the TGs indicates that they can be used by a range of state and non-state actors including, “States; implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned to assess tenure governance and identify improvements and apply them” (Article 2.3). However, it goes on to emphasize that specifically States have obligations to “recognize” (Article 3.1.1), “safeguard” (Article 3.1.2), and “promote and facilitate the enjoyment of legitimate tenure rights” (Article 3.1.3). Further, when these rights are contested, States should “provide access to justice” and “prevent tenure disputes, violent conflicts and corruption” (Article 3.1.5). Although non-State actors have a “responsibility to respect human rights and legitimate tenure rights,” (Article 3.2), ultimately accountability in the process of implementation is defined as: “holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law” (Article 3B.9). This is in line with the fundamental principles of international human rights. That is, international human rights law (both binding and non-binding) rests on the sovereignty of nation states, which are tasked with implementation, and must use their own systems of law to ensure accountability in the implementation process. In regards to the TGs then, implementation will necessarily involve the animation of national legal mechanisms, policy frameworks, and public spaces, where justice can be accessed when tenure rights are contested.

Although the TGs are still a fairly new governance instrument, proponents of each of the three tendencies mentioned above are actively working on a range of implementation efforts in Latin America which link up with local community driven processes as well as with global networks. The different interpretations of the TGs that undergird these initiatives shape the way implementation efforts are taking shape. These differences are not only distinctive features in their own right, they highlight real contradictions and tensions between political tendencies. Below we review a selection of the key examples from the region to date.

Tendency 1: TGs to promote efficient land markets

In 2013, the World Bank publicly endorsed the TGs and conveyed its commitment to incorporating the principles into its Social and Environmental Safeguards framework. Similarly, the “IFC’s Performance Standards were recently strengthened and address many aspects of the VGs, including impacts of land acquisition especially with regard to transparency, community tenure and use rights, and processes for informed consent and fair compensation” (World Bank 2013). However, according to a final statement presented during the activities of the CFS in 2014, signed by IPC on Food Sovereignty members,

[T]he Bank’s recently released draft Safeguards framework narrows the scope of existing policies and actively undermines the spirit of the Tenure Guidelines. It significantly weakens the rights of vulnerable and marginalized peoples, effectively rolling back 30 years of struggle by peoples’ movements and civil society to ensure social and environmental standards protect communities from harm. It demonstrates yet again that the World Bank is not committed to human rights based development (Habitat International Coalition et al. 2014, 1).

Despite such criticism, the existing LGAF indicators are quickly being adapted to incorporate the TGs as a guide for policy recommendations and the “FAO concluded that LGAF is a good base for assessing land

governance status at the country level in the context of the Guidelines in a short period of time and with low cost, even though LGAF does not cover all themes of the Guidelines”, namely restitution is not addressed and plans to assess fisheries governance are still pending (Hilhorst and Tonchovska 2015). According to LGAF advocates⁹, this initiative is in line with the “VG spirit” given that it is based on: country demand, broad stakeholder participation, periodic participatory reviews; and sustained support from partners rather than stop and go. They also argue that most topics of the Tenure Guidelines are covered by the LGAF.¹⁰

Yet, a closer analysis reveals that there are substantial differences between the two initiatives, “at the level of both the *content* of the standard and the *process* of standard assessment” (Monsalve Suárez and Brent 2014, 49). “In the ‘instructions for expert investigation’ related to the establishment of a “tenure typology,” for instance, experts are asked to describe each tenure type according to these three dimensions: 1) Legal recognition, 2) Registration/ recording; 3) Transferability. Thus, this format implicitly implies that good land governance means to promote an efficient land market that would allow the transfer of land toward most efficient users” (Monsalve Suárez and Brent 2014, 50-51). Critics argue that, “the issue is not only to formalize existing land rights, but also to promote *equitable* access to land, fisheries and forests. The notion of equity appears in the LGAF standard. Nonetheless, it primarily concerns procedural issues linked to decision-making processes. For instance, it is stated that institutions should be equally accessible and non-discriminatory (see LGI-6). The idea of incorporating and monitoring ‘equity goals’ only appears in one dimension (LGI-6, dimension 2). Thus, equity does not represent an overarching principle, one that would influence the overall framework in the sense of promoting equitable access to land” (Monsalve Suárez and Brent 2014, 50).

Tendency 2: TGs as codes of conduct for corporate social responsibility

In an effort to reform corporate standards in line with the TGs, Oxfam’s Behind the Brands campaign has developed a score-card system to measure and rank the commitments of the ten largest food and beverage companies best practice in terms of issues like land rights, women, farmers, workers, climate, transparency and water. In the case of land, “The Behind the Brands Scorecard looks at whether the big food companies say they do the right thing by the land and the communities who live on it, and have policies in place to deal with suppliers who violate land rights” (Oxfam 2015). In response to pressure from Oxfam’s Behind the Brands campaign, the Coca-Cola Company has agreed to incorporate new commitments into its Sustainable Agriculture Guiding Principles, which are allegedly inspired by the TGs. A recent brief outlining the policy explains, “Our Company does not typically purchase ingredients directly from farms, nor are we owners of sugar farms or plantations, but as a major buyer of sugar, we acknowledge our responsibility to take action and to use our influence to help protect the land rights of local communities” (Coca-Cola Company 2013).

Much of the pressure from Oxfam focused on tarnishing Coca-Cola’s reputation by publicizing the company’s role in land grabbing. One notable case is in the Mato Grosso de Sul state of Brazil, where sugarcane cultivation has rapidly expanded from 98,958 ha in 2000 to 558,664 ha in 2012 (UNICA 2013b). This growth is forcing the indigenous Guaraní-Kaiowá people from their land, leaving just 42,000 ha under their control—less than one hectare per person (FIAN 2012). Findings from a study by the Conselho Indigenista Missionário (CIMI) revealed deteriorating living standards and a total of 684 cases of suicide between 2000 and 2013 among the Guaraní-Kaiowá—the highest suicide rate in the world (CIMI, 2013). “The largest sugarcane processing company in the region is US-based Bunge and some of

⁹ See power point presentation « Introduction to LGAF » available on the LGAF website in the resource section : http://siteresources.worldbank.org/INTLGA/Resources/Introduction_to_LGAF.pdf

¹⁰ Thea Hilhorst, The Land Governance Assessment Framework. An approach for participatory benchmarking, monitoring and dialogue, power point presentation, December 10th 2013.

their sugarcane has been sourced from five properties located within Guarani-Kaiowá territory [...] Further down the supply chain, one of the principal buyers of sugar from Bunge is the Coca-Cola Company, which not only uses sugar for their soft drinks, but also for their new bio-plastic ‘PlantBottle’ technology” (McKay *et al.* 2014, 14).

Lead campaigner at Oxfam, Judy Beals, explains how this commitment might leverage private power to shape public policy for more secure tenure rights. “Coke can also right now leverage its “sphere of influence” to urge the Brazilian government to finally complete the long-pending demarcations and reach resolution with growers who operate on indigenous lands” (Beals 2013). To push for this type of action, “Oxfam takes a multi-faceted approach to working with the private sector, including campaigning, collaborations and fundraising. The nature of any engagement Oxfam undertakes with a company depends on its goals, the context and the company” (Oxfam 2015). This is welcome news to Dr. Gregory Myers, USAID Division Chief, Land Tenure and Property Rights, who expresses his support of the company’s uptake of the TGs as follows,

We welcome Coca-Cola’s commitments to recognize the property rights of local communities and promote transparency along its supply chain. Coca-Cola and other responsible private sector actors have the ability to affect positive change by leveraging their market power to compel their suppliers to work in consultation with local communities and adhere to guidelines that protect rights and promote responsible investment. We support Coca-Cola’s commitments and hope other companies follow suit” (USAID 2013).

After Coca-Cola’s announcement PepsiCo followed suit, representing big successes in the eyes of Marcela Villarreal, Director of FAO’s Office for Partnerships, Advocacy and Capacity Development as well, who says, “Securing the official commitment and operational support of both PepsiCo and the Coca-Cola Company is tremendously significant for the implementation of the Voluntary Guidelines and we hope that more large private companies will follow their lead” (FAO 2014b).

This strategy is essentially based on naming and shaming companies that are exposed to brand risk for hypocrisy if they do not stick to their commitments. In line with Keck & Sikkink’s work on “accountability politics”, defined as, “the effort to oblige more powerful actors to act on vaguer policies or principles they formally endorsed” (Keck and Sikkink 1999, 95), this approach is significantly strengthened, only if advocacy groups make a medium-term commitment to follow up and evaluate adherence to those commitments. This highlights why follow-up mechanisms are so important and worth thinking about how the participatory and democratic principles that characterized and gave legitimacy to the negotiations of the TGs, can be carried forward in the monitoring and implementation process.

In order to encourage more commitments from the private sector there is a proliferation of work focusing on multi-stakeholder dialogue between, NGOs, public development agencies and the private sector dedicated to interpreting the TGs so that companies will use them. For example, “After being approached by several companies for guidance on this important issue, USAID is developing a practical guide to help the private sector make its agricultural investments more sustainable and inclusive and less risky from a land tenure perspective, in line with provisions of the VGGT and the forthcoming RAI relevant to private investment” (USAID 2014, 2). In a similar effort involving many of the same actors, Rights and Resources Initiative together with representatives from the World Bank Group’s International Finance Corporation (IFC), Nestlé, The Round Table on Responsible Soy, Global Witness, Coca-Cola, Oxfam, and others formed “The Interlaken Group” in 2013, “to identify practical ways in which companies and their investors can support improved land and forest governance and the tenure rights of rural populations”, especially in regards to using the TGs (The Interlaken Group and Rights and Resources Initiative (RRI) 2015). Many of these initiatives are global in scope, but tap into regional networks and impact production and supply chain dynamics throughout Latin America.

In the recently developed Guide for Companies of the TGs, authors explain that although “the VGGTs [TGs] is an indivisible package. In other words, companies cannot pick certain articles with which to comply and ignore others. Every project will encounter site-specific land and forest tenure challenges that will require managers to use their judgment and integrate a variety of competencies into project operations” (The Interlaken Group and Rights and Resources Initiative (RRI) 2015, 1). In short, projects will necessarily *interpret* the guidelines, emphasizing some components more than others. This guide is intended to help companies with such interpretation. Since, “While they [the TGs] provide a high-level framework within which companies can demonstrate support for better land and forest tenure governance, they might be difficult to interpret for those not expert in such concepts” (The Interlaken Group and Rights and Resources Initiative (RRI) 2015, 1).

At the same time, this approach has drawn criticism from a number of food policy scholars and activists. Prof. Marion Nestle remarks, “Oxfam intends to monitor companies’ responses and to adjust scores accordingly. It will have plenty of work to do. Does Oxfam think companies will *voluntarily* take actions that might reduce their bottom lines? Will its scorecard encourage voluntary action? I’m not optimistic” (2013). Anuradha Mittal, of the Oakland Institute argues, “Given the devastating impact of these large-scale land acquisitions, a set of ‘voluntary’ guidelines leaves communities vulnerable to the ‘good will’ of corporations at best,” (Arsenault 2015).

Tendency 3: Use TGs to STOP and rollback violations of tenure rights

Groups in tendency 3 are focusing energy to some extent on 1) engaging with public institutions and participating in policy spaces to monitor and shape implementation efforts in a way that democratizes access and control of land, fisheries and forests; and predominantly working on 2) capacity building among marginalized groups facing violations of their legitimate tenure rights so that they might draw on the TGs as a means of framing demands and protecting, promoting or restoring those rights. This camp highlights the fact that the TGs are a governance instrument that emerged in response to the serious violations of tenure rights experienced by marginalized communities due to unequal distribution, ongoing threats of dispossession, and displacement. As a result the TGs themselves are very clear about who the instrument is meant to serve, and therefore, to whom states must be held accountable, if they are to fully implement them: those most marginalized groups. This conception of governance is well described by a Zapatista slogan: meaningful accountability is to *lead by obeying*.

To ensure that public leaders “obey” the needs and demands of the intended primary beneficiaries of the TGs Franco et al. call for, “democratizing access and control [which] necessarily means deliberately changing the institutional patterns of land access and control in favour of the previously excluded poor people in line with the notion of ‘social justice’” (Franco et al. forthcoming, 2). In this spirit, social movements representing peasant, indigenous and fisherfolk communities throughout the region are using human rights frameworks to engage with public institutions and judicial bodies in defense of their rights in a number of ways. In contrast to the narrowing and selective use of the TGs we see in interpretations of the TGs by actors in tendency 1 and 2, this view attempts to broaden the TGs by using them as a gateway to other human rights instruments. As Landívar explains the engagement of social movements in the negotiation and implementation of the TGs process “ofrecía la oportunidad de incorporar en el texto de las Directrices, los instrumentos del derecho internacional de derechos humanos y de derecho ambiental que protegen los derechos a la tierra y los recursos naturales. Además, las Directrices iban a complementar y fortalecer otras iniciativas relacionadas en marcha como, por ejemplo, el desarrollo de directrices sobre la pesca en pequeña escala, y la declaración de los derechos de los campesinos y las campesinas” (Landívar García et al. 2013, 24–25).

Human rights have provided a legal backbone for indigenous, fisherfolk and peasant struggles in Latin America with increasing strength during the past decade. Due, in part, to pressure from Indigenous movements, constitutional reform efforts throughout the region were guided by the normative frameworks laid out in the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the 1989 International Labor Organization (ILO) Convention 169. In Colombia the creation of “peasant reserve zones (ZRCs) represents an attempt to claim autonomy based on a peasant identity, in much the same way that indigenous peoples have made ethnically based claims to territory [backed by UNDRIP]” (Brent 2015, 689; see also Fajardo CITE, and McKay et al. this issue). More than ten years of work by human rights activists and, especially with the leadership of *La Vía Campesina*, has succeeded in getting a draft of a ‘Declaration on the rights of peasants and other people working in rural areas’ inserted into a formal process of negotiation within the UN Human Rights Council, which created an open ended intergovernmental working group on this topic, chaired by Bolivian Ambassador, Angélica Navarro Llanos (Golay 2015, 9). The recent publication, *The Manual for Judges on the Protection of Peasants’ Rights* reflects the increasing engagement by *La Vía Campesina* in Latin America with human rights. This book is the product of a collaboration that has emerged since 2010 between the *Red Iberoamericana de Jueces* (REDIJ) and *La Vía Campesina* (Laubreaux 2014, 15). In sum, there is a dense network of interconnections and points of engagement around human rights that have brought small-scale food producers and marginalized rural communities into UN institutions and national-level public policy spaces.

Through these channels, authors of the popular manual for the TGs, written by organizations representing those constituents, emphasize that **practical ways of using the TGs** include:

1. Directly contacting special rapporteurs of the UN about tenure rights violations (Ortega-Espés *et al.* 2015, 76)
2. Using the TGs (Article 4.8) to protect human rights activists and small-scale food producers from criminalization when engaging with the courts (Ortega-Espés *et al.* 2015, 77)
3. Using the TGs to support proposed legislation as has been done in the case of the Cristian Ferreyra Law in Argentina¹¹, to place a 5-year moratorium on all evictions until a survey of the current tenure situation is carried out and a roundtable with representation by peasant movements is created (Ortega-Espés *et al.* 2015, 81)
4. Using the TGs as an avenue for participating in policy spaces from the national level (like the Roundtable mentioned in the previous point) to the regional level.

Following the public commitment of MERCOSUR governments to implement the TGs, the Ministry of Agrarian Development in Brazil in collaboration with the Programa de Cooperación Internacional Brasil-FAO, FAO y Reunión Especializada de Agricultura Familiar (Reaf/MERCOSUR) extended an invitation to organizations from La Vía Campesina to a workshop in Brasilia with the following intention: “potenciar el intercambio y reconocimiento entre los países de América del Sur sobre los procesos en marcha de implementación de las directrices en cada país, conocer y debatir la mirada de la sociedad civil” (Ortega-Espés *et al.* 2015, 83). In reference to the decision by members of the IPC on Food Sovereignty to participate in regional and international spaces like this, Landívar explains, “el alto grado de participación e inclusión de este proceso sentó un importante precedente para expandir la democratización en la toma de decisiones a nivel internacional” (Landívar García *et al.* 2013, 25).

The importance of participation by marginalized groups in policy debates that shape the nature of TGs implementation is underscored by Franco et al.: “There is no doubt how fundamental and critical are autonomous social mobilizations from below by subaltern groups; and an integral part of this is their use of the human right to land as a radical and powerful mobilizing narrative to frame land claims from below. Without such claim making from below, the radical potential of a human right to land is not maximized”

¹¹ Named after a peasant leader killed in defense of his land

(forthcoming, 8). However, fruitful participation in these spaces and engagement with human rights institutions has required capacity building, research and monitoring efforts by social movements and allied NGOs. Used in this way, the TGs are an especially important mechanism in the civil society toolbox when confronting threats to existing tenure rights, promoting better distribution of access and control over resources and ensuring restoration of rights. A growing number of examples of this type of work can be found in the region, but three donor funded multi-country initiatives stand out as the main initiatives to support capacity building among members of the IPC on Food Sovereignty, many of whom we situate in tendency 3.

Table 6: Donor funded multi-country initiatives to support capacity building among members of the IPC on Food Sovereignty, many of whom we situate in tendency 3.

Leading organization(s)	Donor	Countries involved	Objective	Actions
1. La Via Campesina	IFAD	Mozambique, Argentina, Nicaragua/Central America, Nepal and Europe	Capacity building on interpreting and using the TGs by grassroots CSOs	-Two workshops per country/region - Developing a Peoples’ Manual on the TGs ¹²
2. IPC on Food Sovereignty and the FAO	Belgium	South Africa, Malawi, Niger, Senegal, Myanmar, Nepal and Guatemala	Increase knowledge and capacity of civil society organizations regarding the use of the TGs	Trainings building on and using the Peoples’ Manual developed in the LVC initiative as the basis for training and capacity building
3. Alianza por la Soberanía Alimentaria de América Latina y el Caribe (IPC on FS Latin America)	FAO and Brazil	Peoples’ initiative to monitor the implementation of the TGs	Colombia, Peru, Panama and Paraguay	Capacity building workshops in each country

Although, much of this work is still in its early phase, these projects have revealed that there is more work to be done in terms of developing materials and knowledge around the justiciability of the TGs, so that people are better prepared to identify meaningful uses of the TGs when States or other third parties are violating their human rights and in those cases, have the capacity and confidence to take matters to court, under the appropriate conditions. Further, while in many cases ambitious and fruitful, the collaborative nature of the projects between IPC on Food Sovereignty members and intergovernmental and donor

¹² Spearheaded by the Movimiento Nacional Campesino Indígena (MNCI) of Argentina, and compiling cases and examples of practical applications of the TGs from around the world. This text is written in accessible language, prompting readers to ask critical questions about how the TGs relate to their own lives. Finished in March 2015, and translated into French, English and Spanish, this guide is intended to help build legal literacy and capacity for self-advocacy among marginalized groups. It stresses the fact that the TGs are part of a broader landscape of strategies for promoting, protecting and restoring tenure rights, encouraging readers to treat them as a stepping stone into a universe of human rights-based instruments. “Son sencillamente una herramienta (de tantas otras que encontramos en la caja de instrumentos) que podemos usar de diferentes formas ante la emergencia de un conflicto o ante procesos políticos relacionados a la tierra, la pesca y los bosques. No son una fórmula mágica. Tampoco funcionan por sí solas. Son una herramienta que se puede utilizar en situaciones específicas, y que requieren de nuestra inteligencia y creatividad colectiva para usarlas” (Ortega-Espés et al. 2015, 50)

organizations also means navigating the cultural and political differences between these actors, as well as synchronizing working dynamics, rhythms and operational styles from the local to the global level.

Finally, it is important to note that some skepticism among organizations within tendency 3 remains around the value of dedicating resources and energy to using the TGs. This is largely due to some remaining vague language in the text, and/or weaknesses that are seen as vulnerable to cooptation, and considered unfortunate concessions during the negotiations. For example, some Brazilian agrarian social movements and NGOs are critical to the TGs because of ‘the political ambiguity of its provisions’ (PRIOSTE 2015, 24). According to these critiques, the TGs

[T]end to seek a conciliation between market mechanisms to regulate the relationship with the land and the rights and claims of peasants, indigenous and traditional peoples and communities. In their claims and ways of life, they do not rely on property right, i.e. the notion of land as a commodity. Though, if on one side the ILO Convention 169 exalts the peculiarities of each people and its cosmological notions of life in the regulation of the access to land, the Guidelines seem to establish a conciliation between these views and market mechanisms (PRIOSTE 2015, 24).

However, such conciliation – or even the possibility of different interpretation of the legal provisions is also consistent with ambiguities in the Brazilian Constitution, which emphasizes market mechanisms. For instance, it establishes private property as a fundamental right, but also recognizes land rights for indigenous and Quilombola communities, as well as the healthy environment’s rights, as fundamental rights of the Brazilian society. Looking from this perspective, depending on how the mechanism is interpreted, some elements of TGs may be capable of helping to advance the realization of rights, but others may hinder the recognition and enforcement of rights to the people of the countryside (PRIOSTE, 2015, 25). Similarly Landívar suggests that although the TGs

[establecieron] un importante estándar de consulta y participación general; lamentablemente, no se extendió el principio sobre el consentimiento libre, previo e informado a otros grupos sociales no indígenas. Más aún, las Directrices no condenan el acaparamiento de tierra: si bien establecen una serie de salvaguardas para controlar esta opción y sus impactos, la correlación de fuerzas durante las negociaciones no permitió que el texto incluyera una prohibición del acaparamiento de tierra (Landívar García et al. 2013, 25).

All of these critiques underscore the fact that the political struggle that went into the negotiations of the TGs is far from over. In fact the process of interpretation that will shape implementation is highly contested political terrain, which most clearly marks the divisions between the three political tendencies, which we have elaborated here.

To sum up our findings, the table below further nuances the analysis elaborated in table 3, by showing how according to the different political tendencies, interpretations of how the TGs might be used in cases where laws are partial, lacking or contradictory, in order to respond to community needs for promotion of better distribution, protection or restoration of their tenure rights. Like table 3, rather than an exhaustive survey of these categories throughout the region, this is a preliminary typology meant to illustrate how the differences we have described can play out when the TGs are put into practice.

Table 7: Interpretations of how TGs could be implemented according to nature of existing policy frameworks in situations where there is a need to promote, protect or restore tenure rights

<i>Community tenure needs/ claims</i>	<i>Political tendencies</i>	<i>Regulatory frameworks and instruments</i>		
		Partially available/	Lacking	Contradicting

		dormant		
Promote better distribution of tenure rights	1	<ul style="list-style-type: none"> - MLARs implementation in context with imperfect land markets - Elimination of obstacles to land and water resources markets 	<ul style="list-style-type: none"> - Vibrant mechanisms for prompt and secure tenure rights transferability 	<ul style="list-style-type: none"> - State control over land and water resources markets
	2	<ul style="list-style-type: none"> - No mention of this issue in the reading list of the Guide for Companies -CSOs participation in land policy making and monitoring 	<ul style="list-style-type: none"> - Widespread secure tenure rights in combination with rigorous social and environmental safe guards and policy frameworks to protect communities’ rights to negotiate better deals and ensure just compensation. 	<ul style="list-style-type: none"> - Pure state-led or pure-market led frameworks for tenure rights (re)distribution
	3	<ul style="list-style-type: none"> - Awareness of, and ability to use the TGs by the most marginalized and vulnerable ones (Peoples’ Manual on the TGs just starting to be shared widely) - Social movements participation in land policy making and monitoring 	<ul style="list-style-type: none"> - Effective mechanisms to promote real (vs procedural) equitable access to and democratic control over land and water resources - Right to land (enshrining democratic land control as a human right) - Declaration on the rights of peasants and other people working in rural areas - Protection of defenders of people’ s tenure rights 	<ul style="list-style-type: none"> - Persistence of MLAR as the preferred framework by many states for tenure rights (re)distribution - Criminalization of demands for democratic land and water resources control
Protect and respect existing tenure rights	1	<ul style="list-style-type: none"> - Transparency standards in large-scale land acquisitions - Adoption of the Responsible Agricultural Investment principles (RAI) - Adoption of Land Governance Assessment Framework (LGAF) 	<ul style="list-style-type: none"> - Vibrant mechanisms for prompt and secure: 1) legal recognition, and 2) registration/ recording of tenure rights - Broad and vibrant multi-stakeholder platforms to deal with tenure conflicts 	<ul style="list-style-type: none"> - State support for (infra)subsistence agricultural producers
	2	<ul style="list-style-type: none"> - Corporate adoption of code of conduct/ corporate social responsibility standards with regards to tenure rights 	<ul style="list-style-type: none"> - Win-win arrangements for inclusion of land and water resource users in the face of land and water grabbing (e.g. contract farming) - Broad and vibrant multi-stakeholder platforms to 	<ul style="list-style-type: none"> - Violent evictions

			deal with tenure conflicts	
	3	<ul style="list-style-type: none"> - States' compliance with UN Special Rapporteurs engaging with land and water resource tenure rights - Effective protection of communal, traditional and/ or informal tenure - Awareness of, and ability to use the TGs by the most marginalized and vulnerable ones (Peoples' Manual on the TGs just starting to be shared widely) 	<ul style="list-style-type: none"> - Effective and real free, prior and informed consent - Right to land (enshrining democratic land control as a human right) - Declaration on the rights of peasants and other people working in rural areas - Judiciability of small-scale agriculturalists', fishers' and forest users' tenure rights violations - Protection of defenders of the tenure rights of the most vulnerable and marginalized ones 	<ul style="list-style-type: none"> - States' (re)classification of communal and/ or informal tenure as fallow or unused land (forests or fisheries) - Mining and oil exploration/ exploitation concessions overlapping small-scale producers' farmland and forest communities' tenure rights - Deep sea port and /or mass tourism development that exclude access rights of small-scale fishers - Responsible Agricultural Investment principles (RAI) - Land Governance Assessment Framework (LGAF) - Forced and violent evictions
Restore tenure rights that have been lost	1	-Land restitution tools not prominent in LGAF		<ul style="list-style-type: none"> - Disruption of development projects and/ or large-scale investments projects in agriculture, fisheries or forests because of demands for restitution
	2	- Section 14 of the TGs on restitution omitted from the essential reading list of the Guide for Companies	<ul style="list-style-type: none"> - Clear and effective compensation mechanisms by states - Just and prompt compensation measures by companies when relevant 	
	3	<ul style="list-style-type: none"> - Current restitution laws - Awareness of, and ability to use the TGs by the most marginalized and vulnerable ones (Peoples' Manual on the TGs just starting to be 	<ul style="list-style-type: none"> - Clear and effective restitution, rehabilitation and reparation state mechanisms in cases of inevitable forced eviction, including cases where tenure rights are not formalized - Restitution of indigenous peoples' territories 	<ul style="list-style-type: none"> - Laws on Protected Areas that do not restitute tenure rights to forest communities established prior to declaration - Responsible Agricultural Investment principles

		shared widely)	- Restitution mechanisms in cases of distress sales - Right to land (enshrining democratic land control as a human right)	(RAI)
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Source: Authors’ own elaboration

VI. Conclusions and Recommendations

There is an urgent need for the implementation of the TGs in Latin America in situations where there is a need to 1.) *protect* existing tenure rights that are threatened or vulnerable to displacement or dispossession from expansion of flex crops, or land and water resources grabbing; 2.) *promote* better distribution of tenure rights due to (re)concentration and/or foreignization; and 3.) *restore* legitimate tenure rights to marginalized groups that have been displaced or dispossessed due to civil war, violence or distress sales. In such situations the TGs can serve a number of functions including: encourage greater participation by marginalized groups in policy making spaces in order to improve partial or dormant laws that shape land and resource governance; provide a blueprint for real democratic access and control, where laws and policies are lacking. Identify contradictory laws and policies that further marginalized already vulnerable peoples; be a tool for building awareness about and ability to claim legitimate tenure rights for marginalized groups.

The TGs are therefore a potentially powerful instrument for holding states accountable to their existing commitments to respect, protect and fulfill the human rights of those living in their territories. In the spirit of human rights, the TGs prioritize the rights of those most marginalized groups. This means their full implementation will likely challenge the status quo and threaten powerful actors by redistributing control over resources.

This potential is largely due to the fact that the TGs carry legitimacy due to the very participatory process of negotiation that led to their approval. The backing and credibility that the TGs provides is seen by many actors as a desirable and useful blueprint for navigating contentious politics around natural resource use. However, the interpretation of the TGs is highly contested, and therefore the implementation is subject to the political tendencies of those actors who control it.

Political tendencies 1 and 2 are subject to selective interpretation of the TGs as a procedural self or third-party monitoring check list for the private sector. This differs from what is stressed tendency 3, where TGs are cast very broadly as a normative framework for governments to draw on when holding tenure rights violators accountable to the rule of law, and for marginalized communities to use as a way of holding states accountable to promote, protect and restore their tenure rights. Such distinctions are important because those forms of implementation that exclude marginalized groups will stray from the participatory spirit, which gives the guidelines their legitimacy.

The FAO is engaging with all three tendencies, even though they represent conflicting visions. As implementation efforts spread it is crucial that extra care be taken to ensure a leadership role for those most marginalized sectors of society, which suffer most from food insecurity and lack of or vulnerable tenure rights. To this end, existing efforts to engage with peasant and indigenous movements are important.

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