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# **TOWARDS HUMAN RIGHTS-BASED TENURE GOVERNANCE IN ASIA**

Perspectives,  
Challenges, and  
Strategies

## Towards Human Rights-Based Tenure Governance in Asia Perspectives, Challenges, and Strategies

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### Published by

Focus on the Global South  
c/o CUSRI, 4th Floor Wisit Prachuabmoh Bldg,  
Chulalongkorn University, Bangkok, Thailand  
[focusweb.org](http://focusweb.org)

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April 2018

# INTRODUCTION

This paper summarizes the discussions that took place in a meeting of representatives from peasant, fisher folk, indigenous peoples and rural women's organizations, and civil society organizations (CSOs), in Bangkok Thailand, 26-28 September 2017. The main aim of the gathering was to foster learning on how to use 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), with the broader goal of advancing human rights-based tenure governance in Asia. Over 50 participants from 12 countries in Asia and four outside Asia participated in these discussions. Majority of them are active in grassroots and national

organizing to secure land and natural resource rights for their constituencies. Others have been involved in multi-level policy making processes to support local peoples' rights to land and natural resource tenure.

The paper refers to some presentations made in the regional meeting and features 'think pieces' from resource persons who provided inputs on key themes tackled during the three-day discussions. However, the views expressed in this paper are those of Focus on the Global South (Focus).

# HUMAN RIGHTS-BASED GOVERNANCE OF TENURE IN LAND, FISHERIES, AND FORESTS

Landlessness and land insecurity are serious global problems. A quarter of the world's 1.1 billion poor population is estimated to be landless, among them are 200 million people living in rural areas<sup>1</sup>. Rural landlessness is a crucial predictor of the extent of poverty and hunger<sup>2</sup>, and in recent years, there has been a global consensus among international development institutions, civil society, and social movements that access to and control of land and natural resources are key not only to helping rural households improve their incomes but also to living with dignity. Yet, although land is life to peasants, small-scale farmers, rural women, indigenous peoples, fisher folk, and pastoralists, millions of rural families do not enjoy ownership of or tenurial rights in lands, fisheries, and forests.

Across Asia, the rural poor, peasantry, indigenous peoples, rural women and youth, fisher folk, and herders face immense challenges in securing their rights to own, access, use, and/or steward land and other natural resources on which they rely for their livelihoods and identities. Central issues in their continuing struggles have been to: (1) overcome the multiple crises arising from destructive

infrastructure projects, massive resource extraction, and development such as mining and hydropower, food price instability, climate change, land and ocean grabbing, corporate control of agriculture and food systems, and; (2) the undermining of small scale farming and food provision. These are compounded by the criminalization of dissent, human rights violations, and shrinking space for political participation of the poor and vulnerable. Small scale food producers, workers, and indigenous and other local communities who defend their lands, waters, resources, livelihoods, and cultural identities face judicial and extra-judicial persecution. They are branded "dissidents" or "anti-national," and have little access to and input into policy and law making that deeply affect their lives.

Rural peoples, peoples' movements, and civil society advocates are increasingly arguing for a human rights-based approach to tenure governance of land, fisheries, and forests. But what does this mean? To answer this question, we need to first clarify what human rights based on international standards means, and second, make sense of human rights from the perspectives of social movements.

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1. Global Land Tool Network (2008). Securing Land Rights for All. UN-Habitat, Kenya, p.4. Accessed at <https://gltn.net/home/download/secure-land-rights-for-all/?wpdmdl=8234>.

2. Palmer, D. et. al. (2009) "Towards Improved Land Governance", Land Tenure Working Paper 11, FAO and UN-Habitat, p.9. Accessed at <http://www.fao.org/3/a-ak999e.pdf>

## Human Rights–Based Approach

The human rights-based (HRBA) approach can be described as a conceptual framework for the process of development that is normatively based on international human rights (HR) standards and principles, and operationally directed towards promoting and protecting HR. It consists of the following principles:

- recognizes human beings as rights-holders and establishes obligations for duty-bearers (see Box 1);
- focuses on discriminated, vulnerable, and marginalized groups and people who are left behind;
- aims for the progressive achievement of all human rights;
- gives equal importance to the outcomes and processes of development.

Human rights are universal (non-discrimination), inalienable (cannot be taken or given away), and indivisible and interdependent (loss of one right impacts on all).

There are broadly three different sets or bundles of human rights, namely:

- Civil and political rights: right to life and physical integrity, right to privacy and a fair trial, right to participate in civil and political life including freedoms of expression, association, assembly, and right to vote;

- Economic, social, and cultural rights: right to decent work, right to an adequate standard of living, including housing, food, and water; right to health, education, social security, and culture. The right to land and natural resources fall within this category; and

- Collective rights: right to self-determination, indigenous peoples' rights, right to development and environmental rights.

A crucial concept of the human rights-based approach (HRBA) is that there are duty-bearers and rights-holders, and they have a relationship that can be contentious. The duty-bearers, which primarily comprise of states but also include development partners (donors), individuals, and private entities have the responsibility to respect, protect, and fulfill the human rights of rights-holders who are every individual, either a man, woman, adult or child, and of any race, ethnic group, or social condition. The rights-holders claim their rights from duty-bearers and exact accountability from them. (See figure 1) Contrary to the needs-based approach that considers actions as optional or voluntary, the HRBA makes the action of duty-bearers mandatory; it says that there are universal and legally established claims and entitlements, that rights-holders are not to be treated as passive beneficiaries but as active participants, and that the fulfilment of their rights are entitlements not charity. The implementation of the HRBA necessitates that power structures be effectively changed and development processes transform behaviors and institutions, and empower rights-holders.

In practical terms, an HRBA helps us to answer four critical questions: Who has been left behind and why; Which rights are at stake; Who has to do something about ensuring the human rights of people that were left behind; What do they need in order to take action on ensuring their human rights, i.e. what mechanisms, processes, policies, etc. will allow them to take the necessary action? In order to answer these questions, processes and their outcomes are

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**Box 1.** *Who are the Rights Holders and Duty Bearers?*

<b>RIGHTS-HOLDERS</b>	<b>DUTY-BEARERS</b>
<p>Approximately 7.6 billion people</p> <ul style="list-style-type: none"> <li>• Every individual, either a man, woman or child, of any race, ethnic group, or social condition</li> <li>• Groups of people, e.g. Indigenous Peoples</li> </ul>	<p>Far fewer number of people</p> <ul style="list-style-type: none"> <li>• Primarily States</li> <li>• In some cases, individuals have specific obligations</li> <li>• Individuals and private entities have generic responsibilities towards the community to respect the rights of others</li> <li>• Development partners</li> </ul>

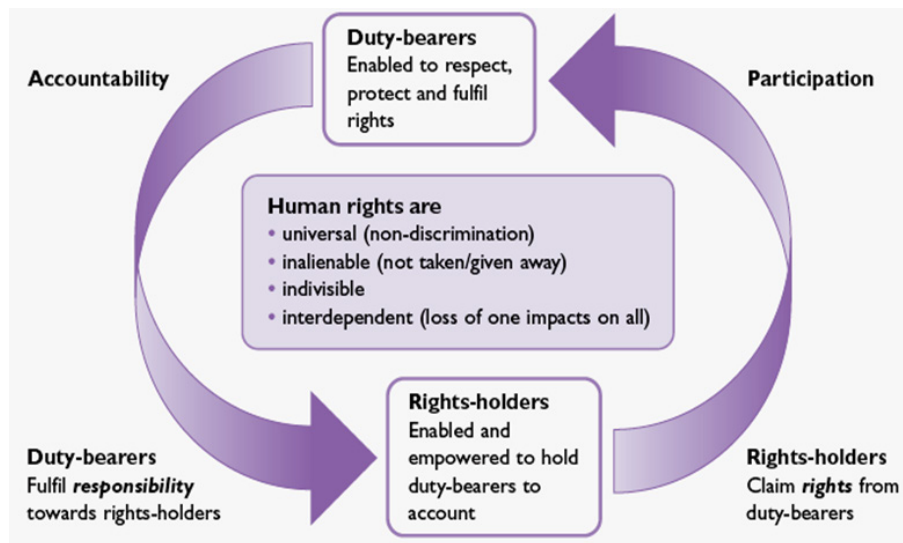
*Source: Katia Chirizzi, “Key elements of a human rights-based approach”, presented at the Tenure Guidelines learning workshop, Bangkok, Thailand, September 26–28, 2017.*

equally important. Take the example of the right to food: hunger and malnutrition are serious problems that affect the poor, especially women and children. The right to food is also connected to the right to life. States as duty-bearers should ensure that the right to food (economically accessible, adequate, and safe) is achieved by the marginalized sectors of society through the institution of appropriate agricultural policies, providing financial resources, and changing structures, policies, and processes that create hunger and malnutrition. For small-scale farmers, appropriate agricultural policies are access to land, control over prices, wealth and redistribution policies, etc. Further, as human rights are interdependent, access, use, and control over land and natural resources directly affect the enjoyment of a wide range of human rights including the right to food. As disputes over natural resources often induce human rights violations, conflicts, and violence, states and private entities such as corporations are duty bound to respect, protect, and fulfill human rights obligations through preventive measures (i.e. do no harm) and enabling access to redress mechanisms and justice for affected communities and victims.

While there are numerous existing human rights instruments ranging from international and regional conventions and declarations such as the Universal Declaration on Human Rights, international labor conventions, humanitarian treaties, etc. to national laws and Constitutions that embody international agreements, there is currently no consensus that tenure rights are human rights or even that land rights are human rights. But human rights are evolving concepts, and tenure rights that cover access to land, water, fisheries, and forests are important for the realization of human rights, such as the right to a standard of living adequate for achieving health and well-being, which should include having enough food and sufficient decent housing.

### **The Tenure Guidelines: An Overview**

There were several imperatives that formed the backdrop for the drafting of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Tenure Guidelines), namely: the centrality of tenure rights as an issue in the 21st

**Figure 1.** Relationship and Roles of Duty-Bearers and Rights-Holders

Source: Katia Chirizzi, “Key elements of a human rights-based approach,” presented at the Tenure Guidelines learning workshop, Bangkok, Thailand, September 26–28, 2017.

century; human rights violations related to global land grabbing, resource extraction, and conflicts over land and natural resources, and; social movements’ campaigns to bring back land and natural resources tenure at the center of global policy debates. Although the guidelines are not legally binding and do not replace existing national and/or international laws, commitments, and treaties, they are embedded in human rights enshrined in the Universal Declaration of Human Rights (UDHR), and therefore, provide guidance on how human rights obligations are to be applied in the context of tenure. They also serve as a set of recommendations for states to hold them accountable to existing obligations under international HR law<sup>3</sup>. The overarching goals of the Guidelines are to support the progressive realization of the right to adequate food in the context of national food security and provide a guiding framework for states to develop legislations, policies, strategies, and programmes on one hand, and for citizens to monitor and evaluate actions and policies on the other.

The Guidelines were intensely negotiated

for nearly two years by governments, civil society, and social movements, and have five general principles. First, they recognize and respect all legitimate tenure rights holders and their rights. The inclusion of legitimate tenure rights is a victory for social movements as tenure rights are not only recognized by laws but also by customary rights—the immemorial and historical claims of peasants, fisher folk, rural women, and indigenous peoples. Second, they safeguard legitimate tenure rights through duty-bearers. Third, they promote and facilitate the enjoyment of legitimate tenure rights. Fourth, they provide access to justice. And fifth, they prevent tenure disputes, conflicts, and corruption. As the Guidelines are based on human rights enshrined in the UDHR, their implementation is anchored on important principles of human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approaches, consultation and participation, rule of law, transparency, accountability, and continuous improvement. For example, the principle of non-discrimination and equality refers to

3. Carpano, F. (2017). “Human rights-based governance of land, fisheries and forests”, PowerPoint presented at the Bangkok workshop on Tenure Guidelines in Asia, organized by Focus on the Global South, September 26–28, 2017.

correcting gender- and caste-based discrimination. Women's access, use, and control of land are often denied through various intuitions and processes such as marriage, inheritance laws, and legal capacity requirement, especially for accessing financial and other resources. Similarly, in many countries

in South Asia, caste systems have discriminated against indigenous peoples and minorities' right to land, territories, and ancestral waters. Table 1 below contains the various principles and corresponding articles, which pertain to them.

**Table 1: Human Rights and Tenure Guidelines**

<b>HUMAN RIGHTS PRINCIPLES</b>	<b>ARTICLE NUMBERS AND SECTIONS THAT ELABORATE OR TACKLE THEM</b>
Non-discrimination and equality	Guiding principle 3B, guidelines 4.6, 5.3, 5.4, 6.1, 11.2, 15.3, 15.6, 17.3, 21.6, 25.3, 25.5, 25.7
Rule of law	Guiding principle 3B (7) and (9), guidelines 6.9, 12.12, 15.4
Right to adequate food	All
Right to adequate housing	3.1.2, 4.4, 7.6, 7 to 10 and 16
Right to an effective remedy	Guiding principle 3.2, Guidelines 4.9, 21.1, 25.4, 25.5
Right to freedom of opinion, expression, assembly and association	4.8
Right to freedom of religion	9.1, 9.7, 18.2
Right to information	5.8, 6.5, 8.4, 9.4, 9.8, 10.5, 11.4, 11.5, 12.11, 13.6, 14.4, 15.9, 17.3, 17.5, 18.3, 18.5, 24.4, 25.4
Right to participation	Guiding principle 3B (6), guideline 9.9
Right to property	In particular 3.1.2, 4.4, 7.6, 7 to 10 and 16
Right to take part in cultural life	9.1, 9.7, 16.2, 18.2
Rights of human rights defenders working on land issues	4.8
Right of indigenous people to their traditional lands, territories and resources, including water	Part 3
Safeguards against limitation of human rights for public interest	4.3
Responsibilities of business enterprises and State duties	Guiding principle 3.2
International humanitarian and criminal law	25
Non-discrimination and equality	Guiding principle 3B, guidelines 4.6, 5.3, 5.4, 6.1, 11.2, 15.3, 15.6, 17.3, 21.6, 25.3, 25.5, 25.7

Source: Carpano, F. (2017). "Human rights-based governance of land, fisheries and forests", PowerPoint presented at the Bangkok workshop on Tenure Guidelines in Asia, organized by Focus on the Global South, September 26-28, 2017.



The Tenure Guidelines refers both to states and non-state actors. Specifically,

*“non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights.”* (Paragraph 3.2)

This is a crucial element of the Tenure Guidelines, as many human rights violations and conflicts around legitimate tenure rights involve business enterprises, and domestic and transnational corporations. The Guidelines stress the responsibilities of these actors in the provision of redress and complaint mechanisms, and access to justice.

The Tenure Guidelines as a soft law contain limitations, such as lack of sanctions for non-compliance and implementation and being open to different interpretations and uses (see Section on Potential Roles and Limitations). At the same time, because they are soft law, they offer a framework for negotiation between small-scale food producers, workers and local communities, and states. By firmly situating tenure rights in the context of human rights, they provide internationally accepted references that affected peoples/communities, peoples movements, and civil society can use in the development of policies and laws to defend tenurial rights.

## **Peoples Movements’ Perspectives**

While the Tenure Guidelines provide tools for rural social movements and communities to claim their legitimate tenure rights, peoples’ movements offer different perspectives on human rights-based tenure governance. C.R. Bijoy from the Campaign for Survival and Dignity in India has emphasized that tenure rights are about redefining social relationships within the households, neighborhoods, states, and countries, and that this is ultimately about power, empowerment, and notions of sovereignty. He added that tenure rights need to be “contextualized and grounded within the histories of people, which include how people were colonized by Western power and now, by colonial states, transnational corporations, and domestic businesses.” Similarly, activists from Myanmar, Indonesia, and Japan looked at tenure rights as political rights of groups of people and individuals to decide how to manage, protect, and use land and other resources; that a human rights-based tenure governance means connecting people with nature; and that the value of these resources and nature cannot be reduced to monetary terms.

Bijoy pointed out how the management of land and resources by “people in power” are now placed within instruments of global markets, making land and other resources into commodities. The era of globalization is also the “triumph of markets,” wherein governments have framed tenure rights as ‘property rights,’ which value lands and other resources based

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on their exchange value or market prices. This way of framing tenure rights emphasizes the creation of land markets for selling and trading on one hand and on the other, the state's role to provide a policy environment that will enable these markets to flourish. The World Bank's market-assisted land reform and new policy reinventions are based on such tradeable rights and a willing buyer-willing seller framework that depoliticizes decades-old problems of land and natural resource injustices and conflicts, unfinished agrarian reform, and inequitable wealth redistribution. These policies have also encouraged exploitative relationships with resources (e.g. extractive activities), enclosures (e.g., privatization), land grabbing, displacement of

and other resources to the private corporate sector through free trade and investments agreements, privatization policies, economic concessions, and other market and investor-friendly laws. The ASEAN economic integration has facilitated the opening up and liberalization of Southeast Asian economies to mining, logging, and agribusiness companies in the pursuit of growth and so-called 'development,' often at the expense of local communities' rights and well-being. In other cases, local communities and forest users have been eased out of their lands due to conservation policies, establishment of natural parks and reservation areas by governments, and with support from international development

“ *Across Asia, the rural poor, peasantry, indigenous peoples, rural women and youth, fisher folk, and herders face immense challenges in securing their rights to own, access, use, and/or steward land and other natural resources on which they rely for their livelihoods and identities.* ”

local peoples and communities from their lands and territories, and other different forms of dispossession of rights. Human rights violations that are centered around resource conflicts are therefore about tenure rights.

According to Bijoy, at the core of these disputes, which needs to be questioned, is the state's historical monopoly and control over determining the rights of peoples despite the reality that “people create the state.” The struggles of indigenous peoples and ethnic minorities in Asia for self-determination and autonomy are cases-in-point. States have often defined the boundaries of indigenous territories and ancestral waters through delineation and land titling schemes as ways to exercise power and authority over rights allocation. Another case in point is the state's tendencies to transfer the rights to use, access, and control lands, territories, forests, water,

agencies and financial institutions such as the Asian Development Bank and World Bank. New carbon-based mechanisms that aim to mitigate climate change such as Reducing Emissions from Forest Degradation and Reforestation (REDD-plus) are no different in that they also confer more tenure rights to governments and promote tradeable rights. The tandem of 'forests without people' and 'planting trees in order to harvest them' have been the overriding principles behind many policies on forest use that have led to dispossession and displacements of local peoples.

Peoples' movements, grassroots organizations, and their allies in Asia have consistently challenged this model of development, resource governance, and the state's power of eminent domain, i.e. appropriation of resources in the name of public interest. Through their daily struggles they have confronted structures

of power and domination as well as sought to reverse processes that oppress people and communities. They have waged campaigns that push for policies aimed at supporting peasant, indigenous, and small-scale producers and workers, particularly these social groups' access to resources. They have collectively called for greater transparency and democratic resolution of resource-based conflicts and land disputes, as well as for greater international, regional, national, and local attention to the importance of policies that promote or enhance the commons and strong community institutions for a functioning, sustainable society in harmony with nature. The commons are kinds of wealth, spaces, values, social relations, systems, processes, and activities that 'belong to' communities and societies, and which are actively claimed, (re)created, protected, and restored for the collective good and purpose of present and future generations. Calling for commons-based tenure governance, therefore, entails redefining relationships between people and land, territories and resources, on one hand, and tenure rights that take into consideration the rights of future generations, on the other. It is essentially about exacting accountability from states and non-state actors and reorganizing and recreating communities and societies.

Although peoples' organizations, small-scale food producers, and workers have articulated their struggles and demands in the language of human rights, they have also pointed to important contradictions in human-rights based tenure governance approaches:

- **Individual vs. collective rights; private property vs. community rights:** The human rights-based approach centers on individual rights rather than collective rights, though it does recognize the rights of indigenous peoples. In certain cases, however, there are overlapping of and conflicting rights claims between different groups of peoples, especially in one territory. Conflicts are inevitable and the

challenge is to find conflict resolution mechanisms to address them. There are also diverse interpretations about the composition of tenure rights, whether these pertain to full ownership or stewardship, the right to exclude other people from use and management of land and territories, etc. These are often linked to the different forms of tenurial arrangements and traditions that exist in Asian countries and communities.

- **Securing legitimate tenure rights through land titles:** Land titling has been a way to recognize tenure rights, but while it is an important tool, it does not guarantee access, use, and control of land, territories, and resources. Titling can be either double-edged sword, in the sense that small-scale farmers may use their titles to sell and trade rights or inappropriate in the sense that corporations and unscrupulous individuals can manufacture or illegally acquire land titles that lead to land grabbing and resource-based conflicts.

- **Right to say no and the free prior and informed consent (FPIC):** Communities that experience constant abuse and oppression assert that the 'right to say no' is a fundamental principle of human rights-based tenure governance. This also covers the rights of indigenous peoples to demand for meaningful FPIC, for their right to refuse a 'development' project that they deem not beneficial to them, and the right to timely and relevant information that will allow them to make informed decisions. However, in practice, FPIC has been reduced to token or selective consultation with community leaders and the options to refuse a project or even significantly change it, are rarely on the table.

# TENURE GOVERNANCE IN ASIA: KEY THREATS AND CHALLENGES

Asia is diverse, with differing colonial histories, cultures, languages, ethnic identities, religions, and political conditions. The region has different forms of governments and political institutions ; the level of development even in terms of formations such as civil society and peoples' organizations also varies. For example, in 2015, in terms of the United Nation's Human Development Index (HDI), Singapore, Japan, the Republic of South Korea, Brunei Darussalam, and Hong Kong are considered countries with 'very high human development', almost at par with Norway, Switzerland, Denmark and other European countries; while the Philippines, Indonesia, and Vietnam are ranked as having medium human development. Nepal, India, Myanmar, Cambodia, and Lao PDR have low human development indices. A country scores higher HDI when its people spend more years in schooling/education, the life expectancy is longer, and income per capita is higher.

However, the region also has commonalities. Asia boasts rich natural resources and biodiversity. There are long-standing traditions, practices, and cultures of regional solidarity and cooperation among Asian peoples as in the case of common fishing grounds among artisanal fisher folk, seed exchanges among peasants and various types of forests among indigenous peoples and other local communities. The region has also been a laboratory

for failed structural adjustment programs pushed by the World Bank and International Monetary Fund and implemented by Asian governments. The penchant for economic growth remains the primary target of many governments and large-scale investments have been equated to development. The region has been the center of economic growth in the past decade, with China and India as rising stars. Regional integration, which intends to open up economies in an attempt to create common regional markets, has led to flooding of domestic and foreign direct investments in agriculture, services and, natural resources. Unfortunately, this has triggered a race-to-the-bottom situation: states depress wages, institute labor contractualization laws, liberalize the mining and natural resources sectors, facilitate more public-private partnerships that favor corporate private sector, and so on and so forth.

Poverty and inequality remain high and have been a constant feature of Asian societies despite record growth levels. In Sri Lanka, India, Myanmar, Cambodia, Thailand, and the Philippines, governments have enacted laws and policies that significantly restrict the abilities of ordinary people to engage meaningfully in decision-making processes, and in the exercise and assertion of their rights. These form the harsh context where securing legitimate tenure rights is an uphill battle for small-scale food

producers, and rural and urban poor populations. At the same time, these struggles offer opportunities for new movements and platforms to emerge, as well as for creative actions, political education, and organizing.

## Key Threats and Challenges

Persisting poverty and inequality, negative impacts of climate change and disasters, continued erosion of human rights and, shrinking resource bases exacerbate existing vulnerabilities and marginalization. Poverty remains largely rural and its main manifestation is tenure insecurity, i.e. lack of access to and control of land and natural resources. Representatives from peoples movements in Southeast, East, and South Asia have identified the following threats and challenges with regard to their rights to land, forest, fisheries:

### Enclosures, privatization, and land grabbing:

New frontiers of land and resource control are being created through agro-export, monoculture and industrial agriculture, land conversions, mining, coal, hydropower, forest exploitation and logging, conservation and national parks, real estate/property development, expansion of townships, etc. Large-scale infrastructure projects, free trade and investment agreements, and regional economic

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*At the core of these trends is the destructive, extractivist, and investor-oriented development model that treats land, territories, and resources as capital and assets for profit-making.*

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integration are driving forces behind many land grabbing and privatization cases. In 2016, for example, Chinese foreign direct investments in the ASEAN has reached a total of USD 143 billion, mostly invested in infrastructure, agriculture, forests, mining, and energy exploitation. Chinese mining investments in the Philippines and the Mekong sub-region have resulted in local people's loss of their sources of food, water, and fuel, as well as loss of their access to their community lands and forest. In Sri Lanka and the Philippines, land reclamations for economic development or as part of recovery programs after natural disasters have dispossessed artisanal/small-scale fishers of their fishing grounds.

**Territorialization:** States or governments, through their power of eminent domain, create new territories for investments through ceasefires, peace agreements, and relocation of villages from uplands to lowlands (e.g. in Laos, Vietnam, Burma, Philippines, and Indonesia). Examples of these 'new territories' are special economic zones such as the Dawei Mega Project, which is the fifth biggest industrial estate in the world and the largest one financed by Thai corporations covering 204.5 square kilometer of lands in Myanmar. It has displaced more than 30, 000 villagers since 2012. In South Asia's contested upland and border areas where conflicts occur, private land concessions for industrial crops are used by the military to control borders. Further, physical violence and laws are ways to control land, territories, and people.

**Financialization of resources:** This is a relatively recent trend that can lead to a systematic erosion of tenure rights through the transformation of a productive economy into financial products for trade. An example is the fabrication of virtual commodities such as food, oil/energy, minerals, ecosystem services, water, and carbon offsets, and trading them in financial markets and stock exchanges.



This trading of virtual commodities are speculative in nature and have serious negative impacts on the real economy, as well as change the ways of production, extraction of resources, law making, and managing territories. Particularly vulnerable here are subsistence producers and communities, workers, indigenous peoples, women, and urban and rural poor. Financialization can lead to the systematic erosion of human, social, environmental and economic capacities of these peoples as well as set the stage for a massive theft of peoples' futures. The impacts of financialization are already evident in REDD and Blue Carbon schemes, which curtail the access of peasants, indigenous peoples, and fisher folk to their lands, forests, and fisheries.

**Lack of acceptance of and respect for human rights:** In many countries, governments do not recognize indigenous peoples as holders of particular rights, as in Laos and Vietnam, where they are viewed as ethnic minorities, their customary rights are not recognized. There are no legal provisions to address historical inequalities. Also, local non-indigenous peoples across the region suffer from insecurity in their tenurial rights in forests, river, and marine areas. Overall, governments are reluctant to uphold human rights of local populations but enact legislation that assures the rights of large-scale private investors.

**Shrinking political spaces; criminalization; and erosion of peoples' rights:** More and more, local community leaders, union members, peoples' movements, civil society activists, journalists, lawyers, and other human rights defenders are experiencing criminalization, physical and economic violence, and persecution. In Pakistan, India, Thailand, Cambodia, Laos, and the Philippines, justice activists and human rights defenders are considered 'enemies of the state.' In Cambodia, the government has passed an NGO law that is essentially a mechanism for surveillance and crackdown of civil society. In

### *How to financialize a resource?*

- Fabricate a commodity (e.g. give monetary value and commodify water and its functions)
- Subject the commodity to a commodification process through privatization, enacting legislation, deregulation
- Build a global (or significant) market: make commodity tradable, standardize it through conditionalities, legislation, deregulation (e.g. carbon offset markets)

Indonesia, villagers in East Java in 2015 were killed by individuals connected to the local government because of their struggles to protect their fishing grounds from a mining company. But states have not been alone in perpetrating violence: domestic, regional, and transnational investors and corporations are equally guilty of crimes, collusion with official perpetrators, and impunity. For instance, since 2013, the Philippines has been considered as the deadliest place for environmental and human rights defenders in Asia. Most of the victims of violence and murders perpetrated by mining companies, paramilitary, and military forces have been indigenous peoples. The erosion of people's rights are done through legal-regulatory measures; military dictatorships and imposition of martial law-type conditions such as curfews and arbitrary check points; manipulation of the justice system; physical violence, murder, state and non-state impunity; and sowing of fear through threats, intimidation, and harassment.

The above trends comprise practices and patterns that consolidate and concentrate land and resources in the hands of old and new elites, private corporations, and the state. At the core of these trends is the destructive, extractivist, and investor-oriented development model that treats land, territories, and resources as capital and assets for profit-making. This has been made possible because of the

changing/changed roles and relationships (at times, collusion) among different actors—governments, corporations, regulators, rent seekers, middle-men, military, political elites—for whom, access and control of land, forests, fisheries, and other natural resources are crucial for profit-making ventures. For example, the establishment of new special economic zones has generated new elites and strengthened the roles of financial actors (e.g. capital venture funds, finance corporations, financial intermediaries, and banks) and other market actors (consolidators/brokers/middle

men). The role of the military is notably present in many SEZs in Myanmar, Laos, and Cambodia. The military has been implicated in land grabbing and the privatization of lands and natural resources. Further, in many countries, the legal and regulatory systems neither support local peoples' tenure rights, customs and traditions, nor recognize women's rights to land, water, and resources.

*Common experiences and demands of fishing, farming, and indigenous communities struggling against mining companies*

Host communities to mining operations suffer from different types of pollution—their rivers and water bodies are polluted by industrial waste and mine tailings; health problems and risks, especially to pregnant women and children; and irreversible damages in lands, vegetations, and soil that lead to loss of livelihoods, territories, and incomes, and to forced migration.

Common slogans and demands:

1. Land and water are our lives. For mining companies to conduct land and water restoration and rehabilitation to do no harm as preventive measures and justly compensate and provide restitution for damages. For states as duty-bearers to do their jobs of protecting and fulfilling human rights of affected communities.
2. Stop the criminalization, harassment, killing, and persecution of local peoples. For states to provide remedy and access to justice of people being persecuted and conduct independent investigation of reported killings and bring perpetrators to justice.
3. Moratorium in mining operations, especially in agrarian and indigenous territories.
4. FPIC, right to information, transparency and accountability of mining companies, especially in their contracts, permits given by the states, profits and revenues, and environmental and social impact assessments.

# THE POTENTIAL ROLES AND LIMITATIONS OF TENURE GUIDELINES AND OTHER HUMAN RIGHTS APPROACHES

Amid the multiple threats and abuses to local peoples' legitimate tenure rights, there are existing national and international laws and human rights instruments that serve as tools for claim-making and exacting accountability from duty-bearers, including non-state actors. As mentioned in the section on the human-rights based approach, the Tenure Guidelines are the latest addition to this box of tools, which peoples' movements, affected communities, and civil society can use in their struggles to secure legitimate tenure rights.

This section offers think pieces from activists who have been part of the formulation and practical application of the Tenure Guidelines. Sylvia Kay provides a brief overview of its potential use and limits. This is followed by a concrete country experience of Myanmar illustrated by Saw Alex of the Lands in Our Hands Campaign. The third piece is by C.R. Bijoy, situating the Tenure Guidelines in the broader context of peoples struggles for self-determination and self-governance.

## ***Tenure Guidelines: Introduction, Potential, and Limits***

*Sylvia Kay, Transnational Institute (TNI)*

The Tenure Guidelines are the first international governance instrument to apply an economic, social, and cultural rights-based approach to the tenure in land, fisheries, and forestry. They represent the highest normative standard existing on land and natural resources. At their best, they articulate a people's right to land and related natural resources, opening up natural resource governance to democratic decision-making and public scrutiny, and thereby setting the stage for greater state accountability to rural citizens.

The Guidelines are anchored on human rights which are indivisible and cross-cutting. The Tenure Guidelines emphasize the most vulnerable and marginalized people, with the goal of progressive realization of the right to adequate food, consistent with state's existing obligations under international law, namely the Universal Declaration on Human Rights and other international human rights instruments. This human rights-based approach to the governance of tenure in land, fisheries, and forests stands in stark contrast to a market-based,



trade and investment perspective which treats natural resources as commodities to be bought and sold.

While highly significant, it is important to recognize that the Tenure Guidelines do also have serious limitations. First, the Guidelines are technically a soft law instrument and as such there are no sanctions for non-compliance or non-implementation. Second, they do not stop land grabbing. Third, they are open to interpretation and different uses. The Tenure Guidelines are a negotiated document containing a contradictory mix of different positions from those that are more market-oriented to a more human rights and social justice perspective. Finally, even if they are perfectly implemented and upheld, the Tenure Guidelines will not necessarily put an end to deep-rooted patterns of discrimination and structural violence.

Still, this is not a zero-sum game and the Tenure Guidelines offer a set of practical tools that grassroots organizations and movements can use in their own struggles. As mentioned earlier, for them to be effectively used as a tool, the Tenure Guidelines must be used in conjunction with a whole raft of other human rights frameworks including: the Universal Declaration on Human Rights, the UN Human Rights Commission's Basic Principles and Guidelines on Evictions and Displacement Generated by Development, the International Labor Organization's core labor standards, the UN Principles on Restitution of Housing and Property of Refugees and Displaced Persons, and the Additional Protocols of the Geneva Convention.

More concretely, there are several practical ways that social movements are already using the Guidelines, such as:

- In building up accountability from below to allow people to claim and defend their rights. For example, using them to monitor the actual situation on the ground and to ask pertinent questions such as the following: what are my rights?; how are they being violated?; where/when/to what degree/why?;
- In documenting and building up cases using tools

“ Amid the multiple threats and abuses to local peoples' legitimate tenure rights, there are existing national and international laws and human rights instruments that serve as tools for claim-making and exacting accountability from duty-bearers, including non-state actors. ”

provided in the Tenure Guidelines for collecting, organizing, and analyzing information;

- In opening up space/s for different engagement strategies, such as raising public awareness and filing legal cases; and
- In conducting community organizing and in mobilizing to expand their field of action and build pressure from below.

In short, grassroots organizations do not need to wait for the state to implement the Tenure Guidelines. They can already take the Guidelines into their own hands and use them as a tool for investigation, reflection, and action.

### ***Some Experiences in Using the Tenure Guidelines in Burma/ Myanmar***

*Saw Alex, Land in Our Hands Campaign, Myanmar*

Myanmar has complex and complicated land problems. Land confiscation by the government continues to happen across the country. The current revised Farmland Law and Vacant, Fallow and Virgin Land laws threaten the customary land tenure rights, as they have become tools to legally take land from the people. Further, the current Investment Law

## Progressive and relevant provisions and articles of the Tenure Guidelines

- Recognition of legitimate tenure rights: States should provide legal recognition of legitimate tenure rights not currently protected by law, such as informal and customary tenure rights and the commons (collective use and management)
- Recognition of the special social, cultural, spiritual, economic, environmental, and political values of land, fisheries, and forests; including indigenous peoples' right to free, prior and informed consent (FPIC) over their ancestral domains/lands
- Moving beyond the status quo to tackle structural inequalities and discrimination relating to tenure patterns through the enactment of (a) redistributive land reforms (public land), "where a high degree of ownership concentration is combined with a significant level of rural poverty attributable to land of access to land, fisheries and forests"; (b) with clearly defined objectives, intended beneficiaries, and the full level of support; and (c) restitution, especially for loss of legitimate tenure rights, in the case of historical injustices
- Important role of sound public policy in the governance of tenure through: (a) measures to counter land concentration and land speculation; (b) safeguards in the case of the (large-scale) transfer of tenure rights (including prior, independent impact assessments; ceilings; parliamentary approval; in line with a definition of responsible agricultural investment); and (c) regulated spatial planning based on balanced territorial development that recognizes the multiple functions/values of land
- In cases of conflict and occupation: (a) respecting international humanitarian law related to legitimate tenure rights; (b) operationalizing the Convention relating to the Status of Refugees and the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles); (c) non-recognition of tenure rights acquired through forceful or violent means
- Proper implementation, monitoring, and evaluation of the Tenure Guidelines at different levels based on principles of participation, consultation, and accountability.

These provisions have been further developed by the CSOs engaging at the UN-CFS through innovative monitoring mechanisms involving people's indicators, etc.

prioritizes investments and profit at the expense of the environment and social well-being of the people; while the land reform agenda of the government has posed a threat to the peace process.

In this context, the Land in Our Hands Campaign (LIOH) and TNI collaboratively attempted to test and locally apply the Tenure Guidelines in Myanmar. Two main activities were conducted: a national training program and two workshops held in Yangon and Mandalay regions. The workshops aimed to increase the local communities and civil society's understanding of the Tenure Guidelines and to consider their role in its implementation in Myanmar. The participants of these capacity-building and awareness-raising activities were mainly farmers, rural women, and rural youth from different states and regions. Others were allied of LIOH- environmental, development, human rights and women rights NGOs which worked on land tenure rights. One government representative (from MOECA) joined both workshops and FAO HQ, Regional Office, and Myanmar National Office participated in the one organized in Yangon, where FIAN, TNI, and LIOH served as facilitators.

From the workshops, three key lessons (and action points) were highlighted: (a) the importance of translating the Tenure Guidelines into local languages for grassroots people and of developing basic materials for advocacy and awareness raising; (b) linking of the Tenure Guidelines to existing national land and investment laws; and (c) development of geographically specific case studies by using the Tenure Guidelines. The LIOH and its network members also went beyond sensitization workshops and used the Tenure Guidelines to influence the Karen National Union's (KNU) land policy. The KNU is a political organization with an armed wing, the Karen National Liberation Army, that represents the Karen people of Burma. It has been waging a liberation struggle in the last 60 years. The LIOH and its network members managed to incorporate progressive provisions in the KNU land policy, which:

- Envision the recognition, restitution, protection, and support of the socially-legitimate tenure rights of all Karen peoples and long-standing resident village communities, resulting in improved political and ecological governance of tenure of land, forests, fisheries, water, and related natural resources;

- Recognize, prioritize, and promote customary tenure rights and practices, and ensure the sustainable occupation, use, and enjoyment of communal land and related rights especially by the poor, marginalized, and vulnerable peoples and long-standing resident village communities, to free them from encroachment or unauthorized occupation or use by others. The provisions also recognize informal land tenure rights;

- Provide restitution (refugees and IDPs);
- Allow for redistribution;
- Establish land ceiling or maximum size of land that an individual or family can own;
- Promote and recognize gender equality;
- Recognize free, prior, informed consent.

The Tenure Guidelines were used as part of a political strategy to shift the policy discourse and debate and entrench human rights in land policy. The LIOH used the progressive provisions on ethnic/indigenous peoples' land rights, smallholders, farmers, etc., and used these as reference to debate and push for pro-poor land policy. Jennifer Franco of TNI stressed that "the strategy of using the Tenure Guidelines [VGGT] as part of a political strategy of engagement helped to alter the process of consultation and also the outcome... In public consultations, people went prepared and were able to bring criticisms and proposals into the official public consultation. This put onto the table over 900 comments that... had to be dealt with."

However, while the National Land Use Policy has some references to the Tenure Guidelines, implementing it is another matter. Also, unfortunately, this policy has not been used to guide the on-going

reform process of land-related laws. There are other challenges, too, such as using it to critically engage in Ethnic Land Policy development and in negotiating and debating on land reform within the peace process. It is equally important to critically discuss with allied parliamentarians and government officials the value of the Tenure Guidelines. The aim is to push for human rights to land (especially on land reform) to be adopted by the government and the Tenure Guidelines can again serve as reference and provide guidance.

Finally, it is essential to understand and use the Tenure Guidelines within the historical context of land and power relations. It cannot exist in a vacuum and for it to be truly effective, the Tenure Guidelines should be used as part of a political strategy.

### ***Human Rights Perspective of Peoples Movements and Struggles on Tenure***

*C.R Bijoy, Campaign for Survival and Dignity, India*

The Tenure Guidelines must necessarily be seen and understood as a response of nation states to growing conflict, often violent, over control and use of natural resources. This conflict is between the market forces that seek to commodify all natural resources so that these can be traded, and the communities who have traditionally been dependent on these very natural resources for their livelihood and sustenance. The Guidelines come at a time when nation states have emerged and built itself up on the edifice of the colonial construct of 'eminent domain' of the State with the State itself facilitating and fueling unfettered capitalist growth and rapid accumulation of capital that has now been opened up to freely and easily move across countries. This capital, now global, is now being used to take control over natural resources and use them in the capitalists' thirst for profit by transforming the natural resources

into goods and services for the consumer class. The State has been actively enclosing the commons and deploying them to benefit the corporate sector. The alignment of the State with capital and corporate interests brings them into a sharp and seemingly irreconcilable confrontation with those communities who have organized their lives traditionally around specific natural resources, whether the commons or private, and substantial part of which are outside the purview of the formal system, largely falling within the domain of customs and traditions. Substantial tenurial rights of communities over land, fisheries, and forests, are yet to be determined and recognized by formal laws. On the one hand, tenurial rights are seen as ways to legally clarify who has what rights and therefore making them potentially available as commodities that are legally tradeable. On the other, communities see this as an opportunity to assert their political power to control and govern these resources sustainably for the greatest common good and for future generations.

For the movements and communities in struggle, tenurial rights are about asserting their unassailable relationship with natural resources, with such relationship in turn determining the manner in which these resources are to be conserved and managed. This also essentially defines their relationships within themselves as a community, with others, and with the State. It means decolonizing governance and deepening democracy by strengthening participatory democracy at the core of democratization of society. Even though governments in a democracy are elected by the people, we do not have control over governments, as the decolonization and democratization of governance are themselves an unfinished agenda. Tenurial rights and their governance have also the potential for communities to take control over governance from government, recreating communities and redrawing power relationship away from its present hegemonic structure. They could also pave the way for the creation of a viable mechanism that constantly seeks

to identify and address conflicts in order to resolve them. Tenurial rights are not merely about property rights, but drastically redraw politics in which people matter.

International regimes are based on the recognition of sovereignty of nations. International agreements, conventions, treaties, and guidelines that nation-states have acceded to come alive only when these are converted into domestic legally enforceable instruments. Laws by themselves do not

transform lives; they come alive only when they are used to transform lives. The Tenure Guidelines are only an instrument that can be legitimately used to challenge governments so that they would critically examine existing legal regimes on tenurial rights and their governance and make the necessary changes, and for the people to further use them politically to assert and establish rights through an ongoing mass struggle.

# STRATEGIES TO BUILD PEOPLES' POWER AND DEFEND LAND, TERRITORY, FORESTS, AND FISHERIES

Peoples' movements, grassroots organizations, and local communities have diverse capacities and employ different strategies and tactics in defending their lands, territories, forests, and fisheries. These strategies are:

- 1. Research, documentation, and critical analysis** of the drivers of land grabbing, privatization, investment financiers, and how people lose their lands, livelihoods, and resources. These include ways by which affected communities collect, document, and monitor the processes of dispossession of their rights, such as community-based action research, participatory impact assessment, community story-telling, videos, photographs, comics/flyers. Peoples' movements also use research as a strategy to document their own sustainable food production practices, such as agroecology and reinvigorating local food systems. There are also positive synergies between progressive scholars and activists who co-produce data and knowledge with affected communities, which contribute to strengthening struggles on the ground, real participation of people in policy making, and alliance building.
- 2. Legal advocacy** is a crucial strategy for reclaiming and defending tenure rights. There are traditions of using Constitutional Courts and judicial processes in which affected communities and activists use existing forestry and natural resources laws as bases for class action suits (for e.g. filing a complaint to cancel a permit to build an artificial island/land reclamation in Indonesia). Lawyers have also provided paralegal trainings to communities to raise awareness about laws and how to use them for their own benefit. At the regional and international levels, peoples' movements and civil society organizations have critically engaged in various public arenas such as the United Nations, through the use human rights conventions and international laws to push for their tenure rights and exact accountability from states and non-state actors.
- 3. Grassroots organizing, movement building, strengthening local resistances and struggles,** building peoples' power entail constant and systematic grassroots organizing and strengthening of community organizations and networks. Local resistances and struggles are essential in stopping land grabbing and other



forms of violations of tenure rights. Local leaders organize peoples' assemblies where community members share their concerns, ideas, and strategies to collectively move forward.

#### **4. Networking, real solidarity work, and alliance building at various levels are crucial in winning campaigns.**

Local campaigns that have won against corporations or states encroaching on their land and territories are strategically networked with national, regional, and international groups. For example, the Clean Sugar Campaign<sup>4</sup> in Cambodia has counterparts in the UK, where solidarity activities put additional pressures on the company's headquarters. Similarly, La Via Campesina, the biggest and broadest international peasant movement, has launched global campaigns against land grabbing. Asian peoples' movements are keen to build a regional movement or platform to defend their land, territories, forests, and fisheries. Alliance and solidarity work are done across sectors—between rural poor and workers, urban poor, consumers, students, academia, civil society groups and peasant unions. An example is how Japanese civil society has linked with Mozambican peasants to convince the Japanese government to stop financing a land grabbing project that has negatively affected the livelihoods of Mozambican peasants. This has created networks as well as an expression of real solidarity between people.

#### **5. Policy advocacy, lobbying and critical engagements are conducted with government agencies.**

Advocating for pro-people, pro-environment, and human rights-based policies, regulations, and laws is an important strategy for movements to secure their rights. Recognition of local peoples' customary rights is an important issue across

the region. In Thailand, a coalition of peoples' movements (PMOVE) uses all available channels and mechanisms to pressure the state to uphold peoples' rights. In the Philippines, a multi-sectoral campaign pushed for the extension of a nationwide agrarian reform program, which is a mechanism to redistribute wealth and power in the countryside. Petition writing and submissions to relevant land and natural resources-related ministries and human rights commissions are done to file complaints against companies and state actors. However, authorities do not always respond and/or act on complaints.

#### **6. Awareness-raising, capacity-building, and political education help**

popularization of human rights and international best practices on securing tenure rights, so that affected communities can strategize effectively. Organizing of meetings/trainings to strengthen capacity on legal, media and policy advocacy, and community mobilizations to win public support are also important. Political education on human rights-based tenure also extends to government officials, who can be champions and allies of movements.

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*Peoples' movements, grassroots organizations, and local communities have diverse capacities and employ different strategies and tactics in defending their lands, territories, forests, and fisheries.*

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4. The Clean Sugar Campaign is “a coalition of affected communities and NGOs that aims to stop human rights abuses and environmental damage caused by the Cambodian sugar industry; bring about a just resolution for the individuals and communities who have been harmed by the industry; and ensure that the agricultural development and trade policies benefit smallholder farmers and local communities”. Accessed at <http://www.boycottbloodsugar.net/the-campaign/>

- 7. Direct actions** consist of people's mobilizations and rallies, land occupations, road blockades through pickets, and boycotts, etc. When combined with other strategies, these are powerful tools for affected communities and allies to win public support, increase their strength, and positively pressure the state.
- 8. Strengthening/reclaiming local food systems, food sovereignty, and alternatives-building are means for** are means for small-scale food producers and workers across Asia to defend their traditional ways of living, producing, strengthening their local food systems, and protecting their ecosystems and territories. Examples of these are agroecology, conservation agriculture, river and aquifer restoration, community land banks, cooperatives, self-help initiatives, autonomous tenure governance, etc. that demonstrate sustainability, gender equality, direct democracy, and solidarity.
- 9. Media advocacy** through traditional and social media are platforms for movements to raise awareness about their struggles and popularize their issues.
- 10. Resource mobilization and solidarity fundraising** are crucial because campaigns need adequate resources and funds in order to conduct different activities.

What is common among the strategies above is that they expose, oppose, and propose. Social movements and civil society organizations and their campaigns continue to expose the different socio-ecological impacts and processes involved in the violations of their tenure rights through multi-platform activities, functional media, reports, research, etc. They oppose projects and policies, demand the stopping of land grabbing and human rights violations, respect of their tenure rights, and restitution when they

have been evicted from their lands and territories. Finally, they propose to protect and strengthen local food systems, sustainable agriculture and agroecological practices, food sovereignty, agrarian reform and redistribution policies, and policy and financial support for smallholder production and security of their tenure.

To complement these strategies, a particular insight on how the Tenure Guidelines can be used to build peoples' power is offered by Sofia Monsalve Suarez from FIAN International.

### ***How to Use the Tenure Guidelines to Help Build Peoples' Power***

*Offered by Sofia Monsalve Suárez, FIAN International*

A law is not self-interpreting or self-implementing, but rather gets interpreted and implemented by real people with their own worldviews, perceptions, experiences, and understanding. The Tenure Guidelines can be understood as "making human-rights-law activism" an arena to resist and rollback the current wave of land and resource grabbing. The Guidelines are well suited to doing this, and in several cases, are proving to be useful and relevant for those who are looking for ways to break through walls of silence and overcome various kinds of obstacles to inclusive and democratic land and natural resource governance. In engaging in this type of activism, social movement actors and other civil society organizations are trying to recalibrate the political-legal terrain for their resource and human rights claim-making, not simply fighting for legal recognition within the status quo. Building on a human rights-framed interpretation of the origin and content of the Guidelines, social movements engaged in using them are taking up this special instance of soft law and trying to make them a vehicle for change.

The food sovereignty movement is trying to recalibrate the international legal framework by using



and further developing the human rights framework vis-à-vis the international trade and investment framework. In this sense, the Guidelines, despite their limitations, are regarded as one achievement which should be interpreted in conjunction with other existing standards and instruments of the human rights system. At the same time, they should be actively promoted and used to consolidate some of the existing standards and instruments and expand alternative legal frameworks. This is the case for instance for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) which is a non-binding declaration lacking mechanisms of implementation. The Tenure Guidelines have operationalized some provisions of UNDRIP, including the FPIC. For this reason, FAO is the first UN agency which has issued a technical guide on FPIC. Mainstreaming the use of the Guidelines in the work of the monitoring bodies of the international human rights treaties is yet another form of opening avenues to demand accountability. The Guidelines can be used in this context as a benchmark for establishing whether state parties to the treaties are complying with their obligations to ensure tenure governance.

Recalibrating the political-legal terrain also implies changing the way international organizations relate to grassroots organizations. Social movements have been demanding that the FAO change the way it operates at the national level so that those identified as the main beneficiaries of the Guidelines can be truly part of their implementation. Agrarian justice organizations have also claimed that their expertise on issues related to governance of land should be recognized by the FAO so that they can participate in the development of capacity-building materials as well as of technical guides to support the Guidelines' implementation. In all these efforts, the IPC sees itself as striving to make the FAO more accountable to rural people.

However, these strategies also create numerous dilemmas. For example, social movements demand a comprehensive participatory approach to

the implementation of international policy-making, but the network itself has limited capacity to follow all the Guidelines-related initiatives and programs launched by international agencies and donor countries. Many national organizations find it too burdensome to engage with the FAO because of heavy bureaucratic requirements, limited funding, and insufficient independence from their national governments. Still, network members recognize that the Guidelines have opened the opportunity for national grassroots organizations to directly engage with FAO and other international agencies on terms which are favorable for marginalized groups. The challenge therefore is to take the next step of trying to use the Guidelines, in order to discover under what conditions their potential to provide the rural poor with broader spaces and resources to organize and mobilize for their claims can become a reality.

While states are tasked with implementing the Guidelines, marginalized and threatened people must not wait for the state to make use of these to claim rights and demand accountability, as part of a larger repertoire of action. The Guidelines, arguably, are built for use as a lens to (re)analyze, (re)assess, and (re)interpret the context, conditions, and consequences of resource grabbing affecting people's lives. We can apply knowledge gained from using the Guidelines to craft calculated collective action and to recalibrate the political-legal terrain in the direction of greater respect for human rights and more democratic land control. For instance, we can use them: 1) to train community members in community organizing and mobilizing; as well as to train key community organizers on national and international legal frameworks governing natural resources in order to build a critical mass of community's land/forest defenders or pressure groups; 2) to create political spaces for interacting with public authorities at different levels (local, province/state, national, regional depending on which level was prioritized by collective action); 3) to make reform processes informed of customary systems and national law frameworks governing

natural resources; 4) to devise distinct accountability strategies for corporations and for public authorities; 5) to build and cultivate allies in the broader society. These forms of using the Guidelines can contribute to overcoming specific legal and extra-legal obstacles, particularly when embedded in larger and more comprehensive accountability strategies.

# CONCLUSION

In a region where peoples' well-being, public interest, and 'development' are increasingly articulated in the language of markets, private investment, and private property, and where resisting these trends put people at risk of being charged with sedition, of creating social-political instability, and of acting against 'national interests', a human rights-based approach to governance of tenure in land, fisheries, and forests is both timely and vital. The Tenure Guidelines are an innovative instrument in this regard; they are "soft law" but rooted in the international human rights framework that governments across the world have pledged to uphold. They are approved by governments but shaped by government, civil society, technical experts, and the private sector. They refer to several human rights conventions and declarations, but are guidelines to be interpreted, adapted, and implemented by state and non-state actors in greatly differing circumstances and conditions.

In the words of South Asia participants at the meeting, "the essence and spirit of the Tenure Guidelines have existed for a long time in our communities and they are a strong tool for us; but they have to be domesticated, made into national law, and used to assess land and natural resource governance policies." Other participants have asked how the Tenure Guidelines and other human rights instruments can be used effectively in countries

where governments are not receptive to human rights and tend to prioritize economic gain of the wealthy and powerful over the wellbeing and dignity of the poor. Implementing the Guidelines in different national contexts assumes the existence of genuine, functioning democracies in which governments are accountable and where majority populations, or at least those most affected, are adequately consulted in policy and rule making. In most Asian countries, however, local people and communities are not able to influence governance processes. Wealthy individuals and private companies have far greater access to governance and justice structures, processes, and systems than ordinary people.

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*“The essence and spirit of the Tenure Guidelines have existed for a long time in our communities and they are a strong tool for us; but they have to be domesticated, made into national law, and used to assess land and natural resource governance policies.”*

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Land, territories, and their associated resources often have competing tenurial claims from different actors, among them local users, private businesses, government agencies/programmes, and even from large NGOs (for example for conservation or biodiversity protection areas). Local communities tend to have the least power in such situations; their claims are not recognized and respected as legitimate tenure rights in the face of more economically and politically powerful claimants. Participants have noted, too, that while it is important to involve all relevant actors in tenure governance processes, multi-stakeholder processes are becoming increasingly problematic because of the power asymmetries between local peoples/communities, state agencies, private businesses, corporations, wealthy individuals, technical experts, and large CSOs. Formulating just means for recognizing legitimate tenure rights will be an important step in implementing the Guidelines. Special care needs to be taken so that women's rights of access and control are not undermined by invoking culture, tradition, and social practice in identifying legitimacy of tenure.

Many participants have asked about the action signatory states could take if one of them "abuses" the Guidelines. Monitoring has thus been identified as crucial in ensuring that the Guidelines are being used in their proper spirit and not being selectively interpreted or manipulated to suit particular interests. Some have suggested preparing shadow reports on land, forest, and fisheries governance that could be used to educate the public and policy makers as well as holding governments accountable.

Civil society organizations and peoples' movements are ready to take the lead in making the Tenure Guidelines and other relevant human rights instruments effective tools for defending peoples' and communities' rights to land, fisheries, and forests. This work entails building, restoring, and strengthening participatory democracy with strong grassroots foundations, where people are able to shape social, economic, and political systems and processes. A key question as we move forward is how international institutions tasked with upholding human rights will support these endeavors.