



# Protecting land and natural resources tenure rights in the era of COVID-19 by heeding the lessons from the past

## SUMMARY

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The COVID-19 pandemic has caused severe disruptions in food supply chains, undermining the ability of small food producers to access their land and the natural resources they need, thereby rendering them more vulnerable to encroachment on their tenure rights. This pandemic is requiring all stakeholders to evaluate and plan for how to protect the tenure rights of small food producers, particularly women, indigenous peoples (IPs) and other vulnerable groups, to avoid additional devastating effects that could follow the existing health crisis. While the impact of the COVID-19 crisis is still unfolding, experiences gained from the food crises of the late 2000s have a lot to teach. This brief aims to highlight valuable lessons learned from those crises, and to outline how legislative and regulatory interventions can, during this crisis and beyond, strengthen secure access and control over land and natural resources for small food producers, particularly women, IPs and other vulnerable groups who feed themselves and the world. This as an important step towards mitigating the impact of the current health crisis on their access and control over natural resources and livelihoods.

## LEGAL ANALYSIS

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*“Mistakes are meant for learning, not repeating.” Unknown author.*

Land is essential for food security and livelihoods, particularly for small food producers who generate 80 percent of the world’s food. Just as land is critical to smallholder households for their food security and livelihoods, secure land and natural resources tenure rights are necessary for these households to enjoy sustainable livelihoods and development. Land rights are vital not only for securing the right to food but also as a social, economic, cultural and spiritual resource, underpinning value and power for rural households. Land tenure laws, regulations and policies determine how land and natural resources, including agricultural lands (for grazing, growing crops and other agricultural purposes) are used, controlled and transferred, or inherited, and how decisions are made about such matters. Experience has shown that land and natural resources that have not been recognized through formal legal tools are not protected effectively in the face of certain threats.

Yet, most of the world’s small food producers do not have secure, legally recognized tenure rights. In Africa, it is estimated that 80 percent of the land is not registered, nor secured, leaving much of it vulnerable to large-scale land-based investments, or inter-family or inter-community conflicts. Women, IPs, youth and other groups who have been historically disenfranchised and lack tenure security are particularly at risk of losing their tenure rights.

The importance of strong and equitable legal, as well as customary, frameworks for tenure security for those who rely on land and natural resources to feed themselves has been well evidenced. Secure tenure incentivizes the right holder(s) to invest in, conserve and improve on the land, including for food production, amongst other benefits. Notably, women's tenure security has been shown to steer more resources towards improved food security, better health and education for the family members. While the link between tenure security and food security is complex and relatively contextual, studies from countries where high-quality data is available, such as Ethiopia, India, Nepal and Rwanda, have shown that increased tenure security has increased food security for households, particularly poor female-headed households. On the other hand, in many other parts of the world, including throughout Africa and Asia, weak legal governance and institutional frameworks due to lack of relevant laws and policies, or enforcement of those laws and policies, have resulted in violations of the rights to access, use or control land, which in turn has led to severe food security insecurity and loss of livelihoods. In 2008, a global food crisis fuelled land speculations and land grabs. In the wake of that crisis, many food-producing countries stopped exporting certain food supplies, much like during the current COVID-19 crisis. Countries, which relied on food imports, sought to secure their food needs by gaining control of agricultural lands and farms in countries primarily located in Africa and Asia. It should be noted that the food crisis had been fuelled by the collapse of international financial markets in 2008, which also led market players, including domestic urban elites, looking for a quick financial turnover to choose land investment as a new strategy for growth, food and fuel production.

Developing country governments generally welcomed these land-based investments for many reasons, buttressed by the false belief that the land was either vacant or not being used productively. Potential cash flows were attractive for economic development, to build infrastructure and industrialise their operations. "Invest in agriculture" became the rallying cry of many governments and other global actors, including of those charged with solving the food crisis.

But a country's available agricultural land space is finite; and it is diminishing due to factors such as environmental degradation and climate change. The intense competition for land that followed the 2008 food crisis – for agriculture, mining, infrastructure, and other uses – left countless communities reeling from dispossession, loss of livelihoods, increased food insecurity, violence, and political instability. Moreover, most of the investments did not yield the economic and social benefits promised and, instead, created more social, economic and political instability.

While many communities and individuals fought against the grabbing and selling of their lands - for many ancestral land, and their main or only asset - most communities were particularly vulnerable to these events as the food crisis had weakened them, rendering them less able to defend their tenure rights. While it is not clear whether the current pandemic will create an increased demand for land, it is becoming apparent that it is creating an environment where increasingly vulnerable individuals and communities can more easily fall prey to measures that limit their access and control over land and natural resources.

### **A health crisis with potentially devastating ripple effects on land tenure rights.**

Even before the pandemic, FAO and other stakeholders were sounding the alarm about a looming food crisis due to global rising temperatures and increased frequency of extreme weather events associated with climate change, conflict, locust and armyworm invasions, with potentially devastating consequences on vulnerable populations. In the current environment, smallholder households that lack secure land rights have been particularly disadvantaged by the

restrictive COVID-19 measures that have impacted their access to the land and resources they need to produce food and contribute to supply chains across the globe. Their limited ability to access the resources they need to meet daily challenges has been exacerbated by the health crisis.

From Africa to Asia and Latin America, small food producers are finding their movements and ability to access water, seeds, labour, forest resources, as well as the very land upon which they rely for their livelihoods, severely restricted, leaving them more vulnerable to encroachment on their tenure rights. On the other hand, certain large-scale land-based investments, such as mining, have been declared essential services' thus benefiting from expedited administrative decisions and some de-regulation. There are already documented cases of deals on contested lands, increasing conflicts, evictions, and other land rights-related violations in the wake of the COVID-19 pandemic. Yet, government measures to protect vulnerable populations, including from evictions, have been ignored in certain places. Women and youth have been particularly exposed to internal pressures to relinquish their rights to more powerful family or community members. Compounding this situation, vulnerable groups are experiencing less access to mediation and judicial systems for recourse.

#### FAOLEX

FAOLEX is a database administered by the Development Law Service (LEGN) of the FAO Legal Office. It contains a comprehensive and up-to-date collection of national legislation, policies and bilateral agreements on food, agriculture and natural resources management. It can be accessed through <http://www.fao.org/faolex>

At [this link](#) you will find a selection of records on the protection of land and natural resources rights drawn from FAOLEX.

At [this link](#) you will find some selected FAOLEX searches relevant to protecting tenure rights, including special protections for women, Indigenous Peoples, and vulnerable groups.

You may also wish to explore legislation and policies of a specific country at [country profiles](#) or search the associated database on [Gender and Land Rights](#).

If you would require further information on FAOLEX or assistance, please write to [faolex@fao.org](mailto:faolex@fao.org)

Alarming, research on the gender-differentiated impact of the COVID-19 crisis on land tenure security remains scant to date. While women farmers in the developing world are responsible for 60 to 80 percent of food production, legal and customary laws and practices have historically hindered their ability to access and control land and natural resources. As such, women remain most vulnerable to tenure insecurity, even more so during a time of extraordinary crisis. As an example, during the height of the AIDS epidemic, women's weak tenure rights contributed to power imbalances that limited women's agency over their resources and their health. In cases of divorce or death of a spouse, women were more likely to be evicted from their land and their homes, without access to the important asset for food security and livelihoods. During the COVID-19 crisis, women have become more vulnerable to gender-based violence exacerbated by confinement conditions, while facing more limited access to justice since support centers are closed or operated under restricted movement orders. The complexities of government administrative procedures and discriminatory customary and social norms can put women at risk, especially in places where birth certificates,

land titles and other legal documents are entrusted to male family members. If a woman is uninitiated to these administrative requirements and has to navigate these and other social/customary barriers on her own, it can be particularly difficult for her to secure her land rights. Women are more often facing greater economic losses as a result of such crises, including COVID-19 notably, due to their greater vulnerabilities and lack of tenure security. Indeed, there are reports of women being forced to cede their land after losing their husbands to COVID-19.

Pastoralist and IP communities have also been notably impacted, as national borders have closed and movements have been restricted within national territories. In West Africa, border closures and movement restrictions have led to high concentrations of animals and herders in certain areas, thereby increasing the risks not only of transmission of COVID-19, but also of conflicts between different groups using the same spaces and scarce resources. Disruptions are also anticipated in the management of natural resources, due amongst other factors to overgrazing and overuse of water resources, which may, in turn, lead to increased conflicts and tenure insecurity, and decreased incomes for already vulnerable communities.

In Africa, 80 percent of the land is generally considered not registered, nor secured, leaving much of it up for grab, whether for large scale land-based investments or because of inter-family or tribal conflicts.

COVID-19 is also expected to exact a particularly heavy toll on forest ecosystems and forest-dependent communities, as the loss of livelihoods will most likely lead to increased over-exploitation of already scarce natural resources, as well as increased food insecurity and poverty. At the same time, illegal mining, timber extraction and poaching are expected to increase due to reduced enforcement capacities and political attention, which is focused on COVID-19 and economic recovery.

Food prices are also steadily rising in urban and rural markets around the world. With massive layoffs, vulnerable households are struggling to put food on the table, while children have been out of school and unable to access school meals. While many countries have implemented food assistance programs, these are often insufficient to reach and benefit all those who need help. This situation is creating a perfect storm whereby small food producers, in order to mitigate the increased scarcity they are facing, are becoming increasingly vulnerable to pressures to undermine their land and natural resources rights. United Nations humanitarian agencies and non-government organisations have warned about the rapidly worsening crisis in the Sahel region, where intensified conflicts, growing food insecurity and rising inequalities as consequences of the COVID-19 pandemic are leaving millions of people in need of urgent humanitarian support on an unprecedented scale.

Moreover, COVID-19 prevention measures may impede the timely and consequential delivery of support to impacted communities, as governments and donors (individual, community, and institutional) also face restricted movements and increasing demands upon limited financial resources. While it is too early to ascertain with certainty what is unfolding, it is evident that the COVID-19 health crisis may be creating an environment where it is easier to violate the tenure rights of vulnerable populations. This underscores the importance of ensuring that the most vulnerable receive enhanced protections during the COVID-19 period and beyond.

## RECOMMENDATIONS

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Tenure rights are necessary for the fulfilment of human rights, particularly the right to food, fully embedded in the broader right to an adequate standard of living. Tenure rights are also the foundation for good governance, underpinning social and political stability. It has been well evidenced that secure tenure is important for the empowerment of women, IPs, and the livelihoods of smallholder food producers who buttress domestic food supply chains. It also usually leads to positive environmental stewardship. Governments, the private sector and civil society alike must honour their commitment to respect and promote the rule of law, including the right to tenure of land and natural resources. They must also work together to protect the rights of individuals and communities who depend on their land and on natural resources for food and livelihoods.

Prioritize the implementation of legislative and regulatory frameworks that promote and protect the legitimate tenure rights of small food producers.

Firstly, large as well as multiple small or medium-scale land acquisitions that amount to large-scale acquisitions in the aggregate should be discouraged at the political level. Alternatives to large-scale land transactions should be encouraged, such as contract farming, management contracts, tenant farming and sharecropping, joint ventures, farmer-owned business and upstream/downstream business links. Secondly, the application of the principles and recommendations contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs) should be ramped up, including through the implementation of needed legal reforms and legal recognition of customary tenure rights, women's land rights, and IPs tenure rights. Moreover, land and natural resources laws and policies should be updated and harmonized with human rights principles, stemming from both international and national obligations. Thirdly, legislative and regulatory initiatives aimed at protecting the tenure rights of small food producers and vulnerable groups must be adequately enforced, including and particularly during times of crisis. During a crisis, smallholder communities are particularly at risk, yet may be the least able to avail themselves of the protection of the law due to unequal power relations within the household, the community or vis-à-vis investors and/or government. They may also be unable to access the legal and social support structures they might be able to rely upon ordinarily due to, for example, the absence or limited presence of such services during the crisis, movement restrictions, reduced incomes, and other impediments such as domestic violence, which negatively affects women disproportionately. Laws against evictions during the crisis may be ignored, and widows may become easy targets because of lapses in customary and/or formal laws. As such, laws that aim to protect small food producers and vulnerable populations must be implemented in a manner that the intent of the law is being met, both during the crisis and beyond. Fourthly, there is a need to promote laws and policies that protect the livelihoods of small food producers, in both rural and urban areas; this includes securing their access to markets so that they can sell their goods and thereby support their livelihoods and decrease their vulnerability to tenure insecurity.

Prioritize the implementation of legislative and regulatory frameworks that protect the livelihoods of small food producers.

Measures can be taken to declare the activities of small food producers as 'essential' during such a crisis to protect their ability to continue accessing the land, natural resources, markets and services they need to sustain their livelihoods. Examples include facilitating access to seeds, inputs, and to local markets; targeted and controlled opening of transhumance border areas; and distribution of livestock food and veterinary care. In addition, governments can consider

financial measures that mitigate the economic impact of the crisis on small food producers. Such measures may include access to grants, credits and extension services such as short-term stimulus packages, subsidized loans, tax incentives, direct public lending, and quotas for financial institutions for small food producers facing economic loss due to the COVID-19 restrictions. Social protection for small food producers should be provided so that their vulnerabilities are not exacerbated during the crisis, leaving them more exposed to losing their land. A variety of social protection mechanisms have been applied to impacted communities, but many have targeted urban areas, leaving isolated rural communities more at risk. These protection measures, including food assistance, health services and others, should be made available to smallholder food producers as well. Last but not least, access to information on rights and services should be ensured for impacted communities, particularly smallholder food producers so that they can access affordable services if these rights are infringed upon. Laws and policies to protect land and natural resource tenure rights are best coupled with knowledge sharing so that communities know better how to protect their rights.

Engage and support land governance frameworks, such as multi-stakeholder platforms, to discuss and solve land-related issues among stakeholders and decision-makers, including women, IPs, youth, multilateral partners and donors, civil society, academia, and investors alike.

Governments may enact legal measures that decentralize land management in order to bring decision-making and services closer to the communities. In addition, stakeholders supporting communities should make use of community tools and approaches to facilitate engagement with and amongst community members - these include watch groups, local dialogue groups, and other local governance structures, with special attention to the most vulnerable in the community (landless, women, youth, IPs, etc.). Government and health professional guidelines for such engagement during the COVID-19 crisis should be respected at all times.

Harvest and digitalize data to inform legislative and policy decision-making.

This should include strengthening legal frameworks that promote robust ICT infrastructure, such as unified national cadasters supported with geo-referenced imagery and topography to share and update information seamlessly, as well as to inform future pandemic vulnerabilities. The engagement of all stakeholders in the digital space, particularly youth, through social media campaigns, digital platforms and shared databases, should be increased, including by supporting, where appropriate and possible, the development and maintenance of a National Spatial Data Infrastructure (NSDI). This also includes prioritizing gender-disaggregated data collection in order to produce knowledge and results that leave no one behind. In addition, there should be accurate data on the impact of laws, policies and practices on tenure security to identify gaps and provide actionable data to address such gaps, for example, identifying vulnerable groups in need to legal protections while providing appropriate safeguards for data protection.

Ensure that land-based investments are consistent with right to food and relevant international human rights law obligations and aligned with national food security and land tenure security objectives.

This requires fair and transparent negotiation of projects with affected communities, including and particularly women, IPs, youth and other vulnerable groups. It could also mean that government representatives serve as pro-small food producers' intermediaries. While investments can provide much-needed resources, they need to be managed through appropriate legal and policy frameworks that provide a more level playing field, such as those

provided through contract farming arrangements and mandatory multi-stakeholder consultations, etc. Again, increasing impacted communities' access to information and knowledge about their rights, and providing these communities with adequate community-sensitive services, can be very important.

Ensure that COVID-19 prevention measures do not hamper the humanitarian response needed to be deployed in certain regions.

The responses to the current health crisis should be tailored to allow for continued support to vulnerable populations facing existing crises as a result of conflicts, climate change, a desert locust invasion, a fall armyworm infestation, droughts and other threats. The better these communities are protected, the less at risk they are and the better they will be able to exercise and protect their tenure rights now and in the future.

## TOWARDS THE FUTURE

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While the current crisis may seem daunting, the lessons learned from the food crisis of the late 2000s, have given us a canvas on which to build an adequate and coherent response to the current COVID-19 crisis. Immediate responses, as outlined above, should focus on protecting the land and natural resource rights of small food producers, particularly women, IPs and other vulnerable groups, as well as on building their resilience to withstand the pressures brought on by the current shocks. Medium and longer-term goals should include a commitment to prioritize and expedite the registration of all legitimate tenure rights, in line with the VGGTs. Broader legal reforms are also necessary to ensure fair and equitable access to, and control over, land and natural resources for all, to promote the basic human right to adequate food and to protect and promote legitimate rights to land and natural resources.

Land and natural resource rights stakeholders should work together to assess and fill the legislative and regulatory gaps that can ensure the tenure security of the world's small food producers. This is the moment to create a robust legislative and policy framework for the protection and respect of land tenure and natural resources rights for food security. This is one way we can heed the lessons of previous crises and mitigate the impact of future ones.

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