

Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests

CSO benchmarks for a successful October negotiation from a food security and sustainable development perspective

From the 10th to 14th of October, Committee on World Food Security (CFS) Member-States, representatives of civil society, the private sector, as well as international organizations representatives will meet in Rome for the final round of negotiation on the Guidelines on Responsible Governance on Tenure of Land, Fisheries and Forests, before their formal adoption on Monday 17th of October during the CFS 37th Session. From a Civil Society Organizations (CSOs) perspective, while the first round of negotiation held in mid July has contributed to some improvements of the First Draft of the Guidelines, a lot remains to be done, among other things regarding security of tenure with regard to investments and concessions, gender and women's rights, spatial planning and implementation. In this context, CSOs strongly call upon all governments to make sure that the final round of negotiations in October confirms progresses already made in July, while successfully meeting the challenges which still need to be addressed. In this document, together through the Civil Society Mechanism (CSM), CSOs engaged in this negotiation want to reaffirm their benchmarks for strong Guidelines from a food and nutrition security and pro-poor sustainable development perspective¹ :

Primary purposes of the Guidelines

The lack of secure access to and control over land, water, fisheries and forests for local communities and in particular small-scale food producers, women, indigenous peoples and the most marginalized and vulnerable groups such as small-scale fisherfolks, resettled communities, older women, widowed women and orphaned girls, nomadic pastoralists and landless people are among the main factors that contribute to the global food crisis. Moreover, the Guidelines have been expressly developed in the framework of the CFS as one of the responses to the aggravation of the global food crisis consecutive to the high increase of food prices in 2007-08. Therefore, it should be strongly reaffirmed that they aim first and foremost to improve access to and control over land, water, fisheries and forests for these populations, as a mean to contribute to hunger eradication and to poverty reduction.

Reference to international human rights and to the States obligations in this regard

Voluntary or not, these Guidelines are based on international human rights directly or indirectly relevant in terms of access to and control over land, water, fisheries and forests, as anchored in various human rights instruments. The Convention 169 on Indigenous and Tribal Peoples of the International Labour Organization (ILO) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) contain explicit references to land rights. Moreover, rights to land, water and other natural resources are intimately connected to numerous economic, social and cultural rights, such as the right to adequate food, housing, health and work. Conventions and treaties addressing these rights include the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the four Geneva Conventions and their two additional Protocols, the Convention on the Rights of the Child, the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention on Biological Diversity, the Core Labor Standards of the ILO, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). All these treaties and conventions are binding for ratifying State, which must be required to incorporate their provisions into domestic law. Therefore, these Guidelines should follow international agreed language when it introduces human rights concepts (avoiding the risk of being interpreted as lowering existing agreed standards) and remind to governments their obligations in this regard.

Protection of local communities from market mechanisms, investments and concessions that undermine their secure access to and control over land, water, fisheries and forests

In terms of access to and control over land, water, fisheries and forests, instead of prioritising the promotion of the development of market mechanisms, investments and concessions in an economic growth logic, States should first of all regulate them in a food security perspective to authorize only those that do not undermine the human rights of local communities, particularly of small-scale food producers, women, indigenous peoples and the most marginalized

¹ This position paper is based on previous CSOs consolidated positions on the Guidelines: on controversial issues in the perspective of the July negotiation, on the First Draft of the Guidelines, as well as on the Zero Draft.

and vulnerable groups, and that do not harm the environment. In this regard, the Guidelines should include provisions which subject market mechanisms, both public and private investments and concessions to strict, legally enforced regulation that safeguards indigenous peoples' rights to territory and peoples' rights to land, water, fisheries and forests, as well as the rights of workers to decent work, fair wages and other compensation in accordance with relevant rights treaties. Moreover, the Guidelines should formulate strong provisions based on the principle of Free, Prior and Informed Consent (FPIC) in order to protect all those communities whose livelihoods depend on land and other natural resources.

Inclusion of water and other natural resources in the Guidelines

Access to water for drinking, food production and livestock tending, as well as to fisheries and forests for local populations, is absolutely crucial to hunger eradication. Furthermore, the use of land for productive purposes cannot be separated in particular from the use of water (investment in land is very much linked to the availability of water). Therefore, the Guidelines should not be limited to land but should also apply to water, fisheries and forests as land resources, with specific provisions where necessary for addressing specificities of access to and control over these resources. The adequate inclusion of water, fisheries and forests in the Guidelines is coherent with the holistic approach to natural resources and their uses that this initiative intends to apply (stated in paragraph 3B5).

The same holistic approach also implies that the Guidelines should 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, woodlots, 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, seeds, 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, have to be respected. They are essential dimensions of the cultural-political identities of individuals and communities, and are crucial to their very survival.

Gender equity and direct and equal access to land, water and other natural resources ensured for women

States are required by Human Rights conventions to ensure that women have equal access to and control over land, water and other natural resources, be it through collective or individual tenure systems. They have the duty to implement existing international human rights conventions, including the CEDAW, as well as the Final Declaration on the Convention on Agrarian Reform and Rural Development (ICAARD). Any relevant policy in terms of access to and control over land, water and other natural resources should integrate specific measures in this regard. As a consequence, the Guidelines should include strong provisions to ensure women's equal access to and control over land and other natural resources.

The need of restitution and redistributive reforms

In terms of different ways of transferring and changing tenure rights, restitution and redistributive reforms seek specifically to address historic dispossession of natural resources and unjust and discriminatory tenure patterns, and thus are of utmost importance for indigenous peoples, pastoralists, ethnic groups, Dalits and landless people. The Guidelines should therefore clearly give the priority to restitution and redistributive reforms that explicitly target these rural poor populations, over other means of transferring and changing tenure rights, in particular over market-oriented approaches which cannot by definition address this crucial challenge. They should explicitly include aquatic reforms and refer to the principles contained in the Final Declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD) and The Peasant Charter as the most authoritative instruments in this matter.

Coherent distinction of the respective roles of States and non-States actors

The Guidelines should clearly distinguish the respective roles of the state, the private sector and civil society. Particular attention should be given to the accountability of business enterprises. In that perspective, the Guidelines should deal with issues of abuses by powerful non-state actors and the responsibilities of transnational companies (TNCs) and other enterprises with respect to the human rights related to tenure issues. They should emphasize States' obligations to properly regulate the activities of TNCs and other commercial entities in order to prevent negative impacts on the realization 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.

Coherent spatial planning from a pro-poor and sustainable development perspective

The Guidelines should adequately address the need for coherent spatial planning in terms of pro-poor and sustainable development. 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 food security, poverty eradication, biodiversity and natural resources preservation, ecosystems protection, climate change mitigation (as well as adaptation to global warming) and realization of human rights, and so must explicitly aim to prioritize the needs of rural poor populations which are the most vulnerable to negative impacts of incoherent spatial planning. All relevant policies having direct or indirect impacts on land uses should be put in coherence with these objectives. Land and natural resources 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.

Policy coherence from an access to land and other natural resources perspective

The Guidelines should include provisions calling for policy coherence in terms of access to land and other natural resources of all relevant policies having direct or indirect impacts on this access, including biofuels, climate mitigation, trade and investment support policies. Indeed, public regulation is needed to ensure that all these policies do not directly or indirectly undermine access to and control over land and other natural resources by local communities and in particular women, small-scale food producers and the most marginalized groups. In that perspective, current policies that undermine this access should be properly reformed, following a process guaranteeing the active consultation and participation of these communities. These policies include notably large-scale biofuels production, large-scale mining and energy production including exploitation of water resources for energy, tourism and development projects, and unsustainable projects of carbon sequestration, which are some of the main factors having contributed to the recent increase of the phenomenon of “land grabbing” in the context of the financial, food, climate and energy crises.

Strong provisions in terms of monitoring and evaluation

Without a strong system of monitoring and evaluation, the Guidelines will not achieve their objectives. The CFS 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.

Strong provisions in terms of implementation

The Guidelines should integrate strong provisions to promote their efficient implementation through participatory and transparent approaches at the national level, as an integral component of States national strategies for the progressive realization of the Right to Food in order to improve consistency with the Voluntary Guidelines on the Right to Food. In this regard, States should be encouraged to develop indicators and benchmarks based on the following objectives: (a) recognition and security of tenure and use rights to land, natural resources and urban spaces by indigenous people, nomadic pastoralists, peasant, forest, fisherfolk, workers, as well as other local and traditional communities in rural and urban areas; (b) tenure and use rights redistribution where necessary to different constituencies, with particular attention to the rights of women and young people; (c) based on the above, recovering, re-establishment and respect for the commons, for collective rights and local self-governance of natural resources; (d) restoration of degraded ecosystems through appropriate actions with the full approval and participation of local communities.