

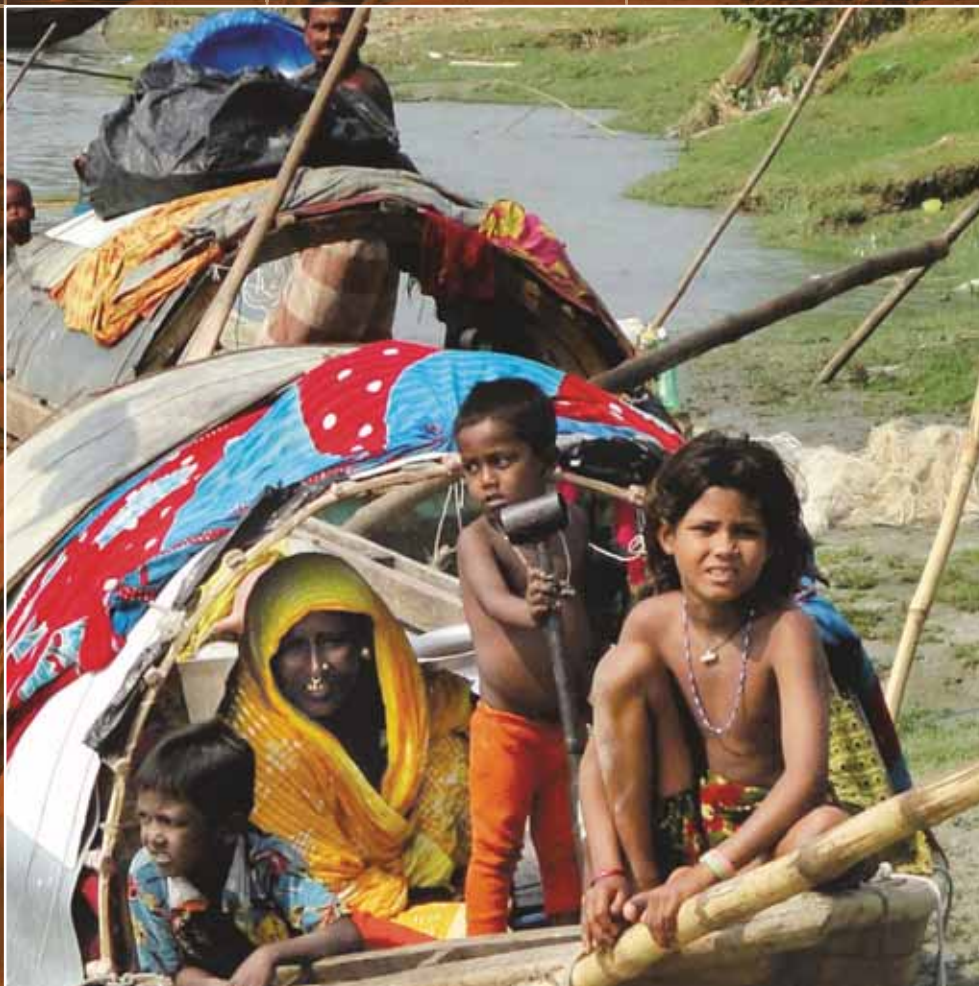
**LAND
TENURE**
JOURNAL

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 FORE

GOVERNANCE OF
TENURE
Making it happen



LAND TENURE JOURNAL

The *Land Tenure Journal* is a peer-reviewed, open-access flagship journal of the Climate, Energy and Tenure Division of the Food and Agriculture Organization of the United Nations (FAO). The *Land Tenure Journal*, launched in early 2010, is a successor to the *Land Reform, Land Settlement and Co-operatives*, which was published between 1964 and 2009. The *Land Tenure Journal* is a medium for the dissemination of quality information and diversified views on land and natural resources tenure. It aims to be a leading publication in the areas of land and other natural resource tenure, policy and reform. The prime beneficiaries of the journal are land administrators and professionals although it also allows room for relevant academic contributions and theoretical analyses.

REVUE DES QUESTIONS FONCIERES

La *Revue des questions foncières* est une publication phare, accessible à tous et révisée par les pairs de la Division du climat, de l'énergie et des régimes fonciers de l'Organisation des Nations Unies pour l'alimentation et l'agriculture (FAO). La *Revue des questions foncières*, lancée au début 2010, est le successeur de la revue *Réforme agraire, colonisation et coopératives agricoles*, publiée par la FAO entre 1964 et 2009. La *Revue des questions foncières* est un outil de diffusion d'informations de qualité et d'opinions diversifiées sur le foncier et les ressources naturelles. Elle a pour ambition d'être une publication de pointe sur les questions relatives aux régimes fonciers, aux politiques foncières et à la réforme agraire. Les premiers bénéficiaires de la revue sont les administrateurs des terres et les professionnels du foncier, mais elle est également ouverte à des contributions universitaires et à des analyses théoriques pertinentes.

REVISTA SOBRE TENENCIA DE LA TIERRA

La *Revista sobre tenencia de la tierra* es una revista insignia de revisión por pares de libre acceso de la División de Clima, Energía y Tenencia de Tierras de la Organización de las Naciones Unidas para la Alimentación y la Agricultura (FAO). Es la sucesora de *Reforma agraria, colonización de la tierra y cooperativas*, que se publicó entre 1964 y 2009. La *Revista sobre tenencia de la tierra*, cuyo primer número apareció a comienzos de 2010, es un medio de difusión de información de calidad que proporciona opiniones diversas sobre la tenencia de la tierra y de los recursos naturales. Aspira a ser una publicación líder en el sector de la tenencia de la tierra y de otros recursos naturales, las políticas y la reforma de la tenencia. Los principales beneficiarios de la Revista son los administradores de la tierra y los profesionales del sector aunque también da espacio a contribuciones académicas relevantes y análisis teóricos.

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OCTOBER 2012

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REVUE DES
**QUESTIONS
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REVISTA SOBRE
TENENCIA DE
LA **TIERRA**

FOOD AND AGRICULTURE
ORGANIZATION OF
THE UNITED NATIONS

ORGANISATION DES NATIONS
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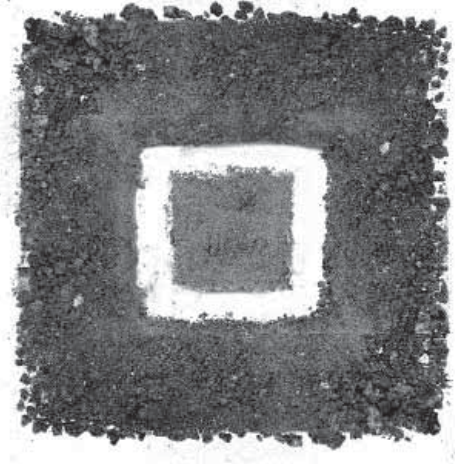
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Preface

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

Este número 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.

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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

RÉSUMÉ

SUMARIO

VOLUNTARY GUIDELINES

DIRECTIVES VOLONTAIRES

DIRECTRICES VOLUNTARIAS

GOVERNANCE OF TENURE

GOVERNANCE FONCIÈRE

GOBERNANZA DE LA TENENCIA

COMMITTEE ON WORLD FOOD SECURITY

COMITÉ DE LA SÉCURITÉ ALIMENTAIRE MONDIALE

COMITÉ DE SEGURIDAD ALIMENTARIA MUNDIAL

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.

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

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.



Applying these principles

Responsible governance of tenure is about these principles and how they are translated into action. The rules of tenure determine the access that people have to the natural resources which support their livelihoods. As tenure is dynamic and bound to change, safeguards should exist to protect the vulnerable from losing their livelihoods as a result of such changes.

Responsible governance ensures that policies and rules result in equitable and secure access to land, fisheries and forests. Decisions to reconcile competing interests in land, fisheries and forests are made at the appropriate level. These decisions are properly informed when the decision-making processes are transparent and provide for equitable participation. Tenure should be monitored and periodically evaluated to ensure that it appropriately reflects all of society's needs. All stakeholders are responsible for their actions.

Responsible governance requires that formal recognition is given to all tenure rights that are considered legitimate by society. Even if decision-making processes are improved, some people may continue to be excluded because they are not regarded to be legitimate stakeholders. Where the law does not recognize the tenure rights that people have to their homes and land, forests and fisheries, those people are unable to participate in formal processes to prevent their eviction or exclusion.

Responsible governance results in an administration of tenure that responds effectively to the needs of all citizens. It ensures that the administration of tenure is efficient by providing services that are timely and affordable. Services are responsive to the needs of people who request them. Relevant agencies are placed on a stable financial basis, allowing for the payment of salaries that are sufficient for employees to support their families, for staff training, and for the redesign of offices and procedures to make them better suited for staff and customers.

Responsible governance improves transparency and standards. Technical activities can proceed without political interference when there are clearly defined roles and responsibilities for the execution and supervision of the activities. Simplifying the institutional framework removes causes of uncertainty, confusion and conflict.

Responsible governance ensures that policies and rules result in equitable and secure access to land, fisheries and forests

Responsible governance requires that formal recognition is given to all tenure rights that are considered legitimate by society

Responsible governance results in an administration of tenure that responds effectively to the needs of all citizens

Responsible governance improves transparency and standards

THE CONTENTS OF THE GUIDELINES

The Guidelines consider tenure rights to land, fisheries and forests in an integrated manner, and gender is mainstreamed throughout the Guidelines.

The Guidelines have 7 main parts:

- Part 1: Preliminary
- Part 2: General matters
- Part 3: Legal recognition and allocation of tenure rights and duties
- Part 4: Transfers and other changes to tenure rights and duties
- Part 5: Administration of tenure
- Part 6: Responses to climate change and emergencies
- Part 7: Promotion, implementation, monitoring and evaluation

Part 1: Preliminary

This part sets the direction of the Guidelines.

- **Section 1 (Objectives)** lays out the purpose of the Guidelines, i.e. to provide guidance to improve the governance of tenure of land, fisheries and forests. Their overarching goals are to achieve food security for all and to 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 intended to benefit all people in all countries, although there is an emphasis on vulnerable and marginalized people.
- **Section 2 (Nature and scope)** emphasizes the voluntary nature of the Guidelines, and that they should be interpreted and applied consistent with each State's existing obligations under national and international law, and with due regard to its voluntary commitments under applicable regional and international instruments.

Part 2: General matters

This part provides guidance which applies to all situations of governance of tenure, i.e. the guidelines presented in these sections should also be considered when reading the sections on specific topics that follow.



- **Section 3 (Guiding principles on responsible tenure governance).** The general principles and principles of implementation are summarized above.
- **Section 4 (Rights and responsibilities related to tenure)** stresses that legal recognition should be given to legitimate tenure rights that are not currently protected by law, that legitimate tenure rights should be protected, and that all forms of discrimination related to tenure rights should be removed.
- **Section 5 (Policy, legal and organizational frameworks related to tenure)** encourages States to ensure that all policies, laws and administrative structures for tenure recognize and respect legitimate tenure rights, are non-discriminatory, and address the obstacles often faced by women and girls with regard to tenure. States should ensure coordination between implementing agencies, as well as with local governments, and indigenous peoples and other communities with customary tenure systems.
- **Section 6 (Delivery of services)** recommends that 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. Public agencies and judicial authorities should serve the entire population, including those in remote locations. Services should be timely and affordable, and respond to the needs of those who request the services.

Part 3: Legal recognition and allocation of tenure rights and duties

This part addresses the legal recognition of tenure rights of indigenous peoples and other communities with customary tenure systems, and the legal recognition of informal tenure rights. It also covers the initial allocation of tenure rights to land, fisheries and forests that are owned or controlled by the public sector.

- **Section 7 (Safeguards)** stresses that when States recognize or allocate tenure rights, they should put safeguards in place to avoid infringing on or extinguishing the tenure rights of others. States should first identify all existing tenure rights and right holders, whether recorded or not. Men and women should enjoy the same rights when tenure rights are recognized. People whose tenure rights are recognized or who are allocated tenure rights should have full knowledge of their rights.

- **Section 8 (Public land, fisheries and forests)** recommends that States should recognize legitimate tenure rights to land, fisheries and forests that are publicly owned or controlled. States should determine which of the land, fisheries and forests they will retain and use, and which of these resources will be allocated for use by others and under what conditions.
- **Section 9 (Indigenous peoples and other communities with customary tenure systems)** emphasizes that particular attention should be given to the recognition and protection of customary tenure rights. States and other parties should hold good faith consultations with indigenous peoples and other communities before initiating any project that affects the resources for which the communities hold rights.
- **Section 10 (Informal tenure)** encourages States to acknowledge the emergence of informal tenure, particularly where it arises from large-scale migrations. States should give legal recognition to informal tenure where this is possible, and where it is not possible, States should prevent forced evictions.

Part 4: Transfers and other changes to tenure rights and duties

This part provides guidance for when tenure rights are transferred or changed in various ways after their initial recognition or allocation.

- **Section 11 (Markets)** recommends that States should establish transparent and efficient market operations, provide non-discriminatory access to markets, and prevent uncompetitive practices.
- **Section 12 (Investments)** recognizes that responsible investments are essential to improve food security. Investments should do no harm and safeguard against holders of legitimate tenure rights being dispossessed of their rights.
- **Section 13 (Land consolidation and other readjustment approaches)** encourages States to consider ways to improve the layout and use of parcels or holdings, while ensuring that all participants are at least as well off after the schemes compared with before.
- **Section 14 (Restitution)** recommends that States should consider providing restitution for the loss of legitimate tenure rights by returning the original parcels to the people who suffered the loss. Where the original parcels cannot be returned, adequate compensation in the form of money, alternative parcels or a combination should be provided.



- **Section 15 (Redistributive reforms)** recommends that States may consider implementing redistributive reforms in order to facilitate broad and equitable access to land, fisheries and forests. Such reforms should respect existing legitimate tenure rights, and should provide the required support to beneficiaries, e.g. access to credit, inputs and technical assistance in rural extension.
- **Section 16 (Expropriation and compensation)** focuses on the expropriation of tenure rights for public purposes, and the provision of a fair valuation and prompt compensation for the loss of tenure rights.

Part 5: Administration of tenure

This part covers the administrative aspects of effective governance of tenure.

- **Section 17 (Records of tenure rights)** stresses the importance of providing systems for recording all types of tenure rights to improve tenure security. People should be able to record their tenure rights without discrimination.
- **Section 18 (Valuation)** focuses on the provision of fair and timely valuations of tenure rights for specific purposes, such as markets, security for loans, investments, expropriation and taxation.
- **Section 19 (Taxation)** recommends that tax policies and laws related to tenure rights should be used where appropriate to provide financing for decentralized levels of government and the local provision of services.
- **Section 20 (Regulated spatial planning)** recognizes that the regulation of spatial use (such as land use) affects tenure rights by reducing the options for using the natural resources. Spatial planning should be carried out in ways that reconcile and harmonize different objectives for the use of the natural resources. Proposals for spatial planning should be developed with wide public participation.
- **Section 21 (Resolution of disputes over tenure rights)** stresses the importance of access to timely, affordable and effective means of resolving disputes over tenure rights. Access to justice may be provided through judicial and administrative bodies, specialized tribunals and alternative forms of dispute resolution.
- **Section 22 (Transboundary matters)** recognizes that while tenure is a matter of national sovereignty, there may be transboundary aspects, e.g. involving pastoralists whose traditional grazing areas or seasonal migration routes lie across international boundaries.



Part 6: Responses to climate change and emergencies

The earlier parts of the Guidelines largely address "every day" situations, whereas this part addresses extreme situations where people could be displaced on a large scale. In all cases, States should prepare and implement strategies and actions with the consultation 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)* encourages policies and laws on tenure to take into account possible strategies and actions to deal with the effects of climate change.
- *Section 24 (Natural disasters)* recommends that tenure is addressed in disaster preparedness programmes, and in the emergency and reconstruction phases following natural disasters.
- *Section 25 (Conflicts in respect to tenure of land, fisheries and forests)* stresses that tenure problems should be resolved in order that they do not lead to conflicts. When conflicts arise, States and others should try to protect tenure rights and related records. When conflicts cease, States should ensure that the restitution and resettlement programmes support lasting solutions.

Part 7: Promotion, implementation, monitoring and evaluation

The final part provides guidance on how the principles and practices of the Guidelines can be promoted, implemented, monitored and evaluated.



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

**FAVORISER
UN NOUVEAU
CONSENSUS**
**Les Directives
volontaires pour la
gouvernance foncière**

**PROMOCIÓN DE UN
NUEVO CONSENSO
MUNDIAL**
**Las Directrices
voluntarias sobre
la gobernanza de la
tenencia**



ABSTRACT

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This is the second in a series of four papers on the Voluntary Guidelines on the Governance of Tenure. This paper presents the preparation of the Guidelines. The first paper provides an overview of the Guidelines and briefly describes tenure and the need for the Guidelines. The third paper 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.

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 bringing together government

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

Les Directives ont été élaborées à travers un large partenariat d'organisations internationales, régionales et nationales de divers types qui ont œuvré ensemble pour parvenir à des changements en matière de gouvernance foncière, à l'échelle mondiale. L'élaboration

Este es el segundo de una serie cuatro estudios dedicados a las Directrices voluntarias sobre la gobernanza de la tenencia. En él se presenta el proceso de preparación de las Directrices. En el primer estudio se expone una visión de conjunto de las Directrices, se describe brevemente el concepto de tenencia y se justifica la necesidad de disponer de Directrices al respecto. El tercer estudio describe por qué las Directrices se enfocan en la tenencia de la tierra, la pesca y los bosques, y el cuarto aborda la ejecución de las Directrices.

Las Directrices han sido elaboradas por medio de una alianza mundial de gran alcance formada por organizaciones internacionales, regionales y nacionales de diferentes tipos que trabajan mancomunadamente para introducir cambios en la gobernanza



representatives, civil society organizations, private sector actors, international organizations and members of academia.

The Guidelines were officially endorsed by the Committee on World Food Security (CFS) in May 2012. They are the first comprehensive global instrument on governance of tenure and its administration to be prepared through intergovernmental negotiations. This new consensus is complementary to agreements on aspects of tenure that were reached in earlier international instruments but is far more comprehensive.

des Directives a donné lieu à un processus ouvert comportant une série de consultations et de négociations qui ont rassemblé des responsables gouvernementaux, des représentants d'organisations de la société civile, des acteurs du secteur privé et des universitaires.

Les Directives ont été officiellement adoptées par le Comité de la sécurité alimentaire mondiale (CSA) en mai 2012. Il s'agit du premier outil complet en matière de gouvernance et d'administration des régimes fonciers préparé à travers des négociations intergouvernementales. Ce nouveau consensus complète les accords déjà réalisés à l'égard de certains aspects des régimes fonciers à travers des instruments précédents, mais celui-ci est beaucoup plus complet.

de la tenencia en todo el mundo. La elaboración de las Directrices tuvo lugar tras un proceso incluyente de consulta y negociaciones en el que participaron representantes de gobierno, organizaciones de la sociedad civil, agentes del sector privado, organizaciones internacionales y académicos.

Las Directrices fueron ratificadas oficialmente por el Comité de Seguridad Alimentaria Mundial (CFS) en mayo de 2012. Las Directrices son el primer instrumento mundial exhaustivo sobre la gobernanza de la tenencia y su administración que haya sido preparado gracias a negociaciones intergubernamentales. Este consenso, recientemente logrado, es complementario de varios acuerdos sobre aspectos de la tenencia, pactados anteriormente en otros instrumentos internacionales, pero es mucho más completo que aquéllos.



INTRODUCTION

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* represent the first comprehensive, global instrument on tenure and its administration to have been developed by governments through negotiations conducted in the United Nations system. These Guidelines thus represent the greatest extent of “common ground” on tenure that has been found to date in a global forum.

This paper briefly reviews the newly emerged consensus as well as the agreements regarding aspects of tenure that were reached in earlier international instruments. It then traces out the development of the new consensus through the preparation and finalization of the Guidelines.

EVOLUTION OF A CONSENSUS ON TENURE

Extending the consensus

The extent of the consensus reached in the intergovernmental negotiations is represented by the contents of the Guidelines, which are briefly described in the first paper of this volume. The Guidelines build on the consensus reached in earlier international instruments that deal with aspects of tenure, but expand the treatment in several ways.

First, a number of earlier instruments refer to property, and often without making any distinction between immovable/real property and moveable/personal property. The Guidelines do not focus on property and property rights, which are usually associated with rights of ownership. Instead, they refer to tenure rights in recognition that many of the poor gain access to land and other natural resources through tenure rights other than ownership.

Second, the Guidelines do not focus only on tenure rights to land, but also explicitly address tenure rights to fisheries and forests in recognition that the livelihoods of many of the poor are diversified and dependent on access to different natural resources. Water rights were initially considered for possible inclusion but were omitted because of the highly political nature and complex legal situations of transboundary water. Nonetheless, the Guidelines' preface

The Guidelines build on the consensus reached in earlier international instruments that deal with aspects of tenure

(which was negotiated) notes that states may wish to consider taking the governance of water and other associated natural resources into account when they implement the Guidelines.

Third, the Guidelines are specifically on the governance of tenure in recognition that governance is often a crucial element in determining if and how people, communities and others are able to acquire tenure rights to use and control land, fisheries and forests.

Moreover, the Guidelines do not present a tenure right as a human right but instead place tenure rights in the context of human rights. They recognize that tenure rights are important for the realization of human rights, including the progressive realization of the rights to adequate food and to adequate housing.

The earlier development of a consensus

The early international negotiations relevant to tenure are on human rights and they centre on property and its ownership.

The innovative and influential Universal Declaration of Human Rights (UDHR), which was adopted by the General Assembly of the United Nations in 1948, famously states in Article 17 that "Everyone has the right to own property alone as well as in association with others", and that "No one shall be arbitrarily deprived of his property". During the negotiation process, representatives of countries often used the term "property" without feeling the need to define what they meant by it, but sometimes they viewed property as "property rights to land" (e.g. with references to real property, real estate and immovable property), and at other times they meant property to include personal or movable property, as well as banks, industrial and commercial enterprises, means of communication, mines and transportation services. Intellectual property, however, was not included in the meaning of property in Article 17 and was given recognition in Article 27.¹

¹ Drafting Committee, First Session, 8th meeting, 17 June 1947 (E/CN.4/AC.1/SR.8); Commission on Human Rights, Third Session, 61st meeting, 7 June 1948 (E/CN.4/AC.1/SR.61); General Assembly, Third Committee, 126th meeting, 8 November 1948; General Assembly, Third Committee, 150th Meeting, 20 November 1948; 151st Meeting, 22 November 1948.



A number of instruments that followed also make only a general reference to property, although some further expand the concept by making explicit a right to inherit, and introduce a requirement for compensation to be paid when someone is deprived of property:

- International Convention on the Elimination of All Forms of Racial Discrimination (Article 5).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 15).
- American Convention on Human Rights (Article 21).
- African Charter on Human and Peoples' Rights (Articles 14 and 21).
- European Convention on Human Rights (Protocol 1, Article 1).
- Charter of Fundamental Rights of the European Union (Article 17).
- Arab Charter on Human Rights (Article 31).

In addition, some instruments make more specific reference to what are usually considered to be property rights to land:

- Convention relating to the Status of Refugees: Article 13 identifies immovable property as well as moveable property.
- Convention relating to the Status of Stateless Persons: Article 13 identifies immovable and moveable property.
- Convention on the Elimination of All Forms of Discrimination against Women: Article 13 identifies the right to mortgages; Article 14 requires State Parties to ensure that women have the right to equal treatment in land and agrarian reform as well as in land resettlement schemes. (Beyond that, Articles 15 and 16 make general references to "property").
- Convention on the Rights of Persons with Disabilities: Article 12 includes equal access to mortgages along with other references to "property".
- UN Declaration on Social Progress and Development: Article 6 identifies "forms of ownership of land" along with general references to property.

The most detailed treatment of tenure comes through instruments that focus on the rights of specified groups, i.e. the International Labour Organisation Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, and the United Nations Declaration on the Rights of Indigenous Peoples.

Member countries of FAO identified the need for action on tenure in several international instruments:

- Universal Declaration on the Eradication of Hunger and Malnutrition, 1974 (which calls for States to remove obstacles to food production, including through measures of agrarian policy reform and the reform of conditions of ownership).
- Declaration of Principles and Programme of Action of the World Conference on Agrarian Reform and Rural Development, 1979 (which calls for the reorganization of land tenure and tenancy reform; regulation of changes in customary tenure; land consolidation; promotion of group farming cooperatives and collective and state farms; community control over natural resources; settlement of unoccupied public lands; and the reduction of inter-regional and inter-community inequalities).
- Declarations of the World Food Summit, 1996, Articles 15, 16, 17 and 19; of its follow-up in 2002, Article 4; and of the World Summit on Food Security, 2009, paragraph 25 (which call for improved access, by men and women, to land and other natural resources).
- Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD), 2006 (which calls for more equitable distribution of land through agrarian reform and an emphasis on national dialogue).

The consensus on tenure was further strengthened through the FAO-led intergovernmental negotiations which resulted in the international soft law instrument of 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). The right to food is an established human right, confirmed for example by the UDHR (Article 25) and the International Covenant on Economic, Social and Cultural Rights (Article 12). The Voluntary Guidelines on the Right to Food address tenure in Guidelines 8 (Access to Resources and Assets) and 8B (Land), and also in Guideline 2 (Economic development policies). Guidelines on tenure are thus placed in a human rights-based instrument.



Human rights and tenure rights

The records of the various meetings of the drafters of the UDHR showed that from the start there was a strong and broad consensus that a right to own property was a human right (and specifically a civil right).² However, it proved challenging to draft an article on property for the UDHR and the associated covenants (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) that together form the International Bill of Human Rights.

The drafters agreed that a right to own property should be protected, and also that the ownership of private property is limited by the rights of other people, the public interest, and the State. Going beyond this simple consensus raised several questions. If the right to own property is a human right that should be protected, for what purposes should the property be expropriated and what compensation should be paid? If the human right to own property is limited, is there a minimum limit of property that is essential for a certain standard of living? And is there a maximum limit of property above which the right to own property should not be considered as a human right? There was some support for limiting the right to own property to that needed for a livelihood but the proposals put forward were considered to be too difficult to define, subjective, and open to different interpretations.³

The development of consensus on the UDHR and the associated covenants was further limited by the global conditions at the time. There were widely differing conceptions of property and any negotiated text had to be acceptable to capitalist and communist countries alike. The negotiations raised questions of what could be owned and by whom. At the start of the negotiations there

2 Drafting Committee First Session, 4th meeting, 12 June 1947 (E/CN.4/AC.1/SR.4); 8th meeting, 17 June 1947 (E/CN.4/AC.1/SR.8), 9th meeting, 18 June 1947 (E/CN.4/AC.1/SR.9); Report to the Commission on Human Rights 1st July 1947 (E/CN.4/21); Drafting Committee, First Session, Report to the Commission on Human Rights, 1 July 1947 Annex H (E/CN.4/21).

3 Drafting Committee, First Session, 8th meeting, 17 June 1947 (E/CN.4/AC.1/SR.8), 13th meeting, 20 June 1947 (E/CN.4/AC.1/SR.13); Report to the Commission on Human Rights, Annex F, 1st July 1947 (E/CN.4/21). General Assembly, Third Committee, 126th meeting, 8 November 1948. Commission on Human Rights, Second Session, 2 to 17 December 1947 (document E/600); Sixth Session, 27 March to 19 May 1950 (A/CN.4/507); Seventh Session, 16 April to 19 May 1951; Eighth Session, 14 April to 14 June 1952; Tenth Session, 23 February to 16 April 1954 (E/CN.4/705); Annotations on the text of the draft International Covenants on Human Rights, 1 July 1955 (A2929).

was strong support for the view that the right to own property should be in conformity with the laws of the State in which the property was located. However, divisions emerged during the negotiations. Some countries held that the UDHR should not be directed against national sovereignty. But with the human rights violations of the Second World War fresh in memories, other countries felt it was paramount that the UDHR should put forward the fundamental rights of individuals and not of states. They argued that internationally recognised human rights should not be diminished by national laws, and that the inclusion of references to national laws could result in giving approval to all existing laws, whether they are good or bad. The latter view prevailed in the end.⁴

There was thus limited consensus regarding the right to own property as a human right. In the case of the UDHR, the difficulties prompted some early calls for the elimination of any reference to property. In the end, a compromise was reached in the form of the general and abstract text of Article 17, a formulation that "said so little that everyone could agree with it. At the same time, it allowed participants to read into it what he /she wanted." (Samnoy, 1999). With regard to the associated covenants, the Commission on Human Rights wrestled with the matter for several years. While the right of an individual to own property was not questioned, it was not possible to find consensus on any text, and negotiations on property stopped after the Tenth Session in 1954. As a result, the two covenants did not mention a human right to property when they were adopted in 1966.⁵

4 Drafting Committee, First Session, 8th meeting, 17 June 1947 (E/CN.4/AC.1/SR.8); Second Session, United States' Recommendations, 5 May 1948 (E/CN.4/AC.1/21). Commission on Human Rights, Second Session, Report to the Economic and Social Council, 2 to 17 December 1947 (document E/600); Third Session, Communication received from the French Government, 6 May 1948 (E/CN.4/82/Add.8); 49th Meeting, 27 May, 1948 (E/CN.4/AC.1/SR.49). 59th Meeting, 4 June 1948 (E/CN.4/AC.1/SR.59); 61st meeting, 7 June 1948 (E/CN.4/AC.1/SR.61); Seventh Session, 16 April to 19 May 1951; Eight Session, 14 April to 14 June 1952. General Assembly, Third Committee, 126th meeting, 8 November 1948. 1948-49 United Nations Year Book, V. Social, Humanitarian and Cultural Questions, 1. Universal Declaration of Human Rights.

5 Drafting Committee, First Session, 8th meeting, 17 June 1947 (E/CN.4/AC.1/SR.8). Samnoy, A. 1999. The origins of the Universal Declaration of Human Rights. In A. Alfredsson and A. Eide, eds. *The Universal Declaration of Human Rights: A common standard of achievement*, pp. 3-22. The Hague, Martinus Nijhoff. Commission on Human Rights, Seventh Session 16 April to 19 May 1951; Eighth Session 14 April to 14 June 1952; Tenth Session 23 February to 16 April 1954.



Despite the difficulties in negotiating the UDHR, the right to own property is now well-established as a human right. Regional courts on human rights have ruled on cases regarding property, including on immovable/real property, i.e. property rights to land. However, there is currently no international consensus that a "right to land" is a human right, and also not a common understanding of what is meant by a "right to land". The fact that access to land can be a fundamental element of the realization of the rights to adequate food and to adequate housing has not led to a global acceptance that the human rights to food and to housing are the same as a right to land.⁶

In light of the limited consensus regarding tenure and human rights, the Guidelines distinguish between human rights and tenure rights in general, but yet they place tenure rights in the context of human rights. The Guidelines specifically declare that their implementation should be consistent with a State's existing obligations under international law, including the UDHR and other international human rights instruments, and further say that they do not limit or undermine any legal obligations to which a State may be subject under international law (paragraphs 1.1 and 2.2).

The implementation of the Guidelines should be consistent with a State's existing obligations under international law

PREPARATION OF THE GUIDELINES ON TENURE

The preliminary steps

FAO has worked on land tenure since 1947 and governance has been implicit in this work, even if not explicitly stated. The explicit inclusion of governance in FAO's work on land tenure and its administration began in early 2005 when land tenure staff began to explore the idea of a code of conduct and an associated field programme.

⁶ Golay, C. and Cismas, I. Legal opinion: The right to property from a human rights perspective. International Centre for Human Rights and Democratic Development, and Geneva Academy of International Humanitarian Law and Human Rights. Office of the United Nations High Commissioner for Human Rights and UNHABITAT: The Right to Adequate Housing. Fact Sheet No. 21/Rev.1; Wickeri, E. and Kalhan, A. Land Rights Issues in International Human Rights Law. Institute for Human Rights and Business.

At that time, the Voluntary Guidelines on the Right to Food had been recently adopted by the FAO Council in November 2004, and work was underway for the preparation of the International Conference on Agrarian Reform and Rural Development (ICARRD), which was held in Brazil in March 2006. These different but related initiatives provided new opportunities to frame discussion on the governance of tenure.

The initial work on governance of land administration was supported by FAO's Regular Programme and a Finnish Trust Fund. A number of research and background papers were prepared and published as volumes of the FAO Land Tenure Studies and Land Tenure Working Papers. Through collaboration with Transparency International, questions on the land sector were included in the Global Corruption Barometer 2009, and the survey results showed the need to improve governance in all regions of the world.

Work also started on securing funding for the preparation of an international instrument. The initial concept note was for a "Code for good governance in land tenure" but the concept was soon modified and broadened to the "Voluntary Guidelines on the responsible governance of tenure of land and other natural resources". "Voluntary guidelines" was introduced as the experience of other initiatives showed that the word "code" was often understood to mean a legal code (i.e. a code that was binding) when it was translated to other languages. Similarly, "responsible" replaced "good", which was sometimes considered to be a subjective term, i.e. what is good for one might not be good for another. Importantly, the scope was extended to include the "tenure of other natural resources" in addition to land tenure, and FAO staff working on forestry, fisheries, law, gender and water also participated in the initiative. The broadening of the scope and the formation of an FAO interdisciplinary team for the work on the Guidelines was built on the foundations laid by earlier interdepartmental collaboration on tenure, and which had been facilitated through trust funds provided by the United Kingdom, Norway and the Netherlands.

Work in support of the Guidelines included a small "partners meeting" in June 2008 to gauge interest by UN agencies and others for the initiative, and a larger "expert meeting" in November 2008 to present the idea more



broadly and to review issues that would likely have to be addressed by the Guidelines. In addition, a website and newsletter were launched in September 2009.

Germany and IFAD showed interest in the concept and each agreed to fund certain outputs and activities. Their trust fund projects became operational between late 2009 and early 2010. Switzerland also expressed an interest in the Guidelines and the issue of large-scale land acquisitions and provided additional project funding which became operational in early 2011.

The consultation process and preparation of the First Draft

The availability of project funding allowed for a wide-ranging and inclusive consultation process to determine what should be included in the Guidelines, although the first regional consultation was held before the first trust fund project became operational in order not to delay the overall schedule. Each consultation meeting was prepared and conducted in collaboration with national and international partners. Each meeting produced an assessment of issues that was posted on the website.

Regional concerns regarding tenure governance were identified in 10 regional consultations held between September 2009 and November 2010. These consultations brought together almost 700 people from the public and private sectors, civil society and academia, and representing 133 countries. (See Box 1.)

Regional concerns regarding tenure governance were identified in 10 regional consultations

- **Southern Africa** (Windhoek, Namibia; 28-30 September 2009), hosted by the Ministry of Lands and Resettlement of Namibia; funded by FAO and the Ministry for Economic Development, Germany; and organized by FAO, GTZ and Namibia Institute for Democracy.
- **Asia** (Hanoi, Viet Nam; 19-22 October 2009), funded by FAO, UN-HABITAT (GLTN), co-sponsored by FIG in parallel with the 7th FIG Regional Conference; and organized by FAO, FIG and the World Bank.

Box 1
The regional consultation meetings



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- **Europe** (Bucharest, Romania; 22-24 March 2010), hosted by the National Agency for Cadastre and Land Registration (ANCPI), Ministry of Administration and Interior, Romania; funded by the German trust fund project; and organized by FAO, GTZ and ANCPI.
 - **Near East and North Africa** (Amman, Jordan; 2-4 May 2010), hosted by the University of Jordan under the patronage of the Ministry of Municipal Affairs, Jordan; funded by the German and IFAD trust fund projects; and organized by FAO and the Universities of Birzeit and Jordan.
 - **Latin America** (Brasilia, Brazil; 20-21 May 2010), hosted by the Agrarian Development and Agricultural Ministries of Brazil; funded by the German and IFAD trust fund projects; and organized by FAO's Regional Office for Latin America and the Caribbean.
 - **Francophone Africa** (Ouagadougou, Burkina Faso; 23-25 June 2010), funded by the German and IFAD trust fund projects; and organized by FAO, SNV, GRAF and GRET.
 - **Pacific** (Apia, Samoa; 14-16 July 2010), hosted by the Ministry of Natural Resources and Environment, Samoa; funded by the German and IFAD trust fund projects; and organized by FAO's Subregional Office for the Pacific, Secretariat of the Pacific Community, and University of the South Pacific.
 - **Central America and Caribbean** (Panama City, Panama; 6-8 September 2010), funded by the German trust fund project and Conseil Supérieur du Notariat (France); and organized by FAO's Subregional Offices for Central America and the Caribbean, UNDP and the International Centre for Sustainable Development.
 - **Eastern and Anglophone Western Africa** (Addis Ababa, Ethiopia; 20-22 September 2010), hosted by UN-ECA and overseen by the Ministry of Agriculture and Rural Development, Ethiopia; funded by the German and IFAD trust fund projects and UN-HABITAT (GLTN); and organized by FAO's Subregional Office for Eastern Africa, WFP, UNDP and the African Union Land Policy Initiative.
 - **Commonwealth of Independent States** (Moscow, Russian Federation; 23-25 November 2010), hosted by the Ministry of Agriculture, Russian Federation; funded by the German trust fund project; and organized by FAO, the Ministry of Agriculture, Russian Federation, and Moscow Timiryazev Agricultural Academy.
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Four consultation meetings were held specifically for civil society organizations of Asia (Kuala Lumpur, Malaysia; 24–26 March 2010); of Latin America (Brasilia, Brazil; 19 May 2010); of Europe and Central and West Asia (Rome, Italy; 7–9 July 2010); and of Africa (Nyeleni, Mali; 8–10 September 2010). These meetings drew a total of almost 200 people from over 70 countries and were funded by the German trust fund project. In addition, a consultation for the private sector was attended by over 70 people from 21 countries. It was held in London, United Kingdom (25–26 January 2010), and was jointly organized and sponsored by FAO and the Royal Institute of Chartered Surveyors (RICS), and funded by FAO.

Some early findings of the consultations were reported to CFS at its 36th Session in October 2010. CFS encouraged the continuation of the inclusive process for the development of the Guidelines, with a view to submitting them for the consideration of the 37th Session of CFS in October 2011. In addition, CFS decided to establish an Open-Ended Working Group to review the first draft of the Guidelines.

As the consultation process drew to a close, thought turned to how the discussions of the consultation meetings should be reflected in the contents of the Guidelines. The issues presented in the consultations assessments were compiled together, with similar issues being grouped into clusters. This analysis was summarized in an “Outcome document” that was posted on the website, and the cluster of issues was used to identify a structure for the Guidelines, i.e. the headings of the main sections. The analysis was reflected in a preliminary document, which was not considered to be a draft of the Guidelines but instead served as a “blueprint” for their design. Its purpose was to identify the issues that could be covered in each section, to see what material already existed as a result of the consultations, and to identify what gaps might exist.

The working title of the initiative had been the “Voluntary Guidelines on the responsible governance of tenure of land and other natural resources”, and during the analysis of the consultation meetings and the preparation of the so-called blueprint document, it became evident that the “other natural resources” would be fisheries and forests, and perhaps water. However, during the initial preparation of the Zero Draft it became clear that there

Four consultation meetings were held specifically for civil society organizations

One consultation was held for the private sector

were difficulties with the inclusion of water, which was then omitted from the Guidelines. It was also decided to exclude genetic resources from the Guidelines as they are treated in other instruments. The title put forward for the Zero Draft was "Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests" in order to reflect more precisely the contents, and to avoid creating expectations that the Guidelines might include guidance on natural resources other than land, fisheries and forests.

The Zero Draft went through an internal review by FAO staff working on the initiative, and the subsequently revised version was reviewed by a small yet diverse group of external experts who knew of the initiative but had not been closely associated with it. Their responses helped to shape the final version of the Zero Draft which was launched, in all six official FAO languages, at a "Rome Reading" at FAO Headquarters on 15 April 2011. An e-consultation on the Zero Draft was held from 18 April to 16 May 2011 and yielded 68 comments from a total of 138 respondents, with many comments coming in a consolidated form.

The First Draft was prepared following an assessment of the responses received during the e-consultation. The First Draft addressed many of the responses but it was not possible to include all proposals that had been made in the e-consultation. In some cases, the proposals were of a greater level of detail than could be accommodated in an instrument such as the Guidelines. In other cases, several different views had been put forward in ways that did not allow them to be reconciled into a single coherent proposal.

The negotiations and endorsement of the Guidelines

The Open-Ended Working Group established by CFS met during 14, 16 and 17 June to review the First Draft. Comments made during the meeting were recorded in some 450 footnotes in a document called the "Bracketed First Draft".

The intergovernmental negotiations were led by CFS and implemented by the Open-Ended Working Group, and took place during three rounds: 12-15 July and 10-15 October 2011, and 5-9 March 2012. Some 98 member countries, as well as the European Union as a member organization, attended the negotiations, including from Africa (27 countries), Asia (10 countries), Europe (28 countries), Latin America (17 countries), Near East (12 countries),

The intergovernmental negotiations were led by CFS in three rounds



North America (2 countries) and South Western Pacific (2 countries). As a result of the recent CFS reforms, the negotiations also included the participation of international agencies, civil society organizations, farmers' associations, private sector representatives and research institutions.

The first round in July 2011 started slowly. Initially, some of those at the meeting repeated their initial positions as stated in the footnotes of the "Bracketed First Draft", but over time the process moved to one of negotiation. The development of a common understanding of terminology also took time. Some confusion and misunderstandings arose at the beginning because of different backgrounds and experiences. For example, as the Guidelines are on tenure, the First Draft referred to "rights" and not to "tenure rights" (e.g. in the section on "Rights and responsibilities") in an attempt to reduce the document's length and the translation costs. However, people with a background in human rights made the automatic assumption that the rights being mentioned were human rights, and with that assumption they rightly questioned some of the text of the draft. As a result, for example, Section 4 was revised to be "Rights and responsibilities related to tenure".

During the first round, the plenary addressed the question of the scope and purpose of the Guidelines, and concluded by adding the words "in the context of national food security" to the end of the title of the First Draft. In addition, two thematic groups were formed to review and make proposals for the sections that addressed tenure reform, and markets and investments. An additional group reviewed the matter of ensuring the harmonization of language with that of other instruments, and another group looked at the definitions and roles of state and non-state actors. Proposals developed by the thematic groups were passed to the plenary for consideration, and by the end of the week about 25 percent of the document had been agreed to by the plenary. An updated version of the draft Guidelines, including annexes of a glossary and a list of relevant instruments, was prepared in the six official FAO languages.

The second round took place the week before the 37th Session of CFS with the hope that the work would be completed in time to allow for their endorsement by CFS during 2011. While this was not possible, considerable progress was made and about 75 percent of the document had been covered by the end of the round.

As a result of the recent CFS reforms, the negotiations also included the participation of international agencies, civil society organizations, farmers' associations, private sector representatives and research institutions

Negotiations were carried out in plenary although, on occasion, groups of a "Friend of the Chair of the Open-Ended Working Group" worked on the side to address issues raised by the plenary. Because some country delegations were small in size, only one Friend of the Chair operated at a time. The Language Harmonization Group, created in July, continued to work as a Friend of the Chair, but with a shift in focus away from ensuring harmony with other instruments and instead towards ensuring harmonization of language within the different sections of the draft. As was the case at the end of the first round, an updated version of the draft Guidelines was prepared.

At the CFS Session in October 2011, CFS recognised the progress that had been made and mandated the CFS Bureau to call for an additional round of negotiations to finalize the Guidelines as soon as possible.

The third and final round of negotiations continued in much the same way as the second round and the Guidelines were finalized on the night of Friday 9 March 2012. As part of the finalization, the plenary considered the annexes of a glossary and the list of relevant instruments to be no longer required and decided to omit them. In particular, considerable additional time would have been required to negotiate a commonly accepted text for the glossary.

The negotiations took longer than initially expected, but those expectations were overly optimistic as the length of negotiations was similar to that of the Voluntary Guidelines on the Right to Food, which required four rounds over two years.

A substantial part of the reason for the length of negotiations was reflected in the character of the discussion. The First Draft was prepared with the intention that it would provide guidance for a global audience, drawing as it did on the consultations that had taken place around the world. During the negotiations, many member countries and participants tried to adapt the wording to make the text more relevant to their own particular circumstances. In doing so, their proposals often resulted in text that did not fit the circumstances of others. The final text then had to be carefully negotiated to reach a commonly accepted position. Some countries frequently played valuable roles in finding text that could be accepted by others.

The Guidelines were endorsed by CFS at its 38th (Special) Session on 11 May 2012 at FAO Headquarters.

The Guidelines were endorsed by CFS at its 38th (Special) Session on 11 May 2012 at FAO Headquarters



CONCLUSION

The Guidelines are in the form of a global instrument without a single identifiable author or authors. Instead, the author is "no one and everyone". The final version of the Guidelines was prepared through negotiations by governments of countries from all regions of the world and with diverse political, economic, social, cultural and religious views. The final text includes ideas and text put forward by civil society and private sector organizations as a result of the inclusive nature of the CFS-led negotiations.

The real test of the worth of the Guidelines will be the extent to which they are implemented and the extent to which the implementation assists in improving the governance of tenure for all. Much will depend on whether the commitment to completing the negotiations of the Guidelines will continue to putting that text into action.

At the same time, it is recognized that the Guidelines are not the final word in the development of an international consensus on tenure and its administration. While the UDHR is as relevant today as when it was drafted, it reflects the global political, economic and social situation that prevailed at the time it was negotiated. Similarly, the consensus found in the Guidelines is a product of its time. Future political, economic, social, environmental and technological changes are expected to prompt the further development of the global consensus on tenure and its administration.

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**IMPROVING THE
GOVERNANCE OF
TENURE OF LAND,
FISHERIES AND
FORESTS**

**AMÉLIORER LA
GOUVERNANCE DES
RÉGIMES FONCIERS
APPLICABLES AUX
TERRES, AUX PÊCHES
ET AUX FORÊTS**

**MEJORAMIENTO DE
LA GOBERNANZA DE
LA TENENCIA DE LA
TIERRA, LA PESCA Y
LOS BOSQUES**

ABSTRACT

GOVERNANCE OF TENURE

LAND

FISHERIES

FORESTS

GENDER

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

The Guidelines provide a framework that can be applied equally to land tenure, fisheries tenure and forest tenure. They recognize that there are important similarities in the tenure of land, fisheries and forests, and also intersectoral linkages. The livelihoods

RÉSUMÉ

GOVERNANCE FONCIÈRE

TERRES

PÊCHES

FORÊTS

GENRE

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

Le cadre déterminé par les Directives peut s'appliquer aux régimes fonciers applicables tant aux terres, qu'aux pêches et aux forêts. Elles prennent en compte les importantes similarités qui existent entre les régimes fonciers applicables aux terres,

SUMARIO

GOBERNANZA DE LA TENENCIA

TIERRA

PESCA

BOSQUES

GÉNERO

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

Las Directrices son un marco que es posible aplicar igualmente a la tenencia de la tierra, de la pesca y de los bosques. En ellas se reconoce que existen analogías importantes entre dichos tipos de tenencia y también



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of many of the rural poor are diversified and are dependent on access to various natural resources. Moreover, the expansion of one type of use of a natural resource often comes at the expense of other users and uses.

The Guidelines promote improving land tenure, fisheries tenure and forest tenure, and the adoption of a coordinated approach for administering the tenure of the resources. By encouraging collaboration across sectors, the Guidelines constitute a basis for taking action on tenure in an integrated way. They equally highlight the centrality of gender equality to responsible governance of tenure.

aux pêches et aux forêts, ainsi que les liens intersectoriels. Les moyens d'existence de nombreux ruraux pauvres sont diversifiés et reposent sur un accès combiné à diverses ressources naturelles. De plus, l'accroissement d'un des types d'utilisation des ressources naturelles se fait souvent au dépens d'autres utilisateurs et usages.

Les Directives facilitent l'amélioration des régimes fonciers applicables aux terres, aux pêches et aux forêts et l'adoption d'une approche coordonnée pour l'administration foncière de ces ressources. En encourageant la collaboration intersectorielle, les Directives constituent une base pour un traitement intégré des questions foncières. Elles soulignent également l'importance des questions d'égalité des sexes pour une gouvernance foncière responsable.

vinculaciones intersectoriales entre ellos. Los medios de vida de muchas personas del medio rural están diversificados y dependen del acceso a una variedad de recursos naturales. Además, la intensidad de uso de una clase de recurso natural se lleva a menudo a cabo a expensas de otros usuarios y de otras formas de aprovechamiento.

Las Directrices promueven el mejoramiento de la tenencia de la tierra, la pesca y los bosques y la adopción de un enfoque coordinado para la administración de la tenencia de los recursos. Al estimular la colaboración entre los sectores, las Directrices constituyen la base para unas actuaciones integradas en materia de tenencia. Al mismo tiempo, las Directrices destacan el carácter esencial de la equidad de género en la gobernanza responsable de la tenencia.



INTRODUCTION

This paper describes why the tenure of land, fisheries and forests is the focus of the Guidelines. In doing so, it highlights the importance of improving the governance of tenure of these resources. The Guidelines are innovative in that they provide a framework that can be applied equally to land tenure, fisheries tenure and forest tenure. They recognize that there are important similarities in tenure governance of land, fisheries and forests which can be treated in a single framework. This framework also has relevance to water tenure. Although the Guidelines do not explicitly mention water, the preface (which was negotiated together with the body of the Guidelines) notes that the governance of water tenure could also be addressed when the Guidelines are implemented.

The Guidelines are also innovative in that they provide a framework that can be applied when addressing matters of tenure at the interface of the sectors of land, fisheries and forests. This paper describes the importance of considering intersectoral linkages when working to improve the governance of tenure. Natural resources and their uses are interconnected. The livelihoods of many of the poor, and particularly the rural poor, are diversified and dependent on access to several different natural resources. Moreover, the expansion of one type of use of a natural resource often comes at the expense of other users and uses.

In addition, the Guidelines highlight the centrality of gender equality to responsible governance of tenure, and also that of equity by recognizing that equality between individuals may require acknowledging differences between them and taking positive actions to promote equitable tenure rights. The paper shows that responsible governance means ensuring fairness for women and men in the processes for establishing the rules which define the relationship between people with respect to natural resources and for administering those rules, whether through formal institutions or customary and informal arrangements.

A FRAMEWORK FOR TENURE OF LAND, FISHERIES AND FORESTS: EMPHASIZING SIMILARITIES WHILE RECOGNIZING DIFFERENCES

While the work in preparing the Zero and First Drafts of the Guidelines placed emphasis on matters that are common to the tenure arrangements of land, fisheries and forests, it recognized that there are differences between them. Each of the natural resources has a different history of tenure governance, and their tenure arrangements are often administered in different ways. These differences in history and approach meant that the preparation of the initial Drafts required finding a common language in order for the Guidelines to apply equally to the tenure of land, fisheries and forests.

Land tenure

For land tenure, the political, social and economic importance of land resulted in the early development of rules of tenure, in societies governed by customary tenure as well as those that developed formal legal statutes. Millennia ago in ancient Rome, statutory procedures for proving ownership of land and transferring land rights were devised. The valuation and taxation of land and associated buildings provided an early form of revenue as these assets were easily visible to the state and so could be easily taxed. Because land is largely limited, provisions for inheritance and justice between generations were established at an early stage. In addition, early systems of land tenure allowed different parties to have different land rights to the same parcel of land, e.g. the right to sell the land, the right to use the land through a lease, and the right to travel across the land could be held by different people. As a result, the basic elements of what can be considered modern formal land administration have been in existence in some countries for centuries.

While there are many differences between land administration in formal, customary and informal settings, they all include functions such as the allocation and transfer of land rights, the adjudication of doubts and disputes over land rights, the management of information on land rights, and the enforcement of land tenure rules. A recent development in a number of countries has been for the administration of formal land tenure systems to address the relationships with customary and informal tenure systems.

The basic elements of what can be considered modern formal land administration have been in existence in some countries for centuries



In addition, land tenure and its administration have been conditioned, in part, by the fact that the vast majority of people in developed economies and increasing numbers in developing economies live in urban environments. For many such people, a land tenure transaction would be thought of as “buying a house” rather than buying the land on which the house is constructed.

Fisheries tenure

Historically, rights to fishing in lakes and rivers often developed as part of rights to adjacent land. In oceanic waters, maritime tenure (in the form of an extension of territorial rights into the sea) is still common today, for example, in many South Pacific islands. Ocean fisheries remained as open access tenure, a condition that did not initially pose resources management issues because the size and harvesting capacity of fishing fleets relative to the size of the fish stocks were small. However, by the early 1600s fishermen from western European, finding the herring in short supply in the North Sea, moved across the Atlantic to catch them. The sequential depletion of fishery resources and the move towards new fishing grounds has been a feature of ocean fisheries until today.

The 1982 United Nations Convention on the Law of the Sea marked the end of open access for marine fisheries. It was the culmination of more than 14 years of negotiations involving participation by more than 150 countries. The Convention's definition of the exclusive economic zone (EEZ) and of states' duties and rights is the outcome of a compromise between a “territorialist” perspective of full sovereignty applied to the territorial sea and the “patrimonial sea concept” with an emphasis on economic jurisdiction over renewable and non-renewable resources, but not sovereignty over the sea as such. While the impetus for establishing EEZs was governed by the wish of coastal countries to secure a larger share of the marine resources adjacent to their coasts, an important consideration was that the wealth which could be derived from marine resources within territorial waters is not independent of the exploitation activities which take place in the adjacent high seas. This applies to many fish stocks whose range is far wider than 12 miles and which can be subjected to exploitation both within and beyond the territorial sea. The impetus for extended jurisdiction can be traced to the concern of many developing countries

The sequential depletion of fishery resources and the move towards new fishing grounds has been a feature of ocean fisheries until today

that the technologically advanced fishing fleets of industrialized countries were the principal beneficiaries of the open access regime.¹

Historically, at national levels the focus has been on instituting regulatory systems for the management of fisheries including closed fishing seasons and fishing areas, and technical specifications of fishing gear, boat and engine. A move towards quasi fishing rights occurred with introduction of licence limit systems that allowed only a certain number of vessels to participate in specific fisheries. An innovative concept of the early 1970s was for individually allocated catch share quotas (IQ), and this was soon followed by the suggestion to allow for tradability of IQs and of specifying them in terms of relative rather than absolute shares.²

The realities of many developing countries neither allow for nor warrant the adoption of individual property rights regimes in fisheries. Where rigorous catch controls are made impossible because of the thousands of participating fishers, functional property rights need to be underpinned by often complex social relationships at the community levels. In these situations, the devolution of management authority to the local level is a necessity. The concept of Territorial Use Right in Fisheries (TURF) held by groups or communities of fishers was proposed as an alternative management arrangement for reasons of functionality as well as to ensure equitable sharing of resource benefits.³ Both community held territorial rights as well as catch quota rights are increasingly being adopted in small-scale fisheries.

Both community held territorial rights as well as catch quota rights are increasingly being adopted in small-scale fisheries

Forest tenure

Most of the world's forests are publicly owned and the majority of these are also managed or administered by governments. At the international level, little attention had historically been paid in the past to the issue of forest

1 Nandan, S. 1987. The exclusive economic zone: a historical perspective. In, Essays in memory of Jean Carroz. The Law and the Sea. FAO. Rome.

2 Christy, F. 1973 Fisherman Quotas: A Tentative Suggestion for Domestic Management. Law of the Sea Institute, University of Rhode Island.

3 Christy, F. 1982. Territorial Use Rights in Marine Fisheries: Definitions and Conditions. FAO Fisheries Technical Paper, No.227. Rome, FAO.



ownership and use rights. Recent studies by FAO and others have shown that in practice forest tenure arrangements in some countries are often more complex than had been previously assumed, and a mixture of rights can co-exist in space and time and may apply to specific products.

Over the past decade, a trend towards the devolution of forest ownership and management rights to households, smallholders, communities, indigenous peoples and other entities has been observed. This is leading to more diversified forest tenure systems which can be a basis for improving forest management and local livelihoods. However, such tenure rights associated with management are often limited in scope and/or time. They frequently do not include the right to harvest timber or to sell the forest. Forests assigned for community management are often degraded, making it difficult to generate economic benefits from them. Customary or traditional tenure systems, especially in Latin America, co-exist alongside the formal legal forest tenure systems with varying degrees of use and management rights and sometimes conflict with newly imposed legal arrangements for forest tenure.

Forest tenure arrangements in some countries are often complex and a mixture of rights can co-exist in space and time and may apply to specific products

THE NEED TO IMPROVE THE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS

Land tenure

Land is the single greatest resource in most countries and for most people land provides the platform for their homes; their employment; and the production, processing and distribution of their food and other products. There are some 500 million smallholder farms worldwide and upon whom more than two billion people depend for their livelihoods. These small farms produce about 80 percent of the food consumed in Asia and sub-Saharan Africa.

The importance of land has meant that land tenure is embedded in political, economic and social relations. As land provides the territorial dimension of a political jurisdiction, it links people who use land to those with political power. With the development of states came expropriation and other sovereign powers over land. Land that appeared to be unoccupied or underutilized (such as common land) was sometimes claimed by the state for other purposes,

Land tenure is embedded in political, economic and social relations

and were used for public works or redistributed to supporters and other influential groups, including demobilized soldiers. Political connections often brought with them the privilege of landownership and in turn landownership sometimes formed the basis for the right to vote and to participate in the political sphere. As production must take place somewhere, land is also a crucial economic resource. Land also achieved significance because particular lands, such as indigenous territories, sacred sites and burial grounds, are often associated with the identity of peoples, from communities to nations: the disintegration of social groups can follow from the loss of access to their lands. The control of land has historically been a way to control labour. Under feudalism, access to land was given in exchange for services or labour, and *corvée* and sharecropping relations are still-existing examples of how control of land can facilitate control of labour. In many parts of the world labour tenancy allows household heads who control land to enjoy the free labour of contributing workers.

The Guidelines do not define what is meant by "land" and a footnote introduced during the negotiations leaves the meaning to be defined within national contexts. The Zero and First Drafts of the Guidelines were prepared with the aim of being relevant to definitions of land that include buildings and other structures associated with the land, and also relevant to land in rural and urban areas for the following reasons:

- In many countries, the same land administration system is used for rural and urban areas. Many land tenure policies, laws and administrative bodies address urban and rural land alike. Professionals such as land surveyors and lawyers are licensed by the state to practice in both urban and rural areas, and the transfer of land (including buildings) in urban and rural areas are often recorded in the same land registration system.
- The boundary between urban and rural land is dynamic. What is urban today may have been rural yesterday. The conversion in land use from agriculture to residential or commercial use means that urban and rural linkages should be taken into account even when focusing on agricultural development. The preservation of prime agricultural land is more likely to occur if agricultural priorities are considered along with urban ones in an integrated spatial planning process.



- The boundary between urban and rural land is fuzzy. This is particularly so in peri-urban areas of developing countries which undergo a transition, often as a result of rural-to-urban migration. Such land is neither completely rural nor urban. In some countries, the land may continue to be held under customary tenure and administered by traditional leaders even as it is converted to residential purposes.
- Outside peri-urban areas, land is often not exclusively rural or urban. Rural land is more than cropland, pastures and rangelands, and it hosts facilities for storing agricultural produce and for post-harvest processing, and includes the farmhouses and buildings of farming families and their burial grounds and sacred sites. Urban land is increasingly becoming a host to urban agriculture, including garden allotments, and to urban forestry, and coastal urban areas are often linked to fisheries activities.

Insecure land tenure rights and weak governance of tenure are a particular burden on the poor. People with insecure land tenure are marginalized and vulnerable to being evicted from their homes and farms, with women being particularly at risk, for example, upon the death of their husbands or through the development or reallocation of common land. In urban areas, nearly 1 billion people live in informal, irregular and unplanned settlements, while rural landlessness is often the best predictor of poverty and hunger: the poorest are usually landless or land-poor. The recent wave of large-scale land acquisitions for biofuel production and food for export to investor countries attracted global attention on “land grabbing” where local people have insecure land tenure rights. Inappropriate land tenure policies and inequitable access to land can also result in over-cultivation and over-grazing of marginal lands.

Weak governance can manifest itself in processes for decision-making and policy formulation that overlook the interests and needs of marginalized groups of society. Confusing regulatory frameworks and complex administrative procedures are also hallmarks of weak governance in land administration. They raise the costs for people to carry out transactions such as registering their land rights, and a lack of transparency and accountability promote opportunities for corruption. Having to bribe corrupt officials to speed up the delivery of a service is often reported in low-income countries. However, corruption can also be found in high-income countries and a common occurrence is

People with insecure land tenure are marginalized and vulnerable to being evicted from their homes and farms, with women being particularly at risk

the abuse of power in the sale of publicly-owned land (including buildings) and in the change of land use classification of land parcels from agricultural to urban use as such changes can multiply the value of land significantly.

Collaboration by FAO with Transparency International in the 2009 Global Corruption Barometer showed that improving governance of land tenure is needed in all regions of the world, and revealed that land administration is one of the most corrupt public sectors in the world, and often largely because of the value and importance of the land sector. Some 34 percent of people globally consider corruption in land administration authorities to be a very serious problem. The findings suggest that government bodies that oversee land administration are among the public entities most plagued by service-level bribery. In the survey of 69 countries, more than one out of every 10 people who contacted a land authority reported paying a bribe.

Improving secure access to land often provides a valuable safety net as a source of shelter, food and income in times of hardship. Improved 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. Tenure reforms can promote land use practices that enhance the environment. Farmers are more likely to invest in improving their land through soil protection measures, planting trees and improving pastures if they have secure tenure and can thus expect to benefit from their investments over the longer term. More broadly, land tenure reforms can provide clarity on existing tenure rights, reduce socio-economic inequalities and foster more stable societies. Clarifying tenure rights to land-based common property resources that suffer from degradation or illegal or inappropriate privatization can reduce the risk of overexploitation where groups or multiple individuals claim overlapping tenure rights.

Fisheries tenure

The world's marine and inland fisheries are a critical source of high value nutritious food. Fish from capture fisheries and aquaculture provide more than 1.5 billion people with almost 20 percent of their average per capita intake of animal protein, and 3 billion people with at least 15 percent of such protein. Fish is of special importance in food deficit low income countries where fish provides a comparatively cheap source of animal protein as well as micronutrients that are critical for early childhood development.

Land tenure reforms can provide clarity on existing tenure rights, reduce socio-economic inequalities and foster more stable societies



Globally, fisheries employ about 130 million people directly in fishing and indirectly in upstream and downstream fishery-related activities (e.g. fish processing and marketing). Including dependents, capture fisheries support the livelihoods of about 360 million people of whom more than 90 percent live in developing countries and depend on small-scale and artisanal fisheries.

Many of the world's fisheries are in a state of de facto open access because of weak or absent rights and tenure arrangements and a lack of capacity to effectively manage fisheries on the part of government agencies, fishing industry and fishworkers' organizations and other stakeholders. As a result, the world's fishing fleets have expanded to double the size they should be. The share of marine fish stocks that are over-exploited, depleted, or recovering from depletion has steadily increased during the last three decades from 10 percent to nearly one third in 2008. A further 50 percent of the fish stocks are fully exploited and whose harvesting may already incur significant economic waste. The potential economic gain of reducing fishing capacity to sustainable, economically optimal levels and restoring depleted fish stocks is of the order of USD 50 billion per annum.⁴

Lack of secure tenure is also one of the causes of the poverty of tens of millions of people depending on marine and inland capture fisheries for their livelihoods and food security in especially poorer developing countries. The loss of customary tenure rights of many indigenous peoples is also a cause for their socio-economic deprivation and loss of identity.

Secure tenure is a fundamental component of successful fisheries management arrangements. Key issues include the rights of access and use of fisheries and the security of these rights. Providing secure tenure to fishery resources, re-establishing customary tenure, making meaningful investments into fisheries management and establishing arrangements for responsible governance can provide a strong foundation to improve the lives and livelihoods of millions of people and significantly enhance globally the economic contribution of capture fisheries. Improving the governance of tenure of fisheries is particularly relevant for small-scale fishers whose livelihoods depend on these resources.

Improving the governance of tenure of fisheries is particularly relevant for small-scale fishers whose livelihoods depend on these resources

⁴ World Bank and FAO. 2009. *The Sunken Billions: The economic justification for fisheries reform*. Washington, DC: World Bank.

Strengthening and securing their tenure rights and developing their capacities and capabilities allows them to fully take charge of their responsibilities to manage their resources in the short and long term.

Forest tenure

Close to 1.6 billion people rely on forest resources for their livelihoods. Apart from timber for construction and fuelwood, they use a variety of non-wood forest products for food, medicines, fibres and fodder. An estimated 60 million indigenous people live in tropical forests and depend on them for survival. Especially in the drier regions of the world, forests and trees on farms are important safety nets during periods of crisis and during lean seasons. Many countries in the developing world draw on fuelwood to meet as much as 90 percent of energy requirements. At the same time, deforestation rates continue to be high. According to FAO's Global Forest Resources Assessment 2010, about 13 million hectares of forest have been converted to other uses or lost through natural causes each year in the last decade.

The forest sector in many countries is characterized by weak governance, which is partly due to weak capacity of forestry institutions to administer forest resources and enforce the law. About 80 percent of the world's forests are publicly owned and the majority of these are administered by the State. However, the people who depend on such forests for their livelihoods often do not have legal use rights, and customary systems of tenure of forest resources are not recognized in many countries. As a result the importance and value of forest resources (including as Non-Timber Forest Products) to existing forest users are often not considered when forests are leased or sold by governments to commercial enterprises, or when forests are protected for conservation purposes.

Between 2005 and 2007 FAO carried out extensive studies of the situation of forest tenure in five major regions of the world and found that in many countries tenure systems are not conducive to sustainable forest management. In addition, the potential of forests to contribute to poverty alleviation is restricted by a lack of access to forest resources by local people who depend on them.

The people who depend on forests for their livelihoods often do not have legal use rights, and customary systems of tenure of forest resources are not recognized in many countries



Secure forest tenure is a fundamental element in achieving improved livelihoods and sustainable forest management. Strengthening the governance of forest tenure can significantly contribute to improved livelihoods, food security and poverty alleviation in a number of ways. Providing more secure and equitable access to and control of forest resources is key to enabling poor people living in and around forests to support their livelihoods by obtaining the full economic benefits from forest products. Creating more diversified tenure systems that are adapted to local situations can allow local people to benefit from these resources. In addition, supporting traditional/customary forest management arrangements of cultural and religious value can help to ensure that all forest users, especially smallholders and local and indigenous communities, know their rights and responsibilities and have the capacities to obtain the benefits provided by access to forest resources. Involving the rural populations who are most dependent on the forest resources, and hence most interested in sustaining them, can improve forest conservation and reduce forest degradation.

Gender aspects of tenure

Women make essential contributions to agriculture, fishing and forestry in developing countries, but their access to land, fisheries and forest resources varies significantly by social group and region and is changing rapidly in some areas.

The evidence illustrating gender inequalities in access to land for agriculture and other purposes is overwhelming. Women comprise on average 43 percent of the agricultural labour force in developing countries, ranging from 20 percent in Latin America to 50 percent in Eastern Asia and sub-Saharan Africa. Yet across all developing regions, women are consistently less likely to own or use land; they are less likely to have access to rented land, and the land they do have access to is often of poorer quality and in smaller parcels. Their land rights are often less secure, more limited, or mediated through others. Strengthening women's access to land is an important means of raising their status, influence, and socio-economic well-being within households and communities. Improving women's access to land and security of tenure has direct impacts on farm productivity, and can also have far-reaching implications for improving household welfare, including through access to associated institutions, information and services that is facilitated by virtue of being a holder of land rights.

Secure forest tenure is a fundamental element in achieving improved livelihoods and sustainable forest management

Women are consistently less likely to own or use land; they are less likely to have access to rented land, and the land they do have access to is often of poorer quality and in smaller parcels

In the case of fisheries, women comprise nearly 50 percent of the total workforce engaged in fishing, processing, and related activities. Gender is often a factor in determining access to institutions and technologies for fishing, fish processing and marketing, as well as to the sites where different fisheries activities are carried out. However, managers, policy-makers and legislators do not always fully appreciate the capacities and needs of women involved in fish value chains, and thus may have an incomplete understanding of how the sector as a whole operates and functions. Understanding gender differences in roles and responsibilities can improve governance of fisheries tenure, especially in the face of growing competition between small-scale fisheries on the one hand and industrial capture fisheries and large-scale aquaculture on the other. Closing the gender gap in access to fisheries and associated resources can increase women's productivity, production and employment in fishing and aquaculture, and boost returns from processing, marketing, and other value adding activities where women predominate. Closing the gender gap can also help reduce post-harvest losses, increase produce quality, improve household food security and nutrition, and enhance the management of fisheries resources.

With regards to forests, research suggests that trees and forests are very important to the livelihoods of rural women and their households. Women are often primary users of forest resources for food condiments, medicine, fuelwood, and income. Women may also be active and knowledgeable managers and caretakers of forest resources, tending wildlings as food or genetic reserve. In many developing countries, especially in Africa, women who run small-scale enterprises based on non-wood forest products, require secure access to forest resources to generate much needed household income. Yet women's rights to these resources are frequently insecure and made even more tenuous by population growth and commercial pressures on forest resources. Studies show that greater participation by women in the governance of forest tenure can help mitigate these risks, while also improving forest resource conservation. This is because women show strong preferences for forest protection, rule compliance and cooperation, and tend to use their knowledge of plant species and methods of product extraction in forest management.

Closing the gender gap in access to fisheries and associated resources can increase women's productivity, production and employment in fishing and aquaculture

Women are often primary users of forest resources for food condiments, medicine, fuelwood, and income



Better governance of tenure requires addressing the needs and situations of both women and men. Yet women tend to be the minority in formal, customary and informal institutions responsible for governing tenure and the capacities, knowledge and sensitivity of those who govern land, forest and fisheries tenure towards women's rights to these resources is generally low. For this reason, the Guidelines highlight the relationship between improving gender equality and improving governance of tenure, and gender equality is one of the principles of the Voluntary Guidelines. Including specific provisions to improve gender equality in both formal and customary systems by amending discriminatory inheritance and tenure laws is one example of how gender issues are mainstreamed throughout the Guidelines.

THE NEED TO IMPROVE THE GOVERNANCE OF TENURE AT INTERFACES OF SECTORS

Improving the governance of tenure for the land sector, or the fisheries sector, or the forest sector is important in itself, but equally important is the need to improve governance at the interfaces of these sectors.

The interconnected uses of natural resources

The livelihoods of many of the poor, and particularly the rural poor, are diversified and are often dependent on access to several different natural resources. Access to land can allow for crop agriculture and livestock grazing, as well as for other purposes, including shelter. Access to fisheries resources may enable the collection of non-fisheries products, such as aquatic plants, in addition to fish. Similarly, forests provide timber and also non-timber forest products, such as wild game, nuts, berries, fuelwood, oils, fibres and medicinal plants. Common pool resources, such as riverside reeds, mangroves, and roadside patches, can be used for thatching, gathering fuelwood, grazing and cropping and so are often critically important for rural women and marginal groups who do not own or control other land-based resources.

In many rural areas, local communities cultivate food crops while at the same time accessing fisheries as well as nearby forests for fuelwood, for hunting wild animals, and for medicinal herbs and supplementary wild foods.

The use of farm, fishery and forest products fluctuates with the seasonal availability of foods and other products. Livelihoods may also be based on using the same area in a variety of ways, and sometimes in a manner that is completely integrated, e.g. fish culture in rice paddies or through sylvopasture and other agroforestry practices. The particular conditions of floodplains may enable households to combine agriculture, livestock grazing and fisheries. The effects of climate change may further increase the importance of having access to diverse natural resources.

Increasing competition within and between the agricultural, fisheries and forestry sectors

Demand for natural resources for different uses has always been strong but it is increasing because of driving factors such as the need for increased food production, which in turn is driven by a growing global population; increasing urbanization rates which expand the share of the world's population that depend on food purchases; food for export as a result of security concerns in investor countries; and changing consumption patterns (e.g. growth in meat consumption) that require more land-intensive production. Other factors include searches for alternative sources of energy (such as bio-energy) and the growth of commercialized agricultural production.

However, a belief that additional demands for natural resources can be met through the availability of large tracts of idle coastal and land-based resources is largely a myth. Virtually all such resources are already used and claimed in some way, even if only for periodic uses such as shifting cultivation, nomadic pastoralism, seasonal fishing and gathering of forest products.

The expansion of one type of use thus often comes at the expense of other users and uses, as illustrated in Table 1. Competition for different uses takes many forms. In some cases, the competition is within the same sector. The recent search for alternative energy sources has provoked a debate on the use of land for bio-energy production rather than food, and of commercial enterprises acquiring land being used by subsistence farmers. Competition may exist between commercial fishing and recreational fishing, and in some regions the economic value of recreational fishing may be larger than the value of landed commercial catch. Forms of competition in forestry include the replacement of natural forests with tree plantations or other tree crops, including rubber, oil palm, etc.

A belief that additional demands for natural resources can be met through the availability of large tracts of idle coastal and land-based resources is largely a myth

In other cases, the promotion of one sector affects the use of other sectors. For example, marine and inland fishing communities face important issues of land access. The promotion of capture fisheries may require the development of beach landing sites, which may in turn compete with other demands for that land. Similarly, the promotion of fish production from aquaculture may require the acquisition of land needed for the investments. Where land tenure rights are poorly defined, the competition places communities at risk of displacement. The promotion of crop agriculture and commercial ranching can result in the expansion of agricultural production into dry season pastures and in the clearing of forests, while the development of industrial timber plantations competes with agriculture for the use of land.

Table 1
Changes in resource use and their effects to other uses and users

	EFFECT ON CROP PRODUCTION	EFFECT ON LIVESTOCK PRODUCTION	EFFECT ON FORESTRY	EFFECT ON FISHERIES AND AQUACULTURE
INCREASED CROP PRODUCTION	Growing competition between family farmers and large commercial producers / investors, and decline in availability of common lands	Land diverted from grazing in favour of crop cultivation	Forests cleared for cultivation	Fish habitats degraded by wetland drainage, flood protection and irrigation systems, and fertilizers and pesticides
INCREASED LIVESTOCK PRODUCTION	Land diverted from cultivation in favour of grazing/ranching	Growing competition between pastoralists and commercial ranchers/farmers	Forests cleared for grazing/ranching	Fish habitats degraded by livestock access to water bodies
INCREASED FORESTRY PRODUCTION	Land diverted from cultivation in favour of commercial plantations	Pastoralists and farmers who raise livestock prohibited or restricted from grazing livestock within forest boundaries	Growing competition between indigenous/ local forest users and commercial plantations. Restricted or prohibited access to forest reserves by local forest users	Fish habitats degraded by timber harvesting practices
INCREASED AQUACULTURE PRODUCTION AND FISHING CAPACITY EXPANSION IN CAPTURE FISHERIES	Land diverted or degraded in favour of fish ponds	Land diverted or degraded in favour of fish ponds	Mangroves cleared for aquaculture	Growing competition and conflicts between small-scale and large-scale fisheries, and across international boundaries and transboundary resources

Shifts in resource use as a result of competition have gender implications, such as in shifts in labour availability for specific crops and the cessation of tenure rights held mainly by women, such as rights to collect fuelwood and other forest products.

Increasing competition for natural resources for other purposes

The use of natural resources is further affected by demands outside the agricultural, fisheries and forestry sectors. For example, there are growing pressures to protect natural resources and reduce negative effects of their exploitation. Resulting measures tend to restrict access to these natural resources, for example through the establishment of protected areas such as wetlands (e.g. Ramsar Convention on Wetlands of International Importance) and protected marine areas, and carbon sequestration initiatives that limit the use of forestry ecosystems.

Further competition arises from factors such as:

- The expansion of urban areas (which expands the re-allocation of rural land for urban purposes);
- The development of public infrastructure (such as transportation routes, warehouses and hospitals) as part of rural development plans;
- The increasing use of water bodies (including coastal areas, lakes and rivers, and oceans), which displace traditional users, such as fishers;
- The creation of new energy sources (e.g. large-scale bio-energy production, large hydropower schemes and offshore windmills);
- The promotion of tourism particularly in coastal areas;
- The exploitation of minerals, oil and gas, and sand mining and stone quarrying;
- Resettlement schemes to accommodate migrants, displaced peoples, or ex-combatants in countries emerging from violent conflicts.

At the same time, this competition is over a shrinking base of natural resources because of degradation, depletion and over-exploitation of the natural resources; climate change and natural disasters (e.g. flooding and prolonged droughts); violent conflicts (e.g. land abandonment because of displacement and use of land mines); and the protection of ecosystems by

There are growing pressures to protect natural resources and reduce negative effects of their exploitation



limiting access to them. When people who are displaced for these reasons settle elsewhere, they often intensify competition over natural resources in the areas of resettlement, which in turn may result in prolonged civil conflicts, violence and food insecurity.

Implications for the governance of tenure

As natural resources and their uses are interconnected, improvements to tenure arrangements of only one type of resource (e.g. land) may help to address some problems but leaves unaddressed those problems that arise at the interface of the resource sectors.

Sectoral approaches are still required but they should be coordinated and integrated across the various resource sectors in order for their effectiveness not to be reduced or even negated. The institutions that govern tenure of land, fisheries and forests need to adapt to the growing and changing interconnections in the use of natural resources. Relevant policy, legal and organizational frameworks should address tenure of these resources in an integrated, coordinated and consistent manner. For example, proposals for a land tenure policy should take into account the implications on the fisheries and forestry sectors, as well as elsewhere. Forest policies and actions to address forest degradation and deforestation should build complementarity with other sectors.

The governing institutions should also adapt to the growing intensity of competition over natural resources, and its effect across the sectors. Rules to govern the changing competition over natural resources may not exist, or they favour the powerful over the poor, or they may be ignored. In such cases, reforms are needed to address competition and conflict over natural resources in ways that allow for the reconciliation of different objectives for the use of natural resources within an area, including the consideration of rural-urban linkages and overlapping political and administrative boundaries.

These reforms should give priority to the interests of marginalized, vulnerable and food insecure people and be in line with development goals that are gender-equitable as well as being socially and environmentally responsible. And these reforms should be carried out in inclusive and participatory ways, ensuring that the voices of the users of different natural

The institutions that govern tenure of land, fisheries and forests need to adapt to the growing and changing interconnections in the use of natural resources



resources are heard and taken into account. Doing so requires strengthening local organizations and groups (e.g. of producers) and creating intersectoral mechanisms for creating and maintaining dialogue and collaboration.

CONCLUSION

The internationally negotiated agreement embodied in the Guidelines serves as a reference for improving the governance of tenure of land, fisheries and forests.

For land tenure, the Guidelines provide a basis for actions, including to improve tenure security for a wide range of people, including family farmers, pastoralists, indigenous peoples and others who use land through customary tenure, and people who live in informal settlements. They can guide actions to ensure that agricultural investments expand production, improve livelihoods, and build food and nutrition security, while safeguarding the tenure rights of local communities. They can serve to improve access to land administration services.

The Guidelines similarly supports activities to improve fisheries tenure, for example by providing clear and defensible tenure security as part of reforms to small-scale capture fisheries in order to secure livelihoods and address overfishing and overcapacities in both small-scale and especially large-scale fisheries. They can be used in the development and implementation of plans that ensure the sustainable use of fisheries and aquaculture resources, and thereby help to ensure that all stakeholders can benefit from better governance of tenure.



In the case of forest tenure, the Guidelines are a foundation for actions, such as encouraging countries to reflect on the effectiveness of existing forest tenure systems. They can support countries in reform processes that strengthen the security of tenure, particularly for the local communities and indigenous people. They can guide activities to improve forest governance, forest policy formulation, national forest programmes and inclusive approaches such as community-based forest management.

Moreover, the Guidelines provide a framework for improving the governance of tenure in a gender-sensitive manner. They can be used to ensure that gender equality is addressed in efforts to improve all aspects of tenure governance, including policy formulation, administration, service delivery, and access to justice and information.

Importantly, the Guidelines promote the adoption of a coordinated approach for administering the tenure of land, fisheries and forests. By encouraging collaboration across sectors, this internationally negotiated agreement constitutes a basis for taking action on tenure in an integrated way.

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**GOVERNANCE OF
TENURE**
Making it happen

**GOUVERNANCE
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**Agissons pour sa mise
en œuvre**

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LA TENENCIA**
Haciendo la realidad



ABSTRACT

AWARENESS RAISING

CAPACITY DEVELOPMENT

TECHNICAL ASSISTANCE

PARTNERSHIPS

MONITORING AND EVALUATION

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

The inclusive and participatory development process of the Guidelines and the global recognition of the importance of responsible governance of tenure is a key foundation for the implementation

RÉSUMÉ

SENSIBILISATION

DÉVELOPPEMENT DES CAPACITÉS

ASSISTANCE TECHNIQUE

PARTENARIATS

SUIVI ET ÉVALUATION

Il s'agit du dernier d'une série de quatre articles sur les Directives volontaires pour la gouvernance foncière. Il aborde la question de la mise en œuvre des Directives. Le premier article propose une vue d'ensemble des Directives, décrit brièvement les régimes fonciers et justifie la nécessité des Directives. Le deuxième article présente 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 processus ouvert et participatif d'élaboration des Directives et la reconnaissance, à l'échelle mondiale, de l'importance d'une gouvernance

SUMARIO

SENSIBILIZACIÓN

DESARROLLO DE CAPACIDADES

ASISTENCIA TÉCNICA

ALIANZAS

SEGUIMIENTO Y EVALUACIÓN

Este estudio es el último de una serie de cuatro estudios dedicados a las Directrices voluntarias sobre la gobernanza de la tenencia. En él se aborda la ejecución de las Directrices. En el primer estudio se expone una visión de conjunto de las Directrices, se describe brevemente el concepto de tenencia y se justifica la necesidad de disponer de Directrices al respecto. En el segundo estudio se describe el proceso de preparación de las Directrices, y en el tercero se expone por qué la tenencia de la tierra, la pesca y los bosques es el tema central de las Directrices.

El proceso de elaboración incluyente y participativo, característico de estas Directrices, y el reconocimiento mundial de la

of the Guidelines and for any work to improve governance of tenure. Institutions and actors involved in the administration and management of tenure of land, fisheries and forests, as well as those supporting them, are encouraged to make effective use of the Guidelines and engage in collaborative actions. Partnerships and common efforts are key to promote the Guidelines, raise awareness on governance of tenure, develop capacities of a range of stakeholders, facilitate technical implementation in countries and monitor and evaluate activities and latest evolutions in the field of tenure governance.

The Guidelines are an engagement towards changing the rules of the game and working towards more transparent and accountable tenure structures and administration. Associated with other activities and frameworks, such as the African Land Policy Initiative, there is a scope for making governance of tenure happen.

responsable des régimes fonciers constituant des éléments essentiels pour la mise en œuvre des Directives et pour toute initiative d'amélioration de la gouvernance foncière. Les institutions et acteurs associés à l'administration et à la gestion des régimes fonciers applicables aux terres, aux pêches et aux forêts, ainsi que ceux qui les soutiennent sont encouragés à utiliser effectivement les Directives et à s'engager dans des activités de coopération. Les partenariats et les efforts partagés sont indispensables pour promouvoir les Directives, assurer des actions de sensibilisation sur la gouvernance foncière, développer des capacités des parties prenantes, faciliter les activités techniques dans les pays, assurer le suivi et l'évaluation des activités et prendre en compte les dernières évolutions de ce secteur.

Les Directives constituent un engagement à changer les règles du jeu et à travailler à la mise en place de structures et d'une administration plus transparentes et responsables. Associées avec d'autres activités et cadres, comme l'Initiative africaine de politique foncière, les Directives disposent du potentiel nécessaire pour une mise en œuvre concrète de la gouvernance foncière.

importancia de una gobernanza responsable de la tenencia son los elementos fundamentales para la ejecución de las Directrices y para la realización de toda acción destinada a mejorar la gobernanza de la tenencia. Se anima a las instituciones y agentes que intervienen en la administración y ordenación de la tenencia de la tierra, la pesca y los bosques y a las instancias que apoyan a estos sectores a hacer un uso eficaz de las Directrices y llevar a cabo acciones en colaboración. Las alianzas y esfuerzos en común son esenciales para promover la difusión de las Directrices, sensibilizar acerca de la gobernanza de la tenencia, desarrollar las capacidades de las diversas partes interesadas, facilitar las actividades técnicas en los países y llevar a cabo tareas de seguimiento y evaluación, y por último consolidar la evolución reciente del sector.

Las Directrices implican un compromiso orientado a cambiar las reglas del juego y a trabajar en aras de la construcción de estructuras y una administración de la tenencia más transparentes y responsables. En asociación con otras actividades y marcos, tales como la Iniciativa Panafricana para Políticas de Tierras, hay aún espacio para hacer realidad la gobernanza de la tenencia.



INTRODUCTION

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* were endorsed by the 38th (Special) Session of the Committee on World Food Security (CFS) on 11 May 2012. The Guidelines were initially developed through a participatory multi-stakeholder consultation process and finalized through intergovernmental negotiations that included the participation of representatives from international agencies, civil society organizations, farmers' associations, the private sector and research institutions.

This period of consultation and negotiation, lasting two and a half years, was vital and proved to be successful for several reasons.

- First, it made possible the development of a globally relevant, appropriate and negotiated document that enjoys a large consensus. As a result, a strong sense of ownership of the Guidelines is shared by the members and participants of CFS and the large number of practitioners and civil society members who have been part of the process since the beginning.
- Second, it facilitated a dialogue between actors who deal with governance of tenure at national, regional and global levels. In some cases, the consultation meetings were one of the first occasions for stakeholders at these different levels to meet, exchange experiences and discuss good practices. This was highly appreciated by all participants.
- Third, it enabled critical elements of awareness raising, capacity development and advocacy to be advanced across all stakeholder groups and across all relevant levels. During the preparatory phase of consultations, this was principally at the level of practitioners and academics from across the stakeholder groups; during the CFS-led negotiations this was principally at the level of policy-makers and international stakeholders.
- Fourth, it provided an opportunity to establish or expand networks and partnerships between international, regional and national organizations of different types that work together to achieve global changes in governance of tenure.

The global significance of the Guidelines is therefore partly based on the process through which it was developed and partly on its content. This unprecedented negotiated document, and the consequent global recognition of the importance of responsible governance of tenure at national, regional and global levels is a key foundation for raising the global visibility of governance of tenure of land, fisheries and forests and setting a solid basis for the implementation of the Guidelines and for any future work to improve governance of tenure. This paper looks at the strategies that exist to make the governance of tenure a reality in practice.

ROLES AND RESPONSIBILITIES OF ACTORS ON GOVERNANCE OF TENURE

FAO encourages institutions involved in the administration and management of tenure of land, fisheries and forests, as well as those supporting them, to make effective use of the Guidelines. Regional initiatives that address access to land and natural resources, such as the recently adopted African Union Land Policy Initiative, are also areas of natural synergy with the Guidelines.

The Guidelines are relevant to all country contexts as many examples of responsible governance of tenure and its administration are found around the world. The Guidelines reflect the lessons learned by FAO and others on responsible practices of tenure. Support for implementation of the Guidelines includes assisting others to adopt such responsible practices, selecting the practices according to their priorities and providing support to them so they can adapt the practices to their circumstances. Being voluntary, a tailored use of the Guidelines is possible. In fact, the Guidelines are likely to be implemented differently in each country in accordance with country priorities, requirements and conditions. In each country relevant topics and ways to initiate action in favour of governance of tenure will need to be identified. The Guidelines encourage all parties, including States, development partners, civil society and the private sector to collaborate in promoting and implementing the principles and practices, and to disseminate information on responsible governance of tenure. All actors have a role to play in improving governance of tenure (box 1).



Box 1
Role of actors in improving the
governance of tenure

ACTOR GROUP	ROLES
STATES	States have an important role to play in improving governance because of their unique position in society regarding the development, implementation and enforcement of policy and law, and through their responsibility for the administration of tenure, including through court systems, registration systems, valuation and taxation systems, and spatial planning. States should encourage civil society, private sector and academia to participate in improving governance of tenure.
COURTS AND GOVERNMENT AGENCIES	Courts and government agencies responsible for administration of tenure (including agencies responsible for allocation and management of tenure rights, registration and cadastre agencies, valuation agencies, spatial planning agencies, dispute-settlement mechanisms and agencies responsible for public lands, fisheries and forests) should endeavour to serve the entire population, delivering equal services to all, including those in remote locations. Services should be provided promptly and efficiently, and without requesting bribes for services.
COURTS AND NATIONAL HUMAN RIGHTS INSTITUTIONS	In cases where breaches of tenure rights also constitute violations of human rights, such as the right to property, rights of indigenous peoples or the right to food, courts and national human rights institutions, such as ombudspersons, public defenders and others, can be engaged to seek redress. The human rights institutions are also responsible for monitoring the status of human rights in their countries. In both instances, awareness of the Guidelines will help them see the connection between human rights and tenure rights, thus increasing the avenues for protecting tenure rights.
PEOPLE AND COMMUNITIES	People, communities and bodies who hold tenure rights should learn what rights they hold, and they should learn how to protect their tenure rights and themselves against corrupt and unlawful behaviour from others. Communities that practice self-governance of tenure of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of equitable access for women.

ACTOR GROUP	ROLES
CIVIL SOCIETY	Civil society, with emphasis on NGOs, can play a large role in advocacy, awareness raising, legal assistance and developing capacity for people to be able to enjoy and protect their tenure rights. They can promote the contribution of the broader public to relevant decision-making processes, and can promote and protect the ability to seek, receive, publish and disseminate information concerning responsible governance and corruption.
INVESTORS	Investors should ensure that their investments do no harm and should safeguard against dispossession of tenure rights and livelihoods, and against negative human rights impacts, food insecurity and environmental damage. Particularly in the case of large-scale acquisition of tenure rights, investors should recognise when people whose tenure rights are to be acquired have less information and negotiating skills. Investors should ensure that all relevant people are engaged and informed in negotiations, and that there is active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.
PROFESSIONALS	Professionals (such as surveyors, lawyers, notaries, valuers, spatial planners, etc.) who work in the area of tenure should ensure they follow standards of conduct for ethical behaviour, including for the correct, honest and proper performance of their duties. Professionals who provide services to States, investors and other clients should undertake due diligence to the best of their ability when providing their services, irrespective of whether it is specifically requested.
ACADEMICS	Academia has a central role in the education of tenure professionals (surveyors, lawyers, notaries, valuers, spatial planners, etc) and others who work in the public and private sectors. Research can help in identifying solutions and helps in further raising awareness. Universities can include the governance of tenure in their courses, and can strengthen collaboration between one another with regard to teaching and research.



PILLARS OF GOVERNANCE OF TENURE

Following the official endorsement of the Guidelines, the immediate challenge is the creation of programmes and projects to improve governance of tenure in line with country priorities and contexts. The Guidelines encourage all parties to use collaborative efforts to promote and implement the Guidelines and disseminate information on responsible governance of tenure in order to improve practices. The Guidelines also encourage development partners, specialized agencies of the United Nations and regional organizations to support voluntary efforts by States to implement the Guidelines, including through South-South cooperation. The Guidelines identify such support as potentially including technical cooperation, financial assistance, institutional capacity development, knowledge sharing and exchange of experiences, assistance in developing national tenure policies and transfer of technology.

Partnerships

The Guidelines were developed in partnership with countries, civil society, private sector, international organizations and other United Nations Agencies working at various levels and sectors. These strong, open and transparent partnerships are also key to developing activities on governance of tenure and to raise visibility on the Guidelines at global, regional, national and local levels. Strong and open partnerships are the basis for achieving global changes.

The Guidelines will provide a unique opportunity to promote practical integrated work between relevant sectors, in particular at the national level where implementing agencies and institutions will be encouraged to co-ordinate and collaborate on issues of responsible governance of tenure. This is essential as different natural resource sectors are often dealt with by different ministries and agencies. While the individual sectors may require differentiated responses and tailored activities, the responses of any sector should be coordinated with those of other sectors in order for them to be effective.

The Guidelines encourage all parties to use collaborative efforts to promote and implement the Guidelines and disseminate information on responsible governance of tenure

The Guidelines will provide a unique opportunity to promote practical integrated work between relevant sectors

Awareness

The Guidelines are an historic international negotiated document on governance of tenure that establish "common ground" for globally accepted principles and practices. It is important that a range of constituencies (governments, civil society, private sector and academia) have access to the Guidelines and are aware of accompanying documents that can assist them in the development of strategies, policies, legislation and practical actions.

The promotion and dissemination of the Guidelines can be done through multiple formats and in multiple languages, each time looking at the most relevant way of communicating the message. Governments should take the lead in the dissemination of the Guidelines among their ministries, agencies and administrative units dealing with tenure at all levels. Civil society organizations will play a valuable role in raising awareness and having continual discussions at the grassroots level to inform people of their rights and responsibilities. Similarly, private sector representatives can circulate the Guidelines among professional associations and platforms, as well as among sectoral industry groups. Academic, education and research institutions have the leading role to play in promoting and supporting an environment for mainstreaming improved governance of tenure in academic and educational centres. Through empirical research and observation of global phenomena, academia can raise awareness on latest developments impacting governance of tenure.

While each constituency has a role to play to promote the Guidelines and to work for better governance of tenure, it is also necessary for them to continue to exchange ideas and experiences. The creation of multi-stakeholder platforms for dialogue at national and regional levels can encourage collaboration and coordination between constituencies and sectors. Awareness raising meetings that bring together a range of actors from neighbouring countries can serve as a starting point for the creation of platforms for dialogue. These platforms will also play a vital role in monitoring and assessing activities, highlighting new issues of governance of tenure and bringing the voices of grass roots to higher levels of decision making.

It is important that a range of constituencies have access to the Guidelines



Capacities

Knowledge on governance of tenure and on the complexity of tenure systems are needed when developing and implementing policies, laws and procedures or when applying new technical approaches to support governance of tenure. The Guidelines call for capacity development of all bodies responsible for governance and administration of tenure. Human, institutional, financial and other forms of capacity of these bodies should be considered, training provided and technical facilitation offered when necessary. In particular, the members of indigenous and other communities with customary tenure systems should have the capacity to participate fully in consultation and decision-making processes of their tenure systems.

Capacity development will be at the centre of activities that aim to improve governance of tenure. Technical support may be sought from regional and international bodies to be able to conduct activities in a timely, effective and gender-sensitive manner. Technical support can concentrate on enhancing existing procedures and practices or helping to initiate new ones. It can also be directed towards platforms and networks for dialogue to make them stronger and more sustainable. When providing technical support, coordination between implementing agencies, donors and international organizations are vital to ensure consistency of activities and effective impact on the ground.

The development of specific thematic guides can help government agencies, civil society and the private sector to design policy and reform processes, analyse existing policies and legislation and draft new ones, conduct interventions, promote best practices and create innovative approaches. These guides translate the Guidelines' principles into practical mechanisms, processes and actions in specific thematic areas.

Monitoring and evaluation

Monitoring and evaluation will be a significant part of the implementation of governance of tenure related activities and will allow assessing priority areas for action.

The Guidelines encourage the development of processes to monitor and evaluate the impact of improved governance of tenure. The processes for monitoring and evaluation should be participatory, gender-sensitive, implementable, cost-effective and sustainable. Efforts to improve governance of tenure should be monitored and evaluated with regard to their impact

The Guidelines call for capacity development of all bodies responsible for governance and administration of tenure

The Guidelines encourage the development of processes to monitor and evaluate the impact of improved governance of tenure

on food security and the realization of the right to adequate food, and on sustainable development. Monitoring and evaluation will also help responsible bodies to identify and target priority areas, to follow up progress of activities and to serve as an "early warning system". For example, gaps in the legal, policy and organizational frameworks could be identified through comprehensive assessments and, based on these results, programmes could be put in place for appropriate remedial action to realize the responsible governance of tenure.

The monitoring and evaluation will build on already existing initiatives conducted and tested by different stakeholders. These approaches include a number of civil society inspired initiatives, land observatories operating at national and regional levels and global governance assessment frameworks. The monitoring and evaluation can be tailored for the needs of different stakeholder groups and conducted by a variety of actors, such as civil society, government agencies, and international organizations. Multi-stakeholder platforms should be set up to ensure that the needs and ideas of all stakeholders are respected in activities related to governance of tenure.

Monitoring and evaluation will also concern the implementation of the Guidelines. The Guidelines recommend that reports on the progress of their implementation should be made to CFS, highlighting *inter alia* regional experiences, best practices and lessons learned. CFS will, therefore, play a crucial role in identifying new priorities and arising concerns at the global level.

Monitoring and evaluation will also help to identify and target priority areas, to follow up progress of activities and to serve as an "early warning system"

EXPERIENCE WITH OTHER CODES AND GUIDELINES

The experience with other similar soft law instruments developed by FAO and endorsed by intergovernmental bodies is encouraging for the implementation of the Guidelines on governance of tenure (see box 2 for more information on the instruments and their implementation mechanisms). The *Code of Conduct for Responsible Fisheries* has become a ubiquitous feature throughout the fisheries and aquatic sector. The *Code of Conduct on the Distribution and Use of Pesticides* has managed to raise the awareness on sound management practices in the distribution and use of pesticides. The principles of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* have been adopted by several countries in their national policies and legislation.



These soft law instruments have been supported through the formulation of national action plans. They have been made operational through the design and implementation of national-level projects which embody the principles established at the international level. Field projects are an important mechanism for building on good principles where they exist, and for introducing them in national policies where they are not yet in place.

FAO's soft law instruments highlight the importance of building partnerships and encouraging collaboration. For example the Code of Conduct for Responsible Fisheries has engaged with industry associations, regional

Box 2.
Summary of implementation mechanisms and actors involved in other FAO Voluntary Guidelines and Codes of Conduct

INSTRUMENT	MECHANISMS FOR IMPLEMENTATION	ACTORS INVOLVED
International Code of Conduct on the Distribution and Use of Pesticides (1985, revised 2002)	<ul style="list-style-type: none"> → Technical secondary guidelines → Field projects and FAO Technical cooperation projects → Monitoring and evaluation 	<ul style="list-style-type: none"> → Governments → Industrial organizations → Non-governmental organizations (e.g. Pesticide Action Network) → Private sector
Code of Conduct for Responsible Fisheries (1995)	<ul style="list-style-type: none"> → Country level implementation (policy, administration, management) → International plans of action and strategies → Technical secondary guidelines 	<ul style="list-style-type: none"> → Industry associations → Regional fishery bodies and fisheries management organizations → FAO through its regular programme and budget → Civil society organizations → Variety of international actors working on awareness raising and capacity building
Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004)	<ul style="list-style-type: none"> → Methods and instruments to assist stakeholders in the implementation of the right to food → Analytical reports and studies on the implications of the right to food → Activities to mainstream the right to food within FAO → Information, education and awareness raising products/material → Framework to assess the right to food situation in member countries → National implementation through improvement of legislation and accountability → Strategy and coordination mechanisms for policy formulation and implementation at national and local levels → Strategies and plans of actions at regional levels → Benchmarking and monitoring → Corporate Social Responsibility policies 	<ul style="list-style-type: none"> → Governments at national and local levels → Parliamentarians → Human Rights and Ombudspersons Institutions → UN Special Rapporteur on the Right to Food → FAO technical departments → Intergovernmental organizations → Regional organizations → Private-sector (e.g. private sector associations and companies; food banks; private sector through corporate social responsibility policies) → Non-governmental organizations



fishery bodies and regional fisheries management organizations and civil society organizations. All of them play a role either in applying the code itself or in awareness raising, lobbying, capacity building, research and project work.

The real implementers of FAO's soft law instruments are the partners and stakeholders involved. FAO plays the supportive role as facilitator and coordinator. The need for strong partnership and a sense of ownership is therefore crucial also to the success of the Guidelines of the Governance of Tenure.

CONCLUSION

The Guidelines are the first ever negotiated document that sets the scene on how tenure rights to land, fisheries and forests should be handled. The development of the Guidelines is an engagement towards changing the rules of the game and working towards more transparent and accountable tenure structures and administration. These changes can be made possible if actors adopt responsible practices. For this to happen, awareness on tenure governance should be raised; capacities to prepare, implement and enforce policies and laws should be developed; and mechanisms for monitoring should be improved.

As a soft law instrument the Guidelines are able to provide comprehensive and detailed guidance to a politically sensitive and technically complicated subject such as governance of tenure. The Guidelines respond to a demand for a flexible instrument that lays out broad principles that can be adapted to and implemented at various levels and contexts. They aim to be a reference point for national and international policies on tenure governance, and they support the design and implementation of technical programmes and activities.

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REVISTA SOBRE
**TENENCIA DE
LA TIERRA**

IMPRESO EN ITALIA
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The *Land Tenure Journal* welcomes articles on land and other natural resource tenure, policy and reform that have not been published in or submitted to any other journal. Authors are invited to write articles in English, French or Spanish preferably using Microsoft Word or Open Office. The manuscripts should have a maximum length of 40 000 characters with spaces, excluding endnotes and references. Authors are also requested to write an abstract (maximum 1 200 characters with spaces) and provide the keywords that best define the issue of their article. All references should be cited in brackets in the text by author and year, for example, (FAO, 2007). An alphabetical bibliography at the end of the article is to be provided, for example, FAO. 2007. *Good governance in land tenure and administration*. FAO Land Tenure Studies No.9. Rome. 57p.

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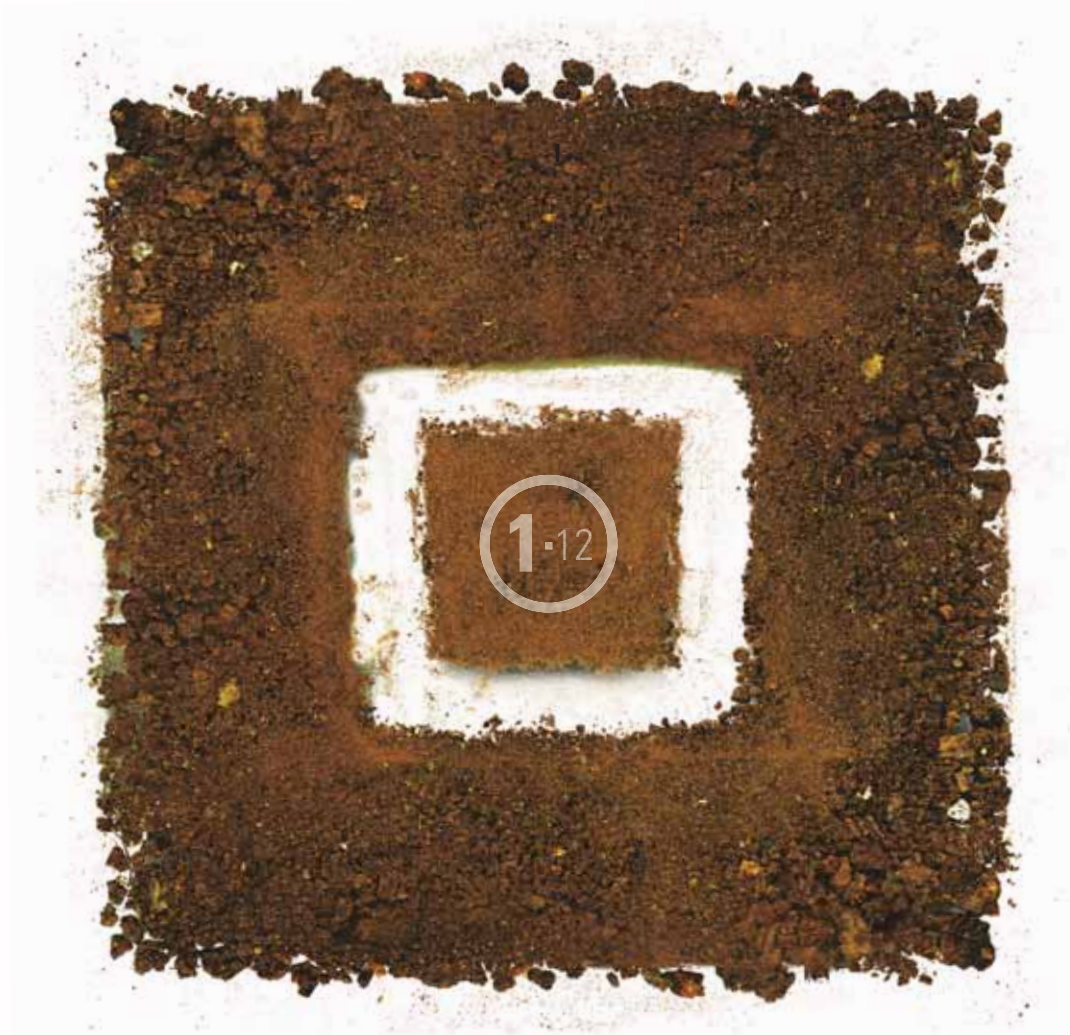
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