

CSO Draft Comments¹

on the First Draft of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests

The Civil Society Organizations (CSO) thank the FAO for the First Draft and its efforts to include our comments submitted to the e-consultation. We acknowledge some improvements with regard to the normative framework. Nevertheless, the First Draft remains far behind our expectations as presented in the *Civil Society Organizations' Proposals to the FAO Guidelines on Responsible Governance of Land and Natural Resources Tenure* and the vision outlined in the final declaration of the International Conference of Agrarian Reform and Rural Development (ICARRD). In the following we present our major issues of concern.

1. The Guidelines continue failing to mention the key driving forces behind the growing conflicts over land and natural resources, and related human rights violations. The Guidelines tend to overemphasize technical issues of administration of tenure while failing to address other aspects such as accountability of States and powerful non-State actors, discrimination in mainstream economic development models; exclusion from decision-making processes on land and natural resources laws and policies. Practices including land and natural resource-grabbing, and the (re-)concentration of access to land, forests, fishing grounds, water sources (freshwater and marine) and other natural resources are accelerating as a result of the dominant development models. This model are based on industrial monocrop agriculture (including crops for agrofuel production and tree plantations); industrial tourism, fishing, and ranching; large-scale mining and energy production; destructive industrial and infrastructure projects; the commodification of natural resources; rapid, unplanned urbanization; and needless consumption. The predominant problems faced by marginalized rural and urban groups in relation to land and natural resource tenure are inextricably linked to distorted power relations in dominant government structures influencing land and natural resources. Power imbalances are manifested in discrimination in mainstream economic development models; exclusion from decision-making processes on land and natural resources laws and policies; State capture of natural resources and kleptocratic mis-governance, discrimination in access to justice; and abuses by powerful non-State actors. The First Draft barely touches upon these issues. Of particular concern is the Guidelines' silence regarding the persecution, harassment and violent repression that defenders of the human rights of peasants, indigenous peoples, fisherfolks, pastoralists and other traditional users suffer for defending rights related to land and natural resources.

2. As previously stated, we welcome the Guidelines' emphasis on improving the governance of tenure for the benefit of vulnerable and marginalized people with the goal of ensuring food security, poverty reduction and the realization of the right to adequate food and other human rights as laid down in the Universal Declaration of Human Rights. Despite this, **the First Draft tends to treat groups such as Indigenous Peoples, nomadic pastoralists, peasants, landless workers, fisherfolks as passive recipients of government policies or as customers and not as rights holders.** The failure to clearly refer to the State's human rights obligations related to tenure makes this tendency even more problematic. Certain paragraphs (e.g. 4.3 and 4.4) read as if the States had all power to give and take tenure rights. Holding States accountable to their human rights obligations should be addressed.

3. **The First Draft still does not fully follow international agreed language when it introduces human rights concepts. This may lead to misinterpretation and a potential**

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The elaboration of these comments has been facilitated by the International CSO Facilitating Team which the International Planning Committee for Food Sovereignty (IPC) put in place early 2010 to facilitate CSO participation in the elaboration process of the FAO Guidelines. It requested comments from all CSO interested in this process through the Civil Society Mechanism of the CFS.

lowering of existing agreed standards, which is not acceptable. It may also contradict the obligation of States that have ratified human rights treaties to not develop any new instruments which would undermine existing obligations. Key concepts which have been carefully defined by the UN human rights treaty bodies, such as the concepts of security of tenure and forced eviction, are not appropriately incorporated in the First Draft. Likewise, the principle of free, prior and informed consent (FPIC), under which the States must obtain the approval of indigenous peoples for any measure affecting indigenous territory or resources, is scarcely referred to despite its paramount importance to the purpose of these Guidelines. Other rights enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), such as the indigenous peoples' right to territory, are not mentioned at all.

4. **The First Draft continues limiting the concept of access to justice to the resolution of disputes over tenure rights.** It fails to state that all persons and communities have the right to an effective remedy in case of violations of human rights in relation to tenure of natural resources. This implies the right to access political, administrative, judicial and quasi-judicial mechanisms that provide adequate, accessible, effective and rapid appeals/recourse (including the possibility of creating national and international independent jurisdictions) when rights have been threatened or violated, or when the States do not fulfil their related Free, Prior and Informed Consent (FPIC) obligations.

5. **The Status of the Guidelines cannot be “voluntary”.** The Guidelines are grounded in binding treaty obligations and principles of international human rights and other public law, thereby making it incumbent upon States to apply the principles they outline. Qualifying the Guidelines as “voluntary” will promote the mistaken understanding that they are somehow “optional” and not binding national and international obligations, and encourage the idea that States and international organizations can act entirely at their own privately driven discretion in the administration and disposal of land and other natural resources. The Guidelines alone will not create new obligations, but should provide an interpretation of existing obligations so as to assist policy makers and implementers to know their duties, as well as *how* to fulfil them. For these reasons CSO strongly recommend the removal of “voluntary” from title of the Guidelines.

6. **Women tenure issues are poorly taken into consideration.** As previously acknowledged, the First Draft applies a cross-cutting gender approach. Nevertheless, women's tenure issues should be referenced more explicitly.

7. **The Guidelines exclude water.** This is illogical when the Guidelines express the intention to apply a holistic approach to natural resources and their use (stated in paragraph 3.2(4)). Access to water for drinking, food production and livestock tending is absolutely crucial to hunger eradication. The use of land for productive purposes cannot be separated from the use of water. Investment in land is inextricably linked to the availability of water. The severe negative impacts of land investment on the availability of water for local users can be witnessed in many cases. Control of land often results in the extraction of groundwater and/or diversion of rivers for irrigation and other purposes at will. Moreover, the use to which the land is put may also result in water being contaminated. Such practices severely affect the access of neighbouring and downstream communities to water.

8. **Fisheries and Forests are not equally and comprehensively represented in the Guidelines.** The current draft is primarily oriented to land issues while tenure issues in fisheries and forests are not adequately addressed (despite reference to both in the title). The section on Safeguards, for instance, mentions “tenure rights to land, fisheries and forest” (7.1) but only deals with evictions (7.5), neglecting the impediment of user rights (gathering, grazing, fishing rights, etc.). It is not clear if the scope of the Guidelines includes rights of access to, use of, and control over range lands, hunting rights, gathering of non-timber forest products, sub-surface resources (such as oil, gas and minerals), above-surface resources, and carbon.

9. **Tenure issues of nomadic pastoralists, particularly the need to ensure their mobility and specific forms of using range lands and other natural resources are weakly addressed in the First Draft.**
10. **Tenure issues of the youth are absent.**
11. **Environmental sustainability, climate change and the relevance of these issues for the tenure of natural resources have not been sufficiently addressed in the Guidelines.** The sustainable use of natural resources should be included in the Guidelines as a principle. Moreover, the protection of ecosystems according to international conventions, and the treatment of ecosystem functions with regard to adaptation and mitigation of climate-change, should be referenced more explicitly.
12. **The Guidelines (Part 3) fail to acknowledge the natural commons, their significance for the food and livelihood security of local users and communities, and their role in the conservation of terrestrial and aquatic biodiversity.** The natural commons comprise farm/crop lands, wetlands, forests, wood-lots, open pasture, grazing and range-lands, hill and mountain slopes, streams and rivers, ponds, lakes and other fresh water bodies, fishing grounds, seas and oceans, coastlines, minerals, terrestrial and aquatic biodiversity. In every part of the world, agricultural, forest, fishing, coastal, pastoral, nomadic and indigenous communities have developed sophisticated systems of using, sharing, governing and regenerating their natural commons. These systems, often rooted in collective rights, are essential dimensions of the cultural-political identities of individuals and communities, and are crucial to their very survival.
13. **The Guidelines (Part 4) deals with different ways of transferring and changing tenure rights as if they had the same importance for the rural and urban marginalized groups.** Restitution and redistributive reforms should clearly have the priority as they seek to address historic dispossession of natural resources and unjust and discriminatory tenure patterns. They are of the utmost importance to Indigenous Peoples, pastoralists, ethnic groups, Dalits and landless people.
14. **The Guidelines fail to promote regulations of markets that restrict the transferability of land and other natural resources tenure rights** in order to protect the commons and indigenous peoples' territories, areas that have undergone redistributive agrarian/aquatic reforms, and areas of peasant and small-scale farming that should maintain an equitable tenure structure.
15. **The Guidelines' reference to investments and concessions (paragraph 12) contradicts the objective defined in 1.1.** This is of major concern, particularly in food insecure countries, as it implies tolerance of large-scale acquisition of tenure rights regardless of the serious human rights impacts of these activities on local populations. Moreover, the Guidelines fail to provide guidance regarding the appropriate regulation of all types of investment to prevent negative impacts on the security of tenure of the poor and their realization of the right to food and other human rights. Instead of formulating strong provisions based on the principle of FPIC of Indigenous Peoples and all peoples whose livelihoods directly depend on the natural resources targeted for investments and concessions, the Guidelines require States and investors to ensure "negotiations" with the affected men and women (paragraphs 12.3 and 12.5).
16. **The Guidelines do not address the accountability of powerful non-State actors such as TNC.** The Guidelines should emphasize States' obligations to properly regulate the activities of TNCs and other commercial entities in order to prevent negative impacts on the realisation and enjoyment of human rights related to land and other natural resources by workers, nomadic pastoralists/herders, artisanal and small-scale fisher-folk, indigenous peoples and peasants. The Guidelines should also encourage the establishment of effective mechanisms that make TNCs and businesses legally accountable for losses and damages arising from violations and/or crimes they commit locally or internationally.

17. **The Guidelines do not adequately address spatial planning.** Spatial planning links national, regional and local land use planning and also combines different land uses such as infrastructure development, settlement, agriculture, water catchment protection, environmental protection, and natural habitats. In the Guidelines, spatial planning must reflect the overall objectives of poverty eradication, environmental sustainability and realization of human rights. Land and natural resource use plans should be formulated in a participatory manner through open and public consultations and decision-making processes. Long-term strategies for managing natural resources should include social and environmental safeguards based on economic, environmental, social and human rights impact-assessments of different types of land and natural resource use. FPIC should be guaranteed in conservation and management initiatives.

18. **The Guidelines' treatment of monitoring and evaluation (Part 7) is extremely weak.** Without a strong system of monitoring, the Guidelines will not achieve their objectives. The CFS and the FAO should develop a monitoring mechanism to ensure compliance at national and international level. The establishment of independent national and multi-actor bodies to observe compliance should be encouraged. Regional and international institutions, and especially international financial institutions (IFIs), must be required to incorporate the Guidelines in their operational policies and directives as a means to avoid supporting private or public projects, programmes or measures that violate human rights.

19. **The Zero Draft does not address the dimension of international cooperation in tenure issues beyond the issue of transboundary matters.** The Guidelines must require States, specialized UN organizations, multilateral agencies and IFIs to not promote measures that obstruct or impede in any way the realisation of human rights related to land and other natural resources, including policies that destroy present and future access and tenure rights of local users and promote the concentration of land and other natural resources in the hands of elite groups. States, specialized UN organizations, multilateral agencies and IFIs should contribute to the fulfilment of these Guidelines in all countries. Under no circumstances should forced evictions or involuntary displacements be supported, encouraged or condoned. All bilateral and multilateral, regional and international trade, investment and economic cooperation agreements should incorporate these Guidelines. The Guidelines should be incorporated in the aid and cooperation policies of FAO, IFAD, other pertinent UN agencies, multilateral bodies and bilateral donors.