

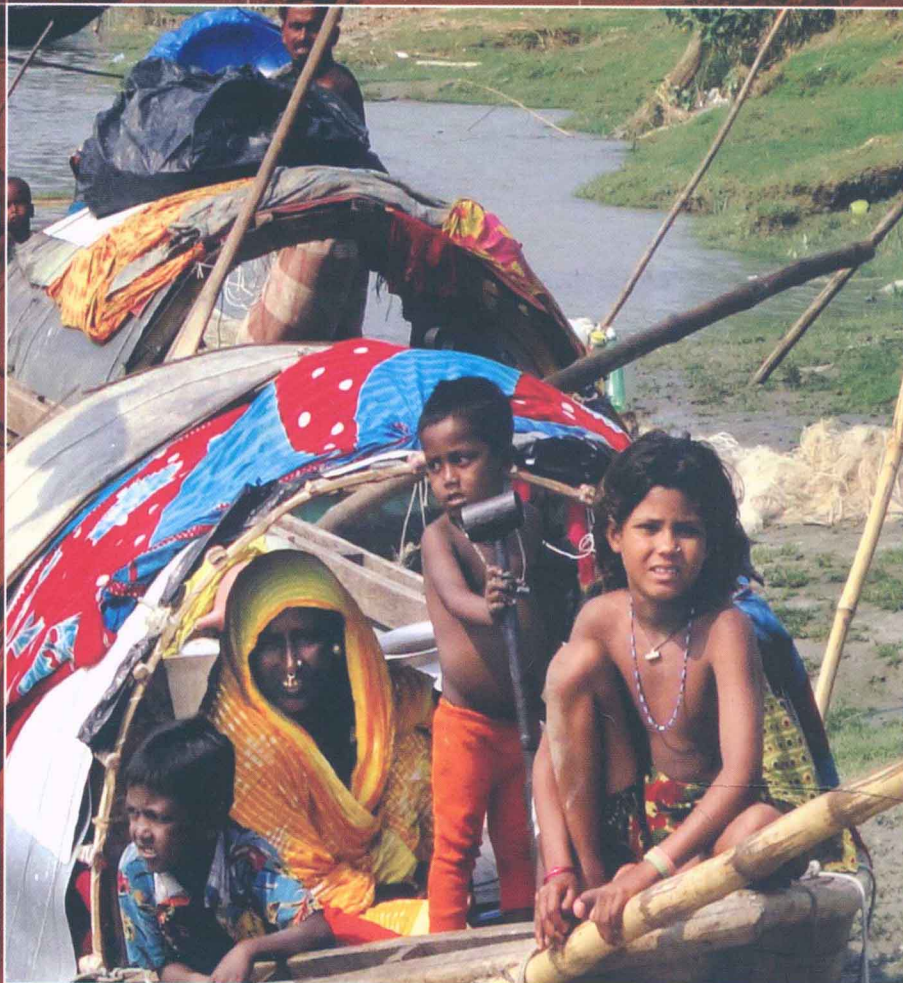
**LAND
TENURE**
JOURNAL

REVUE DES
**QUESTIONS
FONCIÈRES**

REVISTA SOBRE
TENENCIA DE
LA **TIERRA**

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AN OVERVIEW OF THE
VOLUNTARY GUIDELINES
ON THE GOVERNANCE
OF TENURE

FOSTERING A NEW
GLOBAL CONSENSUS
The Voluntary Guidelines
on the Governance of
Tenure

IMPROVING THE
GOVERNANCE OF
TENURE OF LAND,
FISHERIES AND FORESTS

GOVERNANCE OF
TENURE
Making it happen



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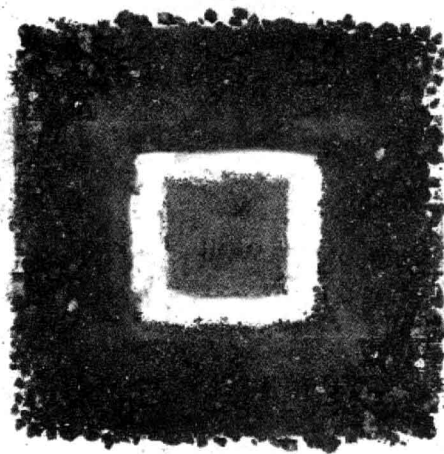
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FOOD AND AGRICULTURE
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Preface

On 11 May 2012 in a landmark decision the Committee on World Food Security (CFS) endorsed a set of far-reaching global guidelines aimed at helping governments safeguard the rights of people to own, manage and access land, fisheries and forests. The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* outline principles and practices that governments and other actors can refer to when defining policies, making laws and administering tenure rights to land, fisheries and forests.

The Guidelines promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. Providing poor and vulnerable people rights to access to land, fisheries forests and other natural resources is a key condition for sustainable livelihoods.

The Guidelines are based on an inclusive consultation process started by FAO in 2009 and then finalized through CFS-led intergovernmental negotiations that included participation of government officials, civil society organizations, private

Préface

Le 11 mai 2012 le Comité de la sécurité alimentaire mondiale (CSA) a adopté, dans une décision historique, une série de Directives de portée considérable, dont l'objectif est aider les gouvernements à protéger les droits des personnes qui possèdent des terres, des pêches et des forêts, les gèrent ou y accèdent. Les *Directives volontaires pour une gouvernance responsable des régimes fonciers applicables aux terres, aux pêches et aux forêts dans le contexte de la sécurité alimentaire nationale* exposent des principes et des pratiques auxquels les gouvernements et d'autres acteurs peuvent se référer pour définir des politiques, élaborer des lois et administrer des droits fonciers relatifs à des terres, des pêches et des forêts.

Les Directives visent à apporter la sécurité foncière et un accès équitable aux terres, aux pêches et aux forêts, dans le but d'éliminer la faim et la pauvreté, de soutenir le développement durable et d'améliorer l'environnement. Apporter aux personnes pauvres et vulnérables un accès aux terres, aux pêches, aux forêts et aux autres ressources naturelles constitue une condition essentielle pour parvenir à des moyens d'existence durable.

Prefacio

El 11 de mayo de 2012, en una decisión histórica, el Comité de Seguridad Alimentaria Mundial (CFS) ratificó un conjunto de Directrices universales de gran alcance orientadas a permitir a los gobiernos salvaguardar el derecho de las personas a poseer, ordenar y acceder a la tierra, la pesca y los bosques. En las *Directrices voluntarias sobre la gobernanza responsable de la tenencia de la tierra, la pesca y los bosques en el contexto de la seguridad alimentaria nacional* se describen los principios y prácticas a los que gobiernos y otros agentes pueden referirse al definir políticas, promulgar leyes y administrar los derechos de tenencia sobre la tierra, la pesca y los bosques.

Las Directrices promueven la seguridad de la tenencia y la equidad en el acceso a la tierra, la pesca y los bosques como medio para erradicar el hambre y la pobreza, respaldar el desarrollo sostenible y mejorar el ambiente. La seguridad del derecho de acceso a la tierra, la pesca y los bosques y otros recursos naturales de las personas pobres y vulnerables es la condición esencial de la sostenibilidad de sus medios de vida.

sector representatives, international organizations and academics.

The Guidelines present a shared vision, a starting point that will help to improve the situation of the hungry and poor. The extensive development process created buy-in and support for the Guidelines. Now the principles of the Guidelines are made available to all – countries, civil society, the private sector and international organizations – to guide the development of responsible policies, laws and activities that respect the rights of people to own, use and control land, fisheries and forest resources. Collaborative actions and wide partnerships are necessary for the implementation of the Guidelines and for making governance of tenure happen in practice.

This issue of the *FAO Land Tenure Journal* focuses on the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. It brings together four articles that will help to better understand the contents of the Guidelines, their development process, their thematic focus and the strategies for their implementation.

Les Directives s'appuient sur un processus ouvert de consultation, initié par la FAO en 2009 et finalisé à travers des négociations intergouvernementales dirigées par le CSA et rassemblant des responsables gouvernementaux, des représentants d'organisations de la société civile, des acteurs du secteur privé et des universitaires.

Les Directives présentent une vision commune et constituent un point de départ pour aider à améliorer la situation des personnes souffrant de la faim et de la pauvreté. L'importance du processus de développement a créé une adhésion et un soutien à l'égard des Directives. Aujourd'hui, les principes des Directives sont à la disposition de tous – pays, société civile, secteur privé et organisations internationales – pour orienter l'élaboration de politiques, législations et activités responsables et respectueuses des droits des personnes en termes de détention, d'utilisation et de contrôle des ressources en terres, pêches et forêts. La mise en œuvre des Directives et la réalisation concrète de la gouvernance des régimes fonciers supposent la mise en œuvre de larges partenariats et d'actions coopératives.

Las Directrices se basan en un proceso incluyente de consulta, iniciado por la FAO en 2009, y que finalizó con la celebración de negociaciones intergubernamentales dirigidas por el CFS. En estas intervinieron autoridades de gobierno, organizaciones de la sociedad civil, representantes del sector privado, organizaciones internacionales y académicos.

Las Directrices presentan una visión común, un punto de partida que contribuirá a mejorar la situación de quienes padecen hambre y pobreza. Un extenso proceso de elaboración hizo que las Directrices fuesen objeto de aceptación y apoyo. Ahora, los principios en que se inspiran las Directrices pueden ser consultados por todos –países, sociedad civil, sector privado, organizaciones internacionales– y guiar el diseño de políticas, leyes y actividades responsables con las cuales se respete el derecho de las personas a poseer, explotar y controlar la tierra, la pesca y los recursos forestales. Para aplicar las Directrices y hacer realidad en la práctica la gobernanza de la tenencia es necesario efectuar acciones en colaboración y establecer alianzas amplias.

- The first article provides an overview of the Guidelines and briefly describes tenure and the need for guidelines on the governance of tenure.
- The second article describes the preparation of the Guidelines.
- The third article describes why the tenure of land, fisheries and forests is the focus of the Guidelines.
- The fourth article addresses the implementation of the Guidelines.

Alexander Müller

Assistant Director General
Natural Resources Management and
Environment Department
FAO

Ce numéro de la *Revue des questions foncières* est consacré aux *Directives volontaires pour une gouvernance responsable des régimes fonciers applicables aux terres, aux pêches et aux forêts dans le contexte de la sécurité alimentaire nationale*. Il comprend quatre articles qui aideront à mieux comprendre le contenu des Directives, leur processus d'élaboration, leur orientation thématique et les stratégies déployées pour leur mise en œuvre.

- Le premier article propose une vue d'ensemble des Directives, ainsi qu'une brève description des régimes fonciers et de la nécessité des Directives pour leur bonne gouvernance.
- Le deuxième article décrit le processus de préparation des Directives.
- Le troisième article explique les raisons pour lesquelles les Directives sont centrées sur la gouvernance des terres, des pêches et des forêts.
- Le quatrième article traite de la mise en œuvre des Directives.

Alexander Müller

Sous-Directeur général
Département de la gestion des ressources
naturelles et de l'environnement
FAO

Ce numéro de la *Revista sobre tenencia de la tierra* se concentra en las *Directrices voluntarias sobre la gobernanza responsable de la tenencia de la tierra, la pesca y los bosques en el contexto de la seguridad alimentaria nacional*. Se reúnen en la publicación cuatro artículos que facilitarán el entendimiento del contexto en el que se sitúan las Directrices, su proceso de desarrollo, su enfoque temático y las estrategias para su ejecución.

- El primer artículo presenta una vista de conjunto de las Directrices, describe brevemente el concepto de tenencia y justifica la necesidad de formular directrices para la gobernanza de la tenencia.
- El segundo artículo detalla el proceso de preparación de las Directrices.
- El tercer artículo explica por qué la tenencia de la tierra, la pesca y los bosques es el tema central de las Directrices.
- El cuarto artículo versa sobre la ejecución de las Directrices.

Alexander Müller

Subdirector General
Departamento de Gestión de Recursos Naturales
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**AN OVERVIEW OF
THE VOLUNTARY
GUIDELINES ON THE
GOVERNANCE OF
TENURE****VUE D'ENSEMBLE
DES DIRECTIVES
VOLONTAIRES POUR
LA GOUVERNANCE
FONCIÈRE****UNA VISIÓN GENERAL
DE LAS DIRECTRICES
VOLUNTARIAS SOBRE
LA GOBERNANZA DE
LA TENENCIA**



ABSTRACT

VOLUNTARY GUIDELINES

GOVERNANCE OF TENURE

COMMITTEE ON WORLD FOOD SECURITY

This is the first in a series of four papers on the Voluntary Guidelines on the Governance of Tenure. This paper provides an overview on the Guidelines and describes tenure and the need for the Guidelines. The second paper presents the preparation of the Guidelines, the third one describes why the tenure of land, fisheries and forests is the focus of the Guidelines, and the fourth one addresses the implementation of the Guidelines.

Tenure and its governance are crucial factors in the eradication of hunger and poverty, and the sustainable use of the environment. They play a central role in determining if and how people, communities and others are able to acquire rights to use and control land, fisheries, forests and other natural resources.

RÉSUMÉ

DIRECTIVES VOLONTAIRES

GOVERNANCE FONCIÈRE

COMITÉ DE LA SÉCURITÉ ALIMENTAIRE MONDIALE

Il s'agit du premier de la série des quatre articles sur les Directives volontaires pour la gouvernance foncière. Cet article propose une vue d'ensemble des Directives et décrit les régimes fonciers, ainsi que la nécessité de ces Directives. Le deuxième article décrit le processus de préparation des Directives, le troisième explique les raisons pour lesquelles les Directives sont centrées sur les régimes fonciers applicables aux terres, aux pêches et aux forêts et le quatrième article aborde la question de la mise en œuvre des Directives.

Les régimes fonciers et leur gouvernance constituent des facteurs déterminants dans l'éradication de la faim et de la pauvreté et pour une utilisation durable de l'environnement. Ils jouent un rôle central pour

SUMARIO

DIRECTRICES VOLUNTARIAS

GOBERNANZA DE LA TENENCIA

COMITÉ DE SEGURIDAD ALIMENTARIA MUNDIAL

Este es el primero de una serie de cuatro estudios dedicados a las Directrices voluntarias sobre la gobernanza de la tenencia. El estudio presenta una visión de conjunto de las Directrices, describe el concepto de tenencia y justifica la necesidad disponer de Directrices. En el segundo estudio se expone el proceso de preparación de las Directrices; en el tercero se indica por qué la tenencia de la tierra, la pesca y los bosques es el tema central de las Directrices, y en el cuarto se aborda la ejecución de las Directrices.

La tenencia y su gobernanza son factores cruciales de la erradicación del hambre y la pobreza y en el aprovechamiento sostenible del medio ambiente. Estos elementos juegan un papel esencial a la hora de determinar si y de qué modo

The Guidelines are the first international instrument on governance of tenure. They serve as a reference and set out principles and internationally accepted standards for practices for the responsible governance of tenure. They provide a framework that States can use when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices.

The Guidelines promote responsible governance of tenure with respect to all forms of tenure: public, private, communal, indigenous, customary, and informal. Gender is mainstreamed throughout the Guidelines. The Guidelines are structured in seven parts and the paper provides an overview of their contents.

déterminer si les personnes, les communautés et d'autres acteurs sont en mesure d'acquérir les droits leur permettant d'utiliser et de contrôler des terres, pêches, forêts et d'autres ressources naturelles.

Les Directives sont le premier instrument international de gouvernance foncière. Elles constituent une référence et exposent des principes et des normes internationalement acceptés en vue de l'instauration de pratiques responsables en matière de gouvernance foncière. Elles proposent un cadre que les États peuvent utiliser pour l'élaboration de stratégies, de politiques, de lois, de programmes et d'activités. Elles permettent aux gouvernements, à la société civile, au secteur privé et aux citoyens d'estimer si les actions qu'ils – ou que d'autres parties prenantes – proposent constituent des pratiques acceptables.

Les Directives assurent la promotion d'une gouvernance foncière responsable – que le régime foncier soit public, privé, communal, autochtone, coutumier ou informel. L'égalité des sexes est intégrée au sein des Directives. Elles sont divisées en sept parties et ce document propose une vue d'ensemble de leur contenu.

las personas, comunidades y otros interesados adquieren derechos para aprovechar la tierra, la pesca y los bosques y otros recursos naturales.

Las Directrices constituyen el primer instrumento internacional dedicado a la gobernanza de la tenencia. Son el texto de referencia en el cual se plantean principios y normas internacionalmente reconocidos que gobiernan las prácticas relacionadas con la gobernanza responsable de la tenencia. Las Directrices son un marco del que pueden servirse los Estados para elaborar sus propias estrategias, políticas, leyes, programas y actividades; y permiten a los gobiernos, la sociedad civil, el sector privado y los ciudadanos juzgar si las acciones que se proponen llevar a cabo y si las acciones de otros sujetos constituyen prácticas aceptables.

Las Directrices promueven la gobernanza responsable respecto de las distintas formas de tenencia, ya sea esta pública, privada, comunal, indígena, consuetudinaria o informal. Las cuestiones de género reciben especial atención en todas las secciones del texto de las Directrices. Estas se estructuran en siete partes, y el presente estudio presenta una visión general de su contenido.



INTRODUCTION

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* were officially endorsed by the Committee on World Food Security (CFS) at its Thirty-eighth (Special) Session on 11 May 2012. CFS is the United Nations' forum for reviewing and following up on policies concerning world food security.

The Guidelines are based on an inclusive process of consultation that was led by FAO. During 2009–11, government officials, civil society organizations, private sector representatives and academics identified and assessed issues and actions to be included in the Guidelines. The Guidelines were finalized through the CFS-led intergovernmental negotiations that took place during 2011–12, and which included the participation of international agencies, civil society organizations, farmers' associations, private sector representatives and research institutions.

This paper briefly reviews the need to improve tenure arrangements and the governance of tenure, and the response to that need in the form of the Guidelines. The paper describes the underlying principles of the Guidelines and then provides an overview of their contents.

THE NEED FOR GUIDELINES ON THE GOVERNANCE OF TENURE

Tenure and its governance are a crucial factor in the eradication of hunger and poverty, and the sustainable use of the environment. The livelihoods of many, particularly the rural poor, depend on access to and control over land and other natural resources. These natural resources are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth.

Societies define and regulate how people, communities and others gain access to land and other natural resources through their tenure systems. These tenure systems determine who can use which natural resources, for how long, and under what conditions. They may be based on written policies and laws, as well as on unwritten customs and practices.

Tenure systems determine who can use which natural resources, for how long, and under what conditions

Tenure systems increasingly face stress as the world's growing population requires food security, and as environmental degradation and climate change reduce the availability of land, fisheries and forests. Inadequate rights of access to land and other natural resources, and insecure tenure of those rights, often result in extreme poverty and hunger. In most societies access to land has favoured certain individuals and groups at the expense of others. Women are one of the groups that often have fewer and weaker rights to land because of biases in formal law, in customs and in the division of labour in society. In addition, inappropriate tenure policies and inequitable access to land and other natural resources can result in over-cultivation and over-grazing of marginal lands.

In contrast, secure access to land and other natural resources may allow a family to produce food for consumption, thus helping to ensure food security, and to increase household income by producing a surplus for sale in the market. Secure access to land often provides a valuable safety net as a source of shelter, food and income in times of hardship. Appropriate tenure arrangements promote sustainable use practices that enhance the environment. Tenure initiatives that promote gender equity may also indirectly serve to further empower women, as improved tenure rights can increase women's power in social and political relationships.

The governance of tenure is a crucial element in determining if and how people, communities and others are able to acquire rights to use and control land and other natural resources. Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance. Weak governance adversely affects social stability, sustainable use of the environment, investment and economic growth. People can be condemned to a life of hunger and poverty if they lose their tenure rights to their homes, land, fisheries and forests because of corrupt tenure practices or if administrative agencies fail to protect their tenure rights. People may even lose their lives when weak tenure governance leads to violent conflict. Responsible governance of tenure conversely promotes sustainable social and economic development that can help eradicate poverty and food insecurity, and encourages responsible investment.

Improving the governance of tenure is the objective of the Guidelines, which serve as a reference and set out principles and internationally accepted

Secure access to land often provides a valuable safety net as a source of shelter, food and income in times of hardship

Responsible governance of tenure promotes sustainable social and economic development that can help eradicate poverty and food insecurity, and encourages responsible investment



standards for responsible practices. The Guidelines provide a framework that States can use when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions, and the actions of others, constitute acceptable practices.

Being voluntary, the Guidelines are not legally binding. They do not replace existing national or international laws and commitments, and nor do they limit or undermine any legal obligations that States may have under international law.

The Guidelines are similar in nature to other voluntary international instruments of FAO, such as the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, the *Code of Conduct on Responsible Fisheries*, and the *International Code of Conduct on the Distribution and Use of Pesticides*.

The voluntary nature of such instruments has sometimes been considered to be a weakness but it often has an advantage over binding international agreements. It is usually easier for countries to reach agreements for voluntary instruments than binding ones, which in turn allows voluntary instruments to be more comprehensive. As a result, voluntary instruments are usually better suited for technical matters. FAO's experience with its international voluntary instruments is that they have a positive impact on guiding national policies and laws in many countries.

**Voluntary instruments have
a positive impact on guiding
national policies and laws**

THE UNDERLYING PRINCIPLES OF THE GUIDELINES

The Guidelines identify two sets of principles for responsible actions, i.e. "general principles" and "principles of implementation".

General principles

States should:

1. Recognize and respect all legitimate tenure right holders and their rights.
2. Safeguard legitimate tenure rights against threats and infringements.
3. Promote and facilitate the enjoyment of legitimate tenure rights.
4. Provide access to justice to deal with infringements of legitimate tenure rights.
5. Prevent tenure disputes, violent conflicts and corruption.

An additional principle specifically guides non-state actors (including business enterprises). They have a responsibility to respect human rights and legitimate tenure rights. They should act with due diligence to avoid infringing on the rights of others, and they should address any adverse impacts, including cooperating in non-judicial mechanisms to provide remedies.

Principles of implementation

1. **Human dignity:** recognize the inherent dignity and the equal and inalienable human rights of all individuals.
2. **Non-discrimination:** no one should be subject to discrimination under law and policies as well as in practice.
3. **Equity and justice:** recognize that equality between individuals may require acknowledging differences between individuals, and take positive action to promote equitable tenure rights for all.
4. **Gender equality:** Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary.
5. **Holistic and sustainable approach:** recognize that natural resources and their uses are interconnected, and adopt an integrated and sustainable approach to their administration.
6. **Consultation and participation:** engage with and seek the support of those who could be affected by decisions, prior to decisions being taken, and respond to their contributions; take into consideration existing power imbalances between different parties and ensure active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.
7. **Rule of law:** adopt a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated.
8. **Transparency:** clearly define and widely publicize policies, laws and procedures in applicable languages, and widely publicize decisions in applicable languages and in formats accessible to all.
9. **Accountability:** hold individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.
10. **Continuous improvement:** improve mechanisms for monitoring and analysis of tenure governance.