

Consolidated Changes to the First Draft of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

(12-15 July and 10-15 October 2011)

Explanatory Notes Regarding Changes to the First Draft

The CFS-led Intergovernmental Negotiations took place during 12-15 July and 10-15 October 2011 before being adjourned and will continue at a date to be confirmed by CFS.

During the negotiations the Plenary reviewed text of the first draft. In some cases, text was reviewed by Thematic Groups^a and Friend of the Chair Groups before being passed to the Plenary for consideration. When the meeting was adjourned on 15 October, the Plenary had found consensus on the following sections:

- Preface
- Section 1 (Objectives)
- Section 2 (Nature and scope)
- Section 3 (Guiding principles of responsible tenure governance)
- Section 5 (Policy, legal and organizational frameworks related to tenure)
- Section 6 (Delivery of services)
- Section 7 (Safeguards)
- Section 10 (Informal tenure)
- Section 13 (Land consolidation and other readjustment approaches)
- Section 17 (Records of tenure rights)
- Section 18 (Valuation)
- Section 20 (Regulated spatial planning)
- Section 21 (Resolution of disputes over tenure rights)

In addition, the Plenary had found consensus on some paragraphs in the following sections:

- Section 4 (Rights and responsibilities related to tenure)
- Section 8 (Public land, fisheries and forests)
- Section 9 (Indigenous peoples and other communities with customary tenure)
- Section 11 (Markets)
- Section 12 (Investments)
- Section 14 (Restitution)
- Section 15 (Redistributive reforms)

^a During July 2011, the Thematic Groups convened were:

- Thematic Group 1 (Plenary): Scope and purpose of the Voluntary Guidelines
- Thematic Group 2: Tenure reform
- Thematic Group 3: Markets, investments and concessions
- Thematic Group 4: Language Harmonization
- Thematic Group 5: Definitions and roles of state and non-state actors

During October 2011, the Language Harmonization group continued to work.

- Section 16 (Expropriation and compensation)
- Section 19 (Taxation)

Where appropriate, text of sentences in other sections was revised to conform to text on which the Plenary had found consensus.

The present document contains the following text:

- a) Text for which the Plenary found consensus is marked by asterisks.
- b) Text proposed by thematic groups or friend of the chair groups but not discussed by the Plenary is shown in brackets and identified by the thematic group or friend of the chair group that made the proposal.
- c) Text discussed but for which consensus was not found, either by the Plenary or by thematic groups or friend of the chair groups, is highlighted.
- d) Text not bracketed, highlighted or marked with asterisks has not yet been reviewed by a thematic group, friend of the chair group or the Plenary.

*** Voluntary Guidelines on the Responsible Governance of
Tenure of Land, Fisheries and Forests in the Context of
National Food Security ***

Contents

Preface.....	3
Part 1 Preliminary	6
1. Objectives.....	6
2. Nature and scope	6
Part 2 General matters	8
3. Guiding principles of responsible tenure governance	8
4. Rights and responsibilities related to tenure.....	10
5. Policy, legal and organizational frameworks related to tenure	12
6. Delivery of services.....	13
Part 3 Legal recognition and allocation of tenure rights and duties	15
7. Safeguards	15
8. Public land, fisheries and forests.....	16
9. Indigenous peoples and other communities with customary tenure systems	18
10. Informal tenure.....	20
Part 4 Transfers and other changes to tenure rights and duties	21
11. Markets.....	21
12. Investments.....	22
13. Land consolidation and other readjustment approaches.....	24
14. Restitution	25
15. Redistributive reforms	26
16. Expropriation and compensation.....	28
Part 5 Administration of tenure	30
17. Records of tenure rights	30
18. Valuation	31
19. Taxation.....	32
20. Regulated spatial planning	32
21. Resolution of disputes over tenure rights.....	33
22. Transboundary matters.....	34
Part 6 Responses to climate change and emergencies	35
23. Climate change	35
24. Natural disasters	36
25. Violent conflicts	37
Part 7 Implementation, monitoring and evaluation	39
Annex 1: Glossary	40
Annex 2: International and regional human rights instruments relevant to the governance of tenure.....	46

*** Preface ***

* The purpose of the Voluntary Guidelines is to serve as a reference and to provide guidance to improve the governance¹ of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food in the context of national food security. *

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

* The eradication of hunger and poverty, and the sustainable use of the environment, depend in large measure on how people, communities and others gain access to land, fisheries and forests. The livelihoods of many, particularly the rural poor, are based on secure and equitable access to and control over these resources. They are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth. *

* It is important to note that responsible governance of tenure of land, forests and fisheries is inextricably linked with access to and management of other natural resources such as water and mineral resources. While recognizing the existence of different models and systems of governance of these natural resources under national contexts, States may wish to take the governance of these associated natural resources into account in their implementation of these Voluntary Guidelines, as appropriate. *

* How people, communities and others gain access to land, fisheries and forests is defined and regulated by societies through systems of tenure. These tenure systems determine who can use which resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices. Tenure systems increasingly face stress as the world's growing population requires food security, and as environmental degradation and climate change reduce the availability of land, fisheries and forests. Inadequate and insecure tenure rights increase vulnerability, hunger and poverty, and can lead to conflict and environmental degradation when competing users fight for control of the resources. *

* The governance of tenure is a crucial element in determining if and how people, communities and others are able to acquire rights, and associated duties, to use and control land, fisheries and forests. Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance. Weak governance adversely affects social stability, sustainable use of the environment, investment and economic growth. People can be condemned to a life of hunger and poverty if they lose their tenure rights to their homes, land, fisheries and forests and their livelihoods because of corrupt tenure practices or if implementing agencies fail to protect their tenure rights. People may even lose their lives when weak

¹ Explanations of important terms such as Governance, Tenure, Land, Fisheries and Forests are given in Annex 1. Note: Annex 1 is still to be finalized.

tenure governance leads to violent conflict. Responsible governance of tenure conversely, promotes sustainable social and economic development that can help eradicate poverty and food insecurity and encourages responsible investment. *

* In response to growing and widespread interest, FAO and its partners embarked on the development of voluntary guidelines on responsible tenure governance (Voluntary Guidelines). This initiative builds on and supports the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (Voluntary Guidelines on the Right to Food), which were adopted by the FAO Council at its Hundred and Twenty-seventh Session in November 2004, and the 2006 *International Conference on Agrarian Reform and Rural Development* (ICARRD). *

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

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

* The current draft to be presented to the CFS for consideration and adoption has been developed by the open-ended working group in three sessions in June, July and October 2011, and is to be finalized in a further session at a date that is to be confirmed. It is based on an inclusive process of consultations that occurred during 2009-2010. Regional consultations were held in Brazil, Burkina Faso, Ethiopia, Jordan, Namibia, Panama, Romania, the Russian Federation, Samoa and Viet Nam. These regional consultations brought together almost 700 people, from 133 countries, representing the public and private sectors, civil society and academia. Four consultations, held specifically for civil society of Africa (in Mali); of Asia (in Malaysia); of Europe and Central and West Asia (in Italy); and of Latin America (in Brazil), were attended by almost 200 people from 70 countries, and an additional private sector consultation drew over 70 people from 21 countries. The draft of the Voluntary Guidelines incorporates proposals received through an electronic consultation on the zero draft. Proposals to improve the zero draft were received from the public and private sectors, civil society and academia, and from around the world. *

* The draft is consistent with, and draws on, international and regional instruments, including the Millennium Development Goals, that address human rights and tenure rights, and which are shown in Annex 2. When readers of the Voluntary Guidelines seek to improve tenure governance, they are encouraged to regularly review these instruments for their applicable obligations and voluntary commitments, and to gain additional guidance. *

Part 1 * Preliminary *

1. * Objectives *

1.1 * These Voluntary Guidelines seek to improve governance of tenure of land², fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty alleviation, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. All programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should be consistent with States' existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments. *

1.2 * These Guidelines seek to: *

1. * improve tenure governance by providing guidance and information on internationally accepted practices for systems that deal with the rights to use, manage and control land, fisheries and forests. *
2. * contribute to the improvement and development of the policy, legal and organizational frameworks regulating the range of tenure rights that exist over these resources. *
3. * enhance the transparency and improve the functioning of tenure systems. *
4. * strengthen the capacities and operations of implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned with tenure governance as well as to promote the cooperation between the actors mentioned. *

2. * Nature and scope *

2.1 * These Guidelines are voluntary. *

2.2 * These Guidelines should be interpreted and applied consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. They are complementary to, and support, national, regional and international initiatives that address human rights and provide secure tenure rights to land, fisheries and forests, and also initiatives to improve governance. Nothing in these

² The term land is defined in Annex 1. Note: Annex 1 is still to be finalized.

guidelines should be read as limiting or undermining any legal obligations to which a State may be subject under international law. *

- 2.3 * These Guidelines can be used by States; implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned to assess tenure governance and identify improvements and apply them.*
- 2.4 * These Guidelines are global in scope. Taking into consideration the national context, they may be used by all countries and regions at all stages of economic development and for the governance of all forms of tenure, including public, private, communal, collective, indigenous and customary. *
- 2.5 * These Voluntary Guidelines should be interpreted and applied in accordance with national legal systems and their institutions.*

Part 2 * General matters *

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

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

3. * Guiding principles of responsible tenure governance *

3A * *General principles* *

3.1 * States should: *

1. * recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights. *
2. * safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions. *
3. * promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all. *
4. * provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes. *
5. * prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings. *

3.2 * Non-state actors including business enterprises have a responsibility to respect human and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and

address adverse human and legitimate tenure rights impacts. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse human and legitimate tenure rights impacts. Business enterprises should identify and assess any actual or potential human and legitimate tenure rights impacts in which they may be involved. States in accordance with their international obligations should provide access to effective judicial remedies for negative human and legitimate tenure rights impacts by business enterprises. Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in human and legitimate tenure rights abuse. States should take additional steps to protect against human and legitimate tenure rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies. *

3B * *Principles of implementation* *

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

1. * **Human dignity:** recognizing the inherent dignity and the equal and inalienable human rights of all individuals. *
2. * **Non-discrimination:** no one should be subject to discrimination under law and policies as well as in practice. *
3. * **Equity and justice:** recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access, to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.*
4. * **Gender equality:** Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status. *
5. * **Holistic and sustainable approach:** recognizing that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration. *
6. * **Consultation and participation:** engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions,

prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes. *

7. * **Rule of law:** adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *
8. * **Transparency:** clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all. *
9. * **Accountability:** holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law. *
10. * **Continuous improvement:** States should improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programmes and secure on-going improvements. *

4. * **Rights and responsibilities related to tenure** *

- 4.1 * States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth. *
- 4.2 * States should ensure that all actions regarding tenure and its governance are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *
- 4.3 * All parties should recognize that no tenure right, including private ownership, is absolute. All tenure rights are limited by the rights of others and by the measures taken by States necessary for public purposes. Such measures should be determined by law, solely for the purpose of promoting general welfare including environmental protection and consistent with States' human rights obligations. Tenure rights are also balanced by duties. All should respect the long-term protection and sustainable use of land, fisheries and forests. *
- 4.4 * Based on an examination of tenure rights in line with national law, States should provide legal recognition for legitimate tenure rights not currently protected by law. Policies and laws that ensure tenure rights should be non-

discriminatory and gender sensitive. Consistent with paragraph 3B.6, States should define through widely publicized rules the categories of rights that are considered legitimate. All forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against unlawful forced evictions, harassment and other threats. *

- 4.5 * States should protect legitimate tenure rights, and ensure that people are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed. *
- 4.6 * States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. In particular, States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights. Such State actions should be consistent with their existing obligations under relevant national law and legislation and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *
- 4.7 * States should consider providing non-discriminatory and gender-sensitive assistance where people are unable through their own actions to acquire tenure rights to sustain themselves, to gain access to the services of implementing agencies and judicial authorities, or to participate in processes that could affect their tenure rights. *
- 4.8 * Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights. In doing so, States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests. *
- 4.9 [States should provide access through impartial and competent judicial and administrative bodies to timely, affordable, and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies and a right to appeal. Such remedies should be promptly enforced and may include restitution, indemnity, compensation and reparation. States should ensure that any person whose human rights are violated in the context of tenure also has access to such means of dispute resolution and remedies.] *(This paragraph was requested to be reviewed by the Plenary after review of paragraphs 21.1 and 21.6; the Plenary has now found consensus on those paragraphs.)*
- 4.10 * States should welcome and facilitate the participation of users of land, fisheries and forests to be fully involved in a participatory process of tenure governance,

inter alia, formulation and implementation of policy and law and decisions on territorial development as appropriate to the roles of State and non-state actors and in line with national legislation and law. *

5. * Policy, legal and organizational frameworks related to tenure *

- 5.1 * States should provide and maintain policy, legal and organizational frameworks that promote responsible governance of tenure of land, fisheries and forests. These frameworks are dependent on, and are supported by, broader reforms to the legal system, public service and judicial authorities. *
- 5.2 * States should ensure that policy, legal and organizational frameworks for tenure governance are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *
- 5.3 * States should ensure that policy, legal and organizational frameworks for tenure governance recognise and respect, in accordance with national laws, legitimate tenure rights including legitimate customary tenure rights that are not currently protected by law; and facilitate, promote, and protect the exercise of tenure rights. Frameworks should reflect the social, cultural, economic and environmental significance of land, fisheries and forests. States should provide frameworks that are non-discriminatory and promote social equity and gender equality. Frameworks should reflect the interconnected relationships between land, fisheries and forests and their uses, and establish an integrated approach to their administration. *
- 5.4 * States should consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognise women's tenure rights are enforced and implemented. States should ensure that women can legally enter into contracts concerning tenure rights on basis of equality with men and should strive to provide legal services and other assistance to enable women to defend their tenure interests. *
- 5.5 * States should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset. Policies, laws and procedures should take into account the capacity to implement. They should incorporate gender-sensitive approaches, be clearly expressed in applicable languages, and widely publicized. *
- 5.6 * States should place responsibilities at levels of government that can most effectively deliver services to the people. States should clearly define the roles and responsibilities of agencies dealing with tenure of land, fisheries and forests. States should ensure coordination between implementing agencies, as well as

with local governments, and indigenous peoples and other communities with customary tenure systems. *

- 5.7 * States should define and publicize opportunities for civil society, private sector and academia to contribute to developing and implementing policy, legal and organizational frameworks as appropriate. *
- 5.8 * States and other parties should regularly review and monitor policy, legal and organizational frameworks to maintain their effectiveness. Implementing agencies and judicial authorities should engage with civil society, user representatives and the broader public to improve services and endeavour to prevent corruption through transparent processes and decision-making. Information about changes and their anticipated impacts should be clearly stated and widely publicized in applicable languages. *
- 5.9 * States should recognize that policies and laws on tenure rights operate in the broader political, legal, social, cultural, religious³, economic and environmental contexts. Where the broader contexts change, and where reforms to tenure are therefore required, States should seek to develop national consensus on proposed reforms. *

6. * Delivery of services⁴ *

- 6.1 * To the extent that resources permit, States should ensure that implementing agencies and judicial authorities have the human, physical, financial and other forms of capacity to implement policies and laws in a timely, effective and gender-sensitive manner. Staff at all organizational levels should receive continuous training, and be recruited with due regard to ensuring gender and social equality. *
- 6.2 * States should ensure that the delivery of services related to tenure and its administration are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *
- 6.3 * States should provide prompt, accessible and non-discriminatory services to protect tenure rights, to promote and facilitate the enjoyment of those rights, and to resolve disputes. States should eliminate unnecessary legal and procedural requirements and strive to overcome barriers related to tenure rights. States should review services of implementing agencies, and judicial authorities and introduce improvements where required. *
- 6.4 * States should ensure that implementing agencies and judicial authorities serve the entire population, delivering services to all, including those in remote locations. Services should be provided promptly and efficiently using locally

³ Use of the word “religious” will be reviewed on a case-by-case basis when negotiations reconvene.

⁴ Section 6 guides particularly the reading of sections 17 to 21.

suitable technology to increase efficiency and accessibility. Internal guidelines should be established so that staff can implement policies and laws in a reliable and consistent manner. Procedures should be simplified without threatening tenure security or quality of justice. Explanatory materials should be widely publicized in applicable languages and inform users of their rights and responsibilities. *

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

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

* This part addresses the governance of tenure of land, fisheries and forests with regard to the legal recognition of tenure rights of indigenous peoples and other communities with customary tenure systems, as well as of informal tenure rights; and the initial allocation of tenure rights to land, fisheries and forests that are owned or controlled by the public sector. *

7. * Safeguards *

7.1 * When States recognize or allocate tenure rights to land, fisheries and forests, they should establish, in accordance with national laws, safeguards to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law. In particular, safeguards should protect women and the vulnerable who hold subsidiary rights, such as gathering rights. *

7.2 * States should ensure that all actions regarding the legal recognition and allocation of tenure rights and duties are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *

7.3 * Where States intend to recognize or allocate tenure rights, they should first identify all existing tenure rights and right holders, whether recorded or not. Indigenous peoples and other customary communities, smallholders and anyone else who could be affected should be included in the consultation process, consistent with paragraphs 3B.6 and 9.8. States should provide access to justice, consistent with paragraph 4.9 if people believe their tenure rights are not recognized. *

7.4 * States should ensure that women and men enjoy the same rights in the newly recognised tenure rights, and that those rights are reflected in records. Where possible, legal recognition and allocation of tenure rights of individuals, families and communities should be done systematically, progressing area by area in accordance with national priorities, in order to provide the poor and vulnerable with full opportunities to acquire legal recognition of their tenure rights. Legal support should be provided, particularly to the poor and vulnerable. Locally appropriate approaches should be used to increase transparency when records of tenure rights are initially created, including in the mapping of tenure rights. *

7.5 * States should ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties. Where necessary, States should provide support to such people so that they can enjoy their tenure rights and fulfil their duties. *

7.6 * Where it is not possible to provide legal recognition of tenure rights, States should prevent forced evictions that are inconsistent with their existing obligations under national and international law, and with due regard to

voluntary commitments under applicable regional and international instruments and in accordance with the principles of these Guidelines. *

8. * Public land, fisheries and forests *

8.1 * Where States own or control land, fisheries and forests, they should determine the use and control of these resources in light of broader social, economic and environmental objectives. They should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *

8.2 Where States own or control land, fisheries and forests, they should respect existing [holders of legitimate tenure rights] [~~tenure right holders~~] [~~and their rights~~]. States should [recognise and respect, in accordance with national law] [~~provide legal recognition~~], in a non-discriminatory and gender-sensitive way, [~~to~~] [legitimate] tenure rights of individuals and communities [with customary tenure systems] [~~, including legitimate customary tenure rights, that are considered legitimate but are not currently protected by law-~~] States should define through widely publicized rules the categories of [legitimate tenure] rights [~~that are considered legitimate.~~] (*proposed in plenary discussions*)

OR

[Where States own or control land, fisheries and forests they should operate in line with paragraph 4.5.] (*alternative version of 8.2 proposed in plenary discussions*)

8.3 Noting that there are [many] publicly-owned lands, fisheries and forests that are collectively used and managed, States should, where applicable, recognize and protect [such] commons, and the related systems of collective governance, [including in processes of allocation of publicly-owned lands, fisheries and forests.] (*new paragraph proposed and discussed in plenary*)

8.4 * States should strive to establish up-to-date tenure information on land, fisheries and forests that they own or control by creating and maintaining accessible inventories. Such inventories should record the agencies responsible for administration as well as any legitimate tenure rights held by indigenous peoples and other customary communities and the private sector. Where possible, States should ensure that the publicly-held tenure rights are recorded together with tenure rights of indigenous peoples and other customary communities and the private sector in a single recording system, or are linked to them by a common framework. *

8.5 * States should determine which of the land, fisheries and forests they own or control will be retained and used by the public sector, and which of these will be allocated for use by others and under what conditions. *

- 8.6 * States should develop and publicize policies covering the use and control of land, fisheries and forests that are retained by the public sector and should strive to develop policies that promote equitable distribution of benefits from State-owned land, fisheries and forests. Policies should take into account the tenure rights of others and anyone who could be affected should be included in the consultation process consistent with paragraph 3B.6. The administration of, and transactions concerning, these resources should be undertaken in an effective, transparent and accountable manner in fulfilment of public policies. *
- 8.7 * States should develop and publicize policies covering the allocation of tenure rights to others, and where appropriate, the delegation of responsibilities for tenure governance. Policies for allocation of tenure rights should be consistent with broader social, economic and environmental objectives. Local communities which have traditionally used the land, fisheries and forests should receive due consideration in the reallocation of tenure rights. Policies should take into account the tenure rights of others and anyone who could be affected should be included in the consultation and participation and decision-making processes. Such policies should ensure that the allocation of tenure rights does not threaten the livelihoods of people by depriving them of their legitimate access to these resources. *
- 8.8 * States have the power to allocate tenure rights in various forms, from limited use to full ownership. Policies should recognise the range of tenure rights and right holders. Policies should specify the means of allocation of rights, such as allocation based on historical use or other means. Where necessary, those who are allocated tenure rights should be provided with support so they can enjoy their rights. States should determine whether they retain any form of control over land, fisheries and forests that have been allocated. *
- 8.9 * States should allocate tenure rights and delegate tenure governance in transparent, participatory ways, using simple procedures that are clear, accessible and understandable to all, especially to indigenous communities. Information in applicable languages should be provided to all potential participants, including through gender-sensitive messages. Where possible, States should ensure that newly allocated tenure rights are recorded with other tenure rights in a single recording system, or are linked by a common framework. States and non-state actors should further endeavour to prevent corruption in the allocation of tenure rights. *
- 8.10 [To the extent that resources permit, States should ensure that implementing agencies] responsible for land, fisheries and forests have the human, physical, financial and other forms of capacity. [~~Where necessary, those who are allocated tenure rights should be provided with support so they can enjoy their rights. (already in 8.8)~~] Where responsibilities for tenure governance are delegated, the recipients should receive training and other support so they can perform those responsibilities.

- 8.11 * States should monitor the outcome of allocation programmes, including the gender-differentiated impacts on food security and poverty alleviation as well as their impacts on social, economic and environmental objectives and introduce corrective measures as required. *

9. Indigenous peoples and other communities with customary tenure systems

- 9.1 * State and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems.*
- 9.2 * Indigenous peoples and other communities with customary tenure systems that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of equitable access for women. Effective participation of all members, men, women and youth in decisions regarding their tenure systems should be promoted through their local or traditional institutions, including in the case of collective tenure systems. Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision-making and governance of their tenure systems. *
- 9.3 * States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. In the case of indigenous peoples, States should meet their relevant obligations and voluntary commitments to protect, promote and implement human rights, including as appropriate from the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries, the Convention on Biological Diversity and the United Nations Declaration on the Rights of Indigenous Peoples. *
- 9.4 [States should provide legal recognition and safeguarding of tenure rights and tenure governance systems of indigenous peoples and other communities with customary tenure systems [as appropriate] [, consistent with their existing obligations under national and international law and with due regard to their [voluntary] commitments to respect, protect and fulfil human rights under applicable regional and international instruments.] Legal recognition of the legitimate tenure rights of indigenous peoples and other customary communities should cover the land, fisheries and forests, including those belonging exclusively to such communities. [Those which are shared amongst different communities should also be acknowledged.] Information of such recognition should be accessible and done through [appropriate media and] notices in official government and other publications in applicable languages that everyone, including indigenous peoples, can understand. [States shall respect and maintain the tenure of indigenous peoples over their ancestral lands and give legal recognition and protection. States should abstain from proceeding of forceful evictions of indigenous peoples from their ancestral lands.] (*proposed by a Friend of the Chair Group*)

- 9.5 * States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of indigenous peoples and other customary communities. Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary tenure systems. *
- 9.6 * States should, in drafting tenure policies and laws, take into account the social, cultural, spiritual, economic and environmental values of land, fisheries and forests held under tenure systems of indigenous peoples and other customary communities. There should be full and effective participation of all members or representatives of affected communities, including vulnerable and marginalized members, when developing policies and laws related to tenure systems of indigenous peoples and other customary communities. *
- 9.7 * States should protect indigenous peoples and other customary communities against the unauthorized use of their land, fisheries and forests by others. Where a community does not object, States should assist to formally document and publicize information on the nature and location of land, fisheries and forests used and controlled by the community. Where tenure rights of indigenous peoples and other customary communities are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims. *
- 9.8 * States and other parties should hold good faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order to obtain their free, prior and informed consent under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understandings of individual States. Consultation and decision-making processes should be organized without intimidation and be conducted in a climate of trust. The principles of consultation and participation as set out in paragraph 3B.6 should be applied in the case of other communities described in this section. *
- 9.9 * State and non-state actors should strive, where necessary, together with representatives' institutions of affected communities and in cooperation with affected communities, to provide technical and legal assistance to affected communities to participate in the development of tenure policies, laws and projects in non-discriminatory and gender-sensitive ways. *
- 9.10 * States should respect and promote customary approaches used by indigenous peoples and other customary communities to resolving tenure conflicts within communities consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. For land, fisheries and forests

that are used by more than one community, means of resolving conflict between communities should be strengthened or developed. *

- 9.11 * States and non-state actors should endeavour to prevent corruption in relation to tenure systems of indigenous peoples and other customary communities, by consultation and participation, and by empowering communities. *

10. * Informal tenure *

- 10.1 * Where informal tenure to land, fisheries and forests exists, States should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation and promote social, economic and environmental well-being. States should promote policies and laws to provide recognition to such informal tenure. The process of establishing these policies and laws should be participatory, gender sensitive and strive to make provision for technical and legal support to affected communities and individuals. In particular, States should acknowledge the emergence of informal tenure arising from large-scale migrations. *
- 10.2 * States should ensure that all actions regarding informal tenure are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, including as appropriate to the right to adequate housing. *
- 10.3 * Whenever States provide legal recognition to informal tenure, this should be done through participatory, gender-sensitive processes, having particular regard to tenants. In doing so, States should pay special attention to farmers and small-scale food producers. These processes should facilitate access to legalization services and minimize costs. State should strive to provide technical and legal support to communities and participants. *
- 10.4 * States should take all appropriate measures to limit the informal tenure that results from overly complex legal and administrative requirements for land use change and development on land. Development requirements and processes should be clear, simple and affordable to reduce the burden of compliance. *
- 10.5 * States should endeavour to prevent corruption, particularly through increasing transparency, holding decision-makers accountable, and ensuring that impartial decisions are delivered promptly. *
- 10.6 * Where it is not possible to provide legal recognition to informal tenure, States should prevent forced evictions that violate existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, and consistent with relevant provisions under Section 16. *

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

This part addresses the governance of tenure of land, fisheries and forests when existing rights and associated duties are transferred or reallocated through voluntary and involuntary ways through markets, investments and concessions, land consolidation and other readjustment approaches, restitution, redistributive reforms or expropriation.

11. * Markets *

- 11.1 * Where appropriate, States should recognise and facilitate fair and transparent sale and lease markets as means of transfer of rights of use and ownership of land, fisheries and forests. Where markets in tenure rights operate, States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. Transactions of tenure rights of land, fisheries and forest, should comply with national regulation of land use and not jeopardise core development goals. *
- 11.2 [States should facilitate the operations of efficient and transparent markets to promote participation under equal conditions and opportunities for mutually beneficial transfers of tenure rights which lessen conflict and instability, create incentives for sustainable use of land, fisheries and forests and conservation of the environment, expand economic opportunities and increase participation by the poor. States should provide safeguards to protect local communities, indigenous peoples and vulnerable groups, and to prevent undesirable impacts from, inter alia, excessive land speculation, concentration, abuse of customary forms of tenure and exploitation of native species. States and other parties should recognize that non-market values, such as social, cultural and environmental values, are not always well served by unregulated markets. States should protect the wider interests of societies through policies and laws, and through means such as taxation and regulated spatial planning.] (*proposed by a Friend of the Chair Group*)
- 11.3 * States should establish policies, laws and regulatory systems and agencies, to ensure transparent and efficient market operations, to provide non-discriminatory access, and to prevent uncompetitive practices. States should simplify administrative procedures in order to avoid discouragement of market participation by the poor and the most vulnerable. *
- 11.4 * States and other parties should ensure that information on market transactions and information on market values are transparent and widely publicized, subject to privacy restrictions. States should monitor this information and take action where markets have adverse impacts or discourage wide and equitable market participation. *
- 11.5 * States should establish appropriate and reliable recording systems, such as land registries, that provide accessible information on tenure rights and duties in order to increase tenure security and to reduce the costs and risks of transactions. *

- 11.6 * States should establish safeguards, to protect the legitimate tenure rights of spouses, family members and others who are not shown as holders of tenure rights in recording systems, such as land registries. *
- 11.7 * State and non-state actors should adhere to applicable ethical standards. They should publicize and monitor the implementation of these standards in the operation of markets in order to prevent corruption, particularly through public disclosure. *
- 11.8 * Given the importance of small-scale producers for national food security and social stability, States should ensure that when facilitating market operations of tenure transactions, they protect the tenure rights of small-scale producers. *

12. * Investments *

- 12.1 * State and non-state actors should acknowledge that responsible public and private investments are essential to improve food security. Responsible governance of tenure of land, fisheries and forests encourages tenure right holders to make responsible investments in these resources, increasing sustainable agricultural production and generating higher incomes. States should promote and support responsible investments in land, fisheries and forests, which support broader social, economic and environmental objectives under a variety of farming systems. States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *
- 12.2 * Considering that smallholder producers and their organizations in developing countries make a major share of agricultural investments, which contribute significantly to food security, nutrition, poverty reduction and environmental resilience, States should support investments by smallholders as well as public and private smallholder-sensitive investments. *
- 12.3 * All forms of transactions in tenure rights as a result of investments in land, fisheries and forests should be done transparently in line with relevant national sectoral policies and be consistent with the objectives of social and economic growth and sustainable human development focusing on smallholders. *
- 12.4 * Responsible investments should do no harm, safeguard against dispossession of legitimate tenure rights holders and environmental damage, and should respect human rights. Such investments should be made working in partnership with relevant levels of government and local land, fisheries and forest tenure right holders, respecting their legitimate tenure rights. * They [should further] contribute to objectives including: poverty alleviation, food security and sustainable use of land, fisheries and forests; support local communities, contribute to rural development, promote [~~and secure~~] local food production

systems, enhance social and economic development, create employment, diversify livelihoods, provide benefits to the country and its people, including the poor and most vulnerable and ~~[Such investments should]~~ comply with ~~[applicable]~~ [national [laws] [and international core labour standards and ILO standards when applicable] ~~[and International Labour Organisation standards.]~~] *(proposed in plenary discussions)*

12.5 [States should ~~[consider]~~ [prevent] risks posed to human rights, livelihoods, food security and the environment due to large-scale ~~[land acquisitions, concessions and leases]~~ [transactions] that involve conversion of land used by local communities, families and individuals ~~[to commercial activities]~~. In that sense, States should provide for additional safeguards. ~~[such as by limiting the scale of tenure rights to be transferred as a result of [acquisitions, concessions, or leases] or [transactions] (such as by introducing ceilings on permissible land transactions) or by providing for additional safeguards in case of proposals of tenure rights transfers exceeding certain scale (such as by parliamentary consultation).]~~ States **[should] or [may]** encourage alternative production and investment models to the full acquisitions of land. ~~[and to large scale concessions and leases.]~~ *(proposed in plenary discussions)*

12.6 * In the case of indigenous peoples and their communities, States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, including as appropriate from the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples. States and other parties should hold good faith consultation with indigenous peoples before initiating any investment project affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with members of indigenous peoples as described in paragraph 9.8. Similar active, free, effective, meaningful and informed consultations and negotiations should be required for investments that use the resources of other communities. *

12.7 States should determine through active, free, effective, meaningful and informed consultation and participation with all affected parties the conditions under which responsible investments ~~[and concessions]~~ should be promoted, and then should develop and publicize policies and laws **[that encourage responsible investments [and concessions]**, respect human rights, and promote food security and sustainable use of the environment. **[Laws should require agreements for investments [and concessions] to clearly define the acquired rights and duties of the investors.]** ~~[Agreements should be periodically reviewable, and sanctions should be clear and enforceable.]~~ *(proposed by Thematic Group 3)*

12.8 States should ensure that proposals for investments ~~[and concessions]~~ involving the acquisition of tenure rights are subject to **[negotiations] or [active, free, effective, meaningful and informed consultation]** with ~~[those affected]~~ **or [the affected men and women, families and communities, including indigenous**

peoples] [, supported by legal professionals where necessary]. States and civil society should inform individuals, families and communities of their tenure rights, and assist to develop their capacity in [negotiations] *or* [consultations] and implementation, and provide professional assistance. *(proposed by Thematic Group 3)*

- 12.9 States should ensure that existing tenure rights and claims, including those of customary and informal tenure, are identified as part of investigatory research and analysis in areas where investments [~~and concessions~~] involving large-scale acquisition of tenure rights are being considered. This process should be conducted in active, free, effective, meaningful and informed consultation with local communities and holders of tenure rights.
- 12.10 Investors should ensure that all relevant persons are engaged and informed in the negotiations, and the agreements are documented and understood by all. The negotiation process should be non-discriminatory and gender sensitive. Investors should recognise and respect tenure rights of others and the rule of law, and they should not contribute to food insecurity and environmental degradation.
- 12.11 Professionals who provide services to States and investors should undertake due diligence to the best of their ability when providing their services, irrespective of whether it is specifically requested.
- 12.12 States should provide timely, affordable and effective means of dispute resolution to enforce contractual terms and obligations of parties to investment [~~and concession~~] agreements.
- 12.13 States, [local authorities], civil society [, farmers organizations, private sector and communities] should contribute to the effective [rule setting and] monitoring of the implementation and impacts of agreements involving large-scale acquisition of tenure rights. States should [provide transparent rules on the scale, scope and nature of allowable acquisitions in advance of investments]. [~~take corrective action where necessary to enforce agreements and protect tenure rights.~~] *(proposed in plenary discussions)*
- 12.14 States should promote the development of independent and voluntary quality certification schemes for internationally accepted practices for investment [~~and concessions~~] in land, fisheries and forests.

13. * Land consolidation and other readjustment approaches *

- 13.1 * Where appropriate, States may consider land consolidation, exchanges or other voluntary approaches for the readjustment of parcels or holdings to assist owners and users to improve the layout and use of their parcels or holdings including for the promotion of food security and rural development in a sustainable manner. States should ensure that all actions are consistent with their obligations under national and international law, and with due regard to voluntary commitments

under applicable regional and international instruments, and ensure that participants are at least as well off after the schemes compared with before. These approaches should be used to coordinate the preferences of multiple owners and users in a single legitimate readjustment. *

- 13.2 * Where appropriate, States may consider the establishment of land banks as a part of land consolidation programmes to acquire and temporarily hold land parcels until they are allocated to beneficiaries. *
- 13.3 * Where appropriate, States may consider encouraging and facilitating land consolidation and land banks in environmental protection and infrastructure projects to facilitate the acquisition of private land for such public projects, and to provide affected owners, farmers and small-scale food producers with land in compensation that will allow them to continue, and even increase, production. *
- 13.4 * Where fragmentation of smallholder family farms and forests into many parcels increases production costs, States may consider land consolidation and land banks to improve the structure of those farms and forests. States should refrain from using land consolidation where fragmentation provides benefits, such as risk reduction or crop diversification. Land consolidation projects to restructure farms should be integrated with support programmes for farmers, such as the rehabilitation of irrigation systems and local roads. Measures should be developed to protect the investment of land consolidation by restricting the future subdivision of consolidated parcels. *
- 13.5 * States should establish strategies for readjustment approaches that fit particular local requirements. Such strategies should be socially, economically and environmentally sustainable, and gender sensitive. Strategies should identify the principles and objectives of the readjustment approaches; the beneficiaries; and the building of capacity and knowledge in the public sector; the private sector; organizations of farmers and small-scale producers, of fishers, and of forest users; and academia. Laws should establish clear and cost-effective procedures for the reorganization of parcels or holdings and their uses. *
- 13.6 * States should establish appropriate safeguards in projects using readjustment approaches. Any individuals, communities or peoples likely to be affected by a project should be contacted and provided with sufficient information in applicable languages. Technical and legal support should be provided. Participatory and gender-sensitive approaches should be used taking into account rights of indigenous peoples. Environmental safeguards should be established to prevent or minimize degradation and loss of biodiversity and reward changes that foster good land management, best practices and reclamation. *

14. * Restitution *

- 14.1 * Where appropriate, considering their national context, States should consider providing restitution for the loss of legitimate tenure rights to land, fisheries and

forests. States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *

- 14.2 Where possible, the original parcels or holdings should be returned to those who suffered the loss, or their heirs. Where the original parcel or holding cannot be returned, States should provide prompt, adequate compensation in the form of money or alternative parcels or holdings, ensuring equitable treatment of all affected people. [Where tenure rights of indigenous peoples were unjustly taken, those peoples affected have the right to redress by means that can include restitution or, when this is not possible, just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation should take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress. The principles of consultation and participation as set out in paragraph 3B.6 should be applied in the case of other communities with customary tenure systems.] *(Note: In the document of July, this paragraph was incorrectly marked as showing the Plenary had found consensus. Instead, the paragraph was referred to the Language Harmonization Group for a review which has been completed, and the paragraph is to be further discussed in plenary)*
- 14.3 * States should develop gender-sensitive policies and laws that provide for clear, transparent processes for restitution. Information on restitution procedures should be widely disseminated in applicable languages. Claimants should be provided with adequate assistance, including through legal and paralegal aid, throughout the process. States should ensure that restitution claims are promptly processed. Where necessary, successful claimants should be provided with support services so that they can enjoy their tenure rights and fulfil their duties. Progress of implementation should be widely publicized. *
- 15. * Redistributive reforms ***
- 15.1 * Redistributive reforms can facilitate broad and equitable access to land and inclusive rural development. In this regard where appropriate under national contexts, States may consider allocation of public lands, voluntary and market based mechanisms as well as expropriation of private lands, fisheries or forests for a public purpose. *
- 15.2 [Redistributive reforms may be considered for social and environmental reasons, among others, where a high degree of ownership concentration is combined with a significant level of rural poverty attributable to lack of access to land, fisheries and forests in national contexts.] *(proposed in plenary discussions)*

- 15.3 * Where States choose to implement redistributive reforms, they should ensure that the reforms are consistent with their obligations under national and international law, and voluntary commitments under applicable regional and international instruments. Reforms should also follow the rule of law and be implemented according to national laws and procedures. States should facilitate the development of active, free, effective, meaningful and informed consultations on the redistribution, including balancing the needs of all parties, and on the approaches to be used. Partnerships between the State; communities; civil society; the private sector; organizations of farmers and small-scale food producers, of fishers, and of forest users; and other parties should be developed. The financial and other contributions expected of beneficiaries should be reasonable and not leave them with unmanageable debt loads. Those who give up their tenure rights to the resources should receive equivalent payments without undue delay. *
- 15.4 Where States choose to implement redistributive reforms, States should clearly define the objectives of reform programmes and exempted land and intended beneficiaries. Exempted land and the intended beneficiaries should also be clearly defined, such as families including those seeking homegardens, women, informal settlement residents, pastoralists, historically disadvantaged groups, marginalized groups, youth, indigenous groups, extractivists, and small-scale food producers. [In designing reform programmes, States may also consider [the use of policy tools such as land ceilings and also the removal of distortions that increase costs of transactions.] *or* [making use of land ceiling laws.]] (*proposed in plenary discussions*)
- 15.5 States should develop policies and laws for redistributive reform, through participatory processes, to make the reforms sustainable. States should ensure that policies and laws assist beneficiaries, whether communities, families or individuals, to earn a living from the resources they acquire. [States should revise policies encouraging inequitable concentration of ownership and other tenure rights, consistent with Section 11.] (*proposed in plenary discussions*)
- 15.6 * States should ensure that redistributive land reform programmes provide the full measure of support required by beneficiaries, such as access to credit, crop insurance, inputs, markets, technical assistance in rural extensions; farm development; and housing. The provision of support services should be coordinated with the movement onto the land by the beneficiaries. The full costs of land reforms, including costs of support services, should be identified in advance and included in relevant budgets. *
- 15.7 * States should implement redistributive reforms through transparent, participatory and accountable approaches and procedures. All affected parties should be accorded with due process and just compensation according to national law and the provisions of Section 16. All affected parties, including disadvantaged groups, should receive full and clear information on the reforms, including through gender-targeted messages. Beneficiaries should be selected through open processes, and they should receive secure tenure rights that are

publicly recorded. Access to means of resolving disputes should be provided for under domestic law. States should endeavour to prevent corruption in redistributive reform programmes, particularly through greater transparency and participation. *

- 15.8 * States, with the participation of the involved parties, should monitor and evaluate the outcomes of redistributive reform programmes, including associated support policies as listed in paragraph 15.6 and their impacts on access to land and food security of both men and women, and where necessary, States should introduce corrective measures. *

16. * Expropriation and compensation *

- 16.1 Subject to their national law and legislations and in accordance with national context, States should expropriate only where rights to land, fisheries or forests are required for a public purpose: [in no way should expropriation or forced eviction be made for private purposes]. States should clearly define the concept of public purpose. States should ensure that all actions are consistent with their national law as well as their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. They should respect all legitimate tenure right holders, including lessees, women and vulnerable groups, by acquiring the minimum resources necessary, and promptly providing just compensation in accordance with national law. Whenever possible, States [should] *or* [may wish to] acquire the resources through open markets as an alternative to expropriation. *(proposed in plenary discussions)*
- 16.2 * States should ensure that the planning and process for expropriation are transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages. Active, free, effective, meaningful and informed consultations should provide information regarding possible alternative approaches to achieve the public purpose, and should have regard to strategies to minimize disruption of livelihoods. States should be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the resources in question are particularly important to the livelihoods of the poor or vulnerable. *
- 16.3 * States should ensure a fair valuation and prompt compensation in accordance with national law. Among other forms, the compensation may be, for example, in cash, rights to alternative areas, or a combination. *
- 16.4 * To the extent that resources permit, States should ensure that implementing agencies have the human, physical, financial and other forms of capacity. *
- 16.5 * Where the land, fisheries, and forests are not needed due to changes of plans, States should give the original right holders the first opportunity to re-acquire

these resources. In such a case the re-acquisition should take into consideration the amount of compensation received in return for the expropriation. *

- 16.6 * All parties should endeavour to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services and a right to appeal. *
- 16.7 [Where land, fisheries and forests to be expropriated are used by people and communities who do not have legally recognized tenure rights, and where it is not possible to provide them with legal recognition of tenure rights, States should prevent forced evictions that violate existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. Where evictions are considered to be justified for a public purpose, States should conduct them with due regard to their relevant obligations and voluntary commitments to protect, promote and implement human rights.] *(proposed in plenary discussions)*
- 16.8 [States should ensure, prior to eviction or shift in land use which could result in depriving individuals and communities from access to their productive resources, that all feasible alternatives are explored in active, free, effective, meaningful and informed consultation with the affected parties, with a view to avoiding, or at least minimizing, the need to resort to evictions.] *(proposed in plenary discussions)*
- 16.9 [Evictions should not result in people being rendered homeless or vulnerable to the violation of human rights. Where those affected are unable to provide for themselves, the State should take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, fisheries and forests, as the case may be, is available.] *(proposed in plenary discussions)*

Part 5 Administration of tenure

This part addresses governance of the administration of tenure, with regard to records of tenure rights, valuation, taxation, regulated spatial planning, resolution of disputes over tenure, and transboundary matters.

17. * Records of tenure rights *

- 17.1 * States should provide systems (for example, registration, cadastre and licensing) to record individual and collective tenure rights in order to improve security of tenure rights, including those held by the State and public sector, private sector and indigenous peoples and other customary communities, and for the functioning of local societies and of markets. Such systems should record, maintain and publicize tenure rights and duties, including who holds those rights and duties, and the parcels or holdings of land, fisheries or forests to which the rights and duties relate. States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *
- 17.2 * States should provide recording systems appropriate for their particular circumstances including the available human and financial resources. Socio-culturally appropriate ways of recording rights of indigenous peoples and other customary communities should be developed and used. In order to enhance transparency and compatibility with other sources of information for spatial planning and other purposes, each State should strive to develop an integrated framework that includes existing recording systems and other spatial information systems. In each jurisdiction, records of tenure rights of the State and public sector, private sector, indigenous peoples and other customary communities should be kept within the integrated recording system. Whenever it is not possible to record tenure rights of indigenous peoples and other customary communities, or occupations in informal settlements, particular care should be taken to prevent the registration of competing rights in those areas. *
- 17.3 * States should strive to ensure that everyone is able to record their tenure rights and obtain information without discrimination on any basis. Where appropriate, implementing agencies, such as land registries, should establish service centres or mobile offices, having regard to accessibility by women, the poor and vulnerable groups. States should consider using locally-based professionals, such as lawyers, notaries, surveyors and social scientists to deliver information on tenure rights to the public. *
- 17.4 * Implementing agencies should adopt simplified procedures and locally suitable technology to reduce the costs and time required for delivering services. The spatial accuracy for parcels and other spatial units should be sufficient for their identification to meet local needs, with increased spatial accuracy being provided if required over time. To facilitate the use of records of tenure rights, implementing agencies should link information on the rights, the holders of those

rights, and the spatial units related to those rights. Records should be indexed by spatial units as well as by holders to allow competing or overlapping rights to be identified. As part of broader public information sharing, records of tenure rights should be available to State agencies and local governments to improve their services. Information should be shared in accordance with national standards, and include disaggregated data on tenure rights. *

- 17.5 * States should ensure that information on tenure rights is easily available to all, subject to privacy restrictions. Such restrictions should not unnecessarily prevent public scrutiny to identify corrupt and illegal transactions. States and non-state actors should further endeavour to prevent corruption in the recording of tenure rights, by widely publicizing processes, requirements, fees and any exemptions, and deadlines for responses to service requests. *

18. * Valuation *

- 18.1 * States should ensure that appropriate systems are used for the fair and timely valuation of tenure rights for specific purposes, such as operation of markets, security for loans, investments and concessions, expropriation and taxation. Such systems should promote broader social, economic, environmental and sustainable development objectives. States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *
- 18.2 * Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable. *
- 18.3 * States should develop policies and laws that encourage and require transparency in valuing tenure rights. Sale prices and other relevant information should be recorded, analysed and made accessible, to provide a basis for accurate and reliable assessments of values. *
- 18.4 * States and other parties should develop and publicize national standards for valuation for governmental, commercial and other purposes. National standards should be consistent with relevant international standards. Training of staff should include methodologies and international standards. *
- 18.5 * Implementing agencies should make their valuation information and analyses available to the public in accordance with national standards. States should endeavour to prevent corruption in valuation through transparency of information and methodologies, in public resource administration and compensation, and in company accounts and lending. *

19. * Taxation *

- 19.1 States have the power to [raise revenue through taxation] [~~use such taxes~~] [related to tenure rights so as to contribute to the achievement of [~~and to raise revenue~~]~~and also to~~ achieve [the State's broader] social, [economic, and environmental] [~~environmental and economic~~] objectives. [These objectives may include [effective financing for decentralized levels of government and local provision of services and infrastructure,] [such as] encouraging investment, or preventing [excessive] speculation and [inequitable] concentration of [ownership and other] tenure rights]. Taxes should not discourage socially, economically, [or environmentally] desirable behaviour, such as registering transactions or declaring the full sale value. (*referred to a Friend of the Chair Group*)
- 19.2 * States should strive to develop policies and laws and organizational frameworks regulating all aspects pertaining to taxation of tenure rights. Tax policies and laws should be used where appropriate to provide for effective financing for decentralized levels of government and local provision of services and infrastructure. *
- 19.3 * States should administer taxes efficiently and transparently. Staff of implementing agencies should receive training that includes methodologies. Taxes should be based on appropriate values. Assessments of valuations and taxable amounts should be made public. States should provide taxpayers with a right to appeal against valuations. States should endeavour to prevent corruption in taxation administration, through increased transparency in the use of objectively assessed values. *

20. * Regulated spatial planning *

- 20.1 * Regulated spatial planning affects tenure rights by legally constraining their use. States should conduct regulated spatial planning, and monitor and enforce compliance with those plans, including balanced and sustainable territorial development, in a way that promotes the objectives of these Guidelines. In this regard, spatial planning should reconcile and harmonize different objectives of the use of land, fisheries, and forests. *
- 20.2 * States should develop through consultation and participation and publicize gender-sensitive policies and laws on regulated spatial planning. Where appropriate, formal planning systems should consider methods of planning and territorial development used by indigenous peoples and other communities with customary tenure systems and decision-making processes within the community. *
- 20.3 * States should ensure that regulated spatial planning is conducted in a manner that recognizes the interconnected relationships between land, fisheries and forests and their uses, including the gendered aspects of their uses. States should strive towards reconciling and prioritizing public, community and private

interests and accommodate the requirements for various uses, such as rural, agricultural, nomadic, urban and environmental. Spatial planning should consider all tenure rights, including overlapping and periodic rights. Appropriate risk assessments for spatial planning should be required. National, regional and local spatial plans should be coordinated. *

- 20.4 * States should ensure that there is wide public participation in the development of planning proposals and the review of draft spatial plans to ensure that priorities and interests of communities, including indigenous peoples and food-producing communities, are reflected. Where necessary, communities should be provided with support during the planning process. Implementing agencies should disclose how public input from participation was reflected in the final spatial plan. States should endeavour to prevent corruption by establishing safeguards against improper use of spatial planning powers, particularly regarding changes to regulated use. Implementing agencies should report on results of compliance monitoring. *
- 20.5 * Spatial planning should take duly into account the need to promote diversified sustainable management of land, fisheries and forests, including agro-ecological approaches and sustainable intensification, and to meet the challenges of climate change and food security. *

21. * Resolution of disputes over tenure rights *

- 21.1 * States should provide access through impartial and competent judicial and administrative bodies to timely, affordable, and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies and a right to appeal. Such remedies should be promptly enforced. States should make available, to all, mechanisms to avoid or resolve potential disputes at the preliminary stage, either within the implementing agency or externally. Dispute resolution services should be accessible to all, women and men, in terms of location, language and procedures. *
- 21.2 * States may consider introducing specialized tribunals or bodies that deal solely with disputes over tenure rights, and creating expert positions within the judicial authorities to deal with technical matters. States may also consider special tribunals to deal with disputes over regulated spatial planning, surveys and valuation. *
- 21.3 * States should strengthen and develop alternative forms of dispute resolution, especially at the local level. Where customary or other established forms of dispute settlement exist they should provide for fair, reliable, accessible, and non-discriminatory ways of promptly resolving disputes over tenure rights. *
- 21.4 * States may consider using implementing agencies to resolve disputes within their technical expertise, for example, those responsible for surveying to resolve

boundary disputes between individual parcels within national contexts. Decisions should be delivered in writing and based on objective reasoning, and there should be a right to appeal to the judicial authorities. *

- 21.5 * States should endeavour to prevent corruption in dispute resolution processes. *
- 21.6 * In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. Judicial authorities and other bodies should ensure that their staff have the necessary skills and competencies to provide such services. *

22. Transboundary matters

- 22.1 Where appropriate, all parties should work together on aspects of tenure of land, fisheries and forests that cross international boundaries. While tenure is a matter of national sovereignty, some aspects of tenure could affect neighbouring countries. *States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.* States should refrain from actions that interfere with tenure rights and relevant human rights beyond its boundaries.
- 22.2 All parties should contribute to an improved understanding of transboundary issues of tenure, such as pastoralists whose traditional grazing areas or seasonal migration routes lie across international boundaries, and fishers who traditionally follow fish stocks across international boundaries.
- 22.3 States should cooperate to settle and clearly define international boundaries where this has not been done.
- 22.4 States and regional bodies should harmonize legal standards to create joint systems of tenure governance, which are in accordance with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. States, regional bodies and tenure right holders should develop and strengthen international measures to administer tenure rights that cross international boundaries.

Part 6 Responses to climate change and emergencies

This part addresses the governance of tenure of land, fisheries and forests during catastrophic events where people could be displaced on a large scale as a result of climate change, natural disasters and violent conflicts.

23. Climate change

- 23.1 [States should ensure that, consistent with relevant climate change framework agreements, consideration is given to the issue of climate change in the application of tenure rights, without undermining existing legitimate tenure rights. In this regard and where appropriate, policies and laws on tenure should take into account possible strategies and actions to deal with the effects of climate change.] * States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. * *(proposed by a Friend of the Chair Group)*
- 23.2 [Where appropriate, States should strive to prepare and implement strategies and actions in consultation and with the participation of all people, women and men, who may be displaced due to climate change. Any provision of alternative land, fisheries, forests and livelihoods for displaced persons should not jeopardize the livelihoods of others. States may also consider offering special assistance to small island and other developing states.] *(proposed by a Friend of the Chair Group)*
- 23.3 [~~All parties should ensure that tenure aspects of land (including associated buildings and other structures), fisheries and forests are addressed in policies and laws concerning adaptation to climate change and mitigation measures. Where appropriate, policies and laws on tenure should address climate change adaptation and mitigation. * States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. *~~] *(original paragraph 23.1; proposed for deletion and replacement by a Friend of the Chair Group)*
- 23.4 [~~Where appropriate, States should prepare and implement adaptation programmes to assist all people, women and men, who may be displaced due to climate change. Provision of secure access to alternative resources and livelihoods for displaced persons should be negotiated with host communities to ensure that the resettlement does not jeopardize the livelihoods of others. Means to resolve disputes over tenure rights should also be provided. Implementing agencies should be strengthened to deal with displacement in collaboration with climate change agencies. International and regional organizations and States may consider offering special assistance to small island developing states.] *(original paragraph 23.2; proposed for deletion and replacement by a Friend of the Chair Group)*~~

- 23.5 ~~[Where appropriate, all parties should ensure that tenure aspects are addressed in mitigation programmes, and that all tenure rights, including those held by indigenous peoples and other customary communities, are recognized and protected. Relevant local communities should be closely involved in the negotiations and implementation of mitigation programmes. Effective, transparent and accountable means should be developed and implemented for the distribution of benefits to local communities and for the fair distribution of benefits within the communities. Community participation should provide for gender equality and should not discriminate against the vulnerable and marginalized. Where necessary, professional assistance should be provided to communities so they can participate effectively in the development and implementation of programmes.] (original paragraph 23.3; proposed for deletion and replacement by a Friend of the Chair Group)~~
- 23.6 ~~[Independent means should be established for the monitoring, reporting and verification of mitigation actions.] (original paragraph 23.4; proposed for deletion and replacement by a Friend of the Chair Group)~~

24. Natural disasters

- 24.1 All parties should ensure that tenure aspects of land, fisheries and forests are addressed when preparing for natural disasters and in responses to them. Regulatory frameworks for tenure, including spatial planning, should be designed to minimize or avoid the potential impacts of natural disasters.
- 24.2 * States should ensure that all actions are consistent with [their] existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.* All parties should act in accordance with international principles, including as appropriate the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”), and the Humanitarian Charter and Minimum Standards in Disaster Responses.
- 24.3 States should address tenure in disaster preparedness programmes. Information on tenure rights should be collected for areas that could be affected. Systems for recording tenure rights should be resilient to natural disasters, including off-site storage of records, to allow right holders to prove their rights and relocate their parcels and other spatial units. Areas should be identified for the temporary resettlement of people who could be displaced by natural disasters, and rules should be established for providing tenure security in such areas.
- 24.4 States and other parties should include tenure in the emergency response phase. Provision of secure access for displaced persons should be negotiated with host communities to ensure that the resettlement does not jeopardize the livelihoods of others. When seeking alternative areas for resettlement, displaced persons should respect the tenure rights of others. Information on tenure rights and unauthorized use should be disseminated to all affected persons.

24.5 States and other parties should address tenure during the reconstruction phase. Persons who are temporarily displaced should be assisted in returning to their places of origin. Means to resolve disputes over tenure rights should also be provided. Where boundaries of parcels and other spatial units are to be re-established, this should be done in a participatory manner. Where people are unable to return to their places of origin, they should be permanently resettled. Such resettlement should be negotiated with host communities to ensure that the people who are displaced are provided with secure access to alternative resources and livelihoods in ways that do not jeopardize the livelihoods of others.

25. Violent conflicts

25.1 All parties should take steps to eliminate tenure of land, fisheries and forests as a cause of violent conflicts and should ensure that tenure aspects are addressed before, during and after violent conflicts.

25.2 * States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, * including as appropriate those of the Convention relating to the Status of Refugees and its Protocol, and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”).

25.3 In order that tenure problems do not lead to violent conflicts, all parties should take steps to resolve such problems through peaceful means. States should revise relevant policies and laws to eliminate discrimination and other factors that can be a cause of violent conflicts. Where appropriate, States should also support and strengthen customary or religious means that provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights.

25.4 When violent conflicts arise, States and other parties should try to protect tenure rights. Displaced persons should be settled in safe areas in ways that protect the tenure rights of the host communities. Violations of tenure rights should be documented. Official records of tenure rights should be protected against destruction in order to provide evidence for subsequent restitution processes, and in areas where such records do not exist, the existing tenure rights should be documented as best possible.

25.5 When violent conflicts cease, States and other parties should ensure that tenure problems are addressed in ways that contribute to the peace process and support durable solutions for those affected, including through consideration of the injustices and displacements. Where restitution is possible, refugees and displaced persons should be assisted in returning safely, voluntarily and with dignity to their place of origin. Procedures for restitution should be non-discriminatory and gender-sensitive and widely publicized, and claims for restitution should be processed promptly. Procedures for restitution of tenure

rights of indigenous peoples and other customary communities should provide for the use of traditional sources of information.

- 25.6 Where restitution is not possible, the provision of secure access to alternative resources and livelihoods for displaced persons should be negotiated with host communities to ensure that the resettlement does not jeopardize the livelihoods of others. Special procedures should provide the vulnerable, including widows and orphans, with access to resources.
- 25.7 Where required, policies and laws should be revised to eliminate pre-existing discrimination as well as discrimination introduced during the conflicts. Relevant agencies should be re-established to deliver services necessary for responsible tenure governance.

Part 7 Implementation, monitoring and evaluation

- 26.1 All parties are encouraged to use collaborative efforts to promote and implement these Voluntary Guidelines in accordance with national priorities and circumstances. All parties are encouraged to disseminate information on responsible tenure governance in order to influence and improve practices.
- 26.2 All parties are encouraged to monitor and evaluate the implementation of these Voluntary Guidelines through participatory approaches that include States, implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; indigenous peoples and other communities; the private sector; civil society and academia. All parties are encouraged to cooperate to establish means for monitoring and evaluation, and to develop disaggregated indicators to assess the impact of policies, laws, programmes and projects on the governance of tenure, including their impacts on both men and women and on the most vulnerable. Based on the outcome of monitoring and evaluation, all parties are encouraged to introduce improvements to tenure governance with clearly established timeframes. Monitoring bodies that address human rights, governance, business and corruption are encouraged to include tenure governance in their periodic reviews. All parties are encouraged to share experiences with others through regional and global networks.
- 26.3 International bodies should periodically monitor the implementation, and review the relevance and effectiveness of these Voluntary Guidelines. As required, these Voluntary Guidelines should be brought up to date, taking into account social, economic and environmental technological changes.

Annex 1: Glossary

Text proposed by Thematic Group 4 (Language Harmonization), based on inputs prepared by the FAO Secretariat and the Office of the High Commissioner for Human Rights

Explanation of selected terms used in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (“Voluntary Guidelines”)

In a number of cases, FAO does not have official definitions for a technical term and instead several different working definitions may be used depending on the context.

Civil society

Civil society refers to the sphere in which citizens and social movements organize themselves around objectives, constituencies and thematic interests. The bulk of FAO’s experience is with NGOs. The UN system’s definition of NGOs is broad: all not-for profit actors who are not governmental or intergovernmental.

[Source: FAO Policy and Strategy for Cooperation with Non-Governmental and Civil Society Organizations 1999]

Discrimination

Discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on grounds such as race, colour, descent, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status and the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights. To eliminate discrimination in practice, special measures aimed at accelerating de facto equality shall not be considered as discrimination. However, such measures shall in no way entail as a consequence the maintenance of unequal or separate standards and these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. Such measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities.

[Source: ICERD, Articles 1 and 4; CEDAW, Articles 1 and 4; CRPD, Article 2. Also see, CESCR General Comment No. 20 (paragraph 7) and HRC General Comment No. 18 (paragraphs 6&7). As to the last sentence, see CESCR General Comment No. 20, paragraph 9]

Expropriation and compensation

Expropriation is the power of the State to acquire private tenure rights without the willing consent of the owner or user in order to benefit society. Exercising this power may be necessary for social and economic development and for the protection of the natural environment.

Compensation should be at least equitable and may be in cash, rights to alternative areas, or a combination. **In case of unavoidable eviction and expropriation, the State must provide or ensure fair and just compensation for any loss of personal, real or other property or goods, including rights or interests in**

property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, taking into account factors such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

[Source: “Basic Principles and Guidelines on Development-Based Evictions and Displacement” (A/HRC/4/18, Annex 1, sections VI)]

Food security

Food security is a situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life.

Forced evictions

Forced evictions refer to the permanent or temporary removal against their will of individuals, families and/or communities from their homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition of forced evictions does not encompass evictions carried out by force in accordance with the law and in conformity with the international human rights instruments.

[Source: Commission on Human Rights resolutions 1993/77 and 2004/28, CESCR General Comment no. 7 on forced evictions, paragraph. 3.]

Gender equality

Gender equality is ensuring the equal right of women and men to the enjoyment of all human rights, while acknowledging difference between women and men and taking specific measures aimed at accelerating de facto equality when necessary.

[Source: ICESCR & ICCPR Article 3, CEDAW Article 4]

Gender sensitive

Gender-sensitive policies, legislation, programmes, processes and communication methods recognize that women and men differ in terms of needs, constraints and opportunities. With these considerations in mind, they are formulated to ensure that both women and men benefit from development opportunities and realize their full productive and human potential. Gender-sensitive policies should be based in an in-depth understanding of the gender inequalities at all levels in places where these are implemented and include strategies and mechanisms to overcome gender inequalities.

“Gender sensitive” is used in the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

Governance

Governance is the process of governing. It is the way in which society is managed and how competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe rules and laws.

Human rights

Human rights are those civil, cultural, economic, political and social rights contained in treaties and declarations adopted in the United Nations system. They are universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. They are internationally guaranteed; legally protected; focus on the dignity of the human being; protect individuals and groups; oblige States and State actors; cannot be waived/taken away; are equal and interdependent; and are universally applicable. Governance of tenure of land, fisheries and forests may affect the enjoyment of various human rights.

[The list of human right instruments contained in Annex 2 are considered to be of particular relevance to the responsible governance of tenure.]

Human rights defenders

Human rights defenders are people who, individually or with others, act to promote or protect human rights. Everyone who, individually or with others, acts to promote or protect human rights, including in the context of the governance of tenure of lands, fisheries and forests, has rights and responsibilities as reconfirmed under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on human rights defenders). States should respect and protect the rights and freedoms referred in the Declaration.

[Source: OHCHR website: <http://www2.ohchr.org/english/issues/defenders/who.htm> , summarizing key points of the Declaration of human rights defenders.]

Implementing agencies

Implementing agencies are agencies at various levels of government responsible for aspects of the administration of tenure, including registration and cadastre agencies, valuation agencies, spatial planning agencies, and agencies responsible for public lands, fisheries and forests.

International and regional human rights instruments:

A list of the main international and regional human rights instruments which are relevant to the governance of tenure is provided in Annex 2. For the purpose of these Voluntary Guidelines, the term “regional and international human rights instruments” encompasses instruments listed in Annex 2.

Investments and concessions

In a broad sense, investments are expenditure or foregone consumption to generate a future return in terms of increased output, income or welfare. They can be viewed as formation of capital - that is, the assets that will generate the future stream of income or output. Capital can be tangible, physical assets or immaterial, whether vested in humans or institutions.

Investments in agriculture, fisheries and forestry include investments in production and in upstream (inputs) and downstream (processing and distribution sectors) as well as in ecosystem services. Investments can be funded from different sources: private or public, both of which can be of domestic or foreign origin. A significant portion of investments are financed by domestic private sources, the bulk of it consisting of the investments of farmers, fishers and foresters in their own operations. Public investments generally focus on infrastructure (such as roads, harbours, schools, communication and public market areas) and on human capacity and institutional development (such as education and public health). These are critical for improved productivity and the management of land, fishery and forest resources on a sustainable basis.

Concessions are agreements through which specific use rights or permits and specific obligations (including reporting requirements and management tasks) of land, fisheries and forests are conferred by public administrations to private entities including corporations, other business entities, co-operatives, non-profit institutions and associations. Forest concessions usually do not include harvesting licences, permits and rights to collect non-wood forest products when such use rights are not linked to a long-term forest management responsibility.

Land consolidation and readjustment

Readjustment refers to approaches to improve the layout of structure of parcels or holdings. This may be achieved by facilitating the exchange of parcels or holdings between multiple owners and users, or through facilitating the pooling of parcels and holdings and the subsequent subdivision with new boundaries that better suit the owners and users.

Land consolidation is the term for readjustment that is usually used in connection with agricultural land. It is intended to help farmers who have many small, fragmented parcels to obtain farms with fewer parcels, but which are larger and better shaped for agriculture. Land consolidation is an effective tool for improving agricultural production and rural development, but it should not be used when fragmentation of land parcels reduces risks of farmers and allows them to grow a greater variety of crops.

Land, fisheries and forests

FAO has several definitions of “**land**” according to context. In the legal and tenure context, precise definitions of land are jurisdiction specific. **For the Voluntary Guidelines, “land” for which tenure rights exist addresses both the land itself and any permanent improvements or immovables on the land (such as associated buildings and other structures) and it includes farmland, pastures, grazing land,**

and rangeland as well as land for housing and commercial purposes, and land with social, cultural, religious and environmental significance.

A fishery is an activity leading to harvesting of fish. It may involve capture of wild fish or raising of fish through aquaculture.

(FAO Glossary)

A forest is land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban land use.

(FAO Global Forest Resources Assessment 2010)

Redistributive reforms

Redistributive reforms are the transfer of tenure rights from the owners to new beneficiaries. Such reforms are often promoted to provide more equitable access.

Land reform is the term for redistributive reform that is often used in connection with agricultural land.

Regulated spatial planning

Regulated spatial planning regulates the use of land (including associated buildings and other structures), fisheries and forests and thus defines tenure rights in relation to use and potential use. It is the process by which States address and resolve competing demands and identify how these resources can be used.

Relevant languages

Relevant languages are those languages that will be understood by the stakeholders in governance of tenure related processes to enable their effective participation.

Restitution

Restitution is the restoring to the rightful tenure right holders, or their heirs, of those tenure rights that are regarded as having been unjustly taken from them. The original parcels or holdings may be returned to the rightful right holders, or where that is not possible, compensation in the form of money or alternative parcels of holdings may be provided.

The provision of restitution when the tenure loss arises from policies and laws that are now regarded to be unjust is a political decision.

Rule of law

The term rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law,

equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

[Source: Report of the Secretary-General to the Security Council, The rule of law and transitional justice in conflict and post-conflict societies, S/2004/616]

Sustainable development

Sustainable development is development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

With regard to natural resources, sustainable development is the management and conservation of the natural resource base, and the orientation of technological and institutional change in such a manner as to ensure the attainment and continued satisfaction of human needs for present and future generations. Such sustainable development (in the agriculture, forestry and fisheries sectors) conserves land, water, plant and animal genetic resources, is environmentally non-degrading, technically appropriate, economically viable and socially acceptable.

[Source: World Commission on Environment and Development, 1987; FAO Glossary]

Tenure, subsidiary tenure rights, customary tenure rights, and informal tenure rights

This document recognizes that no international definition exists for “tenure rights” and other rights included in this paragraph, and that these rights differ according to any national and provincial jurisdiction. Tenure is the relationship, whether defined legally or customarily, among people with respect to land (including associated buildings and other structures), fisheries, forests and other natural resources. The rules of tenure define how access is granted to use and control these resources, as well as associated responsibilities and restraints. They determine who can use which resources, for how long, and under what conditions. Tenure systems may be based on written policies and laws, as well as on unwritten customs and practices. Tenure rights may be held by individuals, families, indigenous peoples and other communities, associations and other corporate bodies, and by States and their various bodies. Within a country a wide range of tenure rights may exist, including ownership rights, lease rights and use rights, including subsidiary tenure rights.

Subsidiary tenure rights include tenure rights which are often used for subsistence by the poor, such as rights to gather firewood, to graze animals, to forage tree crop products, to fish at specified times and locations, and to cultivate crops.

Customary tenure rights of a community include the collective rights of community members to the natural commons as well as private rights of community members to their agricultural and residential parcels. Customary tenure rights have been granted formal legal recognition equivalent to other statutory tenure rights in some countries, while in other countries they lack such legal recognition.

Informal tenure rights are tenure rights that lack formal, official protection by the state. They often arise spontaneously, e.g. the emergence of informal tenure rights in peri-urban areas arising from large scale migrations.

Annex 2: International and regional human rights instruments relevant to the governance of tenure

Text proposed by the FAO Secretariat and the Office of the High Commissioner for Human Rights

1. International treaties⁵

Charter of the United Nations

- Charter of the United Nations (1945)

International human rights treaties

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)

International labour conventions

- ILO Convention (107) on the Rights of Indigenous, Tribal and Semi-Tribal Populations in Independent Countries
- ILO Convention (169) concerning Indigenous and Tribal Peoples in Independent Countries (1989)

Regional human rights treaties

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, 1950)
- European Social Charter (1991 and 1996)
- American Convention on Human Rights (1969)
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988)
- African Charter on Human and People's Rights (1981)
- African Charter on the Rights and Welfare of the Child (1990)
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2000)

⁵ International treaties are legally binding to State Parties which are parties to them. This list is not exhaustive and other international human rights treaties may also be applicable depending on the context.

- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009)

2. UN declarations on human rights⁶

- Universal Declaration of Human Rights (1948)
- Declaration on the Right to Development (1986)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders, 1999)
- United Nations Declaration on the Rights of Indigenous Peoples (2007)

3 Instruments which articulate, operationalize or restate legally-binding international human rights instruments⁷

General Comments and General Recommendations issued by the UN human rights treaty bodies, i.e.

- Committee on the Elimination of Racial Discrimination
- Committee on Economic, Social and Cultural Rights
- Human Rights Committee
- Committee on the Elimination of Discrimination against Women
- Committee against Torture
- Committee on the Rights of the Child
- Committee on the Rights of Migrant Workers
- Committee on the Rights of Persons with Disabilities
- Committee on Enforced Disappearances

Guidelines and principles developed by the UN human rights mechanisms

- United Nations Principles for Older Persons (1991)
- Guiding Principles on Internal Displacement (1998)
- United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons: The Pinheiro Principles (2005)
- Basic principles and guidelines on development-based evictions and displacement (2007)
- Minimum human rights principles applicable to large-scale land acquisitions or leases (2009)
- Guiding Principles on Business and Human Rights: implementing the United Nations “Protect, Respect and Remedy” Framework (2011)

⁶ Core part of some of the declarations listed under this Annex, such as the Universal Declaration of Human Rights, may have developed as customary international law, which is binding to *all* States.

⁷ These instruments articulate and operationalize legally-binding human rights instruments, reconfirm political commitment by States to adhere those legally-binding instruments or restate existing legal norms. This list is not exhaustive and other international human rights norms and standards may also be applicable depending on the context.

Analysis and recommendations issued by the mandate holders of the Human Rights Council special procedures in their reports to the Human Rights Council and the General Assembly, including:

- Special Representative of the Secretary-General on Food Security and Nutrition
- Special Rapporteur on the right to food
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living
- Special Representative of the Secretary-General on the situation of human rights defenders
- Special Rapporteur on the rights of indigenous peoples
- Special Rapporteur on housing and property restitution for refugees and internally displaced persons
- Special Rapporteur on the human rights of migrants
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on violence against women, its causes and consequences
- Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises
- Special Rapporteur on the Human Rights of Internally Displaced Persons
- Independent Expert on the question of human rights and extreme poverty
- Independent Expert on minority issues
- Special Rapporteur on the human right to safe drinking water and sanitation

UN conference on human rights outcome documents

- Vienna Declaration: World Conference on Human Rights (1993)
- Beijing Declaration and Platform for Action of the Conference for Women (1995)
- World Conference against Racism, 2001 (Durban Declaration and Programme of Action)

FAO declarations and guidelines on the right to food

- Declaration of the World Conference on Agrarian Reform and Rural Development (WCARRD, 1979)
- Rome Declaration on Food Security and World Food Summit Plan of Action (1996)
- Declaration of the World Food Summit: five years later (2002)
- Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004)
- Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD, 2006)
- Declaration of the World Summit on Food Security (2009)
- FAO Policy on Indigenous and Tribal Peoples (2010)

Inter-Agency Standing Committee (IASC) guidelines

- IASC Framework on Durable Solutions for Internally Displaced Persons (2009)
- IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (2010)

In addition to these international and regional human rights instruments, the following guidelines are relevant to the governance of tenure.

- European Union Land Policy Guidelines (2004)
- Establishing an Infrastructure for Spatial Information in the European Community (2007)
- Guiding Principles and Implementation Framework for Improving Access to Customary Land and Maintaining Social Harmony in the Pacific (prepared by the Pacific Islands Forum Secretariat, 2008)
- Framework for Action on Food Security for the Pacific (2010)
- Framework and Guidelines on Land Policy in Africa (2010)
- Humanitarian Charter and Minimum Standards in Disaster Response (The Sphere Handbook, 1998, last edition 2011)