SYNTHESIS REPORT ON CIVIL SOCIETY EXPERIENCES REGARDING USE AND IMPLEMENTATION OF THE TENURE GUIDELINES AND THE CHALLENGE OF MONITORING CFS DECISIONS

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

With this event we want to start a process where the following questions are addressed on a regular basis:

➤ What actions have taken place in order to implement the Guidelines?

➤ How have these actions contributed to achieving the Guidelines’ objective of improving governance of tenure of land, fisheries and forests for the benefit of all, with an emphasis on vulnerable and marginalized people, and the progressive realization of the right to adequate food (para. 1.1)?
WHY AN INDEPENDENT CIVIL SOCIETY MONITORING REPORT AT THE GLOBAL LEVEL?

- An important aspect of implementation of the Guidelines is developing adequate monitoring mechanisms of the progress of the use and application of the Guidelines, their impacts on the ground and their contribution to the improvement of tenure governance.

- According to the principles of monitoring and accountability of the CFS’ Global Strategic Framework (GSF), and Civil Society perspectives, monitoring and accountability systems should (among others):
  
  ➤ Be human-rights based, participatory and include assessments that involve all stakeholders and beneficiaries, including the most vulnerable
  
  ➤ Empower social movements at national levels: rights holders and affected people should be able to monitor independently and their views should be fed into all CFS monitoring mechanisms
  
  ➤ Consider the monitoring exercise as a space of dialogue of independent assessments by a range of actors with different monitoring approaches
METHODOLOGY

A broad consultation among social movements and CSOs (members of the CSM and others) was carried out between April and August 2016

➤ Questionnaire, interviews with key informants, consultation in Rome, additional relevant information, peer-review of report by academic experts on tenure issues

Crucial aspects of civil society report:

➤ A human rights-based approach on monitoring as the Guidelines are strongly grounded on human rights

➤ Qualitative analysis of the use of the Guidelines based on the reality on the ground: we sought to assess impacts on people’s livelihoods, and abilities to organize and participate

➤ The interviews allowed the inclusion of as many voices as possible, particularly those of social movements, who represent the most affected and marginalized groups
QUANTITATIVE ANALYSIS AND GEOGRAPHICAL COVERAGE OF THE SUBMISSIONS

68 submissions: 44 country specific, 16 regional and multi-country and 8 global

- Geographical coverage (countries where activities have been carried out)
Distribution of submissions by region and constituency

Country submissions

- Africa: 23
- Asia: 18
- Europe: 18
- Latin America and the Caribbean: 14
- North America: 9
- Oceania: 5
- Global: 3

Regional/Multi-country submissions

- Africa: 11
- Asia: 2
- Europe: 1
- Latin America and the Caribbean: 1
- North America: 9
- Oceania: 5
- Global: 3
USES, APPLICATIONS, IMPACTS, CHALLENGES

We identified 5 types of uses and applications of the Guidelines and for each of them, positive impacts and challenges

1. Awareness-raising, capacity-building and development of guides and training instruments
   ➤ Activities and tools for popularization and sensitization (People’s Manual, fact sheets, translations, media) targeted different constituencies at local, national and/or regional levels, representatives of states, lawyers and journalists

Positive impacts
   ➤ They enabled building progressive understanding and interpretation; creating and/or strengthening networks; linking the Guidelines to ongoing policy processes related to tenure; developing own strategies and action plans; and served as a basis for interaction and dialogue with state authorities

Obstacles
   ➤ There is a need to make the Guidelines and appropriate tools available in accessible formats and indigenous/local languages; More needs to be done to promote and disseminate the Guidelines among relevant policy-makers, state institutions at all levels, including local and judicial authorities. There is also need to build understanding about how they should apply the Guidelines in their full spirit
2. Creation of policy dialogue spaces on tenure-related issues

Positive impacts

➤ These spaces reasserted the precedence of people’s legitimate tenure and human rights and gave visibility to problems related to tenure. They enabled capacity-building and awareness raising activities, and assessments of existing legal and police frameworks related to tenure. Finally they allowed links to decision-making processes and facilitate monitoring of tenure.

Obstacles

➤ They did not automatically generate inclusive, equitable, transparent and accountable processes, nor produce outcomes geared towards human rights-based governance of tenure.

➤ Some multi-stakeholder platforms were constrained by power imbalances between different actors; blurring the important distinctions between third parties who claim to have a “stake” in natural resource governance and primary rights holders.
USES, APPLICATIONS, IMPACTS, CHALLENGES

3. Reforms of legal and policy frameworks related to tenure

Positive impacts

➤ Social movements and CSOs have participated in processes of development or reform of legal and policy frameworks and have used the Guidelines in several ways

➤ The Guidelines are increasingly recognized and used as a standard and reference in policy processes; they played an important role in triggering discussions about tenure issues, providing elements for analysis and kick-starting processes

Obstacles

➤ The Guidelines did not automatically translate into more progressive laws and policies; there is a reluctance of some state authorities to engage in processes to translate the Guidelines’ provisions into national laws and policies

➤ In some countries, laws continue to be biased in favor of powerful groups and business interests
USES, APPLICATIONS, IMPACTS, CHALLENGES

4. Advocacy and resolution of conflicts

Positive impacts

➤ The Guidelines can be a key reference to assist communities in asserting and securing their rights over land and other natural resources, especially in cases where national laws are weak, biased towards powerful actors or frameworks. There have been positive results in the resolution of some conflicts.

Obstacle

➤ The Guidelines are still a new instrument, not yet sufficiently known and still need to be systematically applied by state authorities at all levels, including local authorities and judicial authorities.

5. Monitoring and evaluation

Positive impact: “Bottom-up” accountability instruments by CSOs, combining qualitative participatory monitoring methodologies with statistical and technical ones.

Obstacles

➤ Lack of institutionalized participatory mechanisms that can oversee governance of tenure as a whole.

➤ Urgent need for monitoring and accountability mechanisms that could contribute to protecting, promoting and restoring the rights of the most marginalized communities and groups.
CROSS-CUTTING ISSUES

Several cross-cutting issues emerged from the submissions:

1. Violence against human rights defenders working on natural resources, including communities and social movements
   ▶ More than half of the submissions revealed that some groups or individuals have suffered harassment, persecution or detention due to their activities in defense of tenure rights in the last four years
   ▶ Such violence must be addressed in order to advance human rights-based governance of tenure
   ▶ Actors that perpetrated such violence include state authorities, paramilitary forces and private security guards on behalf of corporations
   ▶ Some submissions showed non-existent or limited access to justice
   ▶ Legal frameworks also play a role in the criminalization of social struggles

This has serious impacts:
   ▶ Free, active and meaningful participation of affected peoples in tenure-related decision-making is denied, and the possibility of people to organize and meet is undermined
CROSS-CUTTING ISSUES

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

- By linking the two instruments, they become complementary and mutually reinforcing, especially for often marginalized and neglected inland and riparian small-scale fishers struggles to access resources in lakes, rivers and dams
- The convergence of both instruments for the benefit of small-scale fishers still needs to be ensured, requiring more efforts by all actors, in particular states

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

- The recognition of legitimate tenure rights is a key element and major achievement of the Guidelines; many submissions referred to customary rights and tenure systems as cross-cutting issues in many of the activities carried out by social movements and CSOs
- There is need for more effort and political will to effectively protect and strengthen customary tenure rights and systems, including in the context of the implementation of the Guidelines
4. Women’s tenure rights

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

➤ Advances regarding women’s rights are the result of longstanding women’s struggles, but the Guidelines can make a contribution to bring about change, as an additional instrument to back demands: in several cases, the Guidelines created a momentum to take forward discussions on tenure-related gender issues and the rights of women.

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

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

➤ Some activities by CSOs included participation by young people, and others specifically designed for them and/or addressed their issues to advance their rights.

➤ Much remains to be done both strengthen the capacity of young people to enable them to engage with duty-bearers in decision-making processes, so as to achieve policies and programs that are responsive to their needs and rights.
Some of the challenges were already mentioned, other crucial challenges include:

- A persistent lack of understanding of how to use soft law in national legal and regulatory frameworks
- The systematic exclusion or under-representation of the stated main beneficiaries of the Guidelines in their implementation
- Different interpretations of the Guidelines by different actors risks causing confusion about their foundation and spirit, and diverting the implementation from the Guidelines’ true objectives.
- The risks of “cherry picking” and of twisting the Guidelines into a Corporate Social Responsibility tool for avoiding reputational risks to companies
KEY RECOMMENDATIONS

To CFS members on each category and issue, and to FAO (as the leading UN agency in the context of the implementation of the Guidelines)

Improve the quality of spaces for policy dialogue so that:

➤ 1) active and effective participation of representatives of the most affected and marginalized rights-holders is prioritized;

➤ 2) the autonomy of CSOs to organize in these spaces is respected;

➤ 3) the distinct roles of rights-holders and third parties (private sector, academia, international NGOs, UN agencies, religious institutions, etc.) are clearly defined and differentiated, including a policy to address conflict of interests;

➤ 4) they are geared towards outcomes to improve the tenure situation of the most affected and marginalized rights-holders
KEY RECOMMENDATIONS

Regarding monitoring and evaluation

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

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

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

➤ Stop all forms of intimidation, violence and criminalization against communities, grass-roots organizations, social movements and other human rights defenders working on tenure-related issues;

➤ End the impunity of those who commit human rights violations and crimes against human rights defenders working on tenure-related issues by holding perpetrators accountable;

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