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STRENGTHENING SECTOR POLICIES FOR BETTER FOOD SECURITY AND NUTRITION RESULTS

Land tenure



These policy guidance notes have been produced in the frame of the strategic partnership between the Food and Agriculture Organization of the United Nations (FAO) and the Directorate for International Cooperation and Development of the European Commission to boost food and nutrition security, sustainable agriculture and resilience.

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This policy guidance note is part of a series that the Food and Agriculture Organization of the United Nations (FAO), the Directorate for International Cooperation and Development (DEVCO) of the European Commission and partners are producing to support policy makers address the food security and nutrition situation in their country. Each note provides guidance on how to sharpen the focus of sector policies in order to achieve sustainable food security and nutrition outcomes.

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Introduction

This policy brief provides background information on tenure, food security and nutrition linkages and addresses the overarching question of what changes are needed to existing tenure-related policies and laws to improve the attention given to food security and nutrition concerns and raise the profile of tenure issues in the food security and nutrition agenda.

Land, fisheries, forests and other natural resources provide a basis for livelihoods and social, cultural and religious practices. Pressure on these resources is increasing as areas are sought for cultivation and are occupied by urban expansion, and as people abandon areas because of degradation, climate change and conflicts. The livelihoods of many, especially vulnerable and marginalized groups – such as women, youth, indigenous people, ethnic minorities and internally displaced persons – are based on their access to land, fisheries and forests. Seventy-five percent of poor people in middle- and low-income countries live in rural areas, and most of them depend directly or indirectly on agriculture for their livelihoods (World Bank, 2007; IFAD, 2010). The majority of them are smallholder farming households. Most people in rural areas in developing countries do not have any form of documentation to protect their land and natural resources rights. In this context of tenure insecurity, their livelihoods and consequently their food and nutrition security are at risk. At the same time, a context of tenure insecurity is also detrimental to the promotion of responsible investment in agriculture that could increase productivity and enhance food security and nutrition.

In response, FAO and its partners initiated the preparation of an unprecedented international agreement on the governance of tenure that promotes secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. The “Voluntary Guidelines on the Responsible Governance of Tenure

of Land, Fisheries and Forests in the Context of National Food Security” (FAO, 2012) (in short, Tenure Guidelines; see Box 1) were officially endorsed by the Committee on World Food Security on 11 May 2012. Since then, implementation has been encouraged by United Nations General Assembly, G8/G7, G20, Rio+ 20, and Francophone Assembly of Parliamentarians.

Following the endorsement of the Tenure Guidelines, and recognizing the importance of enhancing governance of tenure for improved food security, the European Union (EU) joined efforts with FAO, and embarked on an ambitious plan to support ten African countries (Angola, Burundi, Côte d’Ivoire, Ethiopia, Kenya, Malawi, Niger, Somalia, South Sudan and Swaziland) in turning the principles of the Tenure Guidelines into action, under the “Support to Land Governance in Sub-Saharan Africa in the scope of the VGGT [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security] Programme”.



Key messages

- Secure tenure of land, fisheries and forests and equitable access to these resources (including water) are crucial for food security and nutrition.
- Tenure should be considered in cross-sectoral land, fisheries and forest resources policies to release the full potential of the contribution of tenure to improved food security and nutrition.
- An integrated tenure approach through coordination across multiple sectors and multiple stakeholders is needed to support cross-sectoral policies.

In 2015, the EU extended its support under this programme to eight additional countries, including three outside of the African continent (Brazil, Cameroon, Colombia, Ghana, Guinea Bissau, Pakistan, Sudan and Uganda). The EU is committed to foster enhanced governance of tenure. The engagement and financial support provided by the EU, not limited to the projects mentioned above, have been relevant for the successful implementation of the Tenure Guidelines worldwide.

The Tenure Guidelines' overarching goals are to achieve food security for all and support the progressive realization of the right to adequate food. The Tenure Guidelines are meant to benefit all people in all countries, although there is an emphasis on vulnerable and marginalized people. With wide ownership by governments, civil society and the private sector, they represent an unbiased framework in which new discussions on tenure are taking place, new skills are being developed, and new policies are being influenced in participatory ways.

Box 1

Box 1. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

- The Tenure Guidelines are widely recognized as the leading set of international principles on the governance of land and natural resources tenure. The objective is *“to improve governance of tenure of land, fisheries and forests”* so as to help improve food security, enhance sustainable livelihoods and reduce poverty (paragraph 1).
- The Tenure Guidelines explicitly recognize the fundamental importance of secure tenure to achieving food security and other human rights. They explicitly encourage investments that improve food security and, at a minimum, do not harm food security (paragraphs 4.1 and 12.4).
- The Tenure Guidelines take a multi-sectoral, multi-disciplinary approach, recognizing the important similarities in tenure of land, forests and fisheries. These resources and how they are used are interconnected, so effective tenure governance guidelines must apply to the intersection of land, fisheries and forests.

- Reflecting their focus on food security, the Tenure Guidelines emphasize the importance of secure tenure for small-scale food producers. They are specifically intended to strengthen the tenure governance, capacities and operations of small-scale farmers, fishers and forest users (paragraphs 1.2(4) and 2.3).
- The Tenure Guidelines place a high priority on securing the tenure rights of the poorest and most vulnerable people (paragraph 1.1). In recognition of the importance of secure tenure for women in boosting household livelihoods, gender equality is one of the guiding principles of implementation (paragraph 3B(4)).

A variety of useful resources for the Tenure Guidelines are available from FAO, including the “Governance of Tenure Technical Guides” on gender, forest tenure, fisheries tenure, tenure and agricultural investments, and tenure and investors. More guides are being prepared. The guides are available in various languages at <http://www.fao.org/nr/tenure/information-resources/en/>

States can use the Tenure Guidelines when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices.

The governance of tenure is a crucial element in determining if and how people, communities and others are able to acquire rights, and associated duties, to use and control land, fisheries and forests (Box 2). Many tenure

problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance. People can be condemned to a life of hunger and poverty if they lose their tenure rights to their homes, land, fisheries and forests, and their livelihoods because of corrupt tenure practices or if implementing institutions fail to protect their tenure rights.

Tenure rights are governed by a broad spectrum of “statutory” rights, as well as “customary” rights. Statutory rights have legal legitimacy, i.e. written

Box 2

Tenure concepts and definitions

Tenure: *“The relationship among people with respect to land and other natural resources. The rules of tenure determine who can use what resources of the land, forests and fisheries for how long, and under what conditions.”*

Governance of tenure: *“The way in which access to and control over natural resources is managed in a society. It includes how competing priorities and interests of different groups are reconciled, how individuals and groups participate in decision-making, how government is accountable to others, and how society obliges its members to observe rights, freedoms, rules and laws. Effectiveness in addressing tenure problems depends to a large extent on the quality of governance.”*

Land tenure: *“The relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land”.* Land tenure refers to laws, policies, customs and institutions that define and govern people’s rights to use, control and transfer land.

Forest tenure: *“The rights to enter the forest and to use or harvest its resources. Such rights necessarily address who decides how forest resources are used and by whom, and how the resources are transferred to others.”*

Fisheries tenure: *“How relationships between people are defined and negotiated for the utilization of fisheries resources. It thus tells us who does and does not have a legitimate right to the resource and determines how those rights are allocated, transferred and administered.”*

Customary tenure:¹ *“Local rules, institutions and practices governing land, fisheries and forests that have, over time and use, gained social legitimacy and become embedded in the fabric of a society. Although customary rules are not often written down, they may enjoy widespread social sanction and may be generally adhered to by members of a local population. Customary tenure is usually associated with indigenous communities and administered in accordance with their customs.”*

¹ A distinction often made is between statutory rights or “formally recognized rights” on the one hand and customary rights or “traditional rights” on the other hand (FAO, 2002).

policies and laws will have been adopted to achieve a range of objectives, often sectoral, including reducing poverty, achieving food security, increasing agricultural production, attracting (foreign) investment in agriculture and building infrastructure. These objectives may be competing or contradictory and could have different implications for food security and nutrition.

Customary tenure is defined by local rules, institutions and practices governing land, fisheries and forests that have, over time and use, gained social legitimacy and become embedded in the fabric of a society. Although customary rules are often not written down, they may enjoy widespread social sanction and may be generally adhered to by members of a local population. Customary tenure is generally associated with indigenous or local communities and administered in accordance with their customs (FAO, 2012; FAO, 2016). In many countries a hybrid of customary and statutory tenure rights, known as legal pluralism, has come to exist that is often complex, is challenging to address and leads to situations in which statutory and customary rights may clash.

Tenure has multiple dimensions: it brings into play social, technical, economic, institutional, legal and political aspects (FAO, 2016). Governments have rarely considered the trade-offs and the medium- to longer-term implications of tenure on food security and nutrition in their policies and decision-making processes. As a result, few appropriate safeguard measures have been put in place.

Purpose of this guidance note

This guidance note aims to support policy-makers, and stakeholders that contribute to policy-making related to tenure, in sharpening the focus of national tenure-relevant policy instruments for improved food security and nutrition. It provides background information and a set of key questions to help stakeholders identify conflicts and trade-offs between objectives of policy instruments and policies for food security and nutrition. As such stakeholders will be informed and in a better position to engage in policy negotiations.



Background

Tenure and food security and nutrition linkages

Secure tenure rights provide the stability and incentives to invest in land, fisheries and forests to improve productivity and increase income. They are also critical to introducing and developing sustainable practices that help preserve the natural resource base, as well as fostering more gender-equitable societies. Secure access to land, fisheries and forest resources, including water, is associated with increased social well-being and economic growth.

Most people develop livelihood strategies over time in an effort to guarantee a stable income. For most rural people in developing countries, the basis of this income is by cultivating agricultural products, raising livestock and exploiting forest and fishery grounds, for both self-consumption and commercialization. The stability of income and production is heavily susceptible to environmental, social and political shocks. People adopt strategies to mitigate these to some extent.

Food security applies at different levels. A government may strive to achieve national food security, but this does not mean that within each lower administrative level food security is reached within the lower-level administrative unit (district, province). At household level, food security means self-sufficiency, or if the household has access to a market, exchanging or buying products that the household does not produce. An issue to keep in mind while assessing the food security and nutrition situation is how a household in one part of the country can benefit from products produced elsewhere in order to achieve food and nutrition security. Are the geographic location and/or policies concerning the production a limiting factor to achieve food security at a lower-level administrative unit?

Secure tenure rights that allow families and communities to use, manage and control land, fisheries and forests play a crucial role in reducing food insecurity and malnutrition through agriculture growth, enhanced productivity and improved income. This is so for several reasons:

- **Input to social capital:** land tenure rights are often a vital element when rural households balance their capabilities and assets, and determine their resulting strategies to cope with their daily production and food security. However, rights to land are not just a source of economic production. They are also a basis for social relationships and cultural values, and a source of prestige and often power. The resulting social networks that are built up within a specific social and cultural group are a very important asset in ensuring the sustainability of livelihoods of rural households, and hence their food security and nutrition.
- **Livelihood options:** those with secure tenure rights to land, often their primary asset, are less likely to lose access to and control over their land, forests and fisheries, on which they depend for producing food and earning income. Thus, they can ensure that their basic daily needs (e.g. food, water, shelter) are met by making decisions on how to use, manage and control their land, and receive the benefits resulting from these decisions. Decisions can relate to leasing or selling the land, improving the land, cultivating food or cash crops or a mixture, keeping livestock, etc. Decisions can also relate to entering into collaborative business models such as out-grower schemes or contract farming (see Box 4).
- **Access to credit and government programmes:** in many settings, those with secure tenure rights enjoy increased opportunities to access government programmes (e.g. input subsidies for seeds and fertilizer) and services that can improve agricultural productivity. In addition,

as financial institutions tend to require collateral for accessing credit, those with documented tenure rights can more easily access financial resources to invest in on-farm and off-farm income sources.

- **Incentives for investments:** secure rights to land can provide incentives for farmers to invest labour and money in improvements to the land, such as irrigation systems, trees, infrastructure and climate-smart agriculture practices. Women and men who are confident that they will control the land over the long term are more likely to engage in sustainable land management practices to preserve/restore soil fertility and improve agricultural productivity, such as by leaving a portion of the land fallow. Insecure land tenure is one of the factors that hinders farmers from adopting sustainable land management practices, since they must bear the uncertainty of whether they will be able to receive any return on their investment. Similarly, secure long-term tenure rights provide incentives to invest in conservation, sustainable management or restoration of forests, while secure access to marine and inland capture fisheries provides incentives for fishery communities to invest in sustainably managing the resource on which they depend for their livelihood. Furthermore, without secure land rights, most people are reluctant to make the kind of long-term investments and improvements in their land and community that foster environmental resilience. Doing so, in many cases, would just make their land more valuable, and therefore more likely to be taken by powerful stakeholders.

At the same time, household food security benefits when women have secure and equitable rights to land, forests and fisheries. Women who have more secure tenure over land, trees and natural resources may gain greater access to inputs, credit and agricultural extension, which, in turn, has positive effects on production and income. Women are more likely than men to spend household income on food, health and educational needs of their children.

Box 3 Agribusiness models

Discussions occurring at the regional and global scales concerning small-scale (smallholders) versus large-scale agriculture increasingly recognize the potential of smallholders as drivers of productivity alongside their contribution to addressing poverty and food insecurity (see www.fao.org/ag/ags/contract-farming).

Successful development experiences in Asia and elsewhere have amply demonstrated the success of a growth strategy based on small- and medium-scale farmers. There is strong evidence that there are few economies of scale in farming and that in low-wage economies small- and medium-scale farmers are more efficient than large-scale farmers in producing most agricultural products. At the same time, improved productivity that raises the incomes of small- and medium-scale farmers and reduces food prices for poor consumers translates into more equitable growth. Nonetheless, it is recognized that only some small- and medium-scale farmers will become viable commercial farmers, while many others will need to find alternative pathways out of poverty by participating in rural non-farm enterprises linked to a dynamic agriculture or by migrating to cities.

It is important to examine whether and how agribusiness models can be more inclusive of smallholder farmers. Much of the emerging literature on inclusive agribusiness models – most notably on contract farming – is based on the idea that greater efficiency and equity can be achieved through models that match the complementary assets of agribusiness companies, namely their access to technology, capital and markets, with those of smallholders, namely their labour, land and local knowledge.

Source: Byerlee et al., 2014.

Stepwise approach A greater policy focus and coherence for food security and nutrition

The approach used in this guidance note includes four steps:

- the first step is conducting a situation analysis to better understand the critical tenure challenges and how they impact food security and nutrition in a country.
- the second step identifies the different policy instruments and legislation that govern the tenure of land.
- the third step examines trade-offs between the different objectives of tenure policies and legislation and those of food security and nutrition, and identifies a range of potential policy options to improve coherence between tenure and food security and nutrition policies.
- the fourth step is to develop a better understanding of the political economy in order to influence the policy agenda and facilitate change. The description of the different steps is supported by case materials from different countries where FAO has supported tenure reform; more cases will be added over time.

FIGURE 1. Four steps for addressing food security and nutrition outcomes in land tenure policies



Step 1 CONDUCTING A SITUATIONAL ANALYSIS

The situational analysis assesses food insecurity and nutrition from the tenure perspective. It helps in understanding what type of tenure systems and tenure rights are present in the country, where they are located, who holds what type of tenure rights, what agricultural practices are performed under these different tenure systems, to what extent the poor and vulnerable are involved as landholders and/or land users, and how this influences their food security and nutrition situation.

→ Key questions

- What are key food security and nutrition challenges in the country and to what extent are they related to questions of access to and control over land, fisheries and forests?
- What types of statutory and/or customary tenure rights and right-holders are present in the country and where are they located?
- What types of land uses (e.g. crop cultivation, pastoralism, agroforestry, collecting non-timber forest products, inland small-scale fisheries, aquaculture) occur under the different tenure systems and who practices them? Do any of the systems have restrictions or constraints that might contribute to food insecurity and malnutrition?
- Are there any constraints related to tenure and governance faced by the poor and vulnerable?
- What are the policies and trends in tenure rights that may influence the food security and nutrition situation and how do these policies and trends affect the most tenure-insecure?

Answering the above questions will rely mainly on available data from agriculture census and household surveys, *ad hoc* sectoral studies and consultative processes with the government, civil society, the private sector and academia, as well as representatives of different groups affected by tenure constraints. There will be limited information and data available to fully understand the relation between tenure and the food security and nutrition situation, especially for those dependent on the land for their livelihood.

Box 4

Sierra Leone: tenure insecurity by land-owning families

In Sierra Leone, holding land is a food security priority and regarded as the first step toward decreasing risks associated with shocks (e.g. conflicts, economic downturns, natural disasters). Most of the land is chieftaincy land under customary tenure. Although chiefs serve as custodians of the land, extended families have rights of access, use, and transfer by lease. People from outside the chiefdom – including migrants, tenants, ex-combatants and foreigners (collectively known as “strangers”) – can access land by leasing it from land-owning families on an annual basis. They are not allowed to plant trees, grow perennial crops, install irrigation facilities or make other investments that would show long-term interests in the land. Strangers can make up 20 to 40 percent of the chiefdom populations in some areas. The primary constraint on making lands available for cultivation and investing in land for greater productivity is the tenure insecurity of the customary land-owning families. Tenure insecurity by land-owning families results in an extreme reluctance to allocate lands to others in a secure way, due to a fear that others may make claims. Insecurity also results in a reluctance to allow tenants or strangers to make improvements to land, since these improvements can be perceived to be forms of a claim, and therefore represent a real threat to customary ownership. The perceived risks of land loss reflect the widely held and pronounced fear of landlessness, and the food and livelihood insecurity that would then follow.

Source: Unruh and Turray, 2006.

Although there is a need for detailed information on the direct impact of the land tenure situation on the levels of food security and nutrition, two country cases (Guatemala and Sierra Leone, presented in Boxes 5 and 6) suggest that the landless and the land-poor are the ones who have the least power and the poorest access to resources, and the greatest constraints in using their resource base productively. As a result, they face the greatest risk of food insecurity and have the fewest opportunities to improve their livelihoods.

Box 5

Guatemala: lack of access to land and tenure insecurity of indigenous people

Tenure insecurity is one of the key causes of poverty and food insecurity in rural areas in Guatemala. Access to land is very important as most of the rural population depends on agriculture for their livelihood. However, land distribution is highly skewed. The vast majority of the rural population is either landless or lacks sufficient land to provide for their basic nutritional needs. Historically the country has been characterized by high indices of (extreme) poverty and by large numbers of landless and land-poor farmers. Indigenous people comprise 42 percent of the population and face profound systemic and structural exclusion on many fronts. More than half of the population in rural areas suffers from malnutrition. Indigenous communities are particularly affected: chronic malnutrition afflicts 69.5 percent of children up to five years old in these communities.

Source: Gamboa, 2015.

Step 2 MAPPING THE LAND TENURE POLICY LANDSCAPE

Having understood the key tenure constraints and their impact on food security and nutrition, the next step identifies and describes the range of laws and policies and related instruments that govern tenure and access to land and that have or could have a positive or negative impact on food security and nutrition.



Key questions

- What are the key policies and laws that affect people's livelihoods and tenure rights?
- How are tenure-relevant policies linked to other (sectoral) policies and strategies (e.g. agricultural policy, rural development policy, poverty reduction strategies, food security (and nutrition) policies, gender policies)? Is there coherence between these policies? Do the policies address food security and nutrition?
- What instruments have been adopted to implement those policies and laws?
- Which institutions are responsible for implementing those policies and laws? Are their mandates, roles and responsibilities clear?
- To what extent are the policy measures implemented and/or enforced?

Many countries have policies regarding land tenure. These policies generally aim to achieve certain objectives regarding the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. Land policies are essentially an expression of the government's perception of the direction to be taken on major issues concerning land policy and the proposed allocation of the national land resources over a fixed period of time. A sound national land policy is effectively part of the enabling environment and should cover all land uses.

By developing the national land policy through a participatory, integrated and iterative process, there is a much greater likelihood of achieving the objectives of the policy. The land policy should address the current trends and challenges faced in the country (e.g. recording of rights, recognition of customary rights, land disputes, large-scale land-based investments in agricultural land) (see Box 7). Other important policy documents are the rural development policy, or strategy, the agriculture and food security policy and the environmental policy. Gender is often a cross-cutting issue in these policies.

Box 6

Mozambique: participatory land policy development

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After the end of the civil war, the Government of Mozambique established an inter-ministerial land commission to develop a new land policy. The commission took as its starting point a variety of practical realities. First, the policy had to be an instrument that would define and protect existing land claims, lending *de jure* support to pre-existing *de facto* tenure. Second, as mandated by the new government, the state was to remain the sole owner of all land in Mozambique. Third, private investment needed to be fostered; the growth of the industry, mining, agriculture and tourism sectors were deemed necessary to the development of the nation. Finally, customary land claims – and the customary, local systems that managed them – were to be formally recognized.

Mozambican lawmakers were charged with the very difficult task of writing a land law that was flexible enough to encompass and protect the customary practices and land claims of a wide range of peoples and

cultures, maintain state ownership of land, and offer secure tenure and legal safeguards to private investors.

After the land policy was approved in 1995, the Land Commission established a multi-sectoral stakeholder committee to discuss specific points of the policy and construct a draft land law. It then sponsored consultation exercises across the nation to ensure that a wide range of civil society groups were involved in the land-law drafting process. After one of the most participatory lawmaking processes in African history to date, the Land Law was enacted in 1997. Alongside the Land Law, new laws regulating forestry and wildlife, the environment, territorial planning, and other natural resources (e.g. fisheries, water) were implemented. Gender equality and women's land rights have been well addressed by these instruments. All of them share some important principles. Perhaps the most important is that the local community has acquired rights of access to and use of resources for subsistence and livelihoods needs.

Sources: FAO 2010, 2014.

The legislation and areas of law that are important in relation to tenure rights include, but are not necessarily restricted to, the following:

- The Constitution: in many countries the right to own land is embedded in the Constitution.
- The Land Law or any other legislation related to land issues;
- The Natural Resources Law or any law with the words “land resources”, “fisheries resources” or “forest resources”.
- The State Land Management Law and any other law with the words “land management”, “fisheries management” or “forest management”.
- Any law relating to cadastre – the mapping of the boundaries of territories and properties – and land registry – the juridical records of the rights (e.g. deeds, certificates of occupancy, certificates of ownership). The combination of cadastre and registry provides information on who has rights on what and where. The cadastre can be a separate institution from the land registry or the two can be combined in one institution. Not all countries have a cadastre and/or land registry.
- Conservation or nature protection laws concerning national parks and natural resources, including marine reserves.
- Any of the above laws may refer to zoning regulations as to the use of the land according to an established land classification that comprises pre-established land types or land classes. It is important to check if there are any restrictions for any of the land types or land classes.
- Laws that deal with the leasing of land.
- Family and inheritance laws: laws relating to marriage and divorce and the treatment of land and property. Laws that regulate the transfer of property through inheritance. Check if these laws permit women to inherit land and property. If they cannot inherit, check who will inherit and what consequences this may have for the widow and children.

- Religious laws related to tenure.
- Privatization laws.
- Property taxation laws.
- Customary tenure laws.

It is important to keep in mind that in many countries customary tenure may not appear in the legislation, but customary tenure will be practised (see Box 8).

In addition, the institutions involved in executing and enforcing the above-mentioned laws should be mapped together with their mandates, roles and responsibilities. Various ministries, departments, committees and other bodies, at different administrative levels, will be involved. There may be overlapping mandates and responsibilities, or even gaps, which encumber effective implementation of the laws and policies.

It is important to assess how effectively the policy and legislative frameworks are applied in practice. Such an assessment should include discussions with all stakeholders, such as the relevant ministries, lower-level administrative bodies, implementing agencies, professionals (e.g. land surveyors, lawyers, real estate brokers) and well as with the families and communities affected.



Step 3 ANALYSING THE POLICY FRAMEWORK

In this step, the set of relevant laws and policies identified in Step 2 are analysed for their short- and longer-term impacts on the food security and nutrition of rural men and women. The analysis should critically review the trade-offs and potential conflicts among different objectives of tenure-related policy measures and food security and nutrition objectives, and the extent to which the implementation of policies by the different institutions involved is coordinated in a coherent manner. It includes



Key questions

- To what extent are (statutory and customary) land rights guaranteed by pertinent legislation?
- Are the land rights of indigenous peoples and other communities with customary tenure systems recognized and protected?
- Is there an enabling environment for investments in agriculture and improvements in agricultural productivity (e.g. tenure security, sufficient incentives for land improvements, including for tenants and sharecroppers)?
- Are women's land rights protected?
- How does the government protect vulnerable groups that are being deprived of their access to land by third parties (e.g. male relatives, companies, property owners)?
- To what extent is there a gap between legal provisions and what actually happens in the ground?

identifying any adjustments that may be needed to ensure greater food security and nutrition outcomes through enhanced productivity and investments. Furthermore, it entails assessing whether land scarcity can be offset by stimulating non-agricultural employment opportunities, using complementary policies.

Addressing shortcomings of tenure policies and laws is crucial to ensure food security and nutrition in general terms, but especially among the rural poor who rely on the land for their livelihood. Sound tenure policies and laws are also relevant to create an enabling environment for sustainable, inclusive and responsible investment in agriculture. This requires political ownership, willingness and commitment, and inclusive dialogue between government, private sector and civil society actors to create feasible and effective solutions and reach political compromises between various objectives and interest groups. The Tenure Guidelines offer a roadmap for inclusive policy dialogue and change.

The Tenure Guidelines recognize the fundamental importance of secure tenure to achieving food security and other human rights. Through a series of recommendations, they can assist policy-makers in addressing tenure-related issues that arise in a number of important contexts, where well-meaning policies can otherwise have a negative impact on tenure and food security. For example, in the context of large-scale land-based investments in agricultural and forest lands, the Tenure Guidelines set forth several recommendations intended to ensure that these investments do not negatively affect tenure, livelihoods, food security and other human rights. The recommendations include:

- Wherever possible, avoiding investment project designs that require the transfer of land rights of smallholders and other local tenure rights-holders in favour of models that may involve partnerships with local people (see Box 7).

- Ensuring that all holders of legally and/or socially legitimate land rights, and the nature of those rights, are identified and documented. This should include special attention to women and other vulnerable and traditionally marginalized groups.
- Assessing the impact of a proposed transaction to ensure that it does not harm rights-holders. If the impact is likely to have significant negative impacts on tenure rights, food security, human rights or the environment, governments and investors are advised to either cancel the project or, if possible, reconfigure it to prevent the negative impacts.
- Engaging in an inclusive, culturally appropriate process of consultation with all those who may be affected by a potential investment to ensure the participation and, if possible, consent of local communities. Particular attention needs to be devoted to ensuring that marginalized groups participate effectively in these consultations, adopting special measures if necessary; if the investment affects the land or resources of indigenous peoples, ensuring that the project does not proceed without their free, prior and informed consent.

In the context of large infrastructure projects, the Tenure Guidelines and other international guidelines encourage governments and others to abide by the same standards as those applicable to large-scale agricultural investments. In addition, the Tenure Guidelines urge governments to avoid expropriation except where there is a clear public purpose defined in law, and to seek alternatives to evicting people (Tenure Guidelines paragraphs 16.1 and 16.8). When such a public purpose exists and there is no other alternative:

- All legitimate rights-holders should be fairly compensated when their land is subject to expropriation, and the amount of compensation should be based on a fair valuation of the land and possibly be paid in the form of alternative land in addition to or in lieu of cash (Tenure Guidelines paragraph 16.3).

Box 7

Ghana: Copa Connect project

In Ghana the Copa Connect project (a rice project by the Gadco company) established a modern hub farm and combined it with a programme that provides local smallholders with technology, infrastructure, high-yield seeds and much better access to domestic consumer markets through the company's own value chain. The firm leased land from local landholders for the hub farm while participating smallholders have been able to remain on their land, rather than being forced to move or become farm labourers. Early results show a positive impact on smallholder productivity and livelihoods. There appears to have been a positive impact on food security and livelihoods in the project area.

This experience shows that it is possible to develop a business model that integrates smallholder farmers into the project as partners in a win-win situation, without disrupting the land tenure structure, and that enhances the livelihoods, and consequently the food security and nutrition situation, of local communities.

Source: Osei, 2013.

- Evictions should be carried out in a way that respects the human rights of those being evicted and does not cause individuals to become homeless or without access to productive land, forests or fisheries (Tenure Guidelines paragraphs 16.7, 16.9).

In a growing number of countries (e.g. Guatemala, Myanmar, Sierra Leone; see Box 8), the Tenure Guidelines played an important role in facilitating inclusive policy dialogue and formulating policy options for greater impact on food security and nutrition.

Box 8

Guatemala and Sierra Leone: land policies and national multi-stakeholder platforms

In 2013, the Government of Guatemala requested the support of FAO to help review its land policy to address land issues and, more broadly, to address land governance and consequently promote stability, investments and growth in agriculture. This review was considered a necessary step to improve food security and reduce poverty, particularly in rural areas and including indigenous communities.

In Sierra Leone, the Government invited FAO in 2014 to assist in creating a clearer, more effective and socially just land tenure system that also stimulates investment and development.

In both countries, FAO facilitated the establishment of a national multi-stakeholder platform to support a participatory review of the legal, policy and institutional framework for land tenure, including gender aspects, and to facilitate discussions on policy options that include the reflections of different groups of stakeholders. The establishment of such a platform was coordinated by the Government and included representatives from different government agencies, the private sector, academia and civil society, including community representatives. Facilitation of this multi-stakeholder policy dialogue was challenged by the initial lack of trust between the representatives of civil society organizations and large landowners. To build trust between the different groups of stakeholders, a series of workshops was conducted to introduce the Tenure Guidelines and discuss how the Guideline's principles and concepts could help

address current tenure challenges, and how these principles and concepts could be integrated into the new land policy. This led to the development of a critical mass of people from different stakeholder groups who are better informed on the Tenure Guidelines and are promoting their application to the land policy.

In the case of Sierra Leone, a number of cross-sectoral policies on land, fisheries and forestry tenure were reviewed for their positive and negative impacts on food security and nutrition, and policy proposals were drafted for all three sectors. Regarding land, the development of a roadmap for the draft National Land Policy was supported, along with the drafting of the General Registration Act, the Registration of Instruments Act, and the Wildlife and Conservation Act.

In Guatemala, the outcome of the policy review process was the new land policy reflected in the *"Política Nacional de Desarrollo Rural Integral"* (National Policy on Integrated Rural Development), which aims to promote sustainable development through access to land, land tenure security, land conflict resolution and access to other productive assets that strengthen family farming and contribute to economic growth in agriculture. The policy reflects the main concepts and approaches of the Tenure Guidelines in a number of ways. It recognizes and strengthens indigenous communal systems of land tenure and management, including land law and jurisdiction. It also recognizes and promotes women's rights to land.

Source: Gamboa, 2015.

Step 4 UNDERSTANDING THE POLITICAL ECONOMY

To sharpen policy measures for greater food security and nutrition outcomes, it is necessary to influence the setting of the land policy agenda. This means shaping the way that land tenure challenges to food security and nutrition are stated and appreciated, and gaining the commitment and will of major stakeholders to support change.

Strategies to influence policy agendas include public debates, policy dialogue, regular media coverage, collaborating with different stakeholders and working with influential individuals (i.e. policy champions) who serve as catalysts for policy change. In addition, to be effective they require gaining insights on how the wider political context, the different interests of major stakeholders and power relations interact and affect agenda setting, likelihood of policy change and feasible policy options. Many policy prescriptions stem from global think tanks and international organizations or are the product of “lessons learned” from other countries, and their transferability is often assumed. However, policy reform is a political process, and understanding what shapes policy, and how policy changes, is a necessary part of any attempt to improve tenure-relevant policies and/or legislation for greater contribution to food security and nutrition. Key issues to be considered include, (adapted from EU Task Force on Land Tenure, 2004; and Balié, 2009):

Political interests

- What is the government’s political agenda for economic development and securing long-term food security and nutrition (e.g. promoting family farming, stimulating commercial agriculture, supporting large infrastructure development) and what are the tenure implications?
- What is the level of interest, in questions of land, access, security and equity in government, among political parties and other political forces in society? Have there been political debates about land policy and law? Are land issues considered too politically sensitive? What is the level of interest in questions of food insecurity and malnutrition?
- To what extent is the government committed to achieving significant changes in land tenure, and in favour of which social and political groups?
- How do external forces (donors, international and regional policy processes) influence the tenure policy agenda?
- What is the political will and commitment towards gender equality and women’s empowerment objectives?

Political context

- How is the policy debate on tenure organized (what and where is the policy space, how inclusive is it, are debate and possible policy change promoted or suppressed)? Are there specific measures so that women can participate in these debates if they take place? For example, where policy debate occurs behind closed doors, active engagement is difficult and one might consider working through other groups to influence policy.
- How could the policy change be promoted? Through which policy arena(s)?

Windows of opportunity

- Is there an ongoing or planned government project or process related to formulating a land policy or tenure reform? Who is driving this process (e.g. Ministry of Lands and/or Ministry of Agriculture)?
- What broader political factors facilitate or challenge entry points for tenure-related policy change (e.g. elections, land conflicts, formulation of related strategies)?

Stakeholders, interests and power relations

- Who are the main stakeholders involved in tenure issues (e.g. within central/local government, private sector, civil society, farmer representations, women's groups)?
- What are their underlying interests/incentives?
- What are their powers? Who are the influential stakeholders?
- Which ministry or ministries are responsible for implementing land policy and related legislation and instruments? How do these different agencies relate to one another? Are their approaches coherent?
- Which branch of government/line ministry holds the key to change?
- Who are the stakeholders supporting and opposing identified policy options?
- Who are the potential or actual policy champions?



Concluding remarks

Tenure security plays a crucial role in food and nutrition security. On the one hand, it is fundamental to ensure that people and communities that rely on their land and natural resources for their livelihoods are secure in their enjoyment of these resources. This includes safeguarding women's land rights, and fostering more gender-equitable access to land and natural resources. On the other hand, tenure security is essential for the implementation of responsible agriculture investment that can boost economic development and productivity, and enhance life conditions at both household and country levels – ultimately contributing to the overall improvement of national food and nutrition security.

From a production perspective, the certainty of stable access to and control over land and other natural resources is a vital condition and driver for incentives and investments that can make agriculture more productive and profitable. Large-scale investors, but also small-scale producers and family farmers, will be able to soundly adopt sustainable agriculture practices, preserve natural resources and implement measures to improve their land and production only in a context where their land and natural resources rights are clear and secure.

The development of policies and programmes related to food security and nutrition should always carefully consider and address land tenure issues. At the same time, land tenure policies should always sensibly consider food security and nutrition implications. The Tenure Guidelines provide a framework of internationally recognized standards and good practices to improve governance of tenure, thus enhancing tenure security.

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