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REGULATION OF LARGE SCALE ACQUISITION OF LAND.
NEW PERSPECTIVES OF SUSTAINABLE DEVELOPMENT

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*“Against land grabbing we have two choices: react by armed actions or by good legislation”
(A peasant leader from Africa, 2010)*

1. Introduction¹

Nowadays, many different factors contribute to the change to the world's farmland use. The most important of these factors are the climate change, the large scale investments in land and the acquisition of foreign farmland.

In the present article, we investigate the new forms of grabbing, concentration, commodification and privatization of the lands that are shaping the agrarian systems.

We firstly analyze how the large scale investments in the world are changing the use of arable land, the farmer's right to cultivate and, in general, the access to land. In this context the “land” is not only to see as a traditionally productive asset but also as a natural resource, a special “commons” of the food producers comprised of many diverse interests for its use, a Territory which people have traditionally owned, occupied or otherwise used or acquired and which they have the right to own or use, develop and control².

Then, we focus our attention on the unprecedented event on the fundamental issue about the access to land: the engagement of rural social movements and other civil society organizations in the negotiation process of Voluntary Guidelines³, a new ref-

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¹ This article was inspired by and, therefore, is written on the basis of a large collective effort of “The International Facilitation Group” established by the International Planning Committee for Food Sovereignty (IPC). This Group consisted of 26 members from all continents and had the participation of representatives of the following organizations: World Alliance of Mobile Indigenous Peoples (WAMIP), Friends of the Earth International, CENESTA, Asian Peasant Coalition, International Collective in Support of Fisherworkers (ICSF), International Indian Treaty Council (IITC), CROCEVIA, FIAN International, World Forum of Fish Harvesters and Fish Workers (WFF), Focus on the Global South, Arab Group for the Protection of Nature, IMSE, La Via Campesina, MAELA, National Indigenous Peasant Movement of Argentina (MNCI), Network of Farmers' and Agricultural Producers' Organizations of West Africa (ROPPA), Pesticide Action Network Asia and the Pacific (PAN-AP), Housing and Land Rights Network of Habitat International Coalition (HIC-HLRN). After the creation of the Civil Society Mechanism of the CFS in May 2011, this group became a CSM working group and more organizations such as Action Aid, Oxfam and others joined the group. The group was coordinated by Sofia Monsalve from FIAN and supported by International focal point of IPC, Antonio Onorati(CROCEVIA)

² United Nations Declaration on the Rights of Indigenous Peoples, resolution adopted by the General Assembly, 13 September 2007

³ Decision of the Committee on World Food Security (CFS) at its Thirty-sixth Session in October 2010, Rome, FAO

erence and guidance to improve the governance of tenure of land, fisheries and forests at national and global level.

So, in the second chapter we examine some land use change profiles and the threat to food security and sovereignty triggered by the different and distorted utilization of farm land in every part of the planet.

In the third chapter, we discuss FAO and the civil society's recent and important achievement: the Voluntary Guidelines on the Tenure of Land, Fisheries and Forests (VGL)⁴. This type of Guide, as a soft law, can help individual governments to reduce the negative impact of large scale investments in land and to facilitate land access and control specially for the small food producers, to alleviate and reduce poverty and food insecurity.

The fourth chapter is dedicated to the analysis of civil society's important and new role in the process of VGL negotiation.

In the fifth chapter we analyze some of the limitations of the VGL while in the sixth chapter we deal with the implementation process of VGL and the first outcomes.

The last chapter is dedicated to our conclusions.

2. The large scale acquisition of land and the issue of change in the use of farmlands and the access to land. The threat to food security and sovereignty in the world

Now, it is common knowledge that one of the important factors in the change in use of farmland, after the impact of social and economic crisis, is climate alteration, which reduces the arable land in some areas because of drought and severe storms.

Further dramatic disturbances to the climate in the agricultural sector and in the world peoples' right to cultivate and access to land are: the reduction of biodiversity; the increase of fires and damaging insect and disease attacks; the urbanization of rural areas for sprawling metropolis.

Climate change is one of the primary causes to the change in use of farmlands, but not the most important one (Borras, Franco, 2011).

New forms of grabbing, concentration, commodification and privatization are shaping the agricultural sector. A phenomenon, such as land grabbing, that is increasingly more and more widespread, jeopardizes the land tenure of those who use it not only to feed themselves, but also to pursue food sovereignty.

Land grabbing is organized by businessmen and governments who want to produce energy and food supply for the internal or global market or just financial speculation on future value of land (water, biodiversity, minerals, energy, etc). Investors who want to increase their profits are threatening the access to food held by each person and community that seeks to properly feed itself, and investors are doing this with public policy support. Indeed, each State must strengthen its responsibility for control measures necessary to avoid land acquisition by economic actors, who are not interested in agriculture, but only in the mere profits derived from the land rent. In this

⁴ You can find the entire document in www.fao.org/nr/tenure/voluntary-guidelines

way, land is seen as only a mere commodity and both food security and the people's sovereignty are threatened.

So, "The importance of land use when large tracts are acquired to produce industrial crops for export is one such process that often combines with new sorts of actors brokering new practices and global relationships" (Peluso, Lund 2011, 669)

According to several CSO's⁵ opinion, Land grabbing - even where there are no related forced evictions - denies land for local communities, destroys livelihoods, reduces the political space for peasant oriented agricultural policies and distorts markets towards increasingly concentrated agribusiness interests and global trade rather than towards sustainable peasant/small scale production for local and national markets. Land grabbing will accelerate eco-system destruction and the climate crisis because of the type of monoculture oriented, industrial agricultural production that many of these "acquired" lands will be used for.

In addition, vulnerability to food insecurity in rural areas is higher when there is no security of land tenure. Land grabbing is, therefore, a global phenomenon led by local, national and transnational elites and investors, and governments with the aim of controlling the world's most precious resources.

Land grabbing goes beyond traditional North-South imperialist structures. It is also a crisis in both rural and urban areas. Land is being grabbed in Asia, Africa, the Americas and Europe for industrial agriculture, mining, infrastructure projects, dams, tourism, conservation parks, industry, urban expansion and military purpose. Market based, false solutions to climate change are creating more ways to alienate local communities from their lands and natural resources⁶.

For many investors, farmland acquisition – either through purchase or lease – offers a chance to profit from rising agricultural commodity prices. Such investors take a direct hand in farm production, typically on large plantation-like operations, with an eye to profiting from high prices for food, fiber, and biofuel crops. Rising food prices have also encouraged governments of countries such as Saudi Arabia, South Korea, and Egypt to lease huge tracts of land, mostly in Africa, as a means of securing food for their own populations. Producing food offshore allows capital-rich but land-poor countries to bypass volatile global food markets and guard against food riots and related political instability (CFS/HLPE, 2011)⁷.

Still other investors buy farmland as a form of speculative investment in rising global land prices. By renting the land to individual or corporate farmers, investors gain a regular income stream on top of appreciating land values. These investors also acquire farmland as a low-risk hedge against inflation and other side effects of the

⁵ CSO means Civil Society Organization

⁶ A new Report by European Coordination Via Campesina and Handsoff the Land Network shows how land grabbing and access to land are a critical issue today in Europe (<http://farmlandgrab.org/post/view/21949>)

⁷ CFS-2009/2: The goal of the HLPE (High Level Panel of Experts) is to ensure the regular inclusion of advice based on scientific evidence and knowledge. It will also provide scientific and knowledge-based analysis and advice on policy-relevant issues and identify emerging trends. It will also help prioritize future actions and focus attention on key focal areas.

global financial crisis. As with the rush to buy gold, farmland investment is seen as a safe harbor in stormy financial seas.

In this context, land is viewed by the market as a tradable commodity and a good refuge for excess capital. Investors, in effect, buy land at low prices, then they sell them at high prices when the recession is over. This has led to a rush of speculative land purchases. Otherwise it is the social space where economic and community decisions are made. It is the place of neighborhood, culture and livelihoods. For indigenous peoples, it is their territory. It is home.

The global land rush has attracted considerable attention from the media, civil society, international development agencies, and governments. While some welcome these developments as a source of much-needed investment in global agriculture and a way to bring new infrastructure, technological improvements, and jobs to target countries, critics have denounced the deals as resource grabs that dispossess small-scale farmers and Indigenous peoples, threaten food sovereignty, and further degrade agro-ecosystems. These concerns are compounded by the fact that the mechanisms by which these deals are negotiated, monitored, and enforced have been murky at best.

3. Access to land: a difficult choice. The debate of movements and civil society

The demand for an international instrument in favor of the fight for access to land by small-scale food producers has been the subject of peasant movements and a civil society need for decades.

Beginning in 1996, with the final declaration of the Civil Society Organizations “Food for All, or Profit for the Few” at the end of the Forum in Rome, respect to the first World Food Summit (WFS) at FAO, access to land as a small food producers’ right was the primary request within the framework of food sovereignty.

After this, there followed a period of strong activism, with the call on the FAO to bring into compliance the development of the Agrarian Reform.

In 2006, the fundamental Intergovernmental Conference on Agrarian Reform and Rural Development (ICARRD) was convened at Porto Alegre. In this occurrence governments decided to carry on political initiatives for rural development and distribution of land. But this commitment became a dead issue.

In 2007, however, at Nyeleni, Mali, during the Food Sovereignty Movement’s Forum, access to land was one of the priorities.

In 2008, in Rome, the civil society Forum “Terra Preta” pointed out land’s centrality as an inalienable means to face the problems of famine and social injustice and to build a stronger attack against industrialized agriculture.

In the same period, the IPC (International Planning Committee for Food Sovereignty)⁸, through its team actively working on land issues in collaboration with the agrarian reform Campaign of Via Campesina, reacted to FAO’s technical document on land conflicts. Struggles against land grabbing and the World Bank’s position heightened.

⁸ IPC is a platform of more than 42 large global and regional networks of small food producers organizations

The World Bank pursuant to general principles (so-called PRAI, Principle of Responsible Agricultural Investments) tried to prevent such protests.

In the meantime, the FAO CFS (Committee on World Food Security), was reformed and changed, for global governance of food security policies. In this new role, the CFS was called to adopt decisions on access to land for small food producers and to build a link between food security and access to necessary resources to produce food. This is the cornerstone of food sovereignty strategy.

To engage governments' responsibility to elaborate a "soft law" tool, intergovernmental negotiations were necessary. An "Intergovernmental Working Group" (IGWG), was established and governments confronted themselves and jointly negotiated in the CFS with its new rules.

In 2010, the IGWG started to work. Meanwhile, long consultations were conducted by CSOs and social movements through the continents and they were compiled in a sole document which evidenced the differences and, sometimes, the contrasts between different positions of small-farm producers' movements and organizations (e.g. the conflict among nomads and farmers). At the end of this process, therefore, two different Guidelines on tenure land proposals were elaborated at the same time by FAO (as an intergovernmental technical body) and civil society.

During IGWG's first meeting, FAO's draft of the Guidelines was accepted as a negotiation basis, while the civil society's Guidelines would have been used as a counter-proposal during governments negotiations with representatives of small food producer organizations and other CSOs.

The presence of small food producers and civil society organizations as part of the negotiation, like active and equal participants, was fundamental because without them the agreements couldn't have a real impact.

To properly prepare the negotiations, CFS member States asked the High Level Panel of Experts (HLPE) of the Committee on World Food Security to express their view. The HLPE has stated, in its second report (HLPE, 2011), that large scale investment in land is "damaging food security, incomes, livelihoods and environment for local people. The HLPE called on governments to: recognize the right to free, prior and informed consent in relation to the land and natural resources on which they depend for their livelihoods; secure access and use of lands for peasants, pastoralists, forest dwellers, fisher folk and indigenous peoples; undertake redistributive land policies in settings marked by inequality in land control and ownership; abolish targets and subsidies on biofuels; and prioritize investment in the small farm sector and in alternative food systems that are socially inclusive as well as environmentally sustainable, using agro-ecological principles."

The lack of secure access to and control over land, water, fisheries and forests for local communities, in particular small-scale food producers, women, indigenous peoples, the most marginalized and vulnerable groups (such as small-scale fisher folks, resettled communities, older women, widows, orphaned girls, nomadic pastoralists and landless people) are among the main factors that contribute to the global food crisis.

Moreover, the Guidelines have been expressly developed in the framework of the CFS, as one of the responses to the aggravation of the global food crisis following the high increase of food prices in 2007-08.

Voluntary or not, the Guidelines are based on international human rights directly or indirectly relevant in terms of access to and control over land, water, fisheries and forests. Convention 169 on Indigenous and Tribal Peoples (1989) of the International Labour Organization (ILO) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) of the UN General Assembly (1979) contain explicit references to land rights.

Moreover, rights to land, water and other natural resources are intimately connected to numerous economic, social and cultural rights, such as the right to adequate food, housing, health and work. Conventions and treaties addressing these rights include the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the four Geneva Conventions and their two additional Protocols, the Convention on the Rights of the Child, the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention on Biological Diversity, the Core Labor Standards of the ILO, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). All these treaties and conventions are binding for ratifying States, which are required to incorporate their provisions into domestic law.

Therefore, these Guidelines have to follow international agreements upon language when they introduce human rights concepts and to remind governments of their obligations in this regard.

Access to water for drinking, food production and livestock tending, as well as to fisheries and forests for local populations, is absolutely crucial to hunger eradication. Furthermore, the use of land for productive purposes cannot be separated in particular from the use of water (investment in land is directly linked to the availability of water). The adequate inclusion of water, fisheries and forests in the Guidelines is in agreement with the holistic approach to natural resources and their uses that CFS initiative intends to apply (Kay S., Franco J. 2012).

The same holistic approach also implies that the Guidelines acknowledge the natural commons (Ricoverti, 2013), their significance for the food and livelihood security of local users and communities, and their role in the conservation of terrestrial and aquatic biodiversity. The natural commons comprise farm/crop lands, wetlands, forests, woodlots, open pasture, grazing and range-lands, hill and mountain slopes, streams and rivers, ponds, lakes and other fresh water bodies, fishing grounds, seas and oceans, coastlines, minerals, seeds, terrestrial and aquatic biodiversity. In every part of the world, agricultural, forest, fishing, coastal, pastoral, nomadic and indigenous communities have developed sophisticated systems of using, sharing, governing and regenerating their natural commons. These systems, often rooted in collective rights, have to be respected. They are essential dimensions of the cultural-political

identities of individuals and communities, and are crucial to their very survival (Ostrom, 1990).

States are required by human rights conventions to ensure that women have equal access to and control over all natural resources through collective or individual tenure systems.

The Guidelines clearly distinguish the respective roles of the State, the private sector and civil society, with special attention to the accountability of business enterprises. In that perspective, the Guidelines deal with issues of abuse by powerful non-state actors and the responsibilities of transnational companies (TNCs) and other enterprises. They emphasize States' obligations to properly regulate the activities of TNCs and other commercial entities in order to prevent negative impacts on the realization and enjoyment of human rights related to land and other natural resources by workers, nomadic pastoralists/herders, artisanal and small-scale fisher-folks, indigenous peoples and peasants. The Guidelines also encourage the establishment of effective mechanisms that make TNCs and businesses legally accountable for losses and damages arising from violations and/or crimes they commit locally or internationally.

The Guidelines adequately address the need for coherent spatial planning in terms of pro-poor and sustainable development. Spatial planning links national, regional and local land use planning and also combines different land uses such as infrastructure development, settlement, agriculture, water catchment protection, environmental protection and natural habitats. In the Guidelines, spatial planning must reflect the overall objectives of ecosystems protection, climate change mitigation (as well as adaptation to global warming) and so must explicitly aim to prioritize the needs of rural poor populations to negative impacts of incoherent spatial planning.

The Guidelines include provisions calling for policy coherence of all relevant policies having direct or indirect impacts on the access to natural resources, including biofuels, climate mitigation, trade and investment support policies. In that perspective, current policies that undermine this access should be properly reformed, following a process that involves the active consultation and participation of local communities. These policies include notably large scale biofuels production, large scale mining and energy production like exploitation of water resources for energy, tourism and development projects and unsustainable programs of carbon sequestration, which are some of the main factors that have contributed to the recent increase of the phenomenon of "land grabbing" in the context of the financial, food, climate and energy crises.

Without a strong system of monitoring and evaluation, the Guidelines will not achieve their objectives. The establishment of independent national and multi-actor bodies to observe compliance should be encouraged. Regional and international institutions, especially International Financial Institutions (IFIs), must be required to incorporate the Guidelines in their operational policies and directives as a means to avoid supporting private or public projects, programs or measures that violate human rights.

The Guidelines should integrate strong provisions to promote their efficient implementation through participatory and transparent approaches at national level, as an in-

tegral component of States' national strategies for the progressive realization of the Right to Food in order to improve consistency with the Voluntary Guidelines on the Right to Food.

3.1 Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the Context of National Food Security

As evinced from the above mentioned framework, land grabbing is a pivotal issue. Non coincidentally, there is a specific section dealing with "land grabbing" in the VGL text.

Farely Boly, secretary general of Sexagon, a peasant organization in Mali, affirms: "The problem is obvious. Agribusiness projects such as the ones comprising thousands of hectares in the Office du Niger, Mali, do great harm and are profoundly illegitimate. We call on parliaments and national governments to immediately cease all massive land grabs current or future and return the plundered land."

By addressing the means for resolving tenure disputes, ensuring judicial protection of tenure rights, the VGL are crucial for those whose tenure rights are violated.

The aim is to protect local communities from investments and other land, fisheries and forest transactions that undermine their secure access to and control over land, fisheries and forests.

CSOs ask "we urge all CFS Member-States to: encourage first and foremost investments that strengthen tenure of small-scale food producers, with particular regard to women, and do not entail the acquisition of land, fisheries and forests and/or tenure rights, but rather invest financial, human and scientific resources to assist smallholders to improve production, to achieve the necessary scale to access local and regional markets, and to improve their living conditions; insist on the responsibility of States to apply the precautionary principle and provide adequate safeguards on investments or other transactions involving the conversion of land, fisheries and forests used by local communities, families and individuals. Reference to examples of safeguards should be maintained; emphasis on the States' responsibility to regulate investments to ensure that they respect human rights, promote food security and sustainable use of the environment; strengthen where relevant reference to the Free, Prior and Informed Consent for indigenous peoples and to the consultation and participation principle of the implementation for other affected communities."

The Guidelines should support legal recognition and safeguarding of tenure rights and tenure governance systems of Indigenous Peoples and other customary communities that very often are not complied with.

Many publicly-owned lands, fisheries and forests are collectively used and governed as commons. Accessible to everyone, such commons are fundamental for the food and livelihood security of local users and communities, and are essential to their cultural-political identities. It is vital that States recognize, restore and respect such commons and their related systems of governance.

It is important to ensure proper implementation of the Guidelines endorsed by CFS member States on May 11, 2012, and to enable governance of tenure to be monitored

and improved. The CSOs seek: to emphasize States' responsibility in ensuring the Guidelines are promoted and implemented, in accordance with human rights norms and standards and as part of their efforts to realize the Right to Food; to build appropriate and inclusive platforms of dialogue at local, national, regional and global level to promote the implementation in keeping with the Final Declaration on the Convention on Agrarian Reform and Rural Development (ICARRD); to establish monitoring and accountability mechanisms through participatory and transparent approaches that include all relevant actors, with particular regard to women, affected constituencies and their organizations; to allocate sufficient resources to all relevant policies and programs, including accountability and monitoring mechanisms; to ask for coherence of all policies having direct or indirect impact on access to land and other natural resources, including biofuels, climate mitigation, trade and investment support policies; to call on the CFS to periodically monitor governance of tenure, and to review the relevance and effectiveness of the Guidelines.

4. The role of civil society in the process of negotiation of VGL ⁹.

Now that the negotiations of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests have been finalized and approved, the CSOs have evaluated their actions and results.

In internal meeting of the social movements and CSO's delegations, during the negotiation process, some main issues raised.

The International Facilitation Group, established by the International Planning Committee for Food Sovereignty (IPC) in 2009 to enable the autonomous organization of civil society in this process, identified three long term strategic reasons to explain why it was worth engaging in the process of the development of these Guidelines are summed up in the following.

A) The process engaged had the goal to allow CSOs to continue the multi-constituency dialogue started in the Parallel Forum to the International Conference on Agrarian Reform and Rural Development (ICARRD) in Porto Alegre, Brazil in 2006 and the Forum for Food Sovereignty in Sélingué, Mali in 2008 on land, agrarian and aquatic reforms, territory and relationships with nature to produce food and sustain lives, communities and societies in the context of food sovereignty. This process offered the chance to further develop concrete proposals on the governance of land and natural resources as part of the solutions to the current food and climate crisis. At the same time, this process would help to meet and articulate resistance to threats such as the new wave of land grabbing.

The process of autonomous and self-organized consultations that was carried out by CSOs and social movements in the framework of this initiative led them to draft their own proposal for the Guidelines, presented as input to the official process.

⁹ This is part of the condensed document elaborated by "The International Facilitation Group" established by the International Planning Committee for Food Sovereignty (IPC) to support the negotiation process.

This document, the “CSO Guidelines”, condenses vision and aspirations on how land and natural resources should be governed to achieve food sovereignty.

This document also leads up CSOs on how to interpret the officially agreed upon Guidelines, and it also serves as a source of inspiration for debates at the national level. Furthermore, the process of identifying and formulating positions for the negotiations deepened mutual understanding on what is valuable for each of the constituencies and regions of the world. In the negotiations, CSOs learned to defend not only their own priorities but also those of the others. As one of the representatives of the indigenous peoples noted, this is the first time in which indigenous peoples negotiate jointly with other constituencies an international agreement relevant to them. For that reason, the multi-constituency alliance of small-scale food producers has been strengthened and deepened as a result of this process.

Besides, the regular exchanges among many organizations provoked by this process paved the way to discuss how to react to the new wave of land grabbing. The Dakar Call against Land Grabbing, launched at the World Social Forum in 2011, was the result of this dialogue and has served to mobilize resistance against the dispossession and concentration of natural resources. In response to the Dakar Appeal, another document was elaborated in Nyeleni (Mali) in November 2011. The Final Declaration on “Stop Land Grabbing Now!” was resolved by women and men, peasants, pastoralists, indigenous people and their allies, to defend food sovereignty, the commons and the rights of small scale food providers to natural resources.

B) The process, also, entailed the opportunity to incorporate into FAO work the existing international human rights and environmental law provisions protecting the rights to land and natural resources of all rural constituencies. So far, only indigenous peoples have an international recognition of their rights to land and natural resources. Other rural groups like peasants, pastoralists and fisher folks see the international recognition of their rights to land and natural resources scattered in different instruments and in a precarious way.

Besides, the Guidelines could complement and strengthen parallel efforts, for instance, on the development of guidelines on small-scale fisheries, the recognition of peasants’ rights, and on how to implement the UN Declaration on the Rights of Indigenous Peoples, among others.

Considering the growing privatization and commodification of nature, it is urgent to strengthen and broaden legal frameworks at national and international levels that recognize, respect, protect and guarantee individual and collective access to natural resources for marginalized social groups, who are at the same time key actors for the stability and sustainability of our societies.

Guidelines are based on the Universal Declaration of Human Rights, the UN Declaration on the Rights of Indigenous Peoples and the principles and interpretations of human rights. The Guidelines also specify and give more visibility to the rights of peasants, pastoralists, and fisher folks to land, fisheries and forests. The references to the international human rights instruments included in the document will make the

document legally relevant at national and international levels, even though the title of the document still contains the word “voluntary”.

C) The whole initiative could contribute to a more democratic decision making process for food and agriculture. In the last decades, agenda setting and decision-making related to land and natural resources were heavily influenced by International Financial Institutions, with disastrous consequences. FAO, as a multilateral exchange forum and specialized UN agency with a mandate to work on normative issues related to food and agriculture, and the reformed Committee on World Food Security (CFS), which institutionalized the participation of social movements and other civil society organizations, offer new conditions for international governance. The reformed CFS has proven its capability to include in its agenda, and deal with, key issues in the fight against hunger and food insecurity, such as the issue of land; to create effective institutional conditions so that the constituencies most affected by hunger and food insecurity can discuss on equal footing with their governments, other international agencies and the private sector about possible solutions to very controversial issues such as access to natural resources; and to forge intergovernmental agreements in a reasonable period of time. The high degree of participation and inclusiveness in the process is unprecedented in intergovernmental negotiations and establishes an important precedent to expand the democratization of decision making processes at international level to other processes and fields related to food and agriculture.

4.1. The content of VGL

Whereas no agreement or treaty are automatically enforced, regardless of how positive and progressive their content may be, popular pressure, mobilization and organization to demand their enforcement are the elements that give life to these international deals making them work in the search of social changes.

In the “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security”¹⁰, the official document of the finalized negotiation process, it is possible to identify the most useful elements for social struggles in defending the access and control of natural resources for food production.

Part 1 of the document (Preliminary) concerns the proposed objectives.

The Guidelines seek to improve governance of tenure of land, fisheries and forests. They seek to do this for the benefit of all, with an 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 and environmental protection.

All programs, policies and technical assistance of these Guidelines should be consistent with the existing obligations under international law, explicitly mentioning the Universal Declaration of Human Rights.

¹⁰ FAO, Rome, 2012

Part 2 (General Matters) claims that non-state actors, including business enterprises, have the responsibility to respect human rights and legitimate tenure rights. Host States and home States of transnational corporations have the obligation to assure that no abuses of human rights and legitimate tenure rights take place.

Some important principles of implementation are also introduced as human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approach with regards to the management of natural resources, consultation and participation¹¹. They clearly state that the tenure of land, fisheries and forests is not a business matter but a fundamental right that must be recognized, respected and guaranteed.

Among other principles of implementation (transparency, accountability, continuous improvement), the Guidelines introduce the rule of law, or rather, a rule-based approach through laws that is widely publicized, equally enforced and independently adjudicated and that is consistent with its existing obligations under national and international law.

Moreover, this part of the document emphasizes, with detailed provisions, strong gender approach and strengthen the human rights standards about gender equality applied to the field of tenure.

The principle of consultation and participation, eventually, establishes a general standard on a particularly relevant issue for non-indigenous groups, as indigenous peoples already have the principle of free, prior and informed consent recognized in the UN Declaration on the Rights of Indigenous Peoples¹².

In the context of General Matters (part 2 of the document), tenure governance plays a crucial role. Here the Voluntary Guidelines indicate how States -in accordance with national legislations -should ensure a policy of respect and recognize of legitimate tenure rights, including legitimate customary tenure rights that are not currently protected by law. Legal and organizational frameworks for tenure governance should reflect the social, cultural, economic and environmental significance of land, fisheries and forests, the interconnected relationships between land, fisheries and forests (and their uses) and establish an integrated approach to their administration.

Part 3 of the document (Legal recognition and allocation of tenure rights and duties) shows how States should recognize and protect publicly-owned land, fisheries and forests and their related systems of collective use and management of what in some national contexts referred to as commons.

Local communities that have traditionally used the land, fisheries and forests should receive due consideration in the reallocation of tenure rights. Policies should take into account the tenure rights of others and anyone who could be affected should be included in the consultation, participation and decision-making processes.

¹¹ Regarding this principle, a standard that can be very useful was created on how to engage with and seek the support of those who could be affected by decisions

¹² United Nations Declaration on the Rights of Indigenous Peoples, resolution adopted by the General Assembly, 13 September 2007

At this stage the document focuses on informal tenure. States should ensure that all actions regarding informal tenure are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, including as appropriate to the right to adequate housing.

Subsequently, the document devotes particular attention to the situation of indigenous peoples and other communities with customary tenure systems, with special regard to the social, cultural, spiritual, economic, environmental and political value that land, fisheries and forests encase.

Communities should be assisted -where necessary- to increase the capacity of their members to fully participate in decision-making and governance of their tenure systems in order to promote and provide equitable, secure and sustainable rights to their self-governed resources.

Effective participation of all members (even the vulnerable and marginalized ones) should be promoted through their local or traditional institutions in decisions regarding their tenure systems, including the case of collective tenure systems.

Before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights, States and other parties should consult with indigenous peoples through their own representative institutions in an effective and meaningful way, in order to obtain their free, prior and informed consent.

They should moreover provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems and endeavor to prevent corruption. Such recognition should take into account the land, fisheries and forests that are used exclusively by a community and those that are shared. Information about this recognition should be publicized in accessible locations, in understandable and applicable languages.

Where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights to the ancestral lands on which they live, States should recognize and protect these rights preventing the inhabitants from being forcibly evicted.

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 are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims. States should respect customary approaches to resolve tenure conflicts within communities for land, fisheries and forests that are used by more than one community, with the effort to strengthen or develop means of resolving conflicts between communities. State and non-state actors should finally strive to provide technical and legal assis-

tance to affected communities to participate in the development of tenure policies, laws and projects.

Part 4 of the document (Transfers and other changes to tenure rights and duties) is strictly connected with the above mentioned indigenous peoples and other communities with customary tenure systems issue. This section points out how States have the duty to protect local communities, indigenous peoples and vulnerable groups from land speculation and land concentration and how they are responsible to regulate land markets to protect social, cultural and environmental values highlighting the importance of small-scale producers for national food security and social stability.

5. The limitations of the Guidelines

It is evident that the contemporary global land governance is at an embryonic phase. The Voluntary Guidelines may provide the foundations for a progressive transnational framework for land tenure and rights but there is no reason to assume that future global land governance will develop along these lines (Margulis, McKeon, Borras Jr., 2013).

As we have already affirmed more than once, the text of the Guidelines was agreed by governments and civil society. It has a legal and negotiated nature with global validity; it isn't absolutely a technical document. However, in order to reach consensus, quite often it is general and ambiguous, trying to accommodate conflicting views. Even though CSOs managed to include some of its proposals in the text, yet others were modified or not taken into account.

Getting to the heart of the matter, a manifest limitation of the Guidelines is the fact they do not cover water. The preface briefly mentions that States may wish to take these Guidelines into account in the responsible governance of other natural resources inextricably related to land, fisheries and forests, such as water and mineral resources. However, there is still a big gap.

Furthermore, the Guidelines apply only to the issue of tenure and not to the use and management of natural resources. Certainly, tenure and use can be two different things; from the legal point of view, yet, these two dimensions are closely linked in real life. Many problems related to the access and control of natural resources by small-scale food producers are connected to the problems of governance of land use and management. Regrettably, this dimension is only obliquely dealt with in a couple of paragraphs.

The use of the principle of free, prior and informed consent, expressed in the text, could not be extended to other non-indigenous social groups. CSO defended its extension to all groups whose livelihoods depend on land, fisheries and forests. However a general consultation and participation standard is established.

The Guidelines accept the large-scale transfer of tenure rights; this could become, in some situations, a form of land grabbing. Anyway, the text contains several safeguards to control this option and its impacts. Unfortunately, CSO's proposal to put a ban on land grabbing was not accepted due to the correlation of forces. However, the

safeguards agreed and present in different paragraphs of the final and official document could be tactically used at local/national level to organize resistance.

Another controversial issue is that the Guidelines will be interpreted in different ways by different actors. When implementing the VGL, governments and bilateral and international agencies will also find useful references in the text to seek to create an agenda focusing on economic growth, land markets promotion and benefit of commercial interests. Moreover, the right to return in post-conflict situations is not reaffirmed and the principle of policy coherence is not explicitly recognized.

It was not possible to get the States to accept the creation of a strong mechanism to monitor the policies and actions of governments and international organizations with an impact on tenure. CFS Bureau together with CFS Advisory Group¹³, should report to the CFS on the progress of the implementation of the Guidelines, as well as evaluate their impact and their contribution to the improvement of tenure governance.

Among the research studies, there are different point of view about the limitation of the VGL.

The identification between the VGL (Voluntary Guidelines) and PRAI (Principles for Responsible Agricultural Investment), remarked in some scholars' works who share the "code of conduct" approach in this context, could create a wrong interpretation of the whole nature of the VGL.

In someone's opinion both, the VGL and the PRAI, do not give rise to enforceable rights and responsibilities on actors involved in land issues. They claim, furthermore, that the practicability of most of the policy prescriptions is limited as the VGL and the PRAI are suggested by their top-down or state-centric disposition.

The above mentioned identification between the VGL and the PRAI – with which we don't agree – leads, for instance, to affirm that the active involvement of States in the invisibilization of local claims and facilitation of land deals further undermines the creditability of a state-centered regulatory regime in dealing with problems of land matters. It is believed, not quite realistically, the necessity to enhance the power of the local poor as well as changing the existing socio-institutional power asymmetries, so that local communities can be more visible and their rules more applicable/influential in negotiations (Mulleta, 2012).

6. The implementation of the Guidelines

As said above, the VGL are an important international governance instrument but they are not mandatory. From the closely legal point of view, they are also a signifi-

¹³ The Bureau is the executive arm of the CFS. It is made up of a Chairperson and twelve member countries. The Advisory group is made up of representatives from the 5 different categories of CFS Participants. These are: UN agencies and other UN bodies; Civil society and non-governmental organizations particularly organizations representing smallholder family farmers, fisherfolks, herders, landless, urban poor, agricultural and food workers, women, youth, consumers and indigenous people; International agricultural research institutions; International and regional financial institutions such as the World Bank, the International Monetary Fund, regional development banks and the World Trade Organization; Private sector associations and philanthropic foundations.

The Advisory Group helps the Bureau advance the Committee's objectives in particular to ensure linkages with different stakeholders at regional, sub-regional and local levels and to ensure an ongoing, two-way exchange of information.

cative tool of “soft law” and hence they are not a source of legally binding effects for every single State.

According to common idea, soft law is “Rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain (in direct) legal effects, and that are aimed and may produce practical effects” (Senden, 2004).

Another opinion about soft law is “Rules of conduct which find themselves on the legally non-binding level (in the sense of enforceable and sanctionable), but which according to their drafters have to be awarded a legal scope, that has to be specified at every turn and therefore do not show a uniform value of intensity with regard to their legal scope” (Borchardt-Wellens, 1989).

Some scholars rather affirm-from a point of view difficult to share-that the VGL are not enforceable because they are issued by informal typical process of rules production coming from the bottom.

By others, the Guidelines can be, to all the effects, considered “Non-treaty agreements”. Accordingly they are not regarded as substitutes for treaties, but as an independent instrument which can be used to regulate behavior in cases where, for various reasons, a treaty is not an option (Hillgenberg, 1999). It was also remarked that “innumerable technical agreements, as well as documents of the highest political importance, declarations of intent, codes of conduct and guidelines demonstrate the increasing importance of agreements below the level of treaties” (Hillgenberg, 1999). However, these Non-treaty agreements remain ‘closed’ as long as they are not recognized in international law or in single States as a source of legal obligations. At any rate, as affirmed by the above mentioned author, “their political function resembles that of treaties: Non-treaty agreements, too, provide the parties to international arrangements with the power ‘to justify and persuade’”.

In this framework, it is evident that the Voluntary Guidelines are a more flexible tool in achieving policy objectives. Indeed, the States and other actors may undertake voluntarily to do what they are less willing to do if legally obligated. The voluntary nature of the Guidelines also requires, as written in the official document (Part 7), their implementation, monitoring and evaluation by the States.

In the Global Forum for Food and Agriculture, during the 5th Berlin Summit, occurred in January 2013¹⁴, the Agriculture Ministers, gathered together, have recognized the crucial role of sustainable agriculture in feeding global population and its link in the fight against hunger, malnutrition and poverty, especially in developing countries. They also stressed that investment in sustainable agriculture and rural development is essential to support the progressive realization of the right to adequate food.

The Agricultural Ministers have recognized furthermore the importance of an enabling environment to increase and sustain responsible private investment in the agri-

¹⁴ At the Conference there were 80 participating countries (represented at governmental level) and international organizations (also with high-level representation)

cultural sector, based on a legal framework, safeguarding the rights and interests of the States and their populations, with special attention to rural communities and rural people, including their tenure rights. They have also pointed out the importance of investment in public goods that can create appropriate conditions for farmers and other investors.

In this general framework and considered the central role of farmers as investors in the agricultural sector, the Summit has committed to strengthen the skills and abilities of smallholder farmers to promote equitable access to natural resources and to support farmers in organizing themselves in order to create efficiencies and gains in productivity. It focused, in particular, on facilitating their access to capital and financial services, on furthering the transfer of technology and on providing information services.

The Berlin Global Forum has acknowledged the large-scale investments' opportunities when "the investors give priority to business models which include smallholder farmers in value chains, respect legitimate tenure rights for both women and men and all applicable laws, promote transparency and accountability in investments related to transactions in tenure rights over land and natural resources" as indicated in the Summit final document.

However the large-scale investments also pose special risks. For this reason specific safeguards are needed and the investments must be structurally sound, socially beneficial and environmentally sustainable. They must facilitate consultations between investors and stakeholders.

The most significant statement is the call on the parties to confirm their intention to implement the "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" in accordance with national priorities and the call on the business enterprises to comply with them domestically and abroad.

The final call on all parties consists in to further develop overall guidance for responsible investment by committing themselves to actively support the ongoing inclusive consultation process within the Committee of World Food Security to develop principles for responsible agricultural investment that will have a high degree of legitimacy and expedite the progressive realization of the right to adequate food.

This specific commitment was remarked, during the Summit, by FAO Director-General, José Graziano da Silva, who verbatim affirms: "At the global scale, the next step in improving governance will be the development of guidance for responsible agricultural investments. This is the next challenge for the Committee on World Food Security"¹⁵.

Another step towards the implementation of the VGL has been performed by Civil Society Organizations, supported by IPC (International Planning Committee for Food

¹⁵ The text of the speech is available in http://www.fao.org/fileadmin/user_upload/FAODG/docs/2013-01-19-global-forum-for-food-agriculture-2013-DG-speech.pdf

Sovereignty), who participated in opening process of coordination of strategies for the VGL implementation at national level in Heidelberg (Germany).

Some of the meeting topics were: update/exchange on what has been done since the adoption of the Guidelines; national and regional strategies for using the Guidelines; possible additional sources of funding (EU, FAO-OCP, IFAD; OHCHR)¹⁶; connection of the Guidelines to other processes/initiatives against land grabbing; mobilization against G8 New Alliance for Africa; strategies vis-à-vis World Bank, private sector and ILC (International Land Coalition, a mixed platform of NGOs, IFIs, UN International Agencies seating in IFAD).

An interesting proposal was submitted by IPC to FAO Tenure Division for funding of capacity building materials on the tenure Guidelines produced directly by CSO and Social Movements; it is consisting of the popular version of the VGL, the capacity building manual for promoters and audiovisual materials.

It was also remarked that implementation is the responsibility of the States. Therefore Civil Society will demand implementation but through regional and national platforms established along the principles defined in the VGL.

Recently, also the G8 New Alliance claims to implement the Tenure Guidelines but its actual goals are not clear. The New Alliance, still in phase of legitimizing itself, links land, food and nutrition and favors corporations. It is phase two of the G8's coordinated response to the global food crisis and intends to support national agricultural plans in developing countries. Anyway, it bypasses local producers by introducing new foods and a new food culture driven by interest of private sector. The New Alliance instead promotes a voluntary approach to regulate the corporate investment in land that it encourages. However, within each framework, the New Alliance partners confirm their "intention" to "take account" of both, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests and the Principles for Responsible Agricultural Investment (PRAI). The PRAI, as is well known, were initiated by World Bank in 2009 and have been rejected by CFS because they were used to legitimate land grabbing.

While the VGL were adopted by CFS, after a three-year process of bottom-up consultation, their effectiveness will depend entirely on how they are implemented. But the position are opposite: social movements and CSOs in the CFS want the VGL translated into binding national laws, corporations want them to remain voluntary references.

As it has been stressed, the New Alliance intends to implement both the VGL and the PRAI through "pilot implementation programs" that the New Alliance partners—i.e. the very actors (governments and companies) doing the land grabbing—commit to develop together under each Cooperation Framework (Grain, 2013).

¹⁶ EU (European Union); FAO (Food and Agriculture Organization) e OCP (Office for Communication, Partnerships and Advocacy); IFAD (International Fund for Agricultural Development); OHCHR (Office of the United Nations High Commissioner for Human Rights)

7. Conclusions

The final text of the Voluntary Guidelines, realized in three years of negotiations between 96 governments and Civil Society Organizations inside the CFS at United Nations Food and Agricultural Organization (FAO) headquarters, was formally endorsed on May 11, 2012.

As pointed out by Olivier De Schutter¹⁷ “The Special Rapporteur commends the work of FAO on these Guidelines: FAO initiated them, led a long consultative process, and is now preparing their implementation at country level. FAO has also recently played an important role in the context of the CFS Open Ended Working Group on principles for responsible agricultural investments, which will enable CFS to take ownership of the matter”.

In particular, with regards to the adoption of the VGL, the Special Rapporteur on the right to food, affirms “This marks a new era for international cooperation on land issues”

The VGL anchor the land grabbing matter to the existing obligations of States under International Law, explicitly referring to the universal Declaration of Human Rights. Therefore, the Guidelines are a first, essential step made in the long road ahead until peoples’ rights to land, fisheries and forests will be fully recognized and respected. But many more are needed to ensure these rights. This is the position of Civil Society Organizations (CSOs) actively involved in the Guideline negotiations at FAO headquarters.

The Guidelines-this new instrument developed by the Committee on World Food Security of FAO-recognize the key role of women, peasant farmers, fishing communities, pastoralists and indigenous peoples. Nonetheless, they fall short on issues that are critical to the livelihood of small-scale food producers.

According to the CSOs, the text is, at this moment, not enough strong in prioritizing the essential support to small-scale producers, who have the absolute priority if governments want to achieve sustainable development. The Guidelines, because of several intrinsic inadequacies, fail to sufficiently provide a comprehensive set of rules to effectively counteract the widespread practice of grabbing of natural resources, such as land and water, thing that contributes to food insecurity, violation of human rights and environmental degradation. It’s also disappointing that they don’t include water as a land resource.

The Guidelines are the result of multi-year-discussions between governments and Civil Society representatives and are rooted in basic human rights principles such as human dignity, non-discrimination, equity and justice when applied to tenure.

Representatives of small-scale food producers participate to have their say at all stages of negotiations, bringing their real life experience. The process proved able to bring a wide range of voices to the debate, making it easier to find solutions to difficult and contentious issues, such as tenure of land, fisheries and forests. This way of working should serve as an example to the entire UN system.

¹⁷ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-50-Add3_en.pdf

As it has been conveniently remarked “The participation of global civil society is more than token inclusion; global civil society at the CFS has been relatively successful in advancing its goals and articulating alternative policies that challenge the mainstream policies advanced by the G8 and World Bank. Indeed, the success by global social movements to position the Voluntary Guidelines as a wedge and counter-discourse against the earlier maneuver of the World Bank to place the Principles for Responsible Agricultural Investments (PRAI)—which is essentially a voluntary, corporate self-regulatory instrument—as the centrepiece to regulate land grabbing is indicative of the chessboard politics shaping emergent global land governance”(Margulis-McKeon-Borras Jr., 2013).

Although CSOs still disagree with several parts of the text, they will work to ensure that the Guidelines are implemented in a way that strengthens the rights of small-scale food producers and commit to use them as a tool to advance their struggles.

CSOs call on governments and intergovernmental organizations to implement the Guidelines to effectively and urgently contribute to a sustainable and equitable governance of natural resources.

Finally, it’s essential to remark that the land grabbing is only one of the pivotal issues of land control in the world. The VGL are a very important “soft law” tool that urges every State and international organizations to guarantee access to land for small food producers and to build a link between food security and access to necessary resources in food production.

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