



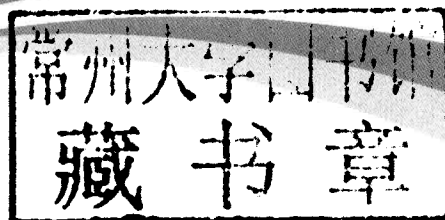
VOLUNTARY GUIDELINES ON THE
GOVERNANCE OF TENURE

At a glance



VOLUNTARY GUIDELINES ON THE
GOVERNANCE OF TENURE

At a glance



The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The mention of specific companies or products of manufacturers, whether or not these have been patented, does not imply that these have been endorsed or recommended by FAO in preference to others of a similar nature that are not mentioned.

The views expressed in this information product are those of the author(s) and do not necessarily reflect the views of FAO.

ISBN 978-92-5-107305-6

All rights reserved. FAO encourages the reproduction and dissemination of material in this information product. Non-commercial uses will be authorized free of charge, upon request. Reproduction for resale or other commercial purposes, including educational purposes, may incur fees. Applications for permission to reproduce or disseminate FAO copyright materials, and all queries concerning rights and licences, should be addressed by e-mail to copyright@fao.org or to the Chief, Publishing Policy and Support Branch, Office of Knowledge Exchange, Research and Extension, FAO, Viale delle Terme di Caracalla, 00153 Rome, Italy.

© FAO 2012

This booklet provides a concise overview of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. It is intended to assist with the understanding of the Guidelines by:

- defining key terms and concepts
- describing the purpose of the Guidelines
- providing an overview of the Guidelines' contents
- describing their relationship to human rights
- indicating how the Guidelines can be implemented and by whom

It is not meant to be a substitute for, or a summary of, the Guidelines.

To access an on-line copy of the Guidelines, visit:

www.fao.org/nr/tenure

What is the purpose of the Guidelines?

The Guidelines promote responsible governance of tenure of land, fisheries and forests, with respect to all forms of tenure: public, private, communal, indigenous, customary, and informal.

Their overarching goals are to achieve food security for all and support the progressive realization of the right to adequate food in the context of national food security. While supporting efforts towards the eradication of hunger and poverty, the Guidelines are also intended to contribute to achieving sustainable livelihoods, social stability, housing security, rural development, environmental protection, and sustainable social and economic development. The Guidelines are meant to benefit all people in all countries, although there is an emphasis on vulnerable and marginalized people.

The Guidelines 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.

How does governance of tenure affect hunger and poverty?

The eradication of hunger and poverty, and the sustainable use of the environment, depend in large measure on how people, communities and others gain access to land, fisheries and forests. Access to natural resources is defined and regulated by tenure systems.

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 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.

The governance of tenure is a crucial element in determining if and how people, communities and others are able to acquire rights, and associated duties, to use and control land, fisheries and forests.

What do we mean by tenure?

Tenure systems define and regulate how people, communities and others gain access to natural resources, whether through formal law or informal arrangements. The rules of tenure determine who can use which 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.

The case for responsible governance of tenure

Many examples of responsible governance of tenure and its administration can be found around the world. However, studies show that problems are encountered with governance of tenure, in one way or another, in all regions of the world, and in high-income and low-income countries alike. Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance.

Weak governance

- marginalizes the poor who lose out because they lack the political force to influence decisions, and because they lack the financial resources to bribe corrupt officials
- makes already socially and economically marginalized women more vulnerable
- affects economic growth by discouraging investments
- hinders environmental sustainability by enabling people to profit from over-exploiting resources

Responsible governance

- makes access to land, fisheries and forests more equitable
- protects people from the arbitrary loss of their tenure rights, including through forced evictions
- helps ensure no one is subject to discrimination under laws, policies and practices
- leads to more transparent and participatory decision-making
- helps ensure that all people are treated equally when laws are enforced
- helps ensure disputes are resolved before they degenerate into conflict
- simplifies the administration of tenure and makes it more accessible and effective to all

What do the Guidelines cover?

The Guidelines cover a wide range of topics that are globally important. Countries may have different priorities for improving governance based on different requirements and conditions. Each country will need to identify which topics are important to it and how to initiate action.

Land

- Secure access to land may allow a family to produce food for household consumption and to increase household income by producing commodities for sale in the market.
- Secure land tenure also provides a valuable safety net as a source of shelter, food and income in times of hardship.

Fisheries

- Responsible tenure arrangements are fundamental for securing the livelihoods of tens of millions of people who depend on marine and inland capture fisheries.
- Strengthened tenure rights and tenure arrangements, when coupled with good governance and the inclusion of the fishing industry and fishworkers' organizations, help ensure fisheries are exploited sustainably and benefits are shared equitably.

Forestry

- Forests are often owned and controlled by the State. Recognizing and securing tenure rights of forest-dependent people, including indigenous peoples, is fundamental for securing livelihoods in forest communities.
- Improved governance (e.g. effective law enforcement, reduced corruption and greater transparency) can promote sustainable forest management and reduce unauthorized activities.

Cross-sectoral issues

- Tenure rights to land, fisheries and forests are often interlinked. The livelihoods of many of the rural poor are diversified and are dependent on access to various natural resources (e.g. combining crop agriculture and livestock grazing with fishing and gathering of forest products).
- Each year, several million hectares of forested land are converted to agriculture and other land uses without prior authorization. This is due to a number of factors, including uncertainty regarding forest tenure, weak law enforcement, corruption and lack of transparency.

What is not covered by the Guidelines?

The Guidelines do not explicitly address water and other natural resources, such as mineral rights. However, the preface to the Guidelines notes that responsible governance of tenure of land, fisheries and forests is inextricably linked with access to and management of other natural resources, such as water and minerals. 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 the implementation of the Guidelines.

Overview of the Guidelines

- PART 1** **Preliminary matters**, sets the direction of the Guidelines.
Section 1: **Objectives**
Section 2: **Nature and scope**
- PART 2** **General matters**, provides guidance which applies to all situations of governance of tenure.
Section 3: **Guiding principles on responsible tenure governance**
Section 4: **Rights and responsibilities related to tenure**
Section 5: **Policy, legal and organizational frameworks related to tenure**
Section 6: **Delivery of services**
- PART 3** **Legal recognition and allocation of tenure rights and duties**, addresses the legal recognition of tenure rights of indigenous peoples and other communities with customary tenure systems, as well as of informal tenure rights; and the initial allocation of tenure rights to land, fisheries and forests that are owned or controlled by the public sector.
Section 7: **Safeguards**
Section 8: **Public land, fisheries and forests**
Section 9: **Indigenous peoples and other communities with customary tenure systems**
Section 10: **Informal tenure**

The founding principles

Section 3 lays out the principles that are at the heart of the Guidelines. In accordance with the general principles, States should:

- **RECOGNIZE AND RESPECT** all legitimate tenure rights and the people who hold them
- **SAFEGUARD** legitimate tenure rights against threats
- **PROMOTE AND FACILITATE** the enjoyment of legitimate tenure rights
- **PROVIDE** access to justice when tenure rights are infringed upon
- **PREVENT** tenure disputes, violent conflicts and opportunities for corruption

Non-state actors (including business enterprises) have a responsibility to respect human rights and legitimate tenure rights.

The principles of implementation include:

- human dignity
- non-discrimination
- equity and justice
- gender equality
- holistic and sustainable approaches
- consultation and participation
- rule of law
- transparency
- accountability
- continuous improvement

PART 4 **Transfers and other changes to tenure rights and duties**, provides guidance for when tenure rights are transferred or changed in various ways after their initial recognition or allocation.

Section 11: **Markets**

Section 12: **Investments**

Section 13: **Land consolidation and other readjustment approaches**

Section 14: **Restitution**

Section 15: **Redistributive reforms**

Section 16: **Expropriation and compensation**

PART 5 **Administration of tenure**, covers the administrative aspects of effective governance of tenure.

Section 17: **Records of tenure rights**

Section 18: **Valuation**

Section 19: **Taxation**

Section 20: **Regulated spatial planning**

Section 21: **Resolution of disputes over tenure rights**

Section 22: **Transboundary matters**

PART 6 **Responses to climate change and emergencies**

The earlier parts of the Guidelines address mostly “every day” situations, whereas this part addresses extreme situations where people could be displaced on a large scale. In all cases, States should strive to prepare and implement strategies and actions in consultation with and participation of people who may be displaced. The provision of an alternative place to settle should not jeopardize the livelihoods of others.

Section 23: **Climate change**

Section 24: **Natural disasters**

Section 25: **Conflicts in respect to tenure of land, fisheries and forests**

PART 7 **Promotion, implementation, monitoring and evaluation**, provides guidance on how the principles and practices of the Guidelines can be promoted, implemented, monitored and evaluated.

Guidelines and gender equality

The Guidelines recognize that women who are already socially and economically marginalized are particularly vulnerable when tenure governance is weak. One of the principles the Guidelines are founded on is gender equality. Improving gender equality is important as women often have fewer and weaker tenure rights to land, fisheries and forests. This inequality is due to a number of factors, including biases in formal law, in customs, and in the division of labour in society and households. The Guidelines do not have a particular section on gender. Instead, gender issues are mainstreamed and addressed throughout the Guidelines. This approach is used to encourage that the requirements and situations of both women and men are addressed in all actions to improve governance of tenure.

The Guidelines, human rights and international law

The Guidelines place tenure rights in the context of human rights. There is currently no international consensus that a tenure right is a human right. However, tenure rights, which provide access to land, fisheries and forests, are important for the realization of human rights, such as the right to a standard of living adequate for the health and well-being, including food and housing (Universal Declaration of Human Rights, Article 25; International Covenant on Economic, Social and Cultural Rights, Article 11).

The governance of tenure may affect the enjoyment of various human rights. The Guidelines recommend that States should ensure that all actions regarding tenure and its governance are consistent with their obligations under national and international law, and with due

regard to their voluntary commitments under applicable regional and international instruments. All programmes, policies and technical assistance to improve governance of tenure through the implementation of the Guidelines should be consistent with States' existing obligations under international law.

The Guidelines are an instrument of soft law

The Guidelines are voluntary. They are not legally binding. They do not replace existing national or international laws, commitments, treaties or agreements. At the same time, they do not limit or undermine any legal obligations which States may have under international law. "Soft laws" have an advantage over binding international agreements in that they are usually easier for countries to reach agreement on. Also, soft laws can be more comprehensive and provide more details, and they are often better suited for technical matters and best practices, such as governance of tenure. FAO's experience with its soft law instruments is that they have a positive impact in guiding national policies and legislation in many countries. When a country enacts all or part of an international soft law instrument, that soft law becomes "hard law" within that country.

Who will use the Guidelines?

Everyone has a role to play in improving governance of tenure. The Guidelines can be used by different people and organizations in different ways, and in partnership with others.

States

States have a unique role in the development, implementation and enforcement of policy and law, and through the administration of tenure, including through courts, registration of tenure rights, valuation, taxation and spatial planning.

Courts and government agencies

Courts and government agencies responsible for the administration of tenure should try to deliver equal services to all, including those in remote locations. Services should be provided promptly and efficiently, and without requesting bribes for services.

Individuals and communities

People, communities and bodies who hold tenure rights should know about their rights and how to protect themselves against corrupt behaviour from others.

Civil society

Civil society organizations can work to raise awareness and assist people to enjoy and protect their tenure rights. They can promote the participation of the public in decision-making processes.

Investors

Investors should ensure their investments do not cause people to be dispossessed of their tenure rights. When they propose to acquire tenure rights to land, fisheries and forests, they should ensure that all relevant people are informed and engaged in the negotiations.

Tenure professionals

Professionals (e.g. surveyors, lawyers, notaries, valuers, spatial planners) should follow standards of conduct for ethical behaviour, including for the honest and proper performance of their duties.

Academics

Universities can include the governance of tenure in their courses, and can strengthen collaboration between one another with regard to teaching and research.

How were the Guidelines developed?

The Guidelines were officially endorsed by the Committee on World Food Security (CFS) in May 2012. The CFS is the top forum of the United Nations for reviewing and following up policies concerning world food security. The text of the Guidelines was finalized during CFS-led intergovernmental negotiations, which were held in July and October 2011 and March 2012.

The Guidelines were developed through a broad global partnership of international, regional and national organizations of different types that work together to achieve global changes in governance of tenure. The development followed an inclusive process involving a series of consultations and negotiations.

CONSULTATION

2009
2010

- Ten regional, one private sector and four civil society consultation meetings were organized between September 2009 and November 2010. These meetings brought together almost 1 000 people from over 130 countries. The participants represented government institutions, civil society, private sector, academia and UN agencies. Each consultation meeting resulted in an assessment identifying issues and actions to be included in the Guidelines in the context of governance of tenure.

NEGOTIATION

2011
2012

- The Zero Draft was prepared following the conclusion of the consultation process, and an electronic consultation was organized in April/May 2011.
- The First Draft incorporated proposals that were received from the public and private sectors, civil society and academia.
- The final version of the Guidelines was prepared through intergovernmental negotiations led by the CFS in July and October 2011 and March 2012.

ENDORSEMENT

2012

- The Guidelines were endorsed by the 38th (Special) Session of the CFS on 11 May 2012.



This guide provides an overview of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. It describes the nature, purpose, contents and intended audience of the Guidelines. The guide explains what is meant by tenure and describes how improving the governance of tenure can serve to eradicate hunger and poverty and lead to the sustainable use of natural resources.

ISBN 978-92-5-107305-6



9 789251 073056

I3016E/1/07.12