



“Inclusive land governance, road to a better life”

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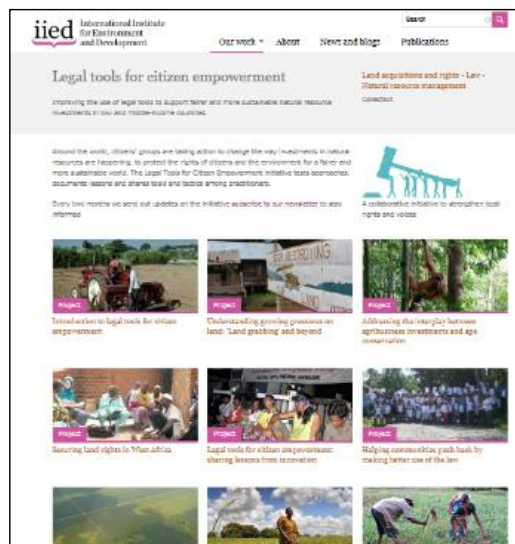
Slide 1

I would like to “unpack” the title and talk about the following:

- Inclusive – what does it mean in the context of land governance? Which actors/stakeholders are involved and of whom do we need to think if we design a project in the context?
- Land governance – what is the internationally definition? Which elements and dimensions belong to land governance?
- Better life – can you make the connection between land governance and livelihood, social and economic development?



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Slide 2

A bit of background about the perspective I come from. IIED, Legal Tools work, socio-legal, agri investments / local-to-global, in-country experience mainly SSA. More recently some work in SEA (Mekong).

I will take a big-picture global view, but also want to draw on practical experience. So my own personal trajectory colors the talk. Look forward to hearing from you about your own experiences in different countries and themes.



Slide 3

Why talk about land? A few years ago we asked these cocoa farmers in Ghana. They had no doubt that land was a very important development issue – i) central to livelihoods, food security, culture, social identity - not just an economic asset, also social and cultural value yet ii) major challenges including widespread disputes over boundaries, tenancies, inheritance, customary authority, etc. Disputes problem in their own right, given importance of land. Also some evidence suggested that tenure insecurity affected propensity of cocoa farmers to replant old/unproductive trees, ie possible concrete repercussions for ag investment & productivity.

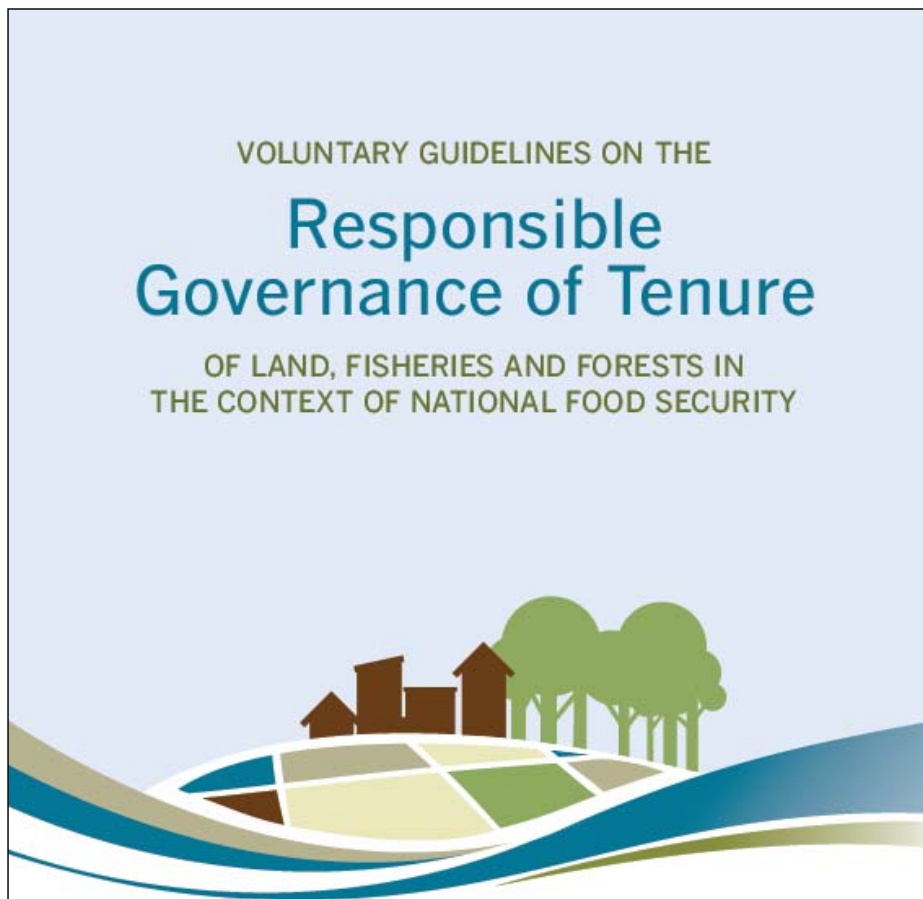
Agricultural investment, or 'land grabbing'?



Slide 4

Recent wave of land deals for agribusiness investments in LMICs – ‘land grabbing’ for the critics. Africa received lots of attention – but also SEA, LA.

Many of the countries affected could stand to benefit from increased investment in agriculture. But much contestation. Including protests, campaigning, etc. Cf Cambodia and Madagascar photos. Linked to diverging visions of agri development, and concerns about investment quality. But also rooted in concerns about weak land governance – eg concerns about weak land rights of people affected by the deals, and limited opportunities for influence. These growing pressures on land compound imperative to secure local land rights, in local-to-global dimensions/context



Slide 5

In this context, growing international guidance on land. Greater consensus on key parameters – what land governance should look like.

VGGT endorsed @ CFS 2012: significance as first global, comprehensive instrument providing guidance on land governance. Link to wider good governance agenda – cf VGGT “principles of implementation” (rule of law, accountability, consultation/participation).

Also regional instruments, particularly AU Framework and Guidelines on Land Policy in Africa (2009, and significant work since).

At the same time, much to do to operationalise these documents – or even fully digest their practical implications for diverse actors. Much work to do to translate international guidance into change on the ground.



Slides 6-7

What is land governance? We all know it when we see it but difficult to define. Even “land” difficult to define. See VGGT. Because of links between land and other resources. See also connotations of French word “foncier”, and impossible exact translations. Clear that governance of land closely inter-related with that of trees, grazing, water, biodiversity (French “terroir”). Territorial dimensions in context of indigenous peoples. Issue of sub-surface resources (minerals, metals, oil, gas)



“There is no international definition of land within the context of tenure. The meaning of the word may be defined within the national context.”

(VGGT, footnote to paragraph 1.1)

Slides 6-7

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Many concepts in “land governance”. Eg 1) level of land users – rights, obligations, relations, evidence; 2) level of system, eg authority – who is responsible eg for managing land and making decisions – plus institutions, processes and administration.

Multiple governance systems can coexist in the same space – eg customary and statutory. Cutting across formal/informal divides.

Not just rights, rules, procedures and institutions – but also ultimately real-life people, money, relations. Technical dimensions eg cadastre, valuation; but also social and political dimensions, vested interests, power relations. This is what makes land such an important yet difficult development issue.

Important to understand (and address) both dimensions. Complexities => need for carefully thought through interventions. Many interventions failed or even caused more trouble than they solved



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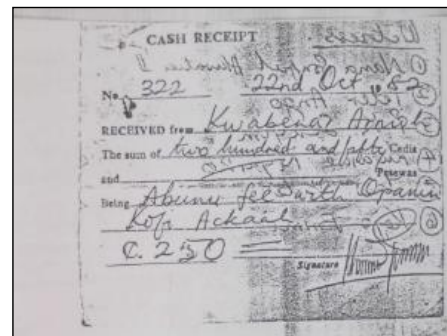
Governance not “static”. Fast-evolving realities, profound socio-economic transformations at local to global levels, growing pressures on land – because more people, expanding urban centres and rising urban food demand, more intensified agriculture integrated into commercial value chains, agri/extractives investments, etc. Vary considerably with context. Overall, however, tend to translate into changes in land relations. Not just because very large land deals. Evidence of growing social differentiation in many rural areas, eg linked to agricultural intensification & spread of cash crops (land values up), or driven by differentiated access to off-farm income, which can translate into more unequal land distribution. Rise of medium scale farms. Land disputes, links to armed conflict in places

So – need for dynamic notion of governance. But also, addressing diverse sources of pressure on land. Besides big-picture trends, recognise that context is key.



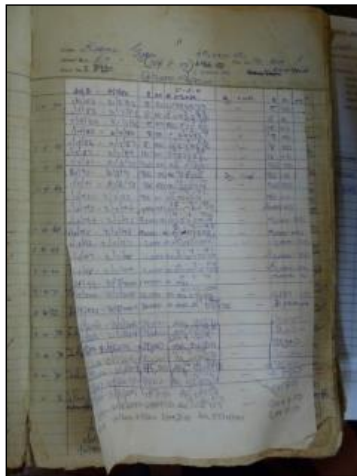
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Multiple “levels” of land governance. Local. Very important. In SSA, for example, many rural people access land through “customary” (if continuously reinterpreted) tenure systems. Custom also key role in land management and DS. Cf Ghana photo. Very different from Western concepts of property eg collective dimensions, nested rights, overlapping use, etc. Eg photo of postharvest livestock grazing in Mali. Need to consider this, no simple exportation of Western models, individual land ownership & titling have typically struggled to cope, rather build on local practice and local concepts of land tenure/governance



Slide 11

And indeed, many ongoing local efforts to address problems. “Local” not = “static” custom. Local responses to evolving realities – eg written receipts (“petits papiers”), witnessing of transactions, locally negotiated agreements & DS “peace committees” in Mali/Nioro – to deal with herder-farmer conflict in contexts like the one described above. Interventions to support and innovate. More devolved approaches that build on local practice hold greater promise. Perceived legitimacy, accessibility, transparency



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Governance at national level. And relationship with local realities – ie these “levels” are not isolated but intersect, relationships btw them is key issue. Eg does the law protect local/customary land rights? Colonial legacy. Policy and legislation – productive land use requirements, notions of “vacant land” can create a gap with local practice (different accounts of what constitutes “productive” – eg pastoralism, use of common property resources) and would tend to undermine security of rights to grazing lands, forest land, shifting cultivation land, land reserves.

Not just policy & legislation design issues. On the ground, legislation often struggles to cope with complex and fast-evolving realities, implementation challenges. Land administration and dispute settlement systems – often geographically/economically inaccessible, outdated systems struggling to cope with growing pressures on land, backlogs & delays, etc. Photo of land registrar in Kumasi, Ghana. Conventional individual land titling/registration often failed – expensive, distortion of underlying rights, hard to keep up-to-date, benefits captured by elites.

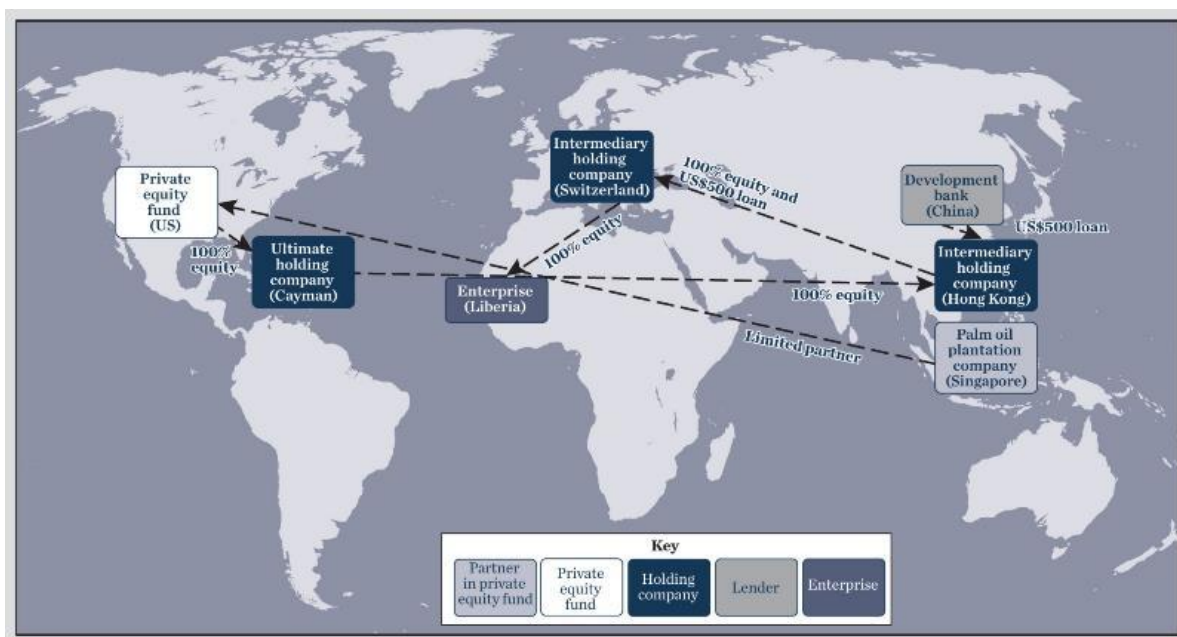
Does not necessarily mean the system does not work – rather, works well for the wrong people. Eg works for urban based groups able to manoeuvre the system (through info, relations, money, influence), and for rural elites that work with them (eg customary chiefs that allocate land to urban groups), but makes many rural people vulnerable to dispossession



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But also recent (last 20 years) wave of law reforms to recognise customary land rights eg Mozambique's Land Act 1997 – collective/customary land rights, community land registration, community consultation. How to ensure implementation? iTC in Mozambique – collective land registration, formalization of CBOs, consultation, etc. Experiences with low-cost recording of land rights, legal empowerment,

Fair to say that making these laws really work has been really difficult. Esp where significant economic stakes are involved. Important to recognise social stratification within communities, need for downward accountability of community authorities, power imbalances

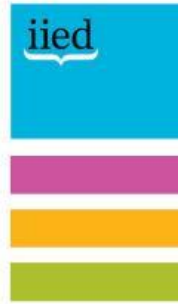


Source: Cotula and Blackmore 2014

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In a globalised world, land governance no longer merely national. Land traditionally within exclusive preserve of national law – political sensitivities, sovereign rights. Now changing. International regulation increasingly important given transnational land relations. “Land grabbing” brought this out powerfully.

Example of this “investment chain” behind a land concession in Liberia. Specifics now dated and may well have changed – but illustrates the transnational/international dimensions of land governance



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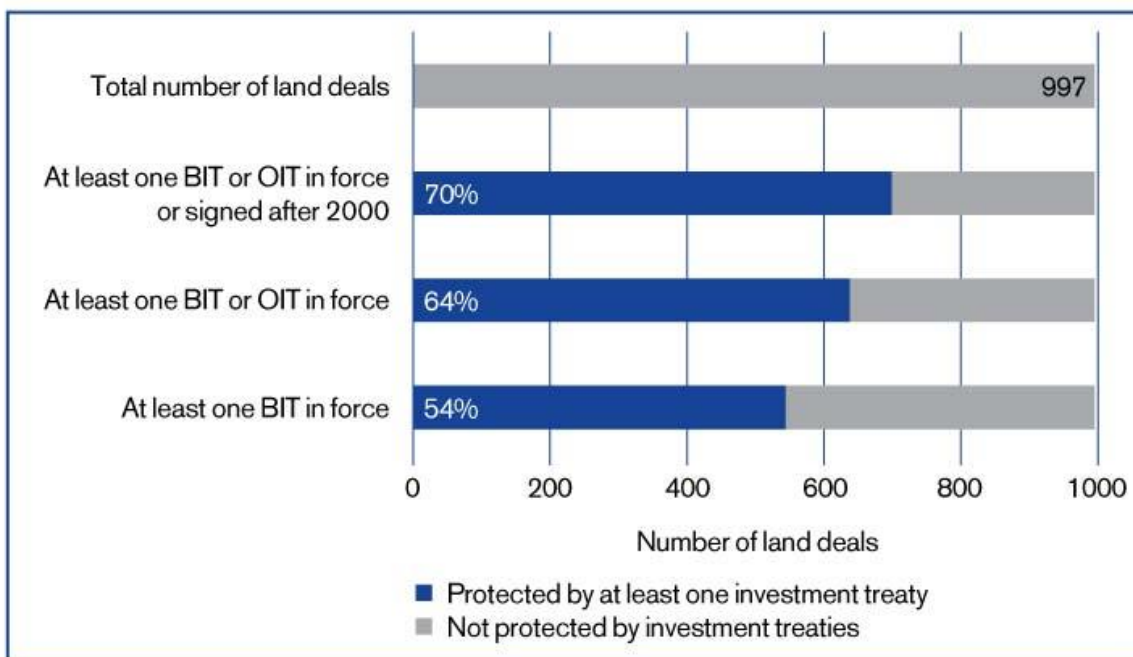
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One example / area to explore this international dimension of land governance concerns trade & investment treaty negotiations. Towards more commodified land relations?

Land rights and investment treaties – IIED report. International investment treaties – treaties concluded between two or more states to promote cross-border investments. Unlike contracts, apply to all covered investments. Some 3000 concluded worldwide. Multilateral fora for debate eg UNCTAD. But treaties are primarily bilateral, also regional, increasingly chapters in wider economic treaties.

Typically cover multiple sectors, including agriculture. A landholding owned by a covered foreign investor would be protected under most treaties. Assisted by relatively effective DS and enforcement. Investors can bring disputes to investor-state arbitral tribunal, which can award significant compensation amounts. Multilateral conventions assist enforcement, so these treaties do matter. Growing number of cases involving land. Concerns have very recently been raised about land restitution in post-conflict transition eg Colombia, or democratic transition eg Myanmar

Figure 1. Number of land deals for agribusiness investments covered by investment treaties



Source: Cotula and Berger, 2015, based on Land Matrix and UNCTAD IIA Navigator data. Covers land deals 2000-2015

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Recent wave of large-scale land deals for agribusiness investment – increased relevance of issue. 2015 IIED report.

Based on Land Matrix data (agribusiness investments only - 997 deals) and UNCTAD IIT navigator (3000 IITs). Included bilaterals + regionals. Also considered IITs signed but not in force if signed after 2000 – bc could expect states might bring them into force, in which case usually wd protect existing land deals. Limitations of the databases. Significant relevance to recent wave of agribusiness investments. 70% coverage. Significant landholdings covered by this international protection. Could affect situations where governments take action on “land grabbing” that adversely affects companies.



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So: land governance – technical + political, multiple “levels” local to global, context specificity

What about “inclusive”? What stakeholders does it refer to, what interventions? Already came up in earlier discussion. Systems may work for urban & rural elites but undermine land rights of peasant farmers, pastoralists, forest dwellers.

Issue of vested interests and power relations – key, especially as land basis for political patronage in many contexts. Understanding inclusiveness requires interrogating complex political economies in land governance.



3. Guiding principles of responsible tenure governance

3A General principles

3.1 States should:

1. 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.
2. Safeguard legitimate tenure rights against threats and infringements. They 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.
3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.
4. Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means

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At the same time, some really useful international guidance. VGGT: recognize and protect all (socially) legitimate tenure rights – includes customary rights, indigenous peoples' rights, tenancies, women's rights, pastoralist rights.... Not just legal rights, socially legitimate rights. Who decides what is legitimate?

- Process elements (and some VGGT guidance on these)
- Context is key. What is legitimate depends on context.

A few examples to illustrate diversity of “inclusiveness” issues

In all examples, one common thread - inclusivity is about systemic governance issues. It's not just about ensuring that women can hold land and have their names on land certificates – though this is very important. How decisions are taken, about voice and representation. About accessibility and transparency of systems



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One is gender. VGGT, also human rights issue (CEDAW and other instruments). Often lofty statements in national constitutions and laws. But major gaps with reality. Because engrained socio-cultural practices. How to promote gender equitable land governance? Important area of work for us, several projects. One intervention to illustrate.

Work in Mali led by partners GERSDA and AMEDD. Three communes in the Sikasso region. Started off with a “classic” focus on facilitating access to land for women’s groups. Evolved into process to redefine gender roles in land-related decision making. Through integrating gender issues in the community-level dialogue for development of a “local convention”. The community dialogues in turn led to a collective agreement to establish and formalise rules that require women representation in family level decision making for land transactions. All family members present at family meetings must now sign an agreement before land can be transacted.

More general lessons: local dialogue key to build ownership, communities are more likely to support and embrace gender sensitive approaches to securing land tenure when they focus on consolidating and formalising progressive local practices and innovations More general lessons: local dialogue key to build ownership, communities are more likely to support and embrace gender sensitive approaches to securing land tenure when they focus on consolidating and formalising progressive local practices and innovations



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Another example. In more institutional terms. Senegal – land “charters” within large-scale land deals.

National law in Senegal vests elected local government bodies with significant powers in the governance of land investments. Yet land investments have exposed the limits of electoral processes alone in meeting local demands for accountability in the day-to-day management of public affairs. In this context, Dakar-based organisation Innovations Environnement et Développement en Afrique (IED Afrique) initiated activities to explore the feasibility of new, locally negotiated “charters” (“Chartes foncières”) in three sites – Beud Dieng, Mboro and Dodel, respectively located in the Louga, Thiès and Saint-Louis regions. The charters would set ground rules on how local government bodies should manage rural land.

More specifically, the charters would clarify roles and lines of accountability, and create spaces for local deliberation and ongoing dialogue between elected officials, their constituents and all other land-related actors including the private sector. For example, the charters would establish arrangements for elected local officials to report on their land-related decisions at specified intervals, and inclusive and transparent processes that those officials must follow in approving proposed investment projects.

There is considerable experience with developing locally negotiated agreements in Senegal, particularly with regard to the decentralised management of natural resources (see e.g. IED Afrique, 2003; Granier, 2006). Local governments have been at the centre of that experience, and in different parts of the country local conventions have been enacted into municipal bylaws. In effect, the project explores the potential for adapting this well-known tool to the governance of land and agribusiness investments.

At the time of writing, activities were at an early stage. Working in collaboration with municipal authorities, IED Afrique was training and supporting 45 community paralegals – that is, community members with basic legal training who can promote awareness about land and investment issues and laws, facilitate local debate and raise “difficult” questions with local authorities. The work of the paralegals was seen as essential in enabling informed local dialogue about possible local charters, and in accompanying their implementation should those charters be adopted. In Dodel, grassroots discussions about a possible charter were at a more advanced stage, and a draft text was starting to emerge.



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Yet another dimension of inclusiveness. Indigenous peoples – special connection to ancestral lands, cultural/spiritual value of land.

Create space for diversity of tenure systems, rather than imposing blueprint solutions re: “security of tenure” Yet under pressure from extractives, infrastructure, agri investments. Free, prior and informed consent key concept – international human rights law, VGGT, and growing local & national level practice Indigenous peoples, international investment treaties. UN Sp Rapporteur on the Rights of Indigenous Peoples, Vicky Tauli. Investment treaties and Lima workshop, part of wider consultation. On-the-ground perspectives of commercial pressures on land, and how international economic treaties can come into play.

Past and ongoing arbitrations affecting indigenous peoples’ lands, what mechanisms to recognise these rights, bring community perspectives in arbitration processes? Experiences with NGO submissions, some of which we documented last year



Preliminary

1. Objectives

- 1.1 These Voluntary Guidelines seek to improve governance of tenure of land*, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. All programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should be consistent with States' existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments.



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“Road to a better life”. Many dimensions. Better land governance road to a better life because land matters so much to rural people’s lives. Empowerment, voice, accountability – valuable in themselves. At the same time, need to link advances in governance to more tangible outcomes. As a woman farmer said during a legal literacy training we ran in Senegal years ago, “we do not eat rights”. This issue brings us back to several of the points I have touched upon:

- Recently established international guidance is helpful. Eg the VGGT explicitly tie land governance to food security (even in the title – plus content, eg objective 1.1). They also link tenure rights to human rights.
- More informed development interventions seek to link land issue to livelihoods. Eg iTC example in Mozambique, or gender work in Mali, discussed above. Not necessarily through a single programme addressing all issues – but through carefully thought through linkages/synergies.

M&E issues, complexities in measuring socio-economic outcomes (eg ag productivity increases) of land governance interventions. Accepting change is complex and non-linear, maintaining scepticism about oft-cited simplistic models (individual title => incentives & collateral => investment => productivity increase), considering multiple dimensions of poverty

Land grab or development opportunity?
Agricultural investment and international land deals in Africa

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Also land governance tied in with the whole issue of agricultural intensification/commercialisation, and understanding what models work – different models of agri development imply / require different tenure models too.

So close link to wider agri (and off-farm) development policies, PPP frameworks etc.

Major shifts occurring in agricultural commercialisation – both opportunities and threats for livelihoods. Again recognising complexities, looking beyond prevailing narratives eg “inclusive business” – who is included, under what terms?

Land governance key in this space – both to create enabling framework for more desirable development pathways, and to establish robust safeguards for land rights / voices that may be affected in the development process

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Two words on IIED's Legal Tools for Citizen Empowerment work to address these issues, and land governance within that