

Fertile ground for the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure?

Critical reflections about the political landscape in Latin America¹

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Abstract

The current configuration of global land politics -- who gets what land, how, how much, why and with what implications in urban and rural spaces in the Global South and North -- brings disparate social groups, governments and social movements with different sectoral and class interests into the issue of natural resource politics. Governance instruments must be able to capture the 'political moment' marked by the increasing intersection of issues and state and social forces that mobilize around these. This paper looks at whether and how the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security passed in 2012 in the UN Committee for Food Security (CFS) can contribute to democratizing resource politics today. This work attempts to make an initial sketch on how a systematic research into the TGs can be done more meaningfully.

1 Global land politics today: context and challenges

In the context of increasingly evident climate change, the past decade has witnessed multiple crises around food, feed, fuel, energy, environmental and climate change, as well as financial crisis, which have overlapped and fed into each other. Among the most immediate and direct consequences of this convergence of multiple crises as well as the competing responses to these has been the wave of global resource grabs that primarily come in the forms of land, water and forest grabbing.⁶ The land rush involves state, corporate and entrepreneurial land investors, land brokers and scammers, as well as big environmental and conservation NGOs -- domestic and foreign. These resource grabs have been: (a) across sectors: land, water and forests, (b) across commodities and regulatory institutions: food, feed, fuel, energy, fiber and other commercial and industrial commodities, as well as conservation processes and outputs, (c) across governance levels: international, national and local.

These resource grabs have differentiated impacts on various social groups and classes in affected communities. There are two broad trajectories, as Tania Li explains: when the land is needed but the people are not, it is likely that the latter are going to be coercively expelled from the land.⁷ But not all of these engagements with land, water and forest require and/or result in the expulsion of people from the land. Some are incorporated, albeit usually adversely, into the emerging enterprises or conservation initiatives. And while, land grabbing is the most high profile and controversial land issue today, this builds on historic and ongoing processes of differentiation in rural areas deepening patterns of land concentration in the region.⁸

Whether expelled, threatened with expulsion or incorporated, when people’s access to and control over their land, water and forest resources are altered, so are their lives and livelihoods. Conflict, at times violent, marks many of these political processes, as some of those affected by land grabs mobilize and resist in a variety of ways.⁹ In response, regulatory interventions have consisted of a variety of minor adjustments to existing land policies, as well as some broad reaching attempts at national land reform, and land market policies. Land policies continue to be implemented in many countries today, however state-driven redistributive land reform traditions have in large part been dropped from the official agendas of national governments, or morphed into something market-driven.

The current configuration of global land politics -- who gets what land, how, how much, why and with what implications in urban and rural spaces in the Global South and North --brings disparate social groups, governments and social movements with different sectoral and class interests into the issue of natural resource politics. Governance instruments must be able to capture the ‘political moment’ -- the context in which they are formulated and its challenges.¹⁰ Will the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (TGs) passed in 2012 in the UN Committee for Food Security (CFS) be able to capture and respond to this particular political moment? Whether and how this can be done -- is something that should be empirically investigated en passe rather than theoretically assumed a priori. This paper attempts to make a very initial sketch on how systemic research into the TGs can be done more meaningfully.

2 The relevance of the TGs in the context of converging issues around resource politics

The converging land politics across sectoral and world geographical divides have resulted in new forms of access and control issues overlapping with persistent old ones. 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. That is, following Franco et al., in situations where poor people still have access to resources but that access is threatened, the task is to protect such access; where poor people do not have access to land, water and forest for a variety of reasons, the task is to promote access; and where poor people lost their access to natural resource and territory due to varying forms of extra-economic coercion, the task is to restore their access.¹¹ Taken together these three dimensions contribute to what Franco et al. has called democratic control over natural resources, arguing that

Table 1: Presence of land grabbing in selected countries in Latin America 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 Bolivia Brazil Chile Colombia Ecuador Paraguay Peru Uruguay Mexico Nicaragua Dominican-Republic Guyana | Costa Rica Guatemala Panama | Trinidad & Tobago | Argentina Bolivia Brazil Chile Colombia Ecuador Guatemala Paraguay Peru Uruguay | Panama Mexico Nicaragua | Costa Rica Dominican Republic Guyana Trinidad & Tobago | Argentina Brazil Chile Colombia Panama Mexico Costa Rica |

Source: Borras et al. (2012) based on the 17 FAO country studies.

democratic natural resource control is inseparable from human rights. In other words, democratization is a process that allows marginalized groups to participate in decision-making that affects their lives and necessarily implies 'expand[ing] the effective reach of human rights in reality system-wide.'¹² This framing has an inherent bias in favor of subordinate agrarian classes and social justice, which reflects the spirit behind social movement participation in the negotiation of the TGs and indeed gives this instrument particular legitimacy among these groups.¹³ The matters addressed in the TGs are essential for realizing and respecting fundamental human rights. Thus, the TGs should be read as part of a web of human rights declarations, protocols, and interpretive and operational documents that make up the normative framework relevant to the democratization of land and resource control.

(i) To protect existing access and control

Many of the rural communities that currently have control over their lands are marginalized and therefore vulnerable to new and ongoing threats of displacement. There are a number of factors that threaten to undermine existing access to and control over land, fisheries and forests in the future. Current trends suggest that the ongoing expansion of particular sectors, as depicted in table 1, threatens to displace more vulnerable communities.

Table 1 shows land grab sites (columns 4-6) based on the aggregated empirical data from the 17 FAO country studies: 10 countries with high level and three countries with medium level of resource grabs. Many of these land investments are large in scale, like those found in Brazil, Argentina, Paraguay, Uruguay and Chile. It is difficult to pin down the actual number of hectares affected by land/water/forest grabs, as explained and debated by some scholars.¹⁴ However tracking land conflicts resulting from expanding commodity frontiers can be done. Research on the expansion of the soy frontier in the Southern Cone, 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.¹⁵

Table 2: Regional Plantation Area (in 000 ha) and Increase (in %) in (Tree) Plantation Area During 2000 to 2010

| | Africa | Asia | Oceania | Europe | Caribbean | Central America | North America | South America | World |
|-----------------------|--------|---------|---------|--------|-----------|-----------------|---------------|---------------|---------|
| Plantation Area, 2010 | 15.409 | 115.783 | 4.101 | 69.318 | 547 | 584 | 37.529 | 13.821 | 264.084 |
| Annual Increase | 245 | 2855 | 78 | 401 | 15 | 16 | 809 | 376 | 4.925 |
| Annual Increase | 1.75% | 2.87% | 2.12% | 0.60% | 3.34% | 3.14% | 2.46% | 3.23% | 2.09% |

Source: UNEP (2012)

There are iconic land grabs that deploy various forms of extra-economic coercion, including violence and intimidation, such as those reported by Grajales in Colombia,¹⁶ Edelman and León in Honduras,¹⁷ and Alonso-Fradejas in Guatemala.¹⁸ Yet, perhaps the more common form of land grabbing, following the more inclusive definition advanced by Borras et al.¹⁹ within the concept of 'control grabbing' includes land transactions around a variety of land sales and rentals where petty landowners do not have other options, for various reasons including lack of state support to small farm agriculture, as exemplified by the system of 'pools de siembra' in Argentina²⁰ and the renting out practices in Santa Cruz soya complex as studied by McKay and Colque.²¹ Protection of rights in this context would mean more than just formalizing private individual land rights (as they already had/have land rights), rather making sure that the policy environment is supportive of small-holder agriculture and/or alternative non-farm livelihoods.

One of the most significant causes of land use and land cover change in the world today is the conversion of forest or agricultural lands into industrial tree plantations, principally eucalyptus (see table 2). The rise of 'flex crops and commodities',²² and in particular 'flex trees' as explained by Kröger,²³ has partly resulted in the massive expansion of industrial tree plantations worldwide. On most occasions, these are politically contested and are vigorously resisted by those that are

threatened to be expelled from their lands -- whether in Ecuador, Brazil or elsewhere.²⁴ Latin America and the Caribbean is one region with the fastest rate of expansion of this sector (see table 2).

Finally, the converging crises and various responses to these has resulted in the resurgence of big conservation interests. Large swathes of land, water and forest are being enclosed in the name of conservation, while long-standing community conservation practices are rarely recognized.²⁵ More recently, climate change mitigation strategies have expanded ever farther the reach of big conservation initiatives through projects such as REDD+, which establish voluntary carbon markets and payment for emissions schemes. Latin America has seen the massive expansion of big conservation in this way -- from southern America²⁶ to Central America²⁷ to Mexico.²⁸

While unpacking the drivers and impacts of these processes is important, communities on the frontlines of these agro-commodities frontiers are searching for ways to protect their tenure rights to the resources that they still inhabit, work and/or control. In this context the TGs provide an important practical tool for strengthening claims to protect land and resource tenure rights. Sections 7, 8 and 9 of the 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).

(ii) To promote better redistribution

The colonization of Latin America established a landed elite and despite a series of land reforms in Latin America since the Mexican land reform in the early part of the past century land concentration has on the whole increased since the 1960s. As the 2012 FAO's study on land grabbing and land concentration in 17 countries in Latin America and the Caribbean has shown, there is a trend towards increasing concentration and displacement in many countries in the region.²⁹ 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)."³⁰

The TGs establish a normative framework that justifies and validates demands for redistributive reforms in the face of land concentration. For example, "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).

(iii) To restore lost access

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, or extreme climate events, which have fueled waves of massive internal displacement. In such cases the issue of how to ensure restitution of land rights to displaced populations 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.³¹ Sixty percent of the abandoned parcels were smaller than 10 hectares, frequently occupied by peasants under precarious tenure conditions.³² 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. TGs' 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 short, there are ongoing processes of land grabbing, expansion of flex crops, land resource concentration and enclosure, and displacement (both due to civil war and gradual processes of dispossession) in the region. In this context communities are searching for ways to protect existing tenure rights, promote better distribution of resource access, and restore lost control over legitimate tenure rights. By drawing on existing human rights obligations the TGs provide a potentially useful guiding, human rights-based normative framework for such demands and struggles.

3 Institutional/Political climate for the TGs

But as Franco reminds us, laws and policies are passed, but they neither self-interpret nor self-implement.³³ As socially legitimate and politically relevant as they may be, competing interpretations and uneven power dynamics driving implementation will significantly shape the actual fate of the TGs. And, the interpretation and implementation of the TGs will vary from one society to another, over time. More empirical research on whether and how the TGs are activated and used by state and social forces can be best understood depending on the specific institutional and political context. Preliminarily, and broadly, we identify three main ways in which the TGs are currently treated by states in the region: 1) as legitimating instrument; 2) as facilitator of regional integration and; 3) as a point of reference. We also note that each of these institutional patterns of engagement with the TGs opens up political space, which can be leveraged by non-state actors (the focus of the following section).

(i) TGs as legitimating instrument

As Tramel and Caal Hub 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.³⁴ However, despite the uptake of TGs language, the policy falls short of the TGs' objectives. One notable component where 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 focus on compensation and verification of lost tenure rights with formal titles.³⁵ They argue that such policies have failed in the past and importantly there is no mention of those displaced in the civil war many of whom had no formal titles, or 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 failure to recognize the primarily indigenous communities displaced by civil war as well as development or accumulation 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).

The Guatemalan example reveals how the uptake of the TGs by governments can open up opportunities for political leverage and monitoring. It also demonstrates that TGs language can provide legitimacy to policy processes, but without engagement from agrarian and other social justice oriented movements there is a risk of the TGs being watered down and used to bolster political agendas different from that of the prioritized subjects of the TGs. This does not necessarily mean that the TGs lose their relevance in these cases. It simply shows that the TGs are a potentially powerful political tool, and thus who benefits from them is likely to be contested throughout the implementation phase.

(ii) TGs to facilitate regionalism

Some policy and political processes have profound implications on resource tenure politics that are beyond national policymaking parameters, and extend to and cut across regional policymaking spaces. The TGs could play a useful role in this context in favour of those who seek social justice reforms. 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 Ameri-

can 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,”³⁶ where market integration initiatives like MERCOSUR are also taking up the challenges of poverty and inequality.³⁷ In this context, we also see expanding policy spaces oriented towards family farming. 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 REAF meeting in Brasilia in June 2015, the governments of Argentina, Bolivia, Brazil, Chile, Ecuador, Paraguay, Uruguay, and Venezuela pledged to support implementation the TGs. The (now defunct) Ministry of Agrarian Development in Brazil in collaboration with the ‘Programa de Cooperación Internacional Brasil-FAO’ and REAF later extended an invitation to organizations from La Vía Campesina to a workshop in Brasilia to exchange experiences and understanding of the process of implementation of the TGs in each country, and discuss the civil society perspective.³⁸ REAF participating states also ‘agreed that the Guidelines should be used to guide the multilateral and bilateral cooperation between states and between states and civil society.’³⁹ In this way, the TGs may serve to strengthen the policy architecture of regional blocs like this. In so doing, the TGs offer a mechanism for facilitating civil society participation and strengthening regional alliances around agrarian issues, which break from previous patterns of exclusively trade-based relations in the context of the Washington-Consensus.

(iii) TGs as a point of reference

As mentioned, the government of Bolivia joined MERCOSUR countries in the REAF meeting in Brasilia to publicly commit to implementing the TGs. However, little progress has been made within Bolivia in terms of TGs implementation, but this may be seen as due to the already well-developed national policy framework promoting human rights of marginalized communities. In this case, where states have demonstrated receptivity to human rights based policy, 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, ‘In Bolivia, the responsibility of agro-industrial companies and investors is a pending issue, which is absent from the public agenda around land issues.’⁴⁰ Rather than adopting the TGs as a new framework they suggest the instrument ‘could contribute to the identification of gaps and needs in order to improve the law.’⁴¹ Indeed section 12 of the TGs is dedicated entirely to investments and provides support for state regulation of investors like, ‘Investors have the responsibility to respect national law and legislation and recognize and respect tenure rights of others and the rule of law in line with the general principle for non-state actors as contained in these Guidelines. Investments should not contribute to food insecurity and environmental degradation.’ (Article 12.12).

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.⁴² Thus far the Colombian government has not publicly committed to TGs implementation. However, McKay et al. 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.⁴³ Land has been a central feature of peace talks in Colombia between the government and the FARC. 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 three ways the TGs are currently being understood and deployed (discursively or in real terms) in Latin America, the inherent tension within the state, as noted by Fox, between the need to facilitate capital accumulation and maintain political legitimacy⁴⁴ makes the political terrain of implementation contradictory, dynamic, and underscores the point that the TGs will not be implemented by governments alone.

4 Monitoring, implementation, and non-state actors regarding the TGs

The TGs provide a normative framework for responsible governance primarily directed towards states whose obligation it is to uphold, respect, and fulfill their citizen's human rights and make sure their citizen's respect the human rights of citizens from other states. Implementation will necessarily involve the animation of legal mechanisms, policy frameworks, and public spaces, where justice can be accessed when tenure rights are contested. We argue that the way this plays out will largely depend on external pressure on states. Thus, how the TGs are interpreted and used by non-state actors is key. 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. (described below) in their mapping of political responses to land grabbing.⁴⁵ The different -- competing -- interpretations of the TGs that undergird these initiatives shape the way implementation efforts are unfolding. 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 [International Finance Corporation] Performance Standards were recently strengthened and address many aspects of the [T]Gs, including impacts of land acquisition especially with regard to transparency, community tenure and use rights, and processes for informed consent and fair compensation.⁴⁶ 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.'⁴⁷

Despite such criticism, the existing World Bank Land Governance Assessment Framework (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.⁴⁸ According to LGAF advocates⁴⁹, this initiative is in line with the '[T] G spirit,' yet, a closer analysis reveals that there are substantial differences between the two initiatives. The LGAF process encourages the establishment of a 'tenure typology' according to three dimensions: 1) Legal recognition, 2) Registration/recording, and; 3) Transferability. Critics argue that implicit in this typology is the idea 'that good land governance means to promote an efficient land market that would allow the transfer of land toward most efficient users.'⁵⁰

[T]he 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.⁵¹

Tendency 2: TGs as codes of conduct for corporate social responsibility and 'win-win' solutions

Framed as a 'win-win' solution, and 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.'⁵² In response to pressure from this campaign, the Coca-Cola Company has agreed to incorporate new commitments into its 'Sustainable Agriculture Guiding Principles', which are allegedly inspired by the TGs.

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 2012.⁵³ 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.⁵⁴ Coca-Cola buys sugar processed by transnational agribusiness Bunge, which sources from five properties within the Guaraní-Kaiowá territory.⁵⁵

Lead campaigner at Oxfam, Judy Beals, explains how Coca-Cola's 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.'⁵⁶ To push for this type of action, 'Oxfam takes a multi-faceted approach to working with the private sector, including campaigning, collaborations and fundraising.'⁵⁷ After Coca-Cola's announcement PepsiCo followed suit—a move Marcela Villarreal, Director of FAO's Office for Partnerships, Advocacy and Capacity Development, calls, 'tremendously significant for the implementation of the Voluntary Guidelines.'⁵⁸

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 corporate 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 [TGs] and the forthcoming RAI relevant to private investment.'⁵⁹ 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.⁶⁰ 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 'the VGGTs [TGs] is an indivisible package,' however, '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.'⁶¹ In short, projects will necessarily interpret the guidelines, emphasizing some components more than others. Indeed, section 14 of the TGs on restitution is omitted from the essential reading list of the Guide for Companies, demonstrating that some selective interpretation is recommended in this political tendency in order to garner the support of corporate actors.

This approach has drawn further criticism from a number of food policy scholars and activists. As Bridget O'Laughlin argues, in trying to make corporations responsible, regulation becomes 'principally a privatized domain with civil society groups directly negotiating with and monitoring corporations.'⁶² Prof. Marion Nestle remarks on her food politics blog, '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.'⁶³

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

Groups in 'Tendency 3' are focusing energy 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; as well as 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 monitoring, 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. This is thanks in large part to the fact that representatives of such communities had a voice in the

negotiation process.⁶⁴ 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 social movements representing peasant, indigenous, forest 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 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 et al. explain ‘The TGs complement and strengthen other related and ongoing initiatives, like the small-scale fisheries guidelines and the declaration on the rights of peasants.’⁶⁵ Indeed this contributes to what Claeys describes as an increasing engagement with human rights frameworks and policy spaces by social movements – especially those advocating for food sovereignty – over the past 20 years.⁶⁶

Key forms of engagement with human rights institutions have focused on research and monitoring efforts by social movements and allies. 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. As Seufert and Monsalve stress, ‘The developing of dynamic monitoring systems is thus a major contribution on the way of putting the Voluntary Guidelines [TGs] and their provisions into practice.’⁶⁷ 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, most of whom we situate in ‘Tendency 3.’

Table 3: Donor funded multi-country initiatives to support capacity building among members of the IPC on Food Sovereignty, most 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 |
| 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 | Colombia, Peru, Panama and Paraguay | Peoples’ initiative to monitor the implementation of the TGs | Capacity building workshops in each country |

The inherent tensions within the state mentioned above underscore the point that the TGs will not be implemented by governments alone, even when cases are legitimate and justiciable. For this reason, some authors suggest that movements 'don't wait for the state' to lay the groundwork for legal action.⁶⁸ However to do monitoring and research, capacity building is also required. This explains the publication of things like a popular manual outlining practical ways of using the TGs, written by organizations representing the prioritized subjects of the TGs.

Despite these capacity building activities, 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 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.⁶⁹

Finally, it is important to note that agrarian and other social justice oriented social movements have varying histories and ideological tendencies, and not all organizations are at home with human rights as the key framework of struggle.⁷⁰ Therefore some skepticism among organizations within 'Tendency 3' remains around the value of dedicating resources and energy to using the TGs.⁷¹

To sum up: 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 resource 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.

5 Conclusions

The TGs are a potentially powerful instrument for holding states accountable to their existing commitments to respect, protect and fulfill the human rights of their citizens. 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. These kinds of governance instruments cut across sectoral concerns and interests, reflecting the contemporary political context, and have the legitimate seal of the United Nations as well as the imprint of those social justice movements.⁷² Yet, the potential impact will remain just that, a potential, if it is not activated by concerned groups. As we have argued in this paper, activating it is one thing, and activating it in a particular political direction is another thing. We take a social justice framework in our paper as an analytical guide. In this context, there is an urgency of 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 in the face of land concentration; 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: open up spaces for greater participation by marginalized groups in policy making spaces in order to challenge the cooptation of human rights discourse to further business as usual; consolidate regional cooperation; serve as a point of reference to improve existing legal frameworks.

Among non-state actors, in our preliminary typology of 3 political tendencies, tendencies 1 and 2 are subject to selective interpretation of the TGs as a procedural self, or third-party (NGO) monitoring check-list for the private sector, in ways that promote efficient property markets and responsible production. This differs from what is stressed in 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. Here the TGs can also be a tool for building awareness about and ability to claim legitimate tenure rights for marginalized groups. Such distinctions are important because those forms of

implementation that exclude marginalized groups will stray from the participatory spirit, which gives the tenure guidelines their legitimacy and value.

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Endnotes

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