

Using the Tenure Guidelines for Action Research



a primer

This primer is the result of a joint effort that brings together TNI work on accountability with FIAN work on monitoring.

This publication is part of collaborative project aimed at strengthening the capacity of grassroots communities in Mali, Nigeria, Uganda and South Africa to address through action research, situations of land and other natural resource grabbing that are threatening their lives and livelihoods. The project was carried out by a consortium of organizations based in Germany, the Netherlands, South Africa, Nigeria, Uganda and Mali. The project involved supporting people in threatened communities to investigate the causes, conditions, and consequences of these processes in order to inform collective action and advocacy, and in particular exploring use of the CFS/FAO Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in action research to increase bottom up accountability amidst these pressures. We hope the primer is of use to other grassroots communities in other countries as well.

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Investigating Bottom-up Accountability through Action Research:

A Practical Guide to Using the Tenure Guidelines

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Introduction

Accountability in general is about the challenge of holding those in power responsible for their decisions. Accountability politics is about exploring whether and how this can be done. This practical guide focuses on investigating accountability and accountability politics in the context of the current global rush for land and other natural resources. The purpose of the guide is to provide practical information to rural communities that they can use in framing and devising collective action and engagement strategies aimed at strengthening their tenure of land, fisheries and forest in order to bring about bottom-up accountability.

The guide highlights an especially interesting, relevant and practical tool – namely, the ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security’ (hereafter Tenure Guidelines or TGs for short – see <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>). The Committee on World Food Security (CFS) of the United Nations adopted the Tenure Guidelines in 2012 with the overall goal of promoting national food security.

Developed from an unprecedented inclusive and participatory process that lasted more than three years, they are the first international ‘soft law’ instrument that focuses on economic, social and cultural rights (ESCR) and how they can be applied to the governance of land, fisheries and forests. Soft law is a law that sets standards and gives guidance on a particular subject but is not mandatory. But, although it is not mandatory, soft law can be a precursor to the adoption of binding law at the national or international level. The Tenure Guidelines are firmly anchored in human rights and so their adoption by the CFS has opened up the possibility to interpret and use them as a springboard to support claims for the right to land. The legal principle of Pro hominem calls for applying the norm or standard most favourable for protecting vulnerable social groups, and

thus allows us to interpret the TGs in line with the highest standards developed by the UN and regional human rights systems, as well as by case law (see Box 1). It allows us to interpret them in a way which contributes to establishing the human right to land in international customary law and in positive international human rights law.

Grassroots groups and social movements in which landless workers, fishers, peasants, herders, nomadic and indigenous peoples are organised have a natural ability to monitor the actual situation on the ground because they can give direct evidence of the shortcomings and problems that interfere with, or prevent the realisation of, their members' right to land. Yet often these groups or movements do not have enough information about the reasons and persons responsible for these shortcomings and problems; they may lack methods and tools to collect, organise and analyse information in order to be able to use this knowledge to generate a change in public policy. Meanwhile, officials responsible

BOX 1

Objectives of the Tenure Guidelines

"1.1 These Voluntary Guidelines seek to improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalised people, with the goals of food security and progressive realisation of the right to adequate food, poverty eradication, 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."

for executing the administrative functions of the State are often unaware of the human rights criteria that enable them to determine whether they are fulfilling their duty in accordance with human rights obligations in regard to land, fisheries and forests.

Serving as a reference, the TGs can provide guidance toward improving governance of land, fisheries and forests so that it can contribute effectively to securing the right to adequate food. They are an especially important and politically legitimate reference due to the fact that they were internationally agreed upon as a normative standard to assess the actions and omissions of states and UN agencies, as well as international organisations, with respect to the way they regulate land, fisheries and forests in specific situations.

Bottom-up Accountability

“To look for accountability in rural Mexico might seem puzzling, since it remains so scarce. Yet the weakness of public accountability reveals more about the power of those who enjoy impunity than it does about the aspirations of those citizens who try to change the balance of power between state and society.”¹

Writing about the challenges faced by rural working people in Mexico in trying to hold those in power responsible for their decisions, American social scientist Jonathan Fox presented nearly a decade ago what might be described as a ‘no illusions’ process-oriented view of accountability. He says, “Accountability politics involves challenging who is accountable to whom, as clients become citizens and bureaucrats become public servants. Accountability politics can overlap with prodemocracy movements, but are not limited to them. Accountability campaigns often involve protest, but are not limited to contestation. Constructing accountability involves challenging the state, but also transforms the state.”² This view can be inspiring for those working on similar issues elsewhere, and suggests why accountability and accountability politics could be an important topic for action research.

As in Mexico, across Africa public accountability in favor of the recognition, respect, protection and fulfillment of the right to land and natural resources of vulnerable, marginalized and threatened social groups – such as peasants, small-scale and artisanal fishers, herders and pastoralists, and indigenous peoples, women and youth – is scarce. Yet it is clear that the aspiration for such runs deep. It persists despite strong and growing pressures on already politically disadvantaged rural working people that are narrowing the space for many of them to gain (or regain) meaningful and effective control of the natural resources necessary for them to enjoy their human rights to the fullest.

Converting aspiration into reality is difficult for many reasons. There are many obstacles to be overcome and many challenges to be faced. Some common obstacles have to do with: 1) factors internal to processes of articulating and defending interests (e.g., difficulty of mass assembly; dispersion of communities; diversity of economic activities; ecological context; daily precariousness of family survival); 2) factors constraining collective action beyond community level (e.g., regional elite control of electoral machinery, judicial system, economic terms of trade, allocation of credit, means of coercion); and 3) factors external to rural movements (e.g., absence of mass media; limited access to information; ‘divide-and-conquer’ and ‘carrot-and-stick’ strategies).³

For those seeking to build power and voice towards changing an unjust situation, numerous challenges must be addressed along the way, including:

- 1 Undertaking collective action (how to organize and act together systematically);
- 2 Breaking through inertia and ‘walls of silence’ around injustices in politically inhospitable settings (how to initiate breakthroughs);
- 3 Reaching out to build up multiclass, multiethnic, multisectoral alliances (how to extend and scale up power and voice);
- 4 Countering authorities and officials at different levels who ‘pass the buck’ (how to plug gaps in state authority/ state law that facilitate anti-reform evasion and manipulation);

5 Eliminating criminalization and elite impunity (how to dismantle political structures that treat those who stand up for their rights as criminals while tolerating erring elites).

One more challenge is fundamental to all those previously mentioned and must be continuously addressed by anyone striving to change an unjust balance of power in relation to decision making – namely, the challenge of acquiring relevant knowledge and awareness. The problem here is not that people don't know when they are being exploited or oppressed or when their interests and aspirations are being ignored or dismissed. Indeed chances are that they do. Too often, however, the very people who are in most need of relevant information that can help them try to change an unjust situation are the very ones with the least access to such information. This is part of the existing power imbalance, and often characterizes the situation of people in impoverished, vulnerable and marginalized conditions.

Grassroots groups and social movements in which landless workers, fishers, peasants, herders, nomadic and indigenous peoples are organised have a natural ability to monitor the actual situation on the ground because they can give direct evidence of the shortcomings and problems that interfere with or prevent the realisation of its members' right to land. However, many times these groups or movements do not have enough information on the reasons and the persons responsible for these shortcomings and problems; and often they lack methods and tools to collect, organise and analyse information in order to be able to use this knowledge to generate a change in public policy.

To be sure, having access to relevant information -- even relevant alternative information, about their situation and about what their rights are in that situation – alone will not solve the problem. But without it, chances are that any response from authorities to their situation is likely to be just that – a response, and not greater accountability.

For people who aspire to change their situation in the direction of greater public accountability, but whose only power resources may be knowledge, awareness, organization and voice, the nature of efforts to exact accountability depends in the first instance on the kind of information available to them. Here, the Tenure Guidelines are significant because they are the first internationally agreed soft law instrument that focuses on economic, social and cultural rights (ESCR) and how they can be applied to the governance of land, fisheries and forests, and they are currently the highest normatively standard existing on land and natural resources. The TGs therefore can be especially useful not only because they constitute information about an especially relevant standard, but also, at the same time, they contain the seeds of how this standard can be deployed as a tool for investigation, reflection and action.

The Tenure Guidelines Debate:

Just a piece of paper? Or tool for change; and in what direction?

The TGs are an example of soft law -- a law that sets standards and guidance on a particular subject but is not mandatory. It is for this reason that some people doubt the efficacy of trying to use these or any non-binding guidelines to claim rights. Yet soft law can become a precursor to a binding law at the national or international level. Given that the TGs are firmly anchored in human rights, their adoption by the CFS opened up the possibility to interpret and use them as a springboard to support claims for a right to land.

The legal principle *pro hominem*, which calls for applying the norm or the standard most favourable for protecting threatened social groups, allows us to interpret the Guidelines in line with the highest standards developed by the UN and the regional human rights systems as well as by case law; and in a way which contributes to establishing in international customary law – and hopefully soon also in positive international human rights law - a human right to land.

At the same time, no law can shield anyone from resource grabbing. Around the world and across history, resource grabbing has taken place, and continues to take place, even where people have legal rights to the natural resources they occupy, use and manage. Where it does exist, 'good' land law does not guarantee 'good' legal outcomes.⁴ Merely having legal rights does not guarantee that one's land, fishery or forest resources won't be grabbed. Experiences from elsewhere show how easily efforts to claim legal rights to natural resources can be undermined. This means that, in the end, it is real people – who are themselves embedded in existing power relations – who interpret and apply the law in practice and who influence whether the law has any traction on the ground.

In short, it is real people who make law in reality, including making it authoritative practice in society. Of course no one, individually or even collectively in groups, can simply make (or unmake) law in whatever way or at whatever moment s/he chooses. State structures and statutory law and all the institutions and vocations associated with it – like the courts and judges, police and lawyers -- still matter. But if state law matters, then so do our interpretations of it and what we choose to do with our interpretations. We must therefore look deeper into the interpretations of law that we can use, and reflect on the ways in which we can use these interpretations to change an unjust situation and achieve greater bottom-up accountability. This requires, among other things, a good awareness and knowledge of the relevant laws and policies.

The TGs establish standards that States and other actors should be held responsible for when it comes to the regulation of tenure of land, fisheries and forests, and in so doing establish normative pressure points that can be used to investigate specific situations and consider mounting bottom-up accountability initiatives. Such mobilization might lead to changes in the direction of greater accountability. But because neither laws nor standards self-implement or implement themselves, and because they are subject to potentially diverse and competing interpretations, there is also a need to proactively embed one's interpretation in the investigation, reflection and action process.

Increasing public accountability requires building the power of previously excluded voices to articulate what they want and to engage public authorities; hence the term ‘bottom-up accountability’. How this might be possible in specific situations remains an open question. Through action research, light can eventually be shed on: 1) what conditions enable TG-framed initiatives aimed at increasing public accountability to emerge and “scale up, down, and across, between the local and regional and the national and transnational”¹⁵; and 2) what were their outcomes.

A key step in any action research is framing and asking relevant questions with numerous purposes in mind. For action research on the theme of access and control of land and related natural resources, the TGs can be used in numerous ways to frame and ask relevant questions that can help to:

- **Strengthen the organisational processes for defending and fighting for the right to land and natural resources.** Systematically gathering evidence, investigating current laws and policies and assessing state actions or omissions are activities that contribute to improving the actions and analytical capacities of social movements and grassroots organisations, as well as improving their ability to make proposals. In this regard, monitoring how natural resources are regulated plays a fundamental role in strengthening all the movements that champion food sovereignty.
- **Promote changes in public policies and the actions of national authorities.** If there is clear and specific information to justify claims related to the right to land the demands will have greater visibility and impact, and it will be more difficult for state authorities to silence or refute them. For example, saying that “Evictions are happening! Something must be done!” has no substantive weight to influence public policies and the actions of national authorities. However, showing how many evictions have occurred in the municipality; how many women, men and children have been affected; what damage these people and the whole community have suffered; who ordered and supported the decision to evict; how the evictions were executed and whether there were

other violations of human rights, etc. justifies the right to land-related claims and can be effectively used to promote policy change.

- **Raise public awareness about the importance of governing natural resources in a fair, equitable and sustainable manner that is also consistent with human rights obligations.** In many cases, societies that have lived for an extended period of time in conditions of inequality are used to seeing violations of the right to land as being a normal, acceptable and an unchangeable situation. In other cases, the consequences of poor or inadequate public policies remain hidden or only partially known. Comprehensively monitoring how natural resources are regulated, together with an appropriate strategy with adequate measures to communicate the results of the monitoring process, can help raise awareness in society about the situation of social groups living in a close relationship with Mother Earth.
- **Draft alternative reports to be submitted to human rights monitoring bodies and to support filing legal cases.** The monitoring work of human rights organisations helps to detect violations that were previously invisible. These violations can then be prosecuted in court by lawyers and human rights defenders, or by taking them to national human rights institutions and regional and international human rights bodies such as the Inter-American or the African Commission on Human Rights or the Committee on Economic, Social and Cultural Rights of the United Nations. A monitoring report showing the political and social context with objective and accurate data can help in supporting claims brought before a court in cases of violation of human rights related to fisheries, forests and land. This type of information is important in sensitising judges about the structural causes behind violations, even leading them to make rulings that may lead to ordering the government to take corrective measures in existing public policies. Submitting independent reports to international human rights bodies can generate international pressure on the states due to their non-compliance with international standards. This pressure may lead to improvements in problematic situations or even result in a halt to violations, thereby strengthening the efforts being made nationally.

- **Organise information in a systematic way which can be used for litigation of exemplary cases at the national or international level.** Bringing the Tenure Guidelines to the attention of the judiciary through monitoring reports may lead to judges using the Guidelines and their normative content when interpreting international human rights obligations with regard to land, fisheries and forests.

BOX 2-

Guiding principles of responsible tenure governance – General Principles

“3A General principles

3.1 States should:

- 1 Recognise 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 that are inconsistent with their existing obligations under national and international law.
- 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.”

Source: Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests

Using the Tenure Guidelines can help us to ask questions that can 1) shed light on what the tenure challenges are in specific situations including what the impacts of key changes in tenure are on different people; and 2) assess the actions and omissions of state and other authorities and actors in relation to these challenges and changes and with respect to the way they regulate land, fisheries and forests in specific situations. The findings can then guide the efforts of affected rural people and communities in specific situations to frame and devise collective action and engagement strategies at various levels (local, regional and national) aimed at strengthening their tenure of land, fisheries and forest in order to bring about bottom-up accountability.

To assess governance of tenure at national level, we can translate the TGs into a series of questions that anyone can ask, aimed at measuring the performance of States on specific provisions. It is useful to start by reiterating the guiding principles of the responsible governance of tenure (see Box 2).

Monitoring

The basic idea of this monitoring tool is to follow the list of questions herein and try to answer them in as detailed and accurate a way as possible. These questions were formulated so as to help identify the non-compliance of key aspects of the guidelines in a relatively simple way. This is an illustrative list, based on each of the guidelines and its provisions, which may facilitate the monitoring of the rights to land and adequate food. The questions were formulated with the criterion in mind, enabling the measurement of the will and effort of the State to regulate natural resources in line with its human rights obligations.

The will and effort of the State is expressed at three levels:

- 1 The institutional and legal structures in place in the State: some of the questions seek to monitor whether there are regulations and institutions needed to ensure that natural resources are regulated in a way that is line with human rights. Such questions then aim to clarify what has been laid out in the constitutions and laws concerning the governance of land, fisheries and forests.

BOX 3

Guiding principles of responsible tenure governance – Principles of implementation

“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 publicised 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 publicising 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.”

Source: Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests

- 2 The processes put in place by the State: this is to identify the specific measures taken by the State. There are two types of these processes: first, policies, programmes and measures necessary to give effect to and actually implement what is laid out in the constitution and laws; and second, how the institutions actually implement the programmes and other measures – that is whether, throughout all these processes, the principles of human rights are respected.
- 3 The results achieved by the State: at this level it must be established whether policies and programmes for protection and institutionalised guarantees are effective – for example if: the number of landless people has decreased; poor women have been prioritised in the allocation of public land, fisheries and forests; or if herders, fishers or nomads can move freely in cross-border areas without being criminalised.

The Tenure Guidelines explicitly include principles of implementation that must be observed in any process relating to the governance of land, fisheries and forests (see Box 3).

This tool provides an illustrative, not exhaustive, list of questions. In general, the questions focus on the national government and on assessing governance at a national scale, but this need not always be the case. In this sense, this tool is only a first step that needs to be adapted, supplemented and widened in various ways, such as:

- Defining the scale of the monitoring exercise, whether it is at national, municipal, provincial or federal state level. Depending on the scale, the questions of the tool would need to be adapted or refined.
- Including a brief description at the beginning of the monitoring report of the economic, social and political context in which the government addresses and manages natural resources so that the reader can better understand the context in which questions included in this tool were answered.

- Analysing the reasons why the Guidelines are not followed or complied with. This analysis could be added to the assessments done guideline by guideline along the questions; or it could be made at the end of the monitoring exercise identifying common causes for the non-compliance of several principles and Guidelines.
- Formulating new questions or refining those presented here so that it can provide a better account of the specific situation to be evaluated.
- Incorporating concrete testimonies of victims of violations of the right to land; or specific cases of violations. Thus, the report could illustrate and support the assessment of each Guideline with real cases of threats to the right to land.

Some questions are repeated in the paragraphs relating to various guidelines. These repetitions have been maintained as some organisations may decide to answer the questions on only some of the guidelines. In this case, it is necessary to ensure that important issues do not go unnoticed, even though these are developed in detail with respect to other Guidelines.

The answer to some of the questions in the tool may be unavailable for various reasons such as: state refusal to provide such information, or states' inability to procure the necessary instruments to produce certain information. In these cases, it is important to acknowledge the lack of information or lack of access to it. Acknowledging this could generate proposals regarding the production or availability of such information.

Additionally, in some places, the tool includes boxes that give; 1) an explanation of key concepts that may be unfamiliar; 2) examples of more elaborate indicators for further analysis; 3) references to other relevant monitoring instruments that complement and deepen the analysis; 4) guidance on how information can be collected.

Questions for Monitoring

Part 1

Preliminary remarks

In the introduction to this tool, we made reference to Chapters 1, 2 and 3 of the Tenure Guidelines. These chapters address general issues such as the objectives, nature and scope of the Guidelines as well as the guiding principles of responsible governance of tenure. To assess these general questions, we recommend that users of this monitoring tool should first address the specific questions that we have developed beginning with Chapter 4 of the Guidelines. This will enable users of the tool to make the evaluation of the objectives and guiding principles of responsible governance of tenure at the end of the assessment based on the results obtained from answering the questions on chapter 4-26 of the Guidelines, as well as the use of general questions such as:

- Does the way in which land, fisheries and forests are governed allow marginalised groups to realise their right to adequate food, overcome poverty, have sustainable livelihoods, social stability, housing security, rural and social development and environmental protection?
- Does the State recognise and respect the legitimate tenure rights of all people and communities (in the case of collective tenure rights)?
- Does the State protect the legitimate tenure rights from actions that may threaten them and does it safeguard them from offenses committed by third parties such as private companies?
- Does the State promote and facilitate the enjoyment of legitimate tenure rights?
- Does the State provide access to the courts for victims of violations of legitimate tenure rights?
- Does the State prevent tenure disputes, violent conflicts and corruption?

Part 2

General information

Part 2 of the Guidelines deals with general aspects of the governance of tenure of land, fisheries and forests as well as the rights and responsibilities, policy, legal and organisational frameworks and the provision of services.

Rights and responsibilities related to tenure

What provisions are there in the constitution and laws which recognise and guarantee the tenure rights to land, fisheries and forests of marginalised groups such as peasants, rural workers, traditional fishers, herders, nomads, indigenous people, and ethnic communities?

Do the current legal provisions on land ownership, fisheries and forests discriminate against individuals or communities on the grounds of gender, race, religious belief, political affiliation or economic status?

Which legitimate tenure rights to land, fisheries and forests are not currently protected by law? Which social groups and/or communities claim legitimate rights to land, fisheries and forests and which of these claims are still not recognised by the law?

In exploring this question, it would be helpful to define what legitimate tenure rights are in the specific context that is being monitored. See possible question in box 4.

Are the communal, collective and customary rights to land, fisheries and forests adequately recognised by the constitution and national legal frameworks?

What kind of mechanisms and procedures exist nationwide to claim legal recognition for legitimate tenure rights to land, fisheries and forests?

What kind of protection is in place against arbitrary and forced evictions of people and communities whose legitimate tenure rights have not yet been recognised by law?

BOX 4

What are legitimate tenure rights?

These are the rights that communities and individuals have to benefit from and enjoy the use of land, fisheries and forests (as well as other related natural resources contained therein) despite not legally owning or possessing these resources or goods, given the fact that they are indispensable for exercising a series of human rights such as the right to adequate food and housing, the right to water, the right to work and the right to participate in cultural life. The communities and individuals with legitimate tenure rights do not have property deeds or other forms of formalised land rights, neither are they possessors in the strictly legal sense due to the fact that they have a particular way of using natural resources which is based on their cosmivision and their specific relationship with the surrounding ecosystem as it is the case, with the seasonal use of grazing areas by nomadic pastoralists and other forms of transhumance.

In many countries, the national legislation does not recognise non-formalised land, fisheries and forest rights and their customary/traditional/community-based systems of tenure. In these contexts, the innovative concept of legitimate tenure rights has the potential to become a tool to defend and claim the recognition and protection of these rights and tenure systems. It further opens up the discussion in the national legal systems about how to end discrimination against tenure systems not based on property and/or possession, particularly of informal systems based on customs and habits since these tenure systems are indispensable for the realisation of human rights and are therefore inextricably linked to the principle of protecting human dignity.

Do women, regardless of marital status and in their own right, have rights to land tenure, fisheries and forests equal to those of men?

Have the defenders of the right to land, fisheries and forests of peasants, fishers, indigenous peoples, workers and herders been criminalised? See box 5 for tips to defining who human rights defenders are.

BOX 5

Who are the defenders of human rights?

There is no specific delineation of who is or can be a human rights defender. In the Declaration on human rights defenders, reference is made to “individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.” For the complete text of the Declaration on Human Rights Defenders, go to: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

According to this general definition, defenders can be any person or group of persons working to promote human rights, ranging from intergovernmental organisations located in the world's largest cities to individuals working in grassroots communities. Defenders can be of any gender, of any age, from any part of the world and have a professional or any other background. It is important to note that what characterises a person as a human rights defender does not require them to have such a title or work for a human rights organisation, but rather the nature of their work. Therefore, women peasants who struggle to prevent the destruction of forests so that their families can still have wild fruits, medicinal plants or firewood for cooking are considered human rights defenders. For more information on possible activities that a defender can do, go to: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

Are the defenders of the right to land, fisheries and forests of peasants, fishers, indigenous peoples, workers and herders or nomadic peoples respected with regard to the rights to life, liberty, freedom of opinion and expression, freedom of assembly and association? See Box 6 for possible indicators to further elaborate on the issue of criminalisation of struggles over natural resources.

BOX 6

Possible indicators to further elaborate on the issue of criminalisation of struggles over natural resources:

- Number of people killed, arbitrarily detained, harassed or persecuted because of claiming their rights to land, fisheries and forests in the past five years;
- Number of cases received, investigated and prosecuted in the courts and other relevant institutions concerning crimes committed against rural leaders who claimed their rights to natural resources in the last five years;
- Number of independent and autonomous organisations of herders, rural workers, peasants and small-scale fishers.
- Percentage of rural population organised in independent and autonomous organisations.

Have the defenders of the right to land, fisheries and forests of peasants, fishers, indigenous peoples, workers and herders become victims of attacks or violence from private security firms?

What kind of access do individuals and communities who see their rights to land, fisheries and forests violated or threatened have to judicial, quasi-judicial and administrative mechanisms?

How effective is the access for women to existing judicial, quasi-judicial and administrative mechanisms or what kind of problems are there?

Are the judicial, quasi-judicial and administrative authorities responsible for resolving tenure conflicts independent and impartial?

Do the judicial, quasi-judicial and administrative authorities provide expedited and effective solutions for victims of violations of their rights to land, fisheries and forests?

See box 7 for further possible indicators of assessing access to justice.

Is there a protocol that judges must follow when reviewing cases impacting on legitimate tenure rights, such as in cases of development projects?

BOX 7

Possible indicators for further assessing access to justice:

- Number of rural people who have benefited from legal aid in the last five years.
- Number of complaints related to the right to land, fisheries and forests that have been received, investigated and adjudicated by courts in the last five years.
- Rate of resolution or average trial time of the cases related to the rights to land, fisheries and forests of rural communities registered in a court or other relevant institution.
- Number of judgments that protect the rights of rural communities to land, fisheries and forests effectively implemented in the last five years.
- Distance to the nearest court.
- Ability to file lawsuits in languages other than the official language of the country.
- Existence of specialised courts dealing with agrarian issues.

Policy, legal and organisational framework related to tenure

Do the current policy, legal, and organisational frameworks promote the responsible governance of land tenure, fisheries and forests?

Are the current policy, legal and organisational frameworks discriminatory?
Please specify in which way.

Do the current policy, legal and organisational frameworks recognise legitimate tenure rights, including legitimate customary tenure rights not currently under legal protection?

Do the current policy, legal and organisational frameworks take into account the social, cultural, economic and environmental importance of land tenure, fisheries and forests?

Do these frameworks properly address the interconnections between land, fisheries and forests and their uses, and do they establish an integrated approach to their regulation?

Do women have access to legal services and other assistance from the State to enable them to defend their tenure rights?

Does the State fulfil the principle of application 3B6 (see box 3 above) regarding consultation and participation when developing and adopting legal frameworks, laws and policies regarding how the land, fisheries and forests are regulated?

Do you consider it necessary to reform the legal framework relating to tenure of land, fisheries and forests in your country? Please explain the reasons and the necessary reformations recommended.

Delivery of services

Do the judicial authorities as well as the implementing agencies addressing issues of tenure of land, fisheries and forests have appropriate human, physical, financial and other capacities to implement policies and laws in a timely manner, effectively and with sensitivity to gender issues?

Do the officials of these implementing agencies and judicial authorities know the obligations of the State concerning human rights and tenure of land, fisheries and forests?

Does the State provide prompt, non-discriminatory access to services and justice for the protection of tenure rights to land, fisheries and forests, especially for those living in remote areas?

Does corruption exist in these implementing agencies and judicial authorities?

Part 3

Legal recognition and allocation of tenure rights and duties

In this section, the standards described are those to be observed in relation to the initial allocation of tenure rights to land, fisheries and forests that are owned or controlled by the public sector as well as the legal recognition of tenure rights of indigenous peoples and other communities with traditional tenure systems in addition to informal tenure rights.

Safeguards

Are there provisions (constitutional, legal and administrative) to safeguard the right to secure tenure of land, including legitimate rights, especially for women, children, young people and other vulnerable individuals and groups?

Have immediate steps been taken (specify which) to provide legal security of tenure to individuals, families and vulnerable communities, especially women and young people, whose rights have not been formally recognised or who do not have property deeds for their land and resources?

Has the government adopted provisions (constitutional, legislative and administrative) and specific measures to prohibit forced evictions and provide for the possibility of compensation, restitution, resettlement and adequate rehabilitation of individuals, especially women and other vulnerable individuals? If yes, please specify which provisions and specific measures have been adopted.

Do these measures have appropriate and effective judicial resources to ensure that individuals who have been subjected to, or are threatened by, forced eviction are able to defend themselves with dignity?

Are there appropriate civil and criminal penalties that can be used against governmental or non-governmental entities that carry out evictions which do not fully correspond to national legal framework and international human rights standards?

In assessing evictions, it is important to answer the following questions:

- Are they regulated by law?
- Are they carried out in adherence to the rules of international human rights law with regard to evictions?
- Do they give the affected people and communities the advice and support of the quasi-judicial state agencies and protection of human rights?
- Are they performed in order to promote general welfare?
- Are they reasonable and within proportion?
- Are they regulated in a way that guarantees full and fair compensation and rehabilitation?
- Are they conducted according to the Basic Principles and Guidelines on Evictions and Displacement generated by Development? (See box 8)

BOX 8

The Basic Principles and Guidelines on Evictions and Displacement Generated by Development

These principles were developed by the Special Rapporteur on the Right to Adequate Housing and adopted by the Human Rights Council. They are intended to assist states in developing policies and laws to prevent forced evictions in the area of national development. These principles and guidelines clarify, among other issues, the general welfare and all standards to be observed before, during and after evictions.

See: http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

In areas and regions where a policy of recognition and allocation of tenure rights has been proposed, is there a national institution with a clear mandate, qualified staff and adequate resources for gathering information on holders of current tenure rights, particularly the most vulnerable, including women, young people and others, and their living conditions?

Are there studies and assessments, both governmental and non-governmental, with the goal of collecting additional information on holders of current tenure rights especially the most vulnerable people (including women and youths)?

How many people identified as holders of tenure rights have been effectively taken into consideration in public policy?

What kind of support (administrative, quasi-judicial, and judicial) does the government provide to prevent infringement or termination of tenure rights of poor and vulnerable people, especially women, young people and others?

Does the government have an attorney or a rural ombudsperson and/or alternative mechanisms to resolve disputes and to be responsible for providing independent, immediate and effective advice to poor and vulnerable people, especially women and young people? If yes, how many people have benefited from this support in a given period?

How many of the cases presented have been investigated and resolved in favour of tenure rights and secure possession of the poorest rural sections of the population, especially for women, young people and other vulnerable individuals and groups?

Are there government training programmes and appropriate communication tools on these rights and responsibilities/duties, including the right to dignified access to safeguard mechanisms for vulnerable sections of the population, especially women, young people and others?

Are there appropriate government training programmes for public officials, including lawyers, law enforcement, and others, on their obligation to implement international human rights standards, including training in women's rights?

How can we ensure that the channels, methods and tools for information dissemination are culturally appropriate and guarantee non-discrimination of vulnerable groups, especially women, young people and others?

Public land, fisheries and forests

Has the government ensured a highly participatory and transparent process for identifying and disseminating the categories of legitimate tenure rights, including the category of communal property, rights and collective ownership?

Have the populations using commons been consulted in the process of defining public lands and their corresponding use? See box 9 for a comprehensive definition of commons.

BOX 9

What are the commons?

“Natural resources such as land, fisheries and forests may be used as commons. This means that a group of people (often understood as ‘community’) uses and manages these resources collectively. In some cases, the group may also hold collective ownership rights to the common resource. These rights are provided in the context of the Guidelines (FAO/CFS 2012), e.g. §§ 8.2, 8.3, 8.7, 8.8, 9.2, 9.4;”

Governing Tenure Rights to Commons A guide to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
<http://www.fao.org/3/a-i6381e.pdf>

Available at:

http://www.fian.org/en/news/article/civil_society_organizations_proposals_for_the_fao_guidelines_on_responsible_governance_of_land_and_natural_resources_tenure/

In what way has the government facilitated the process for the different communities using the commons to draw up their own internal rules and regulations with respect to defining access rights, ownership, shared use and protection of land and other natural resources?

Have conservation strategies been facilitated so as to maintain environmentally fragile and sensitive commons?

Does the State prioritise the allocation of tenure rights to public land, fisheries and forests to women and men without land or a secure livelihood, or those who have very limited access to natural resources?

Indigenous peoples and other communities with traditional tenure systems

Do national constitutions and other laws recognise the special value that land, fisheries and forests have for indigenous peoples and other communities with traditional tenure systems?

Do current laws on mining, hydrocarbons, investment, development, land, water and other related matters contain provisions that take into account this particular value to such communities?

Does national legislation recognise and incorporate the right of indigenous peoples and other communities to exercise self-governance of their land, fisheries and forests?

Do these systems of self-governance of land, fisheries and forests guarantee equal rights to women and the effective participation of women, youth and men in local and traditional institutions of government?

Is there legislation on tenure of resources which take into account international human rights treaties, including Convention 169 of the ILO, the Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous Peoples? Is there legislation to develop the implementation of these conventions?

Do laws on mining, hydrocarbons, water, land and investment generally include such references to these conventions/declarations and/or other human rights treaties?

Are the lands, fisheries and forests used by indigenous peoples and other communities with traditional land tenure systems in an exclusive or shared way properly demarcated? Is such information recorded and publicly available? Does the procedure for granting concessions take into account the aforementioned information?

Does national legislation contain provisions that recognise and respect the legitimate tenure rights of indigenous peoples and other traditional communities to their ancestral lands?

Is there a national protocol on evictions? If so, does it prohibit forced evictions, especially in traditional communities with legitimate rights? How many cases of forced evictions have been reported this year?

Is there a law on land and/or natural resources? If so, does this recognise traditional tenure systems? Does the constitution recognise traditional tenure systems? Is there any specialised legislation on indigenous peoples and other communities covering natural resources tenure issues? If not, are there any planned reforms that provide for such recognition?

Do indigenous and traditional communities participate in drawing up laws and policies that affect their lands, fisheries and forests?

What legal or other resources are available to indigenous peoples and traditional communities in opposition to laws or policies that negatively affect their holdings of natural resources?

Are territories of indigenous and other traditional communities properly demarcated or are they currently being demarcated? Is there a register of these territories? Does the Constitution or other laws prohibit the unauthorised use of traditional territories?

Is there a law that regulates the process of consulting traditional communities with respect to measures affecting these communities? Is such legislation in line with international law on the subject? Have these communities participated in drawing up such legislation? Do laws on mining, hydrocarbons and/or investment take into consideration such consultation?

Are the indigenous peoples able to effectively exercise their right to free prior and informed consent?

Does the State respect and protect the rule of customary dispute-resolution systems relating to tenure?

Informal tenure

Are there constitutional, legal and administrative provisions that recognise informal tenure (tenure not recognised by law) to land, fisheries and forests as part of the various categories of legitimate tenure rights?

Do these provisions recognise the essential importance of these lands, fisheries and forests for cultural and political identity and the survival of small-scale farmers, especially young people?

Is priority granted to small-scale food producers who have maintained informal systems of tenure within the context of the policies for recognising and allocating tenure rights?

What is the process for guaranteeing the participation of small-scale food producers who have maintained informal systems of tenure in designing, implementing and monitoring tenure policies?

Have they been included in government support policies that ensure their social and economic reproduction and their capacities to use and stay on these lands under informal tenure?

Do the policies for recognising and allocating rights guarantee clear, simple and affordable processes for people with informal systems of tenure?

How many individuals and families, including women and young people, with informal systems of tenure, have become holders of rights through recognition policies and allocation of rights? You might also consider finding out the proportion of these individuals/families with respect to those who have not become holders through this processes and why they have not?

Part 4

Transfers and other changes to tenure rights and duties

This section deals with standards to be observed when transferring or voluntarily/involuntarily reassigning tenure rights on the market or through investment, redistribution, restitution and other forms of readjustment and land consolidation and expropriation.

Markets

Are there markets for the sale and lease of land? Are there markets for selling fishing rights and concessions for the use of forests? Are these informal markets or are they legally recognised?

Does the government keep a land registry? Does this registry ensure transparency and publication of land transactions?

Does the market for the sale and lease of land facilitate speculation and concentration of land ownership? Specify and provide details, if possible.

Does the market for the sale and lease of land undermine the traditional forms of governance and tenure, for example, through illegal sale or lease parcels of land that are collectively owned or part of indigenous territories?

What kind of regulation exists to prevent speculation and concentration of land ownership and to ensure that the integrity of traditional forms of land tenure is respected (e.g., are there clauses that cover inalienability, protection against seizure and imprescriptibility of indigenous and community lands)?

What kind of regulation is in place to ensure markets do not endanger the sustainable use and conservation of land, fisheries and forests? Is this regulation effectively implemented?

In the markets for the sale and lease of land, are small-scale farmers forced to sell their land for economic or any other reasons? Is there a regulation that protects the rights of tenure for small-scale farmers in this context, or that protects the land, fisheries and forests dedicated to the production and supply of food from being exploited for other uses such as urbanisation, mining, etc.?

Investments

Do current investments and investment policies contribute to eradicating poverty, attaining the right to adequate food, food security, promotion of local food production systems and job creation, in particular, for the marginalised and poorest sections of the population?

Do the projects and investment policies meet International Labour Organization (ILO) standards? (See box 10.)

Are there national strategies and policies that specifically address promoting and supporting investments that small-scale farmers can make on their own accord? Please describe what these are.

Does the government have production and investment models that do not result in large-scale transfers of tenure rights?

Have indigenous peoples, fishers, nomadic herders, and small-scale farmers been able to play an active role in decisions about and design of policies and laws with regard to investment, as pursuant to Convention No. 169 of the ILO?

Is there evidence of land grabbing? Please provide details about the extent of land grabbing. What are the impacts of land grabbing?

Is all the information concerning investment agreements available to the public?

BOX 10

The ILO standards

The core labour standards consist of five standards, laid out in eight conventions:

- Freedom of association and the effective recognition of the right to collective bargaining (ILO Conventions No. 87 & No. 98);
- The elimination of all forms of forced and compulsory labour (ILO Conventions No. 29 & No. 105);
- The effective abolition of child labour (ILO Conventions No. 138 & No. 182);
- The elimination of discrimination in respect of employment and occupation (ILO Conventions No. 100 & No. 111).

Besides these core labour standards there is a comprehensive system of instruments on work and social policy. For a full overview, see <http://www.ilo.org/global/standards/lang--en/index.htm>

Have the parameters been defined to describe what is considered as a large-scale transaction of tenure rights? Are there rules regulating the scale, scope and nature of the transactions of tenure rights to land, fisheries and forests which are allowed at the national level?

If such large-scale transactions are allowed, are there specific safeguards in place such as limits on the number of transactions permitted, or special regulations or procedures for authorising such transactions, in order to protect legitimate tenure rights, human rights, particularly the right to adequate food, securing livelihoods and the environment from the risks arising from transactions on a large scale?

Does the government conduct preliminary independent assessments on the impact that investments can have on legitimate tenure rights, particularly on forms of customary, traditional and informal tenure, on securing the human right to adequate food and food security and on the livelihoods of vulnerable and marginalised groups?

Are there cases in which companies have abused human rights and legitimate tenure rights? Please specify and provide as many details as possible.

Do companies fulfil their obligation of due diligence to avoid abusing human rights and legitimate tenure rights in investment projects? Do companies have systems for risk management and registering complaints? Are these impartial and easily accessible for individuals and groups affected by the actions taken by the companies?

BOX 11

Possible indicators to assess the role of states that conduct or promote investments abroad:

- Do the investment protection treaties signed by these states include clauses on respecting human rights and legitimate tenure rights?
- Do the public organisations financing investment projects abroad adhere to previous impact assessments on human rights in countries receiving investment?
- Are there mechanisms in place to receive complaints and conduct investigations concerning possible violations of human rights and tenure rights committed by a commercial company or one with significant business activities in the country in question?

Are there state regulations to prevent companies from being involved in abuses of human rights and legitimate tenure rights? Does the government have mechanisms to remedy and effectively rectify abuses of human rights and legitimate tenure rights committed by companies?

Do governments make domestic investments or promote investments abroad in line with their obligations to respect and protect human rights and legitimate tenure rights of the population in the countries receiving investments? See box 11 for possible indicators.

Land consolidation and other readjustment approaches

Is there excessive dividing of the structures of land tenures which prevents small-scale farmers from producing food and successfully maintaining their livelihoods?

What kind of land readjustments measures have been proposed by organisations representing small-scale farmers?

In which context and what type of measures have been taken by the government to address land fragmentation? Have these measures harmed small-scale farmers?

In cases of land consolidation encouraged by the State, were these the result of a government strategy aimed solely at encouraging companies, committees, farming and/or extractive practices or other outside interests in the affected communities?

Restitution

Have there been instances of the loss of the legal rights of tenure to land, fisheries and forests in your country? Who has been affected, in which regions and why?

Has the government taken steps to restore the land, fisheries and forests to those who were evicted from these lands? Describe the measures taken.

Table 1

Type of action	Action name	Objectives	People, communities or persons protected by the action	Type of restitution, compensation or planned amends and the type actually received by the people, communities or individuals affected
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Public policy

Administrative

Budgetary

Judicial decisions

Do the victims of eviction or expropriation, particularly women, have access to legal and paralegal council?

How many women/men/families/communities have had their legitimate tenure rights restored by the government?

See Table 1 for possible additional indicators.

See box 12 for further principles to comprehensively assess situations of restitution.

Redistributive reforms

What is the degree of concentration of the legal rights of tenure to land, fisheries and forests in your country?

How many people are landless or have insufficient access to land – including fisheries and forests – in order to maintain an adequate standard of living?

What is the percentage of women, young people, indigenous people, fishers, herders, rural workers and other marginalised groups who are landless or have insufficient access to land – including fisheries and forests – to maintain an adequate standard of living?

What measures has the government taken to ensure broad and equal access to natural resources? Are there public policies for redistribution of ownership of natural resources? Please describe these public policies.

BOX 12

The Principles on Restitution of Housing and Property of Refugees and Displaced Persons

The Principles on Restitution of Housing and Property of Refugees and Displaced Persons (hereinafter, the “Pinheiro Principles”) contain the legal, policy, procedural, institutional and technical mechanisms for the restitution of housing and property. At the same time, they provide practical guidance on the measures to be implemented to guarantee the right to the restitution of housing and property.

Available at:

http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf

What has been the impact of such policies on redistribution? How many people have benefited from these programmes? What is the percentage of women, young people, indigenous people, fishers, herders or other marginalised groups who have benefited from these programmes of redistribution?

Are policies of redistribution discriminatory such as when land of poor quality, that is inaccessible or at risk of natural disasters or climate change, is allocated to the neediest populations?

What measures have been taken by the government to provide support for the beneficiaries of redistributive programmes?

What percentage of the rural population has access to each of the following services: technical assistance, rural credit, marketing, education and training, health, drinking water and adequate sanitation, irrigation and energy?

What is the percentage of women, young people, indigenous peoples, farmers, fishers, herders or other marginalised groups who have access to each of these services?

BOX 13

International Conference on Agrarian Reform and Rural Development (CIRADR)

The most recent and detailed commitment of the international community regarding land reform and rural development is included in the final declaration of this conference that was organised by FAO and the government of Brazil in 2006.

See <ftp://ftp.fao.org/docrep/fao/meeting/011/j8160e.pdf>

How does the government ensure the sustainability of reforms for redistribution and equal long-term tenure? Has the government reviewed the structural factors causing concentration of ownership of natural resources such as, for example, discriminatory subsidies that favour large landowners? See box 13 for further guidance on how to assess redistributive reforms.

Expropriation and compensation

Are there cases of forced eviction and expropriation of land rights? Who has been affected, in which regions and why?

How would you define public/general interest in the legislation?

In which cases is it legal in your country to expropriate land in the interest of the public/general good?

In cases in which expropriation is carried out in areas of particular cultural, religious or environmental significance or when the land, fisheries and forests in question play an important role in the livelihoods of poor and vulnerable people, has the government taken into consideration any possible alternative ways of raising public/general interest that minimise disturbances? Has the government involved all affected persons in the decision-making process?

Has the government resettled and compensated those who depend on land, fisheries and forests for their livelihoods - particularly women - who are affected by expropriation?

In the case that people have been evicted without rights to property but who depend on land, forests and fisheries for their survival, has the government resettled them?

Do the victims of forced evictions have access to resources and legal protection?

Part 5

Administration of tenure

In this section, the standards described are those for the administration of the tenure of land, fisheries and forests, for example, in connection with the registration of tenure rights, valuation, taxation, the regulated land use planning, dispute settlement and cross-border issues.

Records of tenure rights

What systems (such as registration, cadastre and licensing systems) exist in the country to record individual and collective rights of tenure, including public and private ownership and indigenous peoples and other communities with traditional tenure systems?

Is there an integrated framework that includes existing registry systems (for example, tenure rights of the state and the public sector, the private sector and indigenous peoples and other communities with traditional systems of tenure) and other systems of information on territory?

Have these developed and used appropriate measures from a socio-cultural perspective in order to register the rights of indigenous peoples and other communities with traditional systems of tenure?

When it is not possible, or if they have not registered tenure rights of indigenous peoples and other communities with traditional systems of tenure or living in informal settlements, what safeguards exist to ensure that the rights of third parties in these regions are registered and that the legitimate tenure rights are not violated?

Are the records and information on tenure systems freely accessible by the public?

Valuation

What kind of evaluation systems of tenure rights exist in your country?

Are they discriminatory?

Do these evaluation systems also include non-market value systems, such as social, cultural, religious, spiritual and environmental ones?

Do the implementing organisations make their information and valuation analysis with regard to the valuation of tenure rights available to the public in accordance with current national rules?

Taxation

What laws, policies and tax systems exist in your country with regard to tenure rights?

Does the current tax system prevent or facilitate speculation and concentration of ownership or other tenure rights?

Is the current tax system discriminatory?

Does the State effectively collect taxes with regard to tenure rights, especially from large businesses and wealthy sectors of the population?

Regulated spatial planning

What kind of land planning system exists in your country?

What laws and policies of land planning system are applied in your country?

Does the State respect principles of application 3B4 on gender equality, 3B5 on a holistic and sustainable approach to the use and management of natural resources and 3B6 on consultation and participation (see Box 3), especially of marginalised population groups, to make decisions about how to regulate territory?

Are there provisions in the land planning regulations for the need to tackle climate change and ensure the right to food, including peoples' right to feed themselves by growing their own food and/or through fisheries, animal husbandry, hunting and gathering in the forest? Does the State encourage agro-ecological approaches to land use?

Resolution of disputes over tenure rights

Are there courts or specialised bodies dedicated solely to resolving disputes over tenure rights and regulated spatial planning?

Do the judicial and quasi-judicial authorities have sufficient capacity and technical understanding of human rights and tenure issues?

Do the judicial, quasi-judicial and administrative authorities provide expedited and effective solutions for victims of violations of their rights to land, fisheries and forests?

Does the State provide legal assistance to the vulnerable and marginalised in tenure conflicts?

Does the State respect and protect customary systems of resolution of tenure conflicts?

Does the State provide prompt, non-discriminatory access to services and justice for the protection of tenure rights to land, fisheries and forests, especially those living in remote areas?

Transboundary matters

Are tenure rights, livelihoods and the right to adequate food of migrant populations protected, particularly of herders and fishing communities who live and move across borders? What kind of problems do they encounter?

Are members of fishing communities and migratory herders criminalised for crossing borders or maintaining their livelihood activities in border areas? Specify how many people have been affected, in which regions, and for what reasons?

Do the states concerned cooperate to address tenure issues in a way that protects the rights of migrant populations? Have there been any attempts to harmonise the legislation for this purpose so as to develop or strengthen current international measures to administer tenure rights that cross international borders? Specify the concrete measures that have been taken in this regard.

Does the state adhere to principles of implementation 3B4 on gender equality, 3B5 on a holistic and sustainable approach to the use and management of natural resources and 3B6 (See Box 3) on consultation and participation, for migrant populations affected by the cooperation between the states in order to protect their rights?

Part 6

Responses to climate change and emergency situations

In this section, the standards described are those which must be observed with regard to the tenure of land, fisheries and forests in the specific context of climate change, natural disasters and conflicts.

Climate change

In your country, has research been conducted on the effects of climate change on food production and the preservation of the rights of tenure to land, fisheries and forestry, especially for the rural and/or most vulnerable sections of the population?

Have national, regional and local maps been drawn up on populations whose tenure rights to land, fisheries and forests are at risk due to climate change?

In the laws of your country (or region), are there strategies, policies and/or measures to protect the rights of tenure to land, fisheries and forests for individuals and communities (particularly food producers, rural or vulnerable populations) who may be affected by the risk or effects of climate change?

Have these laws, strategies, policies and/or measures been developed with the participation of the populations that are affected or are at risk?

What mechanisms and actions to restore the rights of ownership of land, fisheries and forests have been planned or implemented in your country for people who have lost their access to these resources due to climate change and natural disasters?

Were the affected sections of the population or individuals consulted, or, did they help to design or implement these mechanisms and actions?

Natural disasters

Have national, regional and local maps been drawn up on populations whose tenure rights to land, fisheries and forests are at risk due to natural or human-made disasters?

Do the standards, policies and land management plans at a national, regional or local level provide contingency measures in the case of rural and/or vulnerable populations whose tenure rights are affected due to natural and human-made disasters?

Do the national, regional and local systems for disaster prevention have specific guidelines regarding the relocation of persons whose tenure rights to land, fisheries and forests have been temporarily or permanently affected by disasters? Do these people or communities receive government protection after the resettlement process, in such a way that their rights are not attacked or violated by others?

Are there regional or local protected areas or specific locations that can be offered as a restitution of land rights when these have been permanently lost by populations as a result of disasters?

Are there strategies in place for prevention and containment of conflicts in cases of relocation of people or communities to areas where other people have legitimate rights to tenure of land, fisheries or forests concerning the resettlement or neighbouring territories?

Have strategies and actions (food, access to natural and economic resources, technical assistance, legal advice in the event of loss of the deeds of ownership) been developed to support people and communities affected by disasters in the process of return, reconstruction or resettlement? What budget is allocated annually for those strategies and actions? How many people have benefited from these?

Conflicts in respect to tenure of land, fisheries and forests

With respect to avoiding conflicts:

Have authorities adopted strategies to reduce internal conflicts associated with tenure of land, fisheries and forests?

Are there effective administrative, legal or conciliation mechanisms aimed at handling such conflicts after they have already begun? Do the authorities use customary dispute resolution mechanisms as they arise between individuals or communities that recognise these customs?

Have government authorities responsible for managing administrative or legal decisions or resolving conflicts over tenure rights been trained so that their actions are not discriminatory, and are they sensitive to gender issues?

Has the government generated internal guidelines to prevent and combat the criminalisation of people or of rural or vulnerable communities who claim their rights to tenure of land in political or regional contexts, wherever they are in dispute with the interests of powerful sectors?

During the conflict:

Are the Additional Protocols I and II to the Geneva Conventions of 1949 on armed conflicts respected, in particular regarding the protection of objects indispensable to the survival of the civilian population? See box 14 for further details.

BOX 14

Article 54 of the Additional Protocol I

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying their sustenance value to the civilian population of the adverse Party, whether to starve out civilians, to cause them to move away, or for any other motive.

See full text of the Geneva conventions and additional protocols at <https://www.icrc.org/eng/assets/files/publications/icrc-002-0368.pdf>

Does the State recognise in its territory the rights of tenure to land, fisheries and forests that have been acquired by force or through the use of violence?

How many and in which regions do people live in conditions as refugees or displaced persons due to conflicts? In which conditions do they live now?

Have these people been able to give their testimony and document violations of human and tenure rights in order to be able to demand restitution and reparation afterwards? Do official records of tenure rights protect against destruction or theft in order to provide evidence for the further processing of such violations and to facilitate any possible measures of compensation?

After the conflict:

Does the State make every effort (including the use of maximum available resources) in order for refugees and displaced persons to return to their places of origin voluntarily, safely and with dignity? (See Table 2 below for possible additional indicators. See also box 12 on the Pinheiro Principles.)

Table 2

Government actions in order to restore, compensate or make amends to populations, communities or people with legitimate tenure rights affected by the loss of land, fisheries and forests

Type of action	Action name	Objectives	People, communities or persons protected by the action	Type of restitution, compensation or planned amends and the type actually received by the people, communities or individuals affected
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Public policy

Administrative

Budgetary

Judicial decisions

BOX 15

Possible indicators to broaden the analysis:

- People affected by occupation, forcible transfer of population, flight or who are considered as refugees;
- Location and amount of land confiscated by the occupying power or the various armed actors;
- Amount of destruction of crops (including permanent crops such as olive trees), crops, livestock, facilities and drinking water supplies and irrigation works.

Part 7

Promotion, implementation, monitoring and evaluation

What initiatives have been taken by the State, FAO, IFAD and other international development aid agencies in your country to improve the way they regulate land, fisheries and forests by using these guidelines?

Are these initiatives adequate, sufficient and consistent with the principles laid out in the Guidelines?

What role do women and those most affected by problems of tenure of land, fisheries and forests and their organisations have to play in these initiatives?

What institutional monitoring mechanisms exist on how natural resources are regulated in your country? Please specify.

Does the Committee on World Food Security fulfil its role in monitoring progress, effectiveness and impacts of the implementation of these guidelines?

Summary

Whether in practice the TGs will become a useful point of reference/ reference tool for action research on bottom-up accountability in relation to regulation of tenure of land and other natural resources is an open question. The answer remains to be seen and the burden of proof is on those who would try. But their aim to improve governance of tenure of land, fisheries and forests in order to contribute effectively to securing the right to adequate food for the benefit of all, with an explicit emphasis on vulnerable and marginalized people, as well as their status and grounding in international human rights law, invites exploration of how they may be used. This practical guide has tried to suggest a way to start, by using the TGs to help frame and formulate questions that anyone can ask to begin to get at indications of where authorities may be excelling and where they may be falling short in fulfilling their obligations with regard to tenure rights and human rights.

Endnotes

- 1 J. Fox (2007) *Accountability Politics: Power and Voice in Rural Mexico*, Oxford: Oxford University Press, p.2.
- 2 J. Fox (2007), p.2.
- 3 J. Fox ed. (1990) *The Challenge of Rural Democratization: Perspectives from Latin America and the Philippines*, London: Frank Cass, pp.3-4.
- 4 J. Franco (2011) *Bound by Law: Filipino Rural Poor and the Search for Justice in a Plural-Legal Landscape*, Manila: Ateneo de Manila University Press, p.54.
- 5 J. Fox (2007), p.2.



TNI is an international research and advocacy institute committed to building a just, democratic and sustainable planet. For more than 40 years, TNI has served as a unique nexus between social movements, engaged scholars, and policy makers. It works to strengthen international social movements with rigorous research, reliable information, sound analysis and constructive proposals that advance progressive, democratic policy change and common solutions to global problems. Through its Agrarian and Environmental Justice Project, TNI works with rural social movements to defend and claim their economic, social and cultural rights to land and related natural resources.

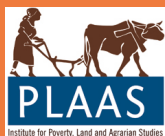


FIAN is an international human rights organization working for the realization of the right to adequate food. It consists of national sections and individual members in over 50 countries around the world. FIAN strives to secure people's access to the resources that they need in order to feed themselves, now and in the future, and cooperates with peasant organizations around the world. Since 2006, FIAN facilitates the IPC for Food Sovereignty working group on land and territory. In this role, FIAN facilitated the civil society process of participating in the development and negotiation of the Tenure Guidelines.

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Institute of
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The critical agrarian studies cluster in ISS has been in the cutting edge of research on global land deals, and has spearheaded innovative initiatives that bridge together academic, policy and grassroots activist circles. It is an institutional co-anchor for the global network of academics working on land deals, the Land Deal Politics Initiatives (LDPI – www.iss.nl/ldpi).



PLAAS of the University of the Western Cape in South Africa is a world leading research institute that conducts and coordinates research across the African region. It is the region's leading research institute working on land issues and land governance. PLAAS collaborates closely with ISS in The Hague especially around the land Deal Politics Initiatives (LDPI, www.iss.nl/ldpi).



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