



Synthesis Report on Civil Society experiences regarding use and implementation of the Tenure Guidelines* and the challenge of monitoring CFS decisions

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

A contribution of Civil Society to the Global Thematic Event during the 43rd Session of the Committee on World Food Security (CFS) and to developing an innovative mechanism for the monitoring of CFS decisions and recommendations.

This report is the result of a broad civil society consultation process, coordinated by the Working Group on Monitoring of the Civil Society Mechanism (CSM) for relations to the Committee on World Food Security.

IMPRESSUM

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EXECUTIVE SUMMARY

This synthesis report summarizes the results of a broad consultation among small-scale food producers and other civil society organizations (CSOs) around the globe on the use and implementation of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (henceforth “the Guidelines”).

The Guidelines and monitoring their implementation in the CFS

Small-scale food producers rely on access to and control over natural resources such as land, including farmland, forests, grazing land and fishing grounds, for the realization of their human right to food and nutrition, their survival and livelihoods. However, a huge number of them face obstacles and threats to this access and control over natural resources. In many countries, land and resource grabbing and the privatization of nature (including in the context of large-scale agricultural land acquisitions and large-scale development and investment projects) result in forced evictions, mass displacement, food insecurity and human rights abuses and violations. In this context, the Guidelines are an unprecedented international agreement and provide practical guidance to improve governance of tenure of land, fisheries and forests based on human rights, with an emphasis on vulnerable and marginalized people. Since their unanimous approval by the CFS member states in 2012, various actors have engaged in a broad range of activities around the world in order to promote and ensure their implementation. Monitoring the use and application of the Guidelines as well as their contribution to the improvement of tenure governance is an important part of their implementation.

The CFS, as the foremost inclusive intergovernmental governing body on food security and nutrition, is currently developing an “innovative mechanism” to promote accountability and has, as a first step, developed and agreed the “Terms of Reference to share experiences and good practices in applying CFS decisions and recommendations through organizing events at national, regional and global levels.” During its 43rd session in October 2016, the CFS will hold a Global Thematic Event to share experiences and take stock of the use and application of the

Guidelines. This event will be the first one held to share experiences and good practices in applying CFS decisions and recommendations, as a contribution to the CFS monitoring function.

Even though decisions and recommendations of the CFS are voluntary, accountability is vital. The Civil Society Mechanism (CSM) has therefore been actively contributing to the development of an innovative monitoring mechanism to enable the accountability of the CFS. Its proposals have been based on the principles of monitoring and accountability of the CFS’ Global Strategic Framework (GSF), which are part of the agreed ToR for monitoring events. There are various approaches to monitoring and the CSM Working Group on Monitoring understands monitoring to be an assessment of the extent to which decisions and recommendations of the CFS are being implemented at national level by the entities that are responsible in these areas. In this sense, monitoring supports a country in abiding by guidelines and principles to which they have agreed. Monitoring initiatives should also empower social movements at national level; rights holders and affected people should be able to monitor independently and their views should be fed into any CFS monitoring mechanism.

The Guidelines and a holistic approach on tenure and its governance

The Guidelines refer explicitly to land, fisheries and forests. However, they recognize that tenure of land, fisheries and forests is inextricably linked with access to and management of other natural resources and that natural resources and their uses are interconnected. This holistic approach is in line with the relationships that people in many parts of the world have with their living environment, according to which land, oceans, rivers, forests, and all of nature are much more than a means of production and instead are the very basis of life, culture and identity, and fulfill crucial social, cultural, spiritual and environmental functions. Tenure is therefore viewed in this report as a collective basket of livelihoods where many local and indigenous communities consider that there is a deep interconnection between land use, access to forests and fishing grounds, use of water, and customary practices. Governance of tenure involves both the formal institutions of government and also informal arrangements. It relates especially to the crucial

issues of who participates in decision-making, whether and how well governments are accountable to their citizens, and how societies oblige their members to observe rules and laws.

Objectives, methodology, scope and geographical coverage of this report

This report intends to contribute to the Global Thematic Event on the Guidelines during CFS 43 from a civil society perspective and addresses the key questions of this event for civil society: what actions have taken place in order to implement the Guidelines and in which ways have they contributed to achieving the Guidelines' objective of improving governance of tenure, particularly for marginalized people? It presents some preliminary findings on what is being done, where and by whom; the impacts of activities on the ground and people's livelihoods; as well as advances, challenges and trends four years after the approval of the Guidelines.

The report is based on a broad consultation among social movements and CSOs (both members of the CSM and others), to share their views on the implementation of the Guidelines and their experiences in using them. Additional information was gathered through several interviews with key informants in order to ensure the inclusion of as many voices as possible, particularly those of the social movements who represent the most affected and marginalized groups. A group of recognized academic experts in the fields of tenure and monitoring peer-reviewed this report with the aim of ensuring its methodological soundness.

In response to the call for contributions by the CSM Working Group on Monitoring, social movements and CSOs submitted 68 submissions, covering a wide geographical area, including 44 country specific, 17 regional & multi-country and 7 global submissions.

Use and application of the Guidelines and impacts on the ground

The submissions received allow some preliminary findings on trends in how the Guidelines have been used to be drawn, as well as their role in advancing human rights-based governance of tenure. Throughout the report special attention is given to how social movements and CSOs have been using the Guidelines.

Awareness-raising, capacity-building and development of guides and training instruments

For many social movements and CSOs strengthening the capacities of their members and communities on the objectives and content of the Guidelines has been a first step towards interacting with this instrument and using it in their struggles. An impressive number of capacity-building initiatives have been carried out across the world since the approval of the Guidelines, either conducted by social movements and CSOs alone or in collaboration with other actors, such as the FAO or governments. In addition, specific tools have been developed by and/or for social movements and CSOs. These processes have served to build a progressive understanding and interpretation of the Guidelines, according to the principles set out in them. Key results have been the opportunity for national organizations and communities to create and/or strengthen networks, to link the Guidelines to ongoing policy processes related to tenure, and to develop their own strategies and action plans. In many cases, these activities have also been the basis for interaction and dialogue with state authorities at different levels. However, much more remains to be done in terms of awareness raising and capacity-building among all actors globally, specifically for the most marginalized groups but also with all competent state authorities. The availability of both the Guidelines and appropriate tools in accessible formats and indigenous/local languages is key in this regard.

Creation of policy dialogue spaces

Dialogue between social movements and CSOs and state authorities at all levels is key for advancing human rights-based governance at the outcome level, i.e. the lives and livelihoods of communities and the most marginalized groups. Such dialogue can contribute to democratic decision-making when it is based on the human rights standards of participation and accountability. The submissions show that social movements and CSOs have engaged in different types of spaces for political dialogue about tenure-related issues. Some of these are framed as "multi-stakeholder platforms", meaning they aim to include any actor who expresses an interest in the tenure of natural resources, including companies, associations representing the private sector, scientific and research institutions etc. In some countries, the Guidelines contributed to creating spaces that previously did not exist to discuss tenure issues and exchange information, and thus giving

visibility to problems related to tenure, enabling capacity-building and awareness raising activities, allowing for assessments of existing legal and police frameworks related to tenure, linking to decision-making processes, and facilitating monitoring of tenure. The existing examples show that the Guidelines can be an extremely useful tool in reasserting the precedence of people's legitimate tenure and human rights, particularly where these have been neglected and marginalized by more powerful actors. Yet the mere existence of dialogue spaces or platforms alone does not automatically generate an inclusive, equitable, transparent and accountable process, nor does it automatically produce outcomes geared towards human rights-based governance of tenure. Issues such as who participates, the scope of a given platform/space and how it has been created, have a bearing on the actual legitimacy of such spaces and their potential impacts in terms of advancing the rights of communities and people. The rise of "multi-stakeholder platforms" in particular has brought about risks. The Guidelines themselves provide guidance for policy dialogue platforms by clearly prioritizing marginalized people as well as their principles of participation.

Reforms of legal and policy frameworks related to tenure

In the last four years, a significant number of countries have undergone processes of reform of their legal and policy frameworks with impacts on tenure. In other countries, such processes are still ongoing, while still in further cases CSOs are proposing revisions of such frameworks. Social movements and CSOs have participated in the development of these policies and laws to different extents and have used the Guidelines in several ways. Overall, the submissions refer to provisions in many of these new or reformed frameworks, which, at least in principle, advance the rights of small-scale food producers and marginalized groups. However, some developments are assessed more critically, pointing to the fact that the Guidelines do not automatically translate into more progressive laws and policies. The "usefulness" of the Guidelines in policy processes is no easy mechanism of cause and effect, but they have, in several cases, played an important role in triggering discussions about tenure issues, providing elements for analysis and, in some cases, kick-starting processes. However, the submissions also point out that state authorities are often reluctant or slow when it comes to engaging in processes to translate the Guidelines' provisions into

national laws and policies. Consequently not all tenure reform processes since the approval of the Guidelines can be evaluated positively and in some countries laws continue to be biased in favor of powerful groups and business interests, and perpetuate the marginalization of small-scale producers, Indigenous Peoples and other groups. Nevertheless the Guidelines have the potential to pave the way towards approaches that put public governance and state-led initiatives at the service of community-defined and community-led processes of negotiation and collective decision-making.

Advocacy and resolution of conflicts

Preventing conflicts, protecting the rights of people in the context of conflicts and ensuring mechanisms to solve conflicts in line with the principles of the Guidelines are important aspects of advancing towards human rights-based governance of tenure. In that sense, several initiatives by social movements and CSOs aimed to assist communities in asserting and securing their rights over land and other natural resources, using the Guidelines as a key reference. Reference to international standards which are based on human rights, such as the Guidelines, can play an important role in advocacy in cases of conflict, especially in cases where national laws are weak, biased towards powerful actors or frameworks that, in principle, protect people's rights but are not enforced. As such, the Guidelines are one tool among others used by CSOs in the context of conflicts. At the same time, they are still a new instrument that is not yet sufficiently known and still need to be systematically applied by state authorities at all levels, including local authorities and judicial authorities.

Violence against human rights defenders working on natural resources

Different forms of violence against human rights defenders working on natural resources, including affected communities and social movements, are widespread across the world. This is a key issue which is intrinsically linked to tenure-related issues and needs to be addressed in order to advance towards human rights-based governance of tenure. The submissions show that violence happens in many forms and is intrinsically linked to the ways communities, movements and organizations defend tenure rights, leading to the criminalization of social struggles. In some cases states and state authorities are involved in and responsible for violence against human rights defenders, as are other actors such as paramilitary forces in some contexts, and

private security guards, the latter in many cases acting on behalf of corporations. Many reported experiences underline the complicity of several of these actors. A specific form of violence happens when free, active and meaningful participation in tenure-related decision-making is denied. In some contexts, violence is so severe that it undermines the possibility of people being able to organize and meet. Non-existent or limited access to justice is also highlighted as a key aspect, as rights violations and abuses can be further aggravated when there are no independent or functioning dispute resolution or grievance mechanisms as well as rampant impunity. A final aspect that is highlighted in the submissions is the role that legal frameworks play in the criminalization of social struggles when, in some countries, laws legalize violence and repression, and severely limit the capacity of people and civil society to organize. This makes democratic and human rights-based governance impossible. Despite these issues being a major issue and a big challenge in the context of the implementation of the Guidelines, they are rarely addressed or even discussed.

Monitoring and evaluation

Collecting information on the tenure of natural resources is a key element for improving the governance and management of tenure. However, the lack of precise and adequate information on these matters as well as the weakness of systematic monitoring remains a major issue, including in the context of the implementation of the Guidelines. What emerges from the submissions is that many activities and initiatives exist related to monitoring in the context of the Guidelines' implementation. In particular social movements and CSOs have used the Guidelines in the context of monitoring since their approval and have, in several countries, developed tools in order to provide a framework for such monitoring. The experience and creativity of social movements and CSOs in using the Guidelines for monitoring (combining qualitative participatory monitoring methodologies with statistical and technical ones) show their potential to act as a "bottom-up" accountability instrument. This is all the more relevant as there is a lack of institutionalized participatory mechanisms that can oversee governance of tenure as a whole. This is particularly the case for systematic and effective monitoring of the outcomes of governance of tenure (i.e. the reality of people) which could go beyond the statistical and technical tools and analysis many institutions

and governments tend to favor. There is thus an urgent need for monitoring and accountability mechanisms that could contribute to protecting, promoting and restoring the rights of the most marginalized communities and groups.

Linking the Small-Scale Fisheries Guidelines to the Tenure Guidelines

The FAO *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication* (SSF Guidelines) represent a global consensus on principles for small-scale fisheries governance and development. Like the Guidelines on the Governance of Tenure, they are anchored in human rights and explicitly prioritize vulnerable and marginalized groups. In particular chapter 5a of the SSF Guidelines builds directly on the Guidelines on the Governance of Tenure. By linking the two instruments, they become complementary and mutually reinforcing. Social movements of small-scale fishers have taken up the challenge and found ways of building this complementarity in their work and struggles in order to secure access rights to territories, lands and waters on which they depend for their life and livelihoods. Linking the Tenure Guidelines to the SSF Guidelines has raised the importance of often marginalized and neglected inland and riparian small-scale fisher struggles to access resources in lakes, rivers and dams. At the same time, the principles in chapter 5 of the SSF Guidelines have provided specific entry points to support the implementation of the Tenure Guidelines. However, the convergence of both instruments for the benefit of small-scale fishers still needs to be ensured, requiring more effort by all actors, in particular states.

Recognition and protection of ancestral, customary and collective rights

A key element and major achievement of the Guidelines is their emphasis on the need to recognize and protect all legitimate tenure rights, including customary tenure systems and legitimate customary tenure rights that are not currently protected by law. In many regions and countries worldwide, communities and people access, use and manage lands through customary systems in order to secure their livelihoods. Accordingly, many submissions refer to customary rights and tenure systems as a cross-cutting issue in many of the activities carried out by social movements and CSOs. While the Guidelines emerge from the submissions as an important and useful instrument to advance the rights of communities and people in the context of

customary tenure, the lack of effective recognition and protection remains a major obstacle in many countries. Especially in the context of resource grabs, communities see themselves confronted with corporations and other powerful actors which often act with the complicity of states who do not recognize their customary rights. Even where statutory laws do recognize these in principle, this does not always translate into practice. The submissions clearly point to the need for more effort and political will to effectively protect and strengthen customary tenure rights and systems, including in the context of the implementation of the Guidelines. This requires inclusive processes, which allow communities and people to develop frameworks and interventions based on their own distinct customary practices and values as well as their conceptions of social and environmental justice.

Women's tenure rights

Although the fundamental role of women in food production, agriculture, fisheries, livestock rearing, forestry and the realization of the human right to food and nutrition is broadly and increasingly recognized, the submissions clearly show that structural gender discrimination and the marginalization of women remains widespread including with regard to tenure of natural resources. Advances regarding women's rights are the result of longstanding women's struggles but the Guidelines can make a contribution to bring about change, as an additional instrument to back demands. Several submissions describe specific activities to advance women's rights in the context of the Guidelines' implementation and indicate that they have, in several cases, created a momentum to take forward discussions on tenure-related gender issues and the rights of women. Despite some positive developments, CSOs also point to persistent challenges regarding the advancements of women's rights and gender equality, such as legal and policy frameworks in many countries which continue to marginalize and discriminate against women. Women's tenure rights also need to be strengthened within customary tenure systems, in the context of supporting the recognition and protection of such systems. Overall, the full potential of the Guidelines has not yet been explored and more discussion should happen in women's organizations, along with more serious and sustained efforts from states.

Youth issues in the context of tenure of natural resources

Young people represent a huge potential and will play a key role in the realization of the human right to food and nutrition in the future. Several submissions show that in many countries young people are demanding access to land to produce food for themselves and for others, create jobs and protect the environment. Yet, they continue to face challenges related to pressure on land and other natural resources, landlessness, insufficient access to information and education, lack of access to credit and technical assistance, and limited involvement in policy dialogue, among other issues. It is of crucial importance to address and overcome the existing challenges for rural youth in order to ensure sustainable food production and governance of tenure. Several submissions describe activities by CSOs in the context of the implementation of the Guidelines that included participation by young people, while other activities were specifically designed for them and/or addressed their issues to advance their rights. Nevertheless, much remains to be done both to strengthen the capacity of young people in the context of tenure and to enable them to engage with duty-bearers in decision-making processes so as to achieve policies and programs that are responsive to their needs and rights.

Obstacles and challenges in improving governance of tenure and implementing the Guidelines

The submissions by social movements and CSOs highlight several remaining obstacles and challenges in improving governance of tenure in line with the Guidelines. While the Guidelines have been established as a key reference with high legitimacy and have in many instances proven to be a useful tool to advance human rights-based governance of tenure, more needs to be done to promote and disseminate the Guidelines among relevant policy-makers, state institutions at all levels, including local and judicial authorities, civil society and other actors, and to build understanding about how these actors can/should apply the Guidelines in their full spirit. Their non-binding nature makes it difficult to convince local, district, provincial and national officials to use and apply them and there is a persistent lack of understanding of how to use soft law in national legal and regulatory frameworks. A key challenge in using the Guidelines effectively is in generating the impetus for administrative and legal reforms to create more equitable

tenure rights regimes and to correct historic injustices. Law-makers and private companies can display strong resistance to policies and regulations that check private sector control over land and natural resources, legitimize customary tenure rights and grant communities the rights to manage and govern communal lands and natural resource systems. According to the experiences of CSOs, the Guidelines are also difficult to communicate to communities because of their language and technical terms, and special efforts are needed to bring the Guidelines closer to people so that they understand how they can use them in their respective contexts. Another big challenge is the participation of the stated main beneficiaries of the Guidelines in their implementation, particularly in the context of local, national and regional processes related to governance of tenure where the most vulnerable and marginalized groups are still systematically excluded or under-represented.

A proliferation of different interpretations of the Guidelines by different actors risks causing confusion about their foundation and spirit, and diverting the implementation from the Guidelines' true objectives. Efforts are not always focused on the primary beneficiaries of the Guidelines, and interpretations promoted by some bilateral donors, corporate foundations, as well as consortia of corporations, multilateral development banks and international NGOs frame governance of tenure as a business, rather than a human rights issue. Such interpretations open the door for misuse of the Guidelines through selective implementation – “cherry picking” – and to legitimize violations of communities' tenure rights, rather than holistic applications of the Guidelines as a comprehensive instrument to guide human rights-based governance of tenure. The compliance of donor support and tenure-related development cooperation programs with the Guidelines also remains a challenge. While the Guidelines are increasingly used as a reference to guide interventions and programs in the context of development cooperation, not all of those projects contribute to advancing human rights-based governance of tenure. In some countries, projects are not addressing existing rights abuses and violations, dispossession and displacement arising from large-scale investments and other natural resource related conflicts and even risk aggravating conflicts and related abuses and violations.

Overall, the main challenge remains to ensure that there is real change on the ground regarding improvement of governance of tenure for the most marginalized groups.

LIST OF ACRONYMS

CEDAW	UN Committee on the Elimination of All Forms of Discrimination Against Women
CESCR	UN Committee on Economic, Social and Cultural Rights
CFS	Committee on World Food Security
COFI	FAO Committee on Fisheries
CSM	Civil Society Mechanism
CSO	Civil Society Organization
DRC	Democratic Republic of the Congo
EESC	European Economical and Social Committee
EU	European Union
FAO	Food and Agriculture Organization of the UN
GSF	Global Strategic Framework for Food Security & Nutrition,
INGO	International Non-Governmental Organization
IPC	International Planning Committee for Food Sovereignty
MERCOSUR	Common Market of the South, Latin America
MPA	Marine Protected Area
NGO	Non-Governmental Organization
OEWG	Open Ended Working Group
OHCHR	Office of the UN High Commissioner for Human Rights
REAF	Specialized Meeting on Family Farming of MERCOSUR
SSF	Small-Scale Fisheries
ToR	Terms of Reference
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

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- Acord International
- Action Aid
- Arab Group for the Protection of Nature – APN
- Asian Farmers' Association for Sustainable Rural Development – AFA
- Biovision
- Bread for the World – Protestant Development Service
- CCFD Terre Solidaire
- Centro Internazionale Crocevia
- CIDSE International Alliance of Catholic Development Agencies
- Collectif Stratégies Alimentaires – CSA, Belgium
- Conseil National de Concertation et de Coopération des Ruraux – CNCR, Senegal
- Coordination Nationale des Organisations Paysannes – CNOP, Mali
- DanChurchAid
- Development Fund Norway
- Eco Ruralis, Romania
- Ekta Parishad, India
- Environmental Friends Society, Bahrain
- FIAN Belgium
- FIAN Germany
- Focus on the Global South
- Institute for Advanced Sustainability Studies, Potsdam – IASS
- Instituto de Estudos Socioeconômicos – INESC
- Instituto por la Democracia, Guatemala
- International Collective in Support of Fish Workers – ICSF
- International Federation of Rural Adult Catholic Movements – FIMARC
- International Indian Treaty Council – IITC/CITI
- International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations – IUF
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- All Nepal Peasants' Federation - ANPFA, Nepal
- Asian NGO Coalition for Agrarian Reform and Rural Development - ANGOC, Philippines
- Asociación de Pescadores del Golfo de Fonseca - APAGOLF, Honduras
- Base Investigaciones Sociales, Paraguay
- Brot für Alle/Bread for All
- Convergence malienne contre l'accaparement des terres - CMAT, Mali
- Comité Nacional de la Agricultura Familiar Campesina e Indígena del Paraguay – CNAFCI, Paraguay
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- Eastern and Southern Africa small scale Farmers' Forum - ESAFF, Madagascar
- European Coordination Via Campesina - ECVC
- FIAN Colombia
- Global Witness
- Green Scenery, Sierra Leone
- Katosi Women Development Trust, Uganda
- Land Watch Asia
- LIFE Platform
- Masifundise/Coastal Links, South Africa
- Rassemblement Démocratique des Femmes du Niger - RDFN
- National Fisheries Solidarity Movement - NAFSO, Sri Lanka
- ÖBV – Via Campesina Austria
- Oxfam Novib Netherlands
- Oxfam Vietnam
- Plateforme Sous Régionale des Organisations Paysannes d'Afrique Centrale – PROPAC, DRC
- REAF Mercosur
- União Nacional de Camponeses – UNAC, Mozambique
- Rights and Resources Initiative – RRI
- Welthungerhilfe

INTRODUCTION

This synthesis report summarizes the results of a broad consultation among small-scale food producers and other civil society organizations (CSOs) around the globe on the use and implementation of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (henceforth “the Guidelines”). It is a contribution from the Civil Society Mechanism (CSM) to the Global Thematic Event on the Guidelines to be held during the 43rd session of the Committee on World Food Security (CFS). This Global Thematic Event will be the first one held to share experiences in applying CFS decisions and recommendations, as a contribution to the CFS’ monitoring function. As such, it constitutes an important step towards promoting accountability in the CFS as the foremost inclusive international and intergovernmental platform on food security and nutrition. Approved in May 2012, the Guidelines were developed in a long and inclusive process of consultations and negotiations, and are an unprecedented international agreement on the governance of tenure based on human rights.

For the preparation of the CFS 43 Global Thematic Event, the CSM WG on Monitoring conducted a broad consultation among social movements and CSOs (both members of the CSM and others), to share their views on the implementation of the Guidelines and their experiences in using them. The inputs received through this consultation were compiled and analyzed, and the results are summarized in this report. This synthesis report does not present a complete overview of everything that has been done with the Guidelines since their approval, and the assessment presented is necessarily preliminary, in as much as it is impossible to do a full evaluation on the implementation, use and application of the Guidelines only four years after their approval, especially given the complexity of tenure issues. The following pages will therefore provide some preliminary findings on how the Guidelines have been used and by whom, as well as their role in improving governance of tenure. Special attention is given to how social movements and CSOs have been using the Guidelines.

This reports begins with some introductory chapters (I-III), which will clarify the context of this monitoring exercise, define its objectives and explain the methodology used. The following chapters (IV-VI) will present the

findings that emerge from the submissions received, including a quantitative analysis of the inputs as well as their geographical coverage, a description and analysis of the main categories of how the Guidelines have been used and applied, as well as persistent obstacles and challenges on the way towards improving tenure governance. The report concludes with a set of recommendations aiming at ensuring that the Guidelines play their role in advancing human rights-based governance of tenure.

I. BACKGROUND: WHY AN INDEPENDENT CIVIL SOCIETY MONITORING REPORT AT THE GLOBAL LEVEL?

A. Importance of the Guidelines and of monitoring their implementation

Small-scale food producers such as peasants and smallholder farmers, agricultural and food workers, pastoralists, small-scale fishers and artisanal fisherfolk, forest dwellers, indigenous peoples, the landless, women and youth, rely on access to and control over natural resources such as land, including farmland, forests, grazing land and fishing grounds, for their survival and livelihoods. However, a huge number of them face obstacles and threats to this access and control over natural resources. Their exercise of customary, collective, temporary and/or subsidiary tenure of natural resources in particular is often disregarded when land is acquired by large landowners or industries, commodified or expropriated (UN ECOSOC, 2014:13). As recognized by the CFS, “smallholders play an essential role in ensuring food security and nutrition today and in the future, including in the increase in food production needed to meet future global demand. Smallholders are a heterogeneous group across countries and regions, supply 70% of overall food production,¹ and yet at the same time many smallholders themselves still suffer from food insecurity and malnutrition.” (FAO, 2012; CFS, 2016).

Issues related to the tenure of natural resources present a number of urgent challenges to human rights, given that access to, use of and control over natural resources directly affect the enjoyment of a wide range of them (e.g. economic and social rights, including the human rights to food and nutrition, housing, water, health, work, an adequate standard of living). Decision-making related to the governance and management of natural resources that ignores human rights standards and disputes over these resources are often the cause of human rights violations, conflicts, and violence. In many countries, land and resource grabbing and the privatization of nature (including in the context of large-scale

agricultural land acquisitions and large-scale development and investment projects such as the construction of hydroelectric dams, mines and oil and gas installations, luxury resorts for tourism or urbanization and industrialization) result in forced evictions, mass displacement and food insecurity, which, in turn, have contributed to an increase in internal and international migration and put added pressure on access to urban land and housing.² Natural resource issues are also factors in emergency situations, including armed conflict and natural disasters (UN ECOSOC, 2014: 3-4:17), as well as in the context of climate change.

The Guidelines are an unprecedented international agreement that recognizes that secure tenure rights and equitable access to land, fisheries and forests, especially for those whose livelihoods depend on the access to and control of these resources, are crucial in order to achieve food security and the realization of the human right to food and nutrition. The stated objective of the Guidelines is to support this through “improved governance of tenure of these resources, for the benefit of all, with an emphasis on vulnerable and marginalized people [...]” (para. 1.1). They serve as a reference and provide practical guidance to improve governance of tenure of land, fisheries and forests. They do so by referring to and building on existing human rights obligations, commitments and standards, and by establishing provisions on how to interpret these in the context of tenure of natural resources. The inclusive process that led to their elaboration and endorsement gives them a high level of legitimacy and political weight.

Since the unanimous approval of the Guidelines in 2012 by all CFS member states, various actors have engaged in a broad range of activities around the world in order to promote and ensure their implementation. Collecting information on these activities, the challenges encountered and outcomes and sharing them, is a major contribution to the way the Guidelines and their provisions can be put into practice in order to reach the objectives set out in them.

² 795 million people are undernourished globally (FAO, 2015:3). Several sources indicate that large-scale land acquisitions by national and foreign investors as well as some governments saw over 60 million hectares of land sold or leased since 2000, primarily in Africa, Asia and Latin America but also in Europe. According to estimates, between 280 million and 300 million people worldwide have been affected by development-related displacement over the past 20 years (OHCHR, 2014:3). In the period 1990–2015, 93 countries recorded net forest losses (totaling 242 million hectares) (FAO, 2016:23). The world’s cultivated area has grown by 12 percent over the last 50 years. Agriculture uses 11% of the world’s land surface for crop production and makes use of 70% of all water withdrawn from aquifers, streams and lakes (FAO, 2011).

¹ Albeit controlling less than a quarter of the world’s agricultural land.

Thus, it is essential to ensure effective monitoring, including the creation of adequate monitoring mechanisms, in order to assess the progress of their implementation as well as their impact on the ground and their contribution to the improvement of tenure governance according to their objectives (para. 26.4).

The importance of monitoring and evaluating the outcomes of the implementation of the Guidelines is stated in their principle of implementation 3B10 on *Continuous improvement*. Section 7 of the Guidelines (*“Promotion, implementation, monitoring and evaluation”*) specifically mentions that “States have the responsibility for their implementation, monitoring and evaluation” (para. 26.1) and calls upon them to engage in different types of inclusive and participatory activities to fulfill this responsibility (para. 26.2). The Guidelines also refer to monitoring in several paragraphs related to different aspects (paras. 5.8, 6.8, 8.11, 11.4, 11.7, 12.14, 15.10, 20.1, 20.4). These processes need to be in line with the Guidelines’ principles, and thus be participatory, non-discriminatory and gender-sensitive, and pay special attention to small-scale food producers and the most marginalized people.

B. Relevance of the CFS 43 Global Thematic Event to report on progress on the implementation of the Guidelines

Reformed in 2009, the CFS is “the foremost inclusive international and intergovernmental platform for a broad range of committed stakeholders to work together in a coordinated manner and in support of country-led processes towards the elimination of hunger and ensuring food security and nutrition for all human beings” (CFS, 2009:2). The CFS will hold a Global Thematic Event at its 43rd session in October 2016 to share experiences and take stock of the use and application of the Guidelines, to contribute to its role of reporting progress on the implementation of the Guidelines, in line with their paragraph 26.4.

The CFS reform document calls for an “innovative mechanism” to promote accountability that would be based on the input of a wide range of actors, involve and benefit from existing frameworks and partners and be flexible enough to benefit both global level (CFS and other) as well as regional/national/local

planning and monitoring requirements (CFS: 2009/2 Rev.2, para. 6ii). The CFS Open Ended Working Group (OEWG) on Monitoring developed and agreed the “Terms of Reference to share experiences and good practices in applying CFS decisions and recommendations through organizing events at national, regional and global levels” (ToR for monitoring events) in 2016. These ToR will be submitted to CFS 43 for approval. As agreed by CFS 42, the development of the ToR to ensure participation, inclusiveness and regional representation in monitoring events (CFS 2015/42/10, para. 35h), should be understood as the first step in building the CFS innovative monitoring mechanism. The Global Thematic Event on the Guidelines will be the first one held to share experiences and good practices in applying CFS decisions and recommendations, as a contribution to the CFS monitoring function.

C. The CSM Working Group on Monitoring and its understanding of monitoring

Even though decisions and recommendations of the CFS are voluntary, accountability is vital, connecting what happens at the local and national level with decisions made at the global level. In this sense, the CSM³ has been actively contributing to the work of the OEWG on Monitoring, particularly in order to establish an innovative monitoring mechanism to enable the accountability of the CFS and to support improving policies by using the CFS recommendations in the context of the realization of the human right to food and nutrition. Generally speaking, monitoring can be described as a continuous activity that systematically uses information in order to measure achievement of defined targets and objectives within a specified time frame. In doing so, it provides feedback on implementation processes and implementation problems. Monitoring also tracks resource acquisition, allocation and expenditures and the delivery of services.⁴

³ Civil society organizations are autonomous and self-organized through the CSM, which is designed to guarantee the participation of those most affected by hunger and food insecurity. To this end, the CSM is organized in eleven constituencies: farmers, fisherfolk, landless, indigenous peoples, pastoralists, consumers, agricultural workers, urban poor, women, youth, and NGOs. For more information on the CSM, please see: www.csm4cfs.org/the-csm/.

⁴ Valadez, J. and Bamberger, M. (1994:53), as quoted in Seufert, P. and Monsalve Suárez, S. (2012:3).

In the Global Strategic Framework (GSF), the CFS approved five principles of monitoring and accountability which have played a central role in CSM's proposals, and are part of the agreed ToR for monitoring events. According to these principles and in consistence with Civil Society (CS) perspectives, monitoring and accountability systems should: 1) be human-rights based, with particular reference to the progressive realization of the right to adequate food; 2) make it possible for decision makers to be accountable; 3) be participatory and include assessments that involve all stakeholders and beneficiaries, including the most vulnerable; 4) be simple, yet comprehensive, accurate, timely and understandable to all, with indicators disaggregated by sex, age, region, etc., that capture impact, process and expected outcomes; and 5) not duplicate existing systems, but rather build upon and strengthen national statistical and analytical capacities. In addition, they should be linked to human rights reporting mechanisms (Seufert and Monsalve Suárez, 2012:36-42).

The CSM Working Group on Monitoring understands monitoring to be an assessment of the extent to which decisions and recommendations of the CFS are being implemented at national level by the entities that are responsible in these areas. Monitoring mechanisms are not a court of law; they support a country to abide by guidelines and principles to which they have agreed. Rights holders and affected people should be able to monitor independently, without interference, and their views should be fed into any CFS monitoring mechanism. Civil society is also seeking to open up multi-actor spaces at national level in order for the implementation of CFS decisions and recommendations to be inclusive and not top-down. Monitoring initiatives should empower social movements at national level. In countries where in-depth monitoring takes place, it is important that funds are available for autonomous (information) research, discussion and reflection by civil society organizations (CSOs), that can either be built into a common document if accepted by the government, or presented as an independent report.

Discussions in the CFS OEWG on Monitoring have shown that there are various approaches to monitoring, as for instance the results-based management approach, the human rights-based approach and the best practices approach. These different approaches encounter a number of difficulties when applied to the case of the CFS, as its decisions and recommendations are neither technical guides nor strategic plans, nor legal agreements (Silva-Castañeda, 2015) and

can hardly be reduced to a set of consensual and measurable, project objectives. More importantly, such exercise would necessarily undermine the democratic potential of this platform by restraining the field of political discussion and debate. In line with the inclusive character of the CFS, the challenge of monitoring lies in reaching a consensus on a global framework, i.e. a set of principles and procedures. It should take into account the diversity of monitoring approaches privileged by different actors, and aim at bringing them into a conversation. The monitoring exercise should be a space allowing for non-consensual views to be expressed, thus implying that a range of actors participate by producing their independent assessments (Silva-Castañeda, 2015). In the understanding of the CSM, the ToR for organizing monitoring events provides for such a space.

D. The holistic approach on tenure and its governance: recognizing the interconnection of natural resources and their uses

For indigenous peoples, communities, small-scale food producers around the world, land, oceans, rivers, forests, and all of nature are much more than means of production. They are the very basis of life, culture and identity, and fulfill crucial social, cultural, spiritual and environmental functions. Many ethnic nationalities, especially indigenous peoples, as well as communities and social movements express these relationships through the concept of "territory." The concept of territory is complex and subject to multiple interpretations, but is understood here as expressing holistic relationships between people and their living environment.⁵

The Guidelines refer explicitly — in their title and throughout the text — to land, fisheries and forests. However, they recognize that "tenure of land, fisheries and forests is inextricably linked with access to and management of other natural resources, such as water and mineral resources" (preface), and invite states to apply the Guidelines to all natural resources. According to the holistic understanding of "territories", as well as the realities of the lives and livelihoods

⁵ In this context the term "territory" is not used in order to define the geographical and economic ambits of states, and over which states assert sovereignty through the use of political, legal and military force.

of many people, it is not possible to separate land, fisheries and forests from other natural resources. Just as it is impossible to separate issues related to each of these resources, meaning that, while specific issues regarding land (in all its forms: farm land, grazing lands etc.), fisheries and forests may need specific and differentiated interventions, all natural resources are connected. For many indigenous and local fishing communities who live along the coast, for instance, the distinction between land and sea tenure is a false one, as they themselves do not distinguish between landscape and seascape.

Tenure is the relationship, whether defined legally or customarily, among people with respect to land and other natural resources.⁶ In practice, this concept tends to be reduced to the physical and economic aspects that only relate to the laws of access, ownership, property, titling and the “productive” (understood as financial-value-producing) use of land and other natural resources, the laws and rules that codify and regulate them, and the formal institutions that create, recognize and enact those particular norms. This kind of reductionism is highly problematic since, in real life, aspects which are related to the use and management of land and other natural resources in their social function, as well as their cultural, spiritual and environmental dimensions (such as agro-ecological approaches), are closely linked to tenure. Many problems related to access to and control over natural resources by communities of small-scale food producers are linked to problems of governance of use and management. The Guidelines underline the need for a holistic approach “recognizing that natural resources and their uses are interconnected” (para. 3B5). Tenure is thus viewed in this report as a collective basket of livelihoods where many local and indigenous communities consider that there is a deep interconnection between land use, access to forests and fishing grounds, use of water, and customary practices.

Governance of tenure refers to the rules, processes and structures through which decisions are made about access to natural resources and their use, the manner in which the decisions are implemented and enforced, and the way that competing priorities and interests of different groups are reconciled (Palmer et al., 2009). This involves both the formal institutions of government and also

informal arrangements, and relates especially to the crucial issues of who participates in decision-making, whether and how well governments are accountable to their citizens, and how societies oblige their members to observe rules and laws. Marginalized groups and communities have the right to be actively involved in deciding who should be an authorized user, what the rules to access, manage and withdraw resources are, what the timing and purpose of the harvest is, and which equipment can be used. The holistic understanding of and approach to tenure thus also includes its governance, as spheres of formal/statutory and informal/customary rights, uses and tenure systems overlap, coexist or, in some cases, contradict each other.⁷

II. OBJECTIVES OF THIS CSM MONITORING REPORT

This report intends to contribute to the Global Thematic Event on the Guidelines during CFS 43 from a civil society perspective. It will address the key questions of this event for civil society: what actions have taken place in order to implement the Guidelines and in which way have they contributed to achieving the Guidelines’ objective of improving governance of tenure of land, fisheries and forests for the benefit of all, with an emphasis on vulnerable and marginalized people, and to the progressive realization of the right to adequate food?⁸

This report does not present a final assessment on the implementation, use and application of the Guidelines. Such an endeavor would be impossible as tenure issues are complex and the Guidelines were approved only four years ago. In addition, challenges and outcomes of the implementation strongly depend on local, national and regional contexts. The report will therefore present some preliminary findings on 1) what is being done, where and by whom; 2)

⁷ In many contexts a situation of legal pluralism exists and this may include more than one systems of law and system of tenure governance – a statutory one and a customary one that is recognized in different ways in different countries (with varying consequences for how customary tenure is then treated in that governance context). A key element of customary systems of tenure is that they are embedded in social relations and the value system of a given group.

⁸ As stated in paragraph 1.1, the Guidelines “seek to improve governance of tenure of land, fisheries and forests [...] for the benefit of all, with an emphasis on vulnerable and marginalized people [...]”

⁶ Based on FAO’s definition of land tenure (FAO, 2002), which, by extension, can be applied to natural resources more generally.

the impacts of activities on the ground and people's livelihoods; as well as 3) advances, challenges and trends four years after the approval of the Guidelines.

As such, this report aims to:

- Monitor progress and take stock of actions in the context of the implementation of the Guidelines at national, regional and global levels by CFS members and participants;
- Promote accountability and foster the adoption, adaptation and scaling up of good practices and learning from experiences in implementing the Guidelines;
- Draw lessons and agree on recommendations to improve the relevance and effectiveness of CFS work for the realization of the human right to food and nutrition;
- Increase awareness and understanding of the Guidelines, and build capacity for food security and nutrition monitoring at national and regional levels; and
- Incrementally build the CFS innovative mechanism of monitoring and illustrate how the CSM can substantially contribute to this monitoring mechanism.

III. METHODOLOGY

For the preparation of the CFS 43 Global Thematic Event, the CSM WG on Monitoring conducted a broad consultation among social movements and CSOs (both members of the CSM and others), to share their views on the implementation of the Guidelines and their experiences in using them. To this end, a questionnaire was broadly shared (see Annex 1). The inputs submitted by CSOs to a survey conducted by the CFS Secretariat and additional relevant information were also taken into consideration. In addition, several interviews were conducted with key informants. The results of the consultation and their presentation in this report were presented and discussed during a meeting of the drafting team and the CSM WG on Monitoring as well as other CSM representatives (including several members of the former CSM WG on the Guidelines), which took place in Rome on July 9, 2016.

The interviews have proven to constitute a crucial element in gathering information and experiences as well as drawing preliminary conclusions. Conducting interviews, in addition to inviting people to fill in the questionnaire, allowed for the inclusion of as many voices as possible, particularly those of the social movements who represent the most affected and marginalized groups — considering that, for example, not all the informants have regular internet connection or the possibility to answer the questionnaire — and for a deeper understanding of conducted activities, the specific context, impacts, challenges etc. Following a human rights-based approach on monitoring, the analysis takes the reality on the ground as the basis of analysis of the use of the Guidelines. We believe that this active and qualitative monitoring methodology, which is not limited to receiving, documenting and compiling information and establishing statistics is essential and constitutes an added value of this report.

A group of recognized academic experts in the fields of tenure and monitoring peer-reviewed this report with the aim of ensuring its methodological soundness. They reviewed the questionnaire and the methods to gather, compile and systematize the information for the report, and provided comments to a draft version of the present report.

IV. QUANTITATIVE ANALYSIS AND GEOGRAPHICAL COVERAGE OF THE SUBMISSIONS

This section gives an overview of the information that was taken into account for the elaboration of this report. A total of 68 submissions were received, covering a wide geographical area, including 44 country specific, 16 regional and multi-country and 8 global submissions.

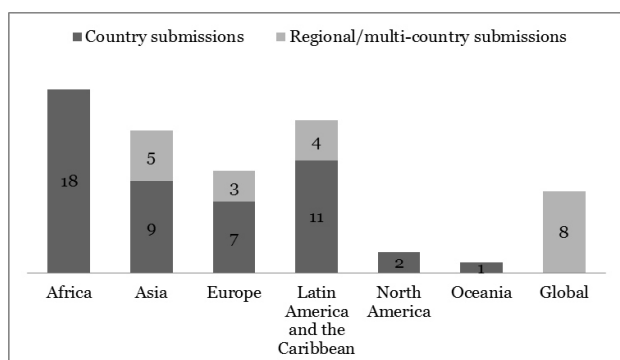


Figure 1: Submissions by region

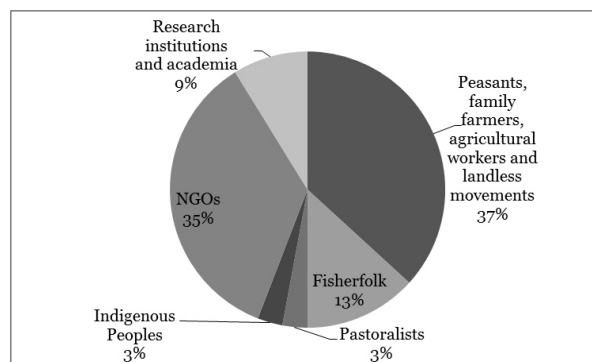


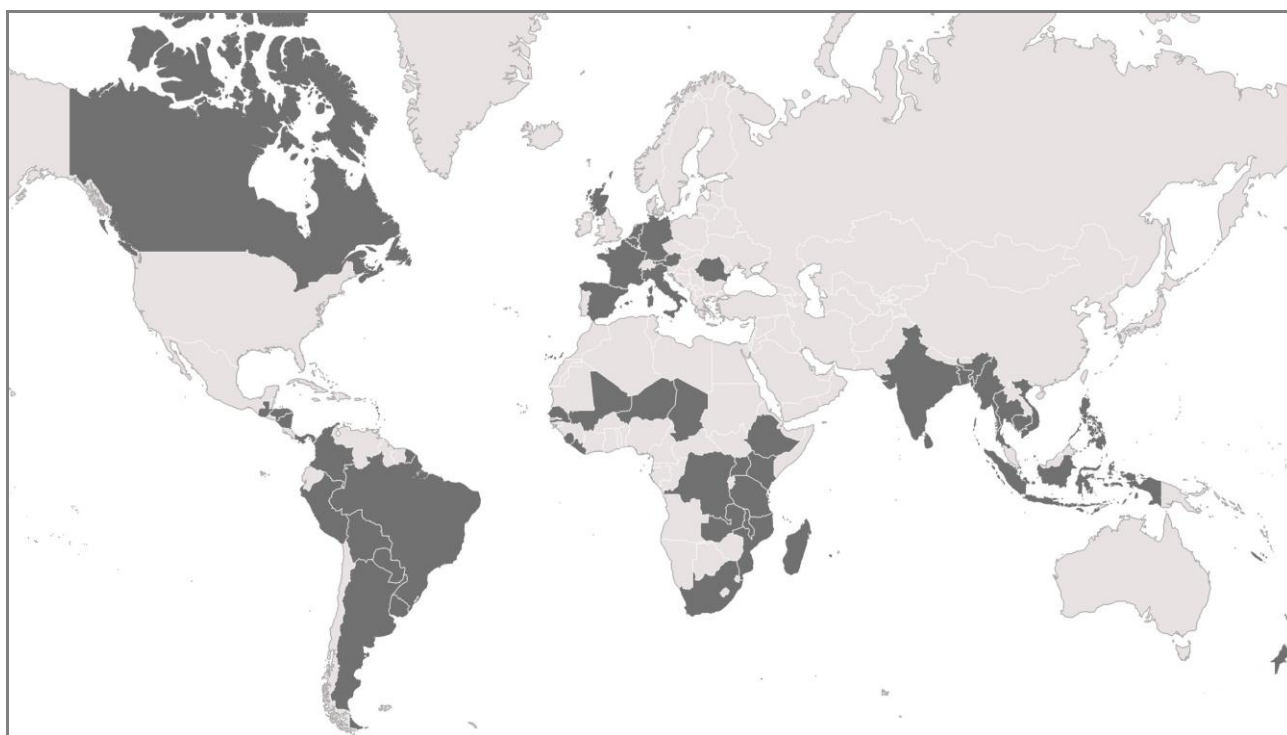
Figure 2: Distribution of submissions as of constituency⁹

30% of the submissions (20 out of 68) mention special attention to women and gender issues.

20% of the submissions (13 out of 68) mention special attention to the youth.

Slightly more than half of the submissions (36 out of 68) come from grassroots organizations who represent small-scale food producers and marginalized groups.

More than half of the submissions (40 out of 68) denounced that some groups or individuals have suffered harassment, persecution or detention due to their activities in defense of tenure rights in the last four years.



Map: Geographical coverage of the submissions (countries where activities have been carried out)¹⁰

⁹ Some of the 11 constituencies represented in the CSM have been grouped together, bringing the number of considered categories to 8. Some of the submissions indicated the involvement of several groups of actors in implementing the activities (e.g. CSOs, grassroots movements, government, and international institutions).

¹⁰ Argentina, Austria, Bangladesh, Belgium, Bolivia, Brazil, Cambodia, Canada, Chad, Colombia, Democratic Republic of Congo, Ethiopia, France, Germany, Guatemala, Honduras, India, Indonesia, Italy, Kenya, Liberia, Madagascar, Malawi, Mali, Myanmar, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Romania, Scotland, Senegal, Sierra Leone, Spain, South Africa, Sri Lanka, Tanzania, Thailand, Uganda, Uruguay, Vietnam, Zambia.

V. USE AND APPLICATION OF THE GUIDELINES AT LOCAL, NATIONAL AND REGIONAL LEVEL, IMPACTS ON THE GROUND AND THE ROLE OF CSOS

Since the approval of the Guidelines in 2012, a number of initiatives have been carried out by and for different actors to address tenure and governance issues related to natural resources, promoting the use and application of this international instrument in diverse contexts. In this section, we present some of these different activities and their impacts on the ground from the perspective of social movements and CSOs, including an analysis of the role the Guidelines have played to advance human rights-based governance of natural resources as well as the role of CSOs and of other actors.¹¹

A. Awareness-raising, capacity-building and development of guides and training instruments

For many social movements and CSOs raising awareness and strengthening the capacities of their members and communities on the objectives and content of the Guidelines have been a first step towards interacting with this instrument and reflecting on how to use it in their struggles. In many cases, these activities have also been the basis for interaction and dialogue with state authorities at different levels about their practical implementation in the field. A significant amount of the submissions thus refer to activities focusing on sensitizing, training and improving an understanding of the potential of the Guidelines to address tenure-related issues. These activities have targeted a broad range of actors of civil society from different constituencies at local, national and/or regional level, as well as representatives of states – including government officials and local authorities –, lawyers and journalists.

An important initiative is the elaboration of a “*People’s Manual on the Guidelines on Governance of Land, Fisheries and Forests. A guide for promotion, implementation, monitoring and evaluation*,”¹² through a

process that involved social movements and CSOs from all regions and constituencies. This manual is a pedagogical guide, which aims to make it easier for peasant, fishing and pastoralist organizations, indigenous peoples, the landless, women and civil society as a whole to understand and use the Guidelines. Starting from the premise that no governance instrument implements itself automatically and that communities and people need to be the drivers of measures to improve their lives and advance their rights, the Manual provides guidance on how to make creative use of the Guidelines, building on concrete examples of how social movements, communities and CSOs have integrated them into their struggles and strategies. Based on the People’s Manual, capacity-building workshops with grassroots members of social movements were organized in fifteen countries on all continents. It is available in Spanish, English, French, Brazilian Portuguese and Arabic and is currently being translated into local and indigenous peoples’ languages. Based on the popular education methodology of the People’s Manual, CSOs and FAO jointly developed a capacity-building curriculum. This “*Training guide for Civil Society on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*” (publication forthcoming) provides a methodology and a set of materials to undertake training on the Guidelines, taking real situations, where governance of tenure is challenged, as a starting point in order to engage with the Guidelines and their principles. Other tools for popularization and sensitization have been produced, such as fact sheets, easy-to-read brief publications and simplified versions of the Guidelines for CSOs (Belgium, Sri Lanka), and policy briefs for policy makers (Malawi). Papers have been published linking the Guidelines to national policy frameworks on tenure and contexts of countries such as Cambodia, Bangladesh, Kyrgyz Republic, Peru and Bolivia.

“Land is always a very political issue. Real-estate brokers are very powerful and those who take on to struggle for their land rights suffer a lot. Commons are easy targets for capture because often they are not legalized and recognized. We see that in many countries not enough efforts have been made in order to involve those most affected by landlessness into tenure reforms. More efforts are needed to build the political capacities of local communities. We need to create platforms where marginalized people can raise their voice more strongly and ask governments to make policies in their favor.”

World Alliance of Mobile Indigenous Peoples - WAMIP

¹¹ A full list of the activities and materials sent by CSOs in response to the survey is available on the CSM website: <http://www.csm4cfs.org/working-groups/monitoring>.

¹² Available at: www.foodsovereignty.org/peoplesmanual.

Several activities included the translation of the Guidelines into local languages (e.g. in India, Sri Lanka and Niger), of their principles (Senegal) or preparation of simplified versions (Malawi). These initiatives by social movements and CSOs have proven to be a key element in ensuring a broad dissemination, understanding and application of the Guidelines, specifically at community level. In several cases, these translations were circulated not only to social movements and grassroots organizations, but also to decision makers and the media, thus contributing to raising awareness about the Guidelines. In some cases inappropriate translations of important conceptual terms in official translations were mentioned as a barrier for their correct use and application. Some CSOs have therefore revised such official translations.

Box 1. From capacity-building to the use of the Guidelines in social struggles

In South Africa, Masifundise/Coastal Links have carried out awareness-raising activities and capacity-building workshops on the Guidelines at national and provincial level. The knowledge they gained on the Guidelines allowed them to link them to the small-scale fisheries Guidelines and to use some of their principles in a submission¹³ to reject the proposed draft on regulations of Marine Protected Areas (MPA) of the Department of Environmental Affairs (DEA), immediately after one of the provincial workshops. The fisher organizations also used them to build a court case¹⁴ with the support of the Legal Resources Centre and in partnership with research institutions, which resulted in the legal recognition, for the first time, that the declaration of MPAs does not extinguish the exercise of the customary rights of coastal fishing communities to access their marine resources in an area, thus also vindicating many similar fisher communities who have claimed the same recognition for years. The Tenure Guidelines as well as the Small-scale Fisheries Guidelines were used as references in expert statements submitted by research institutions to support the case.

Many organizations raised awareness about the Guidelines and burning tenure-related issues through public events such as assemblies as well as during national, regional and international conferences, in order to discuss governance of tenure in the context of human rights, agrarian and social justice, and climate change and how to link the Guidelines to ongoing struggles. Social movements and CSOs also raised awareness on the Guidelines during

workshops and meetings across the world, targeting a diversity of audiences, from grassroots and local leaders, to government officials, local authorities parliamentarians and other actors (e.g. in Sierra Leone, India, Uganda, Kenya). Public awareness of the Guidelines also aimed at strengthening media coverage of issues related to natural resources and broadening audiences within countries through the training or participation of journalists (e.g. in Senegal, Panama, Argentina). Other forms of awareness-raising and media tools were also developed and employed, such as theatre plays and videos in Senegal, radio programs in Argentina and Niger, and video and radio interviews, allowing for a broader dissemination of the Guidelines globally.

An impressive number of capacity-building initiatives have been carried out across the world (e.g. Senegal, Malawi, Mozambique, Niger, Mali, Uganda, Sierra Leone, Liberia, Tanzania, Argentina, Colombia, Guatemala, Nicaragua, Panama, Paraguay, Peru, South Africa, Sri Lanka, Myanmar, the Philippines, Bangladesh, Nepal, Indonesia, Belgium, Italy, Romania, Spain). These trainings and workshops were conducted by social movements and CSOs alone, or in collaboration with other actors, such as the FAO or governments. CSO activities focused on the understanding of the principles and provisions of the Guidelines and on strategies to use them in diverse contexts. In that sense they dealt with key tenure-related issues, relevant legal and policy frameworks, the different actors intervening in the governance of tenure, and the role of communities, movements and CSOs in using the Guidelines as a tool to assert land, fisheries and forest rights. As such, they aimed at strengthening the capacity of peasants, indigenous peoples, pastoralists and fisherfolk, in particular women and youth, as well as trainers, activists, policy-makers and practitioners. In some cases, as during a series of workshops carried out in Panama, Paraguay, Peru and Colombia, capacity-building activities included visits to cases of conflicts over land and natural resources. This allowed for the compilation of first-hand information that was then used for an analysis of the tenure situation in light of the Guidelines and the preparation of a monitoring report (see chapter V.F). Some workshops also explicitly included several countries from across a region – such as in the case of two workshops that mainly targeted small-scale food producers' organizations from Europe and Central Asia – in order to analyze the tenure situation and develop a common action plan to advance their implementation in

¹³ Available at: <http://masifundise.org/coastal-links-south-africa-reject-draft-regulations-on-proposed-marine-protected-areas>.

¹⁴ Available at: <http://masifundise.org/judgement-in-dwesa-cwebe-customary-rights-case>.

the region. Both workshops ended with a public event (at the FAO in Rome and at the European Economical and Social Committee (EESC) of the EU in Brussels respectively), which allowed CSOs and the FAO as well as CSOs and policy makers to deepen their dialogue on ways to address burning tenure issues in the region.

“Each country has a different starting point in its dialogue on governance of tenure. In this context, the participation of small-scale food producers’ organizations, grassroots organizations and CSOs in decision making processes related to governance of natural resources is key and requires specific capacity-building activities to foster ownership of the VGGT. Flexibility in the design of capacity development activities is needed to adapt to national contexts while ensuring quality delivery of capacity development activities.”

Joint submission by the IPC Working Group on Land and Territory and the FAO to the CFS Secretariat’s survey on use and application of the Guidelines (“Enhancing social movements of small-scale food producers, grassroots organizations and CSOs to use the VGGT: a partnership journey”).

Key results of these processes have been the opportunity for national organizations and communities to create and/or strengthen networks, to link the Guidelines to ongoing processes, to engage further into policy processes related to governance of natural resources, and to develop their own strategies and action plans.

These experiences have served to build a progressive understanding and interpretation of the Guidelines according to their principles and thereby to avoid co-optation by powerful actors. As a result, unity among CSOs was strengthened, country-level dialogue was initiated and governments, FAO and other institutions were engaged. These encounters also enabled participants to identify spaces for advocacy and to engage in processes of reform or framing of policies on land, fisheries and forests. The Guidelines have thus served as a useful tool to strengthen capacities and empower at the grassroots level. Several submissions refer to participants expressing that after the workshops they understood their rights better, felt in a better position to mobilize and engage on tenure issues within their constituencies, and are better prepared to assert their rights at local, national and regional level (see Box 1).

Nevertheless, much more remains to be done in terms of awareness raising and capacity-building among all actors globally – and

specifically for the most marginalized groups – in order to tap into their full potential to advance human rights-based governance of tenure. Several submissions underline the need for the Guidelines and related tools to be widely publicized and distributed, in formats accessible to all and in their own languages. Several submissions highlight the need for additional training of communities, social movements and CSOs in order to broaden knowledge about the Guidelines but also to deepen the understanding of some aspects which have not yet been sufficiently addressed, such as the application of the Guidelines in the context of pastoralists and nomadic peoples. Additionally, specific trainings on legal aspects in the context of tenure governance for and with lawyers are mentioned as a priority. At the same time, social movements and CSOs underline the need for states to ensure knowledge about the Guidelines and their use among state authorities at different levels, including parliamentarians and judicial authorities who, in many cases, still lack such knowledge. The need to ensure training and capacities of all competent bodies responsible for land, fisheries and forests is also highlighted by the Guidelines (paras. 6.1, 8.10). Finally, social movements and CSOs ask for capacity-building events, which allow them to engage in or deepen their dialogue with state authorities – and specifically local authorities – on public policies related to natural resources.

B. Creation of policy dialogue spaces

Dialogue between social movements and CSOs and state authorities at all levels is key for advancing human rights-based governance at the outcome level, i.e. the lives and livelihoods of communities and the most marginalized groups. Such dialogue can contribute to democratic decision-making when it is based on the human rights standards of participation and accountability, including the fundamental distinction of roles and responsibilities between states as duty bearers under international human rights law, and the people as rights holders to which states are accountable. In some countries, dialogue has been regularized and more or less institutionalized through specific spaces or platforms. In others, such spaces do not (yet) exist or emerged only recently. Increasing interest in “multi-stakeholder platforms” has opened up spaces

ostensibly aimed at including any actor who expresses an interest in a matter, such as tenure of natural resources. This can include companies, associations representing the private sector, scientific and research institutions etc., which are considered in a human rights framework as “third parties” distinct from the primary duty bearers (states) and primary rights holders (the people). The Guidelines encourage states to initiate “multi-stakeholder platforms and frameworks at local, national and regional levels or use such existing platforms and frameworks” in order to collaborate on and monitor implementation, as well as to evaluate “the impact on improved governance of tenure of land, fisheries and forests, and on improving food security and the progressive realization of the right to adequate food [...], and sustainable development” (para. 26.2). However, when read in conjunction with the human rights standard on inclusion and participation as well as the one set by the Guidelines (para. 3B6), power imbalances between different actors is a key issue that ought to be addressed. As will be outlined below, “multi-stakeholder platforms” pose some significant challenges.

“The introduction of the Guidelines brought a new momentum where affected people were brought directly into the discussions and thus had their voices channeled to the relevant authorities.”

Green Scenery – Sierra Leone

The submissions show that social movements and CSOs have engaged in different types of spaces for political dialogue about tenure-related issues, for example in Argentina, Mali, Senegal, India, Sierra Leone, Germany and the Netherlands, as well as in the REAF (*Reunión Especializada en Agricultura Familiar*/Special Meeting on Family Farming) of the Mercosur as a sub-regional space. Some of these cases are framed as “multi-stakeholder platforms”. In the submissions, social movements and CSOs point out different objectives behind these dialogue spaces as well as their engagement in them, and present various results.

“Civil society organizations of the region, who were involved in the elaboration of the Guidelines, have been a protagonist in their implementation, with different initiatives [...] [which] materialize the use of the Guidelines ensures quality of the discussion at local and regional level, and strengthen the agenda in the process of regional integration.”

Specialized Meeting on Family Farming (REAF) of Mercosur

In some countries, the Guidelines contributed to creating spaces which previously did not exist to discuss tenure issues and exchange information, including on which actors are doing what towards the implementation of the Guidelines, revealing some instances of disconnect.¹⁵ The interactions gave visibility to problems related to tenure, including concrete cases of resource conflicts as well as structural problems, such as the lack of effective protection of customary tenure rights. Several dialogue platforms have also provided spaces for capacity-building and awareness raising activities for the members (e.g., Senegal, Mali, India, Mercosur). Some submissions highlighted assessments of existing legal and police frameworks related to tenure occurring in such spaces (e.g.: Senegal, Sierra Leone). In some cases, the dialogues were linked to decision-making processes in relation to development of new laws and policies, or revision of existing frameworks (e.g. Senegal). In these cases, the platforms provided opportunities for social movements and CSOs to influence the outcomes of new law and policy-making processes. Some platforms and spaces played a role in monitoring tenure situations, although, as mentioned in chapter V.F., how and to what extent monitoring is actually carried out and what exactly is getting monitored (overall tenure situation, implementation of laws, land conflicts, land deals etc.) did vary. In a few cases, dialogues aspired to contribute to the resolution of specific natural resource conflicts, such as in Mali and Argentina (see Box 2).

The submissions reveal that how different dialogue spaces and platforms emerge and function can differ quite substantially from one case to another. First, who participates in these dialogue spaces and platforms and under which conditions? Relatedly, who gets to decide who can participate? These issues have a bearing on the actual legitimacy of such spaces and their potential impacts in terms of advancing the rights of communities and people. It makes a huge difference, for instance, whether or not participation of social movements and CSOs is open or if only selected CSOs are invited, and whether there is a mechanism to ensure the priority of representatives of those most affected and marginalized rights holders and if CSOs can organize autonomously. For many social movements and CSOs, the challenge is to engage as organizations of rights-holders in accountability dialogues with state authorities

¹⁵ In the cases of Germany and the Netherlands, discussions were confined to tenure in the context of development cooperation.

(as duty bearers) as part of democratic decision-making and human rights-based governance. State authorities and governments tend to participate on a political level (ministers) and/or technical level.¹⁶ In “multi-stakeholder platforms”, other kinds of entities may participate as third parties. At times, the FAO and donor countries (mostly through their development agencies) participate in Guidelines implementation platforms along with international NGOs, research institutions or religious institutions. In some cases, private sector representatives may also participate. Such situations risk blurring the fundamental distinction between third parties who claim to have a “stake” in natural resource governance on the one hand, and primary rights holders on the other hand. For small-scale food producers and their communities, what is at stake is very the realization of their most basic economic, social, cultural, environment, civil and political rights. By contrast, what is at stake for investors and corporations are potential business opportunities. The power differences between these different kinds of participants are often huge, which in turn, if not addressed, can lead to outcomes that undermine rather than enforce basic human rights standards.

Box 2. Examples of political dialogue platforms in Mali and Argentina

The Malian Convergence Against Land Grabbing (CMAT), an alliance of peasant organizations (CNOP and AOPP), an organization representing the victims of land grabbing (UACDDDD) and two national NGOs (CAD and LJDH), has been supporting several communities affected by land grabbing in the struggles for their rights. As a result of mobilization and advocacy, CMAT succeeded in establishing a high-level political dialogue with the Malian government in order to resolve the existing conflicts around natural resources. Using the Guidelines as a key reference, CMAT pushed (involving the government as well as the FAO) for the creation of a dialogue platform on tenure issues, which meets every year and comprises state officials, social movements and peasant organizations, representatives of affected communities, parliamentarians, tenure experts, the national FAO office as well as NGOs. In addition to this platform, a technical working group (cadre de concertation) has been established, which is convened four times a year by CMAT and which involves technical staff from relevant ministries. In the context of the working group, field visits to conflict sites have been organized.

In Argentina, the National Peasant and Indigenous Peoples’ Movement (MNCI) has been promoting the Guidelines as a member of the National Dialogue Platform on Sustainable Agriculture. This platform was created by the Secretary of Family Farming of the

Ministry of Agriculture, Livestock and Fisheries, as a result of demands from peasant, indigenous, fisher and pastoralist organizations. Its members are representatives of these organizations, local, provincial and national government, the church and actors from agribusiness. The platform meets regularly in different provinces in order to carry out joint field missions in order to resolve existing conflicts; monitor public policies related to the agricultural sector, and in particular the implementation of the Law on Family Farming in line with the Guidelines; and conserve and promote the diversity of food production systems and the creation of peasant food markets. The platform’s activities have led to the establishment of multi-actor platforms on Land and Agriculture at provincial level.

Second, the quality of dialogue spaces also depends on their scope and objectives and how these are defined, which can vary considerably from one case to another, ranging from mere exchange of information to actual participation in decision-making or resolution of conflicts.¹⁷ How formal the space for dialogue is can likewise impact on actual outcomes. For social movements representing the most marginalized rights holders, a key issue is to what extent dialogue contributes to achieving real changes on the ground in terms of advancing the rights of communities and people. Dialogue spaces and platforms are seen as a possibility to engage with state authorities, to inform them and hold them accountable. Such spaces should serve to enhance democratic and inclusive decision-making across the entire Guidelines implementation process, starting with the determination of national priorities in governance of tenure and management of natural resources. In addition to proceeding on the basis of a clear accountability roadmap and human rights framework,¹⁸ this requires prioritizing the rights and needs of marginalized groups, including their right to participate in decision-making and to hold state authorities accountable.

Third, the origins and histories of dialogue platforms and spaces have much to do with how they work. Numerous “multi-stakeholder platforms” have been created in the name of Guidelines implementation; but not all initiatives are alike. Some may be funded through development cooperation, as in the case of Sierra Leone.¹⁹ Others are the result of

¹⁷ There may also be tensions between the stated scope and the reality in the proceedings of the platform.

¹⁸ Several of the platforms and dialogue spaces mentioned in the submissions are rather informal spaces where it is up to the involved state authorities whether to take results into consideration or not.

¹⁹ The “multi-stakeholder platform” in Sierra Leone has been created as part of comprehensive program to implement the Guidelines in the context of a G7 Land Partnership involving

¹⁶ Often, high-level political dialogue is combined with a technical working group staffed with relevant ministries and departments.

social movements' initiative and pressure, oftentimes in situations marked by burning tenure issues and human rights violations. When they take the realities of communities and people as a starting point, the Guidelines have served as an entry point to finally discuss these problems, even when the formal scope of the dialogue space is not necessarily (or primarily) "Guidelines implementation" (e.g., Mali, Argentina, see Box 2). When the implementation efforts around the Guidelines are linked to the real challenges faced by communities and people, dialogue can trigger the creation of more institutionalized interactions between rights holders and state authorities. Sometimes, these processes build on existing structures, such as in the case of Senegal, where social movements and CSOs created an autonomous platform, which then led to the birth of a Steering Committee on the Voluntary Guidelines (*Comité de pilotage sur les Directives Volontaires*), a formal platform involving several ministries, the FAO, and donors.

The submissions show that the Guidelines can be an extremely useful tool in reaffirming the precedence of people's legitimate tenure and human rights, particularly where these have been neglected and marginalized by more powerful actors. Dialogue between rights holders and duty bearers (the state) is an important part of efforts to improve the tenure situation of the Guidelines' main beneficiaries. Yet the mere existence of dialogue spaces or platforms (including multi-actor platforms) alone does not automatically generate an inclusive, equitable, transparent and accountable process as stipulated by the Guidelines, nor does it automatically produce outcomes geared towards human rights-based governance of tenure and natural resources. The rise of "multi-stakeholder platforms" in the context of implementation of the Guidelines has brought about risks, including:²⁰

- The confusion of the roles of states, inter-governmental organizations (IGO), civil society and the private sector. For example, the generalization of corporations and private investors, on the one hand, and communities and the social movements, which represent them, on the other, as

"stakeholders" that negotiate on equal terms on as crucial an issue as the control over natural resources is unfounded and will generate injustice. It also ignores the power and resource asymmetries that exist between the groups.

- The lack of a clear distinction between public and private interests, which ignores the fundamental differences in the nature, and consequently the roles and responsibilities, of states and, for example, corporations. States draw their legitimacy from the people who confer on them a mandate to serve the public interest based on the principle of human dignity and human rights. States are accountable to the people. Companies, on the contrary, have no legitimate public governance function, because they represent solely particular interests and are only accountable to their shareholders or owners.
- The risk of existing asymmetries of powers between different actors leading to the co-optation of some actors and to the corporate capture of global governance on natural resources, food and nutrition. This can undermine the rights of the most vulnerable groups further and threatens the realization of human rights as well as people's and food sovereignty.
- The provision of legitimacy to powerful actors who are lacking it but need it to pursue their particular interests.
- The creation of artificial spaces, which risk limiting the role of existing, more legitimate decision-making spaces (where such spaces exist) as well as diverting time, energy, and money away from such spaces.²¹

Presenting "multi-stakeholder platforms" as a good/best practice as such ignores fundamental differences between different forms of spaces for dialogue and engagement which impact directly on whether they can/will contribute in a legitimate way to the achievement of the objectives set out in the Guidelines. Tenure and the access to and control over natural resources are extremely contentious issues in many societies. Key issues here are the very different stakes and interests that different actors have as well as existing power imbalances. Under these circumstances, it is an illusion that all "stakeholders" can develop a "common strategy

the governments of Germany, Sierra Leone as well as the FAO. Additionally, the International Land Coalition (ILC) has created "multi-stakeholder platforms" in 21 countries and is planning to create them in 15 additional countries by 2021 in the context of the implementation of the Guidelines.

²⁰ As examples for studies on the issue of "multi-stakeholderism" see, for instance, Brouwer, H. et al. (2013); Cammaerts, B. (2011); Gleckman, H. (2016).

²¹ In the case of donor-funded "multi-stakeholder platforms", the sustainability of such platforms may also be an issue should donor support come to an end.

and vision” on these issues, as many proponents of “multi-stakeholder platforms” want to make believe. The Guidelines themselves provide guidance for policy dialogue platforms by clearly prioritizing marginalized people – both regarding participation in processes and the outcomes of governance – as well as their principles of participation, according to their grounding in states’ human rights obligations. These criteria are echoed in the Terms of Reference to share experiences and good practices in applying CFS decisions and recommendations through organizing events at national, regional and global levels” (ToR for monitoring events) which were developed by the CFS OEWG on Monitoring and have been submitted to CFS 43 for approval.

C. Reforms of legal and policy frameworks related to tenure

Laws and policies, including those on natural resources and tenure, are gradually evolving. Improving the governance of tenure is a complex process, which often has at its core how to resolve social, political and economic conflicts. The Guidelines provide crucial guidance for states about how to deal with these complex issues in accordance with their international human rights obligations. Legal and policy frameworks are an important part of governance. In the last four years, a significant number of countries have undergone processes of reform of their legal and policy frameworks with impacts on tenure. In other countries, such processes are still ongoing, while still in further cases CSOs are proposing revisions of such frameworks. This chapter provides a non-exhaustive list of tenure reforms and adoption of new laws and/or policies that took place since 2012, and presents some elements of analysis on the role the Guidelines have played in these processes.

The submissions reveal changes in the legal and policy frameworks related to tenure of natural resources in many countries. Policies have been adopted, among others, in Mali (*Politique foncière agricole/Policy on Agricultural Land*), Myanmar (*National Land Use Policy*), Guatemala (*Agrarian Policy*), and Sierra Leone (*National Land Policy*). At the regional level, the EU adopted a Common Fisheries Policy in 2013. Regarding laws related to tenure, the following countries have undergone processes towards new laws or of revision of existing laws: Argentina (*National law on historic reparation*

to family agriculture²²), Belgium (local laws for Wallonia and the region of Brussels), Italy (local laws/regulations), Scotland (*Land Reform Bill*²³), India (*Land Acquisition Act*), Ecuador, Nicaragua, Romania and Uruguay. Processes towards reform of legal and policy frameworks are still ongoing in Senegal, Sierra Leone (on forestry and fisheries), Malawi, Bangladesh, the Philippines, Uruguay, Mali, Niger, India and Belgium. It should be noted that some of these policies and laws refer to frameworks that address land, fisheries and/or forests in a more general/comprehensive way, while others address specific issues, such as land acquisition or redistribution/agrarian reform.

Social movements and CSOs have participated in the development of these policies and laws to different extents and have used the Guidelines in several ways, depending on the specific context. Overall, their activities have focused on analyzing existing legal and policy frameworks in light of the Guidelines as well as proposals for new frameworks, developing their own proposals as inputs into processes of tenure reform. They have thus employed the Guidelines as a key reference for advocacy. In practice, these activities are part of processes, which are linked to capacity-building, awareness raising, alliance-building, and creating spaces for policy dialogue. (See Box 3 on the example of Myanmar) Social movements and CSOs are also proposing and actively pushing for new laws and/or policies related to tenure or for a revision of existing frameworks in several countries. The submissions received mention initiatives of this kind in India (proposals for four laws promoted by social movements), Indonesia (advocacy for a Land Bill to replace the Basic Agrarian Law), Uruguay (proposal to introduce a land ceiling), the EU (petition and multi-country initiatives to develop a Directive on fair and sustainable access to farmland), Colombia (proposals for public policies related to access to natural resources), Democratic Republic of Congo (civil society pushing for reform of some articles of the constitution) and Argentina (proposed law “Cristian Ferreyra”). In some cases, such initiatives have been ongoing for several years and the Guidelines came in as an international standard used to back demands. In other cases, such initiatives are more directly linked to the Guidelines and have taken shape in the course of the appropriation of the Guidelines by CSOs. The proposals brought forward by CSOs are also at different stages according to the country:

²² <http://faolex.fao.org/docs/pdf/arg140755.pdf>.

²³ <http://www.legislation.gov.uk/asp/2016/18/contents/enacted>.

some are still at the stage of initial proposals, while others are already more advanced and closer to formal policy processes.

Box 3. Use of the Guidelines by CSOs in policy processes: the example of Myanmar

In Myanmar, CSOs and communities used the Guidelines in the context of the development of the National Land Use Policy (NLUP). In an unprecedented move in October 2014, the Myanmar government unveiled a draft NLUP for public consultation, which it hoped to finalize and adopt by December 2014. Although the move was welcomed, the draft NLUP itself was decidedly pro-business and the planned consultation was severely limited. In a tense atmosphere, many local groups chose to engage, hoping to slow down the process and give time for people to study and develop a unified response. Aided by allies, the CSO network Lands in Our Hands (LIOH) organized nearly a dozen autonomous pre-consultations across the country. Participants used the Guidelines to assess the draft policy's objectives and principles, to identify gaps and weaknesses, and to reflect on their own perspectives. The analysis showed where the government's draft fell short of international standards, while underlining the legitimacy of grassroots perspectives. Their efforts contributed to changing the process and its outcome, by slowing down the process and making it more inclusive. Only in January 2016 was the final version of the NLUP unveiled—not perfect, but vastly improved. The CSO strategy of critical engagement altered the parameters of the consultation process and some of the most important demands of marginalized groups and communities were accommodated.

It is not possible nor within the scope of this chapter to provide an analysis, in light of the Guidelines, of each of these frameworks and the processes through which they were developed. However, what emerges from the submissions by social movements and CSOs is that several of these new or reformed frameworks contain provisions which, at least in principle, advance the rights of small-scale food producers and marginalized groups, including, for example, through the recognition of traditional tenure systems. However, some contributions also point to a more critical assessment regarding developments of tenure-related frameworks with regards to their compliance with the provisions contained in the Guidelines. In one reported case, for example, a government revised by decree a previously adopted rural land law which had restricted the acquisition and leasing of rural lands by foreign individuals and legal entities. This points to the fact that the Guidelines do not automatically translate into more progressive laws and policies, which advance human rights-based governance of tenure. It is clear that reforms regarding the governance of tenure are closely linked to

overall developments related to tenure in different countries and regions, which continue to pose important challenges. A more positive or negative evaluation of new/revised legal and policy frameworks thus remains to be seen in this context, in the sense that an overall positive assessment of a concrete policy or law may not embrace the law/policy as a whole, but refer to specific aspects that improve the situation compared to what was there before. The other aspect worth mentioning here is that the adoption of laws and policies does not automatically entail their effective implementation. In this sense, it is still too early to evaluate whether the new or revised frameworks contribute indeed to advance with regards to achieving the objectives set out in the Guidelines. Many contributions show that CSOs in countries where new laws and policies have been adopted are currently actively advocating for and monitoring their implementation. A positive example is reported from Argentina, where the Law on Family Farming has already been cited to stop a forced eviction.

Indeed, what is clearly apparent from the submissions is that the Guidelines have been an important tool for social movements and CSOs in the context of policy processes. It is, however, important to underline that the “usefulness” of the Guidelines in such processes, has to be assessed in a broader sense. It is not necessarily relevant whether or not the final law or policy text refers explicitly to the Guidelines or contains language taken from them – just as the sole reference to the Guidelines does not guarantee a good framework, which is in line with the Guidelines’ objectives and provisions. The experience of social movements and CSOs shows that there is no easy mechanism of cause and effect, but that the Guidelines in many cases have played an important role in triggering discussions about tenure issues (at times contributing to opening up the possibility of discussing these issues), providing elements for analysis and, in some cases, kick-starting processes. In other instances, the Guidelines were taken up or brought into reform processes that were ongoing. Sometimes this happened because of the political will and upon the initiative of governments, but in many cases social movements and CSOs played a key role in establishing the Guidelines as a reference for laws and policies that were in the process of being drafted. It is important to note that the Guidelines do not only provide a reference for the content of laws and policies but also for the framing of the process of how these are developed, and more specifically for ensuring

adequate and effective participation of the most marginalized groups.

In sum, the Guidelines are increasingly recognized and used as a standard and reference in policy processes and have informed reforms of legal and policy frameworks in a number of countries. This refers both to the content of these frameworks as well as the process of developing them. Social movements and CSOs in particular have contributed significantly to bring the Guidelines into policy processes, insisting on using them as a key reference for human rights-based governance of tenure, giving priority to the rights of the most marginalized groups. Importantly, CSOs and grassroots groups have used the Guidelines as a source of inspiration and have found creative ways of engaging with the Guidelines in order to develop proposals based on their own distinct customary practices and values and on their conceptions of social and environmental justice; and using these in order to trigger debates and open up spaces for broader society-state interaction.

However, the submissions also point out that state authorities are often reluctant or slow when it comes to engaging in processes to translate the Guidelines' provisions into national laws and policies, and to making them comply with human rights standards. Consequently not all tenure reform processes since the approval of the Guidelines can be evaluated positively and in some countries laws continue to be biased in favor of powerful groups and business interests, facilitate resource grabbing and the privatization of nature, and perpetuate the marginalization of small-scale producers, Indigenous Peoples and other groups. Where the results have been more positive, the implementation of laws and policies remains a challenge that will be crucial in order to assess real outcomes on the ground. However, the Guidelines pave the way towards approaches that put public governance and state-led initiatives at the service of community-defined and community-led processes of negotiation and collective decision-making. They open up a political space particularly at the ground level for those most affected to debate and negotiate amongst themselves their own visions of the future.

D. Advocacy and resolution of conflicts

In a context of increasing pressure on natural resources, people and communities see themselves involved in conflicts, often seeing themselves opposed and their rights threatened, abused and violated by powerful actors such as corporations and states. As a matter of fact, conflicts over access to, use and control of natural resources are, unfortunately, often the way people and communities relate to governance of tenure. Preventing conflicts, protecting the rights of people in the context of conflicts and ensuring mechanisms to solve conflicts in line with the principles of the Guidelines is therefore important aspects of improving the governance of tenure and advancing towards human rights-based governance of natural resources. In that sense, several initiatives by social movements and CSOs aimed at assisting communities in asserting and securing their rights over land and other natural resources, using the Guidelines as a key reference.

Examples from Argentina, Canada and Uganda, show that organizations of peasants, fisherfolk and Indigenous Peoples turned to the Guidelines in cases of litigation with the assistance from lawyers. Many CSOs elaborated case studies to document and analyze governance/policy and legal frameworks and cases of conflicts about natural resources (in many cases linked to an analysis of policy and legal frameworks) in several countries – both of the Global South and North – such as in Brazil, DRC, Ethiopia, Chad, Zambia, Mali, Malawi, Mozambique, Colombia, Paraguay, Honduras, Guatemala, India, Myanmar, Cambodia, Belgium, Germany, Romania, Scotland, the USA and Europe as a region. This documentation and analysis is mostly based on action-research that involves CSOs, grassroots organizations and communities in the analysis of the problems they face and the abuses and violations that have occurred, using the Guidelines as a reference. These activities also employ the Guidelines in their proposals on ways to resolve the conflict and on how to improve natural resource governance in order to avoid future conflicts and protect people's rights. Reports resulting from such processes have been disseminated among CSOs, social movements and grassroots organizations, and/or to policymakers and journalists and have been an important tool for advocacy towards state authorities at all levels. In many cases, concrete cases of conflicts and their analysis have provided the basis for social

movements and CSOs to develop proposals on how to improve legal and policy frameworks related to tenure, which were then brought into ongoing policy processes or, in some cases, contributed to initiate such processes (see chapter V.C).

Box 4: Analyzing the tenure situation in Europe

“Hands on the Land,” a coalition of European peasant organizations and CSOs produced a study on the tenure situation in Europe,²⁴ which contains case studies from 13 European countries as well as a specific chapter that assesses the cases and public policies in light of the Guidelines. The document shows that natural resource grabbing and concentration of land also affect small-scale food producers in Europe and that the access to land is especially a problem for young farmers. Although statistics on agriculture in Europe abound, many of the processes described in the case studies are not commonly reported. The study allowed initiating a debate on tenure issues in Europe and opening up and/or strengthening policy dialogues in several European countries as well as in the European Union (among others, the European Parliament commissioned its own study on the extent of farmland Grabbing in the EU²⁵). Based on the analysis and the Guidelines, peasant organizations and CSOs submitted a petition to the European Parliament on “Preserving and managing European farmland as our common wealth”,²⁶ which articulates the demands of small-scale food producers regarding governance of natural resources, including the review of the existing regulations on land use and allocation in the EU according to the Guidelines.

Conflicts over natural resources are often complex and dynamic processes and the same applies to the processes to resolve them. Social movements, communities and CSOs use different strategies in their struggles to assert their rights, mobilization and different forms of direct action being important elements. Reference to international standards which are based on human rights, such as the Guidelines, can play an important role in advocacy in cases of conflict, especially in cases where national laws are weak, biased towards powerful actors or frameworks that, in principle, protect people’s rights but are not enforced. As such, the Guidelines are one tool among others used by CSOs in the context of conflicts. Some submissions point to cases where they have

contributed to positive results in the resolution of conflicts. One example is the advocacy around a land dispute between peasants and mining companies in DRC, which resulted in the confiscation of the licenses of irregular mining companies by the government. In Senegal, a broad CSO alliance organized training workshops to build the capacity of local communities to advocate against the installation of an industrial project in a natural reserve, leading to the area allocated to that project being reduced by half as a first success. In another case, following up on a workshop on the Guidelines, a citizen forum led an instance of mediation in a conflict arising from the development of a tourist resort on an island without any prior information or consultation of the affected fisherfolk. The negotiations involved various district authorities and ultimately led to an agreement that reflected the key demands of the communities, ensuring them to be able to conduct their fishing activities.

Overall, the submissions show that the Guidelines have the potential to play a significant and strategic role in the context of conflicts over natural resources and their resolution. The Guidelines have helped social movements, communities and CSOs to refine their analysis and, consequently, their arguments vis-à-vis authorities, to advocate for conflict resolutions, to draw attention to cases of abuses and violations and highlight structural problems in the context of tenure governance. The Guidelines have thus provided additional elements for the advocacy of communities and social movements to advance their rights. Nevertheless, what also emerges is that the Guidelines are still a new instrument: They are not yet sufficiently known and still need to be systematically applied by state authorities at all levels, including local authorities and judicial authorities.

²⁴ See http://www.tni.org/sites/www.tni.org/files/download/land_in_europe-jun2013.pdf.

²⁵ See [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/540369/IPOL_STU\(2015\)540369_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/540369/IPOL_STU(2015)540369_EN.pdf).

²⁶ See http://www.eurovia.org/wp-content/uploads/2016/03/ep_petition_land_vf_24feb2015_en.pdf.

E. Violence against human rights defenders working on natural resources, including communities and social movements²⁷

Different forms of violence against human rights defenders working on natural resources, including particularly affected communities and social movements,²⁸ are widespread across the world. This is a key issue which is intrinsically linked to tenure-related issues and needs to be addressed in order to advance towards human rights-based governance of tenure. The Guidelines explicitly recognize the universality, indivisibility, interdependency and interrelatedness of all human rights and that the governance of tenure needs to take into account all civil, political, economic, social and cultural rights. They specifically underline the need for states “to respect and protect the rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers” (para. 4.8). If not adequately addressed, violence against human rights defenders working on natural resources thus undermines efforts to advance towards human rights-based governance in the context of the implementation of the Guidelines.

²⁷ The submissions received by social movements and CSOs contain concrete information on cases of violence against human rights defenders working on natural resources, including communities and social movements in several countries. This chapter will, however, neither list or refer to specific cases, nor name countries. It will rather give an overview of tendencies regarding widespread violence against people who are defending their rights to natural resources.

²⁸ According to the definition of the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” from 1998 – commonly known as the “Declaration on Human Rights Defenders” – human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. The definition does not cover those individuals or groups who commit or propagate violence or those who seek to destroy the rights of others. Based on this definition, human rights defenders working on natural resources can be defined as the subset group of human rights defenders who seek to promote and protect human rights related to natural resources.

Generally speaking, human rights defenders in the context of natural resources form a heterogeneous group. They include natural resources users affected by practices or policies negatively impacting on their access to land, and who have committed themselves to the promotion and protection of the land rights of larger groups (amongst whom leaders or members of communities). Particularly in cases where tenure rights are held collectively they are also often defended as such. However, human rights defenders in the context of natural resources can also be professionals who are not personally affected by a conflict but act as allies of those who seek respect for their rights to land, fisheries and forests as well as related human rights, such as representatives and/or members of NGOs, lawyers or journalists.

The submissions sent by social movements and CSOs contain several examples of how human rights defenders working on natural resources and tenure-related issues, including in the context of the implementation of the Guidelines are subject to different forms of violence, which include threats to them and their families, verbal intimidation, harassment, illegal surveillance, slander,²⁹ obstacles in the course of their work, criminalization, attacks, enforced disappearances, arbitrary arrest and detention as well as killings. Such violence can be occasional, but in many contexts it is permanent and systematic. It targets different forms of struggle, activism and work of human rights defenders. These activities include the investigation of human rights violations and elaboration of documented reports, communications to national and international bodies, litigation, advocacy at national and international levels, demonstrations, and other forms of protest. Importantly, human rights defenders working on natural resources and tenure-related issues often use specific forms of protest such as the refusal to comply with an eviction order, the occupation of a house or piece of land as a symbolic act to oppose eviction or reclaim rights (“land occupation”), the blocking of roads or the entrance of a project site, or other forms of direct action.

The submissions show that human rights defenders face risks of infringements of their human rights in all these contexts. Representatives of social movements from Eastern Europe report, for instance, that they have been detained and interrogated about their activities and reasons while investigating a case of land grabbing. In Southeast Asia, members of communities and CSO workers were arrested while carrying out a participatory mapping, under the pretext of lack of authorizations; and peasants attending a workshop on agrarian reform were arrested with the justification that the police had not been notified about the event. That the criminalization of social struggles in the context of tenure of natural resources is not limited to countries of the Global South is illustrated by the fact that peasant leaders from a Western European country report that they are

²⁹ The term “slander” refers to the denigration of human rights defenders, their work and their reputation by various actors who attempt to portray their human rights work negatively. Labels such as “enemies of development”, “enemies of the State”, “radicals”, “terrorists”, “gang members” seek to stigmatize individuals and communities that speak out against violations and abuses. Please see: Observatory for the Protection of Human Rights Defenders, 2016, “We are not afraid” *Land rights defenders: attacked for confronting unbridled development. Annual Report 2014*, www.fidh.org/IMG/pdf/obs_2014-uk-web2.pdf.

systematically fined and harassed when participating in demonstrations and public protest actions, as well as by arbitrary arrests that happened in the context of the resistance by affected people against an infrastructure project. In other regions, peasants report that they or members of their families have been temporarily kidnapped in order to force them to sell their land. Additionally, the use of natural resources by communities may also be criminalized, such as in the case of pastoralist communities in West Africa with ancestral rights to access a lake: they were arbitrarily prohibited from taking their livestock to this lake, and those who did it anyway were arrested and fined. Social movements and CSOs from all regions emphasize that the impairment of human rights occurs especially in cases where communities and people protest and resist against natural resource grabbing.

In many reported cases, states and state authorities are involved in and responsible for violence against human rights defenders. Particularly police and security forces or the military are often in one way or the other involved in violence and the impairment of human rights of activists. Other actors are paramilitary forces in some contexts, and private security guards, the latter in many cases linked to or acting on behalf of corporations. Many reported experiences underline the complicity of several of these actors. A more recent phenomenon, particularly in some Asian countries, is the so-called “green-green alliance”, i.e. the synchronized action of military forces and big conservation INGOs, in the context of evictions carried out in the name of environmental protection. Usually the objective of violence is to keep communities, people and social movements silent and/or to push through powerful interests, often of economic and/or financial nature.

A specific form of violence happens when free, active and meaningful participation in tenure-related decision-making is denied, despite being a crucial aspect of human rights-based governance and the implementation of the Guidelines. In some countries, the context of violence is so severe that it undermines the possibility of people to being able to organize and meet. In a country in South America, for instance, some of the groups that are threatened or displaced cannot organize themselves without the support of institutions or organizations, which are themselves limited or conditioned, mainly for economic reasons.

Violence against human rights defenders and criminalization of social struggles in the context

of tenure thus severely risks impairing the rights to freedom of expression, assembly and association, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to life, the right to freedom of movement and the right to liberty and security of person.

Overall, the submissions confirm a global trend towards increasing violence against human rights defenders, and specifically those working on issues related to natural resources. Indeed, data indicates that human rights defenders working on land and other natural resources are among the groups most exposed to violence.³⁰ Social movements, grassroots groups and members of communities involved in resources conflicts in particular are the target of such violence. In fact, the expression human rights defenders in the context of natural resources often refers to groups from the affected communities that organize collectively in order to claim respect for the human rights of one, several or all communities.³¹ Human rights defenders working on natural resources further often operate in remote areas, meaning that they have more difficult access to justice. They are often disconnected from traditional human rights organizations and, as a consequence, resort less frequently to international and regional protection mechanisms for human rights defenders. In many cases, they are members of already marginalized groups, including ethnic minorities. The submissions underline that those who suffer the most from different forms of violence are women and other marginalized groups, such as subsidiary land users and people whose legitimate tenure rights are not recognized and protected. Individuals and communities opposing land deals or other investment projects related to natural resources also face risks linked to the existence of significant power imbalances as land conflicts often involve high financial stakes.

³⁰ The former UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, identified defenders working on land and environmental issues as one of the groups facing high risk of violations (UNHRC, 2013: para 93). Reports from NGOs revealed that 2015 was the most dangerous year on record for land and environmental activists, with 185 killings taking place across 16 countries, more than three people every week being killed defending their land, forests and rivers against destructive industries. See Global Witness (2016). *On Dangerous Ground*, www.globalwitness.org/documents/18482/On_Dangerous_Ground.pdf.

³¹ As underlined by the former UN Special Representative on the situation of Human Rights Defenders, “defenders working on land rights often organise themselves in the form of social movements. These are usually broad grassroots-based movements with a more horizontal organizational structure than for instance most NGOs”. (UNHRC, 2007).

Non-existent or limited access to justice is mentioned in several submissions as a key aspect, as rights violations and abuses can be further aggravated when there are no independent or functioning dispute resolution or grievance mechanisms. Representatives of social movements also point to an increasing distrust by affected communities in state institutions at different levels in some countries, due to negative experiences, e.g. where grievances have been ignored, authorities have acted in complicity with abusers as well as corruption and unlawful behavior of institutions. The vulnerability of human rights defenders working on natural resources further increases with the rampant impunity of crimes committed against them in many countries and the failure of states to hold perpetrators accountable, either by their action or their omission.

“When we speak with communities in South and Southeast Asia who are defending their land rights in the context of land conflicts, they often tell us that they do not want to hear any more about the rule of law, because laws are being formulated to legalize the capture of land, forests and water by corporations and elites, and to criminalize actions by communities to defend their legitimate tenure rights. It is precisely the institutions that should protect people’s rights who exercise violence against them. Also, land concessions, mining and other land deals are often accompanied by state and para-statal security forces. Affected communities have said to us: ‘We don’t know what came first, ‘development’ or the military.’”

Focus on the Global South

A final aspect that is highlighted in the submissions is the role that legal frameworks play in the criminalization of social struggles and in increasing the risks faced by human rights defenders related to tenure and natural resources. In some countries, laws (which, in some cases, have been recently adopted or modified) legalize violence and repression. Laws may also severely limit – or altogether impede – the capacity of people and civil society to organize, making democratic and human rights-based governance impossible. In this regard, a case is reported from an East African country where land rights activists, who are supporting communities struggling to stop the takeover of their lands by large-scale agricultural investors, were arrested when they were about to attend a workshop abroad. After being held without charge for several months they were charged under a national anti-terrorism law and have, since then, been held in prison without any evidence brought forward to

sustain the charges. Importantly, the country is the target country of a development program, which involves several donor countries and aims explicitly at the implementation of the Guidelines. The program raises serious questions regarding the conditions for such implementation, given the fact that civil society organizations are severely constrained to freely defend the human rights of rural people who have been seriously affected by large-scale agricultural investments projects. The case of the arrested activists shows that the existing legal provisions are applied in concrete cases related to land, making it highly questionable whether such a context offers the very basic conditions for civil society to engage in a meaningful process on how to implement the Guidelines.

The widespread and increasing violence against human rights defenders working on natural resources, and particularly against affected communities and social movements, is a major issue and a big challenge in the context of human rights-based governance and the implementation of the Guidelines. However, these issues are currently rarely addressed or even discussed in the context of the Guidelines. Efforts so far do not take violence against human rights defenders and the criminalization of social struggles sufficiently into account, as many initiatives focus on issues that seem more directly linked to access and use of land, fisheries and forests. It is, however, impossible to advance towards human rights-based governance of tenure as outlined in the Guidelines without ensuring the full respect and protection of all human rights, especially those of communities of small-scale food producers and Indigenous Peoples. This particularly includes their free, active, effective, meaningful and informed participation in tenure-related decision-making, as underlined by the Guidelines.

F. Monitoring and evaluation

It is broadly recognized among different actors that information on the tenure of natural resources is a key element in order to improve the governance and management of tenure. However, the lack of precise and adequate information on these matters as well as the weakness of systematic monitoring remains a major issue, including in the context of the implementation of the Guidelines. Questions such as who monitors; what exactly is monitored and how; who is meant to provide the information; and what should be done with it, are key issues in the context of monitoring. For social movements and CSOs in particular, monitoring (understood as defined in chapter I.C) is a precondition for accountability, which, in turn, is a key element of human rights-based governance. What emerges from the contributions by CSOs is that there exist many activities and initiatives related to monitoring in the context of the Guidelines' implementation, but only very few established monitoring mechanisms to monitor governance of tenure, particularly at the national level.

Comprehensive monitoring and accountability mechanisms such as the National Council for Food Security and Nutrition (*Conselho Nacional de Segurança Alimentar e Nutricional*, CONSEA) in Brazil – a participatory mechanism created to monitor all issues related to food security and nutrition, including tenure and access to natural resources – remain the rare (and laudable) exception. Several submissions indicate that existing governance structures at different levels (local to national) in several countries have also, in principle and to a certain extent, a monitoring function. An example is Austria, where land commissions at the village level, which are constituted by officials as well as elected representatives of the village, take part in decision-making on natural resource governance, and in principle also have the mandate to monitor the local tenure situation. However, the emphasis that is put on this aspect may vary significantly from one place to the other.

In several countries, the regulatory framework on natural resources contains provisions or measures related to monitoring, which are specifically linked to the enforcement/implementation of laws and policies (for example in New Zealand, India and Vietnam). These may take into account the Guidelines but not necessarily (as in the case of New Zealand). In this context, it is to be noted

that in some countries where new policy and/or legal frameworks have recently been adopted, the latter foresee the creation of monitoring mechanisms. Examples are Mali, where the draft Law on Agricultural Land contains a provision to create a specific organ to monitor governance, or Belgium, where the Walloon Code on Agriculture establishes a land observatory with the specific mandate to map and analyze transactions regarding agricultural lands, including an inventory of all agricultural lands as well as monitoring of the price of agricultural lands. In Myanmar, the government has launched a mapping initiative with the aim of providing transparency around land governance but the project managers have still to obtain concrete data from the government. At the same time, it remains difficult for CSOs to undertake research on natural resource governance issues in the country.

However, CSOs point to the fact that existing institutional initiatives often have a statistical or technical approach, which only provides information about a limited (albeit important) part of governance of tenure. Italy, for example, has a statistical tool to monitor the price of land but no monitoring mechanism which covers other aspects of governance. This is representative of Europe in general as well as other regions, where CSOs point to a lack of institutionalized participatory mechanisms that oversee governance of tenure as a whole. A more systematic and effective monitoring of the outcomes of governance of tenure – i.e. the situation of people and communities – with a methodology that includes these groups, is especially key in the eyes of many CSOs, including in the context of the Guidelines' implementation. It should be noted in this context that the Guidelines are being used by CSOs in order to request/demand state institutions to put in place adequate monitoring mechanisms (for example, a petition to the EU Commission by a broad alliance of CSOs which contains proposals for an observatory and elements that such an observatory should monitor). Nevertheless, the case of SAFERs in France is worth mentioning: since the second half of the 20th century, these mixed institutions include representatives from the state, local governments and producers' organizations, and act as land agencies that regulate the French rural land market.

As described in more detail in chapter V.B, different types of dialogue spaces and platforms regarding the governance of tenure have been created in several countries. In some cases, these platforms explicitly have also a

monitoring role, such as in Sierra Leone, Malawi, DRC, Mali, Senegal or Argentina. The extent to which these platforms emphasize their monitoring role, however, varies considerably from country to country and is largely determined by the scope of these platforms and their genesis. Examples such as Mali (*Cadre de Concertation des Directives*) and Argentina (*Mesa Nacional de Diálogo para la Agricultura Sustentable*) show that where such spaces were created mainly due to pressure from CSOs, the focus lies more on the outcome level of governance of tenure, i.e. the real situation and livelihoods of people and communities, including, in particular, problems faced by marginalized groups in conflicts. In both countries, the monitoring of concrete cases of conflicts is a core element of the platforms' work and includes field visits to conflict sites (see Box 2). Submissions from countries where "multi-stakeholder platforms" have been created more recently, and specifically in the context of the Guidelines, indicate that such platforms tend to come "from above" and are therefore not always closely connected to the realities faced by communities and people. Consequently, they have a different take on monitoring which focuses more on expert assessments of existing legal and policy frameworks. In Sierra Leone, for example, a "multi-stakeholder platform" was created as part of a larger implementation program for the Guidelines but according to national CSOs the platform still lacks an adapted approach on monitoring and the adequate tools. The REAF of the South American economic space, Mercosur, is an example of a dialogue space at (sub-) regional level which has included the Guidelines in its work, including on monitoring, and is starting a systematic monitoring of the tenure situation in several member countries using the Guidelines as a baseline.

Although only very few countries have comprehensive formal monitoring mechanisms regarding tenure and tenure related issues, social movements and CSOs have established independent mechanisms (see Box 5). In Brazil, Colombia, Nicaragua (covering Central America) and Senegal, for example, monitoring initiatives specifically focus on conflicts around natural resources.

Box 5. Civil Society Observatories on the Tenure of Natural Resources

CSOs are the drivers of many initiatives aiming at monitoring issues related to tenure of natural resources. A good example of this are civil society observatories, such as the National Observatory for the Governance of Tenure (Observatoire National pour la

Gouvernance Foncière) in Senegal. Created in 2015, its secretariat is based within the national platform of peasant organizations, CNCR, and includes all members of a broad national CSO platform working on tenure issues (CRAFS). The observatory's objectives are to actively collect information related to tenure and make it available, in order to function as a monitoring and alert mechanism, especially in the context of land deals/large-scale land acquisitions. The observatory is anchored in decentralized monitoring hubs at departmental level. Information is made available through regular bulletins, annual reports and studies.

Similar observatories exist in other countries. Some of them cover areas that go beyond national boundaries, such as the Observatorio de conflictos agrarios which is run by the Latin American Coordination of Rural Organizations-Via Campesina (CLOC-LVC) and currently covers six countries in Central America.

Assessing the legal and policy framework regarding tenure and natural resources as well as their implementation is another key element of monitoring, which is important for many CSOs and other actors. Land Watch Asia, an initiative of organizations in the Philippines, Nepal, Indonesia, Bangladesh, Cambodia, India and Pakistan, for instance, monitors national land-related laws and policies. Also in Bolivia and Peru, CSOs have analyzed the existing legal framework in light of the Guidelines. This type of monitoring is at times linked to the development processes of new legal and policy frameworks or to the review of existing frameworks. Land deals or concessions are another object of CSO monitoring efforts in the context of tenure, such as in Cambodia and Uruguay.

At the international level, the regular monitoring procedures of the human rights treaty bodies are important mechanisms in order to assess and monitor progress towards the full realization of human rights, including in relation to tenure. The UN Human Rights Council and treaty bodies, such as the UN Committee on Economic, Social and Cultural Rights (CESCR) or the UN Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW), among others, have established monitoring mechanisms in which states are regularly assessed regarding their compliance with their human rights obligations. Tenure issues are increasingly addressed in the recommendations and concluding observations of human rights bodies and the Guidelines have been explicitly included as a reference in some of them.³² Some human rights organizations are systematically referring to the Guidelines in

³² Examples: CESCR 2013, Concluding observations on Belgium; Human Rights Council 2015, Recommendations to the Lao People's Democratic Republic; UN Committee on the Rights of the Child (CRC) 2015, Recommendation to Eritrea.

their parallel reporting to these bodies wherever tenure-related issues are at stake, including to regional human rights systems.

Another international initiative, the World Bank's Land Governance Assessment Framework (LGAF), is being presented by the World Bank, some donors and institutions as well as other actors as a major contribution to the implementation and monitoring of the Guidelines. Consequently it is used as an assessment framework for the Guidelines in several countries, such as in the case of a program to implement the Guidelines in the context of a G7 Land Partnership in Sierra Leone. However, LGAF cannot be considered as an adequate diagnostic tool to assess governance of tenure and there are substantial differences between LGAF and the Guidelines, at the level of both the *content* of the standard and the *process* of standard assessment. It has to be underlined that LGAF was not designed on the basis of the Guidelines, but developed independently by a group of experts from international institutions. Accordingly, the "multi-stakeholders" process established by LGAF is characterized by a "technical" and "expert" approach and there is no mechanism to guarantee that there will be a balanced representation of various constituency groups. More fundamentally, LGAF indicators were designed according to a specific view of good land governance, one that is primarily guided by the principle of economic efficiency and the assumption that good land governance means to promote an efficient land market that would allow the transfer of land toward most efficient users, rather than by equity or justice. Such an approach is very different from the Guidelines which promote *equitable* access to land, fisheries and forests recognizing the complex and contested nature of tenure governance.³³

Since the approval of the Guidelines, social movements and CSOs have used the Guidelines in the context of monitoring. This includes monitoring of the implementation of the Guidelines at country level but more so of the situation of tenure of natural resources in specific contexts. In several countries, CSOs have developed tools in order to provide a framework for such monitoring (e.g. in Guatemala and Malawi). More importantly, some of these tools have been developed

together with communities that are affected by conflicts (such as in Colombia³⁴), as part of their struggles, strategies and perspectives on human rights-based governance and social justice. This shows that monitoring is part of a broader set of strategies designed by social movements, communities and CSOs that includes capacity-building, developing proposals for the governance and management of natural resources, and advocacy. One example is a process coordinated by the Latin American Alliance for Food Sovereignty:³⁵ based on a methodology for people's and participatory monitoring of the implementation of the Guidelines, a pilot experience in four countries (Panama, Colombia, Paraguay and Peru) assessed whether states are implementing the Guidelines as well as whether the situation regarding tenure and states' actions are in line with the human rights standards and principles of the Guidelines.³⁶

In other cases, CSOs focus on overseeing the implementation of laws, such as in Vietnam. Moreover, international NGOs and CSOs based in countries of the Global North are mainly monitoring the compliance of donor countries' development policies and tenure-related programs.

The experiences and creativity of social movements and CSOs in using the Guidelines for monitoring (combining qualitative participatory monitoring methodologies with statistical and technical ones) show the potential of the Guidelines to act as a "bottom-up" accountability instrument. This is all the more relevant as formal/"official" monitoring remains very limited. There is a lack of institutionalized participatory mechanisms that can oversee governance of tenure as a whole, particularly systematic and effective monitoring of the outcomes of governance of tenure (i.e. the reality of people) which goes beyond the statistical and technical tools and analysis many institutions and governments tend to favor. There is thus an urgent need for monitoring and accountability mechanisms that could contribute to protecting, promoting and restoring the rights of the most marginalized communities and groups.

³³ For a more detailed analysis see Brent and Monsalve: 2014. Given the existing ample evidence that the World Bank's land policy advice and lending practices have had serious impacts on the ground in terms of human and tenure rights of the rural poor, there is rather an urgent need to assess the role of the World Bank in the governance of tenure on the basis of the Guidelines.

³⁴ <http://www.fiancolombia.org/quien-conoce-lo-que-tiene-mas-facil-lo-defiende-gobernanza-de-la-tierra-la-pesca-y-los-bosques-en-nuestros-territorios>.

³⁵ The Latin American Alliance for Food Sovereignty is the regional body of the International Planning Committee for Food Sovereignty (IPC) in Latin America and the Caribbean.

³⁶ This monitoring exercise was based on a global monitoring tool developed by FIAN International (see http://www.fian.org/library/publication/monitoring_the_governance_of_land_fisheries_and_forests).

G. Linking the Small-Scale Fisheries Guidelines to the Tenure Guidelines

The FAO *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication*³⁷ (SSF Guidelines), endorsed in 2014, represent a global consensus on principles and guidance for small-scale fisheries governance and development towards enhanced food security and nutrition. A critical tool to secure access to fish stocks, they aim to contribute to and improve the equitable development and socio-economic condition of small-scale fishing communities alongside sustainable and responsible management of fisheries. Just as the Guidelines on Governance of Tenure, they are anchored in human rights and explicitly prioritize vulnerable and marginalized groups. The language, content, principles and the holistic integrated approach, as well as the common issues on gender, indigenous communities, access and equity of the SSF Guidelines are aligned with the Tenure Guidelines. The Foreword by the Director-General of the FAO, the preface, and large parts of the text in chapter 5 of the SSF Guidelines refer explicitly to the Tenure Guidelines. Particularly chapter 5a of the SSF Guidelines on Responsible Governance of Tenure builds directly on them. By linking the two instruments, they become complementary and mutually reinforcing.

Submissions show that fisher movements and organizations as well as native communities of Canada, the inland fisherwomen of Kenya, coastal and inland small-scale fishing communities in South Africa, and fishers in Uganda, all view the convergent and complementary nature of fishing and farming and land and water as one – as far as access to the ocean or lake access to land is concerned. They underline that their shelters, food, and livelihoods from water cannot be separated from those from land. In Canada, representatives of native people feel that modern fisheries have imposed boundaries on their livelihoods. Through combining the SSF Guidelines and the Tenure Guidelines, they can secure access rights to territories, lands and waters on which they have traditionally depended for their life and livelihoods. By reinforcing the link between both sets of guidelines small-scale fishing communities are struggling to strengthen their customary marine

tenure systems, or develop new customary marine tenure systems in some contexts.

At the same time, the implementation of the principles in chapter 5 of the SSF Guidelines has provided specific entry points to support the implementation of the Tenure Guidelines. Awareness-raising events and capacity building in relation to the Tenure Guidelines as well as for the SSF Guidelines always cross-reference the two documents and are based on the strong involvement of social movements, as was the case during the development process of the SSF Guidelines and the Tenure Guidelines. In South Africa, for instance, fishers' organizations are promoting the implementation and the use of the Tenure Guidelines within small-scale fishing communities as well as with land-related CSOs through capacity-building activities at national and provincial level (see Box 1). They have been working on linking land and sea in some cases of land claims, emphasizing the importance of customary tenure rights, in particular collective rights. Importantly, they point out that the principles of the Tenure Guidelines are already present in the South African Constitution and Bill of Rights and are aligned with their national Small-Scale Fisheries Policy.

Communities in Sri Lanka, Honduras, Kenya, Uganda, Tanzania, South Africa and Canada are using the complementary nature of both Guidelines in order to link tenure with resource management. Especially small-scale communities underline that they do not only want access to practice their livelihoods but also want to be active participants in the decision-making structures, allocation of rights and overall management of their resources (coastal, inland, marine, riparian resources). Linking the Tenure Guidelines to the SSF Guidelines in the context of small-scale fisheries has raised the importance of often neglected issues of access to resources in lakes, rivers and relevant infrastructures such as dams for inland and riparian small-scale fishers. In East Africa, inland fisheries on Lake Turkana, use both Guidelines for advocacy as their livelihoods are threatened by trans-boundary water grabs due to a big dam and irrigation project. Communities and organizations of small-scale fishers in this case also use the Tenure Guidelines in order to advocate for national policies which address more adequately inland fisheries issues, as the existing national policies mainly focus on the rights of fishing communities living close to the ocean. In Southern Africa, fishers' organizations are aiming to link the Tenure Guidelines to the national fisheries and water policies, since some

³⁷ <http://www.fao.org/3/a-i4356e/index.html>.

fishers are denied access to their fishing areas due to economic development for tourism.

Overall the submissions show that the SSF Guidelines and the Tenure Guidelines are complementary and that small-scale fisher communities and organizations are using them to advance their rights and human rights-based governance of fisheries. Social movements of small-scale fishers have particularly taken up the challenge and found ways of building this complementarity in their work and struggles in order to translate it into practice. However, the convergence and combination of both instruments for the benefit of small-scale fishers still needs to be ensured, requiring more effort by all actors, in particular states. All in all, in the context of the implementation of the Tenure Guidelines, fishers' organizations and fisheries are not sufficiently addressed.

H. Recognition and protection of ancestral, customary and collective rights

A key element and major achievement of the Guidelines is their emphasis on the need to recognize and protect all legitimate tenure rights, including customary tenure systems and legitimate customary tenure rights that are not currently protected by law. This also applies explicitly to publicly owned land, fisheries and forests that are collectively used and managed, as well as the related use and management systems (para 8.3). In many regions and countries worldwide, communities and people access, use and manage lands through customary systems in order to secure their livelihoods. Accordingly, many submissions refer to customary rights and tenure systems as a cross-cutting issue in many of the activities carried out by social movements and CSOs (e.g. capacity-building, monitoring, tenure reforms, advocacy etc.). Several activities also focused specifically on customary tenure.

The activities referred to in the submissions are the documentation and mapping of customary land tenure by communities and CSOs, the results of which were then used for advocacy. In several countries (e.g. Mali and Myanmar) the protection of customary rights were a core part of social movements' and CSOs' proposals in the context of tenure reform – leading, in some cases, to provisions that recognize customary tenure systems and communal rights. In other countries, workshops on the Guidelines

triggered an increased interest in a better understanding of customary systems, including among local authorities, judges and government officials. In Malawi, the Guidelines contributed to advancing discussions within communities about the challenges and obstacles women face within customary systems (see also chapter V.I on Women's tenure rights), especially given the fact that traditional leaders are usually men. Several Indigenous Peoples use the Guidelines in conjunction with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in order to defend their ancestral territories and their autonomous governance systems.

While the submissions indicate that the Guidelines are an important and useful instrument to advance the rights of communities and people in the context of customary tenure, the lack of effective recognition and protection of such tenure remains a main obstacle to the realization of their human rights in many countries. Especially in the context of resource grabs, communities see themselves confronted with corporations and other powerful actors which are often acting with the complicity of states who do not recognize communities' customary rights. In some contexts, states are formally the owners of land – often based on laws that go back to colonial times – and abuse their power in order to promote particular economic interests. Overall, the recognition and protection of customary rights and tenure systems in legal and policy frameworks remain a big challenge. However, even where statutory laws do recognize them in principle – the level of recognition, respect and protection of such systems varies significantly from one country to another – this does not always translate into practice and communities continue to be marginalized. In many contexts a situation of legal pluralism exists, which includes a statutory system of law and tenure governance as well as a customary one. Frequently, such as in the case of resource grabs, where customary rights clash with economic interests backed by statutory property rights, the latter prevail, leading to further marginalization of communities. An example of a country struck by a tsunami shows that customary rights are also particularly threatened in the context of natural disasters and rebuilding activities: Here, small-scale fishers' organizations challenged the government's focus on infrastructure and coastal development to attract tourism which restricted fishing communities' access to fisheries.

The submissions clearly point to the need for more efforts and political will to effectively

protect and strengthen customary tenure rights and systems, including in the context of the implementation of the Guidelines. It is important, however, to underline that customary systems vary considerably from one place to the other and customary practices can vary even within the same country. Different (ethnic) groups have developed a variety of ways on organizing their lands. For instance, tenure systems can be based on collective ownership or rather on individual plots, translating, in practice, into a broad range of different conceptions. This points to the need for inclusive processes in the context of implementation of the Guidelines, which allow communities and people to develop frameworks and interventions based on their own distinct customary practices and values as well as their conceptions of social and environmental justice. The strength of the Guidelines lies in the fact that they provide a tool that can be applied in different contexts, allowing movements and people to advocate for their needs.

I. Women's tenure rights

Although the fundamental role of women in food production, agriculture, fisheries, livestock rearing, forestry and the realization of the human right to food and nutrition is broadly and increasingly recognized, structural gender discrimination and the marginalization of women remains widespread, including with regard to tenure of natural resources. Despite gender equality being recognized and promoted through different national laws and international instruments, women have largely remained marginalized. Rural women rarely have legally recognized rights to land, natural and productive resources, including possession of, access to, use and management of, conservation and enjoyment of the benefits from land, forests, pastures, lakes, seas and rivers. Taking into account the different problems women are facing, and the crucial role they play for the realization of the right to food and nutrition, it is essential to understand access to and control of land, fisheries and forests by women as issues of equity, social justice, human rights and sustainability. Consequently, the Guidelines emphasize states' obligations under international human rights law to guarantee equal rights of men and women and to ensure that women and girls have equal tenure rights and access to land, fisheries and forests, independent of their civil and marital status. However, overall, efforts in

the context of the Guidelines' implementation so far have not yet contributed to substantial changes regarding the tenure situation of women.

The submissions clearly show that the discrimination, marginalization and violence against women in the context of tenure remain structural issues and have not fundamentally changed since the adoption of the Guidelines. While some advances in some countries are highlighted, CSOs also mention regressive measures in others. Overall, the Guidelines are not seen as a game changer in as much as they have not brought about fundamental changes by themselves and will not do so. Overall, the contributions emphasize the fact that advances regarding women's rights are the result of longstanding women's struggles. However, many submissions also emphasize the contribution the Guidelines can make to bring about change – as an additional instrument to back demands, claims and struggles in the context of tenure of natural resources. Here, the full potential of the Guidelines has not yet been explored and more discussion should happen in women's organizations, along with more serious and sustained efforts from states and state authorities.

Several submissions relate specific activities to advance women's rights in the context of the Guidelines' implementation. These include specific capacity-building activities on the Guidelines for women, with adapted methodologies (such as theater plays as in the case of Senegal). In addition, capacity-building activities which were not specifically organized for women were an occasion in many countries to discuss women and gender issues related to tenure. In some cases, such discussions led to concrete outputs, such as memos with women's claims (e.g. in Chad). In some countries, CSOs organized mapping exercises specifically involving women and their knowledge (e.g. in Chad). In other cases, CSOs have developed specific tools to analyze and monitor the situation of women with regards to the human right to food and nutrition, including issues of access to and control over natural resources (Colombia³⁸) and have documented and analyzed cases of resource conflicts focusing on the violation of women's rights (e.g. Guatemala and Malawi). Gender issues and women's rights have also been included in advocacy strategies, and in several countries specific advocacy

³⁸ See <http://www.fiancolombia.org/el-derecho-a-la-alimentacion-y-nutricion-adeuada-de-las-mujeres-una-ampliacion-de-horizonte-hacia-la-construccion-de-una-ciudadania-plena-reflexiones-y-propuesta-para-su-seguimiento>.

strategies have been developed in order to advance women's rights related to tenure (examples: DRC and Sierra Leone). In India, the Guidelines have been used as basis for a proposal from social movements to reframe the "Women Farmers Entitlement Act," which has been submitted to the government.

Whereas these specific activities linked to the Guidelines took place in several countries, in most cases, the Guidelines have been included in ongoing processes, activities and struggles. Marches and campaigns (such as in Senegal or in Malawi, with a campaign focusing on land tenure in the patrilineal northern region and on control of land in the central and southern region) are among the most frequently mentioned forms of struggles. In some cases, mobilization and activities have had concrete impacts – for example the attribution of land to women by local authorities in Madagascar or the inclusion of provisions on women's rights in new frameworks, for example in Sierra Leone (equal rights of women to land and natural resources by marriage and inheritance have been included in the National Land Policy), Malawi (the Guidelines' provisions on gender have influenced a pending land bill) and in Uruguay (new provisions regarding equal rights of women and men). In other cases, meetings of women's representatives with parliamentarians and authorities at different levels have taken place (example: Malawi). The General Recommendation on the Rights of Rural Women, which was recently adopted by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), shows that international human rights standards are evolving and clarifying states' obligations to respect, protect and fulfill women's rights, including in the context of tenure (see Box 6).

Box 6. General Recommendation No. 34 on the Rights of Rural Women

The General Recommendation (GR) No. 34 on the Rights of Rural Women³⁹ was adopted by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) during the committee's 63rd session, which was held from February 15 to March 4, 2016. It provides a new reference to claim women's rights in the context of the right to food and access to and control over natural resources. GR 34 is CEDAW's authoritative interpretation of Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women and provides guidance to state parties on the measures to be adopted to ensure full compliance with

their obligations to respect, protect and fulfill the rights of rural women. Its adoption is particularly significant because it is the first international instrument that specifically addresses the rights of rural women and furthermore, the first that explicitly recognizes the human right to adequate food and nutrition of rural women within the framework of food sovereignty. Among others, GR 34 recognizes the right to access, control, manage and own all natural and productive resources on which rural women depend and explicitly refers to the Tenure Guidelines.

The specific role the Guidelines have played in achieving these successes varies from case to case. However, what the submissions clearly indicate is that, in several cases, the Guidelines have created a momentum to take forward discussions on tenure-related gender issues and the rights of women. In Mali, Sierra Leone and Niger, for instance, activities and projects that were framed under the Guidelines have triggered processes in which women have strongly raised their voices, within communities and targeting authorities, and have developed and put forward concrete demands.

Despite some positive developments, CSOs also point to persistent challenges regarding the advancement of women's rights and gender equality. Among other situations, they highlight that existing legal and policy frameworks in many countries are still not in line with the human rights standards contained in the Guidelines and continue to marginalize and discriminate against women. In other countries, frameworks may be more progressive but implementation and enforcement is lacking. In these situations, the real capacity of the Guidelines to serve as a reference to trigger concrete changes for the advancement of women's rights remains to be seen. Moreover, gender issues and the rights of women are not yet systematically included in the programs of donors, such as those contained in the land database of the Global Donor Platform for Rural Development or the G7 Land Partnerships.

"In West Africa, one of the main challenges consists in protecting and securing the customary collective tenure rights of communities. This is a struggle of men and women, including young people. Some customary tenure systems discriminate and exclude women, and this needs to be addressed, but this has to be done by and within a society. Instead of giving individual land titles to women, the solution is to protect communities' collective tenure rights, while at the same time finding ways of addressing exclusion and discrimination that may exist within the customary systems."

Coordination Nationale des Organisations Paysannes (CNOP)/Convergence Malienne contre l'Accaparement des Terres (CMAT) – Mali

³⁹ See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/061/90/PDF/N1606190.pdf?OpenElement>.

Apart from statutory laws and policies which reflect and perpetuate discrimination and marginalization of women, some contributions also point to customary practices and traditions which exclude and discriminate against women. In some countries, such as Mali and Malawi, CSOs have carried out specific activities to address this issue and ensure equal tenure rights in all tenure systems. However, it is emphasized that these issues have to be dealt with through processes within the broader context of the respective society and how they interrelate to tenure issues. In this context, some CSOs criticize that, in some cases, activities carried out under the banners of securing women's land rights and promoting gender equality, in reality promote individual land titles for women, thus imposing a private property regime based on tradable rights. Such approaches do not adequately address the structural causes of discrimination and actually risk increasing the insecurity of tenure of women in the long run. They also conflict with the Guidelines' recognition of a full range of tenure rights, particularly emphasizing customary rights as well as customary tenure and governance systems.

J. Youth issues in the context of tenure of natural resources

Today, there are more than 1.2 billion youth in the world, the largest generation of young people ever to have existed, representing a huge potential resource to their countries. In particular rural youth and urban youth willing to settle in rural areas will play a key role in the realization of the human right to food and nutrition in the future. For many young people across the world, the agricultural sector is seen not only as of vital importance to rural economies worldwide – and particularly in the Global South – but also as a crucial element to address the disproportionately high levels of youth unemployment, underemployment and poverty that affect most countries. Several submissions show that in many countries young people are demanding access to land to produce food for themselves and for others, create employment and protect the environment. Yet, while engaging in agricultural, fishing and pastoralist activities, they continue to face challenges related to pressure on land and other natural resources, landlessness, insufficient access to information and education, lack of access to credit and technical assistance, limited access to markets and limited involvement in

policy dialogue, among other issues. It is of crucial importance to address and overcome the existing challenges for rural youth in order to ensure sustainable food production and governance of tenure.

Since the 2007-08 food price crisis, policy makers have shown greater awareness of the challenges faced by youth, and have refocused their attention on the agricultural sector (FAO, 2014:94). This provides momentum for developing policies, programs and projects that reflect and meet their needs, experiences and perspectives in relation to land and other natural resources. In many corners of the world, young women and men have the ability and potential to be positive agents of change. It is essential to take action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests for youth, one of the most neglected and socially-excluded groups in many countries, to achieving sustainable human development and social justice. The Guidelines emphasize states' obligations to promote youth's effective participation in policy dialogues, decision-making and governance of their tenure systems.

Several submissions describe activities that included participation of young people, while other activities were specifically designed for them and/or addressed their issues to advance their rights in the context of the implementation of the Guidelines. These include capacity-building activities on the Guidelines, some of them ensuring representation of young people and others specifically focusing on their issues (e.g. in Argentina). Other initiatives aimed at opening spaces for dialogue as a result of CSOs' advocacy for the drafting of national and regional policies, with a special mention to rural youth. An example is the creation of a thematic group within the REAF of Mercosur, which organizes youth consultation meetings to address their specific issues related to access to natural resources, production models, rural collective actions and rural workers' rights. Studies and guides on these issues have been prepared, some of them explicitly based on the Guidelines. In Belgium, a platform of peasant organizations, organic agriculture unions and other CSOs was constituted to enhance access to land through sustainable and family farming, among other activities. In particular, the platform reflected the issues and claims of youth in consultations prior to the adoption of the Walloon agricultural code. It also carried out activities on tenure issues at the European Parliament, specifically mentioning young farmers as one of the groups that are

structurally marginalized. In Italy, the social mobilization carried out by rural and urban young people allowed them to put the use of farmland back onto the agenda of local authorities while engaging in a debate, and raising awareness among citizens on this public asset. This led to two “calls for a proposal” for the management of publicly owned land, with reference to the provisions of the Guidelines, and the allocation of land to cooperatives of young farmers. Finally, social movements and CSOs underline that access to information and communication technologies can also provide young people with means to facilitate their access to land. In Austria, a digital platform was set up to put landless people – especially young farmers and urban youth who would like to engage in farming – in contact with farmers who wish to hand over their farms.

Much remains to be done both to strengthen young people in the context of tenure and to enable them to engage with duty-bearers in decision-making processes so as to achieve policies and programs that are responsive to their needs and rights. The Guidelines provide key guidance as regards their anchoring in human rights, including participatory governance processes involving young people.

VI. OBSTACLES AND CHALLENGES IN IMPROVING GOVERNANCE OF TENURE AND IMPLEMENTING THE GUIDELINES

Although the Guidelines have been established as a key reference with high legitimacy and have in many instances proven to be a useful tool to advance human rights-based governance of tenure, they still have a low profile in many countries. Despite serious efforts, too little has been done to promote and disseminate the Guidelines among relevant policy-makers, state institutions at all levels, including local and judicial authorities, civil society and other actors, and to build understanding about how these actors can/should apply the Guidelines in their full spirit.

While social movements and CSOs acknowledge the usefulness of the Guidelines in supporting communities’ tenure rights, they underline that the non-binding nature of the Guidelines makes it difficult to convince local, district, provincial and national officials – who are often unaware of their existence – to use and apply them. Demanding effective implementation of national laws that protect communities’ tenure rights is already challenge enough. Introducing the Guidelines into processes to formulate tenure related laws, policies, reforms or proposals, requires an understanding of how to use soft law in national legal and regulatory frameworks that is currently (still) missing.

A key challenge in using the Guidelines effectively is generating the impetus for administrative and legal reforms to create more equitable tenure rights regimes and correct historic injustices regarding access to and tenure of land and natural resources. Both law-makers and private companies can display strong resistance to policies and regulations that check private sector control over land and natural resources, legitimize customary tenure rights and grant communities the rights to manage and govern communal lands and natural resource systems. Application of the Guidelines has also been limited by lack of political will as well as weak governance institutions, overlapping tenure instruments, conflicting mandates of state agencies in land, forest and fisheries governance, and corruption at different levels. In the specific case of countries of the Global North, there is a perception among some institutions and policy-

makers that the Guidelines do not apply to their national context and are only relevant in development cooperation work in the Global South.

The scope of implementation of the Guidelines is frequently limited to specific geographic areas – project areas – rather than a country or even a region as a whole. Further, governmental restrictions on – and at times persecution of – participation of affected communities and the most marginalized groups in governance and conflict resolution processes related to land, fisheries, forest and natural resource tenure, undermine the potential of the Guidelines as a normative, human rights instrument.

In some countries, national laws governing land, forests and fisheries contain stronger language than in the Guidelines. This can lead to the mistaken impression among civil society and other actors that applying the Guidelines will weaken existing legal protection of communities' tenure rights since the Guidelines are not a "legal instrument."

According to the experiences of CSOs, the Guidelines are difficult to communicate to the general public and rural communities because of conceptual language and technical terms. Although several activities have already been undertaken to disseminate the Guidelines, many terms – such as "tenure", "governance", "legitimate" and even "guidelines" – remain complex, and special efforts are needed to bring the Guidelines closer to people so that they understand how they can use them to assert their rights in the context of tenure-related issues. The concept of tenure itself has multiple interpretations, and questions have arisen regarding the use of terms such as "land rights", "fishing rights", "user rights" and "rights-based approaches". These terms can – and will – mean different things to different actors depending on culture, context and technical backgrounds, making shared understandings and locally appropriate definitions of these terms essential for the effective use of the Guidelines. There is a need for specific tools, support and activities that are targeted particularly to marginalized groups and communities in order to ensure that these groups can understand how the Guidelines are relevant for them, based on their needs and conceptions of social and environmental justice. This includes translations of the Guidelines and materials such as the People's Manual into more local languages so that people in different geographic (and particularly in remote) areas and from different social, political and cultural contexts can see the

relevance of the Guidelines to their respective contexts.

The participation of the stated main beneficiaries of the Guidelines in their implementation remains a big challenge. Indeed, the absence of legal, political and financial support are significant challenges faced by affected communities and civil society in using the Guidelines and participating in local, national and regional processes related to governance of tenure. In many countries, the most vulnerable and marginalized groups, whose tenure rights are most at risk, are also the most socially and politically disempowered, and common targets of criminalization, harassment and intimidation by state and non-state actors. In many instances, social movements and CSOs were also provided with limited information by governments, donors and other actors involved in tenure governance processes. Local, affected communities, especially the most vulnerable and marginalized groups, were denied relevant information in accessible forms and languages, and were not able to participate in official policy and strategic discussions about tenure rights and governance. This made it difficult for civil society to build a comprehensive understanding of activities related to governance of tenure at various levels, and systemically monitor how the government and other actors are using the Guidelines. Involving rights-holders in governance processes enables them to assume ownership, which contributes to the sustainability of programs, policies and strategies. Several submissions mention, however, that many of the groups they work with have been systematically excluded or under-represented in negotiations and from the development, implementation and monitoring of tenure-related laws and policies at the local, national, regional and international level.

The Guidelines are being interpreted and used differently by different actors, including governments, businesses, civil society and academics. While adaptation to differing contexts can expand the relevance of the Guidelines, the proliferation of interpretations risks causing confusion about their foundation and spirit, and divert the implementation from the Guidelines' true objectives. Social movements insist that the Guidelines are primarily directed at states who, by approving them, have committed to apply them according to their paramount objective: to contribute to the realization of the human right to adequate food by improving the governance of tenure for the benefit of vulnerable and marginalized people and communities. However, efforts by

states are not always focused on the primary beneficiaries of the Guidelines. For example, bilateral donors, alliances of donors and corporate foundations, as well as consortia of corporations, multilateral development banks and international NGOs, have developed technical guides on the Guidelines that are premised on reducing and managing reputational and economic risks of businesses in acquiring land and natural resources, while continuing with investments that violate local peoples' tenure and related human rights. By focusing on assisting external investors – state and private – to use the Guidelines for their interests, rather than the rights of the most vulnerable and marginalized (as stated in paragraph 1.1 of the Guidelines), these interpretations frame governance of tenure as a business, rather than a human rights issue.⁴⁰ Reality shows that corporations and powerful investors are often involved in serious abuses against human rights such as forced and violent evictions, killings, arbitrary detention and harassment of communities and people. Further, such interpretations open the door for misuse of the Guidelines through selective implementation – “cherry picking” – and to legitimize violations of communities' tenure rights, rather than holistic applications of the Guidelines as a comprehensive instrument to guide human rights-based governance of tenure.

The Guidelines have also been taken up by donor countries. Indeed, the members of the land working group of the Global Donor Platform for Rural Development, which brings together some of the main donors of development cooperation, have created a data base which is intended to show all projects in the context of the implementation of the Guidelines and which contains 716 projects in 135 countries with a total value of 9.7 billion US dollars.⁴¹ While it is, in principle, positive that tenure-related issues are getting renewed attention and that the Guidelines are used as a reference to guide interventions and programs in the context of development cooperation, not all of these projects do actually contribute to advancing human rights-based governance of tenure in the spirit of the Guidelines. More than half of the projects contained in the data base in reality started prior to the approval of the Guidelines in 2012, indicating thus a relabeling

of existing programs and projects as “Guidelines implementation”, without systematically assessing them in light of the Guidelines and revising them where needed. In some countries, joint projects between national governments and donors to implement the Guidelines do not address existing rights abuses and violations, dispossession and displacement arising from large-scale investments and other natural resource related conflicts. In some cases, projects and initiatives risk aggravating conflicts and related abuses and violations, e.g. by facilitating the privatization of natural resources and large-scale land acquisitions, despite such programs being presented as contributing to the implementation of the Guidelines. In other cases, donor-backed programs are implemented in contexts which do not offer the very basic conditions for civil society to engage in a meaningful process, e.g. due to restrictive laws (see chapter V.E). Also Development Finance Institutions (DFIs) have become important actors in land grabbing, namely as financiers of land deals and investment projects through their private sector financing, including through financial intermediaries.⁴² Social movements and CSOs also note that donor support is disproportionately directed to initiatives to provide guidance to the private sector or to global or northern-based NGOs, rather than to community organizing in southern countries.

Overall, the big challenge that remains is to ensure that there is real change on the ground regarding improvement of governance of tenure for the most marginalized groups.

⁴⁰ See international statement by social movements and CSOs “The Tenure Guidelines at a Crossroads,” available at: https://viacampesina.org/en/images/stories/pdf/2015_TG_Statement_final_EN.pdf.

⁴¹ See <https://www.donorplatform.org/land-governance/programme-map>.

⁴² See Borrás et al. (2016) for DFIs from the EU.

RECOMMENDATIONS

To CFS members

Renew the commitment to implement and apply the Guidelines in accordance with their human rights obligations in order to achieve the objectives set out in them, ensuring that all efforts start from the rights and needs of communities and the most marginalized.

Regarding spaces for policy dialogue:

Improve the quality of these spaces so that

- 1) the active and effective participation, without security risks, of representatives of the most affected and marginalized rights-holders is prioritized;
- 2) CSOs can organize autonomously and engage as organizations of rights-holders in dialogues with state authorities (duty bearers) as part of democratic decision making and human rights-based governance;
- 3) the distinct roles of rights-holders and third parties (private sector, academia, international NGOs, UN agencies, religious institutions, etc.) are clearly defined and differentiated in these spaces, including a policy to address conflict of interests;
- 4) they are geared towards outcomes to improve the tenure situation of the most affected and marginalized rights-holders.

Regarding legal and policy frameworks related to tenure:

Ensure full and active participation of CSOs in any reform of legal and policy frameworks related to governance of tenure and use the Guidelines in the law/policy making process as benchmark to improve law/policy making in line with human rights standards, giving special attention to the inclusion of representatives of the groups most affected and marginalized, including women and youth;

Apply the Guidelines in complementary manner with the SSF Guidelines in the context of small-scale fisheries so that the often neglected issues of access to resources in lakes, rivers and relevant infrastructure such as dams for inland and riparian small-scale fishers are properly addressed;

Apply the Guidelines in a holistic manner, recognizing that natural resources and their uses are interconnected (para. 3B5). For rural people tenure is a collective basket of livelihoods where there is a deep interconnection between land use, access to the forests, fishing grounds, use of water, and to customary practices. In this sense, states should also apply the Guidelines to all natural resources, such as water and mineral resources (as of the Guidelines' preface), taking into account relevant CFS decisions (such as the Decision on "Water for Food Security and Nutrition" approved by the CFS in its 42nd session);

Increase efforts and political will to protect and strengthen customary tenure rights and systems, including in the context of the implementation of the Guidelines. Ensure that communities are able to develop frameworks and interventions based on their own distinct customary practices and values as well as their conceptions of social and environmental justice;

Revise legal and policy frameworks and/or effectively implement existing frameworks in order to ensure equal tenure rights as well as access to and control over land fisheries and forests for women and girls, independent of their civil and marital status.

Regarding tenure-related conflicts:

Guarantee the independence of the judiciary and ensure access to timely, affordable and effective means of resolving disputes over tenure rights in cases of tenure conflicts through impartial and competent judicial and administrative bodies, particularly in remote rural areas;

Guarantee that consultations with those affected conform to regulations and the standards set out by the Guidelines (paragraphs 3B6 and 9.9), including the right of communities and people to withhold their consent if they deem that investment projects are not in their interests;

Pass and enact new laws and/or effectively enforce existing laws that provide effective safeguards for large-scale land transactions, such as ceilings on permissible land transactions or requirements for parliamentary approval (paragraph 12.6 of the Tenure Guidelines);

Pass and enact new laws and/or effectively enforce existing laws that regulate corporations and investors, criminally prosecute and sanction them wherever they commit crimes or impair the human rights of individuals or communities, ensure redress to those affected for damages and prevent repetition of crimes and abuses.

Regarding violence against human rights defenders working on natural resources and criminalization of struggles:

Respect, protect and fulfill the human rights of human rights defenders working on natural resources, including social movements, grassroots organizations and affected communities, among others by refraining from acts which interfere with the enjoyment of their human rights as well as by ensuring effective mechanisms to protect them against all forms of violence, taking into account the specific risks faced by these groups;

End the impunity of crimes and human rights violations and abuses committed against human rights defenders working on tenure-related issues by holding perpetrators accountable;

Review existing legal frameworks which allow for repression and criminalization of social protest and of the work of human rights defenders in the context of tenure.

Regarding monitoring and evaluation:

Establish and improve monitoring mechanisms of governance of tenure, ensuring particularly that the outcomes of governance of tenure and realities on the ground are monitored, including tenure-related conflicts;

Commit to organize national monitoring events on the Guidelines using the “Terms of Reference to share experiences and good practices in applying CFS decision and recommendations through organizing events at national, regional and global levels.”

Regarding donor support related to governance of tenure and implementation of the Guidelines:

Establish formal mechanisms to systematically carry out independent prior human-rights impact assessments (*ex ante* HRIAs) of all tenure-related programs and projects (including the activities of Development Finance Institutions) as well as regular assessments of their impacts (*ex post* HRIAs), in order to ensure that they do not negatively affect tenure and human rights. This includes the establishment of accessible complaint mechanisms for victims of human rights abuses and violations, which ensure that such complaints are investigated independently, as well as ways of effective remedy;

Stop and/or withdraw from programs and projects where substantial human rights risks have been identified or violations have occurred. In the latter case, provide for effective remedy mechanisms.

To FAO (as leading UN agency in the context of the implementation of the Guidelines)

Initiate an inclusive process in order to develop technical guides to assist governments on how to improve access to justice and the protection of human rights defenders in the context of governance of tenure;

Ensure that the multi-actor platforms which FAO supports in the context of the implementation of the Guidelines generate an inclusive, equitable, transparent and accountable process, according to the Guidelines' principles and human rights standards. This requires particularly to ensure the prioritization of marginalized people (both regarding participation in processes and the outcomes of governance), the autonomous organization of CSOs, a clear distinction between rights holders, duty bearers and third parties as well as their respective roles in such platforms, and to address power asymmetries between different kinds of participants;

Assist the efforts of CSOs at national level to actively participate in legal and policy making processes related to governance of tenure;

Continue and scale up support to CSOs representing the most affected and marginalized groups so that they can use the Guidelines to assert their rights, including through capacity building;

Support governments and CSOs interested in organizing national monitoring events on the Guidelines using the "Terms of Reference to share experiences and good practices in applying CFS decision and recommendations through organizing events at national, regional and global levels";

Create a specific program to support the recognition and protection of customary tenure systems and to strengthen women's tenure rights within such systems. Foster collaboration with indigenous and other customary authorities;

Provide guidance for more concerted efforts to implement the Guidelines in complementary manner with the SSF Guidelines, the Voluntary Guidelines on the Right to Food and other relevant human rights instruments.

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ANNEX: QUESTIONNAIRE ELABORATED BY THE CSM WORKING GROUP ON MONITORING

- a. How have the VGGT been used at a national, sub-national or regional level? Please describe your own activities as CSOs and the activities that you are aware of having been undertaken by governments, international agencies/donors and the private sector.
- b. What impacts have your CSOs activities had? What impacts have the activities undertaken by other actors had?
- c. In the past four years, what have been the main developments with regard to governance of tenure in your country? Have there been tenure conflicts? If yes, please describe them and give concrete examples. Which role have the VGGT played in solving these conflicts?
- d. In the past four years, has your government undergone tenure reform or other reforms with impacts on tenure? Which role have the VGGT played?
- e. Have the groups most affected by landlessness, displacement, other forms of livelihoods loss and tenure insecurity been involved in tenure reforms and other legal/policy reforms with impacts on tenure in the last four years?
- f. Have the VGGT helped women to claim and exercise their tenure rights? In what ways?
- g. Did the VGGT provide CSOs with broader spaces and resources to better organize/mobilize for their claims?
- h. Did the VGGT provide leverage for CSOs to work in constrained environments?
- i. Have you experienced cases of harassment, persecution or detention due to your activities in defense of your tenure rights in the last four years? Are the groups most affected by landlessness, displacement and other forms of livelihoods loss and tenure insecurity free to organize to defend their tenure rights?
- j. What are the main challenges ahead in terms of improving governance of tenure in your country? Can the VGGT play a role to overcome them?
- k. What mechanisms exist in your country to monitor governance of tenure?

This synthesis report summarizes the results of a broad consultation among small-scale food producers and other civil society organizations (CSOs) around the globe on the use and implementation of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*. It is a contribution from the Civil Society Mechanism (CSM) to the Global Thematic Event on the Guidelines to be held during the 43rd session of the Committee on World Food Security (CFS). This Global Thematic Event will be the first one held to share experiences in applying CFS decisions and recommendations, as a contribution to the CFS' monitoring function. As such, it constitutes an important step towards promoting accountability in the CFS as the foremost inclusive international and intergovernmental platform on food security and nutrition. Approved in May 2012, the Guidelines were developed in a long and inclusive process of consultations and negotiations, and are an unprecedented international agreement on the governance of tenure based on human rights.