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Struggling for a transnational right to land norm

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Laura Gerken

Struggling for a Transnational *Right to Land* Norm

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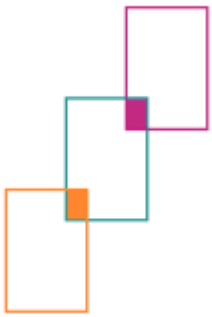

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Tel: +49(0)203 379-5230
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Struggling for a Transnational *Right to Land* Norm

Laura Gerken

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Keywords: Norm Emergence; Large-Scale Land Acquisitions; Social Movements; Transnational Governance; Land Rig

Struggling for a Transnational *Right to Land* Norm[1]

Laura Gerken

1 Introduction

The right to and tenure of land have been receiving increasing attention as crucial elements of development and human rights since the beginning of the millennium. For decades, social movements, especially peasant movements, have been struggling for the recognition of the right to land of rural populations. However, it is only in the last fifteen years that this issue has gained wider attention in the context of increasing large-scale land acquisitions (LSLAs) in the transnational sphere.[3] While the acquisition of land has occurred throughout human history (for various examples, see Roudart and Mazoyer 2016), the sharp increase of investments in land in the form of leasing contracts or sales 'points to a break in a long-term trend that might indicate a larger structural transformation in an old practice' (Sassen 2013: 26). Following reports of the non-governmental organization GRAIN (2008) and the press), investments in farmland particularly have been increasing since 2008 (Deininger et al. 2011: xiv; 51–52). The difference in comparison to past land acquisitions is the transfer of land to third parties by sovereign states that support or conclude these land deals (Sassen 2013: 29). Additionally, complex actor constellations include not only nations but rather a conglomerate of various parties, including non-governmental and private actors (Lawther 2015: 252). The academic literature concludes that the rate and extent of the current land acquisitions, which are much faster and larger than in the past, have the potential to radically restructure agrarian economies, rural livelihoods, and social relations (White et al. 2012: 624).

Reasons for the promotion of large-scale land projects include, for instance, the expectation of economic growth through employment opportunities, knowledge transfer, and infrastructural development at the sites. At the same time, LSLAs bear various risks for vulnerable groups, foremost the loss of land. Target areas of these land projects are mostly

[1] This paper is based on a chapter of my dissertation *Piercing the Fog: Transcalar Social Mobilization around Large-Scale Land Acquisitions in Mozambique* (2023), Cologne, MPRS-SPCE, http://dx.doi.org/10.17185/duepublico/77358 (online first).

[3] Excluding rights and regulations dealing explicitly with the rights of indigenous peoples.

located in the Global South[4] and rural land ownership is, in many of the respective countries, regulated through customary right and not officially documented. Customarily regulated land usage is often overstepped in processes of LSLAs but even if land ownership is officially documented, local users and communities may lose their land as reported in numerous cases globally (Alden Wily 2013: 15).

To counter these risks, social movements have repeated their claims for the recognition of the right to land and stressed its importance in the light of LSLAs. In this paper, I argue that a *Right to Land* norm has been adopted in transnational governance in recent years due to four interrelated processes. First, the rise of LSLAs means that the market for land has expanded strongly. Following Polanyi (1944), such a development provokes a counter-movement to mitigate negative social or environmental effects. Second, due to public attention after reports about LSLAs, the topic has gained salience which has opened political and legal opportunities for social movements to struggle for their cause. Third, the social movements that have been fighting for the right to land since the 1990s put forward well-informed arguments and were able to bring their ideas into the transnational arena. Fourth, by closely linking claims for the recognition of a right to land to already established norms, social movements have lowered barriers to adopt it.

This paper begins with a concise overview of the trends, drivers, and key actors of LSLAs. Following this, I present a conceptual framework that will serve as the analytical lens for this study. Subsequently, I outline my analysis of the evolving recognition of land in governance instruments, categorizing this progression into four distinct phases. The focus then narrows down to an examination of two specific regulations: the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT) (Food and Agricultural Organization of the United Nations [FAO] 2012) and the *Declaration on the Rights of Peasants and other People Working in Rural Areas* (UNDROP) (United Nations General Assembly [UNGA] 2018). This section scrutinizes the development and influence of social movements in the establishment of these instruments. Finally, the findings are thoroughly discussed, leading to a concluding section that provides an outlook for future research in this area.

[4] Wherever possible, I avoid using generalizations such as 'Global South'. Yet, when describing the global phenomenon of LSLAs more specificity is not possible. For a deeper discussion of the term 'Global South', see Schneider 2017.

2 The rise of large-scale land acquisitions

Deals of LSLAs are often embedded in complex and multi-layered investment chains and involved actors are transnationally connected (Nolte, Chamberlain, and Giger 2016: 25–26). Depending on the type of investments, drivers vary. The interplay of global crises, in particular the food crisis with soaring prices for wheat and maize combined with the financial crisis and the desire for alternatives to fossil fuels, has been triggering a worldwide rush for land. Investing countries mainly have been seeking independence from the world market for food production. Corporations continue to aim for investments in large areas to produce biofuels or for the cultivation of non-food agricultural commodities, like rubber or cotton, for domestic industries (Cotula et al. 2009: 15; de Schutter 2011: 251). Following the most recent report of the monitoring initiative Land Matrix, 33 million hectares of land were acquired transnationally by 2020. The overall investment trend in land has slowed down since 2013 (see figure 1), due to land price adjustments, land moratoria and policy changes, and a slowdown of the biofuels trend (Lay et al. 2021: 9).

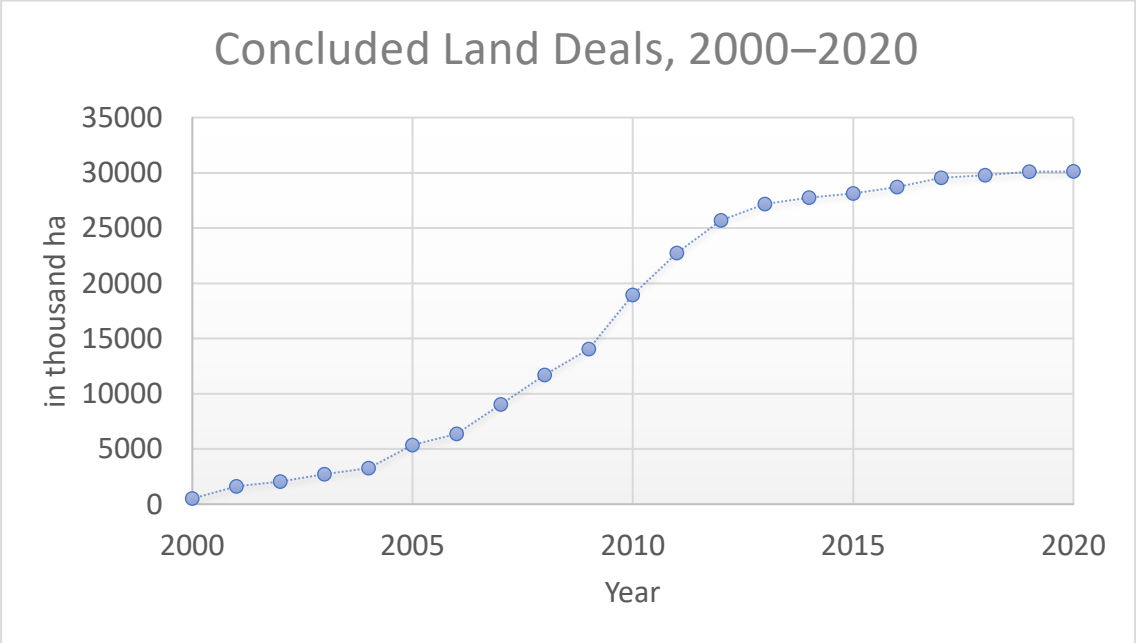

Fig. 1: Concluded global land deals in thousand ha, 2000–2020. Based on Lay et al. 2021: 10.

Target countries are mostly located in Africa, Asia, Latin America, and to a smaller extent in Eastern Europe and Oceania. The biggest share of land acquisitions since the rise of large-scale land investments takes place in Sub-Saharan Africa (Cotula et al. 2009: 15; Deininger 2011: 223; Nolte, Chamberlain, and Giger 2016: 16–17). Target areas are mainly rural and countries with a weak system of ownership rights are often preferred by investors (Deininger 2011: 224–225). Up to 90 per cent of land tenure and ownership in Africa is governed by customary rights, often not reflected in land legislation, which makes land

users vulnerable to land loss in cases of LSLAs (Borras and Franco 2012: 50; Coyle 2015; Cuskelly 2011: 9–10; Huggins 2012).

Recipient governments often support large-scale land investments and projects because they promise economic growth, improvement of infrastructure, and technology transfer (Cotula et al. 2009: 15; Zoomers 2010: 433). However, these LSLAs bear ecological, economic, cultural, and social risks (Deininger 2011: 224–225, 239; Huggins 2012). Ecologically, such deals often lead to monocultures, pollution, or lowering of the water table (Baffoni 2017; Kress 2012; Parulkar 2011); economically, they entail dispossession, the loss of livelihood strategies, food insecurity, corruption, or increasing inequalities (Alden Wily 2014; Baffoni 2017; Golay and Biglino 2013; Kress 2012; Milgroom 2015); culturally, they lead to the loss of access to forests or bush land, which are often the basis for traditional livelihoods (Baffoni 2017; Kanti Basu 2007); and socially, they cause deprivation, harm to vulnerable groups, the exclusion of potentially affected groups from negotiation processes, non-transparency, social polarization, the use of violence or force against resistance, and, as a consequence of all these developments, political instability and conflicts (Alden Wily 2014; Baffoni 2017; Chu 2011; Kress 2012; Margulis, McKeon, and Borras 2014; Temper 2018; Zoomers 2010). These negative impacts of LSLAs attract the attention of social movements that mobilize and counter such investments (Gagné 2019; Monjane and Bruna 2018; Ferrando 2017).

3 Norm emergence in the double movement

Following Polanyi, the expansion of economic liberalism aims to establish a self-regulating market of free trade, a highly unnatural system in which social life is embedded in the economic system. Central elements of production in this system are land, labour, and money. These elements constitute ‘fictitious commodities’ (Polanyi 1944: 72–73). This development provokes the rise of a counter-movement in the form of controlling mechanisms of social and environmental protection. The interlinkage of the movement of an emerging market and the counter-movement of cushioning its effects is a closely connected ‘double movement’ (Polanyi 1944: 130). While Polanyi describes the rise of different regulations as part of the double movement, he does not specify the processes of how and why exactly they are coming into place. This paper discusses this question by linking the double movement assumption to norm emergence scholarship.

Scrutinizing the role of social movements in norm creation, the political process theory puts political opportunities in the focus. ‘Political opportunities’ refer to the open- or closedness

of a political system, the support of elites, and the ability of social movements to create allies, as well as the state's tendency towards repression. They influence 'social movement's prospects for (a) mobilizing, (b) advancing particular claims rather than others, (c) cultivating some alliances rather than others, (d) employing particular political strategies and tactics rather than others, and (e) affecting mainstream institutional politics and policy' (Meyer 2004: 126).

In addition to the political frame in which social movements make claims, the legal context plays an important role as well, especially when looking at the rise and change of rights and regulations. 'Legal opportunities' offer reference points for social movements to justify claims and enable the movements to point towards blind spots or poor implementation of rights and regulations. In other words, a legal opportunity perspective assumes that social movements refer to rules, such as legislation, norms, standards, access to courts, and judiciary receptivity in shaping their goals strategically to increase their chances for success (Cummings 2017: 260; de Fazio 2012). However, the perspective also works the other way around: laws and regulations can also be at the center of demands when social movements want to draw attention to the inadequacies of legislation and campaign for improvements (Vanhala 2012: 543–544). This analysis takes a perspective of legal opportunities and integrates it with scholarship on norm emergence in order to comprehensively trace the development of transnational land governance.

Finnemore and Sikkink (1998) describe three phases of the 'life cycle of norms' while understanding norms as 'a standard of appropriate behavior for actors with a given identity' (Finnemore and Sikkink 1998: 891). First, during 'norm emergence', norm entrepreneurs call attention to a specific issue. Second, a critical mass of states is convinced and adopts the norm. These states become norm leaders, leading to a 'norm cascade'. Third, through 'internalization', the norm reaches a taken-for-granted status (Finnemore and Sikkink 1998: 897, 901, 904). In addition to the important role of norm entrepreneurs, linkages to already established norms make the adoption of a new issue more likely (Finnemore and Sikkink 1998: 908).

Finnemore's and Sikkink's norm life cycle helps to understand the development of a transnational norm up to its transnational adoption. Yet, the content of the norm itself is taken as a given social fact. Wiener (2007; 2014) looks closely at the nature of norms and concludes that they have a dual quality, which refers to their structuring and socially constructed nature. Through interaction with the given context, norms are stable and flexible. They are subjectively constructed and contested at several stages (Wiener 2007: 49). She identifies three of these stages, at which a norm may be challenged: at its formal

establishment through a political community, during its usage as a measure of appropriate behaviour by a group, and during its implementation in everyday practices (Wiener 2014: 19–20).

Still, if norms are understood as disputable and discursive, the probability of adoption depends on how they are embedded and framed in their normative environment (Krook and True 2010: 111). This process of creating linkages between new norms and already established ones to make them more easily adoptable is what Krook and True (2010) call 'external dynamism', Price (1998) names it 'grafting', and Winston (2018) refers to the creation of 'norm clusters'. Besides the connections between topics, the salience of an issue increases the likelihood of being addressed and dealt with.

In summary, the conceptual framework in this analysis is constituted by the following elements: 1) the expansion of the land market triggered a double movement; 2) social movements realize political and legal opportunities to mitigate harmful effects of the expanding land market; 3) even though these movements have already been demanding the adoption of a right to land for decades, the increasing salience of the topic due to LSLAs led to more attention for its recognition; 4) by creating linkages to already established norms, they pushed for a smooth adoption of a right to land.

4 Methods

To trace the development of a *Right to Land* norm, I examined governance instruments on the transnational and regional level. Here, regional level means African regulations on the continental level. As described above, Sub-Saharan Africa was targeted most by large-scale investments. Furthermore, the paper relies on research from a larger dissertation project that studied mobilization processes in the context of two cases of LSLAs in Mozambique. The analysed documents include ten transnational documents, such as voluntary guidelines, declarations, and development objectives. On the regional scale, seven governance instruments of similar contents have been studied.

In the first step, regulations that deal directly and indirectly with land tenure and land governance were mapped, with special attention to social and environmental impacts. This list[5] was supplemented with rights and regulations deemed relevant to mobilization processes around land conflicts by experts that I interviewed in Mozambique. From March to June 2019, I conducted fieldwork in the country, where I interviewed 32 experts on land

[5] See annex 1.

conflicts, including activists, staff of international organizations, government officials, and scholars. The purpose of those interviews was understanding the dynamics, mobilization, and context of LSLAs in Mozambique.

The timeframe of the analysed regulations dates from 2000 until 2018. With the sharp increase of investments in land since 2007, this timeframe allows comparing the development of land governance before and after the rise of LSLAs. However, some regulations have been included that date back to pre-2000. This is due to two reasons: on the one hand, some regulations are substantial for mobilization processes, such as the *Universal Declaration of Human Rights*, on the other hand, some regulations were added by interviewees and date back to before 2000. In a second step, the relevant governance instruments have been chronologically listed and divided into different groups, according to their main topic.[6] This enabled identifying four phases of land governance. With the review of literature on the *VGGT* (FAO 2012) and the *UNDROP* (UNGA 2018), I illustrate the role of social movements in the creation processes of both documents.

5 The emergence of a new transnational norm

By grouping the rights and regulations that address land usage and governance along their main purposes, I identified four phases in which land was regulated to varying extents directly or indirectly. The consecutive phases trace the establishment of a transnational *Right to Land* norm and are: 1) *Basic Human Rights*, 2) *Development Agendas*, 3) *Land Investment Regulations,* and 4) *Internalization of Land Norm* (see figure 2 and 3). As previously stated, emphasis is placed on rights and regulations since 2000, yet some pre-2000 rules were included due to their relevance in the context of land conflicts. The regulations in this phase mainly address 1) *Basic Human Rights*, foremost the *Universal Declaration of Human Rights* (UNGA 1948), in which article 17 addresses the right to property and article 25 refers to an adequate standard of living, housing, and food, thus talking about land-related issues (Cotula 2017; FAO 2012; FAO et al. 2010; McKeon 2014; UNGA 1948). A further instrument is the *African Charter on Human and Peoples Rights* (African Union Assembly of Heads of States and Governments 1981), which constitutes a regional regulation that likewise includes the right to property and the right to compensation (Cotula 2017; African Union Assembly of Heads of States and Governments 1981).

[6] This does not mean that the regulations are exclusively dealing with one topic only. Issues might be overlapping, but they were assessed based on their main purpose.

This phase also entails the *Indigenous and Tribal Peoples Convention* of the International Labour Organization (ILO). It addresses the protection of identity, customs, tradition, and institutions and plays an important role in land conflicts (Indigenous and Tribal Peoples Convention 1989). The later following *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) (UNGA 2007) builds on the ILO Convention and clearly formulates the concept of *Free, Prior and Informed Consent* (FPIC, Art. 10). Although the term indigenous is used hesitantly when referring to African peoples, the concept of FPIC was mentioned by interviewees as important in mobilization processes around land. The declaration further talks about the right to land, protection of dispossession, prohibition of forced removal, and rights for compensation in case of land loss (Indigenous and Tribal Peoples Convention 1989; UNGA 2007; Künnemann and Monsalve Suárez 2014).

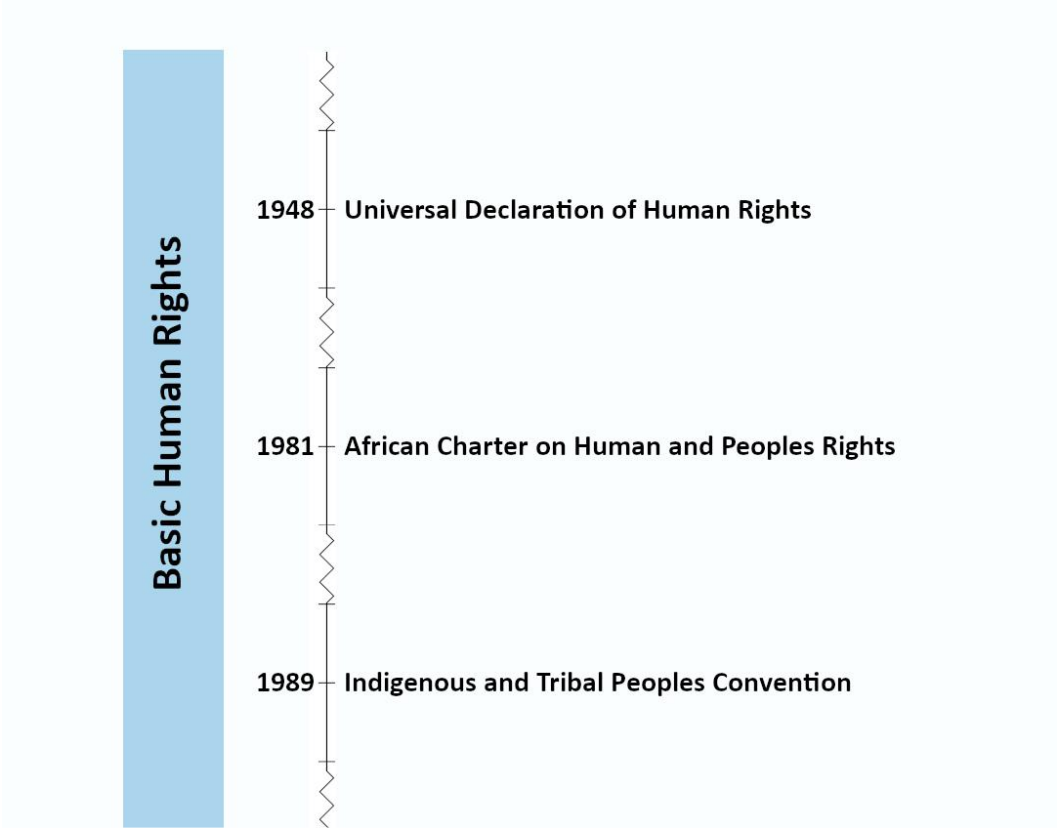

Fig. 2: Governance instruments addressing land and respective phases, pre-2000. Own figure.

In the early 2000s, *Development Agendas* increasingly dealt directly or indirectly with land control issues. While the Millenium Development Goals of 2000 only once talk about tenure in the context of urban housing and slums, this transnational instrument still constitutes a relevant regulation in land conflicts. On the regional level, the *Declaration on Agriculture and Food Security in Africa* of the African Union states that 10 per cent of national budgets shall be dedicated to agricultural development, an issue that was mentioned repeatedly in my research (African Union Assembly 2003). Another document assessed as relevant is the

World Bank's operational policy *Involuntary Resettlement*, which talks about development projects and tenure security in this context (World Bank 2001).

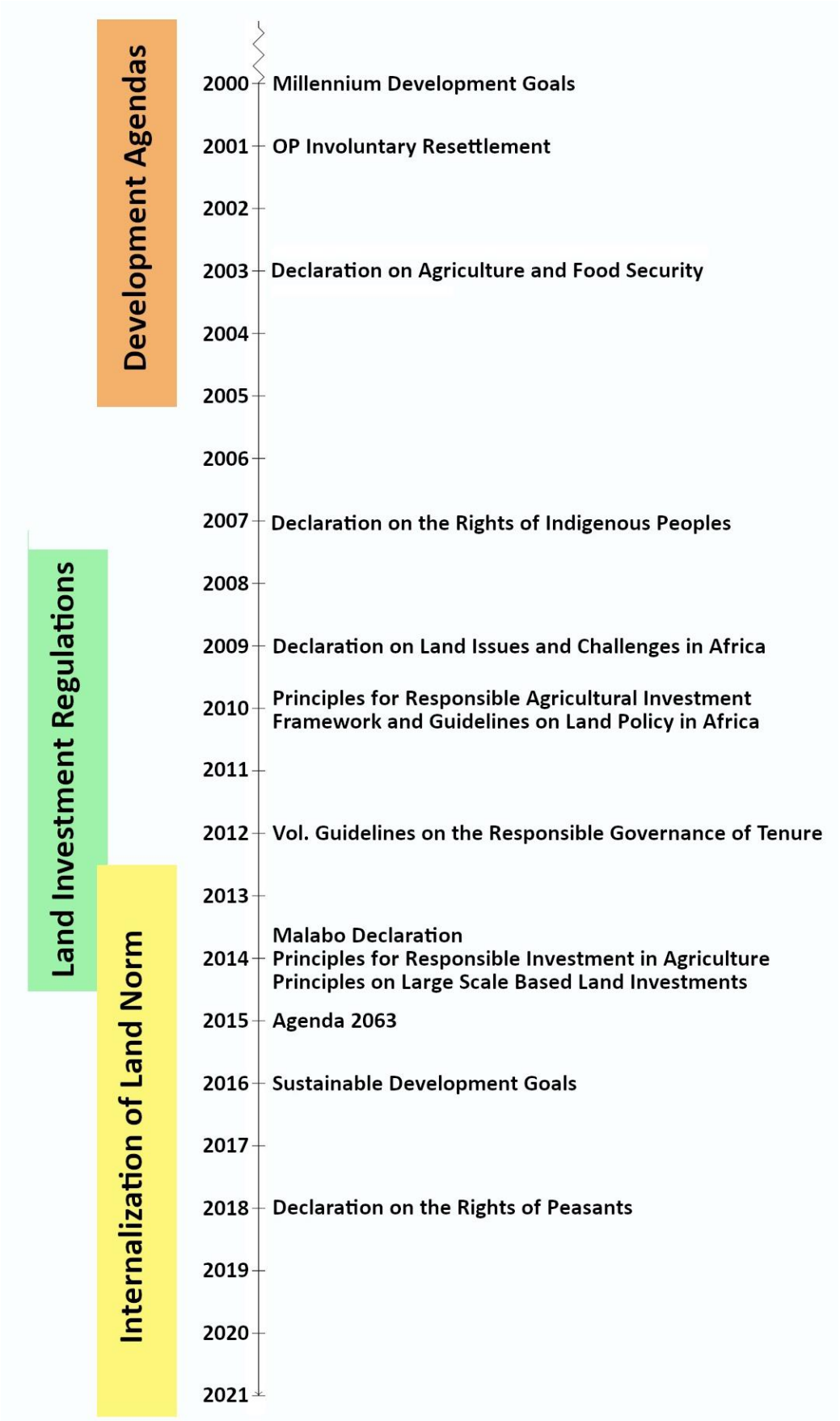

Fig. 3: Governance instruments addressing land and respective phases, post-2000. Own figure.

In the same period that LSLAs were increasing, specific rights and regulations about *Land Investment Regulations* were published. On the transnational scale, these include the *VGGT* (FAO 2012), the *Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources* (FAO et al. 2010), and the *Principles for Responsible Investment in Agriculture and Food Systems* (Committee on World Food Security 2014). In these documents, land is closely linked to food security, livelihoods, land tenure, environmental issues, and transparency in land investments and projects. On a regional scale, further governance instruments address land issues specifically, such as the *Declaration on Land Issues and Challenges in Africa* (United Nations Economic Commission of Africa 2009) and the *Framework and Guidelines on Land Policy in Africa* (African Union, African Development Bank, and United Nations Economic Commission for Africa 2010) with a focus on documentation of land ownership and its role for socio-economic development countries.

In the second decade of the 2000s, governance instruments increasingly included land issues, even if not being mainly about land. The adoption of land rights in the context of other topics refers to an *Internalization of Land Norm*. For instance, the Sustainable Development Goals (UNGA 2015) mention the important role of land in the context of poverty, security, gender equality, and environment (United Nations n.d.). Another transnational regulation is the *UNDROP* (UNGA 2018*)*, dealing with local people and communities and ways to sustainably use and transparently deal with land (UNGA 2018). On the regional scale, governance instruments about livelihoods, poverty mitigation, and responsible land investments emerged, including the African Union's *Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Livelihoods* (African Union Assembly 2014), the *Guiding Principles on Large Scale Based Land Investments* (African Union, African Development Bank, and United Nations Economic Commission of Africa 2014), and the *Agenda 2063* (African Union Commission 2015).

This trajectory of land regulation shows that land is, in this last phase, adopted as an inherent factor of livelihoods, development, gender equality, ecology, and food security. The right to land became an established transnational norm. It contains three key characteristics: 1) land is acknowledged as crucial for rural lives, 2) land use rights are granted to those who use it, including customary land usage, 3) land users should be protected from dispossession. By zooming in on two examples, I will depict the role of social movements in the creation of regulations about land.

6 The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

The *VGGT* (FAO 2012) are guidelines that have been created in phase 3) *Land Investment Regulations* and are the first transnational instrument with a focus on the governance of tenure. They closely link tenure rights to the topics of hunger, poverty, sustainable development, and environmental protection (Munro-Faure and Palmer 2012: 7; Palmer et al. 2012: 22). By connecting human and tenure rights, the VGGT address non-state actors, including business enterprises (Franco, Monsalve, and Borras 2015: 67; Munro-Faure and Palmer 2012: 11). Additionally, the importance of the land to people using it through customary tenure systems, including indigenous peoples, is stressed (FAO 2012: 14–15).

In 2005, the FAO has published its *Voluntary Guidelines on the Right to Food*. Simultaneously, the organization's land tenure group developed a code of conduct and a field program on the topic of land tenure (Palmer et al. 2012: 28). In the same year, the *International Conference on Agrarian Reform and Rural Development* presented a platform to address the issue of tenure governance (Palmer et al. 2012: 29–30). FAO published background papers and conducted meetings on the topic in the following years. Furthermore, it recruited funding for consultation processes taking place between 2009 and 2011 from Germany, the International Fund for Agricultural Development (IFAD), and Switzerland (Munro-Faure and Palmer 2012: 8; Palmer et al. 2012: 28–32). During these consultations, a broad range of actors, including 'government officials, civil society organizations, private sector representatives and academics' informed FAO about relevant aspects to be included (Munro-Faure and Palmer 2012: 8). Already in the 1990s, La Via Campesina[7] (LVC) and the International Planning Committee for Food Sovereignty (IPC)[8], have demanded a better governance of and access to land. Thus, once FAO consulted these groups in the context of land conflicts, they were ready to bring their expertise in (Paoloni and Onorati 2014: 379).

Again, a large variety of actors, including international agencies, civil society organizations, peasant groups, the private sector, and research institutions were included to discuss a draft version of the guidelines (Munro-Faure and Palmer 2012: 8). Eventually, an open-ended working group of the Committee on World Food Security focused on the further

[7] La Via Campesina is a transnational social movement that represents 200 million peasant farmers from 73 countries and struggles against trade liberalism, the World Trade Organization, genetically modified organisms, and land grabbing (Claeys 2019: 2).

[8] The IPC is a platform of small food producers, including more than 42 global and regional networks (Paoloni and Onorati 2014: 370).

revision of the document in 2011 and 2012. The group was constituted of member states of the European Union, international organizations, and further actors, such as the ones included in the discussion around the draft version (Palmer et al. 2012: 33–34.). FIAN, the Food First Information and Action Network, provided a draft for the VGGT guidelines in the working group. This document closely linked land rights to universal human rights and related them further to the *Declaration for Indigenous Peoples*, and its concept of 'Free, Prior, and Informed Consent' (Art. 24 and 28, FIAN International 2011: 9–12). Other reference points in this draft addressed development, human settlement, and agrarian regulations (Art. 29, FIAN International 2011: 11). Further linkages to environmental regulations, such as the *Rio Declaration* and the *Agenda 21*, completed it (Art. 36, FIAN International 2011: 13). While another guideline draft of FAO was used as the base to develop the VGGT, the FIAN guidelines constituted another source in the ongoing discussions (Paoloni and Onorati 2014: 380).

Reflecting on the development of the VGGT with a double movement and norm emergence perspective, some important factors of the process become obvious. The creation of the guidelines not only coincides with, but is triggered through the rise of LSLAs. The document aims to protect several aspects of social and environmental life. In other words, they are a controlling mechanism in Polanyi's understanding of a double movement, especially because the addressees of the guidelines are specifically economic actors.

Political opportunities are taken by the civil society actors involved, mainly by creating alliances, for example with the European Union (EU), individual states, IFAD, and, of course, FAO itself, which helped to open up the process and create linkages by inviting civil society actors to participate. Due to their longstanding struggle for land rights, activists contributed valuable insights and their expertise to debates about the creation of land governance instruments. A normative closeness of land to several already established norms is created, such as to environmental protection, indigenous and human rights, and the right to food. As stated above, the framing of a new norm as being related to already existing ones increases the likelihood of acceptance and adoption.

7 The Declaration of the Rights of Peasants and other People Working in Rural Areas

The *UNDROP* (UNGA 2018) has been adopted in 2018 and belongs to phase 4) *Internalization of Land Norm*. It acknowledges the rights of peasants and other people working in rural areas, with the rights to natural resources, seeds, biodiversity, a decent income and livelihoods, and a right to food sovereignty (Claeys 2019: 2). Besides individual human rights of peasants, it also recognizes collective rights of communities, a base of rural everyday life (Paoloni and Onorati 2014: 381). In the case of this declaration, the affected people themselves were involved in efforts to mitigate the effects of the global food crisis in 2008 (Claeys 2019: 2; Golay 2013: 6–7). The document is the product of 17 years of struggles, initiated in 2001 by LVC at the UN Human Rights Commission in debates over the right to development (Claeys and Edelman 2020: 1).

The first LVC *Declaration of Rights of Peasants – Men and Women* (2009) was drafted after consulting peasants in Indonesia. The document was extended to peasants worldwide for a review process that took place between 2002 and 2008 (Claeys 2014: 8; Golay 2013: 5–6). The draft then included the right of peoples to food sovereignty but also demands for 'the "right to land and territory", the "right to means of agricultural production", the "freedom to determine price and market for agricultural production", the "rights to the protection of agricultural values" and the "right to biological diversity"' (Via Campesina 2008, after Claeys 2014: 7). The document of national reach had been extended to the transnational scale, in contrast to how it is often assumed in norm literature, where norms rather travel from the global to the national scale (Acharya 2014: 405–406).

Olivier de Schutter, UN Special Rapporteur for the Right to Food suggested to strengthen the rights of peasants in the context of increasing LSLAs. Hence, LVC was invited to present its approaches to counter the crisis and an open-ended intergovernmental working group was created (Golay 2013: 6). Another important ally was the Permanent Representation of Bolivia on the Human Rights Committee (HRC), also supporting LVCs claims (Claeys 2019: 7).

A final study of the UN Human Rights Advisory Committee in 2012 on the rights of peasants and others working in rural areas suggested first, an improvement of the implementation of existing international norms; second, international recognition of the human right to land; and third, the creation of a new legal instrument on the rights of people working in rural areas to guarantee the protection of this particularly vulnerable group (Golay 2013: 8). According to the report, adequate rights to address these issues are

> the rights to land and territory (art. 4); the right to seeds and traditional agricultural knowledge and practice (art. 5); the right to means of agricultural production (art. 6); […] the freedom to determine prices and markets for agricultural production (art. 8); the right to the protection of local agricultural values (art. 9); the right to biological diversity (art. 10); and the right to preserve the environment (art. 11) (Final study of the Human Rights Council Advisory Committee 2012, after Golay 2013: 12).

Thus, the suggested rights in relation to land are about human rights of peasants and the acknowledgement of the importance of land in their lives.

The origin of UNDROP can be traced back to the longstanding efforts of social movements to ensure the adoption of the guideline. Closeness to well-established norms has been created, such as to biodiversity, but mainly to food sovereignty. Another important element in the progress towards the adoption of the rights of peasants has been the creation of allies, particularly in the context of the right to food. These allies have also been identified by Claeys (2019: 6) as a crucial factor in bringing the peasants' claims to the UN stage.

As was the case with the VGGT, UNDROP focuses on social and environmental protection, i.e. controlling mechanisms as defined by Polanyi. However, the main reason for the creation of this regulation is the protection of people working in rural areas and not the protection of tenure of land per se. Political opportunities have been taken by LVC in form of allies at the UN level, particularly with the Special Rapporteur for the Right to Food. The use of legal opportunities in the creation process of UNDROP is obvious in the final report of the Human Rights Council's study of 2012. Claims are made explicitly by pointing towards both the lack of implementation of existing rights, but also the need to create new rights. This is precisely what legal opportunities are referring to. Finally, the rights of peasants and the right to land are again framed closely following already established norms, most importantly as the right to food, but also in relation to biodiversity, and human rights in general. Additionally, similarities with the rights of indigenous peoples are reflected, as the right to land of indigenous peoples has been recognized transnationally before.

Looking at why the issue was taken up, the year 2008, characterized by an interplay of crises, once again takes center stage. Not only did it mark the starting point of the large investments in land, but it also coincided with the food price crises. Claeys (2019: 6) likewise describes the global food crisis as a political opportunity used by LVC to bring the issue of peasant rights to the UN Human Rights Council. These crises are, as described above,

interrelated. Thus, they point towards a broader economic transformation, that, in a Polanyian understanding, made the rise of controlling mechanisms necessary.

8 Discussion

The long-term trend and the sequential phases that land governance has moved through show that land issues are increasingly included in rights and regulations. While in the early 2000s, land was mostly only indirectly included in development agendas, governance instruments specifically dealing with land issues have been widely created in the period of increasing LSLAs. After 2013 then, land governance became part of several rights and regulations which are not primarily concerned with land issues. Nowadays, the *Right to Land* and the necessity for adequate land regulations have reached the stage of internalization, having the status of a taken-for-granted norm, closely linked to human rights, development, and environmental protection, by recognizing the importance of land for rural lives, acknowledging the legitimacy of land usage, and granting protection from dispossession.

The two examples presented were created in the third and fourth phases of land governance and, thus, the objectives of the instruments varies. The VGGT's purpose is specifically the protection of land ownership and secure land use, enhanced and supported through the document, whereas in UNDROP, a human rights regulation, land is one of the vital elements that build the base for secure livelihoods of peasants and other people working in rural areas. In other words, while the VGGT is created to call attention to land issues, the *Right to Land* is already part of established norms that are used as the base for UNDROP. Thus, in the latter case, the *Right to Land* norm is internalized transnationally.

Assuming that the *Right to Land* is an established norm since the mid-2010s, the following section deals with the question of which factors led to its adoption in rights and regulations. Following the analysis of the development of both documents, I identified four steps that led to the adoption of land as a relevant issue to be governed (see figure 4). First, the rise of LSLAs led to the expansion of the market of land, which provoked the rise of a counter-movement. Second, this then enabled social movements to take political and legal opportunities that had opened up due to the increasing salience of the topic. Third, the reason why social movements were able to provide insights, expertise, and information on the transnational arena is based on their long-term engagement with the issue of land. Fourth, the topic of land is closely linked to already existing norms, which lowered the threshold of its acceptance.

Fig. 4: The establishment of the *Right to Land* norm.

Taking a Polanyian perspective, the development of LSLAs and the rise of land governance can be understood as a double movement. Due to the potential of large-scale land projects to reshape social organization in rural spaces, land governance is increasingly acknowledged to protect people and nature from the effects of the growing land market.

The extension of the land market led to a higher salience and the necessity of regulating this economic process on multiple levels. This development unlocked political opportunities for social movements that had already worked on the topic for years. The creation of strategic allies, such as international organizations and the EU in the case of the VGGT, and the Special Rapporteur for the Right to Food and the Bolivian HRC ambassador in the case of UNDROP represent political opportunities realized during the creation process of those documents. In terms of legal opportunities, social movements demanded the regulation of land through the creation of respective instruments. Again, those claims were made before, but only recognized as a reaction to the sharp rise of LSLAs.

Social movements already made claims for the governance of land for almost two decades before the issue was taken up in the transnational arena. Though the double movement triggered the development of the regulations, the preparation and work of social movements in the years before enabled them to provide expertise and take an influential role in the creation processes of both of the analysed documents. By pointing towards the interconnections between a right to land with already established norms, its adoption was facilitated. This is a strategic process well described in the literature on norm emergence and it eventually led to the recognition of the *Right to Land* norm.

In sum, the emergence of the *Right to Land* norm in multilevel governance is the product of the long trajectory of social movement's work on the issue, which enabled them to provide ideas as soon as a double movement was triggered. In this process, the movements used political and legal opportunities to promote the new norm by interlinking it with already established ones.

9 Conclusion

The phases identified in this paper clearly show that land issues have been recognized in an increasing number of specific regulations since 2008 and, even further, are nowadays an elementary part of development and human rights instruments with the status of an internalized norm. Claims of social movements date back longer, but they were only heard and integrated into the creation of land governance instruments once the rise of LSLAs made its regulation a necessity, as the examples of VGGT and UNDROP show. The analysis of norm emergence through a double movement perspective could be used in further fields, for instance in the context of global health and the distribution of medication or vaccines to study whether new norms are being established to ensure equal access to adequate treatment and prevention.

According to Polanyi, the protective mechanisms enable a re-embedding of society, which was disembedded due to the economic expansion. If the created governance instruments in the context of land are able to achieve this depends on their application and use. Many studies show that the implementation of such regulations is deficient (e.g., Gironde, Golay, and Messerli 2016). Whether this is due to norm contestation in everyday practices as understood by Wiener or can be ascribed to other reasons goes beyond the scope of this paper and is up for future research.

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Annex

Table 1: Overview of Governance Structures in Social Mobilization Around Land

Multilevel Governance of Land

Regulation	Year	Rule Setter	Purpose
Universal Declaration of Human Rights	1948	UN	Fundamental human rights
African Charter on Human and Peoples Rights	1981	AU	Human rights in Africa Eradicate colonialism International cooperation, esp. among African states
ILO Indigenous and Tribal Peoples Convention	1989	ILO	Human rights of indigenous peoples Protection of their identity, customs, tradition, and institutions
Millennium Development Goals	2000	UN	Halve poverty and hunger by 2015 through addressing global challenges, including peace, security, and disarmament; development and reduction of poverty; protection of the environment; human rights, democracy, and good governance
OP 4.12 Involuntary Resettlement	2001	World Bank	Safeguards to address and mitigate impoverishment risks of involuntary resettlement under development projects
Declaration on Agriculture and Food Security in Africa (Maputo Declaration)	2003	AU	Agricultural development, stating that 10 per cent of the national budget should be allocated to agricultural development

Declaration on the Rights of Indigenous Peoples	2007	UN	Human rights of indigenous peoples Noting 'specific situations' applying to indigenous peoples
Declaration on Land Issues and Challenges in Africa	2009	UNECA	Urging the development of land policies in member countries and the institutional framework for its implementation
Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources	2010	FAO IFAD UNCTAD World Bank	Promoting sustainable, transparent, and fair investment
Framework and Guidelines on Land Policy in Africa	2010	AU AfDB UNECA	Promote socio-economic development through agricultural transformation and modernization Land as a natural resource that requires coordinated and comprehensive governance
Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security	2012	FAO CFS	Improve governance of tenure and aiming to achieve food security while putting land and tenure rights in the center
Malabo Declaration on	2014	AU	Agricultural growth goals to be achieved by 2025 to end hunger, halve poverty,

Accelerated Agricultural Growth and Transformation for Shared Prosperity and Livelihoods			promote intra-African agricultural trade, and increase the resilience of livelihoods
Principles for Responsible Investment in Agriculture and Food Systems	2014	CFS	Increase responsible investment to contribute to food security and nutrition
Guiding Principles on Large Scale Based Land Investments	2014	AU AfDB UNECA	Promote responsible large-scale based land investments
Agenda 2063	2015	AU	Create Pan-Africanism of 'an integrated, prosperous and peaceful Africa, driven by its citizens and representing a dynamic force in the international arena'
Goals of Sustainable Development	2016	UN	Eradicate poverty and hunger by 2030 through addressing global challenges, including poverty, inequality, climate change, environmental degradation, peace, and justice
Declaration on the Rights of Peasants and Other People Working in Rural Areas	2018	UN	Human rights of peasants

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Abstract

The right to land is increasingly recognized in transnational governance. In this paper, I argue that it has been established as a transnational norm. This argument is presented by tracing the transnational governance of land over time. I identified four phases that land governance progressed through. Initially, the issue of land was only indirectly included, while later on rights and regulations dealing specifically with land emerged, until the right to land finally became an established norm. It recognizes the crucial role of land for rural lives and livelihoods, grants individuals and communities a right to the land they are using, and protects them from dispossession. With the examples of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (FAO 2012) and the *Declaration on the Rights of Peasants and Other People Working in Rural Areas* (UNGA 2018), I trace the role of social movements in the creation processes of both regulations. I argue that the growing market of land on a large scale in the mid-2000s led to the necessity of its regulation as a double movement. Due to the accompanying salience, social movements took political opportunities, to struggle for the recognition of a right to land. Because of past efforts of those movements, they provided expertise in this context. By closely connecting their claims to already established norms, the movements increased the likelihood of adopting the transnational right to land norm.

About the author

Laura Gerken is a political sociologist and was a postdoctoral researcher at the Institute for Sociology of the University of Duisburg-Essen. She wrote her dissertation at the International Max Planck Research School on the Social and Political Constitution of the Economy and the University of Duisburg-Essen, where she studied multilevel governance of land and social mobilization around large-scale land acquisitions in Mozambique. Her research interests include transnational governance and organizations, social movements, rural development, agriculture, and rural livelihoods.

Contact
laura.gerken.ude@gmail.com

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