

# GUIDELINES TO SECURE PEOPLES ACCESS TO LAND

Overview of the new “Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security”

The potentials and challenges of implementation

**HANDS OFF THE LAND**

TAKE ACTION AGAINST LAND GRABBING



**IGO**  
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Odpowiedzialności



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The **Hands off the Land** project aims to raise awareness about land grabbing amongst the European public, politicians, policy makers, students and professionals. The project presents case documentation, fact sheets and thematic studies of transnational land grabs in Mali, Mozambique, Zambia, Colombia and Cambodia.

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## Introduction

For decades social movements representing rural women, peasants and family farmers, fishing communities, indigenous peoples, landless people, rural and urban workers, migrants, pastoralists, forest communities, youth and other civil society organizations have been demanding equitable and sustainable access to and control over natural resources for food production. Only secure access to and control over resources will enable people to fulfil their role of providing culturally appropriate, healthy and nutritious food<sup>1</sup> for themselves while helping address the root causes of the food crisis that the world is currently facing. These causes include the highly unequal distribution of land ownership in many countries, the trend towards the re-concentration of land ownership and the reversal of redistributive agrarian reform processes, and the extent of land grabbing for agribusiness projects of all kinds.

The “Voluntary Guidelines on Governance of Tenure of Land, Fisheries and Forests in the context of national food security<sup>2</sup>” were officially endorsed by the 125 member countries of the Committee on World Food Security (CFS) on May 11, 2012. This was a remarkable response to an urgent issue: promoting secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and protecting the environment. “The purpose of these Voluntary Guidelines is to serve as a reference and to provide guidance to improve the governance of the tenure<sup>3</sup> 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.” As the preface says, this new instrument seeks to be a land policy and governance document, as 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. Its purpose is to help States and non-state actors to avoid tenure problems due to weak governance. Above all, it is the first instrument under international law that tackles the very difficult issue of land by referring throughout the text to human rights and implying the responsibility of both States and non-state actors.

Following the inclusive and participatory spirit of ICARRD<sup>4</sup> and in the framework of the Civil Society Mechanism, the Food and Agriculture Organisation of the United Nations (FAO) has created conditions that enable particular representatives of social movements, other than governmental stakeholders and other participants, to actively participate right from the start and throughout the entire process in the formulation of new principles and framework policies for the governance of the tenure of land, fisheries and forests, conferring an important legitimacy to the Guidelines. For civil society organizations (CSOs), this way of working should serve as an example to the entire UN system as well as to other political forums.

Rigorously detailed in forty pages, the Guidelines are divided into seven parts, each subdivided into two to six chapters, and are, due to the very essence of the topic, rather technical. This paper is first of all intended to provide an overview of the message, main objectives and potential application of the Guidelines. In a second part, this paper seeks to contribute to the effective implementation of the Guidelines by exploring and proposing possible ways of implementation at different levels by EU Member States. To conclude, this paper will briefly explain how the monitoring of the Guidelines should take place.

# 1. Message, objectives and potential applications of the Guidelines

## 1.1 Part 1: Objectives, nature and scope of the Guidelines

“These Voluntary Guidelines seek to improve the governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development<sup>5</sup>.”

Following from this main objective, the Guidelines aim to improve and develop the policy, legal and organizational frameworks regulating all sorts of tenure rights over these resources; to enhance the transparency and improve the functioning of tenure systems; to strengthen the capacities and operations of all persons concerned with tenure governance, as well as to promote the cooperation between them<sup>6</sup>. Thus, the Guidelines apply only to the issue of tenure and not to the use and management of natural resources, although in practice these two dimensions are closely linked. Indeed, many problems related to the access and control of natural resources by small-scale food producers are linked to the problems of the governance of use and management. Another important remark concerning the scope of the Guidelines is the exclusion of water resources, despite that the preface of the document briefly mentions that States may wish to take the Guidelines into account in the responsible governance of water and mineral resources.

In concrete terms, the implementation of the Guidelines should be consistent with States' existing obligations under international human rights law, explicitly mentioned in the Universal Declaration of Human Rights (UDHR). The numerous and profound references to human rights can be considered one of the major successes of the Guidelines. CSOs have seen that the Guidelines are based on the UDHR, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the principles and interpretations of human rights. The Guidelines also specify and give more visibility to the rights of women, peasants, pastoralists, indigenous peoples and fisher men and women to land, fisheries and forests. These references to the international human rights instruments included in the document make the document legally relevant at national and international level, even though the title of the document still contains the word “voluntary”.

## 1.2 Part 2: General principles, rights and responsibilities

Several fundamental general principles that CSOs hold as important have been recognized, in particular the importance of respecting and protecting human rights in the context of tenure. Moreover, the Guidelines clearly establish the principles of implementation, in particular human dignity, non-discrimination, equity and justice, gender equality, a holistic and sustainable approach with regards to the management of natural resources, and consultation and participation. This last principle of consultation and participation (3B6) can be a very useful tool, especially for non-indigenous groups who cannot refer to the principle of “free, prior and informed consent<sup>7</sup>” which, unfortunately, applies only to indigenous peoples.

Regarding concrete obligations, States should recognize and respect all legitimate tenure rights holders and their rights (even those that are not currently protected by law), protect them against threats (e. g. forced evictions) and violations, and give them access to justice and the right of appeal (including restitution, indemnity, compensation and reparation) in case of violation of their legitimate tenure rights. Particular attention should be paid to the tenure rights of women and girls. In this regard, States should prohibit all forms of discrimination.

Non-state actors, including business enterprises, also have the responsibility to respect human rights and legitimate tenure rights. This also means that host States and home States of transnational corporations have the obligation to assure that no abuses of human rights and legitimate tenure rights take place. Paragraph 12.15 of the Guidelines reinforces this general principle, saying that in the case of investments abroad, States should ensure that their conduct is consistent with the protection of legitimate tenure rights, the promotion of food security and their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. This is a step forward in the recognition of extraterritorial obligations (ETO) under human rights law as defined in the new “Maastricht Principles<sup>8</sup>”. Paragraph 3.2 also states that 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 abuses of human rights and legitimate tenure

rights. This includes positive responsibility of due diligence, i.e. appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. "States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. States should take additional protective measures against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies" (paragraph 3.2).

### **1.3 Part 3: Rights of indigenous peoples and other communities, informal rights and commons**

The recognition and protection of customary, informal and subsidiary (such as gathering) tenure rights are essential for millions of communities in the world. (Here again, the Guidelines refer explicitly to "legitimate" tenure rights in order to include all tenure rights that are not (yet) protected by law). This recognition also applies to publicly owned land, fisheries and forests that are collectively used and managed, often referred to as "commons", as well as their related systems of collective use and management. Social movements have fought arduously to see the commons appear in the Guidelines. This is especially important for vulnerable groups like pastoralists or fishing communities.

Generally, legitimate tenure rights and the people who hold them are not formally recorded. Also, people can have legitimate tenure rights on land, fisheries and forests even if another actor owns a legal right to the same resource acquired illegitimately. These realities and rights that are all too often ignored and offending parties given impunity are thoroughly examined by the Guidelines. Paragraphs 4.4, 5.3, 7.1 and 8.2 require States to establish, in accordance with national laws and following a mapping of all kinds of tenure rights, safeguards to avoid infringing on or extinguishing legitimate tenure rights of others. In general, States should facilitate, promote and protect the exercise of tenure rights and delegate tenure governance in transparent, participatory ways, using simple procedures that are clear, accessible and understandable to all, especially to indigenous peoples and other communities with customary tenure systems.

Last but not least, as a reference to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), States and non-state actors should acknowledge the social, cultural, spiritual, economic, environmental and political value of the land, fisheries and forests for indigenous peoples and other communities and protect them against forced evictions and the unauthorized use of their land, fisheries and forests by others.

The ninth chapter of the Guidelines includes several important parts of the UNDRIP without going further in examining the question of tenure as the UNDRIP does. It also refers to "communities exercising self-governance of resources".

### **1.4 Part 4: Markets, investments, land consolidation, restitution, redistributive reforms and expropriation**

The heart of the Guidelines thoroughly tackles the delicate issue of transfers of tenure rights, whether they are within the framework of markets, investments, restitutions, redistributive reforms or expropriations. The text defines what are considered as responsible investments<sup>9</sup> and contains several safeguards that CSOs could use at the local and national levels to organize resistance against land grabbing, namely: 1) States should introduce "ceilings on permissible land transactions and regulating how transfers exceeding a certain scale should be approved, such as by parliamentary approval" (12.6); 2) States should "conduct prior independent assessments on the potential positive and negative impacts that planned investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment"(12.10); 3) States "should ensure that their conduct is consistent with the protection of legitimate tenure rights, the promotion of food security and their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments" (12.15); 4) States should provide restitution in case of loss and, subject to their national law and legislation and in accordance with national context, States should expropriate only where rights to land, fisheries or forests are required for a public purpose (defined in the law, as required further by paragraph 16.1).

Another very important step is that the Guidelines urge States to implement redistributive reforms of the tenure of land, fisheries and forests in order to facilitate the wide and fair access to resources by all, especially when a high degree of ownership concentration is combined with a significant level of rural poverty (paragraphs 15.1, 15.2 and 15.3). The equal access by men and women should be guaranteed. Paragraph 15.8 states that States should ensure that redistributive land reform programmes provide the full measure of support required by beneficiaries. However, it has to be noted here that the concept of redistributive reforms was modified to include market-based mechanisms such as willing seller - willing buyer schemes, which has proved highly unsuccessful in terms of redistribution of land<sup>10</sup>.

Above all, it is crucial to interpret the text in the light of its paramount objective as defined in 1.1, prioritizing the essential support to vulnerable and marginalized people, such as small-scale producers, keeping in mind the goals of food security, the realization of the right to adequate food, poverty eradication, environmental protection and sustainable social and economic development. In this regard, States have the obligation to protect local communities and marginalized groups against land speculation and concentration, as well as to regulate land markets through politics and laws and to protect the tenure and human rights of local communities in cases of investments that imply the transfer of tenure rights.

The text also highlights the importance small-scale producers have on national food security and social stability (11.8, 12.2), calling on States to give special attention to protecting the tenure rights of these producers when facilitating market operations of tenure transactions. The Guidelines recognize the key role women, peasants, fishing communities, pastoralists and indigenous peoples play in achieving food security. A notable achievement in this regard is the strengthening of the rights of women (3B4, 4.6, 4.7, 5.3, 5.4, 5.5, 7.1 and 25.5).

A last important element to note is the legal recognition of “public purpose”. According to paragraph 16.1, States should expropriate only in cases when rights to land, fisheries or forests are required for a public purpose, the definition of which should be clearly defined in the law.

## **1.5 Part 5: Administration of tenure**

Besides more technical recommendations, such as simple, accessible, transparent and non-discriminatory recording systems for individual and collective tenure rights, the Guidelines advocate prioritizing the interests of the most vulnerable groups when elaborating spatial planning programs, as well as duly taking into account the need to promote the diversified sustainable management of land, fisheries and forests, including agro-ecological approaches. States are also encouraged to use taxation as a mean to prevent speculation and concentration of ownership. Moreover, States and other parties should improve the governance of transboundary tenure issues, with special attention to the protection of livelihoods and rights of small-scale fishers and pastoralists. Lastly, States should prevent corruption through transparent processes and decision making and by establishing safeguards. This fifth part of the Guidelines should be read in the light of section 6 that gives general principles regarding “Delivery of services”.

## **1.6 Part 6: Responses to climate change and emergencies**

The respect and protection of legitimate tenure rights of small-scale food producers in the context of preventing and responding to the effects of climate change are essential. The Guidelines mention the participation of small-scale food producers in the negotiations and implementation of mitigation and adaptation programmes. The text also recognises tenure problems in the context of armed conflicts and other types of conflicts, including in situations of occupation. Further, it refers to existing provisions under international humanitarian law and to the “Pinheiro principles” on restitution for refugees and displaced persons. Nevertheless, the right to return in post-conflict situations as contained in article 13 of the UDHR was not reaffirmed. Even if a violent conflict (like a war) clearly has a major impact on the tenure of natural resources, e.g. by displacing small-scale producers and other communities, the return of their lands to these people once the conflict is over is far from being the norm.

## **1.7 Part 7: Promotion, implementation, monitoring and evaluation**

Given the voluntary character of the Guidelines, it was not possible to get the States to accept the creation of a strong mechanism to monitor the policies and actions of governments and international organizations with an impact on tenure. Nevertheless, with the universal support for the Guidelines and their official adoption, the task remains on States to implement, monitor and evaluate the impact of the Guidelines on tenure, food security and the realization of the right to adequate food. The Guidelines recommend that this process includes the setting-up of multi-stakeholder participatory platforms on the local, regional and national levels. “The Committee on World Food Security should be the global forum where all relevant actors learn from each others’ experiences, and assess progress toward the implementation of these Guidelines and their relevance, effectiveness and impact. Therefore, the Secretariat of the CFS, in collaboration with the Advisory Group, should report to the CFS on the progress of the implementation of these Guidelines, as well as evaluate their impact and their contribution to the improvement of tenure governance. Such reports should be universal and include, inter alia, regional experiences, best practices and lessons learned” (26.4). This point will be further developed in the following chapter.

## 1.8 Conclusion

The “Voluntary Guidelines on the governance of tenure of land, fisheries and forests in the context of national food security” is the first instrument under international human rights law to tackle the very difficult and complex issue of land, fisheries and forests. This is a remarkable step in the long battle against hunger and poverty that affects so many people in the world. The participatory process, the constant references to human rights and related State and non-state obligations, the special attention drawn to the most vulnerable and marginalized food producer groups and the numerous references to the already established rights of indigenous peoples are, among others, great achievements of a relatively short negotiation process. Still, this instrument has to be interpreted and read in the light of other instruments in order to overcome its weaknesses.

The reformed Committee on World Food Security (CFS) has proven its capacity to: 1) include in its agenda, and deal with, key issues in the fight against hunger and food insecurity,

such as the issue of land; 2) create effective institutional conditions so that the communities most affected by hunger and food insecurity can discuss on equal footing with their governments, other international agencies and the private sector about possible solutions to highly controversial issues such as natural resources; 3) forge intergovernmental agreements within a reasonable period of time. The high degree of participation and inclusiveness in this process is unprecedented in intergovernmental negotiations and establishes an important precedent to expand the democratization of decision making processes at international level to other processes and fields related to food and agriculture.

Since the Guidelines will not be enforced automatically, popular pressure and mobilization will be necessary to give life to this document. CSOs in Europe and elsewhere should organize themselves in order not only to use the Guidelines themselves but also to push governments and non-state actors to implement them in a way that better the livelihoods of the most world's marginalized users of land, forests and fishing grounds.

## 2. Recommendations for the implementation of the Guidelines

### 2.1 IMPLEMENTATION

It is the obligation of States to implement, monitor and evaluate the impact of the Guidelines on tenure, food security and the realization of the right to adequate food. By adopting the Guidelines, States officially expressed their support for this instrument and give it a universal outreach. Governments hold the decision making power in the CFS and are the ones that must bear the duty of human rights obligations. It is the responsibility of all States and the intergovernmental organizations, particularly FAO and IFAD<sup>11</sup>, to fully implement these Guidelines. Nevertheless, CSOs also bear responsibility for creating a meaningful implementation process of the Guidelines. Putting public pressure on governments that may be unwilling to effectively implement the Guidelines will be indispensable.

This second chapter presents recommendations to EU governments on two levels of implementation: firstly, the domestic level in the European Union; secondly, the international level.

#### 2.1.1 EU level

##### 2.1.1.1 General principles for implementation

###### 2.1.1.1.1 Dissemination of the Guidelines

EU Member States should make the document known to relevant institutions and organisms, such as the ministries of agriculture, fisheries or environment, judicial authorities or human rights institutions and bodies, rural-living peoples, commissions of agriculture, human rights and trade, the European Parliament and all national and regional parliaments, local councils and municipalities.

###### 2.1.1.1.2 Inclusive and participatory methodology

At the domestic level of all EU Member States, the inclusive and participatory character of the elaboration and negotiation process of the Guidelines should be extended to the phase of implementation and monitoring. The participation of affected people and their organizations in the elaboration of strategies and implementation programs should be guaranteed at all levels.

###### 2.1.1.1.3 Creation of multi-actor platforms to allow dialogue

As stated in paragraph 26.2 of the Guidelines, "States are encouraged to set up multi-stakeholder platforms and frameworks at local, national and regional levels or use such existing platforms and frameworks to collaborate on the implementation of these Guidelines; [...] In carrying out these tasks, States may seek technical support from regional and international bodies." In other words, EU Member States should support the setting up of national roundtables and platforms for dialogue to identify the main problems and solutions regarding tenure and priorities when implementing the Guidelines. This should be done at the national, regional and local levels. For instance, EU Member States could carry out awareness raising activities and regional workshops in order to disseminate information about the Guidelines and their provisions to make them known among different actors, explain the process, how to use the document and how to develop implementation strategies.

They should also carry out and support national capacity building workshops for social movements and CSOs that are affected or are working on issues related to land, fisheries and forests in order to identify priorities for action. Moreover, they should support CSOs in developing their own materials for capacity building, such as their interpretation of the Guidelines, proposals on how to use them and audiovisual material with testimonies. This material should respond to the particular needs of social movements and grassroots organizations.

##### 2.1.1.2 Using the Guidelines according to the national context

Not all areas of the Guidelines are relevant to the EU domestic level. Thus, the first questions EU Member States should raise are: What kinds of problems do we face in our country in terms of governance of tenure? Which issues do we face when it comes to the responsible governance of tenure rights or access to land and other natural resources? As mentioned above, this first phase of identification and mapping of the problems and issues must be carried out in a participatory process. A multi-actor platform would be the ideal forum to identify these issues.

This paper is not intended to give ready-to-use answers. Each EU Member State has to examine its specific national context. Nevertheless, to help EU Member States raise the right questions when it comes to tenure, we will give three examples: one on regulated spatial planning; another on public lands, fisheries and forests; and a last one on land transfers and the access of young farmers to land.

### **2.1.1.2.1 Regulated spatial planning and stakeholder participation**

In most EU Member States, an increased urban and infrastructural pressure is exerted on agricultural land. With the expansion of cities, business parks, transport infrastructures, tourism facilities, etc., land, fisheries and forests dedicated to local food production is decreasing every year. This reality can be tackled with the Guidelines, for example Guideline 20 on "Regulated spatial planning".

To implement Guideline 20.1, States should conduct and improve regulated spatial planning, which means encouraging sustainable territorial development in a way that promotes the objectives of the Guidelines defined in 1.1. Spatial planning should be developed and/or revised with the broad consultation and participation of the public in the development of planning proposals and the review of draft spatial plans. This will ensure that the priorities and interests of small-scale farmers, peasants and other rural groups will be reflected (20.4). Moreover, 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 (20.3). Lastly, "spatial planning should duly take into account the need to promote diversified sustainable management of land, fisheries and forests, including agro-ecological approaches and sustainable intensification" (20.5).

According to the general principles stated in paragraph 1.1., when conducting regulated spatial planning activities, governments should put special emphasis on vulnerable and marginalized people.

### **2.1.1.2.2 Public lands, fisheries and forests and social and environmental objectives**

In many EU Member States, young farmers face difficulties in getting land: high prices, privatization of public lands and eviction by large agro-industrial corporations all contribute to this problem. According to chapter 8 of the Guidelines, EU Member States should carry out mappings of tenure rights and implement safeguards to legitimate tenure rights of currently marginalized groups of land users. Governments

should allocate tenure rights and delegate tenure governance in transparent, participatory ways, using simple procedures that are clear, accessible and understandable to all. In this context, EU Member States should also ensure access to land for young farmers, who are particularly affected by rising land prices.

In accordance with the general principles of the Guidelines, Member States should consider the attribution (of use or property) of State-owned land to the fulfillment of social and environmental criteria (such as criteria that favor the employment rate per hectare, local production or agro-ecological approaches).

Regarding the requirements of chapter 8, EU Member States should also carry out mappings of all publicly-owned land, fisheries and forests (or "commons") that are collectively used and managed.

### **2.1.1.2.3 Transfer and other changes to tenure rights and duties, and access to land for young small-scale food producers**

Land speculation and land concentration within the hands of big corporations and the private sector are also problems affecting EU Member States. In line with part 4 of the Guidelines, EU Member States should, when regulating markets, take measures to prevent undesirable impacts on small farmers "that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure" (11.2).

According to paragraph 11.8, EU Member States "should ensure that when facilitating market operations of tenure transactions, they protect the tenure rights of small-scale producers". Furthermore, "States should consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors, and should encourage partnerships with local tenure right holders" (12.6). For example, they could adapt their taxation system to discourage large-scale land transfer and land sales for non-agricultural use. Prior to investments, EU Member States should ensure that existing legitimate tenure rights are identified and not compromised by these investments (12.10).

Also, States are encouraged to establish or facilitate the creation of land banks as readjustment approaches (13.2 and 13.3), for example, by establishing tax and financial incentives to transfer long-term land management and ownership to public bodies and land trusts. When considering land consolidation programs, EU Member States should refrain from using land consolidation where fragmentation provides

benefits, such as risk reduction or crop diversification (13.4). In addition, governments should consider redistributive reforms “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” (15.3).

## **2.1.2 International level**

Given the universal character and support of the Guidelines, they should be implemented everywhere with particular attention to the most vulnerable groups. EU Member States should not only implement the Guidelines in their own territory but also at the international level by respecting their extraterritorial obligations.

### **2.1.2.1 Development cooperation**

In line with paragraph 26, EU States, donors and development agencies should carry out participatory methodologies when developing projects aimed at implementing the Guidelines. Moreover, at a specific session of the 38th Session of the CFS in October 2012, EU Member States will be asked to contribute to the adoption of a consistent methodological approach to implement these Guidelines, involving the CSM in the preparation of that specific session of the CFS.

Within their cooperation work with developing countries, States should work together through multi-stakeholder platforms to develop a coherent methodology regarding dissemination and implementation, in order to make sure that their use and impact reach all parts of the world in a coherent and adequate manner. Also, they should encourage and support the establishment of specific institutions that are able to receive reports and complaints regarding tenure rights violations and encourage national human rights institutions to monitor land tenure and related human rights violations.

Donors also have to support the creation of national roundtables and should only finance implementation projects that have been agreed upon in this framework. Donors should be coordinated at national level through national round-tables or through FAO-IFAD.

When setting up multi-stakeholder platforms, EU Member States may seek technical support from regional and international bodies such as the FAO. States should influence the FAO agenda, so that the implementation of the Guidelines is identified as a priority.

CSOs should also develop regional strategies and work plans for getting in contact with regional FAO offices and make concrete proposals. Regarding national FAO offices, CSOs should develop proposals and urge the FAO to set up a forum online where all information material, ideas and so on can be shared and used by everyone.

Lastly, together with the Special Rapporteur on the Right to Food and FAO, States should explore the possibility of organizing joint missions to assess tenure issues based on the Guidelines and issue recommendations. These missions could be used to kick-start national processes.

### **2.1.2.2 Other policies and extraterritorial obligations of States**

As seen before, States carry extraterritorial obligations in regard to human rights and land tenure. In order to fully comply with these obligations, EU Member States should introduce monitoring mechanisms with their embassies to track land acquisitions – particularly in food insecure countries - by domestic investors (State and non-state actors). States should offer remedies to local populations when abuses occur. This could be done by creating specific contact points in the embassies that are able to receive individual complaints and reports from human rights institutions as well as governmental and non-governmental bodies.

EU Member States should pay particular attention to the actions of their transnational companies (TNC) and agricultural investment funds operating abroad. They should investigate who these organizations are and impose specific reporting duties on companies and investors acquiring lands abroad. They should also make domestic law (criminal or civil) applicable to extraterritorial human rights abuses (on the bases of companies and directors) and give foreign victims standing in court.

The EU and its Member States should ensure that trade and investment treaties do not harm land tenure. In this regard, States should carry out human rights impact assessments, paying particular attention to land tenure before negotiating such treaties and during their implementation. Guiding principles for these human rights impact assessments have been provided by the Special Rapporteur on the Right to Food<sup>12</sup>.

The EU and its Member States should monitor other policies that may positively or negatively impact land tenure abroad. Particular attention should be paid to energy policy, agricultural policy, raw material strategy, environmental policy and consumer policy. Potential victims should have the opportunity to demonstrate negative impacts and compelling mechanisms should be put in place to revise these policies.

EU Member States should assess the impacts of policies and projects of intergovernmental organizations (including International Financial Institutions) on land, forests and fisheries and ensure that their budgets are not involved in projects causing harm to local land rights. They should use their negotiating power to influence policies and projects. In particular, States should push the World Bank and IFIs to revise their standards according to the Guidelines and to use it as minimum standards.

## **2.2 MONITORING**

To monitor the implementation of the Guidelines, EU Member States with the participation of CSOs should develop appropriate indicators and benchmarks to assess whether the existing practices in the governance of land, fisheries and forest comply with the principles and best practices maintained in the Guidelines. Depending on the national context, benchmarks should set specific implementation goals to be achieved in the short, medium and long terms and should directly refer to the different levels of the responsible governance of tenure. Indicators should define how the progress, i.e. improvement of the governance of tenure, is to be measured.

Monitoring the Guidelines should be human rights based and should not only assess whether the actions of relevant actors are in line with the Guidelines, but also assess whether these comply with their human rights obligations and follow human rights principles. Human rights based monitoring should stress vertical accountability, i.e. that governments and other institutions are accountable to rights holders, such as the rural poor. Moreover, any new monitoring system or reporting mechanism in the context of the Guidelines should be seen complementary to existing human rights monitoring (i.e. parallel reports).

Monitoring should take place on all levels of implementation, including on the national level, on the level of legal and institutional frameworks, and on the level of policies, activities and projects that affect the tenure of local users of land, fisheries and forests. Above all, monitoring must put a strong focus on the realities on the ground regarding the actual tenure security and access to resources by rural communities, small-scale food producers and other marginalized and vulnerable groups. Finally, monitoring should also refer to all regional and international institutions and organizations whose activities and projects could affect the tenure of local users to land, fisheries and forests.

Monitoring should be inclusive and participatory, and small-scale producers and vulnerable groups, along with CSOs, should play a leading role. The EU and its Member States, aid agencies and donors should also make available adequate, full and timely information about all policies, activities and projects that could affect the tenure of land, fisheries and forests of local users.

# 3. References

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1. According to the UN Committee on Economic, Social and Cultural Rights in his General Comment 12, the right to adequate food should not be interpreted in a narrow or restrictive sense that equates it with a minimum package of calories, proteins and other specific nutrients. It is far more than that: food has to be available, physically and economically accessible, qualitatively adequate, culturally acceptable and sustainable (E/C.12/1999/5).
2. Hereafter "the Guidelines".
3. 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 over these resources, as well as associated responsibilities and restraints. They determine who can use which resources, for how long and under which 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. Source: FAO, Land Tenure and Rural Development, in Land Tenure Studies 3, Rome, 2002, <http://www.fao.org/DOCREP/005/Y4307E/y4307e00.htm#Contents>
4. International Conference for Agrarian Reform and Rural Development, March 2006.
5. FAO, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, May 2012, page 1, <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>
6. 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.
7. The principle of "free, prior and informed consent"(FPIC) is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. FPIC is now a key principle in international law and jurisprudence related to indigenous peoples (<http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>).
8. Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights : <http://www.fian.org/resources/documents/others/maastricht-principles-on-extraterritorial-obligations-of-states>
9. "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 holders of tenure rights to land, fisheries and forests, respecting their legitimate tenure rights. They should strive to further contribute to policy objectives, such as poverty eradication; 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 sustainable development; create employment; diversify livelihoods; provide benefits to the country and its people, including the poor and most vulnerable; and comply with national laws and international core labor standards as well as, when applicable, obligations related to standards of the International Labor Organization." (12.4).
10. See, for example, Food First (Institution for Food and Development Policy), "Promised land: Competing visions of Agrarian Reform", August 2006, <http://www.foodfirst.org/node/1587>
11. International Fund for Agricultural Development: [www.ifad.org/](http://www.ifad.org/)
12. See "Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements", Report of the Special Rapporteur on the Right to Food, presented at the 19th Session of the United Nations Human Rights.