

Civil Society Perspectives on the Use and Application of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests

Background paper to the State of Land Tenure and Governance report



Edu Ponces / RUIDO Photo

Philip Seufert, FIAN International

Submitted to the Food and Agriculture Organization of the United Nations (FAO)

June 2023

Content

Key messages	3
List of Acronyms	4
Introduction	5
1. Looking back: a critical assessment of the first ten years of application and use of the Tenure Guidelines from a social movement and CSO perspective	7
<i>1.1 The starting point: the development and adoption of the Tenure Guidelines</i>	<i>7</i>
<i>1.2 Use of the Tenure Guidelines by organizations of small-scale food producers, Indigenous Peoples and civil society</i>	<i>9</i>
<i>1.3 Donor support to the implementation of the Tenure Guidelines</i>	<i>11</i>
2. Case studies	15
<i>2.1 Brazil: Opposing the financialization of land and ecosystems</i>	<i>15</i>
<i>2.2 Mali: Using the Tenure Guidelines to secure customary tenure rights</i>	<i>18</i>
<i>2.3 European Union: Putting land on the political agenda</i>	<i>22</i>
<i>2.4 Myanmar: Placing land and natural resources at the center of social transformation</i>	<i>24</i>
<i>2.5 Egypt: A missed opportunity to address a historical land conflict</i>	<i>27</i>
3. Some lessons learnt from ten years of use and application of the Tenure Guidelines	30
4. Looking ahead: the Tenure Guidelines in the context of multiple, interconnected crises	32
4.1 Old and new challenges to tenure and the right to land	32
4.1.1 Climate change and biodiversity decline	32
4.1.2 Food systems transformation	33
4.1.3 Conflict, occupation, and war	34
4.1.4 Financialization of land and territories	35
4.1.4 Digitalization.....	36
4.1.5 Gender and intergenerational justice	37
4.1.6 Violence against land rights defenders	38
4.1.7 Inequality and land concentration	38
4.2 The Tenure Guidelines within an evolving human rights framework	39
5. Conclusion and recommendations	41

Key messages

1. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Tenure Guidelines) are a landmark in terms of normative guidance on human rights-based tenure governance and remain highly relevant today.
2. Organizations of small-scale food producers, Indigenous Peoples and civil society have participated in the development of the Tenure Guidelines to ensure the incorporation of advances in international human rights and environmental law and to oppose the growing privatization and commodification of resources. Since their adoption, these organizations have used them in a variety of ways to support their struggles for control over their territories and a sustainable and just distribution of resources.
3. Donor states and multilateral institutions, including the FAO, have undertaken efforts to bring the Tenure Guidelines into application at local, national, regional, and international levels, including through funding. An analysis of available information reveals that donor support has tended to focus on Sub-Saharan Africa as well as programs and projects focusing on land administration, thus raising questions on the extent to which the Tenure Guidelines have been used to change existing approaches to development cooperation in the context of land, fisheries and forests.
4. Based on their experiences from implementation during the first ten years since the adoption of the Tenure Guidelines, organizations of small-scale food producers, Indigenous Peoples and civil society have identified some key factors that are critical to the Guidelines' contribution to improved tenure governance, namely: 1. Prioritization of marginalized groups; 2. Addressing structural drivers of land concentration, dispossession, and ecosystem destructions; and 3. the consistent application of human rights in tenure governance and policies across sectors.
5. The Tenure Guidelines remain highly relevant in today's context of multiple and interconnected crisis. Understanding and applying them within an evolving international human rights framework related to governance of natural resources will be important to address old and new challenges in the year to come.
6. The FAO has an important role to play in ensuring that the Tenure Guidelines can make a significant contribution in the responses to current challenges. To do this, it should give particular attention to the distribution of land, fisheries and forests, the effective protection of customary and collective tenure rights, gender and intergenerational justice, and the establishment of human rights-based monitoring and accountability mechanisms.

List of Acronyms

CAR	Cadastro Ambiental Rural / Rural Environmental Registry
CDF	Code Domaniel et Foncier / Land and Estate Code
CEDAW	Committee on the Elimination of Discrimination Against Women
CFS	Committee on World Food Security
CMAT	Coalition Malienne Contre l'Accaparement des Terres
CSO	Civil society organization
ECVC	European Coordination Via Campesina
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GDPRD	Global Donor Platform on Rural Development
INTERPI	Instituto das Terras do Piauí / Piauí Land Institute
ICARRD	International Conference on Agrarian Reform and Rural Development
IPC	International Planning Committee for Food Sovereignty
LIOH	Land in our Hands network
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNDROP	United Nations Declaration on the Rights of Peasants and Other People Working

Introduction

The unanimous adoption in 2012 of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT, or Tenure Guidelines) by the members of the Committee on World Food Security (CFS) marks a landmark in the governance of natural resources. They have been broadly acclaimed as the first instrument containing principles and internationally accepted standards for the responsible governance of tenure. The Tenure Guidelines are firmly grounded in the right to food and nutrition and provide practical guidance to states and other actors on how to advance toward human rights-based tenure governance. The inclusive process through which they were developed gives them a high degree of legitimacy and political weight.

Over the past ten years since their adoption, all involved actors – states, civil society organizations (CSOs), private sector and multilateral institutions – have undertaken efforts to bring the Tenure Guidelines into application at local, national, regional, and international levels. As the leading UN agency for the implementation of the Guidelines, the Organization on Food and Agriculture of the United Nations (FAO) has also substantially contributed to those efforts.

The tenth anniversary of the Tenure Guidelines in 2022 offered an opportunity to take stock of the achievements made over the last years. At the same time, it has been an opportunity to look ahead and understand how the Guidelines and human rights-based tenure governance can contribute to the responses to the current multiple and interlinked (food, climate, biodiversity, economic etc.) crises. This background paper intends to bring a perspective from organizations of small-scale food producers and Indigenous Peoples as well as CSOs on the lessons learnt and new challenges in the context of the Tenure Guidelines' use and application. While its immediate objective is to inform the FAO's work, including the establishment of a Global Land Observatory and the elaboration of a global report on the state of land tenure, the paper also aims to contribute to a broader discussion among governments, intergovernmental institutions, and other relevant actors on the role that the Guidelines and responsible tenure governance should play in the coming years.

The first chapter will look back at the time of development and approval of the Tenure Guidelines and will give an overview on the ways in which organizations of small-scale food producers, Indigenous Peoples and civil society have used the Tenure Guidelines. In addition, it will present a brief analysis of the activities of donors in the context of Tenure Guidelines implementation.

The second chapter contains examples from five regions that shed a light on how the use and application of the Tenure Guidelines has contributed to improving the tenure situation of people and communities and/or what challenges have impeded such outcomes. These case examples have been selected on the basis of interviews and discussions with organizations of small-scale food

producers, Indigenous Peoples and civil society and intend to provide an exemplary case from each of the following regions: Africa, Asia, Europe, Latin America, and Middle East and North Africa. The first part of the paper will conclude with a brief description of what emerge as main lessons learnt from ten years of Tenure Guidelines implementation from a civil society perspective.

Building on the experiences gathered over the past ten years, chapter three looks ahead by identifying a number of issues that stand out of particular importance for advancing human rights-based governance today and in the next years. While some of these issues have been around for a long time, others have emerged over the past few years, or have become more pressing since the Tenure Guidelines' approval. The chapter argues that the implementation of the Tenure Guidelines has become even more relevant in the current context of multiple, interconnected crisis. By situating them within the context of an evolving human rights framework around land and natural resources, the chapter then points to how the Guidelines continue to provide a good basis for addressing the structural drivers of dispossession, unsustainable levels of land concentration and ecosystem destruction.

The paper closes with some conclusions and recommendations of areas that merit special attention by the FAO and all involved actors in the coming years. The recommendations are intended to provide a basis for further discussion between the FAO and the organizations of small-scale food producers, Indigenous Peoples, and civil society.

The content of this background paper is based on the long-standing work of FIAN International on land and other natural resources, including through its facilitating role within the working group on land, water, forests, and territories of the International Planning Committee for Food Sovereignty (IPC).¹ Several members of this working group and other CSOs have contributed to this background paper by providing information and documentation. The process of elaborating this paper included several bilateral and group discussions, which complemented the information gathered through desk research. The author is grateful to all those who have provided information and shared their experiences. Any mistakes or omissions in this paper remain, however, the sole responsibility of the author.

¹ The IPC is an autonomous and self-organized global platform of organizations of small-scale food producers, Indigenous Peoples and rural workers as well as grass root/community based social movements to advance the Food Sovereignty agenda at the global and regional level. For more information, please see: www.foodsovereignty.org.

1. Looking back: a critical assessment of the first ten years of application and use of the Tenure Guidelines from a social movement and CSO perspective

1.1 *The starting point: the development and adoption of the Tenure Guidelines*

The adoption of the Tenure Guidelines by the CFS in 2012 was the result of a process that lasted for many years. Since 2005, the FAO had been working on raising awareness of the importance of good governance of land and other natural resources, an issue that is also highlighted in the *Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food*.² In 2006, 92 FAO member states adopted the final declaration of the International Conference on Agrarian Reform and Rural Development (ICARRD), which highlighted the fundamental importance of agrarian reform as well as secure and sustainable access to land, water, and other resources for hunger and poverty eradication. Building on these experiences, the FAO launched an initiative to develop and adopt a set of voluntary guidelines for the governance of land and other natural resources, which would constitute an agreement on principles of responsible governance that was broadly supported by governments, multilateral institutions, civil society, and other actors. The process of developing the Guidelines then lasted more than three years and included regional consultations on all continents and several rounds of negotiations in the newly reformed CFS.³

The process to negotiate the Tenure Guidelines coincided with a global rush for land by state and corporate investors in the wake of the global financial crisis of 2008/09, which is commonly referred to as “global land grab” or “global land rush”. Although several governments and the FAO pointed out repeatedly that the process was not about developing ‘guidelines against land grabbing’, this context strongly influenced the discussions and negotiations, not least due to the big public and media attention on the issue. The new wave of land and resource grabbing and the growing privatization and commodification of resources it entailed was also an important factor triggering substantial interest and participation in the process by organizations of small-scale food producers, Indigenous Peoples, grassroot collectives and civil society. Indeed, during the negotiations, these organizations handed over the so-called “Dakar Appeal Against the Global Land Grab” to the chair of the negotiations, which was signed by more than 600 organizations from around the world and called governments and intergovernmental organizations to stop land grabbing and effectively protect the rights of affected people and communities.⁴

² FAO (2005), *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*. Available at: <https://www.fao.org/3/y7937e/y7937e.pdf>.

³ Philip Seufert (2013), *The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*. *Globalizations*, 10:1, 181-186, DOI: [10.1080/14747731.2013.764157](https://doi.org/10.1080/14747731.2013.764157).

⁴ Available at : www.fian.org/fileadmin/media/publications_2015/Dakar_Appeal_en.pdf.

However, The International Facilitation Group, which was established by the IPC to organize the participation of organizations of small-scale food producers, Indigenous Peoples and civil society in the process also aimed to continue the earlier multi-actor dialogue that had been institutionalized during the CSO Parallel Forum to the ICARRD. Moreover, CSOs sought to incorporate into the FAO and CFS discussions the existing international human rights and environmental law provisions protecting the rights over land and other natural resources of all rural people. Finally, they hoped that the Tenure Guidelines process would contribute to a more democratic decision-making process for global policies concerning food and agriculture. To achieve this, they made their participation conditional to the application of the same rules of participation as in the ICARRD process, namely the autonomous and self-organized participation, especially of organizations representing rights holders, throughout all stages of the process.

While the organizations of small-scale food producers, Indigenous Peoples and civil society participating in the process welcomed the approval of the Tenure Guidelines, they also pointed out that the document contains some gaps, ambiguities, and limitations. The exclusion of water from the negotiations, for instance, was criticised by CSOs, as was the reluctance from some states to reaffirm their existing human rights obligations in the context of natural resources tenure, which led to fears that the Guidelines could be used to weaken the existing normative framework, including regarding the respect and protection of the rights of Indigenous Peoples.

In the context of a new surge of land grabbing, the treatment of land-related investments in the Tenure Guidelines was one of the most controversial issues. While CSOs pushed very strongly for an international ban on land grabbing, several countries, including from the Global South, asserted their belief that the large-scale acquisition of tenure rights constituted an essential way of ensuring investment for national development. Although the adopted document accepts the latter position, the Tenure Guidelines contain several well-defined safeguards and recommendations on how to ensure the respect and protection of people's and communities' rights in the context of land-related investments.

Since the adoption of the Tenure Guidelines, many organizations of small-scale food producers Indigenous Peoples, grassroots collectives and civil societies have used the Guidelines in a variety of ways, as will be described in the following chapter. Such use has happened in the understanding that "No agreement or treaty is enforced automatically, regardless of how positive and progressive its content may be. Popular pressure, mobilization and organization to demand its implementation

are the elements that give life to these documents and make them work in the search of societal change.”⁵

1.2 Use of the Tenure Guidelines by organizations of small-scale food producers, Indigenous Peoples and civil society

Based on their active participation in the development of the Tenure Guidelines, organizations of small-scale food producers, Indigenous Peoples and civil society from all the world’s regions have use the Guidelines to advance their struggles in defense of their tenure rights as well as for agrarian, social and environmental justice. The following paragraphs provide an overview of the most important ways in which the Guidelines have been taken up and used by grassroots and civil society organizations, while acknowledging that each territory and country has its specific context and starting point.⁶

One of the main ways of engaging with the Tenure Guidelines, especially in the years immediately after their approval, has been to develop the capacities of members of social and civil society organizations. Indeed, an impressive number of capacity development initiatives have been carried out across the world since the approval of the Guidelines, either conducted by social movements and CSOs alone or in collaboration with other actors, such as the FAO, governments, and/or donors. As part of these activities, organizations have developed specific training tools that respond to the needs and realities of their members.⁷ Conducting and participating in trainings has served to interact with the Tenure Guidelines and relate it to the problems and struggles at local and national levels as well as to create and/or strengthen networks. Capacity development has further constituted the basis of linking the provision contained in the Guidelines to ongoing tenure-related policy processes, and to develop organizations own strategies and action plans. In many cases, these

⁵ CSO Evaluation document produced by the Land Tenure Working Group of the Civil Society Mechanism to the Committee on World Food Security (CFS), after the adoption of the Tenure Guidelines.

⁶ The following paragraphs do not claim to provide a representative quantitative representation but focus on the areas that have been identified by organizations of small-scale food producers, Indigenous Peoples and civil society in workshops, interviews, and group discussions over the past years. They are also informed by a comprehensive monitoring report elaborated by the Monitoring Working Group of the Civil Society Mechanism to the CFS: Working Group on Monitoring of the Civil Society Mechanism (CSM) for relations with the Committee on World Food Security (CFS) (2016), Synthesis Report on Civil Society experiences regarding the use and implementation of the Tenure Guidelines and the challenge of monitoring CFS decisions. Available at: www.csm4cfs.org/wp-content/uploads/2016/09/CSM-Monitoring-Report-VGGT-final1_EN-1.pdf.

⁷ See, for instance: IPC (2016), People’s Manual on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security. A guide for promotion, implementation, monitoring and evaluation. Available at: www.foodsovereignty.org/wp-content/uploads/2016/06/peoplesmanual.pdf. And: FAO and FIAN International (2017), Putting the Voluntary Guidelines on Tenure into Practice. A Learning Guide for Civil Society Organizations. Available at: www.fao.org/3/i7763e/i7763e.pdf.

activities have also been the basis for interaction and dialogue with state authorities at different levels.

Despite the great effort, capacity development remains a need, specifically for the most marginalized groups. CSOs in many countries also stress the need for capacity development of state authorities and some experiences show how joint trainings between technical staff and communities can provide a basis for collaboration leading to positive tenure outcomes.⁸

Another important way of using the Guidelines by organizations of small-scale food producers, Indigenous Peoples and civil society has been to analyze concrete cases of tenure-related conflicts and policies. Around the world, organizations have referred to the Guidelines' principles and provisions when demanding action from local and national authorities in cases of land grabbing, evictions, ecosystem destruction and violence against human rights defenders, among others, and to demand that those responsible are held accountable. Similarly, CSOs and networks have analyzed existing or proposed policy frameworks related to tenure on the basis of the Guidelines, thus pointing to shortcomings and putting forward alternative proposals that respond to the needs and aspirations of people and communities, while safeguarding and advancing their rights.⁹

Thirdly, the Tenure Guidelines have been an important tool for small-scale food producers' organizations and CSOs to advocate for new policy frameworks and/or the revision of existing frameworks, which do not comply with the principles and provisions contained in the Guidelines. The way in which they participated in policy making processes and have used the Guidelines depend on the given context. In some cases, dissemination of the Guidelines and training workshops have set the basis for establishing policy dialogue, including in cases, where spaces for such dialogue did not exist previously. This has allowed to put topics of concerns on the table and to kick-start discussions. In other cases, the approval of the Guidelines has provided an opportunity for social organizations to engage in policy processes for new laws or the revision of existing ones. The Guidelines have served in these situations as an inspiration and reference for proposals put forward by organizations of small-scale food producers and civil society. In addition, appropriating the Guidelines and using them has also meant, in some cases, that small-scale food producers' organizations and CSOs have developed their own policy and/or law proposals and have mobilized and advocated for the initiation of policy processes.

In all these cases, it needs to be emphasized that using the Tenure Guidelines in policy processes is no linear mechanism of cause and effect and that they have not automatically translated into improved laws and policies from a people and human rights-centered perspective. According to the

⁸ See, for instance, the case of Mali in chapter 2.2.

⁹ See, for instance, the case of Myanmar in chapter 2.4.

experience of several organizations, state authorities have often been reluctant to engage in processes to translate the Guidelines' provisions into national laws and policies. Consequently, not all tenure reform processes since the approval of the Guidelines can be evaluated positively and, in several countries, laws continue to be biased in favor of powerful groups and business interests, and perpetuate the marginalization of small-scale producers, Indigenous Peoples and other groups. However, using the Tenure Guidelines in the context of policy processes and reform has allowed to advance on some critical issues. As will be shown in chapter 2.2, important advances have been made in some countries regarding the recognition and protection of customary and collective tenure rights and systems. Another example is the inclusion of land-related provisions in some policy debates and law proposals promoting family farming and agroecology.

Finally, it is important to stress that the Tenure Guidelines have been an important steppingstone in the further development of the international recognition and protection of people's and communities' rights over land, fisheries and forests. While the Guidelines emphasize the deep and multifaceted connection between tenure (governance) and human rights – in particular the right to food and nutrition – and a *pro persona* interpretation¹⁰ points to an implicit recognition of land as a human right, land has been explicitly recognized as a human right of peasants and other people working in rural areas, as well as rural and indigenous women,¹¹ thus complementing the previous recognition of Indigenous Peoples' right to their ancestral territories. Indeed, the Guidelines have been a crucial reference point for such further recognition and has been used by organizations of small-scale food producers, Indigenous Peoples and civil society to advance the rights of marginalized people and communities.

1.3 Donor support to the implementation of the Tenure Guidelines

In addition to the use made by the Tenure Guidelines by organizations of small-scale food producers, Indigenous Peoples and civil society, this chapter will provide a brief analysis of the ways in which donors – governments as well as multilateral institutions like the FAO and the World Bank – have supported efforts to implement them. This is done on the basis of the information provided by the Land Governance Programme Map of the Global Donor Platform on Rural Development (GDPRD).¹² This platform gathers many of the world's largest donors from the OECD group, totaling 40 multilateral and bilateral development agencies, international financing

¹⁰ The *pro persona* principle calls for adopting/applying the most protective norm to the human person, i.e. the victims of human rights violations.

¹¹ See chapter 4.2 for more information.

¹² This chapter is largely based on research conducted by the Transnational Institute (TNI), the outcomes of which will be published in a forthcoming report. This research involved several members of the IPC Working Group on Land, Forests, Water and Territories.

institutions, intergovernmental organizations and private foundations. Since 2020, its secretariat is hosted by the International Fund for Agricultural Development (IFAD).¹³

The Global Donor Working Group on Land was officially formed in 2013 during a Donor Roundtable meeting on the sidelines of the World Bank Land Conference in Washington, D.C., with the stated objective of strengthening land governance in line with the Tenure Guidelines to contribute to sustainable development and poverty eradication.¹⁴ While it is hosted by the GDPRD, the Working Group on Land has a different character to that of the Platform, which is reflected in its membership, which includes a number of actors who are not Platform members.¹⁵

The Working Group on Land has created a ‘Land Governance Programme Map’, an online, open-access database where its members can upload information on programs and projects that they are involved in related to strengthening land governance in line with the Tenure Guidelines.¹⁶ The purpose of this map is to provide donors and other interested actors with a deeper and broader visibility on what they are doing with their land-related investments and programming, with a declared aim to strengthen country-level donor coordination and cooperation. While the map has a number of limitations that need to be taken into consideration – including that it has apparently not been regularly updated since 2019 and operates on the basis of donors’ self-reporting and uploaded data, thus generating some inconsistency and a potentially distorted picture of the funding landscape based on donors who take a more active reporting duty than others – it is a valuable source of information providing at least a partial insight into where, when, and how donors have funded work related to the Tenure Guidelines.

The Land Governance Programme Map and the underlying data base contain a total number of 853 projects, amounting to 9.7 billion USD in funding. These projects have been implemented by 21 donors in 144 countries. Geographically, a strong focus lies on Sub-Saharan Africa, which hosts 42 % of the total amount of projects and received 34 % of funding, followed by Asia and the Pacific (17 % and 15 % respectively) and Europe and Central Asia (14 % and 12 % respectively).

¹³ The Platform was established in 2003 in Washington, D.C. by the World Bank, the German Federal Ministry for Economic Cooperation and Development (BMZ), the Food and Agriculture Organisation of the United Nations (FAO), the Canadian International Development Agency (CIDA), the Government of the Netherlands, and the International Fund for Agricultural Development (IFAD). BMZ and FAO served as the initial co-chairs of the Platform with a Secretariat hosted by the German Agency for International Cooperation (GIZ) up until 2020 in Bonn, Germany. The Platform has grown from its original six founding members to a network of 40 multilateral and bilateral development agencies, international financing institutions, intergovernmental organizations and private foundations.

¹⁴ For more information, please see: www.donorplatform.org.

¹⁵ The Working Group is coordinated by a Chair drawn from one of the Group’s member organisations. The Working Group convenes through periodic online meetings and twice a year through in person meetings. For more information, please see: www.donorplatform.org/thematic-areas/land-governance.

¹⁶ Please see: www.donorplatform.org/thematic-areas/land-governance/programme-map.

However, two aspects need to be considered: first, 360 projects (43 %) amounting to 55 % of the funding started before May 2012, i.e. before the adoption of the Tenure Guidelines; second, there is a sharp decline in reported new projects in 2019 and 2020, after which no new projects are contained in the map. Whereas the latter observation could point to potential reporting gaps – although it is possible that tenure Guidelines-related funding has actually decreased since 2019 – the considerable amount of projects starting before 2012 raise some questions regarding the direct relationship between the programs and projects contained in the data base and the Tenure Guidelines. Concretely, it raises the question whether the Guidelines have entailed a new approach or reorientation of donor funding related to tenure, or if reference to the Tenure Guidelines has (partly or mainly) been a 'branding' exercise while existing projects and approaches have largely been maintained. Indeed, the relationship to the Tenure Guidelines is not always clear from project description contained in the map and data base.¹⁷

Analyzing the map and data base according to the content and objectives of the reported projects and programs, allows to identify the following six broad areas:¹⁸

1. Improving land administration
2. Supporting the operational functioning of networks
3. Securing land tenure/improve livelihoods/strengthen capacity of particular target groups (smallholder farmers, women)
4. Facilitating investment
5. Land in the context of broader food security, agricultural and rural development, natural resource management, environment and climate goals
6. Activities to raise awareness of the Tenure Guidelines and for specific implementation

One information that donors are asked to provide is what specific section(s) or paragraph(s) of the Tenure Guidelines a given project or program supports. This is problematic because it could reflect an approach, where specific provisions of the Guidelines are selectively implemented without considering them within their broader objectives and principles. “Cherry picking” in such a way would not be in the spirit of the Guidelines and could even lead to projects or programs simply being labeled as supporting the Tenure Guidelines, while actually not being connected or even potentially contradicting them. The amount of programs and funding for facilitating land-related investment is particularly problematic in this context since it may lead to legitimizing and/or promoting land deals, which result in dispossession of local people and communities.

¹⁷ It should be noted that the project description is missing for 50 projects.

¹⁸ It is important to note that the information provided by donors on their activities varies, including details on objectives and activities.

Another aspect that stands out is the number of projects that focus on land administration. Indeed, chapter 5 of the Tenure Guidelines on the Administration of Tenure, and within this, para. 5.17 on the ‘Records of tenure rights’ is most heavily favored by donors in terms of overall funding. While these are important topics and their mentioning in the map can mean many different things, the available information points to a tendency of supporting (mostly individualized, sometimes also community) land titling projects which fit within an overall market-based approach towards land and resource governance. This is particularly the case for the projects funded by the World Bank – the largest donor in terms of the total funding. The single largest project included on the Land Governance Programme Map, the ‘Support to Parcelization of Land for Individual Titling (SPLIT)’ project, funded by the World Bank in the Philippines, whose stated aim is “to improve land tenure security and stabilize property right of agrarian reform beneficiaries”, is emblematic of this approach. While this may sound unproblematic on the face of it, this approach has been highly contested, in the Philippines and beyond, with clear lines of distinction drawn between the World Bank’s market-assisted land reform process and what are argued to be a genuinely pro-poor (re)distributive land reform policies. Indeed, the number of projects and programs as well as the dedicated funding focusing on addressing historical and contemporary patterns of land inequality – i.e. redistributive agrarian reforms and restitution – is much lower.

A final consideration in this brief analysis concerns the few references made in programs and projects to marginalized and vulnerable people and communities as direct beneficiaries. A key word search reveals that “business” is more frequently mentioned as an actor in projects than other groups such as “Indigenous Peoples”, “peasants”, “youth”, “the landless”, and “pastoralists”. While this does not preclude the possibility that these groups are engaged in other ways not captured by the database, it does offer one glimpse into the actors prioritized by donors. At the same time, a lot of prominence is given to women in projects even above the generic reference to “farmer”.

2. Case studies

2.1 Brazil: *Opposing the financialization of land and ecosystems*

This case from the Brazilian state of Piauí illustrates how an improved legal framework on land and tenure has only had limited impact on the rights and living conditions of rural communities because the structural factors driving land grabbing, speculation and ecosystem destruction have remained unaddressed.

The state of Piauí is situated in northeastern Brazil and is part of the MATOPIBA region, a land area of more than 70,000,000 hectares expanding across the Brazilian states of Maranhão, Tocantins, Piauí and Bahia.¹⁹ The MATOPIBA special region was created, by decree, by the Brazilian government in May 2015, accompanied by the launch of a Plan for Agricultural Development, which designated the area for the development of agricultural and mining activities. This has accelerated the expansion of the agricultural frontier into the region, notably through the territorial expansion of soy and sugar cane plantations. As a result, land, which had been used and occupied over generations by peasant and other rural communities, has been increasingly appropriated by agribusiness corporations, local brokers and international investors tied to them. Moreover, it has led to massive destruction of the region's ecosystem, which is part of the *Cerrado*, a biome consisting of savannahs and forests that is extremely rich in biodiversity, hosts three of the region's most important aquifers, and is a lifeline for millions of people living there.²⁰

Whereas the expansion of soy and sugar monocultures in Piauí was initially tied to a boom of agricultural commodities, a remarkable development started taking place in the years after the global financial crisis of 2007/08. While the prices of agricultural commodities decreased in international markets, the price of land continued to increase in Piauí (and other parts of Brazil). Consequently, land increasingly became a target for financial and business actors in its own right, including for speculative investments. Whereas some of the actors involved in the land business in the region remain linked to industrial agricultural production, they increasingly seek to obtain capitalized income from land. Simultaneously, specialized companies have emerged that fully concentrate on acquiring, selling, leasing and/or managing land. Often this entails acquiring lands at a low price (sometimes illegally, using fraud, falsification of documents, and bribery), clear it and establish a farm, and then sell it with a profit. Importantly, many of the actors that are operating on

¹⁹ Unless specified otherwise, the information in this chapter comes from: FIAN International, Rede Social de Justiça e Direitos Humanos, Comissão Pastoral da Terra (2018). The Human and Environmental Cost of Land Business. The case of MATOPIBA. Available at:

https://www.fian.org/files/files/The_Human_and_Environmental_Cost_of_Land_Business-The_case_of_MATOPIBA_240818.pdf.

²⁰ It is estimated that around 25 million people live in the Cerrado, including 80 Indigenous Peoples as well as a variety of so-called traditional peoples, to whom Brazilian legislation gives special protection.

the ground are backed by international financial entities that channel great amount of capital into the land business. In the case of Piauí and MATOPIBA, pension and endowment funds from the USA and Europe are important players.

In southern Piauí, the expansion of monocropping of agricultural commodities and land speculation has impaired the right to food and nutrition and other human rights of rural communities. Local people face the consequences of deforestation, widespread contamination of soil, water, and livestock by agrottoxins, and loss of biodiversity. Additionally, violence against community leaders is rampant and land conflicts are on the rise, further exacerbated by changing rainfall patterns due to eco-destruction. The loss of land by rural people destroys their livelihoods, disrupts communities, and leads to food and nutrition insecurity. In many cases, they are forced to migrate to shantytowns (*favelas*) of Brazilian cities. Women are particularly affected by the ongoing land grab and eco-destruction, as they can no longer collect and process wild fruits from the *Cerrado* forests, while the presence of armed guards, intimidation, and physical violence, makes it impossible for them to plan a family life. Quite often, the only jobs available for rural women who have been displaced from their lands are on plantations with degrading conditions, or as house cleaners in urban areas.

One of the main challenges faced by local people and communities is the lack of recognition and protection of their tenure rights, which are often of collective nature. In addition to documenting and denouncing the violence and destruction caused by land and agribusiness, the struggle of rural communities in southern Piauí has therefore focused on obtaining legal protection of these rights, as called for by the Tenure Guidelines.²¹ Importantly, most of the lands claimed – and used for generations – by rural communities are so-called *terras devolutas* (vacant lands), which formally belong to the State.²² This situation creates a special responsibility of state authorities – particularly the Piauí Land Institute, INTERPI (Instituto das Terras do Piauí) – to recognize, protect and promote the legitimate tenure rights of communities as well as their systems of collective use and management, as specified by paras. 8.2 and 8.3 of the Tenure Guidelines.

An additional factor that has further fueled land grabs and other forms of dispossession on Piauí has been legislation through which Brazil introduced a rural environmental registry (*Cadastro Ambiental Rural*, CAR). This registry is part of the country's revised Forest Code of 2012 (Law 12.651/2012) obliges landowners to conserve or restore the native vegetation of a percentage of their land – 20 % in the case of Piauí – and to register it in the CAR. However, it also provides them

²¹ In particular paras. 3.1, 5.3 and section 9.

²² The Brazilian Land Law of 1850 stipulated that all lands that were not formally owned by somebody now belonged to the state. Until today, most of the communities living on and off the land in Piauí do not hold any land titles. Given that these public lands have been used by rural people and communities for generations, the term “public land of common use” better captures the reality (rather than “vacant lands”).

with an alternative: instead of restoring deforested lands, they can buy so-called forest restoration credits, which compensate the destruction with intact lands elsewhere. In Piauí and elsewhere, this has resulted in landowners claiming intact lands that are often occupied and used by rural communities and to register them in the CAR. This works because the CAR is an open online system based on GPS data, in which anybody can register land use information, without requiring proof of ownership. Although the CAR is not recognized by Brazilian law as a proof of land ownership, land grabbers have used it to legitimize their claims over land, including those used by rural communities. Unequal access to the digital registry results in exacerbating the discrimination faced by rural communities, some of which have found themselves in a situation where they tried registering their lands in the CAR and discovering that they had already been registered by others. In 2015, Piauí passed state law No. 6.709 on the regularization of ownership and colonization of land, which was followed by decree No. 16.324. Together, they set forth a land regularization program for lands that formally belong to the state and are considered as vacant. Piauí's land regularization program has received support by the World Bank, through a project entitled "Piauí: Pillars of Growth and Social Inclusion" since 2016. However, research by local, Brazilian and international CSOs has revealed that large plantation owners have used it to legalize their land grabs by formalizing their ownership over vast areas of land.²³ At the same time, regularization of rural communities' lands has been very slow, thus increasing the vulnerability of people in a context of land grabbing and speculation, as explained above. An additional weakness of the program and the underlying legal framework is that it did not contain specific provisions on the regularization of collective tenure rights, although many rural communities access, use and control lands through collective tenure systems.

Acknowledging the concerning situation of rural communities in Piauí due to land grabbing and speculation as well as the gaps in the existing legal frameworks, the Brazilian Public Prosecutor's Office formally recommended to immediately suspend the application of the Piauí Land Law in 2017. Although INTERPI and the World Bank pointed to existing safeguards in the regularization program to ensure that lands that are occupied and used by communities cannot be registered by other actors, they finally had to admit that several lands claimed by communities had effectively been registered by big landowners. The evident gaps in Piauí's Land Law opened the way for a revision, which concluded in the adoption of a revised law in 2019.²⁴

Drawing explicitly from the Tenure Guidelines and including consultations with communities and CSOs, the revision process led to important improvements in the law, particularly by spelling out

²³ FIAN International, Rede Social de Justiça e Direitos Humanos, Comissão Pastoral da Terra (2018). The Human and Environmental Cost of Land Business. The case of MATOPIBA.

²⁴ Law No. 7292 of 12/06/2019, available at: www.legisweb.com.br/legislacao/?id=387180.

more clearly the priority to be given to the regularization of the tenure rights of rural communities and by adding specific provisions on collective titles (arts. 4 and 11). While affected communities and CSOs have criticized the lack of a clear process to ensure the effective participation of organizations of rural communities and social organizations, they seized the opportunity to voice their concerns and proposals and recognized the improvement of the law resulting from its revision. The revised law has made it easier for communities to apply for collective titles and some progress has been made in this regard. One example is the traditional community Brejeira Salto, which received its collective land title in 2021 from the INTERPI.²⁵ However, lengthy procedures and the slow pace of collective titling are putting communities at risk, while local land grabbers and agribusinesses create facts on the ground.

Therefore, the case of Piauí is illustrative of how addressing structural factors of dispossession, violence and ecosystem destruction need to be tackled in a comprehensive way, in order to effectively guarantee the right to land of rural communities. In this case, this includes specifically the driving factors of land grabbing, which are tied to the operations of international financial actors. Moreover, this example points to the deep connection between dispossession and ecosystem destruction as well as the way in which environmental legislation may increment land grabbing dynamics, especially when it relies on offsetting mechanisms. Finally, the example showcases how the introduction of digital registries entails risks of reproducing and reinforcing forms of tenure-related discrimination and exclusion.

2.2 Mali: Using the Tenure Guidelines to secure customary tenure rights

In Mali, peasant organizations successfully mobilized to apply the Tenure Guidelines to secure their customary rights and establish self-governance in a new Agricultural Land Law, including the rights of women and youth.

In the 2000s, Malian peasants faced a surge in land conflicts, expropriations and forced evictions, which were exacerbated by the 2008 global food price crisis. In addition to investors' quest for new investment opportunities, these dynamics were the result of policies of the Malian government to facilitate the entry of investors in mining and agriculture, offering large-scale land leases to foreign and national capital and creating an Agency for Promotion of Investments in Mali. Estimates from 2014 indicate that around 800,000 hectares of land had been grabbed at that time make way for large-scale agro-industrial projects.²⁶ At the same time, rural communities in Mali

²⁵ For more information, please see <https://social.org.br/artigo/artigos-portugues/280-comunidade-ribeirinha-conquista-direito-coletivo-a-terra>.

²⁶ Please see: www.fian.org/fileadmin/media/publications_2015/HOTL_Case_Dossier_Mali-EN.pdf

also faced more piecemeal processes of dispossession linked to the appropriation of and real estate speculation over peri-urban land, especially around the expanding capital, Bamako.²⁷ These processes have been compounded by the intensification of the armed conflict in the country from 2012 onwards.

In the described context, Malian grassroot and peasant organizations as well as non-governmental organizations have organized and mobilized to oppose land grabbing and defend communities' tenure rights. One of the key issues has been to ensure the respect of collective and customary tenure rights. In Mali, access to and control over land is co-governed by the modern law, in the form of the Land and Estate Code (CDF, *Code Domaniale et Foncier*) and customary systems, arising from ancestral traditions and local practices. These two systems coexist and are often contradictory. Even though customary land rights are formally recognized and guaranteed by the CDF, they are not effectively protected. The lack of standards to govern the recognition and registration of customary rights negatively impacts communities who lose their land to private investors or local elites.

In 2012, the organizations CNOP (Coordination Nationale des Organisations Paysannes), UACDDDD (Union des Associations et Coordinations d'Associations pour le Développement et la Défense des Droits des Démunis), AOPP (Association des Organisations Professionnelles Paysannes), CAD (Coalition des Alternatives Africaines Dette et Développement) and LJDH (Ligue des Jeunes Juristes pour le Développement Humain) formed a national platform against land grabbing, called CMAT (Coalition Malienne Contre l'Accaparement des Terres). CMAT documented land grabbing cases and land conflicts and supported affected communities in their struggles for justice. Through CNOP, the CMAT also participated in the development and negotiation process of the Tenure Guidelines in the CFS.

After their approval, CMAT used these Guidelines to support their advocacy work in support of Malian rural communities' tenure rights. Moreover, they became a key reference in the development of a new Agricultural Land Law (LFA, *Loi sur le foncier Agricole*), which was adopted in 2017. Concretely, the Guidelines provided concrete elements for the establishment of a multi-actor platform under the auspices of the Ministry of Rural Development and FAO Mali, which provided a consultation framework on the implementation of the Guidelines in the Malian context with an established work group composed of a variety of actors, from government representatives to the FAO, land experts and academics, and civil society organizations including CNOP and CMAT. The platform sought to function as both a space of exchange and discussion as

²⁷ Daniela Calmon, Chantal Jacovetti & Massa Koné (2021). Agrarian climate justice as a progressive alternative to climate security: Mali at the intersection of natural resource conflicts, *Third World Quarterly*, 42:12, 2785-2803, DOI: [10.1080/01436597.2021.1965870](https://doi.org/10.1080/01436597.2021.1965870), p. 6.

well as a practical tool for making proposals to the government on land and other related issues. Moreover, the Tenure Guidelines constituted the basis for CMAT's key demands for the Agricultural Land Law, in particular the recognition and respect for all legitimate tenure rights holders and their rights (including those not yet protected by law) as well as transparency in the consultation process and effective participation of civil society and affected communities.

The combination of policy dialogue within the multi-actor platform and continuous mobilization by CMAT resulted in the adoption of an Agricultural Land Law in 2017, which recognizes the collective, customary tenure rights of communities and formalizes management bodies from the villages themselves, through so-called Village Land Commissions (COFOV, *Commissions Foncières Villageoises*).²⁸ Although the law does not fill all the gaps of the Malian legal framework on land (the contradictions between the CDF and customary tenure systems remain), it puts in place provisions and mechanisms to ensure legal protection of customary tenure rights and systems on agricultural lands without transforming them into land titles and, thus, private property.²⁹ This approach is unique in West Africa and globally and while protecting rural people from land grabs and speculation, it also creates a space for communities' self-management of natural resources, including opening up spaces for agroecological production.

Since the approval of the law in 2017 and the issuing of a Decree of application in 2018, CMAT and other organizations are supporting the implementation by supporting the establishment of Village Land Commissions. These commissions are tasked with registering community lands and developing local conventions, which set out the rules according to which a given community manages its resources. By March 2023, CMAT had accompanied 308 communities in the process to establish Village Land Commissions in Mali.³⁰ The village land commissions have also served as a trust-building process and mechanism to resolve conflicts within communities by promoting dialogue among the different community members. A key characteristic of these commissions is their inclusion of all members of the community: from traditional authorities to peasants, fishers, and herders, to women and youth.

According to CMAT, the land commissions have allowed to secure communities' lands and have proven to be highly effective in halting expropriations, as well as stopping the expansion of extractive activities such as dredging mines and artisanal gold mining on arable land. They have

²⁸ The law is available at: www.droit-afrique.com/uploads/Mali-Loi-2017-01-foncier-agricole.pdf.

²⁹ For more information, please see: www.farmlandgrab.org/post/view/27237-communique-de-la-cmat-sur-la-loi-fonciere-agricole.

³⁰ Information provided by CMAT.

also contributed to stopping unsustainable practices like bushfires and abusive deforestation and improved the conservation of fruit trees.³¹

Importantly, the Agricultural Land Law establishes that women and youth must be represented in the Village Land Commissions and establishes that at least 15 % of land that is recognized for communities by the state or territorial collectivities must be attributed to collectives or associations of women and youth.³² Throughout the advocacy work and mobilizations, CMAT ensured that women and youth participated in public sessions. These demographics thereby gained confidence and became more vocal about their experiences of oppression, discrimination, and land grabbing. This evolution brought about a change in the women's self-perception and their understanding of their fundamental rights. The women no longer saw themselves as victims, but rather as actors, and thus began to engage actively with public authorities to manage community land.

The inclusion of women and youth in the Village Land Commissions and at all stages of the process through which rural communities decide on how to govern their land and resources represents a substantial shift in gender norms in customary community organizing and complies with the Tenure Guidelines' call for gender equality.³³ Traditionally, older men have occupied positions of authority such as village chiefs, heads of the family, and local representatives with the power to allocate land. In many cases, this arrangement has resulted in abuses of power wherein community land is appropriated for large-scale investments and urbanization processes. Meanwhile, although women were the most impacted by these decisions as they are responsible for reproductive care and fetching water, wood, and food from the land and forests, they were left out of decision-making processes and prohibited from voicing their opinions in public. Through the establishment of Village Land Commissions, customary rights were re-evaluated to include women's and youths' perspectives on natural resource management and to ensure access to land, equity and social justice for all members of the village.

Finally, the example of Mali illustrates the convergence of land and climate issues. Indeed, the country is among those considered particularly vulnerable to the effects of climate change, given the susceptibility of the Sahel region to droughts and considering estimates that the average temperature in parts of Mali has already risen by 1.5 to 2 °C between 1970 and 2006.³⁴ However, implementation of climate change mitigation and adaptation programs has been a challenge and results have mostly been underwhelming. Evidence of the impacts of climate change on rural

³¹ Information provided by CMAT, please see: <https://webelongtotheland.org/index.php/mali-social-struggle>.

³² Art. 13.

³³ In particular paras. 3B4, 4.6, 5.3, 5.4, 5.5, 21.1, 25.4 and 25.5.

³⁴ Daniela Calmon, Chantal Jacovetti & Massa Koné (2021). Agrarian climate justice as a progressive alternative to climate security: Mali at the intersection of natural resource conflicts, p. 7.

communities in Mali has resulted in a process in which CMAT has increasingly promoted the connection between community control over resources and environmental issues. CMAT has therefore been increasingly outspoken that peasants cannot adapt to the effects of climate change if they are not also secure in their access to and control over natural resources, and that environmental regeneration cannot occur in the long term if those who work and care for the land are separated from it in favor of corporations, investors or local elites.³⁵ Hence, the struggle for communities tenure rights has been closely connected to the promotion of peasant agroecology and sustainable, local food systems, underlining that genuine climate change mitigation and adaptation strategies necessarily require secure tenure rights as well as blocking and rolling back land grabs.³⁶

2.3 European Union: Putting land on the political agenda

This example shows how grassroots research, mobilization and advocacy work undertaken by European small-scale food producer organizations and CSOs and using the Tenure Guidelines has resulted in raising public awareness about burning tenure issues in the region and establishing a policy dialogue with European Union authorities.

Although many European Union (EU) member states actively participated in the development process of the Tenure Guidelines, and the latter explicitly state that they are global in scope (para. 2.4), many European governments did not initially consider that there was a need to implement the Guidelines in the region. An alliance of small-scale food producers' organizations and CSOs therefore undertook a participatory research process to analyze the tenure situation in Europe, as part of a broader strategy to use the Guidelines to address burning tenure issues in the region. In 2013, the European Coordination Via Campesina (ECVC), together with the Hands off the Land coalition published the outcomes of this process in a report entitled "Land Concentration, land grabbing and People's Struggles in Europe," which contains case studies from 12 European countries, and was the first comprehensive analysis of the land situation in the region.³⁷

Based on extensive research, the report showed that land grabbing and land concentration have become critical issues in Europe, while uncovering regulatory gaps at national and regional levels. It identified several issues, which require policy action, including: financialization of land – which results in so-called share deals, where land is transferred via selling of company shares on financial

³⁵ Ibid., p 10.

³⁶ Jennifer C. Franco, Saturnino M. Borras (2019), Grey areas in green grabbing: subtle and indirect interconnections between climate change politics and land grabs and their implications for research, Land Use Policy, Volume 84, 192-199, <https://doi.org/10.1016/j.landusepol.2019.03.013>.

³⁷ Transnational Institute, European Coordination Via Campesina (2013). Land concentration, land grabbing and people's struggles in Europe. Available at: www.tni.org/en/publication/land-concentration-land-grabbing-and-peoples-struggles-in-europe-0.

markets –; high land prices resulting in discrimination regarding access, use and control over land, especially by young aspiring farmers; artificialization of agricultural land, i.e. land use change to non-agricultural uses; and marginalization and invisibilization of usage rights. Another critical aspect in the EU context is the ways in which the Common Agricultural Policy (CAP) favors land concentration dynamics by linking subsidy payments to farm size. The reports analyzes these and other emerging issues in the light of the Tenure Guidelines, resulting in a call for the development of a European legislative framework on farmland, based on their principles and provisions – among others, the sections on markets (11), investments (12), taxation (19) and regulated spatial planning (20).

Continuous mobilization and advocacy work brought results in 2015, when the issue of land was taken up by EU institutions. A petition to the European Parliament, which was led by ECVC, and supported by several organizations of the Nyéléni Europe Network and called for the management of farmland as our common wealth, was followed by an own opinion document produced by the Economic and Social Committee of the EU, entitled “Land grabbing – a warning for Europe and a threat to family farming”.³⁸ In the same year, the European Parliament’s Committee on Agriculture and Rural Development (COMAGRI) commissioned and discussed a study assessing the extent of farmland grabbing in the EU.³⁹ Following constant public pressure, and thanks to the work of some committed members of the European parliament, the European Parliament then started a process to develop an own initiative report (INI) on land concentration and access to farmland in the EU. The elaboration of the report was closely accompanied by ECVC and allied organizations. The final report was adopted by an European Parliament resolution in 2017 whose recommendations contain several key demands of ECVC and its allies, including the creation of a European land observatory, a call to EU member states to put in place adequate land market regulation, and the development of guiding principles and recommendations on EU land governance, in line with the Tenure Guidelines.⁴⁰

Despite these important advances, European Union institutions, and in particular the European Commission, have remained reluctant to developing an EU legal framework on land, claiming that tenure governance is primarily a responsibility of EU member states and pointing to the need of balancing such policy action with the EU’s core principle of free movement of capital. In this

³⁸ European Economic and Social Committee (2015), Opinion of the European Economic and Social Committee on Land grabbing – a warning for Europe and a threat to family farming. Available at: www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/land-grabbing-europefamily-farming.

³⁹ European Parliament Committee on Agriculture and Rural Development (2015), Extent of Farmland Grabbing in the EU. Available at: [www.europarl.europa.eu/RegData/etudes/STUD/2015/540369/IPOL_STU\(2015\)540369_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/540369/IPOL_STU(2015)540369_EN.pdf).

⁴⁰ European Parliament (2017), European Parliament resolution of 27 April 2017 on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers (2016/2141(INI)). Available at : www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0197+0+DOC+PDF+V0//EN.

situation, ECVC decided to take the initiative of developing its own proposal for a EU farmland Directive through a participatory process involving its members, CSOs and legal experts. This process, which included internal capacity development on the Tenure Guidelines and the European land governance framework as well as establishing clear priorities from the perspective of European peasant and family farmers, resulted in the publication of a proposal for a European directive on the governance of agricultural land in March 2023.⁴¹

The proposal put forward by ECVC refers explicitly to the Tenure Guidelines and draws extensively from their provisions. It is intended as a minimal standard to ensure that agricultural land in the European Union is governed on the basis of a human rights-based approach, taking into account that land is not a commodity, but a critical resource fulfilling many different functions.⁴² Although the EU institutions have not yet agreed to develop a regulatory framework on this issue, advocacy and policy dialogue have resulted in the recognition of important challenges and shortcomings regarding tenure governance in Europe, but also the collection of more complete land data by the EuroStat. Moreover, some elements of the proposed legislation, such as the establishment of a European land observatory, may have a good possibility of being implemented in the short term.

Overall, this example illustrates how the approval of the Tenure Guidelines has allowed small-scale food producers' and civil society organizations to raise awareness about land governance challenges and gaps in a region, whose institutions considered this to be an issue concerning mainly countries of the Global South. The principles and provisions of the Guidelines have constituted a reference for bottom-up advocacy to ensure governance of natural resources for the public good and in consideration of the needs and aspirations of young and aspiring farmers.

2.4 Myanmar: Placing land and natural resources at the center of social transformation

In Myanmar, which is characterized by a complex social and political context, the Tenure Guidelines have served as an important reference and inspiration for CSOs to develop proposal for a different model of tenure policies within a broader social transformation.

Myanmar is rich in natural resources, but the control over these resources remains in the hands of very few actors – most of whom are part of the country's military or military-connected. For decades, rural people and communities across Myanmar have been losing access to land and

⁴¹ Available at: www.eurovia.org/publications/proposal-for-an-eu-land-directive.

⁴² This was recognized by the Court of Justice of the European Union (CJEU), which ruled that agricultural land is not a commodity like any other but rather a precious, scarce and threatened resource. See: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1018\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1018(01)&from=EN).

natural resources because of various processes of dispossession and because of the socially differentiating currents of free market relations in the rural areas. This trend encompasses aquatic resources, forest resources, and land resources. Over the past ten years, land has been revalued in a dramatic way by powerful economic actors as they seek to gain control over land and other natural resources like water, forests, fisheries and the oil and minerals in the soil.⁴³

This trend and the singular meaning of land as a source of extraction to generate profits that it entails has been encouraged and codified by several new land-related laws and policies. A series of land laws – mostly designed behind closed doors – since 2012 has changed the legal basis for land use rights while establishing a legal land market in order to encourage domestic and foreign investment in land.⁴⁴ Under the 2012 Farmland Law, for instance, plots of land can be legally bought and sold with land use certificates (LUCs), thereby inaugurating a land market based on Western-style (individual) private property rights. The legalization of a land market without strong safeguards for the rights of rural people and communities has put them in a vulnerable position, because many of them do not have formalized tenure rights.

Under another law, the so-called Vacant, Fallow, and Virgin Land Law, land that is not currently titled and being used in certain ways is seen as a ‘wasted asset’. The law allows the central government to redefine untitled farm and forestlands as vacant, fallow, or virgin land and reallocate them to domestic and foreign investors. This also applies to community-managed resources, such as village forests, waterways, fishponds and grazing lands, which become susceptible to confiscation, despite being crucial to local livelihoods and the realization of rural people’s and communities’ realization of the right to food. The law allows such lands to be used for the production of industrial crops to occupy up to a maximum of 50,000 acres for a thirty-year lease, with the possibility for renewal. To the people and communities who have been living and working in these areas and whose rights and livelihoods depend on the access, use, and control over land and other natural resources, that their land is being labelled and grabbed as ‘vacant land’ is absurd and offensive.⁴⁵

Shrinking access to, use of, and control over land for people and community is especially alarming because land is an entry point for accessing forest and aquatic resources too, and because they need a range of access to an array of natural resources for their economic production and social reproduction activities. In this context, it should be noted that Myanmar is one of the world’s most

⁴³ Transnational Institute (2015). The Meaning of Land in Myanmar. A Primer. Available at: www.tni.org/files/publication-downloads/tni_primer-burma-digitaal.pdf.

⁴⁴ For more information, please see: Doi Ra, Sai Sam Kham, Mads Barbesgaard, Jennifer C. Franco & Pietje Vervest (2021), The politics of Myanmar’s agrarian transformation, *The Journal of Peasant Studies*, 48:3, 463-475, DOI: [10.1080/03066150.2021.1901689](https://doi.org/10.1080/03066150.2021.1901689).

⁴⁵ Transnational Institute (2015). The Meaning of Land in Myanmar.

ethnically diverse countries, with ethnic minorities making up an estimated 30-40 % of the total population, and ethnic states (home to mostly poor and often persecuted ethnic minority groups) occupying some 57 percent of the total land area.⁴⁶ Ethnic minority groups have long felt marginalized and discriminated against, resulting in a large number of ethnic armed opposition groups fighting for ethnic rights and autonomy, against the central government dominated by a narrow elite segment of the ethnic Burman majority. Systematic exploitation of the natural resources in these areas has ensured that economic grievances likewise play a part in fueling a civil war that has devastated the country for 60 years. Most of the people living in areas particularly affected by the civil war are ethnic minority farmers engaged in upland cultivation using customary farming practices passed down from earlier generations, and whose relationship with the land is spiritual, cultural and social.⁴⁷

Yet people in Myanmar are resisting land grabbing. Several civil society groups within Myanmar, including the Land in our Hands network (LIOH or Doe Myay in Burmese), are using action research to document and convey experiences of land grabbing and its impacts upon communities throughout Myanmar and to highlight the value of customary practices. The results were published in a report entitled ‘Through Land Grabbing, Destroy People Lives: The Impact of Land Grabbing on communities in Myanmar’, which voices the experiences and perspectives of over 2,500 members of the network within 329 villages across seven regions. It documents the diverse and profound ways that the widespread and systematic land confiscations have impacted their lives, calling for a restoration of rights and principles, particularly for Myanmar’s ethnic minority groups.

Moreover, grassroots groups and CSOs across the country have analyzed laws and policies to identify the factors and provisions that facilitate dispossession and displacement. For example, LIOH has produced numerous analyses of existing laws and policies, using the Tenure Guidelines as one key reference. In 2014, the network analyzed the government’s draft National Land Use Policy. Three years later, the LIOH made a comprehensive critical analysis of proposed amendments of the 2012 Farmland Law. All of these have been the result of in-depth discussion among a vast array of organizations and people from different regions, constituencies, and ethnic groups. In 2018, LIOH spearheaded a nationwide grassroots campaign against the government’s Vacant, Fallow and Virgin Land Management Law.

A central element of all these activities has been the documentation of the diversity of Myanmar’s rural population’s customary tenure and management systems, including the widespread use of shifting cultivation, which are not considered, but rather undermined, by the policy and legal

⁴⁶ Transnational Institute (2015). The Meaning of Land in Myanmar.

⁴⁷ Ibid.

framework. In a collective process, LIOH has articulated rural people's and communities' proposals for an alternative, human right-based approach. Throughout all of these activities, and in addition to basing their proposals on the realities and customs on the ground, CSOs have used the Tenure Guidelines and other internationally recognized instruments to inform their analysis and support their demands. In the context of Myanmar, a critical issue has been to bring together an array of ethnic groups, which have and need different forms of access and use of land, fisheries and forests.

In one notable example, CSOs from numerous ethnic groups across Shan State joined forces to research and document customary land systems and eventually to produce a joint report with their findings and recommendations. Similarly, a number of ethnic armed organizations (EAOs) have taken part in developing land policies that value inclusion, equity and an ecologically healthy future for all. One CSO network – the Burma Environmental Working Group (BEWG) – further developed a 'roadmap for resource federalism'.

The latter example shows how the issue of tenure of land, fisheries and forests as well as its governance is part of a broader social and political transformation proposed by CSOs from Myanmar. For them, the February 2021 coup has made the need to forge new social foundations for a future multi-ethnic federal democratic system of government painfully clear. An approach to tenure governance, which is centered around the needs and rights of rural people and communities in all their diversity, gender-sensitive, and considers intergenerational justice, is a central piece of CSOs' vision of a democratic and just future. The complex political and social context of Myanmar makes changes in tenure governance difficult, but what the described activities show is how instruments like the Tenure Guidelines can provide an important reference and inspiration for CSOs to develop concrete proposals towards a different model, which is based on human rights and equity.

2.5 Egypt: A missed opportunity to address a historical land conflict

The Nubian people are part of a land conflict that is rooted in the historical displacement of their communities due to the construction of the Aswan High Dam and the subsequent denial of their rights to their ancestral lands. Recognition of the Nubians' right to return to their lands in Egypt's 2014 Constitution has not solved the conflict and demands for restitution, compensation and justice from the Nubian community continue.

The Nubians are an ethnic group that has lived in the Nile Valley for thousands of years, primarily in what is now southern Egypt and northern Sudan. The Nubians face multiple forms of

discrimination,⁴⁸ which are to a great extent rooted in the displacement from their ancestral lands for the construction of dams on the Nile River since the beginning of the 20th century, and especially the construction of the Aswan High Dam in the 1960s. The dam was built to provide hydroelectric power and irrigation water for agriculture, but it also caused the displacement of approximately 50,000 Nubians who lived along the Nile River. The flooding of their ancestral lands and the creation of Lake Nasser forced many Nubians to relocate to other areas – often situated in the desert – and they claim not to have been properly compensated for their losses.

Since then, the Nubian people and allied CSOs have been campaigning for their right to return to their ancestral lands and for compensation for the losses they suffered. However, the Egyptian government has been reluctant to grant their demands, arguing that the lands in question are needed for development projects. In recent years, there have been several protests and sit-ins organized by Nubian groups staged protests and submitted formal complaints to the government and other authorities to demand their rights, including a complaint to the African Commission on Human and People’s Rights in 2021. In 2016, Nubian youth organized a so-called Nubian Return Caravan to demand policy action to ensure their return to their ancestral lands.⁴⁹ Protests and mobilization have been met with repression and criminalization by state authorities, including the arrest of Nubian activists.⁵⁰

The 2014 Egyptian constitution recognizes the Nubian Indigenous people’s right to return to their original lands and Article 236 obliges the government to design an economic development plan for marginalized border areas, including Nuba lands near Egypt’s southern borders. The provision also obliges the government to carry out projects to facilitate the return of Nubians to their original lands and their development. However, a presidential decree from that same year (Decree 444 of 2014) classified 16 villages on the Nubian’s ancestral lands as military zones and prohibited residents from living there.⁵¹

The Nubian people and CSOs denounce that the right to return to their ancestral lands has not been implemented and that the historical injustices suffered by the Nubian people have remain unaddressed. This includes the recognition and protection of their tenure rights. In particular, the

⁴⁸ International Labour Organization and African Commission on Human and Peoples’ Rights (2009). Overview report of the research project by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries. Available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_115929.pdf. This report states that the Nubians are not recognized as Indigenous Peoples by the Egyptian state, and consequently, neither are their language and culture. Discrimination also happens through the absence of laws and policies that consider the special circumstance of the Nubians and other Indigenous Peoples.

⁴⁹ Please see: <https://timep.org/2017/10/19/nubians-the-egyptian-state-and-the-right-of-return>.

⁵⁰ Please see: www.amnesty.org/en/latest/press-release/2017/09/egypt-release-24-nubian-activists-detained-after-protest-calling-for-respect-of-their-cultural-rights.

⁵¹ Ibid.

lack of recognition of customary and collective land tenure and management systems by the Egyptian state results in the Nuba lands being considered by authorities as belonging to the state.⁵² According to CSOs, authorities have declared their intention to sell the remaining Nuba lands, which would destroy any hopes of the Nubian people to return to their ancestral territories.

To claim their tenure rights, members of the Nubian people have filed court cases to demand the restitution to their lands, in addition to compensation for the losses suffered by them. In addition, a formal complaint has been filed to the African Commission on Human and People's Rights, in which the Nubian People demand the stopping of the sale by the Egyptian state of Nuba lands, the cancellation of presidential Decree 444, and the implementation of Article 236 of the Constitution through the establishment of a commission for the resettlement, reconstruction and development of the Nubian's ancestral lands.

Despite efforts by Nubian organizations and CSOs to use reference to the international human rights framework, including the Tenure Guidelines, this has not resulted in concrete steps to address this historical land conflict, despite the fact that the Guidelines' provisions on the rights of Indigenous Peoples' and other communities with customary tenure rights (section 9) and on restitution (section 14) could provide concrete elements to inform policy action in this regard. This reflects a general tendency of relatively low uptake of the Tenure Guidelines in the region. Indeed, organizations of small-scale food producers and civil society have pointed out that despite substantial efforts, only few initiatives and programs have been effectively implemented and that little information is available about the actions undertaken by governments, donors and multilateral institutions.⁵³ This corresponds to the information provided by the GDPRD's 'Land Governance Programme Map' (see chapter 1.3), according to which the region received only 3 % of Tenure Guidelines-related projects covering only 3 % of the overall funding spent by donor governments and multilateral organizations.

⁵² International Labour Organization and African Commission on Human and Peoples' Rights (2009). Overview report.

⁵³ Information based on interviews with CSOs from the region.

3. Some lessons learnt from ten years of use and application of the Tenure Guidelines

Based on the experiences of small-scale food producers' and civil society organizations, including in the case examples of the previous chapter, it is possible to draw some conclusions from the first ten years of use and application of the Tenure Guidelines. What emerges clearly is that a variety of factors determine whether the Tenure Guidelines contribute to improving tenure governance outcomes, particularly regarding the respect and protection of the tenure rights of small-scale food producers, Indigenous Peoples, and marginalized people and communities. Local, national, and regional contexts matter and there is certainly no one size fits all recipe for successful application. However, civil society experiences so far allow to identify a few key factors. Generally speaking, from a social movement perspective, positive outcomes depend on whether the Guidelines can contribute to change existing relations of power. Three key factors stand out as critical in this regard:

1. Prioritizing marginalized groups such as peasants, Indigenous Peoples, small-scale fishers, pastoralists, forest people, among others, as called for by para. 1.1 of the Tenure Guidelines: Ensuring agency and effective participation of these groups and their organizations in tenure-related policy processes is a key issue. As the examples of Mali and the European Union show, this may even be a critical factor to create the political will among state institutions to take action in the first place and to establish mechanisms for policy dialogues. In many cases however, governments have rather pursued existing policies, including those that promote corporate land deals and market-based approaches and who entail serious risks of undermining communities' and people's control over their lands, fisheries, forests, and territories.
2. Addressing structural issues generating resource concentration, land dispossession, violence against communities and people, discrimination, and ecosystem destruction: The Tenure Guidelines clearly state that governance of tenure is closely linked to broader policy goals such as the realization of the right to food and nutrition, poverty eradication, sustainable livelihoods, social stability, gender equality, environmental protection, and sustainable social and economic development.⁵⁴ They further call for a holistic approach in their implementation, recognizing that control over land, fisheries, and forests is closely related to their uses.⁵⁵ However, some states, international institutions and non-governmental organizations have tended to apply a narrow interpretation of tenure, focusing on "access to land", without considering the interrelationship between natural resources and a number of

⁵⁴ Para. 1.1.

⁵⁵ Para. 3B5.

human rights. Focusing on “access to land” does not adequately capture the complex and multifaceted relationship that people have with the land and fails to address the power relationships that underpin landed relations.

As the analysis of donor support to Tenure Guidelines implementation in chapter 1.3 has shown, many programs and projects have focused on land administration and technical matters, which are undoubtedly important but need to be addressed within the broader context of existing patterns of discrimination and inequality. Moreover, while meaningful advances have been made in the case of Mali and (to a lesser extent) in the Brazilian state of Piauí regarding the legal protection of collective and customary rights, tenure is predominantly viewed as private property. Consequently, securing land tenure has often been interpreted as granting individual ownership rights, instead of providing legal protection to community and customary tenure systems, ensuring the equitable distribution of land and promote the social and sustainable use of natural resources. Approaches and interventions focusing on “securing land tenure” further tend to leave the structural factors that undermine people’s and communities’ control over land, fisheries, and forests out of the picture. In sum, such approaches fail to consider that land, fisheries and forests are, above all, a social relationship as well as fundamental for the relationship of human societies with their environment.

3. Consistently apply human rights in tenure governance as well as policies across sectors:

As the examples show, tenure cannot be understood and addressed in an isolated way. Land, agriculture, fisheries, investment, trade, finance, climate change and biodiversity are intertwined issues and need to be addressed in a comprehensive and coordinated manner, using a human rights-based approach, as called for by the Tenure Guidelines. The example of the Brazilian state of Piauí shows very clearly that the dispossession of rural communities cannot be stopped without addressing the enabling factors of financial speculation over land, monoculture expansion, and deforestation, among others. The case examples from Myanmar and Egypt also show that land dispossession is tied to deeply rooted forms of discrimination, including on the basis of ethnicity and gender. As the following chapter will show, it is more than ever paramount that tenure governance be embedded in broader policies under a coherent approach that is based on human rights, including the rights of peasants and other people working in rural areas, the rights of Indigenous Peoples, women’s rights, and the rights of future generations.

4. Looking ahead: the Tenure Guidelines in the context of multiple, interconnected crises

4.1 Old and new challenges to tenure and the right to land

Many events and developments have taken place since the approval of the Tenure Guidelines in 2012. Whereas many of the structural challenges regarding tenure and tenure governance persist (such as land grabbing, land concentration, structural discrimination, gender inequality etc.), the developments over the past decade have changed the context in which the Guidelines need to be implemented. Therefore, using and applying the Tenure Guidelines today requires addressing both, old and new challenges.

There is broad recognition today, that the world is facing multiple, interrelated crises (food, health, ecological, economic, political). Although land, fisheries and forests are not always at the center of attention of public and media discourse, they are affected in many ways. At the same time, addressing tenure issues with a human rights-based approach and recognizing the variety of tenure rights and systems can be an important part of responses to these crises. The following paragraphs briefly describe some of the most important dynamics impacting the right to land today.

4.1.1 Climate change and biodiversity decline

The climate change and biodiversity crises have intensified quickly over the past ten years. The impacts of global warming and extreme weather events on communities around the world and the challenges they bring along cannot be ignored anymore. Similarly, the rapid loss of biodiversity and rampant ecosystem destruction pose dramatic problems to rural people. At the same time, securing tenure rights and ensuring more equitable distribution of land, fisheries and forests are increasingly seen as critical contributions to addressing the ecological crises.

Concretely, climate change and the closely related ecological crises (in particular biodiversity loss and pollution) affect the right to land and other tenure-related human rights in several ways, including:

- Land and resource grabs, and ensuing land use change (deforestation, urbanization and “artificialization”, mining, industrial activities etc.) are among the main drivers of global warming, biodiversity loss and ecosystem destruction;
- The effects of climate change and ecosystem destruction often increase and exacerbate land conflicts and dispossession of communities;
- Climate change mitigation as well as ecosystem restoration and conservation entail serious risks of intensifying dispossession of communities;

- Climate change, land degradation, biodiversity loss and ecosystem destruction are used by some power and resourceful actors to justify dispossession of communities and people.

At the same time, realizing the right to land by communities and people is fundamental to their ability to act as stewards of ecosystems as well as to conserve, restore and sustainably use land and biodiversity. The Tenure Guidelines can play a critical role in supporting communities' sustainable land use and management practices, including through redistributive reforms for social and environmental reasons.⁵⁶ They are also important to ensure that tenure rights are respected and protected in the context of climate change mitigation and conservation programs, including the implementation of so-called “nature-based solutions”. Indeed, the implementation of states' and corporations' “net zero” pledges and the increase of carbon markets and other offsetting mechanisms entail serious risks of dispossessing people and communities from their land, fisheries and forests.⁵⁷ The explicit reference to the Tenure Guidelines by the United Nation Convention to Combat Desertification (UNCCD) in its decision on Land Degradation Neutrality is a positive example, although tenure-related risks remain.⁵⁸

4.1.2 Food systems transformation

While small-scale food producers and CSOs that are part of the food sovereignty movement have been calling for a profound transformation of food systems for many years, this issue has skyrocketed to the top of national and international debates during the COVID pandemic since 2020. Indeed, the crisis caused by the pandemic and governments' responses to it have laid bare the profound inequalities of many societies and the deep problems of the industrial food system. However, despite broad recognition of the fact that extractive activities, including agribusiness, are responsible for the destruction of ecosystems and that this leads to the emergence of new pathogens, the international and national responses have provided punctual support to the most vulnerable and marginalized people, while focusing on maintaining global value chains. This has happened despite the fact that local food systems have proven to be more resilient, providing food to communities and people facing shortages and food insecurity in the context of lockdowns.⁵⁹ Moreover, the so-called post-COVID recovery programs in some countries have included a revival of investment

⁵⁶ Tenure Guidelines, para. 15.3.

⁵⁷ See, for instance: Dooley K., Keith H., Larson A., Catacora-Vargas G., Carton W., Christiansen K.L., Enokenwa Baa O., Frechette A., Hugh S., Ivetic N., Lim L.C., Lund J.F., Luqman M., Mackey B., Monterroso I., Ojha H., Perfecto I., Riamit K., Robiou du Pont Y., Young V., 2022. The Land Gap Report 2022. Available at: www.landgap.org; and <https://webelongotheland.org/index.php/brazil-injustice-carbon-markets>.

⁵⁸ UNCCD decision 26/COP.14.

⁵⁹ Please see: www.foodsovereignty.org/food-sovereignty-in-a-time-of-pandemic.

promotion approaches and pro-business policies, which have caused marginalization of rural people and communities in past decades.⁶⁰

The vulnerability of global supply chains and trade systems of food and agricultural inputs has been further exposed by the intensification of the global food crisis through the consequences of Russia's invasion of Ukraine in 2023, thus intensifying calls for a transformation of food systems.⁶¹ Small-scale food producers organizations and CSOs have repeatedly emphasized that such a transformation should support localized, sustainable food systems that are based on agroecology, an approach that has been approved both by the FAO and the CFS.⁶²

Land and territories are central to these debates, but they are rarely prominently discussed in this context. One example is the recently adopted Voluntary Guidelines on Food Systems and Nutrition, which only marginally address land.⁶³ However, small-scale food producers organizations and CSOs have emphasized that a transition to sustainably, localized, just and social food systems will require the equitable distribution of land, fisheries and forests as well as effective protection of tenure rights of communities and people. One example is the Movement of Landless Rural Workers in Brazil (Movimento dos Trabalhadores Rurais Sem Terra, MST) who has pointed out the connection between the impacts of the COVID pandemic and land concentration, and has called for redistributive reforms as part of the response to the crisis, particularly the economic recession and the escalation of inequalities that it entailed.⁶⁴ Similarly, CSO networks have called for public policies that reduce countries' dependency on industrial external inputs through global supply chains and rather focus on supporting small-scale food producers' production, management and tenure systems.⁶⁵

4.1.3 Conflict, occupation, and war

Although the Russian invasion of Ukraine in 2022 and the ongoing war has triggered a lot of media and public attention to the connection between armed conflict, hunger and malnutrition, this reality

⁶⁰ See, for instance: <https://focusweb.org/covid-19-updates>.

⁶¹ FIAN International (2022). War in Ukraine: Recurring Food Crises expose systemic Fragility. Available at: [www.fian.org/files/files/Ukraine_Report_fin\(1\).pdf](http://www.fian.org/files/files/Ukraine_Report_fin(1).pdf).

⁶² See, for instance: FAO (2019). The Ten Elements of Agroecology. Available at: www.fao.org/3/ca7173en/ca7173en.pdf; and CFS (2021). Policy recommendations on agroecological and other innovative approaches for sustainable agriculture and food systems that enhance food security and nutrition. Available at: www.fao.org/agroecology/database/detail/en/c/1402652.

⁶³ CFS (2021). Voluntary Guidelines on Food Systems and Nutrition. Available at: www.fao.org/fileadmin/templates/cfs/Docs2021/Documents/CFS_VGs_Food_Systems_and_Nutrition_Strategy_EN.pdf.

⁶⁴ Please see MST's Emergency Plan for People's Agrarian Reform, available at: <https://mst.org.br/2020/06/05/mst-lanca-plano-emergencial-de-reforma-agraria-popular>.

⁶⁵ Please see: www.foodsovereignty.org/food-sovereignty-in-a-time-of-pandemic.

has been emphasized by a variety of institutions for several years. The FAO's 2021 The State of Food Security and Nutrition in the World (SOFI) report, for instance, named conflicts as one of the major drivers of food insecurity and malnutrition.⁶⁶ Similarly, the United Nations Special Rapporteur on the Right to Food has dedicated his most recent report to the Human Rights Council to the topic of how different forms of violence in food systems harm people and generate the conditions that lead to human rights violations.⁶⁷

The connections between land and conflict, occupation and war are manifold and complex. Not only are land disputes or unequal distribution of land factors that trigger armed conflicts, wars also often impact tenure rights in many ways, creating (temporary and/or permanent) displacement, ecosystem destruction and land degradation, among others.

4.1.4 Financialization of land and territories

While land and resource grabbing already was a major concern at the time of the development and adoption of the Tenure Guidelines (see chapter 1.1), the past ten years have allowed to better understand the drivers and characteristics of land deals as well as their short-term impacts and longer-term implications. Recent critical research has, for instance, recognized that some of the early estimates were rather high, while also emphasizing that so-called failed land deals have, in many cases, still had important impacts on the rights of local communities.⁶⁸

One of the aspects that have been identified as particularly relevant by small-scale food producers' organizations, CSOs and researchers, is the increasingly important role of financial actors and markets in the context of land deals, which is sometimes referred to as "financialization".⁶⁹ Through this process, land, fisheries, forests, and other natural resources are transformed into assets and "investment opportunities" for financial actors, such as banks, investment funds, asset management companies, pension funds, etc. Financialization increases risks of human rights abuses and

⁶⁶ FAO (2021). The State of Food Security and Nutrition in the World 2021. Available at: www.fao.org/state-of-food-security-nutrition/2021/en.

⁶⁷ Available at : www.ohchr.org/en/documents/thematic-reports/ahrc5240-conflict-and-right-food-report-special-rapporteur-right-food.

⁶⁸ See, for instance: Saturnino M. Borras, Jennifer C. Franco, Tsegaye Moreda, Yunan Xu, Natacha Bruna, Binyam Afework Demena (2022), The value of so-called 'failed' large-scale land acquisitions, Land Use Policy, Volume 119, 2022, <https://doi.org/10.1016/j.landusepol.2022.106199>; and www.farmlandgrab.org/post/view/30541-what-happened-to-land-grabs-in-africa.

⁶⁹ See, for instance: FIAN International, Focus on the Global South, Transnational Institute (2020), Rogue Capitalism and the Financialization of Territories and Nature. Available at: [https://fian.org/files/files/Rogue_Capitalism_and_the_Financialization_of_Territories_and_Nature_\(1\).pdf](https://fian.org/files/files/Rogue_Capitalism_and_the_Financialization_of_Territories_and_Nature_(1).pdf); Madeleine Fairbairn (2014), 'Like gold with yield': evolving intersections between farmland and finance, The Journal of Peasant Studies, 41:5, 777-795, DOI: [10.1080/03066150.2013.873977](https://doi.org/10.1080/03066150.2013.873977); Jennifer Clapp, S. Ryan Isakson (2018), Risky Returns: The Implications of Financialization in the Food System. Development and Change, Volume 49, Issue 2, 437-460. <https://doi.org/10.1111/dech.12376>.

violations for communities, creates new forms of dispossession, increases the concentration in the hand of power and resourceful actors, and creates additional challenges for accountability of state and non-state actors.

One important feature of financialization is the use of opaque investment webs involving various actors (companies involved in production, financiers/financial investors, traders and retailers throughout the value chain etc.) that are behind many land deals and make them possible in the first place. Importantly, this not only concerns the production of (agricultural) commodities, but also infrastructure development, mining, industrial activities, urbanization, tourism, conservation, climate change mitigation etc. Such investment webs, which may include the use of tax havens and offshore financial centers, make the attribution of responsibilities for human rights abuses and environmental crimes more difficult for local people and governments alike, while also requiring expanding interventions beyond the traditional realm of land policies, namely considering financial regulations.

4.1.4 Digitalization

The use of digital technology in the land sector has increased substantially since the adoption of the Tenure Guidelines and is promoted by governments, international institutions, and business actors as a way to increase tenure security, transparency and efficiency of land administration, and to protect against fraud and corruption. Despite these promises, land-related digitalization has also led to the impairment, or even nullification, of the enjoyment of human rights.

Two aspects are of critical importance when looking at digital technologies in the context of land: Firstly, digital technologies are pivotal to obtain and make accessible location-specific land-related data and information (such as soil quality, production outputs, water availability, forest cover, rainfall patterns, land price developments etc.). This is key for corporate investors and allows financial brokers in any part of the world to access information for a plot of land in, say, Colombia. In the process, land is transformed into data, which is functional to its transformation into an investible asset. Secondly, the digitalization of land administration data and infrastructure, such as cadastral data and digital registries, increasingly allows for land transactions in the virtual sphere, generating (potential) abuses of power of those who gather, manage and access that information.

The ability to collect, access, store, process, analyze and use land-related data therefore increasingly determines who controls land and related natural resources. Recent research of CSOs has documented some of the ways in which digitalization reproduces existing patterns of exclusion,

discrimination and inequalities.⁷⁰ In addition to concerns regarding the unequal access to digital technologies and land registries, a key problem is the way in which certain tenure rights, such as usage rights as well as collective and customary rights, are made invisible, thus increasing dispossession and land conflicts. Whereas civil society organizations in different parts of the world have engaged in bottom-up, community-driven participatory mapping, in some cases using Geographic Information Systems (GIS),⁷¹ asymmetries of power often make such efforts vain when mapped areas collide with land claimed by corporations or the state.

Importantly, geospatial and other land-related data is increasingly used for spatial and land use planning, including in the context of climate change responses, conservation and land restoration, thus going beyond what has typically been the realm of land administration and governance. As described in chapter 3.1, the introduction of a digital environmental cadaster in Brazil, for instance, has created new forms of dispossession for rural communities.

4.1.5 Gender and intergenerational justice

Although the fundamental role of women in food production, agriculture, fisheries, livestock rearing, forestry and the realization of the human right to food and nutrition is broadly and increasingly recognized, structural gender discrimination and the marginalization of women and girls remain a major issue, including regarding tenure of natural resources. Advances regarding women's rights are the result of longstanding women's struggles but the Guidelines can contribute to bring about change. Legal and policy frameworks in many countries, which continue to marginalize and discriminate women and girls remain a persistent challenge. Gender equality is also an issue that needs to be addressed within customary tenure systems through adequate processes and in the context of supporting the recognition and protection of such systems, as called for by the Tenure Guidelines.

Secure and equitable tenure is also a central issue of intergenerational justice and of realizing the right to food and nutrition today and in the future. In many countries young people face challenges

⁷⁰ FIAN International (2020). Disruption or Déjà Vu? Digitalization, Land and Human Rights. Case Studies from Brazil, Indonesia, Georgia, India and Rwanda. Available at: www.fian.org/files/files/FIAN_Research_Paper_Digitalization_and_Land_Governance_final.pdf. See also GRAIN (2020). Digital fences: the financial enclosure of farmlands in South America. Available at: <https://grain.org/en/article/6529-digital-fences-the-financial-enclosure-of-farmlands-in-south-america>. IT For Change (2022). Recasting Land Tenure Rights in the Data Epoch: Insights from a Country Case Study of India. Available at: <https://itforchange.net/recasting-land-tenure-rights-data-epoch-insights-from-a-country-case-study-of-india>.

⁷¹ One example is Indonesia where a consortium of non-governmental organizations has developed maps covering an area of over 10 million hectares of Indigenous Peoples' territories, see FIAN International (2020). Disruption or Déjà Vu? Digitalization, Land and Human Rights. Case Studies from Brazil, Indonesia, Georgia, India and Rwanda, chapter III.2.

to access land to produce food for themselves and for others, create jobs and protect the environment, due to land grabbing and land concentration, dysfunctional land markets, landlessness, insufficient access to information and education, lack of access to credit and technical assistance, and limited involvement in policy dialogue, among others. Land grabbing, violence, ecosystem destruction and lack of perspectives further cause many young people to leave rural areas and migrate to urban areas and other countries. Ensuring the right to land for young people is critical to provide them with opportunities to build a self-determined and dignified life, both for the children and grandchildren of today's small-scale food producers, as well as for urban youth who want to return to the countryside. It is urgent to give young people a future in agriculture, fishing, animal herding, and community food processing and distribution, to ensure sustainable, localized, healthy and just food systems that will feed future generations.

4.1.6 Violence against land rights defenders

Around the world, communities and social organizations defending their lands, fisheries, and forests and mobilizing for land restitution and redistribution are victims of threats, intimidation, and physical violence. In recent years, the rise of authoritarian and racist governments in several countries has further exposed communities and movements to repression and criminalization as well as violence committed by state forces, para-military groups, or private “security” firms. Some governments have embraced discourses, policies, and practices that warrant and even incite violence against grassroots organizations and marginalized groups. These developments have led to an alarming level of erosion of human rights and democracy at national and international levels. Consequently, the fundamentals for framing land demands and campaigning have changed. Paragraph 4.8 of the Tenure Guidelines, which calls upon states to respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, Indigenous Peoples, fishers, pastoralists and rural workers, therefore remains extremely relevant and important.

4.1.7 Inequality and land concentration

As stated by Antonio Guterres, the UN Secretary General, “inequality defines our time”.⁷² The issue has also been recognized as a priority by the CFS, which has initiated a work stream on Reducing Inequalities for Food Security and Nutrition.⁷³ The distribution of land in particular is a key indicator for structural inequalities and discrimination in societies and small-scale food producers’

⁷² Please see: <https://news.un.org/en/story/2020/07/1068611>.

⁷³ Please see: www.fao.org/cfs/workingspace/workstreams/inequalities-workstream/en.

organizations in many countries around the world have demanded redistributive reforms to ensure a broad equitable distribution of land for decades. Their pressure has contributed to laying the ground for an intergovernmental agreement on agrarian reform as an outcome of the 2006 ICARRD.

Recent research has confirmed what social movements of small-scale food producers have denounced for a long time, namely that land inequality and concentration are major issues, which has acquired unsustainable dimensions. Indeed, what this research shows is that official statistics and metrics such as the Gini coefficient do not fully capture the degree of land concentration and that the real extent of the problem is even greater than hitherto acknowledged.⁷⁴ Moreover, the wealth captured from agricultural land value benefit to a very large extent a small number of big landowners. In the face of these realities, addressing the concentration of ownership and control over land, fisheries and forests through restitution and redistribution become urgent matters in order to overcome structural inequalities and discrimination within societies and achieve the Tenure Guidelines' objectives.

4.2 The Tenure Guidelines within an evolving human rights framework

The old and new challenges described in the previous chapter underline that if anything, the relevance of the Tenure Guidelines and the guidance they provide has increased. Although the overall context has undoubtedly changed since the Guidelines' adoption, the principles and specific guidance set out in them remain relevant and important. The dimension of the challenges and the interwovenness of current crises further point to the need of a comprehensive and political implementation for human rights-based natural resource governance. The control over land, fisheries and forests as well as their management and governance have always been deeply political issues and continue to be so today.

The difficulties in implementing the Tenure Guidelines and the checkered results ten years after their adoption have led to voices being raised – including by the former chair of the negotiations, Gregory Myers – that the Guidelines are not specific and technical enough.⁷⁵ The argument goes, that the guidance provided is not practical enough to be easily implemented by technical staff on the ground. In conversations with representatives of development cooperation agencies, the author has also heard the concern that the Guidelines do not sufficiently address some of the emerging issues, thus implying that a revision of the Guidelines would be necessary. While it is true that some relevant aspects of tenure are not explicitly addressed by the Guidelines (e.g. digitalization) or not

⁷⁴ International Land Coalition/Oxfam (2020). Uneven Ground. Land Inequality at the Heart of Unequal Societies. Available at: www.landcoalition.org/en/uneven-ground/report-and-papers.

⁷⁵ www.sciencedirect.com/science/article/pii/S0264837721005937.

dealt with in the required depth (e.g. climate change), it is a delusion that a technical version of the Tenure Guidelines would be appropriate to solve the complex issues around land, fisheries and forests. As shown in the case examples as well as the emerging tenure-related challenges and as recognized by the Guidelines themselves, advancing toward human rights-based tenure governance requires addressing structural issues and setting clear priorities, both of which are necessarily political and require participatory democratic processes, rather than merely technical interventions.

Rather than calling for a new, “technical” version of the Tenure Guidelines are misguided, it is important to understand and use them as a part of an evolving normative framework. Since their adoption, important advances have been made regarding the recognition of the close interconnectedness of natural resources and human rights as well as the recognition of land as a human right, particularly of peasants and other people working in rural areas. Key human rights instruments explicitly addressing land are the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)⁷⁶, General Recommendation No. 34 on the Rights of Rural Women of the UN Committee on the Elimination of Discrimination Against Women (CEDAW),⁷⁷ General recommendation No.39 (2022) on the rights of Indigenous women and Girls of the CEDAW,⁷⁸ as well as General Comment No. 26 on Land and economic, social and cultural rights of the UN Committee on Economic, Social and Cultural Rights (CESCR).⁷⁹ All these instruments refer to the Tenure Guidelines and complement them in important ways. Several of them further explicitly recognize land as a human right of peasants and other people working in rural areas, as well as rural and indigenous women. Implementation of the Guidelines therefore needs to happen in a comprehensive way that integrates the evolving human rights framework, including instruments that were approved prior to the Guidelines, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),⁸⁰ which recognizes Indigenous Peoples’ rights to their ancestral territories. Among others, these instruments provide guidance for the interpretation of certain parts of the Tenure Guidelines, which may be ambiguous, and allow for the setting of clear priorities. Like the Guidelines themselves, all the mentioned human rights instruments call for implementation processes and tenure governance that focuses on and prioritizes marginalized groups.

⁷⁶ Available at: <https://digitallibrary.un.org/record/1650694>. In particular articles 5 and 17.

⁷⁷ <https://undocs.org/CEDAW/C/GC/34>, in particular paras. 77 and 78.

⁷⁸ www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no39-2022-rights-indigenous, in particular paras. 56 and 57.

⁷⁹ Available at: www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and.

⁸⁰ Available at: <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>.

5. Conclusion and recommendations

Although land, fisheries and forests have declined in the attention of the media, the public, and policy makers in recent years, the governance and management of natural resources remains a central issue in responses to today's challenges. The FAO has a key role to play in ensuring that the Tenure Guidelines, as part of an evolving international human rights framework, can make a meaningful contribution in this context. This requires shifting the focus to activities, interventions and projects that address the root causes of dispossession and support the critical contributions that access, use and control of land, fisheries and forests by peasants, Indigenous Peoples, small-scale fishers, pastoralists, forest people and other communities can make to overcoming the current context of multiple and interrelated crises.

On the Tenure Guidelines' tenth anniversary, organizations of small-scale food producers, Indigenous Peoples, grassroots communities and civil society from around the world issued a statement entitled "We Belong to the Land."⁸¹ Therein, they commit to advance food sovereignty and its transformative potential to build a world in which the right of all people to adequate, healthy and culturally appropriate food is realized. Moreover, they issued a set of key demands to states and the United Nations system, including the FAO.

The analysis in this background paper supports that of these organizations and groups and highlights the need for FAO, as well as governments and other multilateral institutions, to pay particular attention to the following issues:

1. Addressing the way in which land, fisheries and forests are distributed needs to be at the heart of any serious efforts to tackle the roots of today's crises and overcome poverty and inequality. Overcoming the increasingly unequal distribution of natural resources and wealth calls for redistributive agrarian reforms that promote an equitable and sustainable distribution of land and natural resources, as well as the effective recognition, protection and restitution of Indigenous Peoples' ancestral lands and territories.
2. The importance of collective and customary tenure rights and systems for the livelihoods and realization of the human rights of people and communities around the world demands that efforts be redoubled to recognize and protect them in ways that take into account the distinctive customary practices and values of the people and communities who rely on such tenure systems, as well as their conceptions of social and environmental justice. This should include fostering collaboration with indigenous and other customary authorities and strengthening the tenure rights of women, youth and other marginalized groups within these systems.

⁸¹ Available at: www.foodsovereignty.org/wp-content/uploads/2022/05/EN_We-Belong-to-the-Land-Statement_10yearsTG-1.pdf.

3. Address the systemic discrimination against women and other gender groups and the lack of access, use and control over land, fisheries and forests by young people, to ensure that all people have the opportunity to build a self-determined and dignified life. This includes giving these groups priority in public policies for the legal protection of tenure rights, as well as the restitution and redistribution of land.
4. To support the critical contributions that small-scale food producers, Indigenous Peoples and other communities as well as their management practices play to respond to climate change, human rights-based governance of land, fisheries and forests – particularly the equitable and sustainable distribution of these resources – should be included as a key component into policies, programs, and actions addressing climate change as well as those supporting the transformation of food systems towards agroecology.
5. The concerning levels of violence targeting human rights defenders working in defense of land, fisheries and forests, especially communities and groups collectively defending their territories, requires effective frameworks and mechanisms to protect such human rights defenders.
6. In the face of mounting evidence that natural resource-related digitalization processes, such as the use of digital technologies for the identification, registration, administration, and management of tenure rights, entail serious risks for people's and communities' access, use and control over land, fisheries and forests, activities and programs in this regard should be embedded in human rights-based tenure policies and include independent and participatory human rights impact assessments.
7. Increase efforts to support the tenure rights of small-scale food producers, Indigenous Peoples and other people and communities in the context of conflict, occupation and war, including interventions to ensure restitution and/or adequate compensation in case of loss of land.
8. Establish a global monitoring mechanism/framework to regularly assess the contribution of the implementation of the Tenure Guidelines for human rights-based tenure governance. Such a framework should be based on human rights principles to ensure the meaningful and effective participation of organizations of small-scale food producers, Indigenous Peoples, workers, and other groups as rights holders, based on para. 3B6 of the Tenure Guidelines. It should further use methodologies and indicators that allow for a comprehensive analysis of the drivers of dispossession, discrimination, and inequalities. This includes identifying levels of land concentration and violence against land rights defenders and assessing the impacts of policies in all relevant sectors on the access, use, and control over land, fisheries and forests by small-scale food producers, Indigenous Peoples and other marginalized groups, including agriculture, health, trade, finance, investment, mining, climate change, biodiversity conservation, and data and technology, among others.