

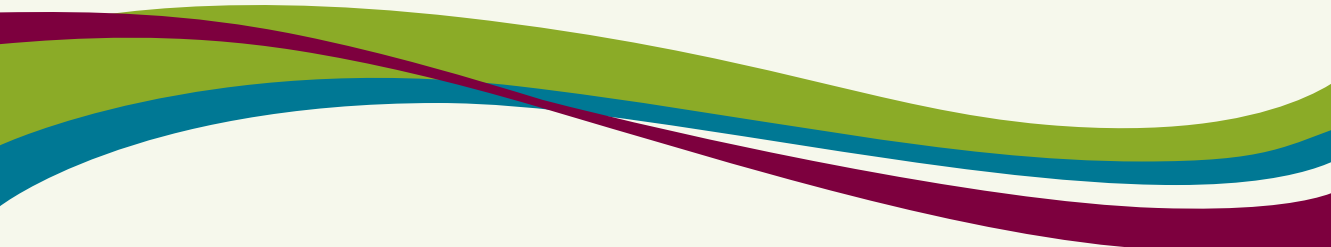
THE RIGHT TO FOOD AND THE RESPONSIBLE GOVERNANCE OF TENURE

A dialogue
towards implementation



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**A dialogue
towards implementation**



Food and Agriculture
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INTRODUCTION

On 11 May 2012, the Committee on World Food Security (CFS) officially endorsed the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT). This major achievement is the result of a three-year inclusive process that “built on and supports the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* [Right to Food Guidelines], which were adopted by the FAO Council in November 2004, and the 2006 *International Conference on Agrarian Reform and Rural Development* (ICARRD)”.¹

The purpose of the VGGT is “to serve as a reference and to provide guidance to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food.”² Stemming from the need to contribute to the eradication of hunger and poverty, the implementation of these guidelines represents an urgent matter, especially considering the present context of increased pressure on natural resources.

This study aims to show how the right to food³ can help guide the implementation of the VGGT, which in turn can help in the realization of the right to food. First, the study presents the global context within which the VGGT were developed. Then, it describes how the right to food framework can be used to guide the implementation of the VGGT. Part three underlines provisions in the VGGT whose implementation will reinforce and advance the right to food. Finally, the study stresses the relevance of this dialogue towards implementation for future debates and draws some conclusions.

1 FAO. 2012. *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Endorsed by the CFS in its Thirty-eighth (Special) Session on 11 May 2012, Rome, p.v.

2 *Ibidem*, p.iv

3 This Study uses the shortened form “right to food” to mean the human right to adequate food as enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (OHCHR, 1966) and elaborated in General Comment No. 12 of the Committee on Economic, Social and Cultural Rights (CESCR, 1999). FAO’s Right to Food Glossary is available at www.fao.org/righttofood/kc/glossary_en.htm

1 THE CONTEXT

Today, estimates indicate that 842 million people – 12 percent of the global population – suffer from chronic hunger, not having enough food for an active and healthy life with the vast majority of hungry people – 827 million of them – living in developing regions.⁴ Lack of access to and control over land, water, fisheries and forests are important causes of their economic poverty, political and social exclusion and cultural marginalization.⁵ Consequently, this seriously threatens the ability to achieve internationally agreed goals on hunger reduction such as the first Millennium Development Goal (MDG) and the 1996 World Food Summit goals.

Tenure problems faced by marginalized groups, such as land tenure conflicts and related violations of human rights, result from a vast range of structural and contextual factors often related to the unequal balance of power. Legal frameworks are sometimes detrimental to the rights of the rural poor, undermining customary rights and practices over natural resources by prioritizing individual private property. Over the past 30 years, a combination of agricultural policies, which have been particularly detrimental to small-scale farmers, have contributed to undermining the agricultural sector in a number of developing countries.⁶ These trends have partially been exacerbated in recent years by policies that have further increased the pressure on farmland, such as those promoting export-oriented agricultural production, which have often led to the development of large-scale plantations producing single crops for profits, energy or food.

⁴ FAO, IFAD and WFP. 2013. *The State of Food Insecurity in the World 2013. The multiple dimensions of food security*. Rome, FAO, p.8.

⁵ Borras Saturnino, M. 2006. *Land, empowerment and the poor: challenges to civil society and development agencies*. IFAD, Rome.

⁶ UN Human Rights Council. 2008. *Report of the Special Rapporteur on the right to food*, Building resilience: a human rights framework for world food and nutrition security, 8 September 2008, A/HRC/9/23, p.7, Annex 1.



In general, the media, NGOs, academics and international organizations, such as FAO and the World Bank, have increasingly reported on the global phenomenon of large-scale land acquisitions, often referred to as 'land-grabbing', in low and middle income countries, mainly in Africa, but also in Asia and Latin America. It is a complex trend that involves governments, multinational companies and other private investors, such as pension funds, real estate groups and finance capital, seeking scarce resources for different purposes, including food production, agrofuels, forestry products and minerals.⁷ Growing investments in land stems from a combination of drivers, amongst which: policies requiring mandatory blending of biofuels in the transport sector; the search for raw materials; governments seeking to ensure their national food security in the face of volatile prices; environmental policies requiring the appropriation of vast areas; and private sector interest in generating a commercial return from commodity production.⁸ As a result, the High Level Panel of Experts (HLPE) of the CFS reported that an estimated 50 to 80 million hectares of land in middle and low income countries have been subject to negotiation by international investors,⁹ while other sources double or triple these figures.¹⁰

'Water grabbing', though less visible at first sight, is another component of the rush for natural resources. Recent study shows that in Africa, many governments are transferring water rights to large investors for extensive periods, without thoroughly considering the impact on the millions of other users — from fishermen to pastoralists — whose livelihoods depend on customary access to water.¹¹

In addition, pressure on natural resources also comes from several other sources, such as the use of land and water for urbanization, infrastructure, mining and development projects, or can result from such measures and programmes as the ones prioritizing market-based mechanisms to address the impact of climate change by planting forests to reduce greenhouse gas emissions in exchange of emission credits.¹² Implementation of environmental projects can sometimes lead to the eviction of people who depend on forests for their livelihoods, but whose customary rights are not well recognized, while similar consequences can derive from the implementation of conservation measures that do not prioritize their right to food.¹³ Moreover, access insecurity is a problem notably for fisherfolks who need to have access to fishing grounds and may be severely affected by the fencing-off of land that provides access to the sea or to rivers.¹⁴

7 HLPE. 2011. *Land tenure and international investments in agriculture*. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, Rome, 2011, p.16.

8 *Ibidem*, p.19.

9 *Ibidem*, p.8

10 Oxfam. 2011. *Land and Power: The growing scandal surrounding the new wave of investments in land* [available at www.oxfam.org/en/grow/policy/land-and-power].

11 Skinner and Cotula. 2011. *Are land deals driving 'water grabs'?* IIED.

12 UN General Assembly. 2010. *Report of the Special Rapporteur on the right to food*, The right to food, 11 August 2010, A/65/281, p.6.

13 *Ibidem*.

14 *Ibidem*, p.13.

In sum, increased competition for natural resources, which characterizes current times, can exacerbate structural trends and tends to have negative impacts such as dispossession and violations of the tenure and human rights of the most vulnerable. Consequently, it can aggravate the global hunger situation, where today almost one billion people suffer from hunger and malnutrition, most of them living in rural areas and depending on those resources for their daily subsistence. Also, it might threaten their right to food by contributing to the increase of food prices, since agricultural products used to produce agrofuels, for instance, are also part of daily diets (maize, sugar cane, soy, cassava, palm oil and sorghum). Because of the unequal power relations, this competition can reinforce the concentration of land and the development of large-scale agricultural exploitations. In this context, the protection and empowerment of the rural poor becomes a priority.¹⁵

¹⁵ See note 6, p.25.

2 RIGHT TO FOOD FRAMEWORK

The VGGT “seek to improve governance of tenure of land, fisheries and forests [...] for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication [and] sustainable livelihoods”.¹⁶ In particular, the right to food can be used to empower the poor and the vulnerable as well as to help protect them from the negative impacts of the increased competition for natural resources. A focus on the obligations of States under the right to food can thus strengthen the implementation of the VGGT. Under international law, States have three obligations when it comes to economic, social and cultural rights: to respect, to protect and to fulfill such human rights. Thus, States are often described as duty bearers while individuals as right holders.

2.1 OBLIGATIONS AND RESPONSIBILITIES

Access to natural resources is closely related to the right to food, whose realization requires that “every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement”¹⁷. The Right to Food Guidelines call upon States to respect and to protect the rights of people, without discrimination, with regards to land, water, forests, fisheries and livestock.¹⁸

¹⁶ See note 1, Paragraph 1.1.

¹⁷ CESCR. 1999. *General Comment No. 12: The right to adequate food*. Committee on Economic, Social and Cultural Rights (CESCR) Twentieth Session Geneva, 26 April–14 May 1999, agenda item 7. E/C.12/1999/5, Paragraph 6.

¹⁸ FAO. 2005. *Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security*. Adopted by the 127th Session of the FAO Council November 2004. Rome, Guideline 8.



Under the right to food, the obligation to *respect* requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves.¹⁹ For instance, it can mean that States must not promote or facilitate land deals intended for export-oriented agricultural production in countries where the population is food insecure.

The obligation to *protect* requires that States protect the access to productive resources from encroachment by third parties,²⁰ which means protecting existing access to land, water, forests, grazing and fishing grounds. Coincidentally, some governments have already taken steps in that direction. As an example, the parliament of Argentina recently passed a rural land law restricting the acquisition of rural land by foreign individuals and companies. The law, in light of the bilateral investment treaties applicable in Argentina, does not consider the acquisition of rural land as an investment, since land is understood as a non-renewable natural resource brought by the host country.²¹

The obligation to *fulfil* implies that States seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security.²² As specified in the Right to Food Guidelines, land reform can be crucial for the realization of the right to food.²³ In the presence of an highly unequal distribution of land, strengthening tenure security may not be sufficient. Therefore, land redistribution may be required for the benefit of smallholders, partly because of the inverse relationship between farm size and productivity and partly since small-scale farming may lead to more responsible use of the soil.²⁴ Equitable land reforms, such as those in Asia following the Second World War, have proved to be significant in reducing poverty, stimulating growth while contributing to social inclusion and economic empowerment of the rural poor.²⁵

Furthermore, the obligations of States to respect, protect and fulfil all human rights to the maximum of available resources²⁶ are not limited to their national boundaries. According to the UN Committee on Economic, Social and Cultural Rights, State parties to the International Covenant on Economic, Social and Cultural Rights should take steps 'to respect the enjoyment of the right to food in other countries, to protect that right,

19 See note 12, p.3.

20 *Ibidem*.

21 The Argentine Land Law was sanctioned on 22 December 2011 and promulgated on 27 December 2011 (available at www.mininterior.gov.ar/fronteras/fronteraArchivos/Ley%2026737%20Tierras.pdf).

22 See note 12, p.3.

23 See note 18.

24 See note 12, p.14.

25 *Ibidem*, p.15.

26 See Article 2.1 of the International Covenant on Economic, Social and Cultural Rights: '*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*'

to facilitate access to food and to provide the necessary aid when required'.²⁷ In the current context of accelerated competition for scarce resources, it means that the obligation to *respect* requires States to ensure that their policies and practices do not lead to violations of the right to food for people living in other countries. The obligation to *protect* requires States to ensure that third parties subject to their jurisdiction, such as their own citizens or transnational corporations, do not violate the right to food of people living in other countries. Governments also have a duty to support the *fulfilment* of the right to food abroad, which requires States, depending on the availability of their resources, to cooperate with other countries to support their fulfilment of the right to food.²⁸

Besides States, private investors and business enterprises also have a responsibility to respect human rights and act with due diligence to avoid infringing upon human rights within their sphere of influence.²⁹ Moreover, private entities have the responsibility to provide adequate non-judicial access to remedy, including effective grievance mechanisms for victims of human rights abuses.³⁰ Given the likely increase in pressure on land from international as well as domestic investments, it is vital to hold investors accountable to their responsibilities towards human rights.³¹ An example of the use of a mechanism for accountability is the complaint filed with the International Finance Corporation's Compliance Advisory Ombudsman, on the Wilmar Group operations in Indonesia, leading to the suspension of all World Bank funding to the palm oil sector worldwide.³² The negotiation ended with a mutual agreement, including the recognition of the right to free, prior and informed consent (FPIC); compensation for loss of livelihoods; and rehabilitation of cleared land and forests with rubber and productive plants.³³

2.2 HUMAN RIGHTS PRINCIPLES (PANTHER)

The "PANTHER" principles, which are human rights principles, are captured by the principles of the VGGT and are thus fundamental for their implementation. "PANTHER" refers to Participation, Accountability, Non-discrimination, Transparency, Human Dignity, Empowerment and Rule of law. The lessons learned on these principles through the implementation of the Right to Food Guidelines could provide a great guidance for the implementation of several VGGT paragraphs listed below.

²⁷ See note 17, paragraph 36.

²⁸ Economic and Social Council. 2005. Report of the Special Rapporteur on the right to food, The right to food, 24 January 2005, E/CN.4/2005/47.

²⁹ See note 7, p.43.

³⁰ *Ibidem*.

³¹ *Ibidem*.

³² Forest Peoples Programme (available at www.forestpeoples.org/tags/cao-story-contesting-procedural-irregularities-and-standards-violations-wilmar-and-ifc-through-).

³³ *Ibidem*.

Participation is the direct control, ownership and management by the people of public decision-making. Participation is inclusive; it actively encourages people to organize themselves and to genuinely, freely, actively participate in decision-making. Participation requires efforts to reach out to those most affected by public decisions and the inclusion of the less privileged, vulnerable and affected population in decision-making. It mandates the incorporation of people's views in all public decisions and actions and it must be voluntary, recognized by law, free or not subject to sanction or threat, and active.³⁴

In relation to tenure rights, it implies the inclusion in all phases of those potentially most affected by policy decisions on natural resources. Tanzania provides an example with two programmes relevant to the involvement of communities in participatory forest management: the joint forest management on national forest reserves, and the community-based forest management of village land.³⁵ In the Shinyanga region, a soil conservation programme re-established the customary practice of setting aside areas as forest reserves, while recognizing the rights of people to the products of these reserves.³⁶

- ◆ States should welcome and facilitate the participation of users of land, fisheries and forests to be fully involved in a participatory process of tenure governance, inter alia, formulation and implementation of policy and law and decisions on territorial development. (4.10)
- ◆ States should develop relevant policies, laws and procedures through participatory processes involving all affected parties. (5.5)
- ◆ Effective participation of all members, men, women and youth in decisions regarding their tenure systems should be promoted through their local or traditional institutions, including in the case of collective tenure systems. (9.2)
- ◆ There should be full and effective participation of all members or representatives of affected communities, including vulnerable and marginalized members, when developing policies and laws related to tenure systems of indigenous peoples and other communities with customary tenure systems. (9.7)

Accountability is a key feature of democracy directly related to human rights obligations of conduct and of result. The human rights principle of accountability means that duty bearers are responsible towards those most affected by public decisions, actions and performance, especially those most vulnerable or most at risk of exclusion and discrimination. It is fairness in conduct, treatment and actions. It is the achievement of human rights objectives and outcomes. It is responsibility not only for policies, decisions, actions, services, goods and associated performance but also for their consequences.³⁷

³⁴ HRBA. *Human rights (PANTHER) principles in development planning*, (available at www.hrbatoolkit.org/?page_id=116).

³⁵ FAO. 2011. *Reforming forest tenure. Issues, principles and processes*. FAO Forestry Paper 165, p. 39.

³⁶ *Ibidem*.

³⁷ See note 34.

In practical terms, this implies that decision-makers and implementing agencies act responsibly at all times, knowing the boundaries imposed by human rights on their actions. For instance, not engaging or supporting corruption and abusive practices that could harm others; periodically disclosing relevant political and financial information to all; and including formal mechanisms to hold public officers and implementing agencies accountable.³⁸

- ◆ States should adopt and enforce anticorruption measures including applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations. [...] Staff working on the administration of tenure should be held accountable for their actions. (6.9)
- ◆ States should strive to establish up-to date tenure information on land, fisheries and forests that they own or control by creating and maintaining accessible inventories. (8.4)
- ◆ States should establish appropriate and reliable recording systems, such as land registries, that provide accessible information on tenure rights and duties in order to increase tenure security and to reduce the costs and risks of transactions. (11.5)
- ◆ States should provide systems (such as registration, cadastre and licensing systems) to record individual and collective tenure rights in order to improve security of tenure rights, including those held by the State and public sector, private sector and indigenous peoples and other communities with customary tenure systems; and for the functioning of local societies and of markets. (17.1)

Non-discrimination is the entitlement to all human rights without distinction of any kind, exclusion, restriction or preference based on race, color, ethnic origin, sex, gender stereotypes, prejudices and expected roles, language, religion, political or other opinion, national or social origin, descent, inherited social status, property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residency, economic and social situation and membership in group. Moreover, it recognizes that certain conditions in society sometimes result in—or maintain—inequality; hence, governments must take temporary special measures to remove those conditions that cause or perpetuate inequality.³⁹

Examples of non-discriminatory measures can be found in legal reforms introduced by several countries in order to promote equal land rights for women and men, such as the Family Law in Mozambique, which enables women to inherit property and recognizes traditional marriages. Legislation has also been amended in countries such as Bolivia, Peru, Honduras and Venezuela to recognize women as 'heads of household'.⁴⁰

³⁸ *Ibidem*.

³⁹ *Ibidem*.

⁴⁰ FAO. 2009. *Towards improved land governance*, Rome, p.38.

- ◆ States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. In particular, States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights. (4.6)
- ◆ States should provide frameworks that are non-discriminatory and promote social equity and gender equality. (5.3)
- ◆ Dispute resolution services should be accessible to all, women and men, in terms of location, language and procedures. (21.1)

Transparency means that all public actions and decisions are visible, free from obscurity, unhidden, clear and distinct. Transparency requires that public documents, decisions, rules, regulations and processes are readily and freely accessible, contain complete information, are released on a timely basis, are written in easily understandable language and presented in people friendly forms and media. Transparency allows right holders and other actors to see openly into all activities of duty bearers.⁴¹

For instance, it is important to disseminate information through the most commonly used channels by people and communities, especially those hard to reach. For example, in the Philippines, studies have shown that most people have access to information through radio or television – not from newspapers. Transparency in the Philippines would therefore be enhanced if broadcast media, such as radio and television, were the prime means of communication used by duty bearers to communicate with – and provide information to – right holders.⁴² Similarly, in many African countries, pastoralists have access to local information mainly through portable radios.

- ◆ Policies, laws and procedures should [...] be clearly expressed in applicable languages, and widely publicized. (5.5)
- ◆ Implementing agencies and judicial authorities should [...] endeavour to prevent corruption through transparent processes and decision-making. Information about changes and their anticipated impacts should be clearly stated and widely publicized in applicable languages. (5.8)
- ◆ States and other parties should ensure that information on market transactions and information on market values are transparent and widely publicize. (11.4)
- ◆ State and non-state actors should adhere to applicable ethical standards. They should publicize and monitor the implementation of these standards in the operation of markets in order to prevent corruption, particularly through public disclosure. (11.7)

⁴¹ See note 34.

⁴² *Ibidem*.

- ◆ Implementing agencies should make their valuation information and analyses available to the public in accordance with national standards. States should endeavour to prevent corruption in valuation through transparency of information and methodologies, in public resource administration and compensation, and in company accounts and lending. (18.5)
- ◆ Assessments of valuations and taxable amounts should be made public. States should provide taxpayers with a right to appeal against valuations. States should endeavor to prevent corruption in taxation administration, through increased transparency in the use of objectively assessed values. (19.3)

Human dignity is the basis of all human rights and rests on the intrinsic value or worth of the human person. Human dignity is immutable: it is the same at all places and at all times. Human dignity is non-negotiable and irreversible.⁴³

For instance, policies and programmes for the implementation of the VGGT require complementary and integrated strategies to address the multifaceted and multidimensional aspects of human life with dignity.⁴⁴

- ◆ Human dignity: recognizing the inherent dignity and the equal and inalienable human rights of all individuals. (3B.1)

Empowerment acknowledges and respects the people's capacity to think and act freely for and on their behalf, to create solutions to address their problems, to control their own destinies and fulfil their potential. It emphasizes people's efforts to realize their human rights and bring about the necessary changes to address their situation. It encourages people to exercise choice in the face of power relations and structures in society. Empowerment builds the capacity of people to engage in the decision-making process.⁴⁵

- ◆ 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. (3B.3)
- ◆ States and non-state actors should endeavour to prevent corruption in relation to tenure systems of indigenous peoples and other communities with customary tenure systems, by consultation and participation, and by empowering communities. (9.12)

⁴³ *Ibidem.*

⁴⁴ *Ibidem.*

⁴⁵ *Ibidem.*

Rule of law is the application of laws and rules with equity, fairness, justice and impartiality in determining conflicting claims. It is a fair and just legal framework coupled with impartial and effective implementation. The principle of the rule of law requires: (a) that conflicts be resolved impartially, on the basis of fact, in accordance with law, and without improper influence or pressure; (b) availability and accessibility of independent and impartial judicial or administrative forums to act on conflicts; (c) provision of appropriate remedies and effective redress mechanisms, including appeals mechanisms; and (d) inclusion of efficient monitoring mechanisms to ensure impartial and just implementation of laws, rules and regulations.⁴⁶

Examples of this principle would include the incorporation of recourse mechanisms in order to allow right holders to question policy decisions, strategies, programs and projects; to bring complaints in the event that these resulted in harm or damages; and to assist right holders in seeking reparation through their right to remedy.⁴⁷

- ◆ Rule of law: adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. (3B.7)

Finally, a strategy for implementation that is guided by human rights principles would benefit from experiences of implementing the Right to Food Guidelines. Several elements that could be beneficial include: the dissemination of the VGGT in national and local languages; the training of administrative bodies and legislators to ensure that international standards are incorporated in domestic law and national constitutions; the promotion of justiciability and enforceability of human rights at national level, ensuring the possibility of complaining against a violation of rights through administrative, quasi-judicial and/or judicial means; and promoting the coordination of national Rapporteurs on tenure rights with current national Rapporteurs for the right to food.⁴⁸ Moreover, the seven-step process, as formulated by FAO, for the implementation and the promotion of the right to food at country level, could provide guidance to 1) identify the hungry and the poor; 2) conduct a thorough assessment; 3) elaborate a human rights based strategy; 4) allocate obligations and responsibilities; 5) create a legal framework; 6) monitor progress and; 7) ensure recourse mechanisms.⁴⁹

⁴⁶ *Ibidem.*

⁴⁷ *Ibidem.*

⁴⁸ ACTUAR. 2012. *Interconnections and reciprocity between the right to food and land tenure rights.* p.12-13.

⁴⁹ FAO. 2011. *Right to Food. Making it Happen. Progress and lessons learned through implementation.* Rome, p.13.

Chapter 2 – Right to food framework

In sum, Paragraph 1.1 of the VGGT implies that implementation should be consistent with the obligations of States under the right to food. Consequently, the right to food is not only an objective, but also a framework for programmes and policies related to access to and tenure of natural resources, which serve the common purpose of primarily seeking to benefit the most vulnerable.

3

THE VGGT AND THE RIGHT TO FOOD

The VGGT deal with a broad range of themes related to responsible tenure governance including: rights and responsibilities; policy, legal and organizational frameworks; legal recognition and allocation of tenure rights; modes of transfers of tenure rights; administration of tenure; responses to climate change and emergencies; and promotion, implementation, monitoring and evaluation. In this section, some of these provisions will be analyzed as they concretely relate to the advancement of the right to food.

3.1 STATES AS DUTY BEARERS

The VGGT, through the general principles of responsible tenure governance (Paragraph 3.1), considers the obligations of States related to tenure right as follows:

Respect

- ◆ Recognize and respect all legitimate tenure right holders and their rights.
- ◆ Refrain from infringement of tenure rights of others.
- ◆ Meet the duties associated with tenure rights.

Protect

- ◆ 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.
- ◆ Prevent tenure disputes and violent conflicts.
- ◆ Prevent corruption in all forms, at all levels, and in all settings.



Fulfil

- ◆ Take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not.
- ◆ Promote and facilitate the enjoyment of legitimate tenure rights.
- ◆ Provide access to justice to deal with infringements of legitimate tenure rights.
- ◆ Provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights.
- ◆ Provide prompt, just compensation where tenure rights are taken for public purposes.

3.2 HUMAN RIGHTS PRINCIPLES

The VGGT reaffirm the PANTHER principles by placing them in an operational context as part of the principles of implementation (Section 3B):

PANTHER	Principles of Implementation (VGGT)
P articipation	1. Human dignity
A ccountability	2. Non-discrimination
N on-discrimination	3. Equity and justice (which includes empowerment)
T ransparency	4. Gender equality
H uman dignity	5. Holistic and sustainable approach
E mpowerment	6. Consultation and participation
R ule of law	7. Rule of law
	8. Transparency
	9. Accountability
	10. Continuous improvement

Among the ten principles of implementation, gender equality as well as consultation and participation offer interesting elements. As for the former, the VGGT tackle a critical issue, that has often been overlooked, by mainstreaming gender considerations throughout the document: equality among women and men is addressed as a principle and also through detailed provisions for implementation.⁵⁰

⁵⁰ See also VGGT, Paragraphs 4.6, 5.3, 5.4, 5.5, 21.1, 25.4 and 25.5.

- ◆ 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. (3B.4)

As for consultation and participation, the VGGT introduces a standard for addressing the need to involve all individuals and communities in decision-making processes that could affect them.

- ◆ 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. (3B.6)

In addition, the VGGT provide guidance for consultations with indigenous peoples in paragraph 9.9 (see below).

3.3 INDIGENOUS PEOPLES AND OTHER COMMUNITIES WITH CUSTOMARY TENURE SYSTEMS

In relation to the food security and the right to food of indigenous peoples and other communities with customary tenure systems, the VGGT contain important paragraphs that recognize the comprehensive relationship with nature of these communities. Indeed, the acknowledgement that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems, has implications for respecting, protecting and fulfilling their human rights. More specifically, Section 9 expands on the obligations of States to protect the tenure rights of indigenous peoples and other communities with customary tenure rights, recognizing their own systems, institutions and ancestral lands. In the current context, where, for instance, fisherfolks have been denied access to fishing grounds on the basis of allocation of coastal lands for tourism purposes, Paragraph 9.9 becomes particularly relevant, as States should meet the requirement to involve indigenous peoples and communities with customary tenure systems prior to initiating actions that could affect their resources.

- ◆ States and other parties should hold good faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order to obtain their free, prior and informed consent under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understandings of individual States. Consultation and decision-making processes should be organized without intimidation and be conducted in a climate of trust. The principles of consultation and participation, as set out in Paragraph 3B.6, should be applied in the case of other communities described in this Section. (9.9)

3.4 CUSTOMARY RIGHTS IN PUBLIC LAND AND THE COMMONS

In various regions of the world, land, fisheries and forests are owned by or under the control of the State. However, the VGGT make it clear that recognizing, respecting and protecting customary tenure rights and systems does also apply to public land, fisheries and forests (Paragraph 8.2). The importance of this is exemplified by a case such as the Masai herdsmen in Kenya, who have been dispossessed of much of their vast nomadic and semi nomadic grazing areas in favour of agrofuels production, as reported by the UN Special Rapporteur on the rights of indigenous peoples.⁵¹

Similarly, States are called upon to recognize and to protect the natural resources referred to as commons, which are fundamental for peoples with customary systems such as fisherfolks, who share collective rights, access and use of fishing grounds and maritime resources (Paragraph 8.3).

3.5 INFORMAL TENURE

The inclusion of Section 10 on informal tenure is significant, underlying the commitment to securing tenure of resources for 'women, the poor and disadvantaged of society', as stated in the Right to Food Guidelines.⁵² The VGGT call for the recognition of informal tenure through policies and laws elaborated in participatory and gender-sensitive processes. These provisions are extremely important to integrate marginalized people settled in rural as well as in urban and peri-urban areas, living in uncertainty and fear of being evicted and excluded from basic services, such as drinking water.

3.6 REDISTRIBUTION OF RESOURCES

The VGGT are, as stated by the Special Rapporteur on the Right to Food, the most important attempt to follow up on the commitments made at ICARRD to ensure significant progress on agrarian reform and rural development.⁵³ Agrarian reform is viewed as a fundamental means to progressively realize the right to food, particularly in situations of high level of land concentration and rural poverty.⁵⁴ The VGGT specifically address the issue of redistributive reforms in Section 15 by focusing on targeting, sustainable policy and legislative frameworks, impact assessments, comprehensive support and human rights principles.

51 FIAN. 2010. Land Grab Study, "Advancing African Agriculture" (AAA): *The Impact of Europe's Policies and Practices on African Agriculture and Food Security*, p.69.

52 See note 18.

53 See note 12, paragraph 34.

54 *Ibidem*, paragraph 37.

- ◆ Redistributive reforms may be considered for social, economic and environmental reasons, among others, where a high degree of ownership concentration is combined with a significant level of rural poverty attributable to lack of access to land, fisheries and forests respecting, in line with the provisions of Section 15, the rights of all legitimate tenure holders. Redistributive reforms should guarantee equal access of men and women to land, fisheries and forests. (15.3)
- ◆ The intended beneficiaries, such as families including those seeking homegardens, women, informal settlement residents, pastoralists, historically disadvantaged groups, marginalized groups, youth, indigenous peoples, gatherers and small-scale food producers, should be clearly defined. (15.5)
- ◆ Where States choose to implement redistributive reforms, they should develop policies and laws, through participatory processes, to make them sustainable. States should ensure that policies and laws assist beneficiaries, whether communities, families or individuals, to earn an adequate standard of living from the land, fisheries and forests they acquire and ensure equal treatment of men and women in redistributive reforms. (15.6)
- ◆ States may, if so desired, conduct assessments on the potential positive and negative impacts that those reforms could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment. This assessment process should be conducted consistent with the principles of consultation and participation of these Guidelines. (15.7)
- ◆ States should ensure that redistributive land reform programmes provide the full measure of support required by beneficiaries, such as access to credit, crop insurance, inputs, markets, technical assistance in rural extension, farm development and housing. (15.8)
- ◆ States should implement redistributive reforms through transparent, participatory and accountable approaches and procedures. (15.9)

3.7 PROTECTION OF HUMAN RIGHTS DEFENDERS

A serious threat to the right to food is the lack of civil and political freedoms. One of the problems resulting from the current rush for natural resources is the exacerbation of conflicts, often leading to the criminalization of peasants, indigenous people, fishers, pastoralist and community leaders and members of their organizations. There are several instances where rights defenders have been persecuted, put in jail, tortured or even killed with impunity. For example, the UN Special Rapporteur on the situation of human rights defenders, during an official visit to Honduras, addressed the land conflict occurring in the Bajo Aguán region since 2009.⁵⁵

⁵⁵ See Statement of the United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, on the conclusion of her official visit to Honduras, from February 2012, on: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11830&LangID=E

She said: “I am concerned over the levels of violence affecting people who are claiming economic and social rights, including land rights, through peaceful means”. She met with “representatives of organisations who had been threatened as a consequence of their interventions to protect the environment against projects by private companies, in particular relating to dams and mining, where indigenous peoples had not been consulted as required by the International Labour Organization Convention No. 169 and the United Nations Declaration on the Rights of Indigenous People”.⁵⁶

The VGGT specifically refer to the universal, indivisible, interdependent and inter-related nature of human rights and call upon States to respect and to protect the civil and political rights of human rights defenders, including peasants, indigenous peoples, fishers, pastoralists and rural workers (Paragraph 4.8). This standard allows for immediate measures, such as creating national protection programmes for these groups. Additionally, the VGGT emphasize the need to provide adequate access to justice and remedies, such as restitution, indemnity, compensation and reparation, to anyone whose human rights have been violated in the context of tenure (Paragraph 4.9).

3.8 RESPONSIBILITIES OF PRIVATE ACTORS

On the responsibility of business enterprises to respect human rights, the VGGT support the human rights framework and are also quite specific about what business enterprises have to undertake in order not to harm others, notably by implementing preventive measures, such as identifying and assessing actual or potential impacts on human rights and legitimate tenure rights (Paragraph 3.2).

The VGGT reaffirm the UN Guiding Principles on Business and Human Rights - also indicated by High Level Panel of Experts - through the reference to the obligations of home and host States in ensuring that international investors and transnational corporations are not involved in abuses of human rights and legitimate tenure rights. Particular attention needs to be given to investments in areas such as mining, environmental, urbanization and development projects.

3.9 INVESTMENTS

From a human rights perspective, it is worth underlining a number of aspects from the Section on investments,⁵⁷ particularly in relation to the ongoing debate on responsible agricultural investments.

⁵⁶ *Ibidem*.

⁵⁷ See VGGT, Section 12. Investments, particularly Paragraphs 12.2, 12.4, 12.5, 12.6, 12.10 and 12.15.

Policy objectives

Responsible investments should contribute to the policy objectives of poverty eradication, food security, sustainable use of land, fisheries and forests, rural development, promoting and securing local food production systems, creating employment and complying with obligations related to standards of the International Labour Organisation (Paragraph 12.4).

Do no harm

The VGGT state that responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights (Paragraph 12.4). They also call on States to provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from potential negative impacts arising from large-scale transactions (Paragraph 12.6).

Production and investment models

The VGGT recommend the promotion of investment models that do not result in the large-scale transfer of tenure rights to investors (Paragraph 12.6). Also, the VGGT recognize that smallholder producers in developing countries are major investors, while contributing significantly to food security, nutrition, poverty eradication and environmental resilience, and therefore call upon States to support investments by smallholders (Paragraph 12.2).

4

THE VGGT, THE RIGHT TO FOOD AND FURTHER DEBATES

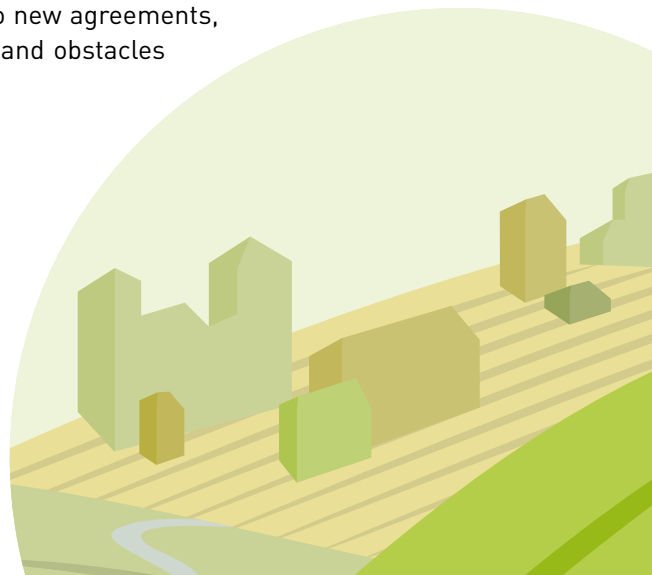
Stemming from longer processes and debates, such as the ones for the Right to Food Guidelines and ICARRD, the VGGT are a result of the willingness to democratize the global governance of food and agriculture. Consequently, they become important for debates within platforms such as that provided by the CFS, for example on responsible agricultural investments.

They are particularly important from the perspective of human rights and the implementation principles, as a “holistic and sustainable approach recogniz[es] that natural resources and their uses are interconnected and adopt[s] an integrated and sustainable approach to their administration” (Paragraph 3B.5). In this regard, the VGGT lead to questions such as what kind of investments and into which modes of production will best support the fulfilment of the fundamental right to be free from hunger and the right to food,⁵⁸ Accordingly, the right to food framework provides a useful human rights methodology of which some elements are listed here:

- ◆ Introducing a *human rights assessment* to international investments and trade agreements, as presented to the Human Rights Council by the Special Rapporteur on the Right to Food. Such a tool has the specific purpose of ensuring that States, when entering into new agreements, will not be facing inconsistent obligations and obstacles to the realization of human rights.⁵⁹

⁵⁸ Künnean, R. 2009. *Foreign investment and the right to food*, in: Murphy and Paasch (eds.). *The Global Food Challenge. Towards a Human Rights Approach to Trade and Investment Policies*.

⁵⁹ Human Rights Council. 2011. *Report of the Special Rapporteur on the right to food*, Guiding principles on human rights impact assessments of trade and investment agreements, 19 December 2011, A/HRC/19/59/Add.5, p.6.



- ◆ *Participatory processes*: as was learned from the preparation and negotiation of the VGGT, it is also extremely important that assessments are guided by the human rights principles of non-discrimination, participation, transparency and accountability. This means assessing whether the *process* of negotiating the trade or investment agreement has affected human rights and if it has been participatory, inclusive and transparent.⁶⁰
- ◆ In regards to agricultural investments, a human rights framework also creates room for assessing if such investments will *contribute to the progressive realization of the right to food* and, if so, how.

⁶⁰ *Ibidem*, p.9.

CONCLUDING REMARKS

In this paper, the relationship between the right to food and the VGGT has been contextualized. Consequently, the VGGT and their subsequent implementation cannot be seen in isolation, but rather as part of a process that has taken a new momentum with the reform of the CFS in 2009, which made it the foremost inclusive international and intergovernmental platform dealing with food security and nutrition.

A key lesson learned from the VGGT process is the centrality of the principle of participation, which marked the negotiation of the Right to Food Guidelines and was further strengthened during this process, thus fostering the way in which the CFS is to work. Participation and inclusiveness were central to the successful negotiation of the VGGT, thus favouring the commitment and ownership of the process by all stakeholders. Therefore, it is highly relevant to:

- ◆ Establish such multi-stakeholder platforms at different levels, national, regional and local, to address issues related to the tenure of land, fisheries and forests.
- ◆ Set participation and inclusiveness as leading human rights principles for implementation strategies of the VGGT at the different levels.
- ◆ Apply these leading principles to related processes, such as those on small-scale fisheries and responsible agricultural investments.
- ◆ Include comprehensive rural development policies and rigorously apply the PANTHER principles to guide redistributive reforms.

The VGGT address the tenure of land, fisheries and forests. However, the preface, which was negotiated with the VGGT, notes that states may wish to take the governance of water and other associated natural resources into account during implementation. The principles and other guidance of the VGGT are thus applicable to water tenure.

The VGGT provide a framework for the monitoring of their implementation through reporting to the CFS on regional experiences, best practices and lessons learned (Paragraph 26.4). While some participants to the negotiations called for a strong mechanism to monitor improvements, the consensus text reflects a recognition of the difficulties that are faced by stakeholders with regard to monitoring. However, the VGGT allows for stakeholders to monitor progress using a human rights approach, for example by assessing whether relevant actors comply with their human rights obligations and follow human rights principles.

The VGGT are a product of negotiations and they represent a global consensus on what constitutes internationally recognized principles and standards for the governance of tenure. However, as negotiated text, the VGGT do not represent the “lowest common denominator”, i.e. text that has been weakened in order to be acceptable to all parties. Instead, government representatives and participants from civil society organizations and the private sector were strongly committed to preparing guidelines that would be effective in improving tenure arrangements. Importantly, the negotiations were conducted in a spirit of respect for one another and with a willingness to understand the views of others. As a result, while the negotiated wording of the VGGT includes text that was initially proposed by civil society participants during the negotiation process, the process in itself provides a basis for future inclusive and participatory collaborations among all stakeholders.

To conclude, a set of priorities are needed when implementing the VGGT, based on the obligations of States to respect, to protect and to fulfil the right to food:

- ◆ Taking advantage of scientific evidence⁶¹ to implement safeguard measures in order to protect the right to food of the most vulnerable as well as their tenure rights.
- ◆ Taking immediate measures to protect the civil and political rights of human rights defenders of peasants, fishers, pastoralists and rural workers. In other words, establishing protection programmes to the extent resources permit where measures are planned and agreed to with the involvement of duty bearers and right holders. Accordingly, authorities must refrain from stigmatizing and criminalizing legitimate social claims and actions.
- ◆ Revising strategies, policies and programmes regarding the tenure of land, fisheries and forests according to human rights principles and the principles of the VGGT.
- ◆ Reviewing legislative frameworks in order to ensure a holistic and sustainable approach to the administration of natural resources, and to recognize the tenure rights of indigenous peoples and other communities with customary tenure systems.
- ◆ Aligning responsible investments with the objectives of the VGGT, as outlined in Paragraph 1.1, while systematically applying the principles of implementation.

A focus on the right to food when implementing the VGGT will help overcome some of the gaps which have been identified in this study and to strengthen the common agenda of both frameworks. Indeed, both the right to food and the VGGT are fundamentally based on giving voice to the marginalized; they address critical governance dimensions in the fight against hunger and establish principles that govern decision-making and implementation processes. They also recognize the need to strengthen public institutions and to integrate a wide array of partners, such as civil society organizations, in decision-making. Most importantly, they help to create and maintain the political will that will be necessary to tackle the structural root causes of hunger in view of achieving the goal of a world free from hunger and malnutrition.

⁶¹ From 6-8 April 2011, the Land Deal Politics Initiative convened the “*International Conference on Global Landgrabbing*” hosted by the Institute of Development Studies at the University of Sussex, UK. More than 100 papers presented evidence from Africa, Asia, Latin America and the former Soviet Union, revealing documentation and impacts of land deals amounting to over 80m hectares (available at www.future-agricultures.org/events/global-land-grabbing).

This study shows the links between two major instruments negotiated and endorsed in the context of the CFS: the Right to Food Guidelines and the Voluntary Guidelines on the Governance of Tenure (VGGT). It discusses how the right to food framework can guide the implementation of the VGGT, and analyses the recommendations in the VGGT that are particularly important for strengthening work on the right to food. This document also stresses the importance of multi-stakeholder platforms, participatory processes, and the application of the PANTHER principles.

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