



ENABLING LEGAL ENVIRONMENT FOR THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTRY

'States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.'

Voluntary Guidelines on the Responsible Governance of Tenure for Land, Fisheries and Forests in the Context of National Food Security, (VGGT) para 4.1.



BACKGROUND

Secure tenure rights are important for subsistence, semi-commercial and commercial food production, and therefore for food availability generally and physical, social and economic accessibility for those involved. Food security implies that people need to be able to access the means of producing or procuring food and that development must be sustainable to guarantee it for all, now and in the future. The responsible governance of tenure is critical for ensuring food and nutrition security, for contributing to more sustainable and equitable livelihoods, social stability, rural development, environmental protection, and for the long-term eradication of hunger and poverty.

What is land tenure?

The rules invented by societies to allocate property rights over land, grant access to the use and control of land, and define the associated responsibilities and restraints.

Natural resource tenure in its simplest definition refers to who holds the rights to use what resource. It is about the relationships between people and natural resources such as land, fisheries and forests. It is complex because these

natural resources are precious, limited and valuable, and the relationships people have with them may be legally defined and formally recognized or customarily defined. They are frequently sources of conflict, dispute or abuse, especially under increasing demands associated with population growth, large-scale investments and climate change. Land tenure may be public, private, communal, indigenous, customary or informal. **Land tenure systems**, which arise from formal written laws or customary arrangements, determine **who can use what resources, for how long, and under what conditions**.

The **responsible governance of tenure**, using human rights principles, makes access to land, fisheries and forests fairer. It protects people from the arbitrary loss of their rights, including through forced evictions. It helps prevent discriminatory practices and leads to transparent and participatory decision making. It guarantees equality before the law and can prevent conflicts by resolving disputes. Ultimately, it promotes food security by securing access to natural resources and protecting the rights of people who depend on them.



THE INTERNATIONAL AND REGIONAL FRAMEWORK

The relationship between access to land, forests and fisheries resources on the one hand, and the enjoyment of human rights such as the right to an adequate standard of living, including to food and water on the other hand, means that the proper governance of these resources impacts positively on the fulfillment of internationally recognized human rights. This is reflected in relevant international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR);¹ the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW);² and the International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples.³

At the global level, States have made strong commitments to make land use more accessible, equitable and sustainable in the interests of ending poverty and eliminating hunger by 2030 with the Sustainable Development Goals (SDG) of 2015.⁴ Standards for the responsible governance of tenure in land and other natural resources to achieve food security and nutrition objectives have been enshrined in internationally accepted instruments such as the 2012 Voluntary Guidelines on the Responsible Governance of Tenure for Land, Fisheries and Forests in the Context of National Food Security (VGGT); the 2004 Voluntary Guidelines on the Progressive Realization of the Right to Food in the Context of Food Security (RtFG); and the 2014 Voluntary Guidelines for Securing Small-Scale Fisheries in the Context of Food Security and Poverty Eradication. These instruments benefit from widely acknowledged legitimacy given the participative and inclusive consultation process that led to their development, including regional multi-stakeholder consultations.

Since its adoption, the VGGT have been used in Latin America and the Caribbean to promote the implementation of the principles enunciated therein, by governments, civil society and institutions involved in land management. At the national level, Guatemala was the first country in the region to apply the VGGT to

¹ All Latin America and Caribbean countries are Parties to the ICESCR, with the exception of Cuba, which signed it on 28 February 2008, but has not ratified it. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en

² All countries in the region are Parties to CEDAW. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

³ The ILO Convention No. 169 has been ratified by 15 countries in the region: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, México, Nicaragua, Paraguay, Peru and Venezuela. https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314

⁴ SDGs 1, 2, 5, 10, 13, 15 specifically refer to land tenure.

reformulate its agrarian policy in a participatory manner. Food and Agriculture Organization of the United Nations (FAO) supported this process, and the dialogue with different sectors considered multiple aspects of the VGGT. To disseminate the guidelines, FAO also trained hundreds of people in the application of the VGGT gender approach. In 2016, FAO and the Secretariat of Agrarian Affairs of Guatemala signed an agreement to strengthen the country's agrarian institutions and to support the implementation of the agrarian policy within the framework of the VGGT (FAO, 2018a). Colombia has also used the VGGT as a reference; it has done so as part of its peace process, in order to improve the access and use of land (FAO, 2017).

Latin America and the Caribbean is the region with the greatest inequality in terms of land distribution

Latin America is the world's **most unequal region in terms of land distribution**. The Gini coefficient for land—an indicator of between 0 and 1, where 1 represents the maximum inequality—is 0.79 for the region as a whole, 0.85 in South America and 0.75 in Central America. These figures indicate much higher levels of land concentration than in Europe (0.57), Africa (0.56) or Asia (0.55) (OXFAM International, 2016, p. 21).

WHAT STATES CAN DO

To meet international and regional commitments towards more equitable and responsible governance of tenure, States should take multiple legislative and policy actions. The VGGT provide guidance on what States should include in their own strategies, policies, legislation and programmes on the governance of natural resources to eradicate hunger and poverty and achieve sustainable livelihoods, socio-economic development and environmental protection. This within the overall goal of achieving food security for all and supporting the progressive realization of the right to adequate food.

The **Guiding Principles** of the VGGT recommend that States take measures to:

- Recognize, respect and register all legitimate tenure rights holders and their rights (FAO, 2016a), including the legitimate rights of informal occupiers of land, and taking into special consideration the discriminatory practices that women can face and the rights of people in situations of vulnerability.
- Safeguard legitimate tenure rights against threats and infringements, including against unlawful forced evictions.
- Promote and facilitate the enjoyment of legitimate tenure rights, ensuring that services are accessible to all.
- Ensure effective access to justice and remedy where there are disputes or grievances over tenure rights, and provide prompt, fair compensation in cases of expropriation.

- Take active measures to prevent tenure disputes, violent conflicts and combat corruption in all forms, at all levels, and in all settings.
- Ensure that non-state actors, including transnational business actors, respect human rights and legitimate tenure rights.
- Observe the principles of human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approach, consultation and participation, rule of law, transparency, accountability, and continuous improvement (VGGT, guideline 3).

States are encouraged to implement the VGGT, applying human rights principles and ensure security of tenure for all, with emphasis on vulnerable and marginalized groups such as pastoralists, peasants, rural women, youth, fisher folks, rural workers and indigenous peoples. Relevant processes should be participatory, transparent and accountable. Consultations should take into account existing power imbalances and ensure active, free, effective, meaningful and informed participation.

Many countries in Latin America and the Caribbean have provided legal recognition to legitimate tenure rights, in particular customary rights, which before may have been ignored (Griffiths, 2004). Yet, with increasing pressure and demand for large-scale land based investments, more needs to be done for their effective protection, in particular through registration and recording of customary, communal and individual land rights. One of the biggest challenges in the recognition and registration of customary rights is to address gender inequalities at the same time - for instance, by stipulating that constitutional rights, such as the right to non-discrimination, must condition customary rights.

Types of legitimate tenure rights:

Legal legitimacy or rights legally recognized:

- Ownership rights recognized by law, including rights of individuals, families and groups, and customary rights recognized by the law;
- Use rights recognized by law including leases, sharecropping and license agreements;
- Servitudes/easements.

Social legitimacy or rights with broad social acceptance but no formal legal recognition:

- Customary and indigenous rights to resources vested in the state in trust for the citizens;
- Customary rights on state land, e.g. forest communities;
- Informal settlements on private and public land where the state has accepted that it is not possible to relocate the people;
- Squatters on private and public land who have almost fulfilled the requirements for acquiring the land through prescription or adverse possession;
- Not formally recognized traditional fishing grounds.

ENSURING GENDER EQUITABLE LAND TENURE

Women are often at an enormous disadvantage in relation to land tenure security. Traditional discriminatory practices result in their claims to tenure being dependent upon their relationships with men. In some cultures, they can be prevented from holding land, be deprived of land, or not permitted to inherit land. Women who work the land in rural communities are often the poorest and most marginalized, frequently lacking formal title to the land, educational opportunities, access to fair markets, systems of credit and fair remuneration for their work (FAO, 2013).

VGGT paragraphs 5.4 and 5.5: "States should consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws that recognize women's tenure rights are implemented and enforced. ... States should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset."

Land tenure governance is inevitably complex and its relationship to gender inequities is replicated in many other areas of social, economic, political and cultural life, including family law and inheritance, access to education, information and training, decent employment, access to markets and the economy, among others. For good governance of land tenure, gender-equitable land policies and legislation are necessary and for this to occur, women must participate actively, meaningfully and effectively in discussions and negotiations relating to pertinent decision-making processes. The elaboration of gender equitable land tenure systems is vital to furthering sustainable development and good governance and there are diverse actions that states can practically take to enhance their economic, social and cultural development with proactive measures for gender-equitable governance of land tenure. Land laws, registration laws, expropriation laws, family and inheritance laws may all be in need of reform to ensure alignment with the VGGT and respect for human rights in general and gender equality in particular. Ensuring that legislation protects all legitimate tenure rights and the equal rights of men and women is a key responsibility of parliaments.

Gender equality in agriculture and with regard to access to resources is high on the regional and international agenda (see above). Under SDG 5, States have committed to reach gender equal land rights in practice and by law.

In order to make progress towards SDG goal 5.a.2 related to the legal and regulatory frameworks that guarantee women's equal rights to land ownership and/or control, the FAO, as custodian of this goal, has identified the following **six proxies** for countries to deliver information (FAO, 2020d):

SDG 5.a.2 – Percentage of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.

In order to track progress in the achievement of SDG target 5.a.2 on legal frameworks that guarantee women's equal rights to land ownership and/or control, FAO as the custodian for the indicator, has developed the following six variables, known as proxies, for countries to report on:

- **Proxy A.** Is the joint registration of land compulsory or encouraged through economic incentives?
- **Proxy B.** Does the legal and policy framework require spousal consent for land transactions?
- **Proxy C.** Does the legal and policy framework support women's and girls' equal inheritance rights?
- **Proxy D.** Does the legal and policy framework provide for the allocation of financial resources to increase women's ownership and control over land?
- **Proxy E.** In legal systems that recognize customary land tenure, does the law explicitly protect the land rights of women?
- **Proxy F.** Does the legal and policy framework mandate women's participation in land management and administration institutions?

The FAO "**Governing land for women and men**" technical guideline aims to support the application of the VGGT, offering guidance that supports the principle of gender equality in tenure governance (FAO, 2013).

The Latin America and Caribbean region offers some examples of situations in which the participation of women in decision-making spaces has led to laws and policies with greater gender equality on land tenure. In these cases, a prominent role of civil society has made all the difference.

Bolivia

The 2008 Constitution establishes the state's obligation "to promote policies aimed at eliminating all forms of discrimination against women in the access to, ownership and inheritance of land" (Art. 402). Likewise, it endows "the right of women to access, distribution and redistribution of land, without discrimination based on civil status or marital union" (Art. 395). Since 2006, an amendment to Law No. 1715 on the Agrarian Reform already provided that the "executive titles" should be issued in favor of both spouses or cohabitants who are working the land, putting the name of the woman in first place (Law No. 3545, final provision No. 8).

Colombia

Law No. 731 of 2002 establishes rules in favor of rural women. Regarding the agrarian reform procedures, the law guarantees the titling of these properties in the name of the spouse or permanent partner left in a state of abandonment, as well as community companies or associative groups of rural women. Preferential access is also given to females in charge of a household and to those who lack social and economic protection due to violence, abandonment or widowhood. Likewise, the law guarantees the equitable participation of rural women in the allocation and use of land (Arts. 24 to 26).

Moreover, Law No. 1448 of 2011 that establishes measures of attention, assistance and integral reparation for the victims of the internal armed conflict, adopts a "differential approach" according to which the measures implemented must respond to "the particularities and degree of vulnerability" of women (Art. 13). Therefore, in land restitution processes, the law provides preferential attention to women. It also gives them priority in respect of some benefits, such as access to credits, land allocation, guarantees, social security, education, training and recreation, family allowance, reforestation plans and programmes, and access to national identification documents. Finally, it establishes that property must be titled in the name of both spouses or permanent partners (Arts. 114 to 118).

Uruguay

Law 19.781 of 2019 sets joint ownership in the adjudication of lands by the National Institute of Colonization (INCC) in the cases in which couples constituted in *de facto* or civil unions, as well as those *de jure*, legally married relationships, have a "Settler profile". This means that both spouses or partners dedicate most of their working time to household and production duties, and the couple's main source of income comes from these activities.

PARLIAMENTARY CHECKLIST FOR ACTION

Sustainable growth and development in Latin America and the Caribbean will largely depend on the way land and land-related resources are conserved, used and managed. Gender-equitable governance of tenure in land and other natural resources supported by sound policy and legal frameworks, as well as appropriate budget and operational plans that are adopted and implemented through participatory processes, can ensure broad-based and sustainable socio-economic development.

The **Parliamentary Front against Hunger in Latin America and the Caribbean (PFH LAC)** is a permanent and plural parliamentary network, composed of national parliaments⁵ and four regional or sub-regional parliaments that promote legislative processes aimed at eradicating hunger and malnutrition for the achievement

⁵ The following 21 countries have parliamentary fronts: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Saint Vincent and the Grenadines and Uruguay.

of the Sustainable Development Goal 2 (SDG2). The PFH LAC provides a space to foster participation, connect interested parties, enhance transparency, and promote technical assistance and awareness raising. Its alliance with FAO, the Spanish Cooperation, and the Mexican Agency for International Development Cooperation (AMEXCID) opens the possibility for parliamentarians and their advisors to participate in trainings, exchanges of experiences, and public information and media campaigns to generate greater impact. The PFH LAC pays special attention to the right to adequate food and nutrition, especially in the context of the COVID-19 pandemic (FAO, 2020c) and the new challenges countries will face in the post-pandemic period.

Parliamentarians have an important role to play in aiding such progress, and can consider the following actions:

- Consider joining one of the national chapters of the Parliamentary Front against Hunger and Malnutrition in your country, or forming one of these fronts if your country does not have one, to promote laws on responsible land tenure and other natural resources or the implementation of the VGGT and other relevant international instruments.
- Join multi-stakeholder platforms on the VGGT, where these exist, or consider forming one if it does not already exist in your country.
- Assess the current policy, legal and institutional frameworks, nationally and locally, and identify potential areas for reforms, windows of opportunity for action, and ensure that land legislation and regulations are consistent and relevant to internationally accepted standards.
- Support the ratification and application of international conventions and regional instruments on women's rights related to land and other natural resources.
- Support the enactment of land laws and policies that recognize the legitimate tenure rights of all, with particular attention to vulnerable and marginalized groups such as pastoralists, forest dwellers, fisherfolk and communities with customary tenure.
- Enact laws that ensure that customary law and practices respect gender equality.
- Promote and support legislative reform where necessary to achieve SDG 5, indicator 5.a.2.
- Enact laws that provide strong protection against forcible evictions, that set up a predictable legal framework for expropriation in the public interest, that combat corruption in the administration of tenure, and that support affordable and accessible dispute resolution mechanisms.
- In approving or drafting legislation, review local context, work constructively with constituents, customary and religious institutions and their

leaders; involve the whole community in consultations, discussions and decision-making processes involving policy, legislation, customary law and land tenure practices, including awareness of tenure inequalities.

- Approve budgets for inclusive public sensitization, awareness raising and the provision of incentives, particularly on gender-equitable governance of tenure, so that people know their rights and how to claim them.
- Seek to support budget allocation for the training of professionals and public officials in the land, family and justice sectors, as well as at the intersection of land laws with family and inheritance laws, based on internationally accepted human rights and gender equality standards.
- Support local groups to find innovative and creative ways to use customary law to help women negotiate their land rights, where statutory protection is inadequate or inaccessible, and promote these good examples to foster legislation and policy or as part of parliamentary oversight.
- In carrying out oversight mandate, seek to ensure the equitable representation of women (including rural women) in the political and governance institutions and structures involved in land policy-making and implementation.
- Strengthen monitoring and follow up practices to evaluate improvements in relation to equitable governance of land tenure in practice, and encourage the development of disaggregated data to allow for evidence-based decision-making and strategies.
- Learn from good practices or parliamentary experiences, including in gender-equitable participation in land tenure policy-making, from other countries and regions.
- Consider opportunities for South-South Cooperation: could your country's experience benefit other countries or could your country benefit from the support by other countries?

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