



NATURAL RESOURCES GOVERNANCE AND THE RIGHT TO ADEQUATE FOOD

THEMATIC STUDY 4

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Foreword

To celebrate the 10th anniversary of the adoption of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (hereinafter “Right to Food Guidelines”), the FAO Right to Food Team has prepared seven thematic studies that document and highlight progress made over the last ten years, while also capturing the challenges ahead in relation to major issues covered by the Right to Food Guidelines (RtFG). The studies are helpful in reflecting upon current gaps and areas of improvement for future implementation of the guidelines and valuable for every person or organization that works in the context of national food security and is interested in realizing the right to adequate food by implementing the RtFG.

The thematic studies¹ cover the following topics:

- 1. THE RIGHT TO ADEQUATE FOOD IN FOOD SECURITY AND NUTRITION POLICY DESIGNS**
Guidelines 2, 3, 5, 6 and 13
- 2. INSTITUTIONAL FRAMEWORK FOR THE RIGHT TO ADEQUATE FOOD**
Guidelines 5, 18
- 3. LEGAL DEVELOPMENTS IN THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD**
Guideline 7
- 4. NATURAL RESOURCES GOVERNANCE AND THE RIGHT TO ADEQUATE FOOD**
Guideline 8
- 5. SOCIAL PROTECTION AND AN ENABLING ENVIRONMENT FOR THE RIGHT TO ADEQUATE FOOD**
Guidelines 8, 14
- 6. NUTRITION, EDUCATION AND AWARENESS RAISING FOR THE RIGHT TO ADEQUATE FOOD**
Guidelines 10, 11
- 7. INTERNATIONAL DIMENSIONS OF THE RIGHT TO ADEQUATE FOOD**
Guideline 19, Part III

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¹ The views expressed in these thematic studies are those of the authors and do not necessarily reflect the views or policies of FAO. The conclusions given are considered appropriate at the time of preparation. They may be modified in the light of further knowledge gained.

List of acronyms

CBD	Convention on Biological Diversity
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CFS	Committee on World Food Security
CFS RAI	CFS Principles for Responsible Investment in Agriculture and Food Systems
COFI	Committee on Fisheries
DRC	Democratic Republic of the Congo
FAO	Food and Agriculture Organizations of the United Nations
FAPDA	Food and Agriculture Policy Decision Analysis
FLA	Forest Land Allocation
FPIC	Free, Prior and Informed Consent
FSN	Food Security and Nutrition
GIAHS	Globally Important Agricultural Heritage Systems Initiative
HLPE	High Level Panel of Experts
HRBA	Human Rights-Based Approach
HRC	Human Rights Council
ICARRD	The Declaration of the International Conference on Agrarian Reform and Rural Development
ICESCR	International Covenant on Economic Social and Cultural Rights
ICRAF	World Agroforestry Centre
IIED	International Institute for Environment and Development
ILO	International Labour Organization
IPCC	Intergovernmental Panel on Climate Change
MLRA	Marine Living Resources Act
NGO	Non Governmental Organizations
OHCHR	Office of the High Commissioner for Human Rights
RBC	Red Book Certificate
RTFG	Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines)
SOFA	State of Food and Agriculture
SOFI	The State of Food Insecurity in the World

SOFO	State of the World's Forests
SSF Guidelines	Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDRIP	The United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSCN	United Nations Standing Committee on Nutrition
UNSG	United Nations Secretary-General
UNSR	United Nations Special Rapporteur
VGGT	Voluntary Guidelines on responsible governance of tenure of land, fisheries and forests in the context of national food security
WFP	World Food Programme
WHO	World Health Organization

INTRODUCTION

A decade has passed since the adoption of the Right to Food Guidelines² (RTFG). It is now time to step back and take stock of the effects these have had to date, determining what specific inputs the Guidelines have provided to addressing issues concerning the access, use and management of natural resources as part of the fight against hunger. How far have we come, and what progress has been over the last ten years?

The first section of the paper analyses the shift that has taken place over the last decade with the incorporation of a human rights discourse within the global agenda on natural resources in the context of food security. As will be seen, this is evidenced not only by the growing body of international instruments adopted to regulate natural resources, with a particular focus on protecting vulnerable populations, but also by the increase of inclusive and transparent consultative mechanisms of dialogue on both an international and national level. An example of this consultative process is the unique platform of the reformed Committee of World Food Security (CFS), where governments, civil society and the private sector have been able to reach a consensus on a variety of themes including responsible governance on tenure of land, fisheries and forests within the context of the food security agenda.

The second section of this paper analyses some examples of national reforms which incorporate a human rights-based approach to natural resources and which constitute progress in terms of the recognition and protection of the rights of the most marginalized populations. This section also explores important challenges to guaranteeing tenure rights to natural resources as a means to the realization of the right to food, both at national and global level. For example, the gender gap in agriculture, in particular as regards access to land, restricts advancing gender equality in access to productive resources. This impedes progress in addressing undernourishment worldwide. Similarly, the impact of climate change, highlighted in the recent report of the Intergovernmental Panel on Climate Change (IPCC), elucidates the need to focus on the most vulnerable in order to find adequate solutions that truly mitigate the impacts that climate change is having on their livelihoods (IPCC, 2014).

As such, this document looks back in order to collect some of the developments related to natural resources and food security from a human rights based-approach and sets forth some of the prominent challenges that still need to be addressed.

I. A CHANGE OF FOCUS OVER THE LAST 10 YEARS

Access to water, land, fisheries, forests and other natural resources are crucial for billions of people's realization of the right to food. The availability of food, which is a fundamental element of the right to food, pertains in part to the possibility of feeding oneself directly from productive natural resources (CESCR, 1999). It is precisely in the context of food security that a shift has occurred within the global agenda on natural resources, as reflected in an increase in the number of international instruments incorporating a human rights perspective within the questions surrounding natural resources. The RTFG were the first international instrument adopted by FAO member States to address access to resources and assets as one of the key areas to be improved in order to contribute to the realization of the right to food, by paying particular attention to the specific access problems of women and of vulnerable, marginalized and traditionally disadvantaged groups. Guideline 8 provides recommendations on issues related to labour, land, water, genetic resources, sustainability and services (see annex 1 for a full content of Guideline 8.)

In order to be able to grasp some of the effects of the RTFG in the natural resources agenda, there is a need to look at the global level in order to identify some of the most recent and significant changes in international instruments and initiatives in that particular field.

² The Council of FAO unanimously adopted a set of Voluntary Guidelines for the Progressive Realization of the Right to Adequate Food in the context of National Food Security in 2004.

This section will highlight main characteristics of a human rights-based approach that are embedded in those instruments, by focusing on i) the participatory process through which they have been adopted and ii) the content, which is the more and more centred on the rights of the most vulnerable individuals and groups.

Developments in international instruments

There are various examples, which demonstrate this shift. Here below we focus on five instruments, which though maintaining contextual specificity, are representative and relevant to the scope of this paper.

Examples of International Instruments -recently adopted- on natural resources from a human rights-based approach

- The Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD), 2006
- The United Nations Declaration on the Rights of Indigenous Peoples, 2007
- The United Nations Resolution 64/292 on the right to water and sanitation, 2010
- Voluntary Guidelines on responsible governance of tenure of land, fisheries and forests in the context of national food security, 2012
- Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication, 2014

▪ ICARRD Declaration, 2006

The International Conference on Agrarian Reform and Rural Development held in Porto Alegre, Brazil from 7 to 10 March 2006, gathered 1400 participants including 450 NGO observers, delegations from 96 FAO member countries, international experts and representatives from over 130 farmer and civil society organizations. During the four days of the Conference, participants reviewed different experiences of agrarian reform around the world, analyzed impacts, processes, mechanisms, reviewed the roles of the different actors involved, and discussed proposals for future action.

A Final Declaration was adopted at the end of the Conference inviting all governments to adopt policies that promote agrarian reform and rural development to benefit the poor and most marginalized. Governments reaffirmed that *"wider, secure and sustainable access to land, water and other natural resources related to rural people's livelihoods is essential to hunger and poverty eradication, contributes to sustainable development and should therefore be an inherent part of national policies"*. They also reiterated their commitment to achieve the Millennium Development Goals and recognized that *"food insecurity, hunger and rural poverty often result from the imbalances in the present process of development which hinder wider access to land, water and other natural resources and other livelihood assets"*.³

Beyond the relevance of the contents of the Declaration in itself, the Conference was particularly characterized by a large participation from a wide variety of stakeholders representing different views on land reform and rural development. This multi stakeholder approach is reflected in the Declaration that strongly recognized human rights as an intrinsic component of sustainable development. ICARRD represented a milestone towards a human rights-based approach to land issues recognizing as well the significant value of the RTFG.

³ See paragraphs 5 and 6 of the Declaration.

ICARRD Final Declaration, 2006

"We recall the significant steps taken by the whole membership of FAO in adopting a set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, which is one essential consideration when dealing with the need to promote rural development"

- **The United Nations Declaration on the Rights of Indigenous Peoples, 2007**

A fundamental element that is inextricably linked to a human rights perspective, and which is increasingly manifest within international instruments on natural resources, is the emphasis on the rights of the most vulnerable. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, is a vital instrument since in many regions of the world indigenous peoples are among the most excluded groups in decision-making processes.

The UNDRIP recognizes customary rights and the principle of self determination and explicitly establishes the principle of free, prior and informed consent (FPIC) of indigenous peoples when involving their territories, lands and natural resources. This principle, which is also recognized in international binding instruments such as the ILO's Convention 169 and the Convention on Biological Diversity⁴ has offered a normative basis to demand its implementation and ensure indigenous people's significant participation in decision making. This is a particularly relevant mechanism in a context where large-scale investment is increasing.

FPIC in national legislation

Many countries have national laws meant to ensure just processes of land transfer, consistent with a requirement to obtain FPIC, but few have yet adopted national laws that explicitly mention an FPIC obligation. An exception is the Philippines, where the Indigenous Peoples' Rights Act requires FPIC for any activity that may affect indigenous peoples' lands and resource rights. Procedures for observance of this duty are overseen by the Philippines National Commission on Indigenous Peoples, which has deployed and reviewed several versions of regulations that set out the required process for FPIC.

- **Resolution 64/292 on the right to water and sanitation, 2010**

Resolution 64/292, adopted by the General Assembly of the United Nations in June 2010, recognized for the first time the human right to water and sanitation. After a series of preliminary work⁵, the human right to water was recognized firmly as part of the human right to an adequate standard of living, enshrined in article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR). The scope of the right to water in this context covers water for drinking, cooking, washing and other household needs.

⁴ The ILO Convention 169 was ratified by 22 States. The Convention on Biological Diversity is a legally binding instrument for 194 State Parties.

⁵ CESCR. 2003. General Comment 15 on the right to water.

Although this UN Resolution does not hold the legal weight of an International Treaty, it represents a significant step forward in the realization of the right to food and the right to health.

As affirmed by the UN Secretary-General Ban Ki-moon on the occasion of the 2012 World Water Day, “over the coming decades, feeding a growing global population and ensuring food and nutrition security for all will depend on increasing food production. This, in turn, means ensuring the sustainable use of our most critical finite source – water” and that securing water access will require, among others, ensuring water rights to all (UNSG, 2012).

RTFG and Water

With regards to water, guideline 8.11 stresses that States should improve access to water resources and promote its sustainable use and allocation. The equitable distribution of water must satisfy basic human needs and reconcile the preservation of ecosystems with domestic, industrial and agricultural needs.

- **The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), 2012**

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), adopted by CFS on the 11th of May 2012⁶, seek to improve governance of tenure of land, fisheries and forests for the benefit of all, with an emphasis on vulnerable and marginalized people. It establishes goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. The VGGT are built on, and provide further development to earlier initiatives such as the RTFG, and the ICARRD Declaration, that already embraced a human rights-based approach (HRBA) to natural resources issues in the context of food security.

The VGGT have been widely recognized for its participatory process. They are built on inclusive consultations that occurred during 2009-2010 at regional and global level and brought together almost 700 people, from 133 countries, representing the public and private sectors, civil society and academia. In addition, four consultations, held specifically for civil society (with 200 people from 70 countries), and a private sector consultation with 70 people from 21 countries. These Guidelines also incorporate proposals received through an electronic consultation on the zero draft (VGGT, 2012). As highlighted before, the shift of focus within the global agenda on natural resources can also be attributed to a change in the processes leading up to the adoption of these international instruments.

In terms of contents, the VGGT expanded the guiding principles already contained in the RTFG (guideline 8), putting them in the context of natural resources tenure.

⁶ Adopted during the 38th period of the special CFS session.

The founding principles of the VGGT

Section 3 lays out the principles that are at the heart of the Guidelines. In accordance with the general principles, States should:

- RECOGNIZE AND RESPECT all legitimate tenure rights and the people who hold them
- SAFEGUARD legitimate tenure rights against threats
- PROMOTE AND FACILITATE the enjoyment of legitimate tenure rights
- PROVIDE access to justice when tenure rights are infringed upon
- PREVENT tenure disputes, violent conflicts and opportunities for corruption

Non-state actors (including business enterprises) have a responsibility to respect human rights and legitimate tenure rights.

The principles of implementation include:

- human dignity • non-discrimination • equity and justice • gender equality • holistic and sustainable approaches • consultation and participation • rule of law • transparency • accountability
- continuous improvement

Founding principles of VGGT

▪ **Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication, 2014**

A very recent example of a negotiation process which incorporated a human rights-based approach is that of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines). These guidelines aim at complementing the Code of Conduct for Responsible Fisheries adopted during the FAO Conference of 1995. Their objective is to recognize and make visible the contribution of small-scale fisheries towards the eradication of hunger and poverty. As for the other international instruments mentioned above, the SSF Guidelines also adopted a participatory approach to place the most vulnerable fishing communities at the top of the agenda. In October 2010 the FAO organized three consultative regional workshops for Africa, Asia and the Pacific, Latin America and the Caribbean bringing together national and regional stakeholders in order to identify best practices in the governance of small-scale fisheries. Adopted by the Committee on Fisheries (COFI) in 2014, it is a milestone towards the realization of the right to food.

▪ **Other Global Initiatives**

Other recent initiatives have been of utmost importance for the right to food in the context of natural resources governance. In May 2013 FAO hosted the International Conference on Forests for Food Security and Nutrition, organized in partnership with Bioversity International, the Center for International Forestry Research, the World Agroforestry Centre (ICRAF) and the World Bank. The meeting was attended by more than 400 participants, comprising experts from governments, civil society organization, indigenous and other local communities, donors and international organization from more than 100 countries. This conference is a milestone not only for being the first of its kind that set the linkages between forestry and food security and nutrition, but also because it addressed concrete policy recommendations on key constraints such as insecurity of tenure, lack of intersectoral coordination, inadequate services for smallholders, and the gender gap, among others, all of these being issues that undermine the contribution of forests to the progressive realization of the right to food.

Also, the RIO +20 United Nations Conference for Sustainable Development was a major achievement to reaffirm respect for all human rights, including the right to development and the right to an adequate

standard of living, including the right to food, the rule of law, gender equality, women's empowerment and the overall commitment to just and democratic societies for development. The outcome document also calls for the necessity to promote, enhance and support more sustainable agriculture, including crops, livestock, forestry, fisheries and aquaculture, that improves food security, eradicates hunger and is economically viable, while conserving land, water, plant and animal genetic resources, biodiversity and ecosystems and enhancing resilience to climate change and natural disasters.

Although those global initiatives did not trigger a negotiated instrument, they set a framework for common understanding on issues related to natural resources that are affecting people's food security and need special attention. The outcomes of both Conferences are a basis for current negotiations on Sustainable Development Goals.

The RTFG have, as highlighted above, foreshadowed and influenced the global agenda on tenure and natural resources management. The following section will provide some examples that enable to identify achievements but also challenges that still need to be addressed at national and global level.

II. FOCUSING ON WOMEN AND THE MOST VULNERABLE: CHALLENGES AND ACHIEVEMENTS AT NATIONAL AND GLOBAL LEVEL

As already exposed, the gradual incorporation of an approach that focuses on the respect and protection of the rights of the most vulnerable groups is an achievement in and of itself. Guideline 13 of the RTFG calls on States to support vulnerable groups by undertaking disaggregated analysis on food insecurity, vulnerability and nutritional status in order to assess any form of discrimination that may manifest itself in greater food insecurity, or in higher prevalence of malnutrition among specific population groups.

Beyond the importance of disaggregated analysis, real progress is measured by the translation of this perspective into national policies, legislations, and policy instruments – which in turn has an effect on the living conditions of groups and individuals.

Challenges and achievements related to gender

In recent years the theme of gender has come to the forefront as a new awareness has arisen of women's roles in agriculture, and on the importance of recognizing equal rights and opportunities in accessing productive resources. A variety of efforts have been made which converge towards this. FAO's report on the State of Food and Agriculture 2010-2011 (FAO, 2011) shows that the agriculture sector is underperforming in many developing countries, in part because women do not have equal access to the resources and opportunities they need to be more productive. In general, women control less land than men and the land they control is often of poorer quality and their tenure is insecure. But the gender gap goes beyond the issue of lack of control over natural resources. They also frequently do not control their economic activities in the agriculture sector (inputs such as improved seeds, fertilizers, credit and access to extension services); these factors also prevent women from adopting new technologies as readily as men do (FAO, 2010-2011: vi).

Women comprise, on average, 43 percent of the agricultural labour force in developing countries, ranging from 20 percent in Latin America to 50 percent in Eastern Asia and sub-Saharan Africa. Closing the gender gap in agriculture would generate significant gains for the agriculture sector and for society. If women had the same access to productive resources as men, they could increase yields on their farms by 20–30 percent. This could raise total agricultural output in developing countries by 2.5–4 percent, which could in turn reduce the number of hungry people in the world by 12–17 percent (FAO, 2010-2011: 5).

Similarly in the forest sector women and men tend to have different tasks and responsibilities in the production and provision of forest products that contribute to food security and nutrition. Many women have a great deal of knowledge about forests and spend a large amount of time collecting forest foods

and fuelwood, while men seldom have the responsibility for collecting and using natural resources for household use. FAO's report on the State of the World's Forests 2014 (FAO, 2014) reveals that women collect about 60 percent of fuelwood globally, mainly for subsistence use, and that men tend to focus more on collection of fuelwood for sale. Other gender gaps exist regarding women access to forestry related tenure rights, credit, technology and employment. Further women usually participate much less than men in forest management and policy decisions. These gender-specific constraints decrease women's productivity, limit their income-earning potential as well as their contribution to food security.

Therefore, adopting a gender perspective within public policies and instruments governing natural resources is crucial in making progress towards realizing the right to food.

As demonstrated by the aforementioned reports, women have an important role in food security that goes beyond food production. It has been shown that "when women and mothers control a higher proportion of household income, families tend to spend a higher share of their budgets on the education, nutrition, and /or well-being of their children. *Post-factum* evaluations of conditional transfer programmes have confirmed this to be the case: the impact on spending patterns goes beyond the simple income effect of the transfer, with recipient households spending a larger proportion of their incomes on food (Schady and Rosero, 2008) and a relatively larger proportion on more nutritious food" (FAO, 2010-2011: 47).

A concrete example of the focus on gender at a national level is the adoption of the Magna Carta of Women Act in the Philippines in August 2009. This Organic Law addresses "all rights in the Constitution and those rights recognized under international instruments duly signed and ratified by the Philippines" (sec 8), and provides detailed regulation on food security and productive resources.

Philippines Magna Carta of Women-Republic Act No. 9710

Sec.20 Food security and Productive Resources.- The State recognizes the contribution of women to food production and shall ensure its sustainability and sufficiency with the active participation of women. Towards this end the State shall guarantee, at all times, the availability in the market of safe and health-giving food to satisfy the dietary needs of poor-girls children and marginalized women, especially pregnant and lactating mothers and their young children.

A) The right to food.- The State shall guarantee the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, the physical and economic accessibility for everyone to adequate food that is culturally acceptable and free from unsafe substances and culturally accepted, and the accurate and substantial information to the availability of food, including the right to full, accurate and truthful information about safe and health giving foods and how to produce and have regular easy access to them.

B) Right to resources for food production.- The State shall guarantee women a vital role in food production by giving priority to their rights to land, credit, and infrastructure support, technical training, and technological and marketing assistance (...)

The example of the Magna Carta is a significant milestone because it illustrates how inequalities in the access to productive resources are considered as a form of discrimination that should be addressed by specific measures set out in the law.

While the objective of this study is not to analyse the impact the law has had on the lives of women in the Philippines, we highlight this as a major achievement of how a human rights based-approach has been translated into national law, recognizing the rights of women in various sectors, including food security

and natural resources. This law clearly demarcates State obligations on the realization of human rights and sets forth guiding principles, responsibilities and institutional mechanisms for its implementation.

Challenges and achievements related to land tenure

A second example of the developments that have taken place so far on the national level relates to land. The phenomenon of large-scale land acquisitions, increasing after to the food crisis of 2008-2009, has triggered significant changes in national policies and legislation. Overall, the proportion of countries implementing land-related measures increased from 71 percent in 2007/08 to 82 percent in 2011/12. With a growing population pressure and increased investors' interest in land acquisitions, land markets have expanded and various governments have implemented policies in order to ensure that local communities have adequate access and tenure security over the land they cultivate. However, there are regional differences: the percentage of countries implementing land policies was higher in LAC (on average 88 percent) and Asia (85 percent) than in Africa (61 percent) during the reference period. Many African countries have yet to take actions but several governments are reviewing their land policies and the proportion of counties introducing new measures has increased sharply in recent years, from 43 percent in 2007/08 to 70 percent in 2011/12 (FAO, 2014: 33)⁷.

Some governments have been putting in place a number of measures to improve access to land for small farmers including i) land distribution for the extremely poor and marginalized, ii) land titling for farmers who own land on a customary basis and iii) credit facilities for low- or mid-income households earning their living from land.

In Kenya for example, there has been progress ranging from constitutional reforms to the adoption of a new policy and law on land in 2012. This is a legal step forward not only on access to natural resources but also on the right to food and the protection of other human rights. The new Constitution⁸ explicitly recognizes the right to food. The contents of Article 43 as well as other provisions reflect the principles and obligations contained in the International Covenant on Economic Social and Cultural Rights, a binding instrument for Kenya since 1972. In terms of land and other natural resources, changes in the Constitution are aimed at increasing the security of tenure, recognizing the customary rights of the most vulnerable groups, and eliminating gender discrimination in access to land.

Constitutional provisions that are relevant to the right to food, women's rights and tenure in Kenya

Chapter IV: Bill of Rights, including article 43 on the right to food;

Section 27(3): "Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres".

Section 60(1): Lists the principles of land policy. They include: equitable access to land; security of land rights; elimination of gender discrimination in law, customs and practices related to land and property in land; encouragement of communities to settle land disputes through recognized local community initiatives.

Beyond the Constitution, the Land Act recognizes customary land rights as one of the forms of tenure – where consistent with the Constitution. It also provides in its article 19 provisions on conservation of land

⁷ Data collected by FAPDA covers around 80 countries (20 from Latin America and the Caribbean; 27 from Africa and 24 from Asia). For land related policies mentioned in this paper, information was not available for 11 countries: Egypt, Mauritania, Senegal, DRC, Malawi, Mozambique, Zambia, Lebanon, Iran and Syria.

⁸ After being approved by popular referendum, the Constitution of Kenya was adopted on 27th August 2010.

based natural resources protecting ecosystems and promoting access, use and co management of natural resources from communities who have customary rights.

Kenya -Land Act No.6 of 2012. Article 19

(1) The Commission shall make rules and regulations for the sustainable conservation of land based natural resources. (2) Without limiting what the Commission may prescribe under subsection (1), the rules and regulations may contain: (a) measures to protect critical ecosystems and habitats; (b) incentives for communities and individuals to invest in income generating natural resource conservation programmes; (c) measures to facilitate the access, use and co-management of forests, water and other resources by communities who have customary rights to these resources; (d) procedures for the registration of natural resources in an appropriate register; (e) procedures on the involvement of stakeholders in the management and utilization of land-based natural resources; and (f) measures to ensure benefit sharing to the affected communities.

It is also important to recognize, within the current analysis, the challenges Kenya faces in the implementation of the legislation. While there are significant advances at constitutional level, customary law regarding marriage and inheritance has been challenged in national courts for being discriminatory against women's rights. In the past years, CEDAW provisions have been used in at least three national cases, generating case-law that affirms women inheritance rights (FAO, 2013: 21). An Act that aims at consolidating existing customary marriage law into one single act has been recently adopted in the country and it has been criticized by some human rights advocates who consider the new act as a backward movement for women's rights.

Challenges and achievements related to fisheries and forestry

In order to better understand both the achievements and ongoing challenges during the implementation stage of natural resources reforms benefitting the most vulnerable groups, we present a few examples in the fisheries and forestry sectors applied to legal frameworks.

One of the most salient points of intersection between the right to food and fisheries and forestry legislation is that they both govern the ability of individuals to access resources. As mentioned earlier, Right to Food Guideline 8.1 urges states to "facilitate sustainable, non-discriminatory and secure access and utilization of resources [...] and protect the assets that are important for people's livelihoods." Guideline 8.3 calls on states to "pay particular attention to the specific access problems of women and of vulnerable, marginalized and traditionally disadvantaged groups".

– Fisheries

Limited access to fisheries resources is considered essential for responsible fisheries, and is an important means for tackling the severe consequences of open-access regimes, including the depletion of stocks, excess harvesting capacity, shortened fishing seasons and related negative social and economic effects. Limited access can, however, be used to limit the possibilities of vulnerable fishing communities to secure their livelihoods through fishing. A right to food approach would therefore require that access for these communities to resources is prioritized or not encroached upon when scarce resources are being allocated (FAO, 2009).

Access to fishing rights for artisanal fishers in South Africa (FAO, 2009)

Prior to the Marine Living Resources Act (MLRA) of 1998, the fisheries framework under the Sea Fisheries Act No. 12 of 1988 granted fishing quotas based on racial considerations, aggregating permits and rights predominantly for the white population and industrial fishing. The MLRA was designed to transcend discrimination, by creating a new category of "subsistence fisher" in addition to the existing commercial and recreational ones, but omitted artisanal fishing groups.

Despite the considerable debate over the definition of artisanal fishers caused by this omission in the law, no amendments were made to giving the group legal recognition under the statute, and the group was thus regulated as commercial fishers. The design and implementation of this scheme failed to accommodate the interests and needs of artisanal fishers. Only a small percentage of artisanal fishers were able to acquire "limited commercial rights," which have been noted to cover only one fishery and comprise unfeasible quotas. With the help of NGOs, a group of about 5000 artisanal fishers launched a class action in the High Court and in the Equality Court in Cape Town, claiming that the Fisheries Minister had failed to provide them with just access to fishing rights, and seeking an order giving them equitable access to marine resources. The fishers moreover argued that the implementation of the MLRA violated their right to food, a right that is protected in the South African Constitution of 1996.

In 2007, the Minister issued a decision, granting traditional fishers the right to catch and sell West Coast Rock Lobster for commercial purposes. This decision followed an order by the Equality Court in May 2007, issued after an agreement among the parties that the artisanal fishers were entitled to some form of relief through fishing until the government had finalized its new subsistence fishing policy. It is to be noted that although the decision was not compatible with the long-term sustainable use of the resource, the Minister still authorized the interim relief, based on the argument that the fishers depended on the resource for their survival. In its ruling of 7/10/2008, the Cape High Court said that the Minister had acted reasonably when taking his decision as an interim relief measure pending finalization of a new fishing policy that formally took their needs into account.

– Forestry

Forests cover approximately one third of the global land surface and provide essential services that support human livelihoods and well-being. They comprise the majority of terrestrial biodiversity and store about half the total carbon contained in land ecosystems. Tropical and subtropical forests are the main biodiversity hotspots, particularly rainforests and coastal forests⁹.

Forests and trees outside forests are integral to food security and nutrition. Non-timber forest resources, such as fuelwood, charcoal, non-wood forest products and wildlife sustain the livelihoods of hundreds of millions of people in forest-dependent communities. In many developing countries, bushmeat is an important source of protein, while for coastal communities or those living near freshwater, fish can be a major source of protein. In Central Africa, there is a very large and well-established trade in bushmeat products, which is driven mainly by consumer demand in major cities (FAO, 2012: 6-7). Most rural and many urban populations in developing countries rely on woody biomass as their main energy source and depend on wild plant medicines for their healthcare. In addition to the direct provision of nutritious food for diversified diets (plants, roots, fruits, nuts, mushrooms, wildlife, insects, etc.), fuelwood for cooking and water sterilization and income generation for improved access to food are vital, especially for the 1.6 billion forest-dependent people. As an example, the State of World's Forests (SOFO) 2014 reveals that

⁹ For more information, see FAO wildlife and protected area management website. <http://www.fao.org/forestry/wildlife/67289/en/>

about 2.4 billion of the world's population use fuelwood for cooking and it is estimated that about 765 million people (10.9% of the global population) use wood energy to boil water for sterilization. Despite the fact that forests and trees outside forests are critical for global food security and nutrition, their role is still underappreciated and their full potential is not yet realized.

Especially in the context of a human rights-based approach, secure forest tenure rights play an important role in ensuring food security and nutrition for farmers and forest dwellers, especially the poor. A lack of equitable and secure access to productive resources such as forests and trees, and a lack of clarity on who owns those resources, generally lead to the degradation of these resources, to conflict and aggravate hunger, food insecurity and malnutrition. Unsustainable wildlife and illegal harvesting for food and non-food purposes also have a negative impact in the livelihoods of rural communities. As a result of this faunal depletion, the remaining tropical and subtropical forests are increasingly becoming empty of large vertebrates ("empty forest syndrome"). In Central Africa, an estimated 579 million forest mammals are consumed annually – up to 5 million tonnes of dressed bushmeat. In East and Southeast Asia, the severity of the problem is related to high human population densities, a long tradition of consuming wildlife products for medicinal use and the exceedingly rapid economic growth. Commercial wildlife trade also poses a threat to wildlife populations beyond the tropics, for example in Mongolia's temperate steppes and woodlands – mainly for the large Chinese market. Even in remote and protected areas, the commercial bushmeat trade driven by markets hundreds of kilometres away threatens the survival of not only the wildlife, but also the indigenous and local populations which depend on sustainable hunting for their subsistence and livelihoods¹⁰. Major concerns relate also to human-wildlife conflict, as well as disease dynamics at the human-wildlife-livestock-ecosystem interface. The design and management of protected areas and regulation that deals with those complex interactions are needed in order to improve forest governance.

Secure tenure rights are particularly important for forestry and agroforestry compared with agriculture because of the relatively long period that may be required to realize benefits. In addition, smallholder farmers and forest-dwellers need to obtain adequate information, technology, financial support, market access and other resources to improve their forest management practices and build successful enterprises. To that effect local institutions with the necessary capacity are required to support the management and control of forests and trees outside forests, and the marketing of goods and ecosystem services by smallholders.

For the development of enabling policies and programmes aiming at improving food security and nutrition through the sustainable management of forest resources, smallholders and rural populations should have an increased and genuine role in decision-making aside national and local institutions. Local community resource rights are critical for sound natural resources management and the realization of the right to food.

Policies and legislation that limit the vulnerable groups' rights to use and manage their forest resources in a sustainable manner, coupled with a lack of evidence-based and comprehensive understanding on forests' contribution to food security and nutrition, hamper their right to food.

¹⁰ See: <http://www.fao.org/forestry/wildlife/67287/en/>

Forest land allocation in Vietnam: private smallholders -a new approach to sustainable forest management and poverty alleviation.

Private property in Viet Nam includes forests managed by individual households and joint venture enterprises. Under this arrangement, forest is allocated to an owner for long-term (50 years, renewable) management. Most forest owners under this arrangement are entitled to a Land Use Certificate also called the Red Book Certificate (RBC) for the forest area they are granted. By law, the RBC is the highest legal document certifying ownership of a piece of (forest) land. It represents legal recognition of all rights and responsibilities as regulated by current land law. RBC holders have the right to exchange, transfer, lease, inherit and mortgage their RBCs and to use their forests in joint production and commercialization activities. Owners of forest under this arrangement are required to pay taxes.

Under this private property scheme, forest owners are obliged to protect their forest allocations against unauthorized use and to plant trees where needed; they have the right to utilize the forest to maximize their profits. Studies have shown that local households have generally achieved (or have the potential to achieve) higher economic benefits from forest resources since the accession to private property: people have developed the forest resources on their allocated land. As forest plantation takes at least five to seven years, even for fast-growing trees, local people's investments in tree planting since rights were devolved reflect their confidence in tenure security. Forest devolution is giving people a chance to improve their livelihoods in the long term, while also improving forest conditions.

The forest land allocation (FLA) policies have been further implemented in a number of provinces. As of December 2010 about 1.8 million RBCs had been issued to recognize users' rights to land, covering close to 9 million ha. The vast majority of these were issued to households, with an average size of around 3 ha.

Sources: Forestry Policy and Institutions Working Paper 14, FAO, 2006, and The State of World's Forests (SOFO) 2014, FAO.

The examples presented above show the multifaceted nature of putting into practice structural changes within the different sectors that are part of the governance of natural resource and how progress comes with specific challenges. The impact of policy measures can be positive or negative, or both, depending on whether preliminary steps have been taken to analyse and take into account the effects these will have on the full set of human rights and target groups.

Global challenges that still need to be addressed

In the context of new global challenges that impact people at a local level, the increase in large-scale land acquisitions –by one side viewed as "land grabbing"– and the impacts of climate change are some of the most prominent.

CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS RAI) will be submitted for adoption in the October 2014 CFS session. The objective of the principles, as requested by the Committee on World Food Security (CFS), is to promote responsible investments in agriculture and food systems that contribute to food security and nutrition and support the progressive realization of the right to adequate food in the context of national food security (CFS RAI, 2013). Agricultural investments can generate a wide range of benefits. In order to do so, however, they need to be responsible and specifically directed towards the achievement of such benefits, while aiming at avoiding potential negative consequences.

The impacts of large-scale investments on the right to food can be negative for a section of the population if provisions on investment agreements (bilateral agreements or domestic contracts) do not respect international human rights standards, including: the participation and consultation of communities affected, transparency and implementation of effective mechanisms for access to information, the obligation to conduct environmental assessments and socio-economic impact studies that incorporate a human rights-based approach, and the existence of accountability mechanisms that allow the suspension of activities of investors who violate these standards.¹¹

GUIDELINE 8E **Sustainability**

8.13 States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry

Positive developments have taken place at a global level showing private sector's commitment to respect human rights. On June 2011, the UN Human Rights Council endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" proposed by UN Secretary-General's Special Representative on business & human rights, John Ruggie. These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. The Guiding Principles clarify that they should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.

Most recently, after the adoption of the VGGT in 2012, the private sector has supported the recommendations included in the Guidelines and has committed to implement them in collaboration with other stakeholders such as FAO. The VGGT call for the commitment of both the public and private sectors, and include specific recommendations to safeguard local people's rights in the event of large-scale land acquisitions.

Working with Oxfam, Coca-Cola committed to help protect the land rights of communities and conduct assessments in some of the world's top sugarcane-producing regions, in addition to implementing a zero tolerance stance on land grabbing. As part of its commitment, the multinational said it would publicly advocate that food and beverage companies, traders, and sourcing country governments endorse and implement the Voluntary Guidelines. PepsiCo is the second big beverage company to give its support to the guidelines after the Coca-Cola Company publicized a commitment to land rights in November 2013. PepsiCo has published a policy recognizing its obligations to respect and protect the rights of local people and encouraging its supplier countries to meet certain standards, including the principles listed in the Voluntary Guidelines. Both the Coca-Cola Company and PepsiCo have also vowed to increase their participation in the Committee on World Food Security to further demonstrate support of responsible land rights practices (FAO, 2014).

¹¹ For comprehensive information on accountability mechanisms to challenge large scale land investments, see Polack, Emily, Cotula, Lorenzo and Cote Muriel in "Accountability in the Land Rush: what role for legal empowerment?" IIED. 2013.

The potential impacts of large-scale investments on the right to food have been extensively covered by literature¹² but what is less clear are measures to be taken by states to ensure the protection of the most vulnerable to the impacts of climate change.

The recent IPCC report highlights the impacts of climate change on production and its impact on food prices. In terms of economic access to food, the report states that “changes in temperature and precipitation, without considering effects of CO₂ will contribute to increased global food prices by 2050” (IPCC, 2014: 3). According to The State of Food Insecurity in the World (SOFI) 2011, it is clear that the rise in food prices especially affects small producers who are living in poverty and are net food buyers.

Regarding food availability, and particularly the fisheries sector, the IPCC report concludes that climate trends are affecting the abundance and distribution of harvested aquatic species both freshwater and marine, and aquaculture production systems in different parts of the world. The report states that “more than 60% of coral reefs are considered to be under immediate threat of damage from a range of local threats, of which overfishing is the most serious and the percentage under threat rises to approximately 75% when the effects of rising oceans temperatures is added to these local impacts”(IPCC, 2014: 8).

Climate change will not affect all regions alike; it will probably have adverse effects in some of the less developed regions and impact more positively some of the developed northern regions. In this regard, the involvement of communities in local consultations organized for the design of public policies to respond to the challenges of climate change is critical. It is essential to build solutions that take into account local knowledge of agricultural practices as well as their understanding of the resources upon which these communities depend upon.

The IPCC reports that “indigenous knowledge has been instrumental in coping with climate change impacts on food security in many parts of the world”, providing some examples of the utility of Inuit knowledge in Alaska, Inca traditions in the Andes and others in Africa and Asia (IPCC, 2014: 33). The RTFG encourage States to apply a multi stakeholder approach to national food security to identify the roles of and involve all relevant stakeholders, encompassing civil society and the private sector, drawing together their know-how with a view to facilitating the efficient use of resources (Guideline 6 on Stakeholders).

The recognition of customary law in statutory law must go beyond ensuring land tenure for indigenous peoples and other local communities. It should also serve to recognize these actors’ role in the development of public policy. Several initiatives are on the table to cope with climate change in the context of food security, including agro ecology (UNCTAD, 2013) and climate smart agriculture (FAO, 2013). Also, over the past decade, the FAO Globally Important Agricultural Heritage Systems Initiative (GIAHS) has been piloting an innovative model for engaging communities, local and national governments in the adaptive management of agricultural heritage and conservation of systems’ goods and services. Looking to safeguard the social, cultural, economic and environmental goods and services these provide to family farmers, smallholders, indigenous peoples and local communities, the initiative fosters an integrated approach combining sustainable agriculture and rural development. The GIAHS initiative has project interventions in Algeria, Azerbaijan, Bangladesh, Chile, China, Ethiopia, India, Indonesia, Iran (Islamic Republic), Japan, Kenya, Mexico, Morocco, Peru, Philippines, Sri Lanka, Tanzania, Tunisia, and Turkey.

Although it is not intended to discuss the various policy options to respond to climate change in this paper, it is important to emphasize the urgency of incorporating the human rights perspective within their future assessment.

¹² Complete information can be found in the HLPE Report on Land Tenure and International Investments in Agriculture, July 2011 and IIED publications. For more information related to large scale land investments and the right to food, see the report of the Special Rapporteur of the Right to Food, 'Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge' presented to the Human Rights Council [A/HRC/13/33/Add.2], March 2010, as well as recent reports from OXFAM and International Land Coalition.

Andean Agricultural System, The Cuzco-Puno corridor, Peru

The Andes are considered as one of the most heterogeneous ecological environments in the planet. Of particular importance are the numerous tubers, of which the potato is the most prominent. Several hundreds of varieties have been domesticated by generations of Aymara and Quechua in the valleys of Cusco and Puno, of which more than 400 varieties are still grown today. The maintenance of this wide genetic base is adaptive since it reduces the threat of crop loss due to pests and pathogens specific to particular strains of the crop. The evolution of agrarian technology in the Central Andes has produced extensive knowledge about using the environment. This knowledge affected the division of the Andean environment into altitudinally arranged agroclimatic belts, each characterized by a specific field and crop rotation practices, terraces and irrigation systems, and the selection of many animals, crops, and crop varieties. The most important cultural adaptation to these environmental constraints has been the development of farming systems and technologies designed to yield an adequate diet with local resources while avoiding soil erosion. The 350 kilometre transect of the GIAHS pilot site captures such environmental verticality and heterogeneity. More than 300 native communities maintain most of the ancient traditional agricultural technologies, in spite of strong outside economic influences. One of the most amazing features of this agriculture heritage is the terracing system used to control land degradation. These trenches were filled with water, modifying or regulating the microclimate and allowing for crop production in the midst of frosts. These ingenious platforms of soil surrounded by ditches filled with water are able to produce bumper crops, despite floods, droughts, and the killing frost common at altitudes of nearly 4 000 m (FAO, 2010).

CONCLUSION

After 10 years of the adoption of the Right to Food Guidelines, it is possible to identify positive developments in that a human rights based approach has been applied in a series of international initiatives within the global agenda. Natural resources are crucial for achieving food security and nutrition and the responsible governance of tenure is key for the realization of the right to food. Recommendations were established in the RTF Guidelines to address natural resources and other productive assets by focusing particularly in the most vulnerable groups that depend on these resources for their subsistence. Subsequent international instruments have reached consensus on the importance of natural resources for realizing human rights, including the right to food. The adoption of instruments such as the UN General Assembly Resolution that recognizes water and sanitation as a human right and the UN Declaration on Indigenous Peoples demonstrate this trend. Within FAO, major achievements show how a human rights-based approach to eradicate hunger, and for ensuring sustainable livelihoods is gradually taking centre stage, in particular the ICARRD Declaration of 2006, the VGGT endorsed by CFS in 2012 and most recently, the Voluntary Guidelines on Small Scale Fisheries for Poverty Eradication by the Committee on Fisheries in 2014.

A decade from the RTFG, achievements have been made at country level through policies and legal frameworks which recognize vulnerable people's rights to access, use and management of natural resources. There is a growing recognition of customary rights in statutory legislation and gender is considered in legal reforms to improve women's access to natural resources. However, despite important policy changes at international and national level, reforms have not kept up with commercial pressures on natural resources. Future efforts to address the increasing pressures on ecosystems and the threat to sustainable production and access to adequate food are still required. As such, the governance of natural resources remains one of the most important areas for food security and human rights standards are crucial to consolidate an enabling environment for the realization of the right to food.

ANNEX 1**RIGHT TO FOOD GUIDELINES**
GUIDELINE 8 Access to resources and assets

8.1 States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources.

8.2 States should take steps so that members of vulnerable groups can have access to opportunities and economic resources in order to participate fully and equally in the economy.

8.3 States should pay particular attention to the specific access problems of women and of vulnerable, marginalized and traditionally disadvantaged groups, including all persons affected by HIV/AIDS. States should take measures to protect all people affected by HIV/AIDS from losing their access to resources and assets.

8.4 States should promote agricultural research and development, in particular to promote basic food production with its positive effects on basic incomes and its benefits to small and women farmers, as well as poor consumers.

8.5 States should, within the framework of relevant international agreements, including those on intellectual property, promote access by medium- and small scale farmers to research results enhancing food security.

8.6 States should promote women's full and equal participation in the economy and, for this purpose, introduce, where it does not exist, and implement gender sensitive legislation providing women with the right to inherit and possess land and other property. States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies.

8.7 States should design and implement programmes that include different mechanisms of access and appropriate use of agricultural land directed to the poorest populations.

GUIDELINE 8A Labor

8.8 States should take measures to encourage sustainable development in order to provide opportunities for work that provide remuneration allowing for an adequate standard of living for rural and urban wage earners and their families, and to promote and protect self-employment. For States that have ratified the relevant instruments, working conditions should be consistent with the obligations they have assumed under the International Covenant on Economic, Social and Cultural Rights, relevant ILO Conventions and other treaties including human rights conventions.

8.9 In order to improve access to the labour market, States should enhance human capital through education programmes, adult literacy and additional training programmes, as required, regardless of race, colour, gender, language, religion, political opinion, national or social origin, property, birth or other status.

GUIDELINE 8B Land

8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.

GUIDELINE 8C Water

8.11 Bearing in mind that access to water in sufficient quantity and quality for all is fundamental for life and health, States should strive to improve access to, and promote sustainable use of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of basic human needs in an equitable manner and that balances the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality.

GUIDELINE 8D Genetic resources for food and agriculture

8.12 States, taking into account the importance of biodiversity, and consistent with their obligations under relevant international agreements, should consider specific national policies, legal instruments and supporting mechanisms to prevent the erosion of and ensure the conservation and sustainable use of genetic resources for food and agriculture, including, as appropriate, for the protection of relevant traditional knowledge and equitable participation in sharing benefits arising from the use of these resources, and by encouraging, as appropriate, the participation of local and indigenous communities and farmers in making national decisions on matters related to the conservation and sustainable use of genetic resources for food and agriculture.

GUIDELINE 8E Sustainability

8.13 States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry.

GUIDELINE 8F Services

8.14 States should create an enabling environment and strategies to facilitate and support the development of private and public sector initiatives to promote appropriate tools, technologies and mechanization in the provision of relevant services, including research, extension, marketing, rural finance and microcredit, to enable more efficient food production by all farmers, in particular poor farmers, and to address local constraints such as shortage.

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