

A Brief Introduction to the
Voluntary Guidelines
on the Responsible
Governance of Tenure of
Land, Fisheries and
Forests in the Context
of National Food Security



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A Brief Introduction to the “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security”

The Voluntary Guidelines¹ are - thus far - the only existing global reference for the best practices in governance of tenure of land, fisheries and forests backed by international consensus of governments, international organisations, civil society and the private sector.



Photo: Guilio Napolitano/FAO

The adoption of the Voluntary Guidelines by the Committee on World Food Security on 11th May 2012 has marked a historic milestone for all organisations, institutions and individuals working on land rights.

The Voluntary Guidelines establish internationally accepted principles and standards for responsible governance of land, fisheries and forests. The overall goal of the Guidelines is to help countries improve their governance of land tenure so as to ensure better food security of their population with special attention given to smallholder farmers, indigenous communities and women's rights. Despite certain limitations, the Guidelines can offer support to all levels of government from national to local as well as to land rights activists, land users and all institutions involved in the development of policies and laws managing access to natural resources. The Guidelines set standards for acceptable practices that can be used to evaluate proposed and existing policies and programmes.

1. The document of the Voluntary Guidelines is available at: <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

The Voluntary Guidelines

A General Overview

“This is the first time that the international community has agreed to set up these principles on responsible governance (of land, fisheries and forests).”

Alexander Mueller

Assistant Director General of the UN Food and Agriculture Organization.²

The adoption of the Voluntary Guidelines is indeed an unprecedented achievement, as the politically contentious issue of land tenure has never been addressed so thoroughly at the international level. The grounding of land tenure and natural resources management issues in the human rights based approach has not been done in international law before which has kept the issues of “classical” human rights and environmental law largely separate.

Food security and realisation of the right to food depend on secure access to land, fisheries and forests by people and communities. Good governance and administration of natural resources is a pre-condition for achieving economic growth and sustainable use of the environment. Small-scale farmers, women and indigenous communities need governments to provide legal recognition of their traditional land use rights, also referred to as “legitimate customary tenure rights”.³ Vulnerable populations need safeguards against loss of livelihoods as a matter of respect and protection of their human rights and in order to be able to invest in sustainable use of their natural resources. The Guidelines make it clear that **achievement of food security and progressive realisation of the right to food are the most important goals of good land tenure governance.**

2. Interview with Alexander Mueller, FAO Assistant Director General: <http://www.youtube.com/watch?v=Nntx9-Kc8ho&feature=youtu.be>

3. The Voluntary Guidelines, Paragraph 5.3



Photo: Hillol Sobhan/IFSN

Civil society welcomes and supports the implementation and monitoring of the Voluntary Guidelines that promote a “**holistic approach**” and recognise that natural resources and their uses are interconnected.⁴ However, civil society members are aware of certain shortcomings of the Guidelines which are discussed here and throughout the text. For instance, **exclusion of water from the scope of the Guidelines has been one of the main disappointments.**

Moreover, the Voluntary Guidelines accept the transfer of tenure rights through market transactions which in the absence of appropriate state regulatory framework can fail to benefit the poor engaged in the process. The right to return in post-conflict situations was not reaffirmed; also the need for a strong monitoring mechanism to ensure accountability of governments and international organisations and their policies having impact on tenure. Nevertheless, despite the limitations, the Guidelines can serve as a solid starting point for governments and regional bodies in crafting appropriate national regulations.

As to the scope of the Voluntary Guidelines, it is extremely broad and ranges from the issues of legal recognition of customary land tenure, operations of markets and investments in land to creating transparent record keeping systems and so forth.

4. The Voluntary Guidelines, Paragraph 3B5 and 5.3

Below we highlight four areas of the Voluntary Guidelines: human rights approach, diversity of existing land and natural resource tenure systems, women's land rights and corporate responsibility. These are of greatest interest and relevance to the policy priorities of ActionAid⁵ and the International Food Security Network (IFSN).⁶

Human rights approach: The Guidelines are deeply anchored in human rights language and principles, especially sections like Objectives, Nature and Scope, General Matters and General Principles. They are fundamentally consistent with the Universal Declaration of Human Rights and also refer to various United Nations instruments including the United Nations Declaration on the Rights of Indigenous Peoples.⁷ In addition, they use the human rights based approach as the guiding principles of implementation of the Guidelines. Mainstreaming rights based approach into the Voluntary Guidelines means that there is an explicit linkage between land tenure and human rights instruments and the guarantees they provide.

Diversity of existing land and natural resource tenure systems: The Guidelines are particularly attentive to the rights of indigenous peoples and recognise that there are many different forms of traditional governance systems including the role of commons. They identify a wide diversity of rights (or tenure systems) and devote special attention as to how states should recognise traditional or customary and common property tenure regimes. The Guidelines make it clear that the state has an obligation to recognise and protect legitimate tenure rights of indigenous peoples and other traditional communities⁸ even where such rights are currently not recognised by law. There is an entire chapter specifically dedicated to indigenous peoples and many other communities with customary, or traditional, systems of land governance.⁹ Unfortunately, the principle of **free, prior and informed consent (FPIC)** has been recognised only for the indigenous peoples and has not been extended to other communities vulnerable to losing land rights. For all other affected communities the **principle of consultation and participation will apply**. The Guidelines also speak strongly against forced evictions of indigenous peoples or other communities from ancestral lands.¹⁰



Photo: Hillof Sobhan/IFSN

5. Please visit: www.actionaid.org

6. Please visit: www.ifsinfo

7. The Voluntary Guidelines, Paragraph 1.1

8. Ibid., Paragraph 9.4

9. Ibid., Chapter 9

10. Ibid., Paragraph 9.5



Photo: James Akenaa/ActionAid

Women's land rights: The Guidelines also shed particular light on women's rights to access of land, fisheries and forests. Gender equality and gender sensitive approach have been mainstreamed into the different sections of the Guidelines rather than contained in a single chapter. The Guidelines are a significant contribution in demonstrating applicability of international human rights principles to tenure administration by making frequent references to women as potential beneficiaries of policies as well as active claimant of their rights. In fact, **gender equality and non-discrimination are among the main principles of implementation of the Guidelines:**

“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 or marital status.”¹¹

11. The Voluntary Guidelines, Paragraph 3B4

Corporate responsibility: The Guidelines recognise the **responsibility of corporations or non-state actors to respect human rights and existing or legitimate land rights**. Investors have the responsibility to “recognize and respect tenure rights of others.”¹² This is quite a breakthrough in the area of applying corporate social responsibility to land tenure. The Guidelines also assign responsibility to the states to ensure that businesses do not abuse human and legitimate tenure rights:

“Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved. 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. 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 abuse of human rights and legitimate tenure rights. States should take additional steps to protect 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 service from State agencies.”¹³

The Voluntary Guidelines also address other issues such as best practices for registration and transfer of tenure rights; making sure that land administration is accessible, affordable and transparent, managing expropriations and restitution of land to people forcibly evicted in the past and so forth. In addition, the Guidelines contain a detailed chapter on **redistributive reforms** which prescribes best practices in this area (Chapter 15). It is also important to note that the Guidelines acknowledge the impact of **climate change and natural disasters** on land tenure by including concise chapters on both the topics. The Guidelines have also bravely included a section on managing **conflicts in respect to tenure of land, fisheries and forests**.

12. The Voluntary Guidelines, Paragraph 12.12

13. Ibid., Paragraph 3.3A.3.2

Background to the Guidelines Adoption and the Process Followed

"We commend the process that was adopted for developing the guidelines, which provided the opportunity for civil society and representatives of small-scale food producers to participate at all stages, to draw attention to the real life issues and make concrete proposals."

Ángel Strapazzón
Movimiento Campesino Indígena-Vía Campesina Argentina¹⁴

The political process for elaboration of the Voluntary Guidelines began at the International Conference on Agrarian Reform and Rural Development (ICARRD) held in Brazil in 2006.¹⁵

Since then, the FAO has undertaken a series of thematic studies, expert meetings and consultations in order to inform the writing of the Voluntary Guidelines. The development of the **Draft Zero of the Voluntary Guidelines was based on a uniquely inclusive process of consultations that occurred during 2009-2010.** Regional consultations were held in Brazil, Burkina Faso, Ethiopia, Jordan, Namibia, Panama, Romania, the Russian Federation, Samoa and Vietnam. These consultations brought together nearly 700 people, from 133 countries, representing the public and private sectors, civil society and academia. In particular, four consultations were held for the civil society in Africa, Asia, Europe and Latin America in addition to a private sector consultation.¹⁶

14. See <http://www.fao.org/news/story/en/item/142587/icode/>

15. Declaration of the International Conference on Agrarian Reform and Rural Development: <http://www.icarrd.org/sito.html>

16. See "Preface" of the Consolidated Changes to the First Draft of the Guidelines: http://www.fao.org/fileadmin/user_upload/nr/land_tenure/pdf/First_Draft_VG_with_changes_October_2011_English.pdf

The real political push for the need to finalise the Voluntary Guidelines arrived through the reformed Committee on World Food Security (CFS).¹⁷ The CFS underwent a comprehensive reform of its structure with the aim to become the central United Nations political platform dealing with food security and nutrition. Following the reform, the CFS at its first session in October 2010 called for establishing an Open Ended Working Group to review and adopt the Draft of the Voluntary Guidelines. It is important to note that the **reform of the CFS has assured a uniquely participatory process in both elaboration, consultation and during all the rounds of intense negotiations on the final text of the Voluntary Guidelines.** Civil society, including representatives of farmer and indigenous peoples' organisations as well as NGOs, has played a key role alongside governments in the final formulation of the Guidelines through the creation of an officially recognised **Civil Society Mechanism to the Committee on World Food Security.**¹⁸ The CFS process has also assured participation of other main stakeholders such as the private sector, the United Nations Agencies and the World Bank.

After three weeks of intense intergovernmental negotiations in July and October 2011 and in March 2012, the Voluntary Guidelines were adopted on 11 May 2012 at the Special 38th Session of the CFS.

This consultative process in developing the content of the Guidelines has been key to ensuring a sense of ownership and the backing of international consensus. In fact, **consultation and participation are among the key principles of implementation of the Guidelines** themselves. The participatory process of negotiations has reinforced the connection between the **human rights based approach to development and management of natural resources** in the final text of the Guidelines.

PRINCIPLES OF IMPLEMENTATION OF “VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY”

HUMAN DIGNITY
NON DISCRIMINATION
EQUITY AND JUSTICE
GENDER EQUALITY
HOLISTIC AND SUSTAINABLE APPROACH
CONSULTATION AND PARTICIPATION
RULE OF LAW
TRANSPARENCY
ACCOUNTABILITY
CONTINUOUS IMPROVEMENT

17. See: Committee on World Food Security: The Guide for Civil Society: <http://ifsn.info/index.php/publications/recent-publications/file/163-cfs-booklet-english>

18. The Civil Society Mechanism to the Committee on World Food Security: <http://cso4cfs.org/csm-working-groups-2/>



Photo: Hillol Sobhan/IFSN

The Voluntary Guidelines and Land Rights Protection

"We have a meaningful series of principles and practices that everybody — countries, the private sector, farmers, civil society — can stand behind and support, and that will work out in the real world."

Yaya Olaniran
Chair - the Committee on World Food Security ¹⁹

Developing countries are currently experiencing unprecedented pressures on their agricultural lands. This is happening due to a wide range of reasons including growing demand for food, animal feed, timber and biofuels combined with climate change and population growth leading to increased investment and speculation in agricultural lands. In recent years "large scale land transactions" or "land grabs" have been on the rise and many organisations have tried to map such growth trends and their frequent impact on local livelihoods and food security.²⁰ While all data points to at least 83 millions of hectares (or more)²¹ of land being leased or sold to foreign investors in developing countries, the precise data is scarce due to an egregious lack of transparency involved in such transactions.²² The outcries against land grabs often come from the communities who - in many cases - use land, not necessarily holding a formal land title that make them vulnerable to dispossession. Civil society has been vocal in its criticism of "large scale land transactions" and issued numerous calls for a moratorium on land grabs and establishing norms and principles as to what constitutes good investment in agricultural lands.

19. See <http://www.fao.org/news/story/en/item/142587/icode/>

20. See <http://www.commercialpressuresonland.org/>

21. Latest data from "Transnational Land Deals for Agriculture in the Global South. Analytical Report based on Land-Matrix Database." April 2012. <http://landportal.info/landmatrix/media/img/analytical-report.pdf>

22. See <http://www.commercialpressuresonland.org/research-papers/dealing-disclosure-improved-transparency-decision-making-over-large-scale-land>

The proper implementation of the Voluntary Guidelines at national or local level would strengthen protection and land rights of communities with customary usage rights, especially of women and indigenous populations. The Guidelines recognise that securing land rights is a precondition for sustainable development and food security. They also recognise that investment in smallholder farmers and by smallholder farmers is preferable to large scale land acquisitions.²³ Unfortunately, the **Voluntary Guidelines do not call for moratorium on large scale land transactions** nor do they explicitly challenge the idea that large investments in industrial agriculture are essential for development. Nonetheless, the Guidelines do list a number of provisions that recommend **that safeguards be put in place to protect tenure rights of local people from large-scale land transactions, and also to protect human rights, livelihoods, food security and the environment.**

The Voluntary Guidelines stipulate that states define what constitutes a large scale land transaction²⁴ and should promote investment models that do not result in the large-scale transfer of tenure rights to investors; rather support those particularly focused on smallholder farmers. **The state is responsible to provide safeguards and protections against negative impacts of large scale land transactions.** Such safeguards can include introduction of ceilings or limits on permissible land transactions and regulation as to how large transfers of land above a certain scale must be approved. The state can regulate transactions of tenure rights above certain scale by assuring prior independent assessment or the need for parliamentary approval.²⁵

The Guidelines also demand **increased transparency of transactions** and request that states and civil society monitor impacts of all types of large scale land transactions. They also demand that proper impact assessment and consultations should take place before any type of large scale land transaction is finalised.²⁶ Such assessments should be impartial and based on consultations with all the potentially affected by such investments. **The Guidelines assert that states and companies do have a responsibility to respect human rights and that governments have a responsibility to protect the right to food of their populations.**

23. The Voluntary Guidelines Paragraph 12.2

24. Ibid., Paragraph 12.5

25. Ibid., Paragraph 12.6 and 12.10

26. Ibid., Paragraph 12.7 and 12.10



Photo: Hillol Sobhan/IFSN

Towards implementing the Voluntary Guidelines

“The FAO stands ready to assist countries in areas such as institutional capacity development, advocacy, technical support and legal advice. The FAO will use the guidelines as the baseline for our partnerships, and we call on all our current and potential partners to endorse them.”

José Graziano da Silva
Director General of the UN's Food and Agriculture Organization²⁷

The Voluntary Guidelines are not legally binding in the sense that they are not replacing any existing international laws or treaties and governments are not obliged to act on or implement any of the guidelines in the national legal systems and national institutions. Nevertheless, the Guidelines can **carry a normative legal force by providing a template and normative framework or benchmark**. They form what is part of “soft international law” and they must be read in accordance with the existing obligations and responsibilities of states or businesses under international law. In fact, **it can be said that the Guidelines re-emphasise existing international obligations of States, particularly in relation to human rights, as they apply to safeguarding the rights of people to access land, fisheries and forests.**

27. <http://www.guardian.co.uk/global-development/poverty-matters/2012/may/11/global-land-deal-guidelines-hunger>

Governments have endorsed the Voluntary Guidelines at the CFS and now national level implementation must begin. The inclusive and participatory character of the negotiation process must be extended to the phase of implementation and monitoring.

At the national level, the Guidelines advise countries to set up multi-stakeholder platforms with representatives of civil society and other interested parties so as to increase collaboration and effectiveness of implementation.²⁸ The first action at national level should be to review and analyse the policy, legal and institutional setting of tenure of land, forests and fisheries with the aim to propose improvements, where necessary, according to the provisions of the Guidelines.

At the regional level, the Voluntary Guidelines should be put on the agenda of regional organisation that should be required to support implementation in the member countries. In the case of Africa, the implementation of both Voluntary Guidelines and African Union Guidelines on Land should be done in a coordinated and coherent way with the support of regional and sub-regional bodies such as African Union or the regional economic communities e.g. Southern African Development Community (SADC).

At the international level, the CFS has been recognised as the global forum to assess the progress toward the implementation of the Guidelines and to assess their relevance, effectiveness and impact.²⁹ Donor countries should be held responsible for assuring that all their aid for any programmes of international organisations or countries linked to governance of management of natural resources meets the standards set by the Voluntary Guidelines. Cooperation among developing countries, also known as South-South cooperation, is also encouraged in implementing the Guidelines. **The Voluntary Guidelines have to become the reference point for all United Nations Organisations and Development Banks in their policy and technical assistance programmes.**



Photo: Guilio Napolitano/FAO

28. The Voluntary Guideliens, Paragraph 26.2

29. Ibid., Paragraph 26.4

Civil society including farmers' organisations and the media need to play a fundamental role in dissemination of information about the Voluntary Guidelines and monitoring their implementation. Civil society and the media can also highlight areas where improvement in governance of tenure of land is most needed. ActionAid and IFSN partners should support the following actions:

- **DISSEMINATE** widely information about the Voluntary Guidelines among local communities, civil society, the media, development institutions, local and national government representatives and civil servants.
- **ENGAGE** in dialogue with governments on how to set up national platforms for collaborative implementation of the Voluntary Guidelines at the national level.
- **ENGAGE** in dialogue with all local stakeholders trying to set up similar platforms at the local level.
- **ENCOURAGE** capacity building on the Voluntary Guidelines among local community people, civil society organisations, national food security networks and government administrators. Food and Agriculture Organization of the United Nations nationally should be contacted for more information on capacity building tools.
- **MONITOR** existing legal and administrative land tenure policies so as to compare them against the standards set by the Voluntary Guidelines.



Photo: Hillol Sobhan/IFSN

For more information on the Voluntary Guidelines and the key actors and institutions in land tenure:

1. **Final Text of the Voluntary Guidelines as adopted by the Committee on World Food Security on 11th May 2012**
<http://www.fao.org/nr/tenure/voluntary-guidelines/en/>
2. **Committee on World Food Security (CFS)**
<http://www.fao.org/cfs/en/>
3. **Committee on World Food Security: The Guide for Civil Society**
<http://ifsn.info/index.php/publications/recent-publications/file/163-cfs-booklet-english>
4. **The Civil Society Mechanism to the Committee on World Food Security**
<http://cso4cfs.org/csm-working-groups-2/>
5. **The Civil Society Mechanism Working Group on the Voluntary Guidelines**
<http://cso4cfs.org/csm-working-groups-2/voluntary-guidelines/>
6. **The Land Portal Website**
www.landportal.info
7. **African Union's Framework and Guidelines on Land Policy**
<http://au.int/en/dp/rea/content/framework-and-guidelines-land-policy-africa>
8. **The USAid Land Tenure and Property Rights Portal**
<http://usaidlandtenure.net/>
9. **The European Union Working Group on Land Issues**
<http://capacity4dev.ec.europa.eu/eu-working-group-land-issues/info/eu-working-group-land-issues>
10. **Private Sector Guide to Food Security Initiative**
<http://www.farmingfirst.org/foodsecurity/>