



Introduction to the Responsible Governance of Tenure

Implementing Responsible Governance of Tenure

Food and Agriculture Organization of the United Nations

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LEARNING OBJECTIVES



- Identify the fundamental principles to implement responsible governance of tenure.
- Understand the main duties of state and non-state actors in responsible governance of tenure.
- Understand the concept of safeguards.

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TEN PRINCIPLES OF IMPLEMENTATION

Together with the five general principles, the Voluntary Guidelines on the Responsible Governance of Tenure are built on ten implementation principles:

The ten principles of implementation

1 Human dignity	6 Consultation and participation
2 Non-discrimination	7 Rule of law
3 Equity and justice	8 Transparency
4 Gender equality	9 Accountability
5 Holistic and sustainable approach	10 Continuous improvement

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HUMAN DIGNITY

1 Human dignity
Recognizing the inherent dignity and the equal and inalienable human rights of all individuals.



Under this principle
Everyone has the right to be treated with respect, and everyone has the obligation to treat others with respect.

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NON-DISCRIMINATION

2 Non-discrimination

No one should be subject to discrimination under law and policies as well as in practice.



Under this principle

In relation to their property, no group should experience a worse status than others because of their gender, race, colour, age, religion or other status.

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EQUITY AND JUSTICE

3 Equity and justice

Recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.



Under this principle

Governments can include special provisions or provide special services for those who have difficulties with enforcing their rights.

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GENDER EQUALITY

4 Gender equality

Ensuring the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.



Under this principle

The Guidelines call on states to take all steps to ensure a more equal situation for men and women.

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TEN PRINCIPLES OF IMPLEMENTATION

? Reserving places in the local community assembly for indigenous groups is based on the following principle:

- 1** Human dignity.
- 2** Non-discrimination.
- 3** Equity and justice.

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HOLISTIC AND SUSTAINABLE APPROACH

5 Holistic and sustainable approach

Recognizing that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.



Under this principle

Agencies responsible for natural resources need to share information and treat the environment as an integrated system.

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CONSULTATION AND PARTICIPATION

6 Consultation and participation

Engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.



Under this principle

States need to seek input from all relevant stakeholders when developing new policies or services.

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RULE OF LAW, TRANSPARENCY AND ACCOUNTABILITY

The following three principles can be grouped together because they share several characteristics.

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graph TD
    A[These three principles are:] --> B[7 Rule of law]
    A --> C[8 Transparency]
    A --> D[9 Accountability]
  
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RULE OF LAW

7 Rule of law
Adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

Under this principle
Laws need to be in languages that we understand and they must be publicised in a variety of media.

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TRANSPARENCY

8 Transparency

Clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all.



Under this principle

All information should be available to the public, other than information that would breach privacy, confidentiality or state secrecy rules.

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ACCOUNTABILITY

9 Accountability

Holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.



Under this principle

No-one should be able to act with impunity no matter how important, wealthy, powerful or well-connected.

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CONTINUOUS IMPROVEMENT

10 Continuous improvement

States should improve mechanisms for monitoring and analysis of governance of tenure in order to develop evidence-based programmes and secure on-going improvements.



Under this principle

Systems need to be in place to report on how the current system is working and where it is falling short of the government's plans and the community's needs.

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THINK ABOUT YOUR COUNTRY

Think about your country...



Think about governance of tenure and tenure rights in your country.

Can you indicate if and how the ten implementation principles have been adopted and applied?

Do you know about cases of failures in the application of the ten implementation principles?

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TEN IMPLEMENTATION PRINCIPLES

Each example is compliant with one of the implementation principles listed below. Try to indicate the right match:

A. Before creating new irrigation channels, the government held many meetings with local people to discuss how to minimize the impacts on their lands and on natural resources.

1. Transparency

B. The government has recently approved a financial disclosure law which requires local public officials to divulge the source of their income and assets.

2. Consultation and participation

C. The new registration programme implemented by the government includes an ongoing reporting to identify the program's main critical issues, to develop responses and to monitor how the responses are working in practice.

3. Continuous improvement

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TO WHOM THE GUIDELINES APPLY

The Guidelines are aimed at a number of actors. States have an important role.



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TO WHOM THE GUIDELINES APPLY

The state however is not the only party involved in responsible governance of tenure. The guiding principles are also applicable to **non-state actors**.

The diagram illustrates the scope of the guidelines. A central yellow oval represents the primary focus, including 'Communities and people', 'Businesses and investors', 'Civil society', 'Academics', and 'Tenure professionals'. To the left, a separate group of blue boxes includes 'States', 'Courts and agencies', and 'Human rights institutions'. A yellow arrow points from the top of the central oval towards the 'States' group, indicating that the guidelines also apply to these entities.

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A SPECIAL ROLE FOR THE PRIVATE SECTOR

Businesses have several specific duties. They should:

The diagram features a circular flow of three arrows in blue, yellow, and green, surrounding a central icon of 'Businesses and investors'. The word 'Duties' is written in the center of the circle, indicating the focus of the subsequent list.

- act with due diligence;
- adopt appropriate risk management systems that prevent adverse impacts;
- cooperate in non-judicial mechanisms to provide remedies;
- identify and assess any actual or potential impacts on legitimate tenure rights in which they may be involved.

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A SPECIAL ROLE FOR THE PRIVATE SECTOR

Read this case-study...



Through a series of business associates, a **big food importer and processor** agreed with a small local company in another country to take shipments of raw materials for processing into packaged food. The small company soon expanded its areas of production into forest lands which local populations had been using for years and polluted the local river.

Due to the local company's breaches of people's rights, pollution and illegal clearing of forest, the local people began an action campaign.

The story was picked up by local and international media and the **international company's management were accused** of illegal clearing, loss of habitat, and other breaches of both human rights and tenure rights.

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A SPECIAL ROLE FOR THE PRIVATE SECTOR

The international company failed to meet its duties:



Due diligence



Appropriate risk management systems



Cooperation in non-judicial mechanisms



Assessment of impacts on tenure rights

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THINK ABOUT YOUR COUNTRY

Think about your country...



Do you know about similar stories in your country?

What was their impact?

What actions did business enterprises take to deal with the impact and repair the damage done to reputation and business?

What measures could they have taken to prevent the damage?

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WHY SHOULD BUSINESS ENTERPRISES FOLLOW THE GUIDELINES?

Based on this example, it is possible to distil at least four main reasons why business enterprises should respect and apply the principles in the Guidelines.



Legislation and penalties



Duties of all tenure holders



Good corporate citizen



Self interest

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WHAT ARE SAFEGUARDS?



The poor and vulnerable may be the most affected by changes.

Change or development can often bring benefits, but change can equally have negative effects on some people.

When there is change of any kind **safeguards** are important.

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WHEN ARE SAFEGUARDS USED?



Safeguards should be used:

Whenever there is an **activity affecting land, fisheries or forests.**

When there **are changes to the landscape itself.**

When the **government implements a program.**

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WHEN ARE SAFEGUARDS USED?



The regional government has decided to launch a program for formal recognition and recording of people's tenure rights. Safeguards should be planned and implemented:

- 1 Before the program starts, evaluating the risk and size of possible harm due to the recognition program.
- 2 At the end of the program to report its achievements and criticalities.
- 3 In case problems arise when dealing with local populations.

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WHAT DO THE GUIDELINES SAY ABOUT SAFEGUARDS?

The Guidelines recommend that states:

- Identify existing tenure rights and right holders
- Recognize women's rights and provide legal recognition and support to the poor and vulnerable
- Increase transparency and ensure that people have full knowledge of their rights and duties
- Prevent illegal forced evictions

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WHAT DO THE GUIDELINES SAY ABOUT SAFEGUARDS?

In this example, was the safeguard plan implemented by the government appropriate?



The government decided to create a new irrigation scheme and organized the project from the ministry headquarters in the capital.

When work in the field began, however, problems started to emerge. Unknown to the government, local people had been using the forest and surrounding lands. Due to government works, however, they were excluded from these areas.

There were no records of these people in the official systems, and government officials claimed that they were squatters and should never have been there. The officials also denied their claims for clean drinking water.



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WHAT DO THE GUIDELINES SAY ABOUT SAFEGUARDS?



Non-government organizations investigated the situation and started a media campaign to protect the local people. An investigation was conducted by an international agency that described the poor treatment of these people.

Local people became sick, and the young and old showed serious signs of disease. Many of the farmers who were to be relocated did not receive land, the land was left unproductive, and the reputation of the government and country suffered in the national and international press.

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WHAT DO THE GUIDELINES SAY ABOUT SAFEGUARDS?

What went wrong?



The state had not established appropriate safeguards.



Local people were ignored, as were their rights and use of the land, waterways and forest.

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CONCLUSIONS

As stated in the Guidelines, an adequate safeguard plan would require:

- a large consultation process;
- the development and implementation of the plan with sufficient resources;
- the monitoring of the levels of participation and the effectiveness of the plan.



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SUMMARY



The ten implementation principles provide a guide on how the principles of responsible governance of tenure should be conducted. They include:

- respect for human dignity, non-discrimination, equity and justice, and gender equality;
- a holistic and sustainable approach;
- consultation and participation, rule of law, transparency, accountability and continuous improvement.

The Guidelines are aimed at state and non-state actors and identify several specific duties for businesses.

Finally, safeguards are intended to reduce the risk of harm. When there is change of any kind, safeguard responses should ensure that people are made no worse off by the change.