

VOLUNTARY GUIDELINES ON THE

Responsible Governance of Tenure

OF LAND, FISHERIES AND FORESTS IN
THE CONTEXT OF NATIONAL FOOD SECURITY



CFS

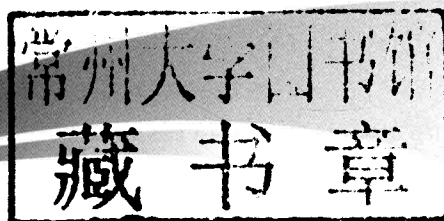
Committee on
World Food
Security



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Preface

The purpose of these 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.

These Guidelines are intended to contribute to the global and national efforts towards the eradication of hunger and poverty, based on the principles of sustainable development and with the recognition of the centrality of land to development by promoting secure tenure rights and equitable access to land, fisheries and forests.

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. The livelihoods of many, particularly the rural poor, are based on secure and equitable access to and control over these resources. They are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth.

It is important to note 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 mineral resources. 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 Guidelines, as appropriate.

How people, communities and others gain access to land, fisheries and forests is defined and regulated by societies through systems of tenure. These tenure systems determine who can use which resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices.

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 these 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. 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 and their livelihoods because of corrupt tenure practices or if implementing 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.

In response to growing and widespread interest, FAO and its partners embarked on the development of guidelines on responsible tenure governance. This initiative built 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).

At its Thirty-sixth Session in October 2010, the Committee on World Food Security (CFS) encouraged the continuation of the inclusive process for developing these Guidelines with a view to submitting them for the consideration of the CFS, and decided to establish an open-ended working group of the CFS to review the first draft of the Guidelines.

These Guidelines closely follow the format of other FAO voluntary instruments that set out principles and internationally accepted standards for responsible practices: *Voluntary Guidelines on the Right to Food*; *Code of Conduct for Responsible Fisheries*; *International Code of Conduct on the Distribution and Use of Pesticides*; *Responsible Management of Planted Forests: Voluntary Guidelines*; and *Fire Management Voluntary Guidelines: Principles and Strategic Actions*. These instruments are relatively short documents that provide frameworks that can be used when developing strategies, policies, laws, programmes and activities. They are accompanied by a wide range of additional documents, such as supplementary guidelines that provide technical details on specific aspects when necessary, training and advocacy materials, and further guidance to assist with implementation.

These Guidelines were endorsed by the CFS at its Thirty-eighth (Special) Session on 11 May 2012.

They were developed by the open-ended working group in sessions in June, July and October 2011 and in March 2012. They are based on an inclusive process of consultations that occurred during 2009-2010. Regional consultations were held in Brazil, Burkina Faso, Ethiopia, Jordan, Namibia, Panama, Romania, the Russian Federation, Samoa and Viet Nam. These regional consultations brought together almost 700 people, from 133 countries, representing the public and private sectors, civil society and academia. Four consultations, held specifically for civil society of Africa (in Mali); of Asia (in Malaysia); of Europe and Central and West Asia (in Italy); and of Latin America (in Brazil), were attended by almost 200 people from 70 countries, and an additional private sector consultation drew over 70 people from 21 countries. These Guidelines also incorporate proposals received through an electronic consultation on the zero draft. Proposals to improve the zero draft were received from the public and private sectors, civil society and academia, and from around the world.

These Guidelines are consistent with, and draw on, international and regional instruments, including the Millennium Development Goals, that address human rights and tenure rights. When readers of these Guidelines seek to improve tenure governance, they are encouraged to regularly review such instruments for their applicable obligations and voluntary commitments, and to gain additional guidance.

Contents

	PREFACE	iv
1	Preliminary	1
	1. Objectives	1
	2. Nature and scope	2
2	General matters	3
	3. Guiding principles of responsible tenure governance	3
	3A General principles	3
	3B Principles of implementation	4
	4. Rights and responsibilities related to tenure	6
	5. Policy, legal and organizational frameworks related to tenure	7
	6. Delivery of services	9
3	Legal recognition and allocation of tenure rights and duties	11
	7. Safeguards	11
	8. Public land, fisheries and forests	12
	9. Indigenous peoples and other communities with customary tenure systems	14
	10. Informal tenure	16
4	Transfers and other changes to tenure rights and duties	19
	11. Markets	19
	12. Investments	20
	13. Land consolidation and other readjustment approaches	23
	14. Restitution	25
	15. Redistributive reforms	25
	16. Expropriation and compensation	27
5	Administration of tenure	29
	17. Records of tenure rights	29
	18. Valuation	30
	19. Taxation	31
	20. Regulated spatial planning	32
	21. Resolution of disputes over tenure rights	33
	22. Transboundary matters	33
6	Responses to climate change and emergencies	35
	23. Climate change	35
	24. Natural disasters	36
	25. Conflicts in respect to tenure of land, fisheries and forests	37
7	Promotion, implementation, monitoring and evaluation	39

Preliminary

1. Objectives

- 1.1 These Voluntary Guidelines seek to improve governance of tenure of land*, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. All programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should be consistent with States' existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments.
- 1.2 These Guidelines seek to:
 1. improve tenure governance by providing guidance and information on internationally accepted practices for systems that deal with the rights to use, manage and control land, fisheries and forests.
 2. contribute to the improvement and development of the policy, legal and organizational frameworks regulating the range of tenure rights that exist over these resources.
 3. enhance the transparency and improve the functioning of tenure systems.
 4. strengthen the capacities and operations of implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned with tenure governance as well as to promote the cooperation between the actors mentioned.

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

2. Nature and scope

- 2.1 These Guidelines are voluntary.
- 2.2 These Guidelines should be interpreted and applied consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. They are complementary to, and support, national, regional and international initiatives that address human rights and provide secure tenure rights to land, fisheries and forests, and also initiatives to improve governance. Nothing in these Guidelines should be read as limiting or undermining any legal obligations to which a State may be subject under international law.
- 2.3 These Guidelines can be used by States; implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned to assess tenure governance and identify improvements and apply them.
- 2.4 These Guidelines are global in scope. Taking into consideration the national context, they may be used by all countries and regions at all stages of economic development and for the governance of all forms of tenure, including public, private, communal, collective, indigenous and customary.
- 2.5 These Guidelines should be interpreted and applied in accordance with national legal systems and their institutions.

General matters

This part addresses aspects of the governance of tenure of land, fisheries and forests with regard to rights and responsibilities; policy, legal and organizational frameworks; and delivery of services.

In the context of governance of tenure States have obligations under applicable international human rights instruments. Part 2 should be read in accordance with paragraph 2.2.

3. Guiding principles of responsible tenure governance

3A General principles

3.1 States should:

1. Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
2. Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.
3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.
4. Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means

to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.

5. Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.
- 3.2 Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved. States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.

3B Principles of implementation

These principles of implementation are essential to contribute to responsible governance of tenure of land, fisheries and forests.

1. **Human dignity:** recognizing 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:** 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, for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.
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. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.
5. **Holistic and sustainable approach:** recognizing that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.
6. **Consultation and participation:** engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.
7. **Rule of law:** 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.
8. **Transparency:** clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all.
9. **Accountability:** holding 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:** States should improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programmes and secure on-going improvements.

4. Rights and responsibilities related to tenure

- 4.1 States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.
- 4.2 States should ensure that all actions regarding tenure and its governance are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.
- 4.3 All parties should recognize that no tenure right, including private ownership, is absolute. 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. Tenure rights are also balanced by duties. All should respect the long-term protection and sustainable use of land, fisheries and forests.
- 4.4 Based on an examination of tenure rights in line with national law, States should provide legal recognition for legitimate tenure rights not currently protected by law. Policies and laws that ensure tenure rights should be non-discriminatory and gender sensitive. Consistent with the principles of consultation and participation of these Guidelines, States should define through widely publicized rules the categories of rights that are considered legitimate. All forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against forced evictions that are inconsistent with States' existing obligations under national and international law, and against harassment and other threats.
- 4.5 States should protect legitimate tenure rights, and ensure that people are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed.
- 4.6 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. Such State actions should be consistent with their existing obligations under relevant national law and legislation and international law, and with due regard to voluntary commitments under applicable regional and international instruments.
- 4.7 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.

- 4.8 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 defence of land, fisheries and forests.
- 4.9 States should provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies, which may include a right of appeal, as appropriate. Such remedies should be promptly enforced and may include restitution, indemnity, compensation and reparation. States should strive to ensure that vulnerable and marginalized persons have access to such means, in line with paragraphs 6.6 and 21.6. States should ensure that any person whose human rights are violated in the context of tenure has access to such means of dispute resolution and remedies.
- 4.10 States should welcome and facilitate the participation of users of land, fisheries and forests in order 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, as appropriate to the roles of State and non-state actors, and in line with national law and legislation.

5. Policy, legal and organizational frameworks related to tenure

- 5.1 States should provide and maintain policy, legal and organizational frameworks that promote responsible governance of tenure of land, fisheries and forests. These frameworks are dependent on, and are supported by, broader reforms to the legal system, public service and judicial authorities.
- 5.2 States should ensure that policy, legal and organizational frameworks for tenure governance are consistent with their existing obligations

under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

- 5.3 States should ensure that policy, legal and organizational frameworks for tenure governance recognize and respect, in accordance with national laws, legitimate tenure rights including legitimate customary tenure rights that are not currently protected by law; and facilitate, promote and protect the exercise of tenure rights. Frameworks should reflect the social, cultural, economic and environmental significance of land, fisheries and forests. States should provide frameworks that are non-discriminatory and promote social equity and gender equality. Frameworks should reflect the interconnected relationships between land, fisheries and forests and their uses, and establish an integrated approach to their administration.
- 5.4 States should consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women's tenure rights are implemented and enforced. States should ensure that women can legally enter into contracts concerning tenure rights on the basis of equality with men and should strive to provide legal services and other assistance to enable women to defend their tenure interests.
- 5.5 States should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset. Policies, laws and procedures should take into account the capacity to implement. They should incorporate gender-sensitive approaches, be clearly expressed in applicable languages, and widely publicized.
- 5.6 States should place responsibilities at levels of government that can most effectively deliver services to the people. States should clearly define the roles and responsibilities of agencies dealing with tenure of land, fisheries and forests. States should ensure coordination between implementing agencies, as well as with local governments, and indigenous peoples and other communities with customary tenure systems.
- 5.7 States should define and publicize opportunities for civil society, private sector and academia to contribute to developing and implementing policy, legal and organizational frameworks as appropriate.
- 5.8 States and other parties should regularly review and monitor policy, legal and organizational frameworks to maintain their effectiveness. Implementing agencies and judicial authorities should engage with civil society, user representatives and the broader public to improve services and endeavour 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.

- 5.9 States should recognize that policies and laws on tenure rights operate in the broader political, legal, social, cultural, religious, economic and environmental contexts. Where the broader contexts change, and where reforms to tenure are therefore required, States should seek to develop national consensus on proposed reforms.

6. Delivery of services **

- 6.1 To the extent that resources permit, States should ensure that implementing agencies and judicial authorities have the human, physical, financial and other forms of capacity to implement policies and laws in a timely, effective and gender-sensitive manner. Staff at all organizational levels should receive continuous training, and be recruited with due regard to ensuring gender and social equality.
- 6.2 States should ensure that the delivery of services related to tenure and its administration are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.
- 6.3 States should provide prompt, accessible and non-discriminatory services to protect tenure rights, to promote and facilitate the enjoyment of those rights, and to resolve disputes. States should eliminate unnecessary legal and procedural requirements and strive to overcome barriers related to tenure rights. States should review services of implementing agencies and judicial authorities, and introduce improvements where required.
- 6.4 States should ensure that implementing agencies and judicial authorities serve the entire population, delivering services to all, including those in remote locations. Services should be provided promptly and efficiently using locally suitable technology to increase efficiency and accessibility. Internal guidelines should be established so that staff can implement policies and laws in a reliable and consistent manner. Procedures should be simplified without threatening tenure security or quality of justice. Explanatory materials should be widely publicized in applicable languages and inform users of their rights and responsibilities.
- 6.5 States should establish policies and laws to promote the sharing, as appropriate, of spatial and other information on tenure rights for the effective use by the State and implementing agencies, indigenous peoples

** Section 6 guides in particular the reading of sections 17 to 21.

and other communities, civil society, the private sector, academia and the general public. National standards should be developed for the shared use of information, taking into account regional and international standards.

- 6.6 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, such as affordable legal aid, and may also include the provision of services of paralegals or parasurveyors, and mobile services for remote communities and mobile indigenous peoples.
- 6.7 States should encourage implementing agencies and judicial authorities to foster a culture based on service and ethical behaviour. Agencies and judicial authorities should seek regular feedback, such as through surveys and focus groups, to raise standards and improve delivery of services, to meet expectations, and to satisfy new needs. They should publish performance standards and report regularly on results. Users should have means of addressing complaints either within the implementing agency, such as by administrative review, or externally, such as by an independent review or through an ombudsman.
- 6.8 Relevant professional associations for services related to tenure should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should adhere to applicable ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States should ensure an environment conducive to their establishment.
- 6.9 States and non-state actors should endeavour to prevent corruption with regard to tenure rights. States should do so particularly through consultation and participation, rule of law, transparency and accountability. States should adopt and enforce anti-corruption measures including applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations. States should provide for the administrative and/or judicial review of decisions of implementing agencies. Staff working on the administration of tenure should be held accountable for their actions. They should be provided with the means of conducting their duties effectively. They should be protected against interference in their duties and from retaliation for reporting acts of corruption.