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*Civil Society Organizations' Proposals  
for the FAO Guidelines on Responsible  
Governance of Land and Natural  
Resources Tenure*

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## LIST OF ACRONYMS

CBD	Convention on Biological Diversity
CEDAW	Convention for the Elimination of all forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CSR	Corporate Social Responsibility
FAO	UN Food and Agriculture Organization
FPIC	Free, Prior and Informed Consent
FTA	Free Trade Agreement
GHG	Greenhouse Gas
ICARRD	International Conference for Agrarian Reform and Rural Development
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Person
IFAD	International Fund for Agricultural Development
IFI	International Financial Institution
IHL	International Humanitarian Law
ILO	UN International Labor Organization
ITQ	Individual Transferable Quota
TNC	Trans-National Corporation
UDHR	Universal Declaration of Human Rights
WTO	World Trade Organization

*"How firm we stand and plant our feet upon our land determines the strength of our children's heartbeats."*

Poolly Koutchak, Unalakleet, Alaska

## **PREAMBLE**

1. The women and men, representatives of organizations of: peasants/family farmers, fisher-folk, indigenous peoples, landless peoples, rural and urban workers, migrants, pastoralists, forest communities, women, youth, consumers, environmental and urban movements, of human rights defenders, of solidarity and development, that have participated in the elaboration of this document, have been engaged in a common, collective struggle for our lands, territories and natural resources. This struggle, strongly rooted in our local realities and experiences, has been expressed in many different meetings that have woven together a collective history and memory, which we believe it is also important to emphasize.

2. In the World Food Summit in 1996 in Rome we presented the vision of food sovereignty and recalled the essential role of agrarian reform and comprehensive rural development policies in combating hunger. In December 2004, we gathered at the World Forum on Agrarian Reform in Valencia, Spain, to call for the recognition of land as commons. This paved the way for the International Conference for Agrarian Reform and Rural Development (ICARRD) organized by the FAO in March 2006, in which governments committed to:

*"Establish a lasting platform at the global, national, regional and local levels to institutionalize social dialogue, cooperation, follow-up and evaluation of the advances made in agrarian reform and rural development".*

3. At the International Forum on Food Sovereignty (Nyeleni) in Mali in 2007, we reaffirmed our commitment to food sovereignty and strengthened our understanding of its transformative potential to build a world where every person's right to adequate, healthy and culturally appropriate food is realised. We also committed to keep fighting for:

*"A true comprehensive agrarian reform that guarantees the peasants full rights to land; defends and recovers territories belonging to indigenous peoples; guarantees the fishing communities' access and control over fishing grounds and ecosystems; recognizes the grazing access, control and migratory routes;*

*guarantees decent jobs with fair salaries and labor rights for all workers; and a future for the rural youth; where agrarian reforms revitalize the interdependence between producers and consumers; guaranteeing the community's survival, and social and economic justice, ecological sustainability and respect for local autonomy and governance with equal rights for women and men ... where the right to territory and self-determination is guaranteed for our peoples".*

4. In April 2010, during the World People's Conference on Climate Change and the Rights of Mother Earth in Bolivia, capitalism's limits and predatory actions against Mother Earth were laid out clearly, and foundations of alternative models of interaction between human beings and nature were delineated. In the People's Agreement, we proposed:

*"... that a new system be forged that re-establishes the harmony between nature and human beings. There can only be balance with nature if there is equity amongst human beings.*

*We propose to the peoples of the world, the recovery, revalorization, and strengthening of the knowledge, wisdom, and ancestral practices of the Indigenous Peoples, which are affirmed in the thought and practices of 'Living Well' (Sumak Kawsay), recognizing Mother Earth as a living being with which we have an indivisible, interdependent, complementary and spiritual relationship."*

5. All of these efforts and initiatives, including our mobilizations and our proposals, have opened up a space today where our voices can be heard by the FAO and governments and can therefore contribute to the formulation of new policies.

6. The present document is the result of four regional civil society consultations that we autonomously conducted on the FAO *Voluntary Guidelines on Responsible Governance of Land and Natural Resources Tenure*. Organizations with different backgrounds came together to share their concerns, visions and proposals to combat the problems our peoples face. We all believe that the present initiative is extremely relevant in the current context of recurring food price crises, accelerating climate change, extensive land-grabbing and growing conflicts over natural resources. We believe it is necessary to establish an international normative standard for governing land and natural resources in the face of the serious problems that threaten the lives of millions in rural and urban areas. We believe that genuine, redistributive agrarian reforms, as well as policies that support and reinforce the rights of local communities to natural resources, and socially just and ecologically sustainable land use are urgently needed. We expect that these Guidelines will hasten the implementation of the ICARRD's commitments, especially those related to land and natural resource tenure.

## BACKGROUND

7. The lack of adequate and secure access to land and natural resources by the rural and urban poor is one of the main causes of hunger and poverty in the world. According to the Hunger Task Force of the Millennium Project, about half the people suffering from hunger live in rural small-hold farming households, while another two-tenths are farming households that do not have land. A smaller group, perhaps a tenth, consists of herders, fishers and forest-dwellers. The rest, about two-tenths, live in urban areas.

8. In 2008, for the first time in history, the FAO registered that the number of hungry people in the world surpassed 1,000 million. Eighty percent of these people are food producers and live in rural areas. In 2010, the FAO registered a small reduction in the number of hungry people, citing the figure of 925 million. The percentages of the groups most deeply affected, however remain unchanged.

9. Although the problems we face are diverse and vary greatly depending on our particular circumstances, we have identified common problems that repeat themselves around the globe. Conflicts over land and natural resources and related human rights violations are growing and are the result of a wide range of structural and contextual factors. Land and resource grabbing, and the (re-)concentration of access to land, forests, fishing grounds, water sources (freshwater and marine) and other natural resources are accelerating as a result of the dominant development model that thrives on industrial monocrop agriculture (including crops for agrofuel production and tree plantations), industrial tourism, fishing, and ranching; large-scale mining and energy production, destructive industrial and infrastructure projects, rapid, unplanned urbanization and needless consumption.

10. The economic policies and frameworks promoted nationally and internationally by governments, International Financial Institutions (IFIs), the World Trade Organization (WTO) and free trade and investment agreements promote the plunder of our natural resources and lands. Especially egregious are policies that enable: processes of privatization and commodification of nature and life itself; the dismantling of public services and all public policies that support small- and medium-scale agriculture, livestock keeping and fishing; the promotion of free trade in food, agriculture and fishing, and concentration of agricultural, fishing and food production chains; the concentration of market power among agribusiness and agrifood corporations; and the growing financialization of agriculture.

11. Industrial agriculture, livestock breeding and fisheries, extractive industry, uncontrolled urbanization and excessive consumption patterns among the rich are

destroying soils and biodiversity, contaminating water sources and accelerating climate change and natural disasters. The serious environmental and climate problems we are facing require immediate, appropriate and adequate responses.

12. Likewise, governance systems of land and natural resources in most countries do not recognize the traditional, customary and collective rights of indigenous peoples and local users and their institutions to manage and protect our territories, lands and natural resources. In many countries, pluralistic legal systems prevail that are often contradictory. Powerful actors and officials often take advantage of such situations to serve their own interests and perpetuate tenure insecurity.

13. Transnational companies (TNCs), governments, multilateral bodies and IFIs, promote market mechanisms for environmental protection, the privatization of drinking water supply, the sale/leasing of protected areas, the sale of genetic resources and associated knowledge to the pharmaceutical industry, and the auctioning of forests in 'forest carbon markets' to offset carbon emissions and other polluting activities. These trends deny peoples and communities access to crucial resources thus depriving them of environmental services provided by nature. Rural and urban communities are being compelled to rely on an emerging "environmental services market" in which, natural resources essential for small-scale local users are owned and managed by private companies and corporations.

14. Promoting market mechanisms for the protection of the environment will further advance the commodification of nature and life. Market mechanisms must not become the main form of governance of natural resources. Given the volatility of markets, they will deepen the natural resource crisis with disastrous effects for people and communities, who will be increasingly excluded from forests and other biologically rich areas inhabited by them.

15. In many regions of the world, wars, occupations and conflicts of varying nature and scope are closely linked to conflicts over land and natural resources, which, in a number of cases, are the very causes of unrest. The impacts of these conflicts - including the placement of colonies by occupiers - can be seen in the involuntary displacement of peoples, both as internally displaced people (IDPs) and as externally displaced people (refugees). Land, water and other natural resources are confiscated by military orders, or populations are intimidated into not using their lands and forests, which are then frequently given over to mining and logging operations, resulting in the depletion of natural resources, contamination of water sources and other long-term environmental damage. The plunder of lands leads to the dismemberment of society, and the loss of livelihoods, cultural identity and memory.

16. Our natural commons—lands, forests, hillsides, wetlands, lakes, seas, rivers and biodiversity—are continually threatened by 'enclosures.' Open access lands, water

bodies, forests and their associated natural resources are regarded by States and investors as sources of revenue only and routinely expropriated for extractive industry, logging, hydro-power, energy production, agricultural investment, tourism and other development infrastructure. Wealthy governments are acquiring large tracts of productive lands in poorer countries to secure food supplies and employment for their own populations, while financial investors and traders are buying land for speculative purposes.

17. Our commons are also threatened by trade and investment agreements that entail the extraction and transformation of natural resources as in the WTO, bilateral and regional free trade agreements (FTAs) and investment treaties. They are further endangered by policy frameworks promoted by IFIs, and bilateral and multilateral donors that favour the commercialisation and privatisation of natural resources and increasing economic growth regardless of its costs. IFIs and most governments do not recognise the importance and viability of collective, shared eco-system management with localised centres of governance and decision-making. Instead, they promote private property regimes and resource governance based on individualised ownership and access/tenure rights that can be freely traded in markets.

18. Because of above trends, time tested practices of sharing, using and managing natural resources within and among communities and different user-groups are dismantled, increasing the potential for conflicts, weakening social cohesion, and diminishing the quality of eco-systems. Local people are cut off from crucial, life-sustaining resources, and the natural environment is degraded because of deforestation, land use changes, chemical contamination, diversion of water flows and over-exploitation, which in turn negatively affect the availability and safety of wild, foraged and gathered food.

19. TNCs are exercising increasing control over agriculture, fisheries, livestock/ranching, tourism, food systems, minerals extraction and natural resources at local, national and international levels with severe impacts on water quality and availability, soil fertility, biodiversity, and thereby on human rights, especially those of peasant communities, indigenous peoples, fishing communities, nomadic herders/pastoralists, and workers and urban poor groups. A handful of corporations exercise excessive power and influence over decisions pertaining to the use of natural resources and the relevant laws and policies that govern them. The activities of these corporations undermine food and economic sovereignty in all our countries.

20. Despite the above threats and related human rights violations, in most countries we do not have effective access to justice. The bulk of courts' decisions are based on formal governance regimes that tend to protect the property rights of wealthy and powerful actors/entities, not local populations, especially those that rely most on

natural resources for food, health, livelihoods and survival; rarely do courts recognize the customary and collective rights of affected peoples and communities. Instead, peoples and traditional users who defend their rights to territory, land and natural resources are often persecuted, harassed and imprisoned by State authorities complicit with third parties.

21. It is crucial that the FAO's future Guidelines tackle these common problems briefly described here.

## THE NORMATIVE FRAMEWORK OF THE GUIDELINES<sup>1</sup>

22. The Guidelines are supposed to delineate and provide orientation on what would constitute responsible governance of land and natural resources tenure. In order to have a clear normative standard about what responsible governance is, the Guidelines should be based on the universal human rights framework. As laid down in the Charter of the United Nations, all States have committed to live together in peace and to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character; and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

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23. Human rights are derived from the aspirations of ordinary people like us: fisher-folks, peasants, pastoralists, indigenous peoples, rural workers and other urban and rural communities. Human rights are grounded in our needs, express universal ethical and moral values, and empower each human being, their communities and peoples with entitlements and enforceable claims *vis-à-vis* their own governments as well as other governments. Human rights belong to a great extent to international customary law.

24. Over the past 50 years, a series of important human rights treaties have been brought into being. The purpose of these treaties and other human rights law generated by States is to facilitate the implementation of human rights by description (not definition or recognition) and by introducing certain procedures to promote implementation. The main human rights treaties are important instruments in our contemporary struggles for justice. Nevertheless, we feel there are gaps in their interpretation and implementation when applied to the issue of land and natural resources.

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<sup>1</sup> For a detailed elaboration on the normative framework, see Annex II.

25. Although all human beings depend directly or indirectly on land and other natural resources for our development, as indeed for our common survival, the international system of human rights recognizes the rights to land and territory of indigenous peoples only. Though the right to land and natural resources has not yet been codified explicitly as a universal right, access to *and* benefits from land and natural resources are part of the normative content explicitly recognized as indispensable elements of several specific human rights enshrined in various international legal instruments.

26. The Universal Declaration of Human Rights (UDHR) embodies a commitment of all States to ensure such rights, including, among others the human rights directly linked to land and natural resource access and use such as the rights to an adequate standard of living, housing, food, health, culture, property and participation.

27. International human rights treaties that are binding for ratifying States must form the foundation of the Guidelines' normative framework. These include among others: the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social, and Cultural Rights (ICESCR, particularly art. 6-8, 11, 12), the International Covenant on Civil and Political Rights (ICCPR, particularly art. 6), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, particularly art. 14), and the corresponding rights enshrined in the International Labour Organization's (ILO) agreements such as Convention no. 169 on Indigenous and Tribal Peoples (particularly art. 13-16).<sup>2</sup> Likewise, all regional human rights treaties such as the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and People's Rights, and the Arab Charter of Human Rights must shape the normative framework of these Guidelines.

28. Furthermore, soft law, or *lex feranda* instruments, which include declarations, basic principles, general observations, etc., represent international commitments that are based in foregoing treaties and the world's major legal systems. Among these, the UN Declaration on the Rights of Indigenous Peoples holds particular importance. It recognizes and commits States to protect indigenous peoples' rights to land, territory, water, coastal bodies of water and other resources that they traditionally have possessed or occupied and used, and to maintain and strengthen a spiritual relationship with them. This recognition is coincident with many rulings in national, regional and global adjudication bodies (as noted in Annex II). Equally important is the Declaration's recognition of indigenous peoples' right to govern their lands and territories with their own forms of land tenure systems and institutions. The Declaration also enshrines the

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<sup>2</sup> For a more complete list of relevant treaties see annex II.

right to determine and develop priorities and strategies for the development and use of their land, territory and other resources and, at the same time, establishes the principle of free, prior and informed consent (FPIC) under which the States must obtain the indigenous people's approval for any project affecting indigenous territory or resources.

29. Other relevant instruments of soft law include the UN Declaration on Social Progress and Development, the World Conference on Agrarian Reform and Rural Development and its Action Plan (better known as the Peasants' Charter), the Declaration resulting from the International Conference on Agrarian Reform and Rural Development, the Code of Conduct for Responsible Fisheries, the Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the context of National Food Security, the UN Basic Principles and Guidelines on Development-based Evictions and Displacements, the Guiding Principles on Internal Displacement and the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons, the Vancouver Declaration on Human Settlements, the Istanbul Declaration on Human Settlements, and the Habitat II Agenda.

#### *What Must States Do to Implement Their Human Rights Obligations?*

30. States that are party to the various human rights treaties have the obligations to respect, protect and fulfill the enshrined rights. The obligation to respect means that States must refrain from interfering directly or indirectly in the exercise and enjoyment of people's human rights. Thus, States and all their representatives must not carry out, sponsor or tolerate human rights violations (for example, forced evictions and destroying a community's existing access to land and natural resources). The obligation to protect demands regulatory and enforcement measures to ensure that third parties (individuals, businesses and other non-State actors, including transnational parties) do not violate human rights. This includes taking punitive measures and ensuring reparations in cases where such actors deprive persons or user groups of their rightful access to *and/or* enjoyment of their territories, lands and other natural resources. The obligation to fulfill means that the State actively must promote and facilitate the population's rightful access to land and other natural resources, as well as their equitable use of them.

#### *How Must States Implement Their Human Rights Obligations?*

31. The first three articles of the ICESCR embody over-riding principles and establish the ways in which States have to perform, in order to realize all of the guaranteed human rights. Herein lie the binding principles of ensuring self-determination of peoples, non-discrimination, gender equality, progressive realization of rights (and its corollary of prohibition against taking regressive measures), the application of the maximum of a State's available resources, as well as the duty to engage in reciprocal

international cooperation to realize ESC rights, and ensure the rule of law (elaborated further in the ICCPR) to guarantee realization of the rights and remedy in the case of violations.

32. Whereas States bear a duty to international cooperation under ICESCR (Articles 2.1 and 22), and other instruments, the obligations to uphold all human rights are both, extraterritorial as well as domestic in scope. Accordingly, States must adopt measures that respect and protect the enjoyment of all rights in other countries, as well as facilitate, promote and provide, in certain cases, so as to discharge the duty to fulfill human rights as well. Thus, States are obliged both to seek and lend assistance to this end, as needed.

33. When a State violates its obligations to respect, protect, and fulfill human rights through application of all of the above mentioned over-riding principles, then the State is considered liable for the violation of human rights. The Committee on Economic, Social and Cultural Rights (CESCR) has recognized also that such a violation could be either by commission or omission. The former type of violation occurs when a State or its representative carries out an act resulting in harm that affects any of the rights enshrined in the covenant. The latter type of violation arises when a State, and/or a natural or legal person acting as its agent, fails to act in consistency with the treaty obligation to respect, protect and fulfill human rights. In cases of *gross* violations such as forced eviction, whether by commission or omission, the affected persons bear the right to reparations, which the State is obliged to ensure.

34. Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of land and natural resources should not only take into account rights directly linked to land and natural resource access and use, such as in the case of rights to housing, property, livelihood, food and water, but also the civil and political rights that are indispensable to the exercise of other human rights, such as the right to personal freedom and security, and to not be detained or imprisoned arbitrarily, the right to equality before the law and the right to due process, the right of access to information, and the right to freedom of assembly and association, among others (for a full list of other relevant rights, see Annex II). The interpretation of these rights provides an important comprehensive guidance to States for their implementation of their obligations related to land and other natural resources.

35. Most human rights and the corresponding States' obligations apply in all situations. Certain human rights are non-derogable, which means that they cannot be suspended, repealed or violated even in states of emergency or war. International humanitarian law (IHL) governs the conduct of parties to armed conflicts and

occupations and seeks to limit its harmful effects, including human rights violations. At the core of IHL are the four Geneva Conventions of 1949 and its Additional Protocols (I and II) from 1977. The Fourth Geneva Convention is especially important for the protection of land and natural resource tenure, since it establishes the rules to protect civilians, including civilians in occupied territories, from the consequences of war.

#### *Environmental and other relevant Instruments*

36. The Convention on Biological Diversity, the UN Convention on the Law of the Sea, International Treaty on Genetic Resources for Food and Agriculture, the Convention to Combat Desertification impose relevant binding obligations on party States. The Stockholm Declaration on the Human Environment, the Rio Declaration on the Environment and Development, Agenda 21 and the UN Fish Stocks Agreement also constitute commitments that govern State conduct with bearing on human rights, particularly of those most severely affected by the current forces and developments identified above.

37. That a State must guarantee the human right to a healthy and balanced environment has already been acknowledged. This collective right also has a strong connection with other human rights, such as the right to land, the right to inhabit a certain territory, to not be denied means of subsistence; and at the same time it also complements these rights, advising that activities must be realized in a way that does not cause harm to the environment.

38. Since the Stockholm Declaration (1972) the environment's importance for people's lives and development in all areas - spiritual, moral, social and intellectual - has been widely recognized. Furthermore, the environment is now considered fundamental to the enjoyment of human rights. The Declaration also recognizes the importance of conserving, restoring and improving the land's productive aspect, and that this must be done without putting at risk future generations' standard of living.

39. The Convention on Biological Diversity (CBD) acknowledges how important it is for local and indigenous people to continue living in the territories where they have developed their lifestyles and traditional knowledge. Article 8j of the CBD defends the importance of traditional knowledge and establishes that the signing countries are obliged to respect, preserve and maintain this knowledge. In turn, because traditional knowledge depends on biodiversity, its protection must be realized in the same territory where the knowledge originates. Otherwise, this knowledge could weaken and eventually be lost. Therefore, in order to protect traditional knowledge, the territories where the knowledge-holding communities live as well as their areas of influence must be protected. Without land/territory, traditional knowledge is not possible.

40. This rule is reinforced by article 10 c) that creates the obligation for the signing countries to protect the customary use of nature's wealth, whereas the traditional cultural practices are compatible with conservation.

41. In turn, the Rio Declaration includes important elements that: acknowledge the right to live a healthy life in harmony with Nature; and restrict government's use of natural resources to their own national policies. This use, as well as development, must respect future generations' developmental and environmental needs. Hence, environmental protection is an inherent part of the development process.

42. Sustainable development must be achieved by, among other means, the elimination of the production and consumption models that are unsustainable according to principle 8 of the Rio Declaration. And, according to principle 10, citizens' participation, including in the decision-making process, is one of the best ways to deal with these environmental issues. Principle 20 recognizes the invaluable role of women in environmental regulation and development. Likewise, principle 20 refers to the indigenous communities that, according to the CBD, provide important traditional knowledge and therefore, must have an effective means of participation in sustainable development.

## NATURE AND SCOPE OF THE GUIDELINES

43. The FAO's initial proposal frames the Guidelines as voluntary. Nonetheless, the Guidelines are supposed to be grounded in binding treaty obligations and principles of international human rights and other public law, thereby making it incumbent upon States to apply the principles outlined in the Guidelines. Qualifying the Guidelines as "voluntary" will promote the mistaken understanding that they are somehow "optional" and not binding national and international obligations, and encourage the idea that the States and international organizations can act entirely at their own privately driven discretion in the administration and disposal of land and other natural resources. The States have recognized in various instruments of international law and in their own national Constitutions that they have binding obligations to guarantee their populations' access to *and* enjoyment of the use and benefit of their territories, lands and other natural resources. To comply with these obligations is indispensable to modern statecraft in this globalized world.

44. The Guidelines alone will not create new obligations, but should provide an authoritative interpretation of existing obligations so as to assist policy makers and implementers to know their duties, as well as *how* to fulfill them. An interpretative gap prevails in the understanding of States' national and extraterritorial obligations with regard to land and natural resources. On this subject, the Guidelines could contribute substantially to international standard setting in the wider field of governance and international relations. Likewise, the Guidelines should give practical orientation on how to implement such obligations at a local, national and international level, respecting the principle of subsidiarity.

45. The FAO defines land tenure as the relationship, whether defined legally or customarily, among people with respect to land. It defines governance as the process of governing, including the way in which society is managed and how the competing priorities and interests of different groups are reconciled. For the FAO, governance involves both the formal institutions of government and also informal arrangements, and is especially concerned with the issues of which citizens participate in decision-making, whether and how well governments are accountable to their citizens, and how societies oblige their members to observe rules and laws.

46. The broad definition that the FAO assigns to land tenure—which, by extension, can be applied to natural resources—is multifaceted and takes into account our complex relationship with land, natural resources and nature itself. In practice, however, the concept of "tenure" tends to be reduced to the physical and economic aspects that only relate to the laws of access, ownership, property, titling and the "productive" (exchange

value-producing) use of land and other natural resources, the laws and rules that codify and regulate them, and the formal institutions that create, recognize and enact those particular norms. This kind of reductionism is highly problematic; the Guidelines provide an opportunity to address it. Besides addressing those aspects usually associated with tenure, it is essential that the Guidelines also address those aspects more often neglected, and which are related to the use and management of land and other natural resources in their social function, as well as their cultural and spiritual dimensions.

47. Governance of land and other natural resources involves deciding not only how land and other natural resources are to be governed, but also who gets to decide and how the key decisions will be made, including how different social groups' priorities, interests and rights will be dealt with. At the heart of this matter lie the power relations and modes of production that prevail in a society and the international community. In developing countries, nothing is more inextricably linked to power than land. The Guidelines should therefore explicitly address the main land and natural resources problems faced by marginalized rural and urban groups, like those related to: distorted power relations within and behind the ruling government structures affecting land and natural resources; discrimination in mainstream economic development models; exclusion from decision-making processes on land and natural resources laws and policies; weak, corrupt and inefficient land administration institutions; discrimination in accessing justice; and abuses by powerful non-State actors.

48. For the reasons mentioned above, we propose to change the title of the Guidelines as follows: "FAO Guidelines on the Governance of Land and Other Natural Resources".

49. The Guidelines we propose build on these existing international human rights and environmental legal framework instruments. We have interpreted and further developed them in the light of our aspirations and struggles, as noted in the preamble of this document. Thus the draft Guidelines we present here are integrally linked with these international norms, at the same time as they are rooted in our people's ancestral philosophies. Their constituent values, both primordial and currently relevant and urgent, espouse a cosmology whereby human beings are not the usurpers of Mother Earth, but rather her children, custodians and caretakers, and brothers and sisters of all living things. The proposed Guidelines are based on the articulations of diverse peoples, social movements and organizations, which in some cases have already become national law.

50. In the best tradition of standard setting among nations and peoples, we offer the following proposals for the FAO's consideration.

## I. GUIDELINES ON OVERARCHING PRINCIPLES

### *GUIDELINE 1: SHARED AND SELF-GOVERNED LANDS, WATER BODIES, SPACES AND “TERRITORIES”*

- 1.1 Land, oceans, rivers, forests, and all of nature are much more than means of production; they are the very basis of life, culture and identity, and fulfill crucial social, cultural, spiritual and environmental functions. In both rich and poor countries, the relationships that women and men have with the earth and water are complex and transcend the particular locations from which they derive their livelihoods. Many ethnic nationalities, especially indigenous peoples, express these relationships through the concept of “ancestral territory” or “ancestral domain.”
- 1.2 The concept of territory is complex and subject to multiple interpretations. Among ethnic nationalities and indigenous peoples, territory connotes the bio-ecological surroundings on which human collectives depend to satisfy their material and economic needs, construct social and political relationships, and develop culture and spirituality. Territories connote holistic relationships between a people and their bio-ecological environment. At the same time, territories define the geographical and economic ambits of States, and over which States assert sovereignty through the use of political, legal and military force. Territories are deeply contested spaces in multi-ethnic and multicultural settings with changing occupancy, dynamic ethnic identities, migration and/or rapid urbanization. In situations where growing multi-ethnic, multicultural and multi-religious populations share the same resource base, territories become spaces to be defended from “outsiders,” often resulting in extreme societal violence and civil unrest.
- 1.3 A crucial dimension of the secure access and tenure of peoples to land and other natural resources is self-determination. The right of all peoples to self-determination is enshrined in Article 1 of the ICCPR and ICESCR, which establishes that they can: a) freely establish their political condition and provide their own economic, social and cultural development, and; b) freely use their natural wealth and resources, without prejudice to any obligations arising out of international economic cooperation. All States that are party to the ICCPR and ICESCR are expected to respect and promote the rights of peoples, communities and groups to self-determination, which includes their respective forms of self-organisation, and management/governance of lands, natural resources, common spaces and territories.

- 1.4 For indigenous peoples and many ethnic nationalities, self-determination implies their right to autonomously manage and govern ancestral domain and “territory”. Self-governance is a non-centralized, participatory democratic system of managing the affairs of peoples through consensual principles focusing on prevention and resolution of disputes. It should be noted that in many situations, more than one ethnic nationality, tribal or indigenous people may claim rights over the same, overlapping, and/or contiguous domain of land, water, forest and mountains. This can result in conflict and unrest, and appropriate mechanisms and processes need to be in place to resolve disputes if they arise, to prevent the exclusion of minorities and avert conflicts.
- 1.5 States should recognize and support the autonomy and self-governance of territories, lands, forests, fishing grounds, water bodies, domains and other natural resources by peoples and communities. This includes:
  - a) recognizing the importance and significance of the designation of particular bio-ecological zones as domains or “territories” by peoples, communities and other units of self-governance;
  - b) recognizing and respecting customary systems of managing/governing domains or territories (including lands, forests, fishing grounds, waters and all natural resources) and establishing legal frameworks through which peoples and communities can define their bio-ecological zones and the rules to exercise self-governance over them; and
  - c) initiating a broad and inclusive process to determine rights that are to be enjoyed collectively by a community, by particular groups within a community and individually by all members of a community.
- 1.6 Further, all normative systems and rights defined through such processes should respect and guarantee at all times human rights principles such as equity, gender-equality, and non-discrimination based on race, ethnicity, age, religion or social condition; and the human rights of individuals.
- 1.7 States and society must promote peaceful coexistence of different communities in the same, overlapping and contiguous domains, respect the specific rights of different groups (for example, nomadic herders, fisher-folk, peasants, indigenous peoples, rural workers, urban workers, forest communities) and strengthen conflict resolution mechanisms.
- 1.8 Where necessary, States and societies should promote dialogues among neighboring peoples and communities who may have overlaps in terms of rights and jurisdiction over territories, land and natural resources, in order to delineate and share responsibility.

## ***GUIDELINE 2: COMMONS AND COLLECTIVE RIGHTS OVER NATURAL RESOURCES***

- 2.1 The commons refer to resources that peoples, communities and societies recognize as being accessible to everyone, and that are preserved and managed collectively for use by present and future generations. Commons can be natural, social and institutional, political and intellectual, cultural and spiritual.
- 2.2 The natural commons comprise lands and water bodies, including for example, farm/crop lands, wetlands, forests, wood-lots, open pasture, grazing and range-lands, hill and mountain slopes, streams and rivers, ponds, lakes and other fresh water bodies, fishing grounds, seas and oceans, coastlines, minerals, terrestrial and aquatic biodiversity. In many rural communities, farm/crop lands are communally owned, although the tenure rights of families that farm specific parcels of land are recognized and respected. In every part of the world, agricultural, forest, fishing, coastal, pastoral, nomadic and indigenous communities have developed sophisticated systems of using, sharing, governing and regenerating their natural commons. These systems are essential elements of their respective cultural-political identities and are crucial to their very survival.
- 2.3 States, IFIs, donors and international policy makers, transnational companies and other commercial enterprises should recognise and respect the importance of natural commons to the survival of local communities and for harmonious coexistence of different members of society and the conservation of terrestrial and aquatic biodiversity.
- 2.4 States and societies must immediately start a process to arrive at a shared understanding of what spaces and resources constitute the natural commons, and how they will be protected from profit and rent-seeking actors and processes.
- 2.5 National and sub-national policies for the use, management and governance of the natural commons should be based on the realities, wisdom and practices of peoples from different geographic areas.
- 2.6 The governance of the natural commons should be rooted in collective rights and stewardship. States must guarantee to all user groups and communities, without prejudice, secure access, tenure, and management of their commons. They must also recognise the rights of different users to formulate rules to define individual and collective access, tenure, use, sharing and protection of lands and other natural commons, including appropriate penalties for abuse and wrong-doing. Conservation strategies must emerge from local user communities, especially in environmentally sensitive and fragile areas.

- 2.7 The commons should be protected against expropriation, privatisation, commodification and degradation by the State and its associated entities, private investors and societal actors.
- 2.8 Governments should initiate measures to restore as commons those spaces and resources that have been privatised but which are important for the food and livelihood security of local users and for the conservation of terrestrial and aquatic biodiversity. In situations where full restoration is not possible, appropriate agreements should be made that give local communities and groups' full access and use rights over these spaces and resources.
- 2.9 IFIs and donors should not promote policies that in any way, directly or indirectly, result in the degradation and/or privatisation of the commons, or that restrict the access of local users and peoples to the natural commons.

### ***GUIDELINE 3: FREE, PRIOR AND INFORMED CONSENT (FPIC)***

- 3.1 The principle of Free, Prior and Informed Consent (FPIC) of peoples, local natural resources users and their communities must be respected and upheld in all matters related to the use, transfer, tenure, management and governance of land and other natural resources.
- 3.2 States should hold good faith consultations with indigenous peoples, peasants, pastoralists, fisher-folks, traditional users of natural resources, urban and local communities before initiating any plan, project, and legislative or administrative measure -- including processes of constitutional reform -- that may affect directly or indirectly the territories, land, domains and/or natural resources these constituencies may own, occupy, use, manage and/or depend on for livelihood, social and cultural activities. The procedures of these consultations should be in accordance and harmony with the FPIC principle and related criteria, as well as the customary rules and decision-making structures of indigenous peoples and/or other local communities. These procedures should facilitate access to the consultations by all affected peoples, especially those who potentially might be negatively affected – and not only particular communities and elite actors in the affected communities. The participation of women and young people should also be adequately ensured in the consultations. Moreover, the consultations must be organised without intimidation or coercion, and be conducted in a climate of trust that favors productive dialogue.
- 3.3 All persons, communities and groups affected directly and indirectly should have equal opportunity to discuss, question and propose alternatives to any proposed plan, policy, project or measure. Equal opportunity includes equal access to financial, human and material resources for affected communities and groups to

fully and meaningfully participate in their own indigenous language(s), or by other appropriate means – including access to alternative information about the proposed project and its backers.

- 3.4 Each State should formulate a national consultation policy through open consultation and debates with peoples and in line with the aims of the Guidelines, which lays out the conditions and criteria for different levels of consultation, as well as directions for how the results of these consultations should be used. If the government does not promote consultations based on FPIC, then the affected communities have the right to do so. A request for holding such a consultation should be backed by a certain percentage of the persons that will be affected directly or indirectly by the plan, project, policy or measure. This percentage and the criteria to declare such a consultation should be determined at the national level and included in the consultation policy.
- 3.5 Consultations should aim for all parties to reach mutual understanding about the best course of action and adopt decisions by consensus. If the affected communities do not give their free, prior and informed consent (FPIC), the plan, project, policy, or measure (whatever is the subject of the consultation) shall not be implemented. In the event that consent to a proposed measure is granted, and significant changes are subsequently proposed, free, and prior and informed consent to such changes must also be sought.
- 3.6 Independent observers should participate in the consultations, (unless the affected communities and groups decide it is not necessary); the observers can be, for example, representatives of national human rights organisms, and/or neutral international actors, such as representatives from the UN Office of the High Commissioner of Human Rights, who have been approved by the communities and groups to be consulted and government authorities. If agreement about the proposed observers cannot be reached, each party should have the right to choose the same number of observers to participate in the consultations.
- 3.7 The private companies, corporations, enterprises and other private entities interested in promoting or executing the aforementioned plans, projects and measures cannot under any circumstances organise and conduct the consultations. Private companies and corporations should guarantee that their operations are in accordance with international human rights law and the Guidelines, especially with regard to FPIC.
- 3.8 Free consent: It is a general principle of law that consent is not valid if it is obtained by means of force, coercion or manipulation. For this reason, persons, groups and communities should not be subjected to force, coercion, intimidation

or manipulation by any party seeking to obtain a certain decision. In such a case, the affected people should be able to report such actions and have access to legal redress.

- 3.9 Prior Consent: Consent of affected communities should be sought in all stages of the decision-making process, and must be obtained freely before the plan, project, policy, legislative or administrative measure can be approved or the private/public company be given the corresponding concessions. During this process the time requirements of affected peoples and communities should be respected to give them sufficient time to conduct an analysis of the scope and impact of the plan, project, policy or legislative or administrative measure and its impacts on their rights. The communities and groups should be able to formulate suggestions and recommendations that government authorities take into consideration and that are debated between the parties to the consultative process. Any measure or action that is imposed without obtaining prior consent must be annulled and rescinded. With respect to pre-existing measures, retrospective consultations should be held as soon as reasonably practicable. Pending the satisfactory resolution of the consultations, the measures in question should be temporarily suspended.
- 3.10 Informed Consent: The issues under consultation should be properly and fully conveyed, in the local language, through constant communication between the parties so that there is a real understanding of the implications and scope of the issues. All points of view and perspectives should be aired and considered. At least, all information and perspectives about the following aspects should be available during the consultation process:
- a) The nature, magnitude, schedule, reversibility and scope (including full details of all resource rights to be transferred or affected) of any proposed plan, project, policy, legislative or administrative measure;
  - b) The reason(s) or objectives for the plan/project;
  - c) Its expected duration;
  - d) The location of the areas to be affected;
  - e) A preliminary evaluation of the economic, social, health, cultural, and environmental impacts, including possible risks and human rights impacts assessments, done by independent experts. In these evaluations a comprehensive analysis should be conducted of all the areas that could possibly be affected (rivers, streams, and other water in general, forests, mountains, etc.). These assessments should be compulsory;

- f) Proposals for fair and equitable distributions of benefits in a context that respects the precautionary principle;
- g) the personnel that will most likely be involved in the proposed plan or project's execution (including private sector personnel, research institutions, government employees and other persons);
- h) The procedures that the plan, project, policy, legislative or administrative measure could entail;
- i) Any restrictions on the rights of peoples or communities to property or possession in particular regarding the development plans or investment that would affect their land, domains or natural resources;
- j) All existing legal and procedural requirements that the plan project or measure has to fulfill;
- k) Full details of all entities seeking to acquire land or other natural resources in the proposed plans and measures including (i) beneficial ownership; (ii) any history of human rights violations, environmental violations or corruption; and (iii) other resources held in the country by the entity or entities connected to it.

3.11 The communities and groups can request and receive additional information that they consider pertinent in their own language and access technical assistance.

3.12 FPIC must be upheld in every country by law and appropriate public institutions. The law should include the possibility for continual revision and evaluation of the functioning of consultative mechanisms by experts appointed by the government and communities. Indigenous peoples, peasant, fisher-folk, herder, and other traditional communities should participate in these processes of evaluation and revision. Where necessary, communities and groups should be provided with the necessary resources to ensure effective representation. The law should also include the possibility to file an appeal against authorities that violate the right to consultation and FPIC.

## II. GUIDELINES ON SPECIFIC POLICY ISSUES

### *GUIDELINE 4: JUST, EQUITABLE, AND SUSTAINABLE DISTRIBUTION OF NATURAL RESOURCES*

- 4.1 The just, equitable and sustainable distribution of natural resources within and between communities and groups is essential to realising the right to food. This requires that States a) continually bolster equitable access to natural resources by individuals and communities; b) formulate and implement redistributive reforms of natural resource tenure in the context of highly inequitable tenure; c) establish and implement policies and regulations that prevent the expropriation and concentration of resources by wealthy, powerful and socially dominant actors.
- 4.2 Redistributive reforms of natural resource tenure should be based on the following principles:
  - a) The recognition and respect of traditional or ancestral territories of indigenous peoples, the rights to mobility of nomadic herders/pastoralists and migrant fisher-folk, and the rights to the natural commons by all local user communities;
  - b) Food sovereignty, social justice, cultural and spiritual values, welfare and well-being of all peoples;
  - c) Gender-equality and non-discrimination in ensuring peoples' access to and control over natural resources based on gender, age, ethnicity, race, caste, religion, etc.;
  - d) Intergenerational equity that guarantees availability, access and use of natural resources by young people and future generations;
  - e) The realization of all economic, social, cultural, civil and political human rights, especially the human right to adequate food through food production that is ecologically and economically sustainable and culturally appropriate;
  - f) The recovery and restoration of eco-systems and what indigenous peoples call Mother Earth;

- 4.3 In order to promote equitable access to natural resources, States must implement effective agrarian, aquatic and urban reforms, and ensure that the rule of law is respected by all. Important principles to guide these reforms include:
- a) Limits on the amount of property that can be owned privately and redistribution of lands in the case of large-scale, fixed land holdings (such as haciendas and plantations), so as to prevent the concentration of land;
  - b) The recovery and restoration of lands, forests, mangroves, fishing grounds, rivers, lakes, terrestrial and aquatic biodiversity and public water sources that rightfully belong in the commons from private enclosures by State and private companies/corporations;
  - c) The recognition and demarcation of the ancestral territories of indigenous peoples;
  - d) Ensuring that collective rights to fish and fishing grounds are held by those who actually fish while reversing the privatization of water, fishing grounds and fishing resources, such as through individual transferrable quota (ITQ) and ITQ-like systems;
  - e) Progressive incorporation of privately owned lands and natural resources under the control and management by community self-governance regimes so as to assimilate them into the commons and/or indigenous peoples' territories;
  - f) The establishment of various forms of taxes with distinct and complementary objectives such as discouraging speculation on lands and natural resources, preventing large-scale land concentration, supporting the functioning of local governments and customary institutions in charge of governing land and natural resources tenure;
  - g) The application of fiscal instruments to revenues, and profits (especially financial and productive) and their movement at various levels, local, national and global in order to prevent massive appropriation of lands and natural resources;
  - h) Regulations that restrict the transferability of land and other natural resources in order to protect the commons and indigenous peoples' territories, areas that have undergone redistributive agrarian/aquatic reforms, and all types of natural resources of local peoples; this includes regulations to prevent resource concentration and speculation,

impounding/seizing of land used as debt collateral, the buying and selling of community lands, etc.;

- i) Positive discrimination measures in favor of women to guarantee that they have direct access to and control over land and other natural resources, be it in collective or individual tenure systems;
- j) Facilitating access to agricultural lands and other natural resources for young people and migrants;
- k) Strengthening of smallholder tenants' rights against arbitrary eviction and excessive rents, including: promoting tenancy rights that cannot be alienated in case of divorce or widowhood; permitting tenants to inherit rent contracts; giving tenants priority of purchase in the case that the owner wants to sell; and enabling tenants to stay on lands in the case that the land-owner changes;
- l) The use of urban lands (public and private real estate) that are not built on or utilized, or are underutilized or unoccupied, for the fulfillment of the social function of land and to guarantee all citizens the right to live in urban areas in just, decent and environmentally sustainable conditions;
- m) In the formulation and implementation of urban policies, collective social and cultural interests should prevail over the individual right to property and speculative interests.

- 4.4 Local users and their communities that exercise their right to self-governance of natural resources should foster just, equitable, and sustainable distribution of natural resources, with special attention to guaranteeing equal rights for women.

### ***GUIDELINE 5: SUSTAINABLE USE OF LAND AND OTHER NATURAL RESOURCES***

- 5.1 States and societies should respect the rights of Mother Earth and promote the sustainable use of land and other natural resources, including the re-generation of biological and other natural capacities and cycles. They should respect the rights of all communities and groups to use and benefit from natural resources, and collaborate with them to rehabilitate and restore degraded ecosystems.
- 5.2 Through open, public consultations, governments should formulate participatory land and natural resource use plans and long-term strategies for managing natural resources that include social and environmental safeguards, and are based on economic, environmental, social and human rights impact assessments of different types of land and natural resource use.

- 5.3 In order to build a food production system that is in harmony with nature, respects the rights of peoples (including indigenous peoples, peasants, fisher-folk, pastoralists, nomadic herders and others) and the public interest, and produces healthy, culturally appropriate food for all consumers, agrarian and aquatic reforms should:
- a) Encourage storage of water for irrigation through small-scale infrastructure, such as water harvesting, wetlands, lakes, etc.;
  - b) Be based on and promote rural indigenous and traditional knowledge and appropriate technology that complements this knowledge;
  - c) Promote agro-ecology, small-scale farming, artisanal and small-scale fisheries, and nomadic herding as sustainable forms of livestock keeping and managing of particular ecosystems;
  - d) Balance the productive uses of natural resources with protecting ecosystems through participatory agro-ecological zoning with various user communities;
  - e) Bindingly ensure the full and effective participation of indigenous peoples and other local communities, and seek their full free, prior and informed consent in any and all conservation and management initiatives; where communities do not give their consent, conservation and management initiatives should not go ahead;
  - f) Provide adequate support to small-scale local natural resource users, especially women, in terms of infrastructure, credit, local and national markets, participatory research and training;
  - g) Shorten the geographical distance between food suppliers and consumers and strengthen urban-rural food networks.
- 5.4 States need to establish appropriate policy frameworks for trade, investment, infrastructure and rural and economic development to ensure that they do not violate the human rights to food, housing and water, and the principle of food sovereignty.
- 5.5 States should ensure that the use of land and other natural resources are guided by the principle of intergenerational equity to ensure healthy environments for future generations. Of particular concern are greenhouse gas (GHG) emissions caused by unsustainable land and resource use, including large-scale dams, large-scale energy production, large-scale industrial monocrop agriculture and commercial logging, among others. Soils, terrestrial and aquatic biodiversity, native forests, mangroves, wetlands, range-lands and other landscapes, and all water sources should be protected against contamination and/or depletion by

large-scale extractive and other industries, industrial agriculture, ranching and fishing, intense use of chemical inputs and pesticides, large dams, large-scale extractive energy production, large-scale tourism and urban expansion through appropriate laws and regulation.

- 5.6 States should promote uses of land and other natural resources that strengthen local control over natural resources and their benefits. The use of technology packages that negatively impact the autonomy of peasants, nomadic pastoralists and fisherfolks, and dispossess local users of their access to and control over natural resources (such as the genetic engineering and patenting of life forms) should be strictly regulated or banned.
- 5.7 In urban environments, all inhabitants should be guaranteed full enjoyment of the area's resources, wealth, and spaces, which should be utilized in ways that prioritize the social, cultural and environmental interests of the whole. Socially and environmentally-just use of urban spaces and soil should be promoted, including public spaces, and urban and peri-urban agriculture in sustainable and gender-equitable conditions. Cities should work to establish institutional mechanisms to support diverse modalities of production of habitats and housing, including repair, maintenance and construction consistent with appropriate building standards, paying special attention to self-managed projects and organized collectives.
- 5.8 Urban areas must not be developed at the expense of rural areas. All peoples in both the countryside and towns/cities have the right to just, dignified, sustainable and appropriate living and livelihood conditions. Public investment in infrastructure and social services in rural and urban areas must be equitable, and socially and environmentally balanced.
- 5.9 Urban spaces in particular should be ecologically sustainable and self-sufficient in energy and water, with total waste recycling.
- 5.10 States should recognize that land, forests, rivers, oceans and nature are all spaces for life, culture and spirituality. They should respect the cultural and spiritual uses of natural resources by all peoples, especially, of trees, plants, animals, sacred sites, cemeteries, places for meetings, celebrations or communal festivities, singing, legend-telling and oral traditions pertaining to human relationships with the land and aquatic environments.
- 5.11 States should give priority to community based conservation and protection of nature. Top-down and non-participatory conservation initiatives and market mechanisms for this purpose risk dispossessing local users of their control of natural resources and of deepening the commoditization of natural wealth. States, should, therefore, guarantee the full and effective participation of

indigenous peoples and local communities and their full, prior and informed consent in conservation and management initiatives.

### ***GUIDELINE 6: ADEQUATE REGULATION OF INVESTMENTS***

- 6.1 Neither private nor public investments should obstruct the rights of peoples to adequate and appropriate food, and the productive resources they need to realise this right. Land and other natural resources are the most crucial productive resources for majority of the population in the world and should be protected from expropriation and transfers for both, private and public investments.
- 6.2 Small-scale peasant producers, who are predominantly women, artisanal and small-scale fisher-folk, nomadic herders, gatherers, rural workers and indigenous peoples actually feed the world and have a great potential to preserve our ecosystems. It is the investments of unpaid work by women and men, communal/collective work, small-scale infrastructure installation and maintenance, immigrants' remittances, solidarity networks and public financial support that sustain much of the world's food systems. These investments must be recognised for their full value and prioritised in policy formulation.
- 6.3 Public investment policies should be guided by principles of environmental, social and economic sustainability that emphasize regenerating nature and strengthening people's processes, as well as their tenure over land, water, seeds, biodiversity, coastal lands, mangrove swamps, fishing grounds, forests, mountains, etc. for present and future generations. Public investment should support and augment people's economic initiatives, and encourage locally led transformation and commercialization processes. Most important, public investment policies should promote food sovereignty and help States to meet their human rights obligations related to land and other natural resources toward their citizens, especially local producers and workers.
- 6.4 While some State's obligations are immediate, others need to be met progressively. States and the international community are obliged to use the maximum available resources to do so. The communities and organizations of rural workers, fisher-folk, indigenous people, herders, and peasants should play leading roles in decision-making, consultation, management, auditing and monitoring, as well as in the formulation of policies for public investment and official budgeting.
- 6.5 Family cooperatives and businesses should enjoy a preferential treatment and strategic support from the State by means of credit, training, input subsidies and

protection of local markets, so that small-scale production has priority in distribution and direct marketing to consumers.

- 6.6 Both public and private investments should be subject to strict, legally enforced regulation that safeguards indigenous peoples' rights to territory and peoples' rights to and the quality of land and resources, as well as the rights of workers to decent work, fair wages and other compensation in accordance with relevant human rights treaties. States should prohibit large-scale appropriation and concentration of land, water and other natural resources, and impose maximum limits on the quantity of these resources that private investors (domestic and foreign) can control or own to avoid the transfer of land and resources from the commons/peoples' territories to private hands; the concentration of resources in the hands of a few actors; and increased power by private companies over the productive structure of the country.
- 6.7 All private investments must be coherent with the public interest and be subject to public monitoring to ensure that they do not violate human rights or negatively affect food sovereignty and environmental sustainability objectives. To safeguard against the 'capture' of natural resources by vested interests at the expense of the public interest and community needs, it is crucial that States make provisions for allocation processes to be open, fully disclosed and not compromise or undermine the interests of local, small-scale users, especially those who are poor and vulnerable. States should also take steps to ensure revenue transparency and accounting in line with international best practice standards.
- 6.8 States should also ensure that all agreements affecting land or other natural resources:
  - a) Specifically record the submission of all parties to continuous oversight by independent monitoring and dispute resolution proceedings;
  - b) Explicitly record any assurances made during the negotiation process by the acquiring entity to the local community (for example, any assurances made with regard to employment for the local community); or
  - c) Include provisions prohibiting assignment or transfer of land or other natural resources rights without free, prior and informed consent from local users.

## **GUIDELINE 7: FORCED EVICTION AND OTHER GROSS VIOLATIONS OF HUMAN RIGHTS**

- 7.1 Before engaging in any development or other project involving the removal of housing and inhabitants, governments and all concerned parties must scrupulously avoid forced evictions. Where eviction becomes necessary for purposes of safety, environmental protection, prolonged non-payment of reasonable and agreed rents, or for genuine public purpose, governments and all concerned parties must plan, program and budget fully in order to realize the rights of the affected population.
- 7.2 In general and as a corollary to FPIC, forced evictions and involuntary and arbitrary displacements are gross violations of human rights and grave breaches or crimes under IHL and/or criminal law. Inevitable evictions and resettlements for the betterment of the general welfare can be conducted only in exceptional circumstances and with the free, prior and informed consent of all the affected persons, families and communities.
- 7.3 States should guarantee that they have laws and institutions that effectively protect individuals and groups from forced evictions and they should conduct a complete review of the laws that could permit forced evictions and take adequate measures to repeal and/or reform the laws that are in conflict with related international human rights norms. States also have the obligation to protect individuals and communities from forced evictions committed by third parties, including the adoption of specific preventive measures to avoid and/or eliminate the underlying causes of the forced evictions, such as land and real estate speculations.
- 7.4 States should apply civil or penal sanctions where appropriate against any public or private person or entity that carries out an eviction that is not in total accordance with the international human rights norms. The eviction victims have the right to comprehensive reparation and the guarantee of non-repetition.
- 7.5 States should guarantee effective pre-emptive recourse, including appeals, to affected persons and groups in cases of threatened forced evictions. As *post facto* remedial measures, the state must ensure reparations for victims of these violations; prioritize restitution and return when physically possible, resettlement and compensation for irretrievable costs and losses, and the guarantee of non-repetition of the crime/ violation. Victims should be satisfied that justice has been done. The entire process of reparation (restitution, return or resettlement, compensation, rehabilitation, guarantees of non-repetition and satisfaction once justice is done) can be realized only with the full participation of the persons, groups and communities affected. In no case can resettlement lands or housing be inferior to the previous ones, and cash compensation alone for

lands lost is *prima facie* unacceptable. In particular, States should take into account the rehabilitation plans proposed by the affected population.

- 7.6 In cases of violation such as eviction, displacement or transfer that constitute gross violations or grave breaches and/or crimes, all victims of such violations have the right to adequate appeals/recourses that can consist of restitution, indemnity and compensation, reparation and the guarantee that such acts will not be repeated. Consequently, the State bears the primary obligation to ensure such remedy and reparations. Courts should be able to request interim measures to avoid irreparable harm.

### **GUIDELINE 8: CONFLICT AND POST-CONFLICT SITUATIONS**

- 7.7 All peoples of the United Nations are committed to live in peace and to save succeeding generations from the scourge of war. In many regions around the world though, war, occupations, and conflicts of different natures and scope are closely linked to land and natural resource conflicts. One of the goals of the present Guidelines consists in contributing to the prevention of conflicts by aiding effective and equitable governance.

- 7.8 In case of domestic or international armed conflicts, it is prohibited to mine, attack, destroy, remove or misuse the goods that are necessary to the survival of civilian populations, for example, food products, agricultural areas for food production, harvests or ranching facilities, and drinking or irrigation water supplies and installations. Environmental protections from large-scale, serious and long-term damages resulting from military actions must be guaranteed, including, the prohibition of utilizing means of war aimed or expected to cause environmental damage that threatens the population's health and/or survival.

- 7.9 Taking into account the obligations from international treaties and constitutional provisions, States should take the necessary measures to prevent violations resulting from poor land and natural resource management, including the following measures that comply with the established principles of transitional justice:

- a) Preservation of the memory of events and circumstances involving the violations of affected persons and communities;
- b) Documentation and publication of the offenses and their consequences;
- c) Promotion of reconciliation within the concept of justice respecting diverse cosmologies and understandings of justice;
- d) Reparation for losses and damages, including:

- i. Restitution, whenever materially and physically possible, to the original situation before the violation of international human rights law or international humanitarian law, that restores the freedom and enjoyment of all human rights to the victims;
- ii. The consensual return of affected persons and communities to their homes, lands and natural resources;
- iii. Rehabilitation in all aspects (i.e., social, cultural, psychological, economic, cultural, etc.);
- iv. Compensation for losses not subject to restitution;
- v. The violator's commitment, under penalty of law, not to repeat the crime;
- vi. Affected persons' and communities' satisfaction with the reparations effected;
- vii. The reform of laws and institutions with a view to implementing reparations and deterring such conflict in future.

8.1 International organizations should respect and apply international law without discrimination toward any party. To effectively implement international humanitarian law and international human rights law, and above all to fight against all forms of discrimination and racism, it is urgently necessary to reform the international organizations, as well as States' foreign policies and extraterritorial behavior consistent with the human rights obligations of international cooperation.

8.2 Perpetrators of crimes and illegal activities related to land, natural resources and housing (appropriation, pollution, vandalism, population transfer, etc.), including state agencies/institutions and private actors, should be prosecuted in accordance with applicable law, including international law and treaty obligations. However, this should not be used selectively to target particular ethnic/cultural, religious or minority groups/communities.

### ***GUIDELINE 9: INSTITUTIONS AND LEGAL FRAMEWORKS***

9.1 States should harmonize domestic laws with the obligations arising from international human rights, environmental and other relevant conventions and

treaties; they must implement and enforce the provisions related to ensuring and preserving equitable access of all citizens to land and other natural resources.

- 9.2 In line with the principle of self-determination, States should legally recognize and respect indigenous peoples' and communities' customary rules and traditions that govern the tenure and use of land and natural resources that do not violate human rights, particularly those of women. Likewise, States should support the processes of self-organization of all social-cultural groups seeking to establish forms of self-governance and their own rules to govern their natural resources.
- 9.3 The self-governance over land and other natural resources by peoples and communities and the state governance are limited by the rights of other peoples, communities and states. The basic principles and rights laid down here apply to all with the aim of guaranteeing the survival of present and future generations and the protection of nature.
- 9.4 Appropriate forms of legislation to protect indigenous territories and the commons should be developed with the participation of different user communities and constituencies, for example, indigenous peoples, ethnic nationalities, subsistence and smallholder farmers, fisher-folks, pastoralists, agricultural workers, urban workers, low-income communities, etc. These include, for example, provisions for collective/community land titles, community fisheries, pastoral mobility and use, forest community and user rights, self-governance of domains, autonomy, etc.
- 9.5 The principle of subsidiarity holds special importance for the recognition and promotion of forms of self-governance of natural resources. States and communities should reach common agreement on how State/institutions responsible for governing natural resources will interact and support institutions established by communities (including customary institutions), to ensure good governance of natural resources. This will likely require reorganization of public institutions and introduction of binding mechanisms that guarantee the participation of representatives from different communities and constituencies at all levels of operation (for example, planning, decision making, management, follow-up and assessment).
- 9.6 States should also ensure coordination across all ministries, agencies and departments involved in matters related to land and other natural resources, in order to guarantee policies, plans and programmes that support realizing the rights to land and other natural resources of women, rural workers, fisher-folk,

peasants, herders, and other small local users; and the rights to territory of indigenous peoples.

- 9.7 Corruption of all forms and at all levels in the allocation, use, management, tenure and transfer of land and other natural resources must be actively combated by the respective public institutions.
- 9.8 The public institutions related to the governance of land and other natural resources should use and strengthen participatory methodologies to collect relevant information. States should accept and respect the local users' knowledge of their natural resources; new systems and new technologies for developing and managing land and other natural resources should be complementary to this knowledge, and be accessible to local land and resource users, affordable, sustainable and gender-equal.
- 9.9 In order to guarantee sustainable governance of domains and ecosystems that stretch beyond state borders, neighboring States, their institutions and institutions of communities should cooperate to create joint systems of governance. This is particularly important in relation to the management of rivers, water, oceans, hillsides/mountains, plateaus and forests. Regional organizations of States should actively support these processes.

### **III. GUIDELINES ON ACCOUNTABILITY**

#### ***GUIDELINE 10: APPEAL MECHANISMS***

- 10.1 All persons and communities have the right to an effective remedy in case of violations of her/his rights. This implies the rights to access political, administrative, judicial and quasi-judicial mechanisms to provide adequate, accessible, effective and fast appeals/recourses when their rights to land and other natural resources and to territory – when it applies— have been threatened or violated, or when the States do not fulfill their related FPIC obligations. All victims of such violations have the right to adequate appeals/recourses that can consist of restitution, indemnity and compensation, reparation and the guarantee that such acts will not be repeated.
- 10.2 Corrective justice should be enacted adequately against the destruction of land, ancestral territories or natural resources by state and governmental actors, IFIs, private corporations and/or other private entities (domestic and foreign). This includes environmental clean-up and restoration, whose costs will be assumed by the polluters.

- 10.3 It is essential that local users have full access, in their language, to all information and documentation relating to plans, projects and measures affecting land and other natural resources, in order that they can understand the rights afforded to them under the same, and appeal any terms or provisions which violate international human or environmental rights, or are otherwise not in their collective interest. Accordingly, States should make all agreements affecting land and other natural resources publicly available prior to implementation, together with all documents referred to within such agreements, as well as all collateral agreements.
- 10.4 States must recognise and support customary conflict-resolution institutions and authorities and encourage their use in the case of conflicts over natural resources within or between communities. In agreement with the communities, the States should also establish independent arbitration and mediation mechanisms in case conflicts between communities cannot be resolved through customary institutions. The States must develop judicial systems that implement fair, quick and effective solutions to land and other natural resources disputes.
- 10.5 Mechanisms for objection and appeal in cases of mismanagement of natural resources, as well as guarantees for full reparations in case of damages, should be established.
- 10.6 States should respect the rights of all peoples (citizens or not) to due process, and the civil and political liberties of defenders of the human rights of peasants, indigenous peoples, artisanal fisher-folk, nomadic herders, traditional communities, and rural workers. States should abstain from criminalizing and repressing social and community struggles in defense of land and other natural resources.

### ***GUIDELINE 11: FOLLOW-UP AND MONITORING***

- 11.1 States and regional and international organizations should establish broad, comprehensive and clear systems of follow-up and monitoring of their policies and actions regarding land and other natural resources to be used by different social actors. Strong mechanisms of public accountability should be in place.
- 11.2 States, aid cooperation agencies, and international organizations have the obligation to provide adequate, full and timely information about all policies, activities and projects that could affect the tenure of local users to land and other natural resources. States have the additional obligation to guarantee effective access by local users and their communities to natural resources and to all relevant information that can assist for their decision-making processes and facilitate social control of natural resources.

- 11.3 States should gather statistics and other disaggregated data regarding issues related to the security of natural resource tenure, in particular about forced evictions and arbitrary displacements, the number of people without land or enough land, the degree of concentration of land and other natural resources, losses of access to fishing grounds, grazing and range-lands, farmlands, water and other natural resources, the reasons for these losses, ecosystem degradation, biodiversity loss, and other related socio-economic data. The breakdown of the data should consider, at the very least, ethnicity, gender, age, language, occupation and economic status.
- 11.4 Likewise, States should supervise the uses of natural resources to ensure their sustainability. Environmental, social and economic sustainability standards should be developed through broad-based public consultations, especially with different constituencies of land and natural resource users. Particular attention needs to be paid to soil fertility conservation, the use of fertilizers and pesticides, the management of water and protection of watershed areas, meadows, forests, mangrove swamps, coastal areas, fishing activities, and the regeneration of biodiversity and ecosystems.
- 11.5 States should elaborate with the participation of relevant and interested constituencies, indicators and benchmarks for monitoring compliance with and progressive realization of the present guidelines. In this respect, specific goals and timeframes for the following are recommended:
- a) Recognition and security of tenurial and use rights to land, natural resources and urban spaces by indigenous peoples, nomadic pastoralist, peasant, forest, fisherfolk, workers, and other local and traditional communities in rural and urban areas;
  - b) The redistribution of the tenurial and use rights where necessary to different constituencies, with particular attention to the rights of women and young people;
  - c) Based on the above, recovering and re-establishment of the commons and local self-governance of natural resources;
  - d) The restoration of degraded ecosystems through appropriate actions with the full approval and participation of local communities.
- 11.6 States and specialized international organizations should support and strengthen the capacity of local communities and the organizational structures of indigenous peoples, fisher-folk, herders, rural workers, peasants, and urban groups to gather information autonomously about the condition/quality, use and management of

natural resources, and to independently supervise the implementation of the present Guidelines.

- 11.7 States should establish independent and participatory mechanisms to facilitate monitoring the implementation of the Guidelines at national levels. It is also especially recommended that national human rights institutions take into consideration the present Guidelines. The establishment of national independent and multi-actor bodies to observe compliance with the present Guidelines should be encouraged.
- 11.8 At the international level, these Guidelines can serve as a reference for the periodic reporting of States to different human rights monitoring and environmental treaty-bodies, as well as for the work of other institutions such as the Office of the High Commissioner of Human Rights, the Human Rights Council and the specialized UN agencies like FAO, IFAD, UN-Habitat. Reporting regarding adherence to these Guidelines should also be invited from organizations of indigenous peoples, fisher-folk, herders, rural workers, peasants, and urban groups, and specific resources should be made available for this, if required.
- 11.9 Regional and international institutions -- especially IFIs -- must incorporate the present Guidelines in their operational policies and directives and not support private or public projects, programmes or measures that violate human rights. The operations evaluation mechanisms within IFIs must incorporate respect for human rights as core criteria.

### ***Guideline 12: Accountability of Transnational Corporations and other Commercial Businesses***

- 12.1 States and UN organizations must adequately regulate the activities of transnational companies (TNCs) and other commercial businesses to guarantee that they do not affect negatively the realisation and enjoyment of human rights related to land and other natural resources of workers, nomadic pastoralists/herders, artisanal and small-scale fisher-folk, indigenous peoples and peasants. States should establish effective mechanisms that allow TNCs and businesses to be held legally accountable for losses and damages arising from violations and/or crimes that they commit at home or abroad. At the domestic level, legal reforms are required that, for example: make clear the penal and civil responsibilities for businesses that violate human rights, labour rights, and international environmental law; that establish obligations regarding reporting of social, environmental and labour impacts of their operations; and that establish remedies and reparations for people and communities negatively affected by

these operations. All evaluations of potential damages should be based on the precautionary principle and intergenerational equity.

- 12.2 TNCs should be regulated under the jurisdiction of where their operational headquarters are located, as well as under the domestic laws of where they conduct their businesses. Codes of Conduct and Corporate Social Responsibilities (CSR) schemes should not be accepted as substitutes for legally binding regulation. The mandate and competency of the International Criminal Court should also be broadened so that it has jurisdiction over legal persons, and therefore, over business.

### ***Guideline 13: The Extraterritorial Dimension***

- 13.1 States should respect the extraterritorial dimension of their human rights obligations related to land and other natural resources. States remain liable for acts and omissions by their agents or legal persons operating under their jurisdiction or effective control that affect the human rights of persons and communities well beyond their territorial jurisdiction or effective control.
- 13.2 States, the specialized UN organizations, multilateral agencies and IFIs should not promote measures that obstruct or impede in any way the realisation of human rights related to land and other natural resources and to territory, including policies that promote the concentration of land and other natural resources in elite groups and impede genuine redistribution of land and other natural resources to the poor. Instead, they should contribute to the fulfillment of these Guidelines in all countries. States, specialized UN agencies and IFIs in particular, should not promote projects, plans, policies or measures that destroy present and future access and tenurial rights of local users, and/or result in the privatisation of land and other natural resources. Under no circumstances should agents or legal persons operating within their jurisdiction or effective control encourage, support or condone forced evictions or involuntary displacements.
- 13.3 All bilateral and multilateral, regional and international trade, investment and economic cooperation agreements should incorporate these Guidelines to ensure that such agreements do not negatively affect indigenous people's rights to territory and the access and tenurial rights of local users and their communities to land and other natural resources. States must undertake human rights audits of commitments already made in the WTO, FTA and investment agreements, and rescind commitments that violate the right to adequate food and to territory, land and other natural resources. Global trade and investment commitments should not take precedence over human rights commitments.

- 13.4 States and UN specialized organisations should guarantee the effective participation of women, artisanal fisher-folk, indigenous peoples, peasants, nomadic herders, and other traditional users of natural resources, and rural workers in the design and implementation of international cooperation policies related to land and other natural resources. The Guidelines should become incorporated into the aid and cooperation policies of FAO, IFAD, other pertinent UN agencies, multilateral bodies and bilateral donors. The FAO and IFAD, especially, should establish independent and participatory monitoring mechanisms to monitor if their policies and programs are coherent with and contribute to the fulfillment of the Guidelines.
- 13.5 States and UN organisations need to increase the effectiveness of the international human rights and environmental protection system by putting in place strong compliance and sanction mechanisms, for example, the creation of international tribunals to prosecute human rights violations and environmental destruction.