

# **First Draft**

## **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests**

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## Preface

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

How people, communities and others gain access to land, fisheries and forests is defined and regulated by societies through systems of tenure<sup>1</sup>. These tenure systems determine who can use which resources, for how long, and under what conditions. The systems may be based on written policies and laws, as well as on unwritten customs and practices. Tenure systems increasingly face stress as the world's growing population requires food security, and as environmental degradation and climate change reduce the availability of land, fisheries and forests. Inadequate and insecure tenure rights increase vulnerability, hunger and poverty, and can lead to conflict and environmental degradation when competing users fight for control of the resources.

The governance<sup>2</sup> of tenure is a crucial element in determining if and how people, communities and others are able to acquire rights, and associated duties, to use and control land, fisheries and forests. Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance. Weak governance adversely affects social stability, sustainable use of the environment, investment and economic growth. People can be condemned to a life of hunger and poverty if they lose their tenure rights to their homes, land, fisheries and forests and their livelihoods because of corrupt tenure practices or if implementing agencies fail to protect their tenure rights. People may even lose their lives when weak tenure governance leads to violent conflict.

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

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<sup>1</sup> Tenure is the relationship, whether defined legally or customarily, among people with respect to land (including associated buildings and structures), fisheries, forests and other natural resources. The rules of tenure define how access is granted to use and control these resources, as well as associated responsibilities and restraints. Tenure thus usually reflects the power structure in a society, and social stability may depend on whether or not there is a broad consensus on the fairness of the tenure system.

<sup>2</sup> Governance is the process of governing. It is the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws.

At its Thirty-sixth Session in October 2010, the Committee on World Food Security (CFS) encouraged the continuation of the inclusive process for developing the Voluntary Guidelines with a view to submitting them for the consideration of the Thirty-seventh Session of CFS, and decided to establish an open-ended working group of the CFS to review the first draft of the Voluntary Guidelines.

The Voluntary Guidelines closely follow the format of other FAO voluntary instruments that set out principles and internationally accepted standards for responsible practices: *Voluntary Guidelines on the Right to Food*; *Code of Conduct for Responsible Fisheries*; *International Code of Conduct on the Distribution and Use of Pesticides*; *Responsible Management of Planted Forests: Voluntary Guidelines*; and *Fire Management Voluntary Guidelines: Principles and Strategic Actions*. These instruments are relatively short documents that provide frameworks that can be used when developing strategies, policies, legislation, programmes and activities. They are accompanied by a wide range of additional documents, such as supplementary guidelines that provide technical details on specific aspects when necessary, training and advocacy materials, and further guidance to assist with implementation. Similar additional documents will become available following the adoption of the Voluntary Guidelines.

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

This first draft of the Voluntary Guidelines incorporates proposals received through an electronic consultation on the zero draft. Proposals to improve the zero draft were received from the public and private sectors, civil society and academia, and from around the world. The interest in the process and the efforts taken to prepare thoughtful and helpful proposals are highly appreciated. Some proposals were not included in this revised draft because they provided a greater level of detail than that which can be accommodated in an instrument of this nature, and they may be more suited for supporting material that will become available later. In other cases, several different views were put forward in ways that did not allow them to be reconciled into a single proposed change. The reconciliation of such different views will be addressed along with other matters during the CFS-led negotiations and open-ended working group meetings which are intended to lead to a final text of the Voluntary Guidelines in July 2011.

The first draft is based on an inclusive process of consultations that occurred during 2009-2010. Regional consultations were held in Brazil, Burkina Faso, Ethiopia, Jordan, Namibia, Panama, Romania, the Russian Federation, Samoa and Viet Nam. These regional consultations brought together almost 700 people, from 133 countries, representing the public and private sectors, civil society and academia. Four consultations, held specifically for civil society of Africa (in Mali); of Asia (in

Malaysia); of Europe and Central and West Asia (in Italy); and of Latin America (in Brazil), were attended by almost 200 people from 70 countries, and an additional private sector consultation drew over 70 people from 21 countries.

The first draft is consistent with, and draws on, international and regional instruments, including the Millennium Development Goals, that address human rights and tenure rights, and which are shown in the box below. When readers of the Voluntary Guidelines seek to improve tenure governance, they are encouraged to regularly review these instruments for their applicable obligations and voluntary commitments, and to gain additional guidance.

### **Box**

#### International treaties

- Geneva Conventions (1949), and their Protocols
- Convention relating to the Status of Refugees (1951), and its Protocol
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Economic, Social and Cultural Rights (1966), and its Optional Protocol
- International Covenant on Civil and Political Rights (1966), and its Optional Protocols
- Convention on the Elimination of All Forms of Discrimination against Women (1979), and its Optional Protocol
- United Nations Convention on the Law of the Sea (1982)
- Convention on the Rights of the Child (1989), and its Optional Protocols
- ILO Convention (169) concerning Indigenous and Tribal Peoples in Independent Countries (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Convention on Biodiversity (1992), and its Protocols
- United Nations Convention against Corruption (2003)

#### Regional treaties

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, 1950)
- American Convention on Human Rights (1969)
- African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa (1981)

#### UN declarations

- Universal Declaration of Human Rights (1948)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders, 1999)
- Millennium Declaration (2000)
- United Nations Declaration on the Rights of Indigenous Peoples (2007)

#### UN conference declarations

- Stockholm Declaration of the United Nations Conference on the Human Environment (1972)
- Vancouver Declaration on Human Settlements (1976)
- Rio Declaration on Environment and Development (1992)
- Vienna Declaration: World Conference on Human Rights (1993)
- Beijing Declaration and Platform for Action of the Conference for Women (1995)

#### FAO declarations and non-legally binding instruments

- World Conference on Agrarian Reform and Rural Development (WCARRD, 1979)
- Code of Conduct for Responsible Fisheries (1995)
- Rome Declaration on Food Security and World Food Summit Plan of Action (1996)
- Declaration of the World Food Summit: *five years later* (2002)
- Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004)
- International Conference on Agrarian Reform and Rural Development (ICARRD, 2006)
- Responsible Management of Planted Forests: Voluntary Guidelines (2006)
- Fire Management Voluntary Guidelines: Principles and Strategic Actions (2006)

#### UN expert body opinion

- United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons: The Pinheiro Principles (endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights, 2005)

#### Policies of international organizations

- Asian Development Bank Policy on Involuntary Resettlement (1995)
- Inter-American Development Bank Policy on Involuntary Resettlement (1998)
- World Bank Operational Policy on Involuntary Resettlement (2001)

#### Relevant reports of the following UN Special Rapporteurs, Representatives and Experts

- Special Rapporteur on the right to food
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living
- Special Representative of the Secretary-General on the situation of human rights defenders
- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people
- Special Rapporteur on housing and property restitution for refugees and internally displaced persons
- Special Rapporteur on the human rights of migrants
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Special Rapporteur on violence against women, its causes and consequences
- Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises
- Representative of the Secretary-General on the human rights of internally displaced persons
- Independent Expert on the question of human rights and extreme poverty
- Independent Expert on minority issues

#### Regional and NGO guidelines

- European Union Land Policy Guidelines (2004)
- Establishing an Infrastructure for Spatial Information in the European Community (2007)
- Guiding Principles and Implementation Framework for Improving Access to Customary Land and Maintaining Social Harmony in the Pacific (prepared by the Pacific Islands Forum Secretariat, 2008)
- Framework for Action on Food Security for the Pacific (2010)
- Framework and Guidelines on Land Policy in Africa (2010)
- Humanitarian Charter and Minimum Standards in Disaster Response (The Sphere Handbook, 1998, last edition 2011)

## **Part 1 Preliminary**

### **1. Objectives**

- 1.1 These Voluntary Guidelines seek to improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and realization of the right to adequate food, poverty alleviation, sustainable livelihoods, social stability, housing security, rural development, environmental protection and economic growth. All programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
- 1.2 These Guidelines seek to improve tenure governance by setting out principles and internationally accepted practices for systems that deal with the rights to use and control land, fisheries and forests. They seek to improve the policy, legal and organizational frameworks regulating the range of tenure rights that exist over these resources. They also seek to improve the capacities and operations of implementing agencies, courts, local governments, indigenous and other communities, the private sector, civil society, academia and all persons concerned with tenure governance.
- 1.3 These Guidelines seek to promote the cooperation of States, local governments, indigenous and other communities, the private sector, civil society, academia and others in improving tenure governance.

### **2. Nature and scope**

- 2.1 These Guidelines are voluntary.
- 2.2 These Guidelines should be interpreted and applied consistent with existing obligations under national and international law, and voluntary commitments to other applicable international and regional norms and standards. They are complementary to, and support, national, regional and international initiatives that address human rights and provide secure tenure rights to land, fisheries and forests, and also initiatives to improve governance.
- 2.3 These Guidelines provide principles and practices that can be used by States, local governments, indigenous and other communities, the private sector, civil society, academia and others to assess tenure governance and identify improvements.
- 2.4 These Guidelines are global in scope. They are directed towards all members and non-members of FAO, organizations (whether governmental or non-governmental), local governments, indigenous and other communities, the

private sector, civil society, academia and all persons associated with tenure governance. They can be applied in all countries and regions at all stages of economic development. They apply to the governance of all forms of tenure, including private, public, communal, collective, indigenous and customary.



## **Part 2 General matters**

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

### **3. Guiding objectives and principles of responsible tenure governance**

#### **3.1 Guiding objectives**

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

#### **3.2 Principles of implementation**

1. **Human dignity:** recognizing the inherent values of all individuals and the rights they hold as a result, treating all individuals in a manner that reflects their inherent values.
2. **Non-discrimination:** not subjecting people to discrimination under laws, policies and practices based on grounds of sex, sexuality, race, colour, language, religion or conviction, political or other opinion, national or social

origin, ethnicity, nationality, age, economic position, ownership of property, marital status, disability, birth or other status.

3. **Gender and social equity, and gender and social justice:** recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, to ensure equitable treatment and outcomes for all, women and men, and vulnerable and marginalized people.
4. **Holistic approach:** recognizing that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.
5. **Consultation and participation:** engaging with those who could be affected by decisions, and responding to their contributions, taking into consideration existing power imbalances between different parties and ensuring active, free, effective participation of tenure right holders, including individuals and groups.
6. **Rule of law:** adopting a rules-based approach through laws that are widely publicized in relevant languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with obligations and voluntary commitments to applicable international and regional human rights norms and standards.
7. **Transparency:** clearly defining and widely publicizing policies, laws and procedures in relevant languages, and widely publicizing decisions in relevant languages.
8. **Accountability:** holding people and public agencies responsible for their actions and decisions according to the principle of the rule of law.
9. **Continuous improvement:** systematically monitoring and analysing tenure governance, and implementing reforms.

#### 4. Rights and responsibilities

- 4.1 States should strive to ensure responsible governance of tenure because land (including associated buildings and other structures), fisheries and forests are essential elements for the realization of human rights, food security, poverty alleviation, sustainable livelihoods, social stability, housing security, rural development and economic growth.
- 4.2 States should ensure that all actions regarding tenure and its governance are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.

- 4.3 States have the power to provide access to land, fisheries and forests through various forms of tenure, but they should ensure that the forms of tenure are consistent with their relevant obligations and voluntary commitments to protect, promote and implement human rights. All forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats.
- 4.4 All parties should recognize that no tenure right, including private ownership, is absolute. All tenure rights are limited by the rights of others and by the State's powers, such as to expropriate with compensation for public purposes, to impose spatial planning and environmental restrictions, and to impose taxes. Tenure rights are also balanced by duties. All should respect the long-term protection and sustainable use of land, fisheries and forests.
- 4.5 States should provide legal recognition, in a non-discriminatory and gender-sensitive way, to tenure rights that are considered legitimate but are not currently protected by law. States should define through widely publicized rules the categories of rights that are considered legitimate.
- 4.6 States should protect tenure rights, and ensure that people are not arbitrarily evicted and that their tenure rights are not otherwise extinguished or infringed.
- 4.7 States should remove and prohibit all forms of discrimination, including in inheritance, change in marital status, legal capacity and access to economic resources that prevent people from acquiring, enjoying or disposing of tenure rights in accordance with national and local norms that do not violate obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 4.8 States may consider providing non-discriminatory and gender-sensitive assistance where people are unable through their own actions to acquire tenure rights to sustain themselves, to gain access to the services of implementing agencies and courts, or to participate in processes that could affect their tenure rights.
- 4.9 States should provide access through impartial courts and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, and should support alternative means of resolving such disputes.

## **5. Policy, legal and organizational frameworks**

- 5.1 States should provide and maintain policy, legal and organizational frameworks that promote responsible governance of tenure of land (including associated buildings and other structures), fisheries and forests. These frameworks are dependent on, and are supported by, broader reforms to the legal system, public service and courts.

- 5.2 States should ensure that policy, legal and organizational frameworks for tenure governance are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 5.3 States should ensure that policy, legal and organizational frameworks for tenure governance recognize legitimate tenure rights, including by providing legal recognition to tenure rights that are considered legitimate but are not currently protected by law; facilitate and promote the exercise of tenure rights; and protect tenure rights. Frameworks should reflect the social, cultural, religious, environmental and economic significance of natural resources. States should provide frameworks that are non-discriminatory and promote social and gender equity. Frameworks should reflect the interconnected relationships between land, fisheries and forests and their uses, and establish an integrated approach to their administration.
- 5.4 States should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset. Policies, laws and procedures should take into account the capacity to implement. They should incorporate gender-sensitive approaches, be clearly expressed in relevant languages, and widely publicized.
- 5.5 States should clearly define the roles and responsibilities of agencies dealing with tenure of land, fisheries and forests. States should ensure coordination between implementing agencies, as well as with local governments and indigenous and other customary communities where appropriate.
- 5.6 States should place responsibilities at levels of government that can most effectively deliver services to the people. States should ensure that implementing agencies have the human, physical, financial and other forms of capacity to provide adequate quality of services. The services and information of implementing agencies should meet national standards of quality.
- 5.7 States should define and publicize opportunities for the private sector, civil society and academia in developing and implementing policy, legal and organizational frameworks.
- 5.8 States and other parties should regularly review and monitor policy, legal and organizational frameworks to maintain their effectiveness. Implementing agencies and courts should engage with civil society, customer representatives and the broader public to improve services and eliminate opportunities for corruption, particularly through transparency in processes and decision-making. Information about changes and their anticipated impacts should be clearly stated and widely publicized in relevant languages.
- 5.9 States should recognize that policies and laws on tenure rights operate in the broader political, legal, social, cultural, religious, environmental and economic contexts. Where the broader contexts change, and where reforms to tenure are therefore required, States should seek to develop national consensus on proposed

reforms. To make proposed tenure reforms sustainable, States may need to alter policies and laws beyond those directly related to tenure of land, fisheries and forests.

## **6. Delivery of services**

- 6.1 States should ensure that the delivery of services related to tenure and its administration are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 6.2 States should provide prompt, accessible and non-discriminatory services to protect tenure rights to land (including associated buildings and other structures), fisheries and forests, to promote and facilitate the enjoyment of those rights, and to resolve disputes. States should review services of implementing agencies, such as land registries and spatial planning bodies, and the courts, and introduce improvements where required. States should eliminate unnecessary legal and procedural requirements. They should overcome common obstacles such as lack of information, language barriers, negative attitudes of staff (particularly to women and ethnic minorities), high costs, complicated or difficult procedures, long distances to services and delays.
- 6.3 Within resource limitations, States should ensure that implementing agencies and courts serve the entire population, delivering equal services to all, including those in remote locations. Services should be provided promptly and efficiently. Procedures should be simplified without threatening tenure security or quality of justice. Explanatory materials, which inform customers of their rights and responsibilities, should be widely publicized in relevant languages, including through visual means as appropriate, and should address requirements, fees, time for response and appeal procedures.
- 6.4 States should ensure that policies and laws are implemented consistently. Internal guidelines should be established so that staff can implement policies and laws in a reliable manner. Guidelines should be expressed in gender-sensitive ways and promote social equity. Services, including those of courts, should be provided in languages that everyone can understand.
- 6.5 States should establish policies and laws to promote the sharing and effective use of spatial and other information by the public and private sectors, indigenous and other communities, civil society, academia and the public. National standards should be developed for the shared use of information, taking into account international and regional standards.
- 6.6 States should use locally suitable technology to increase efficiency and overcome obstacles to delivering services to the entire population, and to sharing information between implementing agencies.

- 6.7 Within resource limitations, States should ensure that implementing agencies and courts have the human, physical, financial and other forms of capacity to implement policies and laws in a timely, effective and gender-sensitive manner. Staff at all organizational levels should receive continuous training.
- 6.8 States and other parties may consider support to vulnerable or marginalized groups who could not otherwise gain access to administrative services and courts, such as through legal aid, the use of paralegals or parasurveyors, and by mobile services for remote communities.
- 6.9 Implementing agencies and courts should foster a culture based on customer service and ethical behaviour. They should seek regular feedback from customers, such as through surveys and focus groups, to raise standards and improve delivery of service, to meet expectations of customers, and to satisfy new needs. Agencies and courts should publish performance standards and report regularly on results. Customers should have means of addressing complaints either within the implementing agency, such as by administrative review, or externally, such as by an independent review or through an ombudsman.
- 6.10 States should eliminate opportunities for corruption, particularly through publicizing requirements, fees and times for responses, and through removing conflicts of interest and wide discretionary powers. States should ensure that decision-makers are accountable for their decisions and actions. States may consider providing for the administrative review of decisions of implementing agencies. Adequate and equitable salary scales should be introduced to reduce incentives for corrupt practices. Staff positions that are vulnerable to corruption should be identified and safeguards should be introduced. Staff should be protected against political interference in their duties. States should take measures to protect public officials who report acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

### **Part 3 Legal recognition and allocation of tenure rights and duties**

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

#### **7. Safeguards**

- 7.1 When States recognize or allocate tenure rights to land (including associated buildings and other structures), fisheries and forests, they should establish safeguards to avoid infringing on or extinguishing tenure rights of others, including those rights that are considered legitimate but are not currently protected by law. In particular, safeguards should protect women and the vulnerable, who hold subsidiary rights, such as gathering rights.
- 7.2 States should ensure that all actions regarding the legal recognition and allocation of tenure rights and duties are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 7.3 Where States intend to recognize or allocate tenure rights, they should first identify all existing rights and right holders, whether recorded or not. Indigenous and other customary communities, smallholders and anyone else who could be affected should be included in the consultation and decision-making processes. Where necessary, such people should be provided with information and support so they can participate effectively. States should provide a right of appeal if people believe their tenure rights are not recognized.
- 7.4 States should ensure that records of newly recognized or allocated tenure rights show spouses. Where possible, legal recognition and allocation of tenure rights of individuals, families and communities should be done systematically, progressing area by area in accordance with national priorities, in order to provide the poor and vulnerable with full opportunities to acquire legal recognition of their rights. Legal support should be provided, particularly to the poor and vulnerable. Locally suitable approaches should be used to increase transparency when records of tenure rights are created for the first time, including in the mapping of tenure rights.
- 7.5 States should ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties. Where necessary, States should provide support to such people so that they can enjoy their rights and fulfil their duties.
- 7.6 Where it is not possible to provide legal recognition of tenure rights, States should prevent forced evictions that violate their obligations and voluntary commitments to applicable international and regional human rights norms and standards. Where evictions are considered to be justified for reasons of public

interest, States should conduct them with due regard to their relevant obligations and voluntary commitments to protect, promote and implement human rights. Evictions should not result in people being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State should take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, fisheries and forests, as the case may be, is available.

## **8. Public natural resources**

- 8.1 Where States own or control land, fisheries and forests, they should determine the use and control of these resources in light of broader social, environmental and economic objectives. They should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 8.2 Where States own or control land, fisheries and forests, they should respect existing tenure right holders and their rights. States should provide legal recognition, in a non-discriminatory and gender-sensitive way, to tenure rights of individuals and communities that are considered legitimate but are not currently protected by law. States should define through widely publicized rules the categories of rights that are considered legitimate.
- 8.3 States should establish up-to-date tenure information on land, fisheries and forests that they own or control by creating and maintaining accessible inventories. Such inventories should record the agencies responsible for administration as well as any private, indigenous, customary or informal rights to these resources. Where possible, States should ensure that the publicly held tenure rights are recorded together with private and communal tenure rights in a single recording system, or are linked to them by a common framework.
- 8.4 States should determine which of the resources it owns or controls will be retained and used by the public sector, and which of these resources will be allocated for use by others and under what conditions.
- 8.5 States should develop and publicize policies covering the use and control of land, fisheries and forests that are retained by the public sector. Policies should take into account the tenure rights of others and anyone who could be affected should be included in the consultation and decision-making processes. These resources should be administered in transparent and effective ways, in fulfilment of public policies. Transactions concerning these resources should be undertaken in open and accountable ways. The State's role of regulator and role of owner should be assigned to separate agencies to avoid conflicts of interest.
- 8.6 States should develop and publicize policies covering the allocation of tenure rights to others, and where appropriate, the delegation of responsibilities for



tenure governance. Policies for allocation of rights should be consistent with broader social, environmental and economic objectives. Policies should take into account the tenure rights of others and anyone who could be affected should be included in the consultation and decision-making processes. Such policies should ensure that the allocation of rights does not threaten the livelihoods of people by depriving them of their historic access to resources.

- 8.7 States have the power to allocate tenure rights in various forms, from limited use to full ownership. Policies should recognise the range of tenure rights and right holders. Policies should specify the means of allocation of rights, such as allocation based on historical use or public auction. States should determine whether they retain any form of control over resources that have been allocated, such as by imposing duties or restrictions on the rights.
- 8.8 States should allocate tenure rights and delegate tenure governance in transparent, participatory ways, using simple procedures. Information in relevant languages should be provided to all potential participants, including through gender-sensitive messages. Where possible, States should ensure that newly allocated tenure rights are recorded with other tenure rights in a single recording system, or are linked by a common framework.
- 8.9 States should ensure that implementing agencies responsible for land, fisheries and forests have the human, physical, financial and other forms of capacity. Where necessary, those who are allocated tenure rights should be provided with support so they can enjoy their rights. Where responsibilities for tenure governance are delegated, the recipients should receive training and other support so they can perform those responsibilities.
- 8.10 States should clearly define the decision-making authorities and their powers in order to eliminate opportunities for corruption in the allocation of rights to land, fisheries and forests. States should also introduce checks and balances, such as public disclosure of all allocation of rights, the right to appeal, the right to be compensated, and legal assistance. States should hold decision-makers accountable.
- 8.11 States should monitor the outcome of allocation programmes, including their impacts on both men and women, as well as on the environment, and introduce corrective measures as required.

## **9. Indigenous and other customary tenure**

- 9.1 All parties should acknowledge that land, fisheries and forests have social, cultural, spiritual, environmental, economic and political values for indigenous and other communities with customary tenure systems.
- 9.2 Communities that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources,

with special attention to the provision of equitable access for women. There should be effective participation of all members, men and women, in decisions regarding indigenous and other customary tenure. Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision-making and governance of indigenous and other customary tenure.

- 9.3 States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards. In the case of indigenous communities, States should meet their relevant obligations and voluntary commitments to protect, promote and implement human rights, including as appropriate from the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries, the Convention on Biological Diversity and the United Nations Declaration on the Rights of Indigenous Peoples.
- 9.4 States should provide legal recognition and protection of indigenous and other customary tenure rights and governance systems of communities, consistent with their relevant obligations and voluntary commitments to protect, promote and implement human rights. Recognition should cover resources that are used exclusively by communities and also those resources that they have traditionally shared with others. Such recognition should be widely publicized through notices in official government and other publications.
- 9.5 Where appropriate, States should adapt the policy, legal and organizational frameworks to cover indigenous and other customary tenure. Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary systems.
- 9.6 In drafting policies and laws, States should take into account the social, cultural, spiritual, environmental and economic values of land, fisheries and forests held under indigenous and other customary tenure. There should be full and effective participation of all members of affected communities, including vulnerable and marginalized members, when developing policies and laws related to indigenous and other customary tenure.
- 9.7 All parties should protect communities against the unauthorized use of their resources by others. If desired by a community, all parties should assist to formally document and publicize information on the nature and location of resources used and controlled by the community. Where indigenous and other customary tenure rights are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims.
- 9.8 States and other parties should hold good faith negotiations with communities before initiating any plan or project that could affect the resources for which the communities hold rights. Decision-making should involve a participatory process of effective consultation of all members of a community, men and women and elders and youths, for decisions that require free, prior and informed consent by

the community. Negotiations and decision-making processes should be organized without intimidation, and be conducted in a climate of trust.

- 9.9 Where necessary, States and other parties should provide technical and legal assistance to communities to participate in the development of policies, laws and projects in non-discriminatory and gender-sensitive ways.
- 9.10 States should respect and support indigenous and other customary approaches to resolving tenure conflicts within communities consistent with their obligations and voluntary commitments to international and regional human rights norms and standards. For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed.
- 9.11 States should eliminate opportunities for corruption in matters of indigenous and other customary tenure, particularly by involving civil society, building capacity of community members, and ensuring greater transparency.

## **10. Informal tenure**

- 10.1 Where informal tenure rights to land (including associated buildings and other structures), fisheries and forests exist in rural and urban areas, States should acknowledge their existence in ways that recognize the reality of the situation and promote social, environmental and economic well-being. In particular, States should acknowledge the emergence of informal tenure rights in peri-urban areas arising from large-scale migrations.
- 10.2 States should ensure that all actions regarding informal tenure are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards, including as appropriate to the right to adequate housing.
- 10.3 States should establish policies and laws to provide recognition and protection to informal tenure rights where those rights do not present threats to individuals, society or the environment. Policies and laws should be drafted in a non-discriminatory and gender-sensitive way, and widely publicized in relevant languages.
- 10.4 States should provide legal recognition to informal tenure rights through participatory, gender-sensitive processes, while also having regard to informal lessees and others. Such processes should be simple to improve access to legalization services and minimize costs. Technical and legal support should be provided to communities and participants. States should ensure cooperation between implementing agencies and bodies responsible for different aspects of legalization.

- 10.5 States should take all appropriate measures to limit the causes of informality such as simplifying legal and administrative requirements for land use change and development on land, including the construction of buildings and other structures. Development requirements and processes should be clear, simple and affordable to reduce the burden of compliance. States should create conditions that encourage planned public and private investment in adequate housing.
- 10.6 States should eliminate opportunities for corruption, particularly through increasing transparency, holding decision-makers accountable, and ensuring impartial decisions are delivered promptly.
- 10.7 Where it is not possible to provide legal recognition to informal tenure rights, States should prevent forced evictions that violate obligations and voluntary commitments to applicable international and regional human rights norms and standards.

## **Part 4 Transfers and other changes to tenure rights and duties**

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

### **11. Markets**

- 11.1 Where appropriate, States should recognize sale and lease markets as a means for economic growth through the efficient trading of a broad range of tenure rights of use and ownership of land (including associated buildings and other structures), fisheries and forests. Where markets in tenure rights operate, States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 11.2 States should facilitate the efficient operations of markets to promote mutually-beneficial transfers of tenure rights which lessen conflict and instability, create incentives for sustainable use and conservation of the environment, expand economic opportunities and increase participation by the poor. States should provide safeguards to protect local communities and vulnerable groups, and to address undesirable impacts. States and other parties should recognize that non-market values, such as social, cultural, religious and environmental values, are often not well served by markets. States should protect the wider interests of societies through policies and laws, and through means such as taxation and regulated spatial planning.
- 11.3 States should establish policies, laws and regulatory agencies to ensure transparent market operations, to provide non-discriminatory access, and to prevent uncompetitive practices. States should reduce or eliminate obstacles such as taxes and fees that discourage market participation. States should also remove policy, legal and administrative barriers to making transactions.
- 11.4 States and other parties should ensure that information on market transactions of sales, leases and auctions and information on market values are widely publicized, subject to privacy restrictions. States should monitor this information and take action where markets have adverse impacts or discourage wide market participation.
- 11.5 States should establish reliable recording systems that provide accessible information on tenure rights and duties in order to increase tenure security and to reduce the costs and risks of transactions.
- 11.6 When tenure rights are traded, States should establish safeguards to protect the tenure rights of spouses and others who are not shown as holders of tenure rights in recording systems, such as land registries.

- 11.7 States and other parties should develop, publicize and monitor the implementation of high levels of ethical behaviour in the operation of markets. Public and private sector parties should follow the ethical standards. All parties should eliminate opportunities for corruption, particularly through public disclosure.

## **12. Investments and concessions**

- 12.1 Where appropriate, States should encourage and support responsible investments and concessions in land, fisheries and forests which promote broader social, environmental and economic objectives. States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 12.2 Responsible investments and concessions should promote food security, poverty alleviation and sustainable use of the environment; support local communities; work within and respect existing rights; and contribute to rural and urban development, the creation of employment and the diversification of livelihoods. They should do no harm and safeguard against dispossession of tenure rights and livelihoods, and against negative human rights impacts, food insecurity and environmental damage. All parties should pay particular attention where investments and concessions involve the large-scale acquisition of tenure rights as they could have major negative impacts on the livelihoods of individuals, families and communities, and on the environment.
- 12.3 In the case of indigenous communities, States should meet their relevant international obligations and voluntary commitments, including as appropriate from the International Labour Organization Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples. States should consult and cooperate in good faith with indigenous communities before initiating any plan or project that could affect the resources for which the communities hold rights. Decision-making should involve a participatory process of effective consultation of all members of an indigenous community, men and women and elders and youths, for decisions that require free, prior and informed consent by the community. Similar voluntary and informed consultations and negotiations should be required for investments and concessions that use the resources of other communities.
- 12.4 States should determine through consultation with all affected parties the conditions under which responsible investments and concessions should be promoted, and then should develop and publicize policies and laws that encourage responsible investments and concessions, respect human rights, and promote food security and sustainable use of the environment. Laws should require agreements for investments and concessions to clearly define the acquired rights and duties of the investors. Agreements should be periodically reviewable, and sanctions should be clear and enforceable.

- 12.5 States should ensure that proposals for investments and concessions involving the acquisition of tenure rights are subject to negotiations with the men and women who could be affected. States and civil society should inform individuals, families and communities of their tenure rights, and assist to develop their capacity in negotiations and implementation, and provide professional assistance.
- 12.6 States should ensure that existing tenure rights and claims, including those of customary and informal tenure, are identified as part of investigatory research and analysis in areas where investments and concessions involving large-scale acquisition of tenure rights are being considered. This process should be conducted in consultation with local communities and holders of tenure rights.
- 12.7 Investors should ensure that all relevant persons are engaged and informed in the negotiations, and the agreements are documented and understood by all. The negotiation process should be non-discriminatory and gender-sensitive. Investors should recognise and respect tenure rights of others and the rule of law, and they should not contribute to food insecurity and environmental degradation.
- 12.8 Professionals who provide services to States and investors should undertake due diligence to the best of their ability when providing their services, irrespective of whether it is specifically requested.
- 12.9 States should provide timely, affordable and effective means of dispute resolution to enforce contractual terms and obligations of parties to investment and concession agreements.
- 12.10 States and civil society should contribute to the effective monitoring of the implementation and impacts of agreements involving large-scale acquisition of tenure rights. States should take corrective action where necessary to enforce agreements and protect tenure rights.
- 12.11 States should promote the development of independent and voluntary quality certification schemes for internationally accepted practices for investment and concessions in land, fisheries and forests.

### **13. Land consolidation and other readjustment approaches**

- 13.1 Where appropriate, States may consider land consolidation, exchanges and other approaches for the readjustment of parcels or holdings to assist owners and users to improve the layout and use of their parcels or holdings of land, fisheries and forests. States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards, and ensure that participants are at least as well off after the schemes compared with before. These approaches should be used to coordinate the preferences of multiple owners and users in a single readjustment.

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

## **14. Restitution**

- 14.1 Where appropriate, States should provide restitution for the loss of tenure rights to land (including associated buildings and other structures), fisheries and forests due to policies and laws that are regarded as unjust. States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 14.2 Where possible, the original parcels or holdings should be returned to those who suffered the loss, or their heirs. Where the original parcel or holding cannot be returned, States should provide prompt, adequate compensation in the form of money or alternative parcels or holdings, ensuring equitable treatment of all affected people. Where indigenous and other customary tenure rights were



unjustly taken and the full restitution of the traditional domains is not possible, the communities should be assisted in reaching agreements for the continued use and benefit of the resources, and should receive prompt, adequate compensation for the loss of any tenure rights.

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

## **15. Redistributive reforms**

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

land by the beneficiaries. The full costs of land reforms, including costs of support services, should be identified in advance and included in relevant budgets.

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

## **16. Expropriation and compensation**

- 16.1 States should expropriate only where rights to land (including associated buildings and other structures), fisheries or forests are required for a public purpose. States should clearly define the concept of public purpose. States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards. They should respect all tenure right holders, including lessees, women and vulnerable groups, by acquiring the minimum necessary, and promptly providing at least equivalent compensation. States should, whenever possible, acquire the resources through open markets as an alternative to expropriation.
- 16.2 States should ensure that the planning and process for expropriation are transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages. Consultations should provide information regarding possible alternative approaches to achieve the public purpose, and should have regard to strategies to minimize disruption of livelihoods. States should be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the resources in question are particularly important to the livelihoods of the poor or vulnerable.
- 16.3 States should ensure that prompt compensation restores those affected to their equivalent position before the expropriation. The compensation may be in cash, rights to alternative areas, or a combination. The full costs should be identified in advance of expropriation so that the compensation is provided promptly.
- 16.4 States should ensure that implementing agencies have the human, physical, financial and other forms of capacity. Staff should receive continuous training.

- 16.5 Where the resources are not needed due to changes of plans, States should give the original right holders the first opportunity to re-acquire the resources.
- 16.6 All parties should eliminate opportunities for corruption, particularly through use of objectively assessed values, transparent processes and a right to appeal.
- 16.7 Where resources to be expropriated are used by people and communities who do not have legally recognized tenure rights, and where it is not possible to provide them with legal recognition of tenure rights, States should prevent forced evictions that violate obligations and voluntary commitments to applicable international and regional human rights norms and standards. Where evictions are considered to be justified for a public purpose, States should conduct them with due regard to their relevant obligations and voluntary commitments to protect, promote and implement human rights. Evictions should not result in people being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State should take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, fisheries and forests, as the case may be, is available.

## **Part 5 Administration of tenure**

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

### **17. Records of tenure rights**

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

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

## **18. Valuation**

- 18.1 States should ensure that appropriate valuation systems are used to address the valuation of tenure rights to land (including associated buildings and other structures), fisheries and forests for specific purposes, such as operation of markets, security for loans, investments and concessions, expropriation and taxation in ways that promote broader social, environmental and economic

objectives. States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.

- 18.2 States should develop policies and laws that encourage and require transparency in valuing tenure rights for governmental, commercial and other purposes. Where markets in tenure rights operate, sale prices and other market information should be recorded, analysed and published, to provide a basis for accurate and reliable assessments of values.
- 18.3 Where appropriate, policies and laws should take into account non-market values, such as social, cultural, religious and environmental values.
- 18.4 States and other parties should develop and publicize national standards for valuation for governmental, commercial and other purposes. National standards should be consistent with relevant international standards.
- 18.5 Implementing agencies should make their valuation information and analyses available to the public. Agencies should share information in accordance with national standards.
- 18.6 States should ensure that implementing agencies have the human, physical, financial and others forms of capacity. Continuous training should be provided, particularly in methodologies and international standards. Staff should be recruited with due regard to ensuring gender and social equality, including at all management and technical levels.
- 18.7 Professional associations for valuation should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should follow the ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.
- 18.8 States and other parties should eliminate corruption opportunities in valuation through transparency of information and methodologies, particularly in public resource administration and compensation, and in company accounts and lending.

## **19. Taxation**

- 19.1 States should ensure that taxation relating to land (including associated buildings and other structures), fisheries and forests is considered as part of strategies to achieve the State's broader social and economic objectives, including effective financing for decentralized levels of government and local provision of services and infrastructure. States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.

- 19.2 States have the power to use taxes to raise revenue and also to achieve social, environmental and economic objectives, such as encouraging investment or preventing speculation and inequitable concentration of ownership and other tenure rights. Taxes should not discourage socially or economically desirable behaviour, such as registering transactions or declaring the full sale value.
- 19.3 States may consider developing policies and laws on annual taxes on tenure rights as well as incidental taxes at the point where a transaction occurs. Policies and laws should cover means for enforcement of tax payments.
- 19.4 States should administer taxes efficiently and transparently. Systems of assessment of valuation should be based on internationally accepted practices. Taxes should be based on appropriate values and should be affordable. Assessments of valuations and taxable amounts should be made public. States should provide taxpayers with a right to appeal against valuations.
- 19.5 States should ensure that implementing agencies have the human, physical, financial and others forms of capacity. Continuous training should be provided, particularly in methodologies and international standards. Staff should be recruited with due regard to ensuring gender and social equality, including at all management and technical levels
- 19.6 Professional associations for accounting and taxation should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should follow the ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.
- 19.7 States and other parties should eliminate corruption opportunities in taxation administration, particularly through increased transparency and use of objectively assessed values.

## **20. Regulated spatial planning**

- 20.1 States should conduct regulated spatial planning, including territorial development, in a way that promotes broader social, environmental and economic objectives. Regulated spatial planning affects tenure rights to land (including associated buildings and other structures), fisheries and forests, and States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards.
- 20.2 States should develop and publicize policies and laws for regulated spatial planning that incorporate gender-sensitive, participatory and negotiated approaches, which encourage involvement at all stages. Indigenous and customary forms of planning and territorial development should be considered in

the formal planning system. States should adopt specific regulations and tools for complex and special situations, such as for coastal and river basin planning, and for increased population density and expansion of urban areas.

- 20.3 States should ensure that regulated spatial planning is conducted in a manner that recognizes the interconnected relationships between land, fisheries and forests and their uses, including the gendered aspects of their uses. There should be a balance between State, private, public and community interests. Planning should take into account and accommodate the requirements for various uses, such as rural, urban and environmental protection. It should consider all tenure rights, including overlapping and periodic rights. Where appropriate, impact and risk assessments should be required. National, regional and local spatial plans should be consistent. Agencies should share information in accordance with national standards.
- 20.4 States should ensure that there is wide public participation in the development of planning proposals and the review of draft spatial plans to ensure that priorities and interests of communities are reflected. Where necessary, communities should be provided with support during the planning process. Implementing agencies should disclose how public input from participation was reflected in the final spatial plan.
- 20.5 States should ensure that implementing agencies have the human, physical, financial and other forms of capacity to develop and implement spatial plans, and to monitor and enforce compliance with those plans. Staff should receive continuous training, particularly in planning methodologies and standards. Staff should be recruited with due regard to ensuring gender and social equality, including at all management and technical levels.
- 20.6 Professional associations for spatial planning should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should follow the ethical standards, and be subject to disciplinary action in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.
- 20.7 States should eliminate corruption opportunities in regulated spatial planning, particularly through involvement of civil society and others in the planning process. Safeguards should be established against improper use of spatial planning powers, particularly regarding changes to regulated use. States should ensure that decision-makers are accountable for their decisions and actions. Implementing agencies should report on results of compliance monitoring.

## **21. Resolution of disputes over tenure rights**

- 21.1 States should provide and support means for resolving disputes over tenure rights to land (including associated buildings and other structures), fisheries and forests, such as for the enforcement of decisions and to deal peacefully with problems



that could otherwise disrupt livelihoods. States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards. Responsibilities for resolving disputes should be placed at levels that can most effectively deliver services to the people.

- 21.2 States have the power to provide means of dispute resolution in various forms, but each form should be efficient, effective and deal with disputes promptly. Dispute resolution services should be affordable and accessible to all, women and men, in terms of location, language and procedures.
- 21.3 States may consider introducing specialist tribunals or bodies that deal solely with disputes over tenure rights, and creating expert positions within the courts to deal with technical matters. States may also consider special tribunals to deal with disputes over regulated spatial planning, surveys and valuation.
- 21.4 States should strengthen and develop alternatives, such as arbitration and mediation. Where appropriate, States should also support and strengthen customary or religious means that provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights. States may consider allowing enforcement of customary, religious and other non-judicial decisions through the courts.
- 21.5 States may consider administrative options using implementing agencies, such as those responsible for surveying, to resolve disputes between private parties. Such options should be limited to matters within the technical expertise of an implementing agency. Decisions should be delivered in writing and based on objective reasoning, and there should be a right to appeal to the courts.
- 21.6 States should incorporate approaches in procedures that avoid or resolve potential disputes at the preliminary stage, such as by sharing information, giving reasons for decisions, and using negotiations as part of the procedure. Customers should have means of resolving potential disputes at preliminary stages, either within the implementing agency, such as by administrative review, or externally, such as by an independent review or through an ombudsman.
- 21.7 States should provide special services to ensure safe access to justice by those who would otherwise be excluded due to poverty, gender, ethnicity, education, language, disability, location or other factors. Courts and other bodies should ensure that their staff have representation and the necessary skills and competencies to provide services for women, ethnic groups and language groups. States should consider outreach services such as legal assistance and paralegals to provide wider access to justice.
- 21.8 Professional associations should develop, publicize and monitor the implementation of high levels of ethical behaviour. Public and private sector parties should follow the ethical standards, and be subject to disciplinary action

in case of violations. Where such associations do not exist, States and professionals should cooperate to establish them.

- 21.9 States should eliminate opportunities for corruption in dispute resolution processes, and may consider the introduction of an investigative office, such as an ombudsman. The elimination of opportunities for corruption in disputes regarding tenure rights is dependent on broader anti-corruption reforms.

## **22. Transboundary matters**

- 22.1 Where appropriate, all parties should work together on aspects of tenure of land, fisheries and forests that cross international boundaries. While tenure is predominantly a matter of national sovereignty, some aspects of tenure could affect neighbouring countries. States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards. States should refrain from actions that interfere with tenure rights and relevant human rights beyond its boundaries.
- 22.2 All parties should contribute to an improved understanding of transboundary issues of tenure, such as pastoralists whose traditional grazing areas or seasonal migration routes lie across international boundaries, and fishers who traditionally follow fish stocks across international boundaries.
- 22.3 States should cooperate to settle and clearly define international boundaries where this has not been done.
- 22.4 States and regional bodies should harmonize legal standards to create joint systems of tenure governance, which are in accordance with obligations and voluntary commitments to applicable international and regional human rights norms and standards. States, regional bodies and right holders should develop and strengthen international measures to administer tenure rights that cross international boundaries.

## **Part 6 Responses to climate change and emergencies**

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

### **23. Climate change**

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

### **24. Natural disasters**

- 24.1 All parties should ensure that tenure aspects of land (including associated buildings and other structures), fisheries and forests are addressed when preparing for natural disasters and in responses to them. Regulatory frameworks

for tenure, including spatial planning, should be designed to minimize or avoid the potential impacts of natural disasters.

- 24.2 States should ensure that all actions are consistent with obligations and voluntary commitments to applicable international and regional human rights norms and standards. All parties should act in accordance with international principles, including as appropriate the Humanitarian Charter and Minimum Standards in Disaster Responses, and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”).
- 24.3 States should address tenure in disaster preparedness programmes. Information on tenure rights should be collected for areas that could be affected. Systems for recording tenure rights should be resilient to natural disasters, including off-site storage of records, to allow right holders to prove their rights and relocate their parcels and other spatial units. Areas should be identified for the temporary resettlement of people who could be displaced by natural disasters, and rules should be established for providing tenure security in such areas.
- 24.4 States and other parties should include tenure in the emergency response phase. Provision of secure access for displaced persons should be negotiated with host communities to ensure that the resettlement does not jeopardize the livelihoods of others. When seeking alternative areas for resettlement, displaced persons should respect the tenure rights of others. Information on tenure rights and unauthorized use should be disseminated to all affected persons.
- 24.5 States and other parties should address tenure during the reconstruction phase. Persons who are temporarily displaced should be assisted in returning to their places of origin. Means to resolve disputes over tenure rights should also be provided. Where boundaries of parcels and other spatial units are to be re-established, this should be done in a participatory manner. Where people are unable to return to their places of origin, they should be permanently resettled. Such resettlement should be negotiated with host communities to ensure that the people who are displaced are provided with secure access to alternative resources and livelihoods in ways that do not jeopardize the livelihoods of others.

## **25. Violent conflicts**

- 25.1 All parties should take steps to eliminate tenure of land (including associated buildings and other structures), fisheries and forests as a cause of violent conflicts and should ensure that tenure aspects are addressed before, during and after violent conflicts.
- 25.2 States should ensure that all actions are consistent with their obligations and voluntary commitments to applicable international and regional human rights norms and standards, including as appropriate those of the Convention relating to the Status of Refugees and its Protocol, and the United Nations Principles on

Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”).

- 25.3 In order that tenure problems do not lead to violent conflicts, all parties should take steps to resolve such problems through peaceful means. States should revise relevant policies and laws to eliminate discrimination and other factors that can be a cause of violent conflicts. Where appropriate, States should also support and strengthen customary or religious means that provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights.
- 25.4 When violent conflicts arise, States and other parties should try to protect tenure rights. Displaced persons should be settled in safe areas in ways that protect the tenure rights of the host communities. Violations of tenure rights should be documented. Official records of tenure rights should be protected against destruction in order to provide evidence for subsequent restitution processes, and in areas where such records do not exist, the existing tenure rights should be documented as best possible.
- 25.5 When violent conflicts cease, States and other parties should ensure that tenure problems are addressed in ways that contribute to the peace process and support durable solutions for those affected, including through consideration of the injustices and displacements. Where restitution is possible, refugees and displaced persons should be assisted in returning safely, voluntarily and with dignity to their place of origin. Procedures for restitution should be non-discriminatory and gender-sensitive and widely publicized, and claims for restitution should be processed promptly. Procedures for restitution of indigenous and other customary tenure rights should provide for the use of traditional sources of information.
- 25.6 Where restitution is not possible, the provision of secure access to alternative resources and livelihoods for displaced persons should be negotiated with host communities to ensure that the resettlement does not jeopardize the livelihoods of others. Special procedures should provide the vulnerable, including widows and orphans, with access to resources.
- 25.7 Where required, policies and laws should be revised to eliminate pre-existing discrimination as well as discrimination introduced during the conflicts. Relevant agencies should be re-established to deliver services necessary for responsible tenure governance.

**Part 7 Implementation, monitoring and evaluation**

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