

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

**INTERCONNECTIONS AND RECIPROCITY BETWEEN THE RIGHT
TO FOOD AND LAND TENURE RIGHTS**

January 2012



ABSTRACT

Once the *Guidelines on Tenure Governance* are approved, CSOs must energetically monitor States' actions to respect, protect and fulfill tenure rights, through strong, independent, participatory and transparent monitoring mechanisms, which ensure that the principles established in the *Guidelines on Tenure Governance* are being effectively taken into consideration.

Adoption and implementation of the *Guidelines on Tenure Governance* can be enriched by the lessons learned from the *Voluntary Guidelines on the Progressive Realization of the Right to Food* adopted by FAO in 2004.

In order to illustrate the concerns regarding incorporation of human rights language, obligations and principles of good governance in the *Guidelines on Tenure Governance*, this working document proposes a crossing of PANTHER principles and the *Guidelines on Tenure Governance's* principles for implementation.

This working document explores the interconnections between the Right to Food and Tenure Rights, providing learning examples and summarizing main questions to each one of the Implementation Principles of the *Guidelines on Tenure Governance*.

This working document was prepared by **ACTUAR** with contributions from **IFSN** partners from the Portuguese-speaking African countries (**REDSAN-PALOP**) and the consultants Magdalena Anna Kropiwnicka and Joana Rocha Dias.



ACTUAR is a plural, independent and no-profit organisation, based in Coimbra, Portugal. The Food and Nutrition Security and the Right to Food themes are a top priority of its intervention.

C O N T A C T S

Quinta do Bispo, Bencanta, 3040-316 Coimbra, PORTUGAL

Telf: +351. 961585638 / E-mail: geral@actuar-acd.org / URL: www.actuar-acd.org



REDSAN-PALOP is a space for articulation of civil society organizations that work together aiming at strengthening policy dialogue with governments and international organisations in order to influence the FNS and the Right to Food policy agenda within the Portuguese-speaking Countries. REDSAN-PALOP was launched in 2007 and has representations in Angola, Cape Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe and Portugal.

C O N T A C T S

REDSAN-PALOP Secretariat works in ACTUAR

URL: www.redsan-palop.org



IFSN is a European Commission (EC) financed project that mobilises more than 1,400 local and national civil society organisations with the main purpose of creating and strengthening national food security networks for influencing the implementation of the human right to food in southern countries at national, regional, and international level.

C O N T A C T S

Rua Morais e Vale, 111 / 3º floor, Rio de Janeiro, CEP: 20021-260 Brazil

Phone: +55 21 21 894636 / E-mail: ifsncommunication@actionaid.org / URL: www.ifsn-actionaid.net

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"This publication has been written prior to the finalization of the negotiations of the text of the Voluntary Guidelines in March 2012 and their adoption in May 2012. This publication references paragraphs of the Voluntary Guidelines that have already been agreed to in the Plenary of the CFS Working Group on Voluntary Guidelines in October 2011. The authors are not responsible for any discrepancies that may result post final adoption of the text in May 2012. Therefore, please consult the final text of the Voluntary Guidelines in order to avoid any possible inconsistencies in numbering of the paragraphs and the final language to be approved in May 2012".

1. BACKGROUND

Tenure rights refers to *the relationship, whether legally or customarily defined, between people, as individuals or groups, with respect to land or other natural resources*. Tenure rules can be formal (written policies, laws, regulations, etc), customary (unwritten customs and practices, which legitimacy depends on a community, clan, association, etc) or informal. The security of tenure refers to the certainty that a person's rights are recognized and protected, through access to effective appeal and conflict resolution mechanisms. It is also important to have in mind that tenure rights are also balanced by duties, since *“All tenure rights are limited by the rights of others and by the measures taken by States necessary for public purposes. Such measures should be determined by law, solely for the purpose of promoting general welfare including environmental protection and consistent with States’ human rights obligations”* (Guidelines on Tenure Governance, Part 2 – 4.3).

The unique and immovable nature of land tenure implies that it is frequently subject to simultaneous uses and legal rights. Land tenure and administration systems determine who can use the resource and under what conditions. Thus, equitable and secure rights have huge **implications for social and economic development** and its achievement contributes decisively to overcoming hunger and rural poverty and to achieve food security and sustainable land use, which respects and protects biodiversity. Providing **secure rights to land for women** also contributes to increase their status in social and political relationships and frequently leads to other concrete benefits, such as access to credit and technology. As stated in the Preface of the Guidelines on Tenure Governance's: *“Inadequate and insecure tenure rights increase vulnerability, hunger and poverty, and can lead to conflict and environmental degradation when competing users fight for control of the resources”*. Unfortunately, **land grabbing**¹ resulting from large scale investments is frequently displacing communities from their lands, without any compensation, and often through forced evictions. The weak legal protection of resources held under customary tenure makes local people vulnerable to dispossession when governments make land available for private acquisition without taking into consideration existing tenure rights (formal and informal). Following Anseeuw *et al* (2012), *Africa is the prime target of the land rushes, accounting for 134 million hectares of reported deals, of which 34 million hectares have been cross-referenced*.

Due to the unquestionable importance and urgency of an equitable and fair access to land and other natural resources, a transparent and accountable regulatory framework is required. As United Nations Special Rapporteur on the Right to Food, Dr. Olivier De Schutter underlined, a failure of global governance to overcome existing fragmentation of efforts is a

¹ Following Tirana Declaration, signed in May 2011 by over 150 representatives of civil society organisations, social movements, grassroots organisations, international agencies, and governments - including the members and strategic partners of the International Land Coalition (ILC) - from more than 45 countries in Africa, Latin America, North America, Asia and Europe, *land grabbing* corresponds to *“acquisitions or concessions that are one or more of the following: (i) in violation of human rights, particularly the equal rights of women; (ii) not based on free, prior and informed consent of the affected land-users; (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and; (v) not based on effective democratic planning, independent oversight and meaningful participation”* – available at <http://www.landcoalition.org/about-us/aom2011/tirana-declaration>.

main reason for the failure to eradicate hunger and vulnerability. In addition, weak governance is one of the most important causes of insecure tenure rights. For example, many legal systems fail to legally recognise and protect customary land rights, in a clearly unfair power relationship with international corporate investors, since these rights often do not have equal legal force as those acquired through statutory entitlement.

2. INDIVISIBILITY OF HUMAN RIGHTS: INTERCONNECTIONS AND RECIPROCITY BETWEEN RIGHT TO FOOD AND TENURE RIGHTS

The *Guidelines on Tenure Governance* clearly state that (Part 2 – 4.8)

“Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights. In doing so, States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defense of land, fisheries and forests”.

Land and other natural resources are often mainly discussed at a technical level. Having a human rights-based approach implies going beyond *secure* access to land and include *equitable* access to it, ensuring equal opportunities. In fact, as stated by Fundación Tierra (Bolivia) during a consultation process organized by ILC (ILC, 2010), *“those who concretely depend on land for their food production (...) are the first exposed to food insecurity due to inequitable land tenure systems”*. It is urgent to recognize land, water and other vital natural resources as primary assets in household food production, preventing social and economic exclusion².

In fact, access to natural resources is essential for food production and income generation, contributing thus to achieve adequate levels of food and nutrition security and to reduce poverty and inequalities (ACTUAR, 2010). Therefore, the right to food depends directly on making decisions in a human rights-based framework of land tenure governance. The links between land tenure and the right to food and the importance of right to food consideration in land policy are recognized for years and are growingly being integrated into international

² Rights to land, water and other natural resources are intimately connected to numerous economic, social and cultural rights, such as the right to adequate food, housing, health and work. Although voluntary, the Guidelines are in conformity with international human rights instruments, namely, the Convention 169 on Indigenous and Tribal Peoples of the ILO - International Labour Organization and the CEDAW - Convention on the Elimination of all forms of Discrimination Against Women, which contain explicit references to land rights. Other international human rights instruments which are directly or indirectly linked with Tenure rights: Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, four Geneva Conventions and their two additional Protocols, Convention on the Rights of the Child, International Convention on the Elimination of all forms of Racial Discrimination, Convention on Biological Diversity, Core Labor Standards of the ILO, International Treaty on Plant Genetic Resources for Food and Agriculture, United Nations Declaration on the Rights of Indigenous Peoples.

frameworks and instruments³. A significant part of academia and civil society seems to agree that secure access to land is directly linked with significant reductions in hunger and poverty⁴. Following the same approach, the right to food is strongly put at risk when tenure rights are not guaranteed. Since the large-scale land acquisitions are mainly linked with production for export commodities or forestry and biofuel projects, small scale producers' needs and their rights are often ignored thus worsening with negative impact on local food security. Following an OXFAM research in several African countries, in Mozambique, for example, where approximately 35% of households are chronically food insecure, only 7% of the area approved for agriculture investment between 2007 and 2009 was for food crops. In fact, small-scale producers will be able to play an important role in poverty reduction and food security only if some significant investments are made in infrastructure, markets and distribution and, the most importantly, if their land rights are strengthened *vis-à-vis* the competing commercial land pressures (OXFAM, 2011).

The Right to Food and Tenure Rights are indeed indivisible and interrelated. Their multidimensional nature requires implementation with a holistic perspective, which includes several policy areas, such as natural resources management, investment in agriculture, trade policy and other sectors such as energy and infrastructure. In this perspective, the Voluntary Guidelines on the Right to Food specify that *“States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people’s livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources”* (Guidelines 8.1). In particular, with regard to land, the Guideline 8B indicates that *“States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land”*.

The clear interdependence between the right to food and land tenure rights is also attested in the Guidelines on Tenure Governance's Preface, which states that: *“The purpose of the Voluntary Guidelines is to serve as a reference and to provide guidance to **improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food in the context of national food security**”*.

³ The article 11 of the International Covenant on Economic, Social and Cultural Rights, for example, states that, aiming to achieve the right to food at a national level, States shall take measures for *“developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources”*.

⁴ For an interesting discussion at global level, see Maxwell & Wiebe, 1998.

Following the United Nations Committee on Economic, Social and Cultural Rights, implementing the Right to Food implies three main obligations: respecting (states must not take measures that impede existing access to food), protecting (states must take measures to ensure that individuals are not deprived of their access to adequate food) and fulfilling the right (obligation to provide the Right to Food, protecting individuals also in situations of extreme vulnerability and no conditions to enjoy the right to food through their own means).

With regard to land tenure, authorities must **respect** (by refraining, for example, from authorizing expropriations that violate international standards of human rights), **protect** (by ensuring national laws and programs consider clearly human rights principles) and **fulfill** tenure rights (by ensuring respect for the rights of individuals in situations of extreme vulnerability, such as indigenous communities struggling for the ownership of their ancestral lands⁵).

The *Guidelines on Tenure Governance* consider these three main obligations of states, and are particularly concerned with ensuring that tenure rights are fulfilled, as illustrated in the table below:

GUIDELINES ON TENURE GOVERNANCE	
RESPECT	<ul style="list-style-type: none"> - States should safeguard legitimate tenure rights against threats and infringements (3A – 3.1) - 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 with due regard to voluntary commitments under applicable regional and international instruments and in accordance with the principles of these Guidelines (7.6). - States should respect and promote customary approaches used by indigenous peoples and other customary communities to resolving tenure conflicts within communities consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments (9.10).
PROTECT	<p>States should (Part 2 – 3A – 3.1):</p> <ul style="list-style-type: none"> - take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not. - take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights. - provide access to justice to deal with infringements of legitimate tenure rights. - prevent tenure disputes, violent conflicts - prevent and fight corruption.
FULFILL	<ul style="list-style-type: none"> - States should consider providing non-discriminatory and gender-sensitive assistance where people are unable through their own actions to acquire tenure rights to sustain themselves, to gain access to the services of implementing agencies and judicial authorities, or to participate in processes that could affect their tenure rights (4.7).

⁵ The case *Comunidad Indígena Sawhoyamaya v. Paraguay* is illustrative of a case in which the Inter-American Court of Human Rights decided that the State’s sale of land in the Paraguayan Chaco region to foreigners (dating from the late 19th century) caused a fragmentation which consequently reduced the access to land by the Sawhoyamaya indigenous community and failed to take the necessary measures to prevent jeopardizing their right to life. The Court ruled that the State must ensure access to adequate food for all community members who did not have complete access to their land. This and others similar cases have clear implications in the obligation to guarantee the fulfillment of economic, social and cultural rights. See further details of this case at FAO - Land Tenure Working Paper 15.

	<ul style="list-style-type: none"> - States should ensure that women can legally enter into contracts concerning tenure rights on basis of equality with men and should strive to provide legal services and other assistance to enable women to defend their tenure interests (5.4). - States and other parties should consider additional measures to support vulnerable or marginalized groups who could not otherwise access administrative and judicial services. These measures should include legal support (for example, affordable legal aid), and may also include the provision of services of paralegals or parasurveyors, and mobile services for remote communities and mobile indigenous people (6.6). - Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision-making and governance of their tenure systems (9.2). - State and non-state actors should (...) provide technical and legal assistance to affected communities to participate in the development of tenure policies, laws and projects in non-discriminatory and gender-sensitive way (9.9).
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Using a rights-based approach means that the dimension of human rights institutions and guarantees linked to land tenure must be explicit. In this sense, the *Guidelines on Tenure Governance* incorporates human rights language, obligations and principles of good governance (as the PANTHER principles stipulate⁶), specifically in which concerns the Principles of Implementation, described at Part 2 – 3B. The *Guidelines on Tenure Governance* underline that “*States and non-state actors should endeavor to prevent corruption with regard to tenure rights (...) particularly through consultation and participation, rule of law, transparency and accountability*” (Part 2 – 6.9). The crossing of these two axes (PANTHER principles and *Guidelines on Tenure Governance*'s principles of implementation) is illustrated in the table below:

HUMAN RIGHTS PRINCIPLE	DEMANDS	SECTION OF THE GUIDELINES ON TENURE GOVERNANCE
PARTICIPATION	<ul style="list-style-type: none"> - ensure active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes; - ensure free, prior and informed consent in relation, specifically to indigenous communities, before undertaking any project or program that may affect their life and livelihoods; 	<ul style="list-style-type: none"> - States should welcome and facilitate the participation of users of land, fisheries and forests to be fully involved in a participatory process of tenure governance, inter alia, formulation and implementation of policy and law and decisions on territorial development (4.10). - States should develop relevant policies, laws and procedures through participatory processes involving all affected parties (5.5). - Effective participation of all members, men, women and youth in decisions regarding their tenure systems should be

⁶ PANTHER is a mnemonic devised by FAO, which stands for the human rights principles of Participation, Accountability, Nondiscrimination, Transparency, Human dignity, Empowerment and Rule of law. The conscious and deliberate application of these principles aims to allow development planners to design complementary, integrated and targeted strategies of empowerment, equality and inclusion, with express safeguards and mechanisms for redress and accountability – further information at http://www.hrbatoolkit.org/?page_id=116.

		<p>promoted through their local or traditional institutions, including in the case of collective tenure systems (9.2)</p> <ul style="list-style-type: none"> - There should be full and effective participation of all members or representatives of affected communities, including vulnerable and marginalized members, when developing policies and laws related to tenure systems of indigenous peoples and other customary communities. (9.6)
ACCOUNTABILITY	<ul style="list-style-type: none"> - hold individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law - ensure powerful economic actors (such as transnational corporations and international financial institutions) are held accountable - organize an institutional system whereby all people can accede to accountability mechanisms regarding land and natural resources tenure 	<ul style="list-style-type: none"> - States should adopt and enforce anti-corruption measures including (...) limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations. (...) Staff working on the administration of tenure should be held accountable for their actions. (6.9) - States should strive to establish up-to-date tenure information on land, fisheries and forests that they own or control by creating and maintaining accessible inventories. (8.4) - States should establish appropriate and reliable recording systems, such as land registries, that provide accessible information on tenure rights and duties in order to increase tenure security and to reduce the costs and risks of transactions. (11.5) - States should provide systems (for example, registration, cadastre and licensing) to record individual and collective tenure rights in order to improve security of tenure rights, including those held by the State and public sector, private sector and indigenous peoples and other customary communities (17.1)
NON-DISCRIMINATION	<ul style="list-style-type: none"> - ensure no one is subject to discrimination under law and policies (e.g. land tenure laws, regulations and practices; decision-making processes for passing and adopting land tenure laws or regulations; implementation of land tenure laws, regulations and policies; access to justice and remedies when land rights have been violated, etc). 	<ul style="list-style-type: none"> - States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. In particular, States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights (4.6) - States should provide frameworks that are non-discriminatory and promote

		<p>social equity and gender equality (5.3)</p> <ul style="list-style-type: none"> - Dispute resolution services should be accessible to all, women and men, in terms of location, language and procedures (21.1).
TRANSPARENCY	<ul style="list-style-type: none"> - clearly define and widely publicize policies, laws and procedures in applicable languages and in formats accessible to all - disclose and guarantee effective access, particularly for marginalized groups, to all relevant information and documents that might be essential for decision making by individuals and groups concerning social control over land and natural resources administration - ensure equal access to information is available in land registry systems (with impacts on taxes and land assessments) 	<ul style="list-style-type: none"> - Policies, laws and procedures should (...) be clearly expressed in applicable languages, and widely publicized (5.5) - Implementing agencies and judicial authorities should (...) endeavor to prevent corruption through transparent processes and decision-making. Information about changes and their anticipated impacts should be clearly stated and widely publicized in applicable languages. (5.8) - States and other parties should ensure that information on market transactions and information on market values are transparent and widely publicize (11.4). - State and non-state actors should adhere to applicable ethical standards. They should publicize and monitor the implementation of these standards in the operation of markets in order to prevent corruption, particularly through public disclosure (11.7) - Implementing agencies should make their valuation information and analyses available to the public in accordance with national standards. States should endeavor to prevent corruption in valuation through transparency of information and methodologies, in public resource administration and compensation, and in company accounts and lending (18.5) - Assessments of valuations and taxable amounts should be made public. States should provide taxpayers with a right to appeal against valuations. States should endeavor to prevent corruption in taxation administration, through increased transparency in the use of objectively assessed values (19.3).
HUMAN DIGNITY	<ul style="list-style-type: none"> - recognize the inherent dignity and the equal and inalienable human rights of all individuals 	<ul style="list-style-type: none"> - ... take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women’s tenure rights are enforced and implemented (5.4).

<p>EMPOWERMENT</p>	<ul style="list-style-type: none"> - Build people's capacity to engage in the decision-making process and encourage people to exercise choice and realize their human rights in the face of power relations and structures in society. 	<ul style="list-style-type: none"> - Principles of implementation: (...) Equity and justice: recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access, to land, fisheries and forests (3B 3). - States and non-state actors should endeavor to prevent corruption in relation to tenure systems of indigenous peoples and other customary communities, by consultation and participation, and by empowering communities (9.11).
<p>RULE OF LAW</p>	<ul style="list-style-type: none"> - Ensure all persons receive equal protection of the law and of their human rights and fundamental freedoms. - Ensure everyone has access to an independent tribunal in the determination of his/her rights, including property rights (including inheritance, land registration, eviction, compulsory purchase and taxation, the owners, occupiers and users of land and natural resources are entitled to public and independent hearings). 	<ul style="list-style-type: none"> - adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments (3B 7). - Reforms should also follow the rule of law and be implemented according to national laws and procedures (15.3).

3. MONITORING THE IMPLEMENTATION OF THE GUIDELINES

The adoption of the *Guidelines on Tenure Governance* will be a crucial step to achieve and defend the rights to land and other natural resources of small scale producers by providing a framework and a point of reference against which national and international policies, regulations and laws can be evaluated.

After the adoption of the *Guidelines on Tenure Governance I*, the subsequent critical step will be to assure its implementation at international and at national levels. It is the national implementation that will give the *Guidelines on Tenure Governance* its force, having as a background the principles of good governance and a human Rights-based approach. In fact, although international players and *fora* are paying increasing attention to tie tenure rights and national laws incorporate some of the principles highlighted in the *Guidelines on Tenure Governance*, there are still many legal and socio-cultural obstacles that limit an equitable

access to and control over natural resources⁷. For these reasons, it is necessary to adopt a holistic view on this theme, covering the macro level, through advocacy by policy makers, the meso level with community leaders and other decision makers, and the micro level with community awareness raising to promote constructive dialogue between local authorities, civil society, peasant organizations and the private sector (ACTUAR, 2010), in order to ensure the effective implementation of the existent national and international frameworks.

In this sense, it is crucial to monitor whether the States take immediate steps to respect, protect and fulfill tenure rights, and whether policies contribute to the progressive realization of these rights. A strong, independent and transparent monitoring mechanism must be put in place to ensure compliance at national and international levels, as an integral component of States national strategies. Since the *Guidelines on Tenure Governance* have incorporated a human rights language and principles, also the monitoring process should be based on a human rights-based approach, going beyond the mere monitoring of the execution of tasks or State activity in general, and exploring whether the State is fulfilling its human rights obligations and follows human rights principles in its legislative, executive and judicial spheres. In this sense, some items are particularly important when monitoring the implementation of the *Guidelines on Tenure Governance*, such as the existence and effectiveness of specific: **human rights based mechanisms** considered in national legislations / policies for monitoring land tenure rights; **mechanisms for collection, management, analysis and dissemination** of information on policies, strategies, programs and projects oriented to human rights realization; competent **institutions** to implement the provisions of the national regulations or policies (with the necessary human, technical and financial resources).

3.1. POSSIBLE CONTRIBUTIONS OF THE VOLUNTARY GUIDELINES ON THE RIGHT TO FOOD & POSSIBLE LESSONS LEARNT FROM IMPLEMENTING THE RIGHT TO FOOD

Adopting and implementing the *Guidelines on Tenure Governance* can be enriched by previous experiences, particularly by the Guidelines on the Right to Food (adopted in 2004), which provisions serve as a source of inspiration for the *Guidelines on Tenure Governance*. As stated in the *Guidelines on Tenure Governance* preface, "*This initiative builds on and supports the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Voluntary Guidelines on the Right to Food), which were adopted by the FAO Council at its Hundred and Twenty-seventh Session in November 2004, and the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD).*"

⁷ In Angola, for example, the most recent Land Law (approved in 2004, replacing the previous one) stipulates that "*the State respects and protects the land rights of rural communities, including those based on use or custom*" (Article 9). However, the law is not sufficiently clear with regard to traditional rights, since most people living in rural areas do not own lands, as they do not have titles that serve to attest their ancestral rights over these lands (ALRN, 2005). Also in Mozambique, even if the statutory 1997 Land Law does not establish formal constraints to land registration, the attitude of civil servants and the excessive bureaucracy can be major barriers that hinder the legalization of land rights (ACTUAR, 2010).

In fact, the FAO Voluntary Guidelines on the Right to Food represent the first experience to achieve the realization of food security as an individual human right, through guidelines which assist the States and indicate the path to follow. Thus, States are encouraged to implement right to food obligations under international law, incorporating these obligations in the national laws, strategies and plans. To do so, it is imperative that States develop a culture of human rights and civil society must use the available tools to hold States, international institutions and private sector accountable. The implementation of the Voluntary Guidelines on the Right to Food is undoubtedly an important and successful experience to guide the implementation of the *Guidelines on Tenure Governance*. In this sense, some aspects should be underlined, such as:

- **DISSEMINATION** of the Guidelines in national and *local* languages: As the Voluntary Guidelines on the Right to Food, the *Guidelines on Tenure Governance* can be used for education and raising awareness of the population. In Brazil, the National Council for Food and Nutrition Security (CONSEA⁸) launched a campaign to raise awareness and promote the *Guidelines on the Right to Food* at national, regional and international levels, with success on achieving the official commitment of executive, judiciary and legislative sectors to the implementation of these Guidelines.
- **TRAINING OF ADMINISTRATIVE BODIES AND LEGISLATORS** to ensure that international standards are incorporated in domestic law and national constitutions. An interesting example is through the seminars organized in Guatemala by FIAN in cooperation with the Supreme Court of Justice and the Judicial School (July 2005 and October 2006) to raise awareness among judges, attorneys, human rights' ombudsman and government representatives concerning the commitments of Guatemala under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The focus was on the due application of the right to food in agrarian conflicts, exploration of the Constitutional provisions which recognize international human rights treaties, the Voluntary Guidelines on the Right to Food, and the appropriate application of the concepts in the context of judicial practice on agrarian issues. The general feedback of the participants was that the right to food concept offers the most appropriate legal framework to resolve the land conflicts they deal with.
- Promote **JUSTICIABILITY AND ENFORCEABILITY OF HUMAN RIGHTS** at national level: ensure possibility of complaining against a violation of rights through administrative, quasi-judicial and/or judicial means. CSOs must monitor the implementation of decisions by courts and quasi-judicial bodies and give visibility to cases of violation of rights. The incorporation of the right to food into national legal systems in different normative hierarchies allows judges to apply the decision in cases and lawyers and civil society in general to appeal for its application in order to demand the full realization of the right to food. Additionally, more than 20 countries have already

⁸ CONSEA is an advisory body composed of 57 representatives (in 2011), two-thirds from civil society and one-third from the federal government. CONSEA was responsible for the elaboration of the National Law on Food and Nutrition Security (2006).

explicitly recognized the right to food in their respective Constitutions (this is the case of Brazil or Ecuador, among many others).

- Promote the coordination of **NATIONAL RAPORTEURS** on tenure rights with current National Rapporteurs for the Right to Food. In the area of monitoring and claim mechanisms. Brazil experience is widely known, through the implementation of enforcement mechanisms and the existence of a National Rapporteur on the Human Right to Adequate to Food and Rural Land (which constitutes a monitoring system based on the mandate of the United Nations Special Rapporteur on the Right to Food), encouraging thus the dialogue between the government and civil society.

3.2. RECOMMENDATIONS FOR ACTION

In fact, national policies should be designed, implemented and monitored in a lasting and structured dialogue with civil society, particularly, smallholder farmers as well as with other relevant actors, taking into consideration the environmental and social impacts and the respect for local tenure rights and traditional knowledge.

The *Guidelines on Tenure Governance* are addressed to a wide range of stakeholders (governments, private sector, donor agencies, owners and users of natural resources, non-governmental organisations, etc). CSOs have a particular role to play in monitoring the gradual implementation of the *Guidelines on Tenure Governance*. Concrete actions might include:

- CSOs must ensure the **dissemination** of the *Guidelines on Tenure Governance*, in national and *local* languages, contributing to raise awareness of the population on land and other natural resources tenure rights (small scale producers, legislators, and technical staff).
- Collect disaggregated **data** and develop qualitative and quantitative **indicators**, through participatory and independent mechanisms to monitor the adoption of the Guidelines on Tenure Governance (security of tenure, forced evictions, number of landless people, degree of concentration of resources, unsustainable uses of natural resources, recovering, re-establishment and respect for the commons, for collective rights and local self-governance of natural resources, etc). Access to information might be problematic but its important to remind that the *Guidelines on Tenure Governance* rule that “*States should strive to establish up-to-date tenure information on land, fisheries and forests that they own or control by creating and maintaining accessible inventories*” (Part 3 – 8.4). Also,
- Assess the impact of **national policies and institutions** in guaranteeing the rights over natural resources of rural communities, and review them when appropriate. The legal environment of the different countries is complex, given the coexistence of multiple

legal systems⁹. As indicated in the Preface of the Guidelines on Tenure Governance, *“While recognizing the existence of different models and systems of governance of these natural resources under national contexts, States may wish to take the governance of these associated natural resources into account in their implementation of these Voluntary Guidelines, as appropriate”*.

- All policies having direct or indirect impact on access to land, fisheries and forests (including biofuels, climate mitigation, trade and investments support policies) should be made consistent with the *Guidelines on Tenure Governance* and should be formulated in a participatory manner.
 - States should ensure policy coherence and coordination at national level¹⁰ and guarantee adequate resources and capacity for public institutions.
 - Following the *2011 Resolution on Sustainable Urban Development through Expanding Equitable Access to Land, Housing, Basic Services and Infrastructure* (UNHABITAT), the coordination among rural and urban concerns considered in land tenure policies must be ensured, by implementing land policy development and regulatory and procedural reform programmes, and by ensuring that land interventions are anchored within effective land governance frameworks.
 - Strategies for managing natural resources should include social and environmental safeguards based on economic, environmental, social and human rights impact assessments of different types of land and natural resource use. Free Prior and Informed Consent should be guaranteed in conservation and management initiatives.
 - Strengthening customary institutions and collective tenure systems while ensuring that they respect the rights of women.
- Monitor the **access** of each person or community **to justice** (administrative, quasi-judicial and judicial mechanisms). The *Guidelines on Tenure Governance* underline that *“States should provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes”* (Part 2 - 3A 3.1.4). Also, *“In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination”* (Part 5 – 21.6).

⁹ ACTUAR (2010) gives some examples of countries where customary and statutory laws coexist side by side, also with regard to natural resource management.

¹⁰ As exemplified in ACTUAR (2010) research, the government structure in East Timor includes several land-related institutions, as well as various departments scattered throughout the government, which hold responsibilities in the area of land administration. This causes some disturbances and inter-agency conflicts. The most recent trend of assigning global responsibility to a single land agency represents an attempt to resolve the issue of coordination in a system with many administrative departments responsible for multiple activities, although related.

- Collaborate in the establishment of **effective accountability mechanisms** that make transnational corporations and businesses legally accountable for possible losses and damages arising from violations and/or crimes. States should adopt measures to guide the transfer of land and other natural resources to entrepreneurs based only on adequate and independent studies and after effective discussions with the populations involved. Such studies should include solutions for the problems of small scale producers who may eventually be in disadvantage. Also, regional and international institutions must be required to incorporate the *Guidelines on Tenure Governance* in their operational policies and directives. As per the Part 2 of the *Guidelines on Tenure Governance* (3.2), “*Non-state actors including business enterprises have a responsibility to respect human and legitimate tenure rights. Business enterprises (...) should include appropriate risk management systems to prevent and address adverse human and legitimate tenure rights impacts*”.

CSOs should ensure the monitoring of existing legal and institutional **structures** within the State (what elements already exist and which ones need to be introduced), the **measures/processes** taken effectively by the State and the **outcomes** of the measures undertaken. Monitoring the implementation of the *Guidelines on Tenure Governance* will imply the answer to important questions, such as, whether the principles established in the *Guidelines on Tenure Governance* are being effectively taken into consideration. From what was said above and having in mind the organizational, financial and political constraints for CSOs and NGOs to monitor the implementation of the *Guidelines on Tenure Governance*, one starting option might be to strengthen the "land tenure" dimension/discussion in already existent spaces where CSOs and NGOs normally engage in dialogue with governments and other stakeholders. As a governing land tenure policy implies an intersectoral approach, synergies with the existent national food security and nutrition forums or councils might be explored. Creating or strengthening "working groups" on land tenure issues might be a good starting point. These working groups can be further mobilized and connected through multi-stakeholders info platforms such as the **Land Portal** (FAO, IFAD, ILC and several CSOs and NGOs including Action Aid International).

Below, a selection of important main initial questions is proposed to each one of the Implementation Principles of the *Guidelines on Tenure Governance*:

Human Dignity

- Which measures were taken to ensure equal and inalienable human rights of all individuals are recognized?
- How secure is the land tenure of rural people?
- ***Are there mechanisms to secure the belongings of people affected by forced eviction?***

Non-discrimination

- In which regulations / policies are all forms of discrimination related to tenure rights removed (including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources)?

- Are dispute resolution services accessible to all, in terms of location, language and procedures? Specify.
- ***Which measures have been taken to safeguard the right of the indigenous peoples, pastoralists and nomadic peoples to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities?***

Equity and justice

- Which positive actions (including empowerment, ensuring consultation and participation) were taken in order to promote equitable tenure rights and access to land, fisheries and forests, for all, within the national context?
- **Are there constitutional or legal provisions establishing the State obligation to give priority to vulnerable groups, especially regarding the right to food and the access to natural resources?**
- Which are the main obstacles which impede the access to recourse mechanisms?
- Do the concerned institutions have the necessary human, economic and technical resources in order to carry out their mandate?

Gender equality

- Which laws/policies recognize women's tenure rights (including the right to inherit and bequeath these rights)? Which measures were taken to ensure that legal and policy frameworks provide adequate protection for women?
- Which mechanisms exist for women to participate in the formulation, adoption, implementation and monitoring of agrarian and rural development policies?
- ***Do customary laws exist that denies women's equal entitlement to natural and productive resources rights?***

Holistic and sustainable approach

- Which are the mechanisms for intersectoral coordination to ensure the concerted implementation, monitoring and evaluation of agrarian reform and rural development policies and programs?
- Which national policies, legal instruments and help mechanisms exist to protect the economic sustainability and to preserve biodiversity and the conservation of local and traditional species and crops?
- Do States recognize and legitimize access to commons, by developing policies and regulations protecting commons lands?
- ***Which measures have been taken to safeguard the right of the indigenous peoples, pastoralists and nomadic peoples to use and control their traditional seeds and knowledge?***

Consultation and Participation

- ***Which regulations are in place which foresee the participation of stakeholders in the designing, implementation and monitoring of tenure rights policies and strategies?***
- Do the responsible authorities, in practice, consult the stakeholders when adopting decisions that can have a bearing on tenure rights? Are users of land, fisheries and forests fully involved in a participatory process of tenure governance? How? Are there specific channels or forums in which citizens can play a major role?
- Is the principle of Free, Prior and Informed consent adopted in national legislations/policies? Specify.

Rule of Law

- **Are national laws and eventual reforms consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments?**
- Are there legal guarantees for human rights norms in national legislations?
- Which constitutional and other legal provisions exist to guarantee and enforce the right to natural resources (land, forests, fisheries, water, etc.) and the right to productive resources (capital, access to appropriate technologies, access to information, extension services) of rural communities?
- Which legal provisions are in place to rule out forced evictions? How are issues like adequate compensation, resettlement and restitution safeguarded in constitutional/legal provisions?
- Are the rights to land and territory of indigenous peoples and other ethnic groups recognized at the national level?
- Are communal, collective and customary rights to land and natural resources adequately recognized?
- Are there national human rights institutions competent to monitor tenure rights or to receive complaints related to violations of these rights?
- Within the scope of their current functions, do institutions have specific programmes or projects for the promotion, monitoring and defense of tenure rights?

Transparency

- Do States create and maintain accessible inventories with tenure information on land, fisheries and forests that they own or control?
- Are policies, laws and procedures clearly widely publicized in applicable languages?
- **Do States provide systems (such as registration, cadastre and licensing) to record individual and collective tenure rights in order to improve security of tenure rights, including those held by the State and public sector, private sector and indigenous peoples and other customary communities?**

- Is there an effective freedom of the press in the country? Do local, regional and national media especially follow tenure rights related issues in the country?
- Are complaint processes transparent and autonomous? Is the institution really accessible for vulnerable groups? What is the degree of independence of the judiciary?

Accountability

- Is staff working on the administration of tenure held accountable for their actions? How?
- Are there anti-corruption policies in place and are they adequately equipped with human, financial and technical resources?
- ***Does the state have institutions and mechanisms to hold private actors, especially transnational companies, accountable? Does the state have legal mechanisms in place to exercise this control?***

Continuous improvement

- ***Do States improve mechanisms for monitoring and analysis of tenure governance, in order to develop evidence-based programmes and secure on-going improvements? Specify.***
- Do States prioritize constant improvements and learning processes and identifies areas in which international cooperation is required, particularly in the current context of emerging threats (e.g. climate change, increased volatility of prices on the markets of agricultural commodities, etc)?

The Guidelines on Tenure Governance aim to serve as a framework with recommendations that States use to adapt their legislation, policies and programmes, respecting local context, and having as a background a human rights-based approach.

The *Guidelines on Tenure Governance* should integrate strong provisions to promote their efficient implementation through participatory and transparent approaches at the national level. Answers to these (and others) questions related with the implementation principles considered in the *Guidelines on Tenure Governance* should be gathered and analyzed, in order to identify the extent to which State activities contribute to achieve tenure rights and whether there is a risk of perpetuating violation¹¹.

Also, statistics, indicators and benchmarks should be developed, in order to give visibility to the extent of recognition and security of tenure rights to land and other natural resources and thus hold States accountable.

¹¹ Tenure rights are violated when a State does not fulfil its obligations to take steps, not discriminate, respect, protect and fulfil the right, causing damage to a person and the damage can be attributed to the State.

Some relevant information to be gathered is indicated below:

- Proportion of the national budget effectively allocated for the realization of tenure rights.
- Percentage of national budget oriented to compensate situations of inequality.
- Number of cases of land grabbing and illegal appropriation of natural resources of rural communities within the past five years.
- Estimated number of persons (disaggregated by gender) forcibly evicted from rural land within the past five years.
- Estimated number of evicted people adequately compensated and resettled (disaggregated by gender) within the past five years.
- Estimated number of people killed, arbitrarily detained, harassed and persecuted because of claiming their rights to natural and productive resources in the last 5 years.
- Number of cases received, investigated and adjudicated in courts and other relevant institutions concerning crimes committed against rural leaders claiming their rights to natural and productive resources in the last 5 years.
- Number of newspaper and other *media* in the country able to express opinions divergent from the official information channels.

In order to ensure States fulfill their responsibilities in respecting and protecting tenure rights, as established in the *Guidelines on Tenure Governance*, it is crucial to formulate appropriate indicators and to monitor the information above-mentioned for assessing the effectiveness of rights-based approaches. In fact, although the crucial importance of concluding the negotiations of the *Guidelines on Tenure Governance*, the subsequent step, its implementation, will ensure its force on realizing the rights to land and other natural resources tenure. Once adopted, the *Guidelines on Tenure Governance* must be followed by concrete action at national, regional and international levels. The targets to be achieved should be set at national level, through transparent and participatory processes, in the light of the priorities identified for each State. CSOs must energetically monitor States actions to respect, protect and fulfill tenure rights, through strong, independent and transparent monitoring mechanisms. Also, the Committee on World Food Security (CFS) should have a role monitoring the implementation of the *Guidelines on Tenure Governance*, through the analysis of the targets and benchmarks for action, in order to track progress made at national and at international levels. As Olivier De Schutter (2009) argues, CFS should be transformed “into a platform in which governments, international agencies, and civil society organizations could jointly improve their understanding of what needs to be done, and improve the accountability of both the international community and national governments”. Multi-stakeholders information systems on land tenure issues are an institutional but also operational arrangement that might add significant value to this objective since they can support the CFS to perform its important role.

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