

Zero Draft

Original working title: “Voluntary Guidelines on the Responsible Governance of Tenure of Land and Other Natural Resources”

An inclusive consultation process has shown a broad and strong consensus for an international instrument that deals with the governance of tenure of land, fisheries and forests. A proposed title for the instrument is thus:

“Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests”

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Preface

The alleviation of hunger and poverty, and the sustainable use of the environment, depend in large measure on how people, communities and others gain access to land, fisheries and forests. The livelihoods of many, particularly the rural poor, are based on access to these resources. They are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth.

How people, communities and others gain access to land, fisheries and forests is defined and regulated by societies through systems of tenure. These tenure systems determine who can use which resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices. Tenure systems increasingly face stress as the world's growing population requires food security, and as environmental degradation and climate change reduce the availability of land, fisheries and forests.

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. Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance. Weak governance adversely affects social stability, sustainable use of the environment, investment, and economic growth. People can be condemned to a life of hunger and poverty if they lose their farms, their homes and their livelihoods because of corrupt tenure practices or if implementing agencies fail to protect their tenure rights. People may even lose their lives when weak tenure governance leads to violent conflict.

In response to growing and widespread interest, FAO and its partners embarked on the development of voluntary guidelines on responsible tenure governance (Voluntary Guidelines). This initiative builds on and supports the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, which were adopted by the FAO Council at its Hundred and Twenty-seventh Session in November 2004, and the 2006 *International Conference on Agrarian Reform and Rural Development* (ICARRD).

During 2009-10, global and regional concerns regarding tenure governance were identified through an inclusive process of consultations. Regional consultations were held in Brazil, Burkina Faso, Ethiopia, Jordan, Namibia, Panama, Romania, the Russian Federation, Samoa and Viet Nam. These regional consultations brought together almost 700 people, from 133 countries, representing the public and private sectors, civil society and academia. Four consultations, held specifically for civil society in Africa; Asia; Europe and Central and West Asia; and Latin America, were attended by almost 200 people from 70 countries, and an additional private sector consultation drew over 70 people from 21 countries.

At its Thirty-sixth Session in October 2010, the Committee on World Food Security (CFS) encouraged the continuation of the inclusive process for developing the Voluntary Guidelines with a view to submitting them for the consideration of the

Thirty-seventh Session of CFS, and decided to establish an open-ended working group of the CFS to review the first draft of the Voluntary Guidelines.

This “zero draft” of the Voluntary Guidelines is based on the regional, civil society and private sector consultations which showed a broad and strong consensus for an international instrument that deals with the governance of tenure of land, fisheries and forests. It is consistent with international and regional instruments, including the Millennium Development Goals, that address human rights and tenure rights. The responses to this zero draft will inform the preparation of the first draft, which is to be submitted for review to the open-ended working group of the CFS.

The zero draft is intended to provide a framework for responsible tenure governance that supports food security, poverty alleviation, sustainable resource use and environmental protection. It sets out principles and internationally accepted practices that may guide the preparation and implementation of policies and laws related to tenure governance. At the same time, the zero draft recognizes that improvements in governance in this area will depend on, and also support, other development efforts including broader reforms to governance in society.

Part 1 Preliminary

1. Objectives

- 1.1 These Voluntary Guidelines seek to improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security, poverty alleviation, sustainable livelihoods, social stability, housing security, rural development, environmental protection and economic growth.
- 1.2 These Guidelines seek to improve tenure governance by setting out principles and internationally accepted practices for systems that deal with the rights to use and control land, fisheries and forests. They seek to improve the policy, legal and organizational frameworks regulating the range of tenure rights that exist over these resources. They also seek to improve the capacities and operations of implementing agencies, courts and others concerned with tenure governance.
- 1.3 These Guidelines seek to promote the cooperation of States, the private sector, civil society and academia in improving tenure governance.

2. Nature and scope

- 2.1 These Guidelines are voluntary.
- 2.2 These Guidelines should be interpreted and applied with respect for existing obligations under national and international law. They are complementary to, and support, national, regional and international initiatives that address human rights and secure access to land, fisheries and forests, and also initiatives to improve governance.
- 2.3 These Guidelines provide principles and practices that can be used by States, the private sector, civil society and academia to assess tenure governance and identify improvements.
- 2.4 These Guidelines are global in scope. They are directed towards all members and non-members of FAO, organizations (whether governmental or non-governmental), the private sector, civil society, academia and all persons associated with tenure governance. They can be applied in all countries and regions at all stages of economic development. They apply to the governance of all forms of tenure, including private, public, communal, collective, indigenous and customary.

Part 2 General matters

This part addresses matters that should apply in general to all aspects of the governance of tenure of land, fisheries and forests, with regard to rights and responsibilities; policy, legal and organizational frameworks; and delivery of services.

3. Guiding objectives and principles of responsible tenure governance

3.1 *Guiding objectives*

1. **Respect:** to recognize and respect tenure right holders and their rights.
All parties should take reasonable measures to identify and respect tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights. States should provide compensation where tenure rights are taken for public purposes.
2. **Protect:** to safeguard tenure rights against threats.
To protect tenure right holders against the arbitrary loss of their tenure rights.
3. **Fulfil:** to promote and facilitate the enjoyment of tenure rights.
To take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights.
4. **Remedy:** to provide access to justice to deal with infringements of tenure rights.
To provide effective and accessible means, through courts and other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes.
5. **Prevent:** to eliminate opportunities for corruption.
To work against corruption in all forms, at all levels, and in all settings.

3.2 *Principles of implementation*

1. **Human dignity:** treating everyone with respect, and encouraging respectful treatment from others.
2. **Non-discrimination:** treating everyone equally regardless of sex, sexuality, race, colour, language, religion or conviction, political or other opinion, national or social origin, ethnicity, nationality, age, economic position, ownership of property, marital status, disability, birth or other status.
3. **Gender and social equity, and gender and social justice:** recognizing differences between individuals, and taking positive action to ensure equitable treatment and outcomes for all.

4. **Holistic approach:** recognizing that natural resources and their uses are interconnected, and adopting an integrated approach to their administration.
5. **Consultation and participation:** engaging with those who could be affected by decisions, and responding to their contributions.
6. **Rule of law:** adopting a rules-based approach through laws that are widely publicized in relevant languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with international human rights norms and standards.
7. **Transparency:** clearly defining and widely publicizing policies, laws and procedures in relevant languages, and widely publicizing decisions in relevant languages.
8. **Accountability:** holding people and public agencies responsible for their actions and decisions.
9. **Continuous improvement:** systematically monitoring and analysing tenure governance, and implementing reforms.

4. Rights and responsibilities

- 4.1 States should strive to ensure responsible governance of tenure because land, fisheries and forests are essential elements for food security, poverty alleviation, sustainable livelihoods, social stability, housing security, rural development and economic growth.
- 4.2 States have the power to provide access to land, fisheries and forests through various forms of tenure, but they should ensure that the forms of tenure are consistent with international and regional human rights obligations.
- 4.3 All parties should recognize that no tenure right, including private ownership, is absolute. All tenure rights are limited by the rights of others and by the State's powers, such as to expropriate with compensation, to impose spatial planning restrictions, and to impose taxes. Tenure rights are also balanced by duties. All should respect the long-term protection of land, fisheries and forests.
- 4.4 States should provide legal recognition, in a non-discriminatory and gender-sensitive way, to tenure rights that are considered legitimate but are not currently protected by law. States should define through widely publicized rules the categories of rights that are considered legitimate.
- 4.5 States should protect tenure rights, and ensure that people are not arbitrarily evicted from their homes or otherwise deprived of their tenure rights.

- 4.6 States should remove all forms of discrimination that prevent people from acquiring, enjoying or disposing of tenure rights, including by inheritance, in accordance with national and local norms that do not violate international and regional human rights obligations.
- 4.7 States may consider providing non-discriminatory and gender-sensitive assistance where people are unable through their own actions to acquire tenure rights to sustain themselves, to gain access to the services of implementing agencies and courts, or to participate in processes that could affect their tenure rights.
- 4.8 States should provide access through courts and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, and should support alternative means of resolving such disputes.

5. Policy, legal and organizational frameworks

- 5.1 States should provide and maintain policy, legal and organizational frameworks that promote responsible governance of tenure of land, fisheries and forests. These frameworks are dependent on, and are supported by, broader reforms to the legal system, public service and courts.
- 5.2 States should ensure that policy, legal and organizational frameworks for tenure governance recognize legitimate tenure rights, including by providing legal recognition to tenure rights that are considered legitimate but are not currently protected by law; facilitate and promote the exercise of tenure rights; and protect tenure rights. Frameworks should reflect the social, cultural, religious, environmental and economic significance of natural resources. States should provide frameworks that are non-discriminatory, promote social and gender equity, and are consistent with international and regional human rights obligations. Frameworks should reflect the interconnected relationships between land, fisheries and forests and their uses, and establish an integrated approach to their administration.
- 5.3 States should develop relevant policies, laws and procedures through participatory processes, ensuring that both men and women are included from the outset. Policies, laws and procedures should take into account the capacity to implement. They should incorporate gender-sensitive approaches, be clearly expressed in relevant languages, and widely publicized.
- 5.4 States should clearly define the roles and responsibilities of agencies dealing with tenure of land, fisheries and forests. States should ensure coordination between implementing agencies, as well as with local governments and indigenous and other customary communities.
- 5.5 States should place responsibilities at levels of government that can most effectively deliver services to the people. States should ensure that implementing

agencies have the human, physical, financial and other forms of capacity to provide adequate quality of services. The services and information of implementing agencies should meet national standards of quality.

- 5.6 States should define and publicize opportunities for the private sector, civil society and academia in developing and implementing policy, legal and organizational frameworks.
- 5.7 States and other parties should regularly review and monitor policy, legal and organizational frameworks to maintain their effectiveness. Implementing agencies and courts should engage with customer representatives and the broader public to improve services and eliminate opportunities for corruption, particularly through transparency in processes and decision-making. Information about changes and their anticipated impacts should be clearly stated and widely publicized in relevant languages.
- 5.8 States should recognize that policies and laws on tenure rights operate in the broader social, cultural, religious, environmental and economic contexts. Where the broader contexts change, and where reforms to tenure are therefore required, States should seek to develop national consensus on proposed reforms. To make proposed tenure reforms sustainable, States may need to alter policies and laws beyond those directly related to tenure of land, fisheries and forests.

6. Delivery of services

- 6.1 States should provide accessible and non-discriminatory services to protect tenure rights to land, fisheries and forests, to promote and facilitate the enjoyment of those rights, and to resolve disputes. States should review services of implementing agencies, such as land registries and spatial planning bodies, and the courts, and introduce improvements where required. States should eliminate unnecessary legal and procedural requirements. They should overcome common obstacles such as lack of information, language barriers, negative attitudes of staff (particularly to women and ethnic minorities), high costs, complicated or difficult procedures, long distances to services and delays.
- 6.2 Within resource limitations, States should ensure that implementing agencies and courts serve the entire population, delivering equal services to all, including those in remote locations. Services should be provided promptly and efficiently. Procedures should be simplified without threatening tenure security or quality of justice. Explanatory materials, which inform customers of their rights and responsibilities, should be widely publicized in relevant languages, and should address requirements, fees, time for response and appeal procedures.
- 6.3 States should ensure that policies and laws are implemented consistently. Internal guidelines should be established so that staff can implement policies and laws in a reliable manner. Guidelines should be expressed in gender-sensitive ways and

promote social equity. Services, including those of courts, should be provided in languages that everyone can understand.

- 6.4 States should establish policies and laws to promote the sharing and effective use of spatial and other information by the public and private sectors, academia and the public. National standards should be developed for the shared use of information, taking into account international and regional standards.
- 6.5 States should use innovative technology to increase efficiency and overcome obstacles to delivering services to the entire population, and to sharing information between implementing agencies.
- 6.6 States should ensure that implementing agencies and courts have the human, physical, financial and other forms of capacity to implement policies and laws in a timely, effective manner. Staff should receive continuous training.
- 6.7 States and other parties may consider support to vulnerable or marginalized groups who could not otherwise gain access to services, such as through the use of paralegals or parasurveyors, and by mobile services for remote communities.
- 6.8 Implementing agencies and courts should foster a culture based on customer service and ethical behaviour. They should seek regular feedback from customers, such as through surveys and focus groups, to raise standards, to meet expectations of customers, and to satisfy new needs. Agencies and courts should publish performance standards and report regularly on results.
- 6.9 States should eliminate opportunities for corruption, particularly through publicizing requirements, fees and times for responses, and through removing conflicts of interest and wide discretionary powers. States should ensure that decision-makers are accountable for their decisions and actions. States may consider providing for the administrative review of decisions of implementing agencies. Adequate and equitable pay scales should be introduced to reduce incentives for corrupt practices. Staff positions that are vulnerable to corruption should be identified and safeguards should be introduced. Staff should be protected against political interference in their duties.

Part 3 Legal recognition and allocation of tenure rights and duties

This part addresses the governance of tenure of land, fisheries and forests with regard to the legal recognition of indigenous and other customary tenure rights, as well as informal tenure rights; and the first allocation of tenure rights to resources that are owned or controlled by the public sector.

7. Safeguards

- 7.1 When States recognize or allocate tenure rights to land, fisheries and forests, they should establish safeguards to avoid extinguishing tenure rights of others, particularly women and the vulnerable, who hold subsidiary rights, such as gathering rights.
- 7.2 Where States intend to recognize or allocate tenure rights, they should identify all existing rights and right holders, whether recorded or not. Indigenous and other customary communities, smallholders and anyone else who could be affected should be included in the consultation and decision-making processes. Where necessary, such people should be provided with information and support so they can participate effectively. States should provide a right of appeal if people believe their tenure rights are not recognized.
- 7.3 States should ensure that records of newly recognized or allocated tenure rights show spouses. Where possible, legal recognition and allocation of tenure rights should be done systematically, progressing area by area in accordance with national priorities, in order to provide the poor and vulnerable with full opportunities to acquire legal recognition of their rights. Locally suitable approaches should be used to increase transparency when records of tenure rights are created for the first time.
- 7.4 States should ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties. Where necessary, States should provide support to such people so that they can enjoy their rights and fulfil their duties.
- 7.5 Where it is not possible to provide legal recognition of tenure rights, States should avoid forced evictions that violate international and regional human rights obligations and are contrary to the rule of law. Where evictions are considered to be justified, they should be conducted with due regard to international and regional human rights obligations, and measures should be taken to provide the displaced people with adequate resettlement.

8. Public natural resources

- 8.1 Where States own or control land, fisheries and forests, they should determine which of these resources will be retained and used by the public sector, and which of these resources will be allocated for use by others.

- 8.2 States should establish up-to-date information on land, fisheries and forests that they own or control by creating and maintaining inventories. Such inventories should record the agencies responsible for administration as well as any legal, indigenous, customary or informal rights to these resources. Where possible, States should ensure that the publicly held tenure rights are recorded together with privately held tenure rights in a single recording system, or are linked to them by a common framework.
- 8.3 States should develop and publicize policies covering the use and control of land, fisheries and forests that are retained by the public sector. These resources should be administered in transparent and effective ways, in fulfilment of public policies, and taking into account the tenure rights of others. Transactions concerning these resources should be undertaken in open and accountable ways. The State's role of regulator and role of owner should be assigned to separate agencies to avoid conflicts of interest.
- 8.4 States should develop and publicize policies covering the allocation of tenure rights, and where appropriate, the delegation of responsibilities for tenure governance. Policies for allocation of rights should be consistent with broader social, environmental and economic objectives. Such policies should recognize the range of tenure rights and right holders. Local communities which have traditionally used the land, fisheries or forests should receive priority in the allocation of rights. The allocation of rights should not threaten the livelihoods of people by depriving them of their historic access to resources.
- 8.5 States have the power to allocate tenure rights in various forms, from limited use to full ownership. Policies should specify the means of allocation of rights, such as allocation based on historical use or public auction. States should determine whether they retain any form of control over resources that have been allocated, such as by imposing duties or restrictions on the rights.
- 8.6 States should allocate tenure rights and delegate tenure governance in transparent, participatory ways, using simple procedures. Information in relevant languages should be provided to all potential participants, including through gender-sensitive messages. Where possible, States should ensure that newly allocated tenure rights are recorded with other tenure rights in a single recording system, or are linked by a common framework.
- 8.7 States should ensure that implementing agencies responsible for land, fisheries and forests have the human, physical, financial and other forms of capacity. Where necessary, those who are allocated tenure rights should be provided with support so they can enjoy their rights. Where responsibilities for tenure governance are delegated, the recipients should receive training and other support so they can perform those responsibilities.
- 8.8 States should clearly define the decision-making authorities and their powers in order to eliminate opportunities for corruption in the allocation of rights to land,

fisheries and forests. States should also introduce checks and balances, such as public disclosure of all allocation of rights, and hold decision-makers accountable.

- 8.9 States should monitor the outcome of allocation programmes, including their impacts on both men and women, as well as on the environment, and introduce corrective measures as required.

9. Indigenous and other customary tenure

- 9.1 All parties should acknowledge that land, fisheries and forests have social, cultural, spiritual, environmental, economic and political values for indigenous and other communities with customary tenure systems.
- 9.2 Communities that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of access for women. There should be effective participation of all members, men and women, in decisions regarding indigenous and other customary tenure. Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision-making and governance of indigenous and other customary tenure.
- 9.3 In the case of indigenous communities, States should meet their international obligations including, as appropriate, from the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries, the United Nations Declaration on the Rights of Indigenous Peoples, and the Convention on Biological Diversity.
- 9.4 States should recognize indigenous and other customary tenure rights and governance systems of communities, consistent with international and regional human rights obligations. Recognition should cover resources that are used exclusively by communities and also those resources that they have traditionally shared with others.
- 9.5 Where appropriate, States should adapt the policy, legal and organizational frameworks to cover indigenous and other customary tenure. Where constitutional or legal reforms place the rights of women in conflict with custom, all parties should cooperate to accommodate such changes in the customary systems.
- 9.6 In drafting policies and laws, States should take into account the social, cultural, spiritual, environmental and economic values of land, fisheries and forests held under indigenous and other customary tenure. There should be full and effective participation of all members of affected communities, including vulnerable and marginalized members, when developing policies and laws.

- 9.7 All parties should protect communities against the unauthorized use of their resources by others. If desired by a community, all parties should assist to formally document and publicize information on the nature and location of resources used by the community. Where indigenous and other customary tenure rights are formally documented, they should be recorded with other tenure rights to prevent competing claims.
- 9.8 States and other parties should hold good faith negotiations with communities before initiating any plan or project that could affect the resources for which the communities hold rights. Decision-making processes involving all members of a community, men and women, should be adopted for decisions that require free, prior and informed consent by the community. Negotiations and decision-making processes should be organized without intimidation, and be conducted in a climate of trust.
- 9.9 Where necessary, States and other parties should provide professional assistance to communities to participate in the development of policies, laws and projects.
- 9.10 States should respect and support indigenous and other customary approaches to resolving tenure conflicts within communities. For land, fisheries and forests that are used by more than one community, means of resolving conflict should be strengthened or developed.
- 9.11 States should eliminate opportunities for corruption in matters of indigenous and other customary tenure, particularly by involving civil society, building capacity of community members, and ensuring greater transparency.

10. Informal tenure

- 10.1 Where informal tenure exists, States should acknowledge its existence in ways that recognize the reality of the situation; promote social, environmental and economic well being; and are consistent with international and regional human rights obligations. In particular, States should acknowledge the emergence of informal tenure rights in peri-urban areas arising from large-scale migrations.
- 10.2 States should establish policies and laws to provide recognition and protection to informal tenure rights where those rights do not present threats to individuals or society. Policies and laws should be drafted in a non-discriminatory and gender-sensitive way, and widely publicized in relevant languages.
- 10.3 States should legalize informal tenure rights through participatory, gender-sensitive processes, while also having regard to informal lessees and others. Such processes should be simple to improve access to legalization services and minimize costs. States should ensure cooperation between implementing agencies and bodies responsible for different aspects of legalization.

- 10.4 States should simplify legal and administrative requirements for land use change and development on land, including the construction of buildings and other structures, to remove causes of informality. Development requirements and processes should be clear, simple and affordable to reduce the burden of compliance. States should create conditions that encourage planned public and private investment in housing.
- 10.5 States should eliminate opportunities for corruption, particularly through increasing transparency, making decision-makers accountable, and ensuring decisions are delivered promptly.

Part 4 Transfers and other changes to tenure rights and duties

This part addresses the governance of tenure of land, fisheries and forests when existing rights and associated duties are transferred or reallocated through voluntary and involuntary ways through markets, investments and concessions, land consolidation and other readjustment approaches, restitution, redistributive reforms or expropriation.

11. Markets

- 11.1 Where appropriate, States should recognize markets as a means for economic growth through the efficient trading of a broad range of tenure rights of use and ownership. States should ensure that markets operate efficiently, while protecting vulnerable groups, addressing undesirable impacts and promoting non-market policy objectives, such as environmental protection.
- 11.2 Where markets in tenure rights operate, States should establish policies, laws and regulatory agencies to ensure transparent market operations, to provide non-discriminatory access, and to prevent uncompetitive practices. States should reduce or eliminate taxes and fees that discourage market participation. States should also simplify procedures and regulatory requirements for making transactions.
- 11.3 States and other parties should ensure that information on market transactions and values is publicly available. States should monitor this information and take action where markets have adverse impacts or fail to serve the population, particularly the vulnerable.
- 11.4 States should establish reliable recording systems that provide information on tenure rights and duties in order to increase tenure security and to reduce the costs and risks of transactions.
- 11.5 When tenure rights are traded, States should establish safeguards to protect the tenure rights of spouses who are not shown as holders of tenure rights in recording systems, such as land registries.
- 11.6 States and other parties should recognize that non-market values, such as social, cultural, religious and environmental values, are often not well served by markets. States should protect the wider interests of societies through policies and laws, and through means such as taxation and regulated spatial planning.
- 11.7 States and other parties should develop, publicize and monitor the implementation of high levels of ethical behaviour in the operation of markets. Public and private sector parties should follow the ethical standards. All parties should eliminate opportunities for corruption, particularly through public disclosure.

12. Investments and concessions

- 12.1 States should encourage and support investments and concessions in land, fisheries and forests while safeguarding against dispossession of tenure rights and livelihoods. Responsible investments should promote food security, poverty alleviation and sustainable use of the environment; support local communities; work within and respect existing rights; and contribute to rural and urban development, the creation of employment and the diversification of livelihoods. All parties should pay particular attention where investments and concessions involve the large-scale acquisition of tenure rights as they could have major negative impacts on the livelihoods of individuals, families and communities, and on the environment.
- 12.2 States should develop and publicize policies and laws that encourage responsible investments and concessions, respect human rights principles, and promote sustainable use of the environment. Laws should require agreements for investments and concessions to clearly define the acquired rights and duties of the investors. Agreements should be periodically reviewable, and sanctions should be clear and enforceable.
- 12.3 States should ensure that proposals for investments and concessions involving the large-scale acquisition of tenure rights are subject to negotiations with the men and women who could be affected. Where necessary, States and civil society should assist to develop capacity of individuals, families and communities in negotiations and implementation, and provide professional assistance.
- 12.4 States should ensure that existing tenure rights and claims, including those of customary and informal tenure, are identified as part of investigatory work in areas where investments and concessions involving large-scale acquisition of tenure rights are being considered. This process should be conducted in consultation with local communities and holders of tenure rights.
- 12.5 Investors should ensure that all relevant persons are engaged and informed in the negotiations, and the agreements are understood by all.
- 12.6 Private sector professionals who provide services to States and investors should undertake due diligence to the best of their ability when providing their services, irrespective of whether it is specifically requested.
- 12.7 States and civil society should contribute to the effective monitoring of the implementation and impacts of agreements involving large-scale acquisition of tenure rights, and States should take corrective action where necessary.

13. Land consolidation and other readjustment approaches

- 13.1 Where appropriate, States may consider land consolidation and other approaches for the readjustment of parcels or holdings when seeking to improve their layout and use. These approaches should be used to coordinate the preferences of owners and users of parcels or holdings in the readjustments.
- 13.2 States may consider the establishment of land banks (sometimes called land funds) to acquire and temporarily hold land parcels until they are allocated to beneficiaries through land consolidation programmes.
- 13.3 States may consider using land consolidation and land banks in environmental protection and transport projects to facilitate the acquisition of private land for such public projects, and to provide affected owners and farmers with land in compensation that will allow them to continue, and even increase, production.
- 13.4 Where fragmentation of smallholder family farms and forests into many parcels increases production costs, States may consider land consolidation and land banks to improve the structure of those farms and forests. States should refrain from using land consolidation where fragmentation provides benefits, such as risk reduction or crop diversification. Land consolidation projects to restructure farms should be integrated with support programmes for farmers, such as the rehabilitation of irrigation systems and local roads. Measures should be developed to protect the investment of land consolidation by restricting the future subdivision of consolidated parcels.
- 13.5 States should establish strategies for land consolidation, land banks and other readjustment approaches that fit particular local requirements. Such strategies should be socially, environmentally and economically sustainable, and gender-sensitive. Strategies should identify the principles and objectives of land consolidation, land banks and other readjustment approaches; the beneficiaries; and the building of capacity and knowledge in government, the private sector and academia. Laws should establish clear and cost-effective procedures for the reorganization of parcels or holdings and their uses.
- 13.6 States should establish appropriate safeguards in projects using land consolidation and other readjustment approaches. Anyone likely to be affected by a project should be contacted and provided with sufficient information in relevant languages. Participatory and gender-sensitive approaches should be used. Environmental safeguards should be established to prevent degradation and loss of biodiversity.

14. Restitution

- 14.1 Where appropriate, States should provide restitution for the loss of tenure rights due to policies and laws that are regarded as unjust. Where possible, the original parcels or holdings should be returned to those who suffered the loss, or their

heirs. Where the original parcel or holding cannot be returned, States should provide compensation in the form of money or alternative parcels or holdings. Where indigenous and other customary tenure rights were unjustly taken and the full restitution of the traditional domains is not possible, the communities should be assisted in reaching agreements for the continued use of the resources.

- 14.2 States should develop gender-sensitive policies and laws that provide for clear, transparent processes for restitution. Information on restitution should be widely disseminated in relevant languages. Claimants should be provided with adequate assistance throughout the process. States should ensure that restitution claims are promptly processed. Where necessary, successful claimants should be provided with support services so that they can enjoy their rights and fulfil their duties.

15. Redistributive reforms

- 15.1 Where appropriate, States may consider redistribution of private land, fisheries or forests to provide more equitable access. States should clearly define the objectives of reform programmes, such as improved social welfare and justice, and sustainable use of the environment. The intended beneficiaries should also be clearly defined, such as families, women, informal settlement residents, historically disadvantaged groups, youth or indigenous groups.
- 15.2 Where States choose to implement redistributive reforms, they should ensure that the reforms are consistent with their international and regional human rights obligations. Reforms should also follow the rule of law. States should facilitate the development of a national consensus on the redistribution, including balancing the needs of all parties, and on the approaches to be used. The financial and other contributions expected of beneficiaries should be reasonable and not leave them with unmanageable debt loads. Those who give up their tenure rights to the resources should receive equivalent payments without undue delay.
- 15.3 States should develop policies and laws for redistributive reform, through participatory processes, to make the reforms sustainable. States should ensure that policies and laws assist beneficiaries, whether communities, families or individuals, to earn a living from the resources they acquire. Policies and laws on markets, taxation and subsidies should be revised to remove distortions that encourage inequitable concentration of ownership and other tenure rights.
- 15.4 States should ensure that redistributive land reform programmes provide the full measure of support required by beneficiaries, such as access to credit, inputs, markets, training and advisory services; farm development; and housing. The provision of support services should be coordinated with the movement onto the land by the beneficiaries. The full costs of land reforms, including costs of support services, should be identified in advance and included in relevant budgets.

- 15.5 States should implement redistributive reforms through transparent, participatory approaches and procedures. All parties should receive full and clear information on the reforms, including through gender-targeted messages. Beneficiaries should be selected through open processes, and they should receive secure tenure rights that are publicly recorded. Access to means of resolving disputes should be provided. States should eliminate opportunities for corruption in redistributive reform programmes, particularly through greater transparency and participation.
- 15.6 All parties should monitor and evaluate the outcomes of reform programmes, including their impacts on both men and women, and where necessary, States should introduce corrective measures.

16. Expropriation and compensation

- 16.1 States should expropriate only where rights to land (including associated buildings and other structures), fisheries or forests are required for a public purpose. They should respect all tenure right holders, including lessees, women and vulnerable groups, by acquiring the minimum necessary, and promptly providing equivalent compensation. States may consider acquiring the resources through open markets as an alternative to expropriation.
- 16.2 States should ensure that the planning for expropriation is transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages. Consultations should provide information regarding possible alternative approaches to achieve the public purpose. States should be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance.
- 16.3 States should ensure that compensation restores those affected to their equivalent position before the expropriation. The compensation may be in cash, rights to alternative areas, or a combination. The full costs should be identified in advance of expropriation so that the compensation is provided promptly.
- 16.4 States should ensure that implementing agencies have the human, physical, financial and other forms of capacity. Staff should receive continuous training.
- 16.5 Where the resources are not needed due to changes of plans, States should give the original right holders the first opportunity to re-acquire the resources.
- 16.6 All parties should eliminate opportunities for corruption, particularly through use of objectively assessed values, transparent processes and a right to appeal.
- 16.7 Where resources to be expropriated are used by people and communities who do not have legally recognized tenure rights, and where it is not possible to provide them with legal recognition of tenure rights, States should avoid forced evictions that violate international and regional human rights obligations and are contrary to the rule of law. Where evictions are considered to be justified, they should be

conducted with due regard to international and regional human rights obligations, and measures should be taken to provide the displaced people with adequate resettlement.

Part 5 Administration of tenure

This part addresses governance of the administration of tenure, with regard to records of tenure rights, valuation, taxation, regulated spatial planning, resolution of disputes over tenure, and transboundary matters.

17. Records of tenure rights

- 17.1 States should provide systems to record tenure rights (including registration, cadastre and licensing systems) to improve tenure security and the functioning of markets. Such systems should record, maintain and publicize tenure rights and duties, who holds them, and the parcels or holdings of land (including associated buildings and other structures), fisheries or forests to which the rights and duties relate.
- 17.2 Such systems should be appropriate for the particular circumstances of countries, including the available human and financial resources. Records of tenure rights of the State and public sector, private sector and indigenous and other customary communities should be kept in a single recording system or be linked by a common framework to provide transparency and a single source of information for planning and other purposes. Where it is not possible to record indigenous and other customary tenure rights, or occupations in informal settlements, particular care should be taken to prevent the registration of competing rights in those areas.
- 17.3 States should ensure that everyone is able to record their rights and obtain information without discrimination because of ethnicity, language, gender, marital status or other basis. Services should be delivered in a transparent and gender-sensitive way, with assistance for those with special needs. Responsibilities should be placed at levels that can most effectively deliver services to the people. Where appropriate, implementing agencies, such as land registries, should establish service centres or mobile offices, having regard to accessibility by women, the poor and vulnerable groups. States may consider using professionals, such as lawyers, notaries and surveyors, to deliver information on tenure rights to the public.
- 17.4 States should ensure that implementing agencies provide adequate quality of services. Agencies should publish performance standards, paying due attention to non-discrimination, gender equity, affordability and accessibility. Agencies should regularly monitor and publish results on their performance. The management of implementing agencies should be subject to supervision by an external, impartial board or state body.
- 17.5 States should ensure that implementing agencies have the human, physical, financial and other forms of capacity. Staff should receive continuous training. States should provide agencies with the financial autonomy required to manage their own affairs. Agencies should adopt feasible business models for their long-

term sustainability. Staff should be recruited with due regard to ensuring gender and social equality, including at all management and technical levels.

- 17.6 Implementing agencies should adopt simplified procedures and locally suitable technology to reduce the costs and time required for delivering services. The spatial accuracy for parcels should be sufficient for their identification to meet local needs, with increased spatial accuracy being provided if required over time. To facilitate the use of records of tenure rights, implementing agencies should link information on the rights, the holders of those rights, and the parcels related to those rights, including reference to spatial locations. Records should be indexed by parcels as well as by holders to allow competing rights to be identified. As part of broader public information sharing, records of tenure rights should be available to State agencies and local governments to improve their services. Information should be shared in accordance with national standards.
- 17.7 States should ensure that information on tenure rights is easily available to all, subject to privacy restrictions. Such restrictions should not unnecessarily prevent public scrutiny to identify corrupt and illegal transactions.
- 17.8 Professional associations should develop, publicize and monitor the implementation of high levels of ethical behaviour. Implementing agency staff and private sector parties should follow the ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.
- 17.9 States should eliminate opportunities for corruption in the recording of tenure rights, particularly through publicizing requirements, fees, times for responses, and through removing conflicts of interests and wide discretionary powers. Information on processes, fees and other requirements should be published. Adequate and equitable pay scales should be introduced to reduce incentives for corrupt practices. Staff positions vulnerable to corruption should be identified and safeguards, such as staff rotations, should be introduced. Staff should be protected against political interference in their duties. States should ensure that decision-makers are accountable for their decisions and actions.

18. Valuation

- 18.1 States should create, maintain and publish objective assessments of values of tenure rights to land (including associated buildings and other structures), fisheries and forests by developing and supporting systems for specific purposes such as operation of markets, security for loans, investments and concessions, expropriation and taxation.
- 18.2 States should develop policies and laws that encourage and require transparency in valuing tenure rights for governmental, commercial and other purposes. Sale prices and other market information should be recorded and analysed, to provide a basis for accurate and reliable assessments of values. Where appropriate,

policies and laws should take into account non-market values, such as social, cultural, religious and environmental values.

- 18.3 States and other parties should develop and publicize national standards for valuation for governmental, commercial and other purposes. National standards should be consistent with relevant international standards.
- 18.4 Implementing agencies should make their valuation information and analyses available to the public. Agencies should share information in accordance with national standards.
- 18.5 States should ensure that implementing agencies have the human, physical, financial and others forms of capacity. Continuous training should be provided, particularly in methodologies and international standards.
- 18.6 Professional associations for valuation should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should follow the ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.
- 18.7 States and other parties should eliminate corruption opportunities in valuation through transparency of information and methodologies, particularly in public resource administration and compensation, and in company accounts and lending.

19. Taxation

- 19.1 States should ensure that taxation relating to land (including associated buildings and structures), fisheries and forests is equitable and consistent with the State's broader social and economic objectives.
- 19.2 States have the power to use taxes to raise revenue and also to achieve social, environmental and economic objectives, such as encouraging investment or preventing speculation and inequitable concentration of ownership and other tenure rights. Taxes should not discourage socially or economically desirable behaviour, such as registering transactions or declaring the full sale value.
- 19.3 States may consider developing policies and laws on annual taxes on tenure rights as well as incidental taxes at the point where a transaction occurs. Policies and laws should cover means for enforcement of tax payments.
- 19.4 States should administer taxes efficiently and transparently. Systems of assessment of valuation should be based on internationally accepted practices. Taxes should be based on objective, up-to-date records of values. Assessments of valuations and taxable amounts should be made public. States should provide taxpayers with a right to appeal against valuations.

- 19.5 States should ensure that implementing agencies have the human, physical, financial and others forms of capacity. Continuous training should be provided, particularly in methodologies and international standards.
- 19.6 Professional associations for accounting and taxation should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should follow the ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.
- 19.7 States and other parties should eliminate corruption opportunities in taxation administration, particularly through increased transparency and use of objectively assessed values.

20. Regulated spatial planning

- 20.1 States should conduct regulated spatial planning, including territorial planning, in a way that promotes broader social, environmental and economic objectives.
- 20.2 States should develop and publicize policies and laws for regulated spatial planning that incorporate gender-sensitive, participatory approaches, which encourage involvement at all stages. Indigenous and customary forms of planning should be considered in the formal planning system. States should adopt specific regulations and tools for complex and special situations, such as for coastal and river basin planning, and for increased density and expansion of urban areas.
- 20.3 States should ensure that regulated spatial planning is conducted in a manner that recognizes the interconnected relationships between land, fisheries and forests and their uses. There should be a balance between State, private, public and community interests. Planning should take into account and accommodate the requirements for various uses, such as rural, urban and environmental protection. National, regional and local spatial plans should be consistent. Agencies should share information in accordance with national standards.
- 20.4 States should ensure that there is wide public involvement in the development of planning proposals and the review of draft spatial plans. Where necessary, communities should be provided with support during the planning process. Implementing agencies should disclose how public input was reflected in the final spatial plan.
- 20.5 States should ensure that implementing agencies have the human, physical, financial and other forms of capacity to develop and implement spatial plans, and to monitor and enforce compliance with those plans. Staff should receive continuous training.

- 20.6 Professional associations for spatial planning should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should follow the ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.
- 20.7 States should eliminate corruption opportunities in regulated spatial planning, particularly through involvement of civil society and others in the planning process. Safeguards should be established against improper use of spatial planning powers, particularly regarding changes to regulated use. States should ensure that decision-makers are accountable for their decisions and actions. Implementing agencies should report on results of compliance monitoring.

21. Resolution of disputes over tenure rights

- 21.1 States should provide and support means for resolving disputes over tenure rights, including enforcement of decisions, to deal peacefully with problems that could otherwise disrupt livelihoods. Responsibilities for resolving disputes should be placed at levels that can most effectively deliver services to the people.
- 21.2 States have the power to provide means of dispute resolution in various forms, but each form should be efficient, effective and deal with disputes promptly. Dispute resolution services should be affordable and accessible in terms of location, language and procedures.
- 21.3 States may consider introducing specialist tribunals or bodies that deal solely with disputes over tenure rights, and creating expert positions within the courts to deal with technical matters, such as survey disputes. States may also consider special tribunals to deal with disputes over regulated spatial planning, as well as valuation and taxation.
- 21.4 States should strengthen and develop alternatives, such as arbitration. Where appropriate, States should also support customary or religious means that provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights. States may consider allowing enforcement of customary and other non-judicial decisions through the courts.
- 21.5 States may consider administrative options using implementing agencies, such as those responsible for surveying, to resolve disputes between private parties. Such options should be limited to matters within the technical expertise of an implementing agency. Decisions should be delivered in writing and based on objective reasoning, and there should be a right to appeal to the courts.
- 21.6 States should incorporate approaches in procedures that avoid or resolve potential disputes at the preliminary stage, such as by sharing information, giving reasons for decisions, and using negotiations as part of the procedure. Customers should have means of resolving potential disputes at preliminary stages, either

within the implementing agency, such as by administrative review, or externally, such as by an independent review or through an ombudsman.

- 21.7 States should provide special services to ensure access to justice by those who would otherwise be excluded due to gender, ethnicity, education, language, disability, location or other factors. Courts and other bodies should ensure that their staff have representation to provide effective services for women, ethnic groups and language groups. States may consider outreach services, legal assistance and paralegals to provide wider access to justice.
- 21.8 Professional associations should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should follow the ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.
- 21.9 States should eliminate opportunities for corruption in dispute resolution processes, and may consider the introduction of an investigative office, such as an ombudsman. The elimination of opportunities for corruption in disputes regarding tenure rights is dependent on broader anti-corruption reforms.

22. Transboundary matters

- 22.1 Where appropriate, all parties should work together on aspects of tenure that cross international boundaries. While tenure is predominantly a matter of national sovereignty, some aspects of tenure could affect neighbouring countries.
- 22.2 All parties should contribute to an improved understanding of transboundary issues of tenure, such as pastoralists whose traditional grazing areas lie across international boundaries, and fishers who follow fish stocks across international boundaries.
- 22.3 States should cooperate to settle and clearly define international boundaries where this has not been done.
- 22.4 States and regional bodies should harmonize legal standards to create joint systems of tenure governance, which are in accordance with international and regional obligations. States, regional bodies and right holders should develop and strengthen international measures to administer tenure rights that cross international boundaries.

Part 6 Responses to emergencies

This part addresses the governance of tenure of land, fisheries and forests during catastrophic events where people could be displaced on a large scale as a result of climate change, natural disasters and violent conflicts.

23. Climate change

- 23.1 All parties should ensure that tenure aspects are addressed in policies and laws concerning adaptation to climate change and mitigation measures.
- 23.2 Where appropriate, States should prepare and implement adaptation programmes to assist people who may be displaced due to climate change. Provision of secure access to alternative resources for displaced persons should be negotiated with host communities to ensure that the resettlement does not jeopardize the livelihoods of others. Means to resolve disputes over tenure rights should also be provided. Implementing agencies should be strengthened to deal with displacement in collaboration with climate change agencies. International and regional organizations and States may consider offering special assistance to small island developing states.
- 23.3 Where appropriate, all parties should ensure tenure aspects are addressed in mitigation programmes, and that tenure rights, including indigenous and other customary rights, are recognized and protected. Relevant local communities should be closely involved in the negotiations and implementation of mitigation programmes. Effective, transparent and accountable means should be developed and implemented for the distribution of benefits to local communities and for the fair distribution of benefits within the communities. Community participation should provide for gender equality and should not discriminate against the vulnerable and marginalized. Where necessary, professional assistance should be provided to communities so they can participate effectively in the development and implementation of programmes.
- 23.4 Independent means should be established for the monitoring, reporting and verification of mitigation actions.

24. Natural disasters

- 24.1 All parties should ensure that tenure aspects are addressed when preparing for natural disasters and in responses to them.
- 24.2 All parties should act in accordance with international principles, including the Humanitarian Charter and Minimum Standards in Disaster Responses, and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”).

- 24.3 States should address tenure in disaster preparedness programmes. Information on tenure rights should be collected for areas that could be affected. Systems for recording tenure rights should be resilient to natural disasters, including off-site storage of records, to allow right holders to prove their rights and relocate their parcels. Areas should be identified for the temporary resettlement of people who could be displaced by natural disasters, and rules should be established for providing tenure security in such areas.
- 24.4 States and other parties should include tenure in the emergency response phase. Provision of secure access for displaced persons should be negotiated with host communities to ensure that the resettlement does not jeopardize the livelihoods of others. Displaced persons should be prevented from the unauthorized use of resources of others. Information on tenure rights and unauthorized use should be disseminated to all affected persons.
- 24.5 States and other parties should address tenure during the reconstruction phase. Persons who are temporarily displaced should be assisted in returning to their places of origin. Means to resolve disputes over tenure rights should also be provided. Where parcel boundaries must be re-established, this should be done in a participatory manner. Where people are unable to return to their places of origin, they should be permanently resettled. Such resettlement should be negotiated with host communities to ensure that the people who are displaced are provided with secure access to alternative resources in ways that do not jeopardize the livelihoods of others.

25. Violent conflicts

- 25.1 All parties should ensure that tenure aspects are addressed during and after violent conflicts, and should take steps to eliminate tenure as a cause of violent conflicts.
- 25.2 All parties should act in accordance with international principles and relevant obligations including those of the Convention relating to the Status of Refugees and its Protocol, and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”).
- 25.3 In order that tenure problems do not lead to violent conflicts, all parties should take steps to resolve such problems through peaceful means. States should revise relevant policies and laws to eliminate discrimination that can be a cause of violent conflicts.
- 25.4 When violent conflicts arise, States and other parties should try to protect tenure rights. Displaced persons should be settled in safe areas in ways that protect the rights of the host communities. Violations of tenure rights should be documented. Official records of tenure rights should be protected against destruction in order to provide evidence for subsequent restitution processes, and

in areas where such records do not exist, the existing tenure arrangements should be documented as best possible.

- 25.5 When violent conflicts cease, States and other parties should ensure that tenure problems are addressed in ways that contribute to the peace process. Where restitution is possible, refugees and displaced persons should be assisted in returning to their place of origin. Procedures for restitution should be non-discriminatory and gender-sensitive, and claims for restitution should be processed promptly. Procedures for restitution of indigenous and other customary tenure rights should provide for the use of traditional sources of information.
- 25.6 Where restitution is not possible, the provision of secure access to alternative resources for displaced persons should be negotiated with host communities to ensure that the resettlement does not jeopardize the livelihoods of others. Special procedures should provide the vulnerable, including widows and orphans, with access to resources. Where required, policies and laws should be revised to eliminate discrimination introduced during the conflicts. Relevant agencies should be re-established to deliver services necessary for responsible tenure governance.

Part 7 Implementation, monitoring and evaluation

- 26.1 All parties are encouraged to use collaborative efforts to promote and implement these Voluntary Guidelines in accordance with national priorities and circumstances. All parties are encouraged to disseminate information on responsible tenure governance in order to influence and improve practices.
- 26.2 All parties are encouraged to monitor and evaluate the implementation of these Voluntary Guidelines through participatory approaches that include States, the private sector, civil society and academia. All parties are encouraged to cooperate to establish means for monitoring and evaluation, and to develop indicators to assess the impact of policies, laws, programmes and projects on the governance of tenure, including their impacts on both men and women. Based on the outcome of monitoring and evaluation, all parties are encouraged to introduce improvements to tenure governance. All parties are encouraged to share experiences with others through regional and global networks.
- 26.3 International bodies should periodically monitor the implementation, and review the relevance and effectiveness of these Voluntary Guidelines. As required, these Voluntary Guidelines should be brought up to date, taking into account social, environmental, economic and technological changes.