

Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests

CSO position on controversial issues in the perspective of the July negotiation

The Open-Ended Working Group (OEWG) June meeting on the First Draft of the Voluntary Guidelines (VGs) for Responsible Governance of Tenure of Land, Fisheries and Forests has successfully identified areas of major concerns for FAO Member-States, CSO and other stakeholders in the context of the July negotiation. The present document aims to reaffirm CSO position related to these controversial issues¹.

Primary purposes of the Guidelines

The lack of secure access to and control over land, water, fisheries and forests for local communities and in particular small-scale food producers, women, indigenous peoples and the most marginalized and vulnerable groups such as small-scale fisherfolks, resettled communities, older women, widowed women and orphaned girls, nomadic pastoralists and landless people are among the main factors that contribute to the global food crisis. Moreover, the Guidelines have been expressly developed in the framework of the CFS as one of the responses to the aggravation of the global food crisis consecutive to the high increase of food prices in 2007-08. Therefore, it should be strongly reaffirmed that they aim first and foremost to improve access to and control over land, water, fisheries and forests for these populations, as a mean to contribute to hunger eradication and to poverty reduction.

Reference to international human rights and to the States obligations in this regard

Voluntary or not, these Guidelines are based on international human rights directly or indirectly relevant in terms of access to and control over land, water, fisheries and forests, as anchored in various human rights instruments. The Convention 169 on Indigenous and Tribal Peoples of the International Labour Organization (ILO) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) contain explicit references to land rights. Moreover, rights to land, water and other natural resources are intimately connected to numerous economic, social and cultural rights, such as the right to adequate food, housing, health and work. Conventions and treaties addressing these rights include the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the four Geneva Conventions and their two additional Protocols, the Convention on the Rights of the Child, the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention on Biological Diversity, the Core Labor Standards of the ILO and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). All these treaties and conventions are binding for ratifying State, which must be required to incorporate their provisions into domestic law. Therefore, these Guidelines should follow international agreed language when it introduces human rights concepts (avoiding the risk of being interpreted as lowering existing agreed standards) and remind to governments their obligations in this regard.

Protection of local communities from market mechanisms, investments and concessions that undermine their secure access to and control over land, water, fisheries and forests

In terms of access to and control over land, water, fisheries and forests, instead of uppermost promoting the development of market mechanisms, investments and concessions in an economic growth logic, States should first of all regulate them in a food security perspective to authorize only those that do not undermine the human rights of local communities, particularly of small-scale food producers, women, indigenous peoples and the most marginalized and vulnerable groups, and that do not harm the environment. In this regard, the Guidelines should include provisions which subject market mechanisms, both public and private investments and concessions to strict, legally, enforced regulation that safeguards indigenous peoples' rights to territory and peoples' rights to land, water, fisheries and forests, as well as the rights of workers to decent work, fair wages and other compensation in accordance with relevant rights treaties. Moreover, the Guidelines should formulate strong provisions based on the principle of Free, Prior and Informed Consent (FPIC) in order to protect all those communities whose living depend on land and other natural resources.

¹ This document is based on the CSO consolidated position on the First Draft of the VGs (update of CSO position on the Zero Draft). Please refer to this consolidated position for the complete CSO position on the whole First Draft.

Inclusion of water and other natural resources in the Guidelines

Access to water for drinking, food production and livestock tending, as well as to fisheries and forests for local populations, is absolutely crucial to hunger eradication. Furthermore, the use of land for productive purposes cannot be separated in particular from the use of water (investment in land is very much linked to the availability of water). Therefore, the Guidelines should not be limited to land but should also apply to water, fisheries and forests, with specific provisions where necessary for addressing specificities of access to and control over these resources. The adequate inclusion of water, fisheries and forests in the Guidelines is coherent with the holistic approach to natural resources and their uses that this initiative intends to apply (stated in paragraph 3.2(4)).

The same holistic approach also implies that the Guidelines should acknowledge the natural commons, their significance for the food and livelihood security of local users and communities, and their role in the conservation of terrestrial and aquatic biodiversity. The natural commons comprise farm/crop lands, wetlands, forests, woodlots, 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 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, often rooted in collective rights, are essential dimensions of the cultural-political identities of individuals and communities, and are crucial to their very survival.

The need of restitution and redistributive reforms

In terms of different ways of transferring and changing tenure rights, restitution and redistributive reforms seek specifically to address historic dispossession of natural resources and unjust and discriminatory tenure patterns, and thus are of utmost importance for indigenous peoples, pastoralists, ethnic groups, Dalits and landless people. The Guidelines should therefore clearly give the priority to restitution and redistributive reforms on other means of transferring and changing tenure rights, in particular on market-oriented approaches which cannot address this crucial challenge. They should explicitly include aquatic reforms and refer to the principles contained in the Final Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD) and The Peasant Charter as the most authoritative instruments in this matter.

Coherent distinction of the respective roles of States and non-States actors

The Guidelines should clearly distinguish the respective roles of the state, the private sector and civil society. Particular attention should be given to the accountability of the private sector. In that perspective, the Guidelines should deal with issues of abuses by powerful non-state actors and the responsibilities of transnational companies (TNCs) and other enterprises with respect to the human rights related to tenure issues. They should emphasize States' obligations to properly regulate the activities of TNCs and other commercial entities in order to prevent negative impacts on the realization and enjoyment of human rights related to land and other natural resources by workers, nomadic pastoralists/herders, artisanal and small-scale fisher-folk, indigenous peoples and peasants. The Guidelines should also encourage the establishment of effective mechanisms that make TNCs and businesses legally accountable for losses and damages arising from violations and/or crimes they commit locally or internationally.

Coherent spatial planning from a “sustainable development” perspective

The Guidelines should adequately address the need for coherent spatial planning in terms of “sustainable development”. Spatial planning links national, regional and local land use planning and also combines different land uses such as infrastructure development, settlement, agriculture, water catchment protection, environmental protection and natural habitats. In the Guidelines, spatial planning must reflect the overall objectives of food security, poverty eradication, biodiversity and natural resources preservation, ecosystems protection, climate change mitigation (as well as adaptation to global warming) and realization of human rights. All relevant policies having direct or indirect impacts on land uses should be put in coherence with these objectives. Land and natural resources use plans should be formulated in a participatory manner through open and public consultations and decision-making processes. Long-term strategies for managing natural resources should include social and environmental safeguards based on economic, environmental, social and human rights impact-assessments of different types of land and natural resource use. FPIC should be guaranteed in conservation and management initiatives.