



Introduction to the Responsible Governance of Tenure

Principles of Responsible Governance of Tenure

 Food and Agriculture Organization of the United Nations

This course is funded by the European Union through the EU-FAO Improved Global Governance for Hunger Reduction Programme.
© FAO, 2013



Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

LEARNING OBJECTIVES



- Understand the principles that form the basis for responsible governance of tenure.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

INTRODUCTION

The Guidelines state five general principles which summarise the basic elements of responsible governance of tenure. They include:

Principles of responsible governance

- 1 Recognize and respect all legitimate tenure right holders and their rights
- 2 Safeguard legitimate tenure rights
- 3 Promote and facilitate the enjoyment of legitimate tenure rights
- 4 Provide access to justice
- 5 Prevent tenure disputes, conflicts and corruption

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 1

- 1 Recognize and respect all legitimate tenure right holders and their rights

Recognizing tenure right holders and their rights requires that right holders are **identified**.

This may require officials to check the records or to make investigations or a field visit because **records are often out of date**.



Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 1

Sometimes, programmes to recognize tenure rights in the state registration system may not be successful. Let's read this story...



The state launched a land registration programme aimed at recording all the right holders and their homes, agricultural land and forest land. However, the programme was not well organized. Officials did not visit the local areas. Rather, they established the registration office in the capital city.

So only those who lived in the capital city and who heard about the programme knew to apply for registration. In addition, most people outside the capital did not have any papers showing their rights.

As a result, **very few right holders were registered.**

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 1



In your opinion, what was needed in this situation?

- A law allowing right owners to receive an official title.
- Investigation of the situation on the ground.
- Wider publicity in a way that people would understand.
- A bigger registration office in the capital city.
- Assistance for those people who were not able to be actively involved in the programme.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 1

 The **laws and procedures** should have clear provisions that allow the holders and their rights to be acknowledged, and that clearly specify:

how the **recognition process** operates



how the holders and their rights can be **recorded**



what recognition means **in law and in practice**



ACTION 

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 1

Here are some good examples....



In Rwanda

Registration teams **visited local community centres** to encourage involvement in the programme.



In Macedonia

The registration program published information in minority languages and locally established registration offices were created.



In Romania

The laws and processes were amended before the registration programme got fully underway.



In Canada and Australia

Oral and archeological evidence have been used to support claims to land by indigenous people.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 1

RIGHTS

States should also **respect** right holders and their rights and leave holders to peacefully occupy the natural resource.

Unless there is good reason, they should not go onto land, into forests or disturb the aquatic environment where people have rights.



DUTIES

In having our rights recognized and respected, we must also accept that we have **duties**.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 1

Think about your country...



Try to imagine a case in your country or area of work where people's rights to land, fishery or forest is not acknowledged by the state (or others) or where it is not respected.

What is likely to happen?

What would be the consequences if people were evicted or denied access to their land, fishery or forest? How could they survive?

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 2

2 Safeguard legitimate tenure rights

Let's first review this story...



A major **hotel and housing resort** was developed on the coast to meet the growing demands of international visitors and the local elite. The complex was constructed on cleared forest land, mangrove forest and along the beaches.

The land and water areas were officially "vacant" state land, although officials were aware that **local people used the forest**, beaches and waterways for subsistence, but they did not have any formal proof of their rights.

As a result, the **local people lost valuable sources of food and cash income.**

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 2



What was the problem in this story?

- Customary rights of local people were not recognized by the state.
- The state didn't take any action to protect the rights of local people.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 2

States should not only recognize and respect rights, but also **safeguard** them, that means taking action and **put in place measures** to reduce and deal with infringement of those rights.

States should also protect right owners against **arbitrary loss**, which can be caused by the state itself as well as by other individuals.



Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 2

Some international organizations, such as the World Bank and Asian Development Bank, have formal **safeguard policies**.



All legitimate right holders are protected, without the need to formally record those rights.

Anyone wanting to develop a site or carry out an activity has to **come to an arrangement** with the local people.



Publicity, communications and dispute resolution mechanisms are also incorporated in the process.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 2

Think about your country...



Can you think of some examples of laws and institutions that can be used to protect people's rights to land, fisheries and forest?

Do these work in practice? If not, then why?

What happens if one person squats on another's land?
 What happens when people are forced from their homes or sources of food without any compensation?

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 3

3 Promote and facilitate the enjoyment of legitimate tenure rights



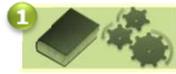
States can play an important role when people use their rights in a way that involves third parties. If someone wants to sell or lease their rights, or use their rights as security for a loan, then they often need the support of **clear, well defined laws**.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 3

What can states do to promote the enjoyment of tenure rights?

States can...



1 Create the policy, legal and administrative frameworks, and provide services under these frameworks



2 Establish dispute resolution systems



3 Establish registration systems



4 Regulate inheritance



5 Open services to all

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 3

Responsible governance can help not only individuals and communities, but **the whole society and economy**.

A country that promotes and facilitates the enjoyment of tenure rights, gives the owners of those rights **more options**, makes it easier for them to fulfil those options, and lessens the cost for the owners and the rest of society to achieve the same outcome.



Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 3

Think about your country...



Can you think of any examples from your country or work where the laws or services could be improved so that people could do more with the existing tenure rights?

What is stopping people from making the most of their tenure rights?

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 4

4 Provide access to justice



Where infringements occur, responsible governance of tenure requires that there should be some state sponsored means of redress to deal with the infringement.

The Guidelines call on states to provide **effective and accessible mechanisms to resolve disputes over tenure rights.**

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 4



It is important that the state authorizes some officials, such as **judges**, or other people with experience and knowledge to help resolve the disputes quickly, simply, affordably.

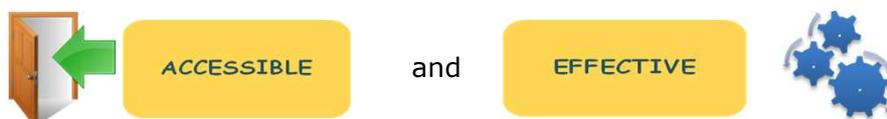


For **simple disputes** that are really just technical problems, states can authorize officials to provide the necessary advice or guidance.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 4

Services that deal with infringements and disputes should be:



This means that **people can actually use the services** established by the state.

This means that:

- services must **work in practice**;
- disputes can be dealt with **certainty**;
- the people providing the service must have the necessary **skills**;
- and
- **laws and procedures** are clear.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 4

 Complaints about the courts are common in many countries. Can you indicate if the following weaknesses are related to lack of accessibility or effectiveness?

	Lack of accessibility	Lack of effectiveness
Courts are too slow	<input type="radio"/>	<input type="radio"/>
It is too expensive to employ lawyers	<input type="radio"/>	<input type="radio"/>
The courts are located too far from where people live	<input type="radio"/>	<input type="radio"/>
The judges cannot be trusted	<input type="radio"/>	<input type="radio"/>
The decision takes years to be delivered	<input type="radio"/>	<input type="radio"/>

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 4

It is not much use to have a decision in your favour if you cannot **implement or carry out it in practice**. If the losing side does not agree to cooperate, then the state needs to step in to help.



ACTION

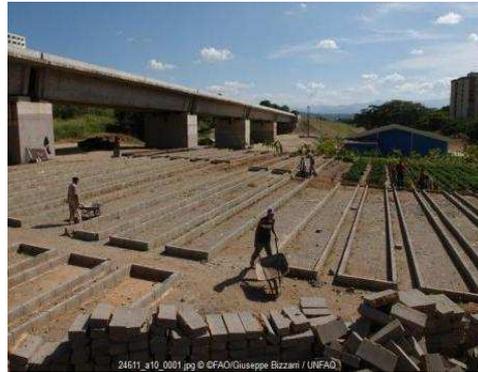
This generally occurs through an official, or someone with authority, who has the **power to enforce the court decision**, such as a bailiff or a sheriff.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 4

The constitutions of many countries expressly say that states can take private property **for a public purpose**. This is because the needs of the country can be considered to override the rights of individuals.

However, this is usually balanced by the obligation to compensate the owner, plus some procedural rules as to notice and appeal rights.



Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 4

Think about your country...



What does your constitution say about expropriation and compensation?

Do you have a special law on expropriation?

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 4

What can states do to provide a better access to justice?

There have been many **reforms** around the world to **improve access to justice**.



Can you think about some of them?

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 5

5 Prevent tenure disputes, conflicts and corruption



The fifth principle calls on states to take active measures to **prevent tenure disputes** from arising and from escalating into violent conflicts, as well as to **prevent corruption**.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 5

There are many steps that states can take to **reduce the risk and numbers of disputes**:

1



Firstly, states need to have **clear strategies, policies and laws** that set the tenure rules and procedures.

2



States also need open, accessible systems supporting these laws, such as a **registration or valuation systems**.

3



States need to have clear, reliable and available **information**.

4



States need to have well defined **institutional arrangements** within state.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 5

And more...

5



States need to have **qualified, trained officials** to implement the laws and systems.

6

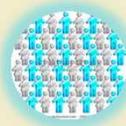


States need to **publicise** the laws, systems, services and availability of reliable information to the public.

7

States should **place the duty on the one starting the dispute** to give good reasons why it should be considered.

8



At the very widest level, states can promote harmony within society, equal treatment for all and tolerance of differences.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 5



Finally, in extreme cases, particularly for potential violent conflicts, states need to take further action, such as providing **physical protection** to the owners and their properties and deterrents to those who would pursue disputes through unlawful means.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 5

Corruption can arise in many circumstances and take many forms. No matter what form it takes, corruption means that **the owners and users of tenure rights face additional costs, hurdles, difficulties and other problems** when they want to take some actions that involve officials.



Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

GENERAL PRINCIPLE 5

It seems that measures like securing rights in laws, establishing registration systems, improving information and transparency, are crucial for the application of each of the five principles.



Where all the **five general principles** exist in policies, laws, institutions and services, then responsible governance of tenure emerges for the benefit of individuals, groups, businesses, society, the economy and the national community.

Introduction to Responsible Governance of Tenure
Principles of Responsible Governance of Tenure

SUMMARY



The five general principles that form the basis for responsible governance of tenure are to:

1. recognize and respect legitimate tenure rights;
2. safeguard those rights;
3. facilitate full enjoyment of those rights;
4. provide access to justice for disputes over those rights; and
5. prevent disputes and conflicts, and corruption, in relation to those rights.

The five principles provide a set of "road signs" that should be kept in mind for understanding any technical areas related to governance of tenure.