

# Global governance/politics, climate justice & agrarian/social justice: linkages and challenges

An international colloquium  
4-5 February 2016

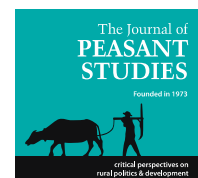
## ***Colloquium Paper No. 41***

Interpreting and using the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in Guatemala: Challenges for democratizing land, fisheries and forests tenure

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The Hague, The Netherlands

Organized jointly by:



ECOFAIR TRADE DIALOGUE

With funding assistance from:



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**February, 2016**

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# **Interpreting and using the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in Guatemala: Challenges for democratizing land, fisheries and forests tenure**

*Salena F. Tramel and Jose Luis Caal Hub<sup>1</sup>*

*Draft for ICAS/ISS colloquium, 20 December 2015*

## **Abstract**

*This paper explores the challenges for democratizing land, fisheries and forests tenure in Guatemala through the use of the FAO/CFS Tenure Guidelines across a variety of stakeholders, including, the national government, international intergovernmental organizations, NGOs and grassroots rural working people organizations, FAO, IFAD, and UNEP, and academic researchers. This international human rights instrument comes at a critical moment, where the current global land rush has shaped contemporary agrarian transformation with serious implications on the right to food and natural resource control. We argue that Tenure Guideline provide us with a unique opportunity to discuss how land and natural resource tenure falls under the prescriptions of international human rights law, while tendencies often subsume tenure by a narrow and unquestionable understanding of property rights enshrined by civil and merchant law. In Guatemala, we are witnessing a political opening, where the Government has incorporated the language of the Tenure Guidelines into its regulatory framework unlike any other country in Latin America. At the same time, the interpretation of the Tenure Guidelines is extremely contested, with some state and corporate actors seeking to write the guidelines into policy in order to gain political legitimacy for the expansion of oil palm and sugarcane production. Our findings indicate that when applied together with a rights-based approach, the Tenure Guidelines are highly relevant and politically urgent. This is especially true of the most marginalized populations who require protection and respect of their existing tenure rights, promotion of reforms for better access to and control over land and resources, and restoration of tenure rights resulting from displacement or dispossession.*

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<sup>1</sup> The authors warmly acknowledge the support of the United Nations Food and Agriculture Organization (FAO) to conduct this research.

# 1. Introduction

## 1.1 Prologue

A labyrinthine grid of oil palm plantations in Guatemala's northern lowlands encloses the village of Sachaj on three sides, obscuring what is left of small family farms. Indigenous rural working people in the Mayan Q'eqchi' village and its surrounding areas in the Raxruhá municipality confront various and interlinked land accumulation processes as the oil palm industry expands in global marketplaces and local communities like Sachaj—with the blessing of the Guatemalan state and a laudable narrative of food security and job creation. Yet at the community level, *who gets what* in this latest phase of an agricultural economy that has routinely marginalized peasants? How much do they get, why, and for what purpose (Bernstein 2010)? It is within the framework set by this question that democratic land control and human rights merge—in a sense, democratic land control being political economy terminology for the emerging 'human right to land' (Franco et al. *forthcoming*).

Access to and control over land in Sachaj mirror distinct but interconnected processes throughout Guatemala—and, we would argue, elsewhere—where land concentration, extraction of natural resources, environmental degradation, and rural hunger reach a tipping point. These courses of action converge pointedly on the land angle. Paradoxically, while growing the majority of the world's food, approximately 700 million of the global small-scale food producers and agricultural workers are hungry (De Schutter 2010). More than 70 percent of Guatemala's indigenous and rural population depends on agriculture, often in the form of small-scale peasant production, primarily growing maize on their own or rented land. Up to fifty percent of Guatemalan children suffer from chronic malnutrition—amounting to the highest rate in Latin America, and among the highest in the world—and the overwhelming majority of them are indigenous (FAO 2014). For these groups of people effective access to land and water resources can literally be a matter of life or death. International human rights declarations and normative frameworks such as the Right to Food and the UN Declaration on the Rights of Indigenous Peoples provide welcomed measures that should be taken by states to protect all citizens, with a clear bias in favor of the most marginalized and poor.

A right to land framework, as a launching platform for its related human rights, dovetails with their principles and assumes a similar partiality on behalf of rural working poor people. Ribot and Peluso would problematize democratic land control as an issue of access, 'the *ability* to derive benefits from things' rather than only 'the *right* to benefit from things' (2003). From here, two types of essential land tenure policies emerge to help secure rural poor peoples' access to and control over land, fisheries and forests. Simultaneously, policy should respect and protect democratic land access where it already exists and promote democratic redistribution of control over land (Franco et al. *forthcoming*). These key concepts form the theoretical spine of this report.

Firstly, in settings where rural poor people have existing access to land, water, forest, and other natural resources, but contemporary political economic processes threaten it, there is a need to *respect* and *protect* that access. Secondly, in settings where rural poor people have no existing access to land, water, forest, and other natural resources, but not as a result of violent expulsion from, or fraudulent or distressed loss of their previous homeland or communities, there is a need to promulgate and *promote* (re)distributive reforms. Finally, in settings where rural poor people have no existing access to land, water, forest, and other natural resources, and this was the result of past violent expulsion from, or fraudulent or distressed loss of, their previous homeland or communities, there is a need to *restore* their access via land restitution and other vehicles.

The UN- World Committee on Food Security and Nutrition (CFS) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (hereafter Tenure Guidelines) delivered in 2012, has set a new global standard in regards to land tenure from a human rights perspective. It is currently the only international instrument dedicated to land, fisheries and forests and within its human rights spirited pages are a set of minimum standards that states can rely on to democratize access and control over land, water and connected natural

resources for its ‘most vulnerable and marginalized’ citizens (Art. 1.1 of the Tenure Guidelines) that represents the interrelated concept/policy of ‘respect/protect, promote, restore’.

Guatemala, from its position as having endorsed the Tenure Guidelines, its impasse between rural working people and large-scale agrarian extractive industry, and its expressed desire to implement a long-awaited Agrarian Policy<sup>2</sup> is at an historic juncture to right previous wrongs and prevent future harm to its vast rural working and indigenous citizens with strategic political insight from the Tenure Guidelines. At the same time, while the weightiest responsibility falls on the shoulders of national government, the Tenure Guidelines also implicate international governmental organizations, NGOs and grassroots rural working people organizations, and academic researchers in their interaction with critical agrarian and ecological issues. Essentially, the guidelines are a tool designed for use across multiple actors and scales—including by concerned and impacted local communities.

In Sachaj, the David vs. Goliath face-off between the oil palm industry and rural indigenous who are landless or threatened with landlessness by the shrinking enclosure continues. It is indicative of similar battles throughout Guatemala, and telling of a future agrarian trajectory with regional and global consequences. Hence, international human rights instruments in general and the Tenure Guidelines in particular come at a time where they are profoundly relevant and politically urgent. When used in collaboration with participatory signatory states to inform national legislation, the Tenure Guidelines can help identifying *gaps*, *absences* and *contradictions* in current regulatory frameworks around the needs to *protect and respect*, *promote*, and *restitute* the tenure rights of the most vulnerable and marginalized.

## 1.2 Methodology

This work positions Guatemala’s agrarian trajectory within the minimum standards set by the Tenure Guidelines in an attempt to assess the national policies and institutions and their potentials as they relate to marginalized, vulnerable, and poor populations throughout the Guatemalan rural landscape. Neither local or national policymaking trends nor the Tenure Guidelines suffice alone in this context—instead, they should be considered as dynamic and mutually reinforcing tools for constructing healthy regulatory state instruments built on solid foundations of human rights and democratic land control.

Even for one of the smallest countries in Latin America, Guatemala holds complex agrarian and environmental stories between its Pacific and its Caribbean coastlines and at its borders with Central American neighboring nations. The political, geographical, social, and economic undertones obviously have different rings across Guatemalan territory, even if they form part of the same refrain. Forest dwellers that forage the central part of the country, for example, face different threats than small-scale fishers in beachside communities and indigenous farming families of varied regions. Yet at the same time, the Tenure Guidelines apply to all of them—throughout land, fisheries, and forests—where lack of just agricultural and environmental policy with strong state involvement affects their lives in very similar ways.

While some simplification is inevitable, we attempt to avoid it in this study by focusing when possible on the expansion of oil palm, particularly as it is playing out in the department with the highest concentration of agrarian conflict in all of Guatemala, Alta Verapaz. And within Alta Verapaz, when feasible, we focus on the municipality of Raxruhá, and even more up-close on the village/community of Sachaj. The nature of this kind of analysis is one that requires us to continually adjust our analytical lens—so while we zoom in while possible on land and resource grabbing in Sachaj/Raxruhá/Alta Verapaz, we also zoom out to the national level, bringing in snapshots from elsewhere along the way.

We argue that many Guatemala’s policies and institutions fall short of the minimum standards set by the Tenure Guidelines, especially in terms of their ability to ensure protection, promotion, and

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<sup>2</sup> ‘Agrarian policy’ in Guatemala is synonymous to ‘land policy’ elsewhere.

restoration of access to and control over land, fisheries, and forests (with an emphasis on land as a primary natural resource that acts as a gateway to others). In some cases, regulatory frameworks exist—but only in a partial, dormant, or contradictory way. In other cases, these regulatory frameworks are absent. This analysis looks at the four axes of Guatemala’s Agrarian Policy: 1) *land access*, 2) *resolution of agrarian conflict*, 3) *legal guarantees and security*, and, 4) *access to other productive activities*, as well as other particular regulatory instruments at different geographical scales—the Constitution, the Peace Accords and municipal legislation being good examples). An examination of the state and corporate actors indicated in these regulatory frameworks cuts across all points of this discussion in conjunction with equally important intersections indicated in the Tenure Guidelines.

We probe the intersections and gaps between the Tenure Guidelines and regulatory frameworks across Guatemala in the three broad contexts, also described above. Firstly we look at *safeguards* (7), and *public land, fisheries and forests* (8) where rural poor people’s access to land and natural resources is threatened. This includes those who have access without land tenure, and others who have land tenure rights but no (real) access. Secondly, we highlight *redistributive reforms* (15), and *informal tenure* (10) as inroads for a comprehensive agrarian reform for the (near) landless. Finally, we turn to *restitution* (14) to restore land and resources to populations that were violently displaced or evicted or fraudulently so.

Complementary chapters in the Tenure Guidelines work with these measures that apply to all three aforementioned groups of people and current priorities in Guatemala’s Agrarian Policy, namely, *indigenous peoples and other communities with customary tenure systems* (9), *markets* (11), and *investments* (12). Each of these recommendations should be fully synced with the *guiding principles of responsible tenure governance* (3) as ensured in the opening general matters of the Tenure Guidelines. They are further complimented by—and therefore meant to work with—previously consecrated international human rights law that are referenced in this study such as *Free Prior and Informed Consent*, the *Rights of Indigenous Peoples*, the *Right to Food*, and *Convention 169 of the International Labor Organization*.

Hence, these measures of Tenure Guidelines and their correlative human rights and international governance instruments apply to a variety of settings across Guatemala. In settings where policies to protect, promote, or restore land tenure are *absent* such as is the case with *promoting* comprehensive agrarian reform, the Tenure Guidelines can act as such; that is as a guide to *develop regulatory frameworks* to fulfill the rights of vulnerable groups like landless workers. Across settings where land access is recognized but *contradictory*, the Tenure Guidelines provide indications for regulatory frameworks to *correct such contradiction(s)*—a decisive example being women’s land rights, wherein the legislation being used to promote those rights can actually thwart it (as is often the case in Guatemala). In settings where restorative and other land and resource policies exist but in a way that is insufficient in *partial* laws, the Tenure Guidelines can suggest how to *fill the gap*. This is best exemplified in the case of Guatemala where restitution is part of the policy, but not one that recognizes its most marginalized victims of violent crisis and expulsion including refugees of the civil war and its notorious scorched earth campaigns, let alone those who lost their land access due to fraud or distressed sales. Finally, in settings where adequate policies exist, but are *dormant*, the Tenure Guidelines serve to facilitate that *implementation*—highlighted by grassroots efforts to boost peasant economies with strong state support. The political settings navigate geographic space, and even as we explore them here at the local and national levels in Guatemala, the insights and implications are regional and global in nature.

Above all, we argue that the Tenure Guidelines can serve as a set of minimum standards—based on human rights—which can be used to reflect on and measure the relevance and effectiveness of what is in place on the ground, and what is lacking. This applies especially to the regulatory capacities of different state actors—from executive to judiciary to legislative—to democratize land, fisheries, and forest tenure.

## 2. The Political Economy of Contemporary Agrarian-Environmental Transformation in Guatemala in the Context of the Current Global Land Rush

Guatemala has some of the most unequal land distribution in the world. The *Gini Coefficient* with respect to the concentration of tenure and land ownership rose from 0.82 in 1979 to 0.84 in 2003 (INE 2003). This number shows that by 2003, 78 percent of arable land was already concentrated in the hands of 8 percent of landholders—both setting the backdrop for this latest investment boom on the heels of the 2007-08 food crisis and violating the human rights of many rural working Guatemalans, in particular, their right to food. Control over and access to land is a fundamental starting point for natural resource governance and food security. Across all of its functions, land holds or surrounds other resources—forests, water, and minerals—making it the point of departure for agrarian-environmental transformation processes. In some circumstances, including for sugarcane and oil palm agribusiness, land is key to securing cheap labor such as contract farming. For many groups of people, indigenous rural Guatemalans being no exception, land is territory—signifying that it is much more than just an economic production factor, but laden with socio-cultural reproduction factors along with ancestral, and spiritual significance (Grandia 2012, Ybarra 2010, Holt-Giménez 2008, Borrás and Franco 2010, among others). Because of this, reducing land to just one of these factors, as states often do when dealing with records rather than people, amounts to a dangerous form of oversimplification and alteration of territory-based social and ecological interactions.

The current global land rush exploded in 2007-08 as the food, energy, financial, and climate crises converged while the BRICS (Brazil, Russia, India, China, and South Africa) and even some prominent MICs (Middle Income Countries) created new hubs of capital accumulation (Borrás et al. 2012). One of the most telling trends of this current phase in land acquisitions is the mushrooming demand for ‘flex’ crops, crops that have multiple uses as food, animal feed, and fuel among others (especially Borrás et al. 2015, Alonso-Fradejas et al. 2015)—and thus harness, according to the industries controlling them, the potential to solve multiple crises, and at the same time provide safe investment opportunities (McMichael 2012). These crops are grown on what is assumed to be marginal lands, with the blessing of cash-strapped states that claim these lands are available. Two of the most prominent flex crops globally are oil palm and sugarcane, and have been scrutinized widely as instances of land grabbing (Borrás et al. 2015, Alonso-Fradejas et al. 2015, McKay et al. 2014, among others).

Yet ‘land grabbing’ itself is has contested definitions, the most typical being the framework employed by FAO in its groundbreaking study on concentration and foreignization of land in Latin America and the Caribbean. That study which included 17 countries—one of which was Guatemala (Carrera and Carrera 2011)—minimally benchmarked land grabbing as 1) large-scale, involving at minimum a thousand hectares, 2) involving foreign governments, and 3) having a negative impact on food security in the country where it takes place (Gomez 2011, cited in Borrás et al. 2012). Because of these stipulations, the FAO study concluded that land grabbing is only taking place in Argentina and Brazil. Its assessment found that while Guatemala has undergone significant land concentration, it does not amount to land grabbing (Carrera and Carrera 2011). A broader and more inclusive definition of land grabbing allows us to measure processes of accumulation in countries including but not limited to Guatemala as they relate to the global land rush. For this assessment, we draw on the Borrás et al. framework that warns against analysis that relies exclusively on land scale-foreign investors and food-centered issues, presenting the more inclusive framework of land control grabbing.

*[C]ontemporary land grabbing is the capturing of control of relatively vast tracts of land and other natural resources through a variety of mechanisms and forms involving large-scale capital that often shifts resource use to that of extraction, whether for international or domestic purposes, as capital’s response to the convergence of food, energy and financial crises, climate change mitigation imperatives and demands for resources from newer hubs of global capital (2012: 404 – 405).*

What is missing from the more dominant narrative is a broader and more geographically adaptable understanding of what actually constitutes an instance of land grabbing. Borras et al. addressed this gap by outlining three delineating features of modern land grabbing. Primarily, land grabbing should be grounded in control grabbing as previously outlined. Secondly, scale must be reconsidered in a case-by-case basis with careful attention to the interlinked concepts of scale of *land acquisitions* and *scale of capital*. Finally, the original feature of contemporary land grabbing is that it occurs in the context of multiple interrelated crises (2012). With this in mind, two concepts are key when analyzing current land grabs in Latin America: foreignization and land concentration as noted in the original FAO study (Gomez 2014) and mentioned above. It is important to note that neither necessarily results in land grabbing as it is known in prevailing narratives, but are both integral to the overarching concept of capturing control of natural resources—and thus land grabbing. Foreignization refers to ‘the acquisition of land by foreigners—government, corporate or private individuals—for a variety of purposes and on a variety of scales.’ Land concentration moves beyond the nationality of the dispossessor, bringing land ownership and state agrarian politics and local corporate behavior back into the arena (Borras et al. 2012).

Recent critical research in Latin American countries not deemed subject to land grabbing as more narrowly defined by FAO suggest that land grabbing is in fact occurring in those states. Alonso-Fradejas observes in his research in Guatemala that control-grabbing mechanisms there have displaced hundreds of families and in some cases entire communities (2012). Guatemala unlike regional land-rich countries such as Brazil and Argentina has experienced waves of rural exodus and expulsion linked to control grabbing in several interconnected forms. Using the definition put forth by Borras et al. as defined above, these and other instances in Guatemala indeed amount to land grabbing and follow distinct regional trends as described in this section.

Broadening the analytical lens of the overlapping mechanisms of land grabbing requires reflection that moves beyond transnational and corporate actors. Hence, the role of the national state is central. Four core arguments as illustrated by Wolford et al. unpack the function of the nation state in land deals. First, many states—fragile and powerful alike—are active and manipulative political partners in land deals. Second, structural inequality within states exploit resources; states do not merely partition between *those acquiring land* and *those being acquired*. Third, governments throughout the world respond differently to land deals. Finally, various power structures within the state, such as police, military, and paramilitary are active players in implementing and regulating land deals (2013).

Within these four core arguments, four integral components of governance lay the groundwork for a more intimate understanding of actors and processes in the state’s role in land grabbing. They are: territory, or the ‘legal extension of state power on the ground’; sovereignty, or the ‘capacity of rulers to control the conditions of their own reproduction’; authority, or the ‘role of diverse actors in governing multiple scales’; and, subjects, or the ‘constitution and influence of new actors who because of changing property relationships are either empowered or dispossessed of the ability to make claims on the state’ (Wolford et al. 2013: 193-194). Accumulation by dispossession as explained by Harvey, where centralized wealth by a powerful minority dispossesses the majority of their lands and livelihoods (2003), adds to a narrative that breaks down the state in aforementioned forms, and within particular contexts. A good example is Levien’s study on special economic zones in India, where he positions the Indian state as a key player in regards to land grabs in that country. Levien argues that accumulation by dispossession has turned in fact to ‘regimes of dispossession’, transitioning farmer’s land for sustenance to one of production—with interlinked connections to the state (2013).

These practices have mushroomed over the past three decades in the form of privatization policies favoring commodity regimes throughout the world. The framework of ‘accumulation by dispossession’ captures the twenty-first century environment well: ‘What accumulation by dispossession does is release a set of assets (including labor power) at very low (and in some instances zero) cost. Over-accumulated capital can seize hold of such assets and immediately turn them to profitable use’ (Harvey 2003: 149). In Guatemala, historical and current injustices have turned capital accumulation into a ‘cumulative effect’—stemming from the Spanish crown through the patron estate and



Washington Consensus styled restructuring and into the current land and resource grabbing dynamics around agrarian extractive industry.

In 2008, Guatemala deemed over a million hectares of land—amounting to 37 percent of its total farmland—available for oil palm and sugarcane cultivation (Alonso-Fradejas, Caal Hub, and Chinchilla 2011). That same year, the World Bank called agriculture good business, with the potential for poverty reduction (World Bank 2008)—noting that in urbanized countries agriculture acts in a similar way to other exchangeable economic sectors up for trade. This underpinning notion of agriculture as an export commodity is echoed throughout Guatemala’s regulatory instruments. In the Raxruhá municipality of the Alta Verapaz district, agriculture is big business indeed, as seen through reduced family farming due to oil palm expansion and ensuing grievances as pointed out by the community itself in the following communication.

*Oil palm plantations in our town are causing serious harm, which includes: not paying property tax, damage to road infrastructure, land grabbing, labor exploitation, pollution of potable water sources, pressure from businesses to community leaders and families to sale their land, violation of right of way between neighboring communities, use of coercive force, violence against peasant families, destruction of forests and jungles, altering the way of life of the communities... acts of pressure, coercion, threats and intimidation by oil palm companies, intermediaries (coyotes) or by government officials in the sale of plots, to leaders, authorities, organizations or people who protest freely to be able to express our opinions, and defend our rights, to define different strategies in order for the companies to improve the living conditions of the people of Raxruhá.<sup>3</sup>*

### **3. Laying the Foundation for the needs to promote, protect and restore the tenure rights of the most vulnerable and marginalized**

Existing Guatemalan land tenure policies, particularly as exemplified in its Agrarian Policy, are rooted in two watershed documents in the country’s recent history: the 1985 constitution and the 1996 Peace Accords just over a decade later. Article 39 of the 1985 Guatemalan constitution (reformed in November 1993) set forth private property as an inherent ‘citizen right’, elaborating that it is the state’s responsibility to carry out access with an assumed dual benefit of individual progress and national development (Government of Guatemala 1993: 9). Paralleling the private property tenure mechanism, the constitution also outlined communal and collective tenure in article 67 where it referenced protection of indigenous land and agricultural cooperatives. The article further stipulates that land in the hands of indigenous communities or cooperatives that desire other forms of communal or collective agrarian land tenure (also including housing and family property) are to benefit from special protection by the state, preferred credit and technical assistance to improve quality of life for all inhabitants. Of further relevance to Guatemala’s rural poor the article stipulates that indigenous communities and other lands that have historically belonged to them and that they have traditionally administered in a special manner will maintain those systems (Government of Guatemala 1993: 13).

More recently, collectivity and tenure have been further addressed in Order 41-2005 of the Law of the Registry of Cadastral Information. This particular decree defines collective, or communal, tenure as lands in ownership, possession, or tenure of indigenous or peasant communities as collective entities, with or without personal jurisdiction. The Registry of Cadastral Information was directly linked to the 1996 Peace Accords that had prioritized land access for the rural poor. Yet, the entire process and its outcomes were dominated by a powerful Guatemalan elite and the World Bank and International Monetary Fund, among other international financial institutions (Short 2007, Brett 2008), leaving out real structural reforms to address the root cause of poverty in the rural agricultural sector (Granovsky-Larsen 2013). In addition, communal land tenure is often an example of ‘partially’ available land. For

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<sup>3</sup> Comunicado de prensa, de fecha de junio 14 de 2013.

example, communal tenure is not recognized in protected areas, even in cases where the community has been living in, and depends on forests, before they were officially declared ‘protected areas’. In other words, land and resource access have often been principled on paper in various instances, and not in practice on the ground where systemic change has continually been needed the most.

After the Peace Agreements were officially signed, with some of its most prioritized commitments addressing Socioeconomic Aspects and the Agrarian Situation, the National Land Fund (hereafter FONTIERRAS) was created with a stated overarching objective to facilitate the transfer of lands to landless peasants. More specifically, the institution intended to ‘drive the land market’ via two parallel policy platforms—‘regularization’ and ‘access’. According to Article 46 of the FONTIERRAS code of conduct, regularization refers to the process of analysis, revision and update of records to those that constitute land sale and tenure submitted or in process of submission on behalf of the State. Access, as defined in Article 25 of the FONTIERRAS code of conduct is achieved across three schemes: adjudication, grants of credits for land purchase, and grants of credits for land rental with or without a purchasing option.

It is in this light that Guatemala’s Agrarian Policy was conceived, conceptualized as an indispensable component of the National Policy for Integral Rural Development spanning multiple sectors of society. It is important to note that the FONTIERRAS and Registry of Cadastral Information are two of the state institutions most responsible for implementing the agrarian policy at the local and national levels. Agrarian Policy threads together objectives, strategies, and instruments that its proponents say aspire to facilitate and increase land access, conflict resolution, legal guarantees and security, and access to other productive assets (see Government of Guatemala 2014). These threads tie back to a conceptualization of land as an economic factor by the Government of Guatemala, more often than not disregarding its political, social and cultural aspects, where land titling and other related processes have often undermined access to and control over land and other natural resources for the most marginalized rural working people in the country (Gauster and Isakson 2007, Hurtado 2008, Alonso-Fradejas et al. 2008). This follows a contemporary discourse trend, as noted by Borras and Franco:

*Where governance is linked to land policy, the tendency is to treat it as an issue of efficient state administrative function, e.g. ‘cheaper land administration’, ‘affordable land mapping’, ‘cheaper conflict management mechanism’, and so on – evading the fundamental issues of political power, recognition of land rights and effective access to land rights, or the political-economy of land and political change (2010: 5, emphasis added).*

In addressing these issues of power, recognition of land rights, effective access, political economy of land and political change in land policymaking, the Tenure Guidelines are nowadays indispensable, as we explain in the following section.

#### **4. ‘Respect/Protect, Promote, Restitute’: State actors, trajectories of agrarian change, and the Tenure Guidelines**

To understand the salience of the guidelines’ recommendations and how Guatemala’s legislation and actual practices measures up to these international standards, we turn to a discussion that pits each axis of Agrarian Policy, including noted strategies and instruments, against the relevant recommendations agreed upon in the Tenure Guidelines by its signatories. As one of those signatories, the Guatemalan state is in the position to set a regional example by adopting and implementing a democratic land policy that protects, promotes, and restores a human rights centered approach to land and territory for previously marginalized citizens where it currently falls short. Additionally, Guatemalan authorities refer to the Tenure Guidelines in their conceptualization of Agrarian Policy as part of its legal framework in addition to other international human rights treaties such as the Rights of Indigenous Peoples. These policy points work hand in glove with the state institutions responsible for their implementation—indeed, as Cousins reminds us, there is a difference between rights making and

making rights real (1997). Thus, we critically analyze those actors in tandem while at the same time offer voices from the grassroots.

#### *4.1 Conflicting agendas on how to promote tenure rights redistribution*

Guatemalan policies and institutions have repeatedly laid out land access as a pressing issue. The first axis of the 2014 Agrarian Policy echoes the founding law (no. 24-99) of FONTIERRAS, where land access is a prioritized vision that should be guaranteed by the state. Land access is addressed in the policy through the first strategy of *sale and leasing of land with or without the option to buy* (1.1). Tools for carrying this out are identified as credit and guarantee funds for the purchase and rental of land, buying foreclosed assets from banks and other financial institutions, and treatment of existing ‘agrarian debt’<sup>4</sup>. The second strategy under land access is *free adjudication, whether in ownership or usufruct* (1.2), to be achieved through the instrument of a Land Bank managed by FONTIERRAS. Thirdly, Agrarian Policy aims to protect *women’s land access* (1.3) using mechanisms for access to land and other forms of production. Agrarian Policy’s fourth land access strategy is to *transform Guatemala’s current colonato economy into a peasant economy* (1.4) through investment in ‘productive infrastructure’ in addition to agreements between the state, employers, and settlers. The final strategy deals with *measures to promote rational land use* (1.5) with land use administration and land tax tools.

In triangulating land access within Guatemala’s political structure and institutions and the Tenure Guidelines, it is of utmost importance to return to the definition of access that we drew from earlier, explicitly that access is ‘the *ability* to derive benefits from things’ rather than simply ‘the *right* to benefit from things’ (Ribot and Peluso 2003). This understanding of access calls for the resettling of control over natural resources within the hands of previously marginalized communities—thus building their *political power*. The fact that FONTIERRAS and the Agrarian Policy prioritize access in their founding legal framework is warmly welcomed, although it is not clear who will benefit from that access.

Agrarian Policy in general and its Land Access priority in particular often recycles failed policies and tasks government institutions that have proven to be inapt with (re)implementing those policies throughout the countryside to solve the current impasse—seriously risking repeating cycles of rural poverty and dependency. *Sale and leasing of land with or without the option to buy* (1.1) puts FONTIERRAS at the helm of credit and guarantee funds for the purchase and leasing of land, an arrangement that has repeatedly reaped disastrous outcomes. After the signing of the Peace Accords, Guatemala took on a Market Led Agrarian Reform (MLAR) program—thanks to political prodding and ample funding from the World Bank—to ‘advocate for voluntary transactions between ‘willing sellers’ and ‘willing buyers’ and the removal of various ‘distortions’ from land and agricultural markets’ (Lahiff et al. 2007).

FONTIERRAS, as a state institution was conceived in this very manner and at that historical moment—to fund landless families through credit and subsidies and manage the national titling system (a responsibility that would be shared with the National Cadastral Registry from 2005 forward). Throughout this process, FONTIERRAS failed miserably, managing to redistribute land to less than 5 percent of landless or near landless families in a national reach that touched only 4 percent of Guatemala’s arable land from 1997 – 2008. After 2009, FONTIERRAS only offered the option to lease land yearly, rather than buy it outright. Today, many spiral deeper into debt as they are not able to pay off the rising interest in addition to the principal of the original loans (Alonso-Fradejas 2012). As of 2007, 80 percent of the beneficiaries of farm-land transfer under the MLAR program had fallen behind in their loan repayment and reported that it was impossible to ever pay such an amount in full (Gauster and Isakson 2007, noted in Lahiff et al. 2007).

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<sup>4</sup> That is, the amount owed to FONTIERRAS by families which bought land through its credit mechanism

Gauster and Isakson offer a useful five-point analytical framework for understanding the logic behind MLAR problems, each of which contributed to its ultimate breakdown in Guatemala, and are summarized as follows:

1. World Bank style land reform assumes the notion that poor peasant farmers are not ‘credit-worthy’. Hence, land banks with the purpose of lending at subsidized rates are axiom to maintaining the market model.
2. Clearly delineated property rights must be in place to enable land exchange, adding what is seen as a necessary link to the regularization of land tenure that is central to this model.
3. The market-led archetype recommends that those farmers who desire credit create a productive plan in order to ensure commodity production to enable them to repay their loan and use their new land ‘efficiently’. Technical assistance and marketing plans are ideally managed by the private sector with a justification of reduced corruption.
4. To further minimize corruption and allow for heightened cooperation with richer landowners, land prices should be brokered directly between potential sellers and buyers, with payment in full upon the formalized agreement.
5. ‘Perfectly competitive land markets’ are theoretically contingent on large numbers of buyers and sellers. Large landowners are persuaded to participate in MLAR through structural adjustment that decreases property value and by tax levying on underutilized large plots of land (2007: 1520 - 1521).

These political procedures also coincided with a policy preference for individual land titling, starting from the time of the Peace Accords and continuing through the establishment of the Registry of Cadastral Information (RIC) and the Agrarian Policy discussed here. In a meeting with the community assembly, residents of Sachaj explained that they relied on an agrarian heritage that is highly communal in nature—since there was no individual title; one person was unable to sell her/his land entitlements in the absence of broad consent. The Peace Accords changed all of that with a new mandate on land administration authority, promoting widespread individual land titles. On one hand, this indeed upset communal land holdings. Yet on the other hand, many (indigenous) peasants thought of individual land titling as the most powerful way to secure their tenure rights—imitating the way traditional large landowners made their claims to ‘property rights’ (Alonso-Fradejas 2012).

Even as the Peace Accords, and subsequently what is currently the Agrarian Policy, were written in a manner that was inclusive of marginalized groups with an emphasis on women (see especially Agrarian Policy 1.3 *women’s land access*). In this manner, we find the prioritization within Guatemala’s Agrarian Policy of women’s land access praiseworthy, yet through the current language in which the policy pinpoints subsidies and credits, connected to individual titling, it may actually undermine women’s land access in practice. Decisions in rural communities are made by the male-head-of-household, and with individual titling there is often little women can do to maintain plots for use by their own families and future generations. In one survey in the Northern Lowlands regarding land sales, half of men working in agribusiness plantations who headed households had sold their plots because they had become ‘unproductive’. The other half said that they did so because they were ‘highly indebted’. Other men reasoned that they had been ‘forced’ to sale. Yet in the same survey, an astonishing 86 percent of women heads of household blatantly opposed giving up their land at any cost (Alonso-Fradejas 2012). Villagers in Sachaj saw FONTIERRAS coming in to issue land titles, and ever since then, they said, land sales are easily facilitated, and that the government had sold off its peoples right to land. Today, little has changed under the new Agrarian Policy. As of March 2015, 44 families in Sachaj had sold their land and 26 remain on their plots—with those who remain reporting pressure to sale and those recently landless saying that they had been menaced to vacate by various parties.

Multiple instances of land tenure violations play out within a single setting such as Sachaj, and are reflected throughout Guatemala. Where rural poor people have some forms of access to land and other natural resources, but that access is threatened, there is a political shortcoming—and necessity—to protect it. We explore two such circumstances below, looking at 1) land access lacking ownership

rights and 2) land ownership lacking proper access. Both of these cases require *respect* and *protection* of natural resource governance, which is addressed in the Tenure Guidelines, most aptly outlined in its third section, *Legal recognition and allocation of tenure rights and duties*, and even more specifically in chapters 7 (*Safeguards*), 8 (*Public land, fisheries, and forests*), and 9 (*Indigenous peoples and other communities with customary tenure systems*), and quite possible to implement through state law and institutions. Then, where rural poor people have no access to land and natural resources, but not as a result of violent expulsion, current policies and procedures fall short of finding political space for such peoples. We examine another set of individuals that fall under these circumstances, 1) peasant land sellers, and 2) agricultural workers. Many of these people call for a *promotion* of land access mechanisms, namely through (re)distributive reforms that are specifically attended to in the Tenure Guidelines. Others demands within this grouping include restitution (for peasant land sellers where sales were forced or distressed) and better terms of incorporation (for agricultural workers' wages and/or labor arrangements and conditions). The selected examples are not intended to represent an extensive list. Rather, taken together they shed light on some of the most pressing national issues identified.

#### ***4.2 Under threat: the need to protect existing tenure rights***

##### **Scenario A: Land access under rental and usufruct arrangements**

Having access to land and natural resources does not necessarily imply ownership. Much of the *colonato* economy is fading away, and with it the characteristics of the plantation economy where peasants survived at the intersection of tenancy and bonded labor arrangements with large landowners. Today, what is left of that structure leans more heavily on rental agreements and is rapidly commoditizing to give way to land leasing markets. Guatemalan regulatory framework addresses this within Agrarian Policy where one of its stated goals is to *transform Guatemala's colonato economy into a peasant economy* (1.4) through investment in productive infrastructure in addition to agreements between the state, employers ('patrones'), and settlers. 'Productive infrastructure' is extremely vague and open-ended language that can be used against the most vulnerable sectors of the population—especially when the deals often shift in reality toward the more powerful state and patrones. Furthermore the policy makes no mention of corporations such as powerful oil palm or sugarcane industry (although they very well may be considered 'productive industry'), and have the upper hand in relationship to paralyzed local governments and traditional landlords who have seen a decrease in income due to plummeting coffee or cattle prices or other factors. But it is sometimes these same actors—private sector agribusiness, the state, and traditional landed upper classes—that have a bottom line of profit in agricultural production, which may further marginalize the rural poor. Therefore, 'Productive infrastructure' could actually be used in a way that undermines the peasant economy, rather than promoting it. Similarly, in its language that promotes agreements between the state, employers, and settlers encourages rentals and a modernization of productive relation in the countryside instead of righting the root cause of unequal land tenure and injustice. In combination with a renewed zest in land rentals from FONTIERRAS, these activities raise cause for concern as strategies to transform the agricultural sector into an economy where peasants truly benefit.

##### **Scenario B: Land access under growing farming, environmental and health damages by third parties**

A second area where people have access, but that access is threatened, is highlighted by increasing environmental and related health concerns that come as a consequence of oil palm expansion and other (agrarian) extractive industry. Returning yet again to the definition of access being the ability to derive benefit from things, deployment of the oil palm project has undermined that ability on several counts—even when rural working people hold individual or collective land titles. Deforestation, river diversions, and water scarcity and contamination are commonplace to make way for water-intensive crops as evidenced by the growing presence of industrial tree and other plantations throughout Guatemala (meeting with communities).

In Sachaj, community members said that their maize cultivation was perceptibly diminished in the face of oil palm expansion. They noted with grave concern that the environment has changed drastically due to toxic pesticides, and that local water sources had been poisoned in the process of oil palm expansion. Indeed, they pointed out once-clear rivers that are now running low and have changed in color from crystalline-blue to yellow-green<sup>5</sup>. Indigenous working people in the village were equally concerned about their food security situation. Almost all of those who do own land once cultivated basic crops for their own subsistence such as corn and beans, and today no longer have sufficient planting space—even with technical land access—and many of those are now day laborers on the oil palm plantation. New illnesses are creeping up in Sachaj, notably stomach problems and a skin condition that affects children and is very difficult to treat. These farming, environmental and health implications of corporate oil palm cultivation also constrain working people’s access to land, but such cases of ‘indirect’ constraint of access to land by third parties are not addressed in the current Agrarian Policy.

#### ***4.3 International Human Rights Law and the Tenure Guidelines: A Need to Respect and Protect Threatened Land and Resource Access for the Rural Poor***

Land access is clearly prioritized across Guatemala’s political structure, notable in the current 2014 Agrarian Policy—as it was in the Peace Accords and subsequently in FONTIERRAS establishment and guiding principles—and it should be a foundation on which all other land policy frameworks are erected. Our major concern is that it is currently an unstable foundation, and in this not-yet-solidified state will not be able to hold up the complex political architecture that relies on its base. This is where the Tenure Guidelines are imperative to a just and sustainable land and natural resource political framework in Guatemala. The first building block for protecting (threatened) access for poor rural people is a full understanding of the *guiding principles of tenure governance* that is mapped out in detail in section three of the Tenure Guidelines. General principle 3.1 stipulates that states should *recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.*

This is overlooked in the current policy wherein land access is dealt with through sale and leasing (1.1, Agrarian Policy), economic in function (1.4, Agrarian Policy) and ‘productive infrastructure’ (1.5, Agrarian Policy). Although these and other policy points addressed in Axis I: Land Access of the Agrarian Policy are (see especially 1.3, Women’s Land Access) important marks of contention, a human rights approach to land tenure would be one that is just that—rooted in the sort of rights-based language that we see in general principle 3.1 and elsewhere in the Tenure Guidelines. The language as it currently stands is one that is vision-based, thus avoiding infringement responsibility and leaning towards economic potential (therefore, threatening the rights of those who may stand in the way), and away from a genuine discussion of ‘legitimate holders of tenure rights’ (that when identified, must be protected by all measures including international rights treaties to which the state is held accountable or bound). The Tenure Guidelines principles of implementation add to this rights-based understanding. Each holds resounding resonance in the case of Guatemala, but to ensure land access in this primary axis of Agrarian Policy, we would like to highlight *human dignity* (1.) with its emphasis on human rights, *equality and justice* (2.) as it empowers highly marginalized populations; *rule of law* (7.) in relation to the past failure of institutions such as FONTIERRAS and RIC to follow through on promises to those who currently have access to land and resources, and finally in that vein; *accountability* (8.) to hold all parties accountable to rule of law and other connected principles.

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<sup>5</sup> Various parties physically pointed out pollution of water sources on several occasions while data was being collected in the field for this study. It was also discussed in detail in a personal meeting with the Mayor of Raxruhá on 1 April 2015 and in a gather with communities affected by oil palm in Alta Verapaz on 22 April 2015.

Moving beyond the general *guiding principles of responsible tenure governance* as outlined in section three of the Tenure Guidelines and discussed briefly above, sections seven (*Safeguards*) and eight (*Public land, forests, and fisheries*) provide additional guidance than is much needed to ensure protection of land access where it is presently available for poor rural people in Guatemala. As discussed in scenario (a), many working people in the countryside enjoy access to land not as owners, but through different rental or usufruct agreements with large landowners—mostly large *colonato* landholdings. In the absence of proper safeguards, these people are under serious threat of loss of access and livelihood. Within the *legal recognition and allocation of tenure rights and duties*, outlined in the Tenure Guidelines, respect to these rental agreements is dealt with in safeguard principle 7.1 stating that: *when States recognize or allocate tenure rights to land, fisheries and forests, they should establish, in accordance with national laws, safeguards to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law. In particular, safeguards should protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights.*

Agrarian Policy recognizes usufruct land users. On the positive side, does so by emphasizing ‘free adjudication’. But on a negative note, its usufruct land use strategy spotlights increased land bank practices managed by FONTIERRAS. With this narrow focus on establishment of land banking that has further *denied* access through MLAR and other mechanisms. Principle 7.6 of the Tenure Guidelines further stipulates that when such legal recognition of tenure rights is not possible, *States should prevent forced evictions that are inconsistent with their existing obligations under national and international law [...]*. By preventing forced evictions, states are both protecting rural poor peoples land access and avoiding situations that require comprehensive agrarian reform and complicated restitution—both which are discussed within the contours of this study. An implementation of these and other safeguards detailed in the Tenure Guidelines could improve access by preventing procedural loopholes.

Near landless and landless people additionally employ *strategies of land occupation* in an attempt to push for either land reform or land restitution. Together with ‘historical land claims’ and ‘rural labor disputes’, ‘land occupations’ as forms of organized agrarian struggle in Guatemala have amounted to more land access for peasants than MLAR (see Granovsky-Larsen 2013).

Another area of those who have access that is discussed briefly in scenario (b) is those who have access to land, but one that is compromised by diminishing resources, environmental hazards and their ensuing health concerns as exacerbated by a third party. Most importantly, access is null and void in the absence of *legitimate* access. Clearly, the issue at hand has to do more with *who* is responsible for creating environmental (and related health, and reduced ability to farm, etc.) and holding that third party accountable—in many cases powerful monoculture production companies such as oil palm corporations.

### Environmental grievances and public land

Like the concept of food security and nutrition that hold the Tenure Guidelines together from start to finish, the concept of environmental protection is also laced throughout its pages—appearing in nearly every section. It is in this way that the Right to Food is embedded in environmental justice as it applies to democratic land access. Regulatory frameworks in Guatemala also includes broad strokes that include the environment, yet they are yet to be articulated succinctly in a way that binds them into legal and human rights framework.

For this reason, section eight of the Tenure Guidelines deals specifically with public land and its stewardship.

Thus, where States own or control land, fisheries and forests, they should determine the use and control of these resources in light of broader social, economic and environmental objectives. They should ensure that all actions are consistent with their existing obligations under national and international law [...] (8.1). Later in section 8, we see that states should develop and publicize policies covering the use and control of land, fisheries and forests that are retained by the public sector [...] (8.6). Additionally, policies for allocation of tenure rights should be consistent with broader social, economic and environmental objectives [...], and that such policies should ensure that the allocation of tenure rights does not threaten the livelihoods of people by depriving them of their legitimate access to resources (8.7).

These provisions are a small but relevant sample on a wide spectrum of access mechanisms that apply to those threatened by environmental concerns.

#### ***4.4 Under pressure: Access unhinged***

##### **Scenario A: Peasant land sellers**

Guatemalan state past practices and its current regulatory framework stress the importance of land titles without provisioning of technical assistance or ways to access capital which created an upsurge in indigenous peoples vulnerability in regards to land grabbing—where investors and elites compel peasants into selling the highest quality lands (Gauster and Isakson 2007). The political pressure rural working people encounter when it comes to selling their land is often laden with trickery and arm-twisting. Although government officials and policy speak in World Bank language of willing buyers and sellers, land transfers in practice often violate international rights instruments such as Free Prior and Informed Consent (FPIC) even in cases where both parties are considered ‘willing’. In response to an upsurge in grievances by agrarian extractive industries, communities threatened by these projects are often deeply—and understandably—untrusting and unwilling to negotiate directly with their corporate representatives. Today, it is commonplace that middlemen, known locally as ‘corporate coyotes’ are brokering land deals. To add insult to injury in the form of deeper fissures of distrust, corporate coyotes most often do not come from outside the community, but are most likely to be highly regarded individuals connected to local schools or churches (see Alonso-Fradejas 2015). Alonso-Fradejas recorded a typical grievance in the municipality of Sayaxché of newly landless in the Peten department that neighbors Alta Verapaz to the north:

*They came to cheat us. ‘You better sell your land before it is flooded by the Puebla to Panama Plan hydroelectric mega-dams’, they said. ‘The companies will provide employment and welfare that the state cannot’, they also told us. And they were not people from faraway places, not even company lawyers or engineers. They were our brothers from neighboring villages! (2015: 509, group meeting in March 2010)*

Cases such as the one highlighted above clearly delineate a lack of transparency on behalf of extractive industry that has become increasingly commonplace in land acquisitions of corporate nature with limited protection by the state.

Of equal concern in this category is the case of distressed sales—that is, when peasants find no other option than selling their land to obtain the cash they need to deal with pressing necessities. Examples include illness, food procurement, recovering from a natural disaster, and pollution of land and resources by third parties, among others (see Maxwell and Wiebe 1999). Again, these instances indicate a lack of public services and protection.

##### **Scenario B: Agricultural workers**



In a system where one plantation economy has replaced another, agricultural workers in Guatemala are up against a past labor regime with a makeover. Some have called this a ‘pretty up’ strategy, where the sugarcane, and to a greater extent the oil palm, industries are redefining their images as an answer to converging crises that benefits the rural workers and the environment (Alonso-Fradejas 2015). In this vein, the ‘land for food, not for fuel’ campaigns advocated for by agrarian and environmental justice movements are met by industrial claims that they are contributors to ‘food sovereignty’ and job creation. This was illustrated by the Guatemalan Oil Palm Growers Guild (GREPALMA) in its emphasis that oil palm is a food crop, going as far to advertise it as ‘food sovereignty’ (Hunsberger and Alonso-Fradejas *forthcoming*).

Although there is no official data thus far, oil palm industry figures indicate that it will create direct employment for 20,500 people along with 102,500 indirect jobs<sup>6</sup>. The Rising Global Interest in Farmland (RGIF) 2011 report by the World Bank backs these claims, in its assertion that non-forested and potentially arable land throughout the world is widely uninhabited and produces far below its ultimate potential—and cites Guatemala as one such case (Deininger et al. 2011). Underpinning this reasoning is the assumption that land acquisitions in these places can feed the world’s hungry and create jobs, without harming the environment. Yet, experience points in a different direction where petty coercion has uprooted generations of subsistence farmers in favor of a labor regime that is dependent on market mechanisms.

On the ground in Sachaj, residents indicated that *when* oil palm companies hire locally, they only hire young people—leaving many out of work and disrupting community systems. Salaries are not sufficient, they said<sup>7</sup>. Out of the average 60 quetzals (about \$7.84) daily payment, at least 30 quetzals of that are used to pay for food, leaving little to cover the living expenses of those who are not offered work. In addition, rural working people in the village explained that is common practice for oil palm companies to bring in their own labor forces under the assumption that rural indigenous locals will disrupt systems they already have in place.

Wage and labor conditions and arrangements in the Guatemalan oil palm industry are unstable, and often below international standards (Alonso-Fradejas 2015, Alonzo and Dürr 2008, Hurtado and Sánchez 2011 and Alonso-Fradejas, Chinchilla Miranda and Caal Hub 2011). Reflecting on the situation, one community member said that the oil palm company created a situation of dependency and that conditions were squalid, at best. Tania Li reminds us that the ultimate concerns here are the profit margin of the investors, not local poverty reduction. Since states are often in competition to lure these investors, they are often willing to give up land on the cheap, or even for free—as long as the ‘job creation’ narrative removes them from accusations about rights violations (2011). It is indeed likely in this way that the Guatemalan government justifies the incorporation of Convention 169 of the International Labor Organization into its Agrarian Policy. Ultimately, since the corporations offer protection for their workers, the state has for the most part forfeited its oversight responsibilities leaving a growing population without access to land at the mercy of fluctuating and profit-seeking markets.

#### ***4.5 International Human Rights Law and the Tenure Guidelines: A Need to Promote Land and Resource Access for the Rural Poor***

International human rights instruments likewise address cases where the rural poor have no existing access to land and natural resources, but not as a result of violent expulsion. Two of the most common of those scenarios in present-day Guatemala are outlined above where indigenous peasants sold their land as a result of coercion and/or are themselves rural workers in agricultural flex crop plantations. The spirit of the Tenure Guidelines speaks to these issues, and given its incorporation into

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<sup>6</sup> [http://www.grepalma.org/index.php?option=com\\_content&view=article&id=81&Itemid=53](http://www.grepalma.org/index.php?option=com_content&view=article&id=81&Itemid=53) accessed on August 15, 2015.

<sup>7</sup> Meeting with the community of Sachaj, 1 April 2015

Guatemala's Agrarian Policy opens up political space to hold the Guatemalan state accountable for remedying these situations. Additionally, especially with the concerns that arise in the first case, an examination of the applicability of Free Prior and Informed Consent (FPIC) is relevant.

FPIC was initially sketched within the framework of ILO's 169 convention, and then incorporated into the landmark UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007. FPIC works hand in glove with the Tenure Guidelines, providing measures that will simultaneously respect traditional land rights and promote access to resources by spelling out what giving up consent could entail in grassroots communities through extensive consultation measures in communities where land deals are proposed. Its reception has been twofold. In one regard, merely getting to the point of folding FPIC into international jurisdiction was a hard-fought win, advocated for by years of struggle in indigenous and other marginalized communities. But on the other side of the coin, FPIC has become a device that gives legitimacy to large-scale land deals—thus used as a facilitating mechanism for their implementation (Franco 2014).

Notwithstanding, when FPIC is implemented where *consent* is in step with community agreement (and not just consultation) it can be a powerful tool. This is another place where the 2014 Agrarian Policy falls short. By focusing on consultations, it fails to clarify that legitimate conversations in full disclosure of development objectives put all outcomes on the table and respect the decision—regardless of any outcomes seen as negative for development, financial or otherwise. Specifically, this includes the right to say 'no' as detailed in the FAO Technical Guide No.3 on how to implement FPIC, where, *companies and governments engaging in good-faith negotiations with communities must recognize that even when a thorough information and negotiation process has been carried out, indigenous peoples and local communities have the right to say 'no' to development or to a project on their customary lands* (FAO 2014, in Franco 2014).

First and foremost within the Tenure Guidelines, promoting land and resource access for rural poor people where land tenure inequalities prevail requires an overhaul of the entire system—that is, redistributive reforms. The kinds of reforms that favor indigenous peasant communities are not to be mistaken with the MLAR programs previously analyzed in this assessment. This is also our major point of contention with the Agrarian Policy. When driven by the corporate private sector, the role—and thus, responsibility—of the state is often greatly diminished. The Tenure Guidelines offer steps that move states back to positions of accountability and positive action to their most vulnerable citizens.

Section fifteen of the guidelines deals exclusively with redistributive reforms in a way that we see as possibly leading to a (never completed) *comprehensive* agrarian reform in Guatemala. The Tenure Guidelines remind us that redistributive reforms can *facilitate broad and equitable access to land and inclusive rural development* (15.1). These reforms *may be considered for social, economic and environmental reasons, among others, where a high degree of ownership concentration is combined with a significant level of rural poverty attributable to lack of access to land, fisheries and forests [...]* (15.3). A good starting point for redistributive reforms where high ownership and rural poverty coincide is the policy option of land ceilings (see 15.2).

Never before has Guatemala written into legislation such a bold move and land ceilings—and we argue that such an option could be a first step in dismantling colonial landholdings. However, when applied to the current corporate control over land and agriculture, it is quite possible to circumvent such scale limitations. Thus, more comprehensive land reformation is critical. Redistributive reforms along the Tenure Guidelines, and the Declaration of the 2006 FAO *Conference on Agrarian Reform and Rural Development* (ICARRD), work with a thorough and longstanding involvement of and commitment from the public sector in the ways where MLAR and other land reform programs fall short.

Whereas MLAR targeted beneficiaries based on their credit-worthiness, the Tenure Guidelines hold that intended beneficiaries should include historically disadvantaged groups, among them women,

indigenous people, youth, and informal settlement residents (15.5). The state is further actively engaged in the process by providing public support in areas such as *access to credit, crop insurance, inputs, markets, technical assistance in rural extension, farm development and housing*, (15.8) Follow-through in the form of monitoring and evaluation of its redistributive reform programs is critical (15.10).

Informal tenure, as specified in section ten of the Tenure Guidelines works in close collusion with redistributive reforms—most poignantly as it applies to workers and protecting their tenancy rights. As we briefly described in scenario (b), oil palm workers face rights violations and lack of public accountability in the plantations daily. Their grievances—from low wages, to health concerns, to job security—are a microcosm of what workers encounter throughout Guatemala. The most notable of these violations for the purpose of this assessment is nonexistent land access, whenever such is the aspiration/claim of the worker. The guidelines stipulate that where informal tenure exists, *States should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation and promote social, economic and environmental well-being* (10.1). Such can be the case of voluntary or coerced sellers who have turned to plantation work. These affected individuals and communities should be afforded the opportunity to be part of the process of establishing such laws and policies in a gender-sensitive and participatory manner with *special attention to farmers and small-scale food producers* (10.1, 10.3). These instances squarely place the responsibility of grievances due to flex crops and other extractive industry, as well as recognition of informal tenure, on the state. Mechanisms for informal tenure are an urgently important tool as they apply especially to women, and unpaid women plantation workers.

#### **4.6 Resolution of Agrarian Conflict**

Guatemala's regulatory frameworks and institutions prioritize resolution of agrarian conflict, as central to drawing attention to and resolving widespread agrarian conflict through seven interconnected strategies in its Agrarian Policy. Firstly, the policy stipulates *implementation of alternative conflict resolution methods* (2.1)—its specific tools in such being negotiation, mediation, and reconciliation, and agrarian arbitration. The second strategic intervention is *administrative processes* (2.2) outlined especially through provision of free legal assistance and linkages between the Secretary of Agrarian Affairs with the Judicial Body, Public Ministry, and the National Council for Protected Areas. Thirdly, Agrarian Policy outlines an agrarian conflict resolution strategy of *restitution of rights, compensation and land acquisition for high impact conflicts* (2.3), with its complementary instruments being a program for restitution of land rights and compensation and a mechanism of land acquisition to resolve high impact conflicts. The fourth point deals with *judicial processes* (2.4), offering accompaniment of cases where resolution is being processed through the courts. Fifthly, Agrarian Policy aims to make use of *conflict prevention* (2.5) mechanisms, especially agrarian investigations and application of the consulting mechanisms indicated in Convention 169 of the International Labor Organization with particular attention to its application in indigenous communities. In its sixth conflict resolution strategy, Agrarian Policy visualizes *conflict resolution through customary law* (2.6) expressly as it applies to indigenous peoples' legal systems. Finally, *treatment of land occupations* (2.7) is outlined as a conflict resolution priority to be accomplished through historical, registry, and cadastral research.

The fact that Guatemala's Agrarian Policy has an entire axis dedicated to agrarian conflict resolution is commendable. Yet in order to engage in any meaningful discussion of agrarian conflict and the potential for its resolution, it is critical to return, at least,<sup>8</sup> to the context of the civil war—which is something that the policy fails to do. After the only serious attempt at agrarian reform in Guatemala (Williams 2007) in what was an effort to right the wrongs of the *colonato* landholding regime, the CIA sponsored a coup in which a military leader dislodged a democratically elected progressive president (see especially Hurtado 2008 and Ybarra 2011). The agrarian reform program had been widely

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<sup>8</sup> Not to talk about the dispossession held by the Spanish Crown and the liberal state after independence.

influential among rural poor people throughout Latin America, yet its antagonists, including the U.S. government maintained that it was an attempt at a communist revolution that would unravel their own escalating regional power. These actions ignited the flames of the civil war that would burn from 1960 until they subsided with the Peace Accords in 1996. Guatemala's civil war would prove to be one of the greater atrocities of the second half of the 20<sup>th</sup> century, in which the rural indigenous majority—some organized as Marxist groups throughout the countryside, others organized together in liberation theology groups, and yet others not organized at all—were treated as highly suspicious for the military regime and amounting to 'collective enemy of the state'. The state green-lighted the killing of up to 70 percent of its Mayan and peasant Ladino majority population through its notorious *scorched earth campaigns*. And by the time the war was over, the military killed or disappeared more than 200,000 and forcibly evicted up to 2.5 million in what a UN sponsored truth commission would later attribute to genocide (CEH 1999, Ybarra 2011, Williams 2007). Eighty-three percent of them were indigenous Mayans.

However, unlike other negotiated agreements to ethnic conflicts around that time—notably Bosnia and South Africa—Guatemala's Peace Accords presented an end to war that failed to segue into a rule by the oppressed majority. Forms of restitution had been called upon (Williams 2007), but there was no earnest attempt at follow-up or implementation—leaving the wounds that had been exposed by the war merely dressed but not cleaned. Adding salt to those lacerations, and profound distrust in rural indigenous communities, the commitments that *were* promised by the Guatemalan state were to be rolled out in many cases by the perpetrators that had committed the violations in the first place. With no other place to go, many retreated to urban slums, where approximately 250,000 still remain (Williams 2007). In sum,

*Rather than considering their plight as part of the larger problem of displacement due to conflict, the Guatemalan government defines the urban displaced as economic migrants. The government is unwilling to recognize thousands of people as IDPs without personal identification documents stating proof of origin. Many in the community, particularly women, have lost these documents as the result of the constant displacement during the war (Fitigu, in Williams 2007).*

The Peace Accords, at best, accounted for an unspecified remedy rather than a real 'right to restitution' (Williams 2007) and the Agrarian Policy, albeit in more nuanced language, follows suit by putting many options on the table in a visionary fashion but offering little in the way of bringing that to fruition. This is also the case of rural poor people who experience violent expulsion from their previous homelands or communities through the expansion of oil palm and sugarcane extractive industry—again, not mentioned in the policy. While in previous cases, we referred to those who willingly sold, or did so under political trickery and arm-twisting or distressed sales, there are also cases of violent and forced evictions.

Agrarian conflict resolution has been routinely curtailed because of a serious lack of agrarian legislation and courts. This was mandated through the Peace Accords, but never developed due to outright opposition by organized landed capitalists in the 'Camera del Agro', and more broadly, the CACIF. As mentioned in the following section, this is now resurfacing as part of the third axis of Agrarian Policy. However, like past attempts, the power to develop such legislation is out of reach for the SAA (and government in general). The SAA lack the political mandate and the funds to remedy this complex problematic. And even though mandated by the 2005 Law on the Cadastral Registry, an Agrarian Code and tribunals are still lacking.

#### ***4.7 International Human Rights Law and the Tenure Guidelines: A Need to Restore Land and Resource Access for the Rural Poor***

We commend Guatemala's regulatory framework, particularly the Agrarian Policy for addressing restitution within its pages, specifically in section 2.3 where it deals with *restitution of rights*,

*compensation and land acquisition for high impact conflicts.* However, its focus on compensatory measures is alarming in a way that echoes the Peace Accords. Moreover, its program and methodology proposes management by the Secretary of Agrarian Affairs and FONTIERRAS using similar measures that have proven unsuccessful in the past—again with a focus on cadastral land management systems rooted in private property. It is worth repeating that it makes no mention of, a) those displaced by the civil war, and b) people now landless due to agrarian and environmental extractivist projects.

The Tenure Guidelines are critical in those—and other—such circumstances where the rural poor are made landless. The guidelines dedicate an entire chapter for land restitution that begins by strongly citing States obligations to national and international law (see 14.1). A point that is often neglected in the face of violent evictions is that *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* (14.2). This resonates soundly in Guatemala where indigenous tenure systems were routinely eradicated before and throughout the civil war. Programs following the Peace Accords focused on shanty and unsustainable housing on the outskirts of urban areas (Williams 2007) and monetary compensation. That compensation was attached to proof of titles and identity documents—and more often than not, land was allocated under customary and/or indigenous systems, and many documents that did exist were lost when people fled their land.

This is being repeated through a technically narrow cadastral system. For this reason it is crucial that the particular *concerns of indigenous peoples regarding restitutions should be addressed in the national context and in accordance with national law and legislation* (14.3). Guatemala can, and should, improve its language and legislation around restitution. This starts with a clear recognition of historical injustice and human rights violations during the civil war. Likewise, there is a need to stipulate processes for refugees of expanding agribusiness, natural disaster, and climate change. The Tenure Guidelines summarizes this succinctly, in that: *States should develop gender-sensitive policies and laws that provide for clear, transparent processes for restitution. Information on restitution procedures should be widely disseminated in applicable languages. Claimants should be provided with adequate assistance, including through legal and paralegal aid, throughout the process. States should ensure that restitution claims are promptly processed. Where necessary, successful claimants should be provided with support services so that they can enjoy their tenure rights and fulfill their duties. Progress of implementation should be widely publicized* (14.4).

The Tenure Guidelines clearly state that forced evictions should be avoided in several of its sections. Point 2 of General Principal (3A) says that (states) ‘*should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.*’ In Chapter 4, which deals with *Rights and responsibilities related to tenure*, the Guidelines specify that ‘*All forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against forced evictions that are inconsistent with States’ existing obligations under national and international law, and against harassment and other threats* (4.4).’ Chapter 7 (*Safeguards*) stipulates that ‘*Where it is not possible to provide legal recognition of tenure rights, States should prevent forced evictions that are inconsistent with their existing obligations under national and international law, and in accordance with the principles of these Guidelines* (7.6).’ Similarly, chapter 10 (*Informal tenure*) lays out that, ‘*Where it is not possible to provide legal recognition to informal tenure, States should prevent forced evictions that violate existing obligations under national and international law, and consistent with relevant provisions under Section 16* (10.6).’

#### **4.8 Legal Guarantees and Security**

The third axis of Agrarian Policy, legal guarantees and security, intends to assure citizens that the rule of law will be enforced and meet the basic criteria to which it applies and assumes twin strategies. On one side, legal guarantees and security is envisioned through *strengthening traditional tenure systems and communal land management* (3.1). Law for the regularization of land tenure and municipal offices for land administration are the proposed tools for making this an on-the-ground reality. The other side

deals with *agrarian legislation and jurisdiction* (3.2) and looks to a wider and more complex set of tools to unlock its supposed potential. These are: Agrarian Code and Agrarian Procedural Code; courts, tribunals, and agrarian courts/proceedings; agrarian prosecution; agrarian procedure; a stronger Registry of Cadastral Information through acceleration of the cadastral process; modernization of the General Registry of Property; and, a system to integrate the General Registry of Property with the Registry of Cadastral Information.

The axis of Agrarian Policy dedicated to legal guarantees and security is one that in theory should provide all citizens with accountability and rule of law favoring the most marginalized, especially since its first strategy is *strengthening traditional tenure systems and communal land management* and subsequently referencing the historical rights of communities. In the case of Guatemala, the Americas, and elsewhere, traditional land tenure systems are not limited to but run deep through its indigenous heritage and customary systems of resource access and control. However, realizing these rights is once again handed to the Secretary of Agrarian Affairs, FONTIERRAS, and RIC through the establishment of a land tenure regularization law. The Agrarian Policy leaves exactly what this will look like somewhat vague, and we suggest a thorough inclusion of chapter nine (indigenous peoples and other communities with customary tenure systems) of the Tenure Guidelines throughout this clause of Agrarian Policy and elsewhere as a measure to protect traditional land tenure systems, since the ability to pass legislation extends beyond the SAA or the executive branch of the state. We also argue that it is a point of reference for promoting and restoring democratic land access for indigenous peoples and other groups who were made landless by violent or other means and wish to return (when possible) to their homelands or those of their ancestors. Above all, *State and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems* (9.1). It is no coincidence that this point is repeated through several chapters of the Tenure Guidelines and mentioned on multiple occasions throughout this work. It is a fundamental human rights-based starting point for lawmaking around land where social actors and leadership predates the modern state and market allocation tendencies.

Communal land management and agrarian legislation and jurisdiction require the highest level of accountability, transparency, and professionalism when applied to grievances of the most marginalized and rural people. Expanding agribusiness for flex crops—especially its consequential environmental and health impacts, and those that curtail small-scale producers’ farming abilities—must be held to the highest standard of the law. Activists and leaders in the Raxruhá municipality came together to take collective action against the pollution and costs caused by oil palm industry in their area. Since taxes are a key organizing tools of governments at the local and national level, the municipal council decided together that the oil palm companies who had never paid ‘a single quetzal’ in taxes (e.g, the land use tax) be held to this legal instrument. The municipality planned to use this money to mend some of the damage in their area, with the mayor taking the lead. But when the mayor was taken to court by the ‘Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations’ (CACIF) an historic representative of extractive agrarian industry), the court ruled in favor of the oil palm companies and sued the mayor. This action is significant in that it shows both that there is a lack of respect and unwillingness to pay, the rectification of which would reflect that it operated inside the law. The mayor still sees it as a victory, saying that Raxruhá was unique in the decision to swim up current and continue to identify strategies to defend their land and territory<sup>9</sup>.

Lack of legality and intervention of the state has caused activists and leaders in Raxruhá to turn to different tactics. This particular ruling understandably caused deep resentment in a community that was willing to work *with* the corporate private sector, and has instigated a more radical course of action. The mayor of Raxruhá, together with 56 associated and auxiliary mayors are now campaigning for the oil palm companies to leave all together (Alonso-Fradejas 2015). In a related meeting with communities affected by oil palm in Raxruhá decided resoundingly against a ‘negotiated position’ with priorities on labor rights and pacts between the community and the companies, favoring instead a

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<sup>9</sup> Based on meeting with Mayor of Raxruhá, 1 April 2015

‘strong position’ to, a) avoid and reject destruction of territory, b) territory is non-negotiable, and, c) stop the destruction of mother earth (June 2014).

In the case of grassroots communities and their rural working peoples movements, there is still a lack of awareness about the Tenure Guidelines—their existence, let alone how to use them to advance rights/claims to respect and protect, promote, and restore resource tenure vis-à-vis regulatory instruments that may or may not be available—and such applies to the case above. Tools such as the newly released popular manual on the Tenure Guidelines are indispensable in settings such as the one described above (see Ortega-Espés et al. 2015). Of equal relevance are community workshops and radio programs that deal with international human rights law in general, and the Tenure Guidelines in particular.

#### 4.9 Productive Activities

The final axis on which Guatemala’s Agrarian Policy stands is access to other productive assets, which aptly recognizes that access to land alone does not suffice without inclusion and participation in other activities that encompass a range of historical, social, economic, political, cultural, and environmental considerations. This axis assumes a single strategy, *promoting the peasant economy and making the rural areas more competitive in their contribution to the national economy* (4.1). Its proposed tools are many: participatory rural appraisals of the peasant economy; strengthening the national system of rural extension services; consolidation of the family agriculture program to strengthen the peasant economy; strengthen systems to generate technology and market information; agricultural subsidies, credits, and security; boosts to agricultural cooperatives, livestock keeping, handicrafts, and other forms of community organization; strengthening local food supply systems and post-harvest management; public-private partnerships to promote rural value chains for the generation of conditions for access to national and international markets; rules for water access, use, development and conservation; and, create and strengthen community capacity in the steps of prevention, mitigation, and response to natural disasters.

At its most fundamental level, the fourth axis of Agrarian Policy is spot on in recognizing that land alone is not enough without additional means of livelihood production. We are specifically optimistic that this expressly points to considerations that are *historical, social, economic, political, cultural, and environmental* in both concern and nature. In fact, the notion of land taking on a mosaic of purposes is also written into the Guatemalan constitution, which explicitly referred to its *social* function. Our concern with this part of the policy is that its sole and primary strategy is competition in rural areas to boost the national economy—once again leaning heavily on market mechanisms that amount to centralized and externally-dependent development. Such a strategy can, and has in the past, hindered local and decentralized economies and contributed to dependence. Today, the large-scale extractivist agricultural model evidences the harms of this development trajectory. The policy specifically refers to value chains. Friedmann warns of the commodity/value chain model, explaining that it is one of two ‘competing and evolving visions of the earth’, where transnational corporations manage production chains, and in doing so disturb natural cycles (2000: 508).

Agrarian Policy hinges on public-private partnerships. We do not dismiss corporate private sector participation altogether, however, we advocate that it should take a lighter role as it has failed to safeguard poor rural communities in the past and especially with the increased positioning of agribusiness throughout all aspects of relations and landscapes in the countryside. Hence, we shed light on use of the tenure guidelines with a focus on public-*peasant* partnerships (see also Kay 2014), that is, the very community-controlled organizational forms stated as part of the tools for this strategy, where the state can redouble its efficacy in relation to its peasant-majority constituency and their own grassroots efforts around resource tenure—respecting, promulgating, and even restituting democratic land access.

The Tenure Guidelines offer guidance here in chapters 11 and 12, regarding markets and investments subsequently. One such capsule of that guiding analysis is that *States should simplify administrative procedures in order to avoid discouragement of market participation by the poor and most vulnerable* (11.3). Even though the focus here is land markets, they are dealt with as part of and in relationship to other sectors of the economy, namely subsistence and small-scale farmers, where, *given the importance of small-scale producers for national food security and social stability, States should ensure that when facilitating market operations of tenure transactions, they protect the tenure rights of small-scale food producers* (11.8). Perhaps more pressing than any other application along this scale of the Tenure Guidelines is its application to investment. More than ever, *considering that smallholder producers and their organizations in developing countries provide a major share of agricultural investments that contribute significantly to food security, nutrition, poverty eradication and environmental resistance, States should support investments by smallholders as well as public and private smallholder-sensitive investments* (12.2). There are well-documented examples both at a national and regional scales, making the case for the consideration of family farmers as powerful economic actors, instead of either as ‘inefficient’ or social actors deserving only social funds from the government.

Dürr exposes ten common myths regarding the inefficiency of peasant agriculture, countering them with realities from his research in Guatemala, and are summarized as follows:

- 1) Agricultural products generate substantial value, from production of inputs, to agricultural production, to processing, to marketing.
- 2) Peasant agriculture is extremely important to the national economy, generating more work than commercial agriculture.
- 3) Agricultural chains generate more employment than just in the field—in fact making space for 0.7 additional posts in various sectors for each job created in agriculture.
- 4) Family farm production reaches much farther than the local market—equally important is its destination to domestic and international markets.
- 5) The domestic market is developed to the point of enormous interregional reach, with national consumers dependent on its ability to function properly.
- 6) Industry and trade are not simply concentrated in metropolitan areas, but are built on high added value in rural areas.
- 7) Rural producers work with traders who receive modest margins, helping to thwart exploitation by intermediaries and coyotes.
- 8) Producers do not always have lower income than intermediaries.
- 9) Women are core to rural agricultural production, even while they earn little and their work is often invisibilized.
- 10) Peasant agriculture—and small-scale farming products with high added value—generates more employment and income in rural regions than large-scale monoculture production (2011: 8 - 24).

On the one hand, and at a national scale are these contributions of family farming to growth and employment. On the other hand are the peasant-to-peasant agroecological exchanges and public marketplaces (Alonso-Fradejas 2015). These two strategies include interesting tools already being used on the ground and promoted by grassroots organizations that can be further developed with increased public support. Of particular significance is strengthening the national system of rural extension services; consolidation of the family agriculture program to strengthen the peasant economy; strengthen systems to generate technology and market information; agricultural subsidies, credits, and security; boosts to agricultural cooperatives, livestock keeping, handicrafts, and other forms of community organization; and strengthening local food supply systems and post-harvest management. Together, these strategies not only contribute to strong and sustainable communities, but can also help secure land and resource tenure.

Overall, it is critical that Guatemala recognize the vast amounts of investments that rural working people engage in within their own communities and treat them as primary investors and, as such, as key economic actors for a broad-base growth and development. This requires a shift in power



dynamics, in which the state must reprioritize its food producing and indigenous majority. A vigorous way of doing this is the promotion of public-*peasant*-partnerships over the public-private-partnerships that currently dominate Guatemala's agrarian landscape and are endorsed on paper through the Agrarian Policy.

## 5. Conclusion

An aerial view of Guatemala City in May 2015 revealed a different kind of enclosure—a sea-like mass of thousands of people encircling government buildings and demanding an end to the stalemated corruption that has become part and parcel to a system in which they do not feel represented. Unlike the lattices of industrial tree, sugarcane and oil palm plantations encroaching on villages and family farms in the countryside, the congregation in the capitol was one that was fluid in its ebb and flow—bringing together indigenous peasants and their urban counterparts, women, youth, and others in a dynamic fusion that illustrates today's Guatemala.

The protests became a reoccurring fixture until the Vice President, and subsequently, President resigned to 'face justice' in a corruption scandal, and in the case of the President, also having to do with his past ties to Scorched Earth Campaigns during the Civil War. Justice and equality in Guatemala evidently have many facets, yet the lynchpin has always been, and continues to be, land—its control, concentration, extraction of its resources, its environmental degradation, and its ability to feed people. As these infringements converge, so do the solutions, most precisely in the articulation for a *right to land* at the point where democratic land control and human rights coalesce. The Tenure Guidelines are an indispensable international standard at this juncture, shining light on (minimum) paths that states can take to improve their agrarian and environmental futures. Lifting that veil also allows rural poor people themselves the opportunity to define their access to and control over natural resources.

The Tenure Guidelines are part of deducing the evolving *human right to land and resources*. Overall, a human rights guided land approach prioritizes:

- 1) Making available and/or strengthening rights and protections for marginalized, vulnerable, and poor populations,
- 2) Following actions to restore land and resources to victims of coercive or arbitrary eviction and displacement and distressed sales, and
- 3) Practicing redistributive land measures for households that are landless or threatened with landlessness.

In several national settings, these priorities have informed state policies ranging from redistributive land and agrarian reform to land restitution to land stewardship—and in doing so, have set a new norm (Franco et al. *forthcoming*). Guatemala's nascent Agrarian Policy has this same potential, and would set a regional rights-based standard with global implications of its local impacts—but only if it is revised heavily and implemented by competent institutions that truly represent the indigenous rural majority. We have attempted to provide some broad contours for these new directions in this assessment, informed by the minimum standards set by the Tenure Guidelines. Yet again, this is most amply represented by the triad concept/policy that *protects, promotes, and restores* democratic land access, thus having a similar effect on human rights and adding political legitimacy to the right to land.

Guatemala's Agrarian Policy, while containing some affirmative and rights-giving language, is at this point a visionary document in that it tells us what needs to be done, tasking institutions along the way, but does not show us *how* it will get there. This major concern is coupled with two others. On one side, the *institutions* charged with implementing the policy are in fact the same bodies that committed much of the harm that it is said to alleviate. On the other side, it recycles some previous failed *policies* that contributed to the current impasse between big business and rural working people. In this way, it can

be read as an attempt to legitimize escalating patterns of accumulation that are consequenced by waves of rural dispossession. Although we welcome the Guatemalan state's endorsement of the Guidelines and its statement that the Tenure Guidelines inform its unfolding Agrarian Policy, we are apprehensive that international human rights instruments could be used in a way that undermines credible intentions. For this and other reasons, it is absolutely critical that all concerned actors—international intergovernmental organizations, NGOs and grassroots rural working people organizations, FAO, IFAD and UNEP, and academic researchers—hold national governments to task and make improvements along the journey ahead.

This continuing drive forward will undoubtedly be met with obstacles, hurdles that cannot be overcome with even the best-intentioned one-size-fits-all policy prescriptions in the form of local-national procedures and the Tenure Guidelines alone. Hence, it is imperative that more radical alternatives are also considered as complementary to local, national, and international policy instruments. Specifically, this purposes *sovereignty* as it applies to land and food and has been conceptualized and advocated by the academia and grassroots rural working people organizations. Food sovereignty builds on the right to food by specifying the 'right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems' (Nyéléni 2007). Land sovereignty abounds on the land and natural resources pillar of food sovereignty by recognizing, primarily, the 'right of working peoples to have effective access to, use of, and control over land and the benefits of its use and occupation, where land is understood as resource, territory, and landscape' (Borras and Franco 2012, see also Borras et al 2015).

None of these reflections should be taken as piecemeal policy remedies. Instead, they overlap and intersect one another in a way that is as complex as the situations on the ground to which they speak. In Guatemala, the issue at hand is pressing—but the convergence of those affected pushes back in a critical mass with greater force.

## **6. Implications and Recommendations**

### **6.1 (i) For national governments**

The role of the state is vital, perhaps now more than ever. As governments around the world follow privatization trends, the agricultural sector is increasingly outsourced to corporations and where states are more actively involved it is often in a way that encourages public-private partnerships. These political arrangements can result in devastating effects on the lives and livelihoods of small-scale food producers and often ensue in land and resource grabbing. The Tenure Guidelines are a way to bring back the central role of the state in governing land and resource tenure issues. We place the state's greatest use of the Guidelines as one that *protects* those who have access to land and resources, but are under threat of losing that access. This can take the shape of having access without land, or land without (real) access. Here it is essential that states shape their protective policies in line with *safeguards* (7), and *public land, fisheries and forests* (8). Where rural poor people are landless, states should correct and *promote* land distribution policies through comprehensive agrarian reform, taking guidance from the Tenure Guidelines, notably through *redistributive reforms* (15), and *informal tenure* (10). Where instances of violent expulsions have occurred, states can *restore* land access through *restitution* (14). In states where indigenous, tribal, or other forms of land management exist, states should align agricultural policy in a manner that *indigenous peoples and other communities with customary tenure systems* (9). Rural women and agricultural workers should also be prioritized. These recommendations reach farther than just policy, also applying to parliaments and the judiciary.

### 6.2 (ii) For international intergovernmental organizations

International intergovernmental organizations—and firstly we single out the World Bank here—have an unprecedented political opportunity created by the Tenure Guidelines. The World Bank has stated its strong support for the guidelines (World Bank 2014) and is therefore in a place where it can reform its development strategy to one that is in sync with the Tenure Guidelines and its own stated goals of ‘ending extreme poverty’ and ‘promoting shared prosperity’ (World Bank 2013). Against the backdrop of land and resource grabbing that contribute to poverty instead of relieve it; the World Bank should take a hard look at its preferential market-led strategies with the Tenure Guidelines and change courses to a rights-based strategy. Even though the World Bank has stated its support for the Tenure Guidelines, it must adjust its *interpretation* in a way that aligns with marginalized communities. New research within its Land Governance Assessment Framework is timely. Financial institutions that support the flex-crop strategies in the region are also implicated here. The Inter-American Development Bank, which finances the Mesoamerican Integration Development Project—including Puebla-Panama Plan is a key player in Guatemala, thus another contender to follow rights-based resource strategy as indicated in the Tenure Guidelines.

### 6.3 (iii) For NGOs and grassroots rural working people organizations

Social actors play a strong role in holding governments accountable, and the Tenure Guidelines are a perfect accountability mechanism for land access. We see rural working people organizations and NGOs as having four main leverage points with the Tenure Guidelines across local and national policies. Firstly, in settings where there are not policies to protect, promote, and restore democratic land access and human rights, social actors should use the Tenure Guidelines as a *substitute*—especially where their governments are signatories. A second access point is in settings where policies to protect, promotes, and restore land rights are flawed. Here, the Tenure Guidelines should be advocated in a way that provides a *corrective measure*. Thirdly, in settings where policies to protect, promote, and restore land access are insufficient, the Tenure Guidelines should be used by social actors to *fill the gap*. Lastly, in settings where policies to protect, promote, and restore democratic land access and human rights exist, rural working people organizations and NGOs should use the Tenure Guidelines as a means of policy *implementation*. More specifics around understanding the Tenure Guidelines and using them as a tool for policy analysis and advocacy can be found in a newly published ‘popular manual’ for communities and movements.

### 6.4 (iv) For FAO, IFAD, and UNEP

We commend the partnerships between FAO, IFAD, and UNEP with grassroots rural working people organizations, some of which have grown significantly over the past years. In this way, UN branches are able to hear from rural poor people themselves and prioritize their rights and solutions into international human rights law. It was in fact, this kind of dynamic and mutually reinforcing relationship that resulted in the Tenure Guidelines. FAO, IFAD, and UNEP should prioritize these voices in implementation of documents such as the Tenure Guidelines. The emerging right to land energizes such prioritization. FAO, IFAD, and UNEP should insert critical input throughout this process, pushing for a formulation that combines democratic land access and human rights in a right to land formulation that protects, promotes, and restores (real) access to land and natural resources. More conversations around food and land sovereignty are an absolutely integral part of this formulation. A similar strategy should be taken with the process to give political legitimacy to the rights of peasants. Finally, when engaging with social actors, the overlap of agrarian and environmental issues is creating new convergences between grassroots movements and UN bodies like FAO, IFAD, and UNEP. There issues are also of relevance to the Inter-American System of Human Rights Bodies. Therefore, discussions must be had across these spaces, and from the grassroots up.

## 6.5 (v) Academic Research

For scholars of agrarian political economy and political ecology, human rights investigations that overlap between these areas can result in research that is both scientifically rigorous and socially relevant. The Tenure Guidelines can be used as a measuring stick (within the methodological frameworks mentioned above) of democratic land access and human rights where resource accumulation and other processes put those rights under direct threat. The theoretical handles of protect, promote, and restore as concepts and policies gives academics a way to move with intent between local and global settings—grounding analysis with singular or comparative case studies and international trends. The same is true with the parallel process of absent law/policy, partial law/policy, and contradicting law/policy. Rights-based framing is a methodological approach where academic research and policymaking can acquiesce. Critical studies on the Tenure Guidelines are also relevant, as well as the guidelines use with other international human rights tools, and comparative analysis—crosscutting between local, regional, and transnational insights.

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