

The Human Rights and Land Navigator: Strengthening responsible land governance



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Abstract

This paper introduces the Human Rights and Land Navigator, an online database that links the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) to binding human rights standards.

The Navigator helps land rights and environmental activists defend human rights alongside legitimate land tenure rights. It also supports the work of national human rights institutions in investigating and reporting on human rights violations. The Human Rights and Land Navigator provides a basis for research, analysis, and action to hold public and private actors to account.

Introduction

More than 220 land and environmental activists were murdered in 2020 (Global Witness 2021). These people paid the ultimate price for standing up to powerful interests that were polluting the environment and violating legitimate land rights. Pressure on land rights and environmental defenders continues to grow due to intense competition for land driven by expanding food production and urbanization. Added to these factors is the more recent pressure to meet climate change mitigation goals through increased afforestation and the cultivation of biofuel crops. Without strong safeguards, the legitimate tenure rights of vulnerable individuals and communities will continue to be violated.

In 2012, the 194 member countries of the UN Food and Agriculture Organization (FAO) adopted a set of human rights standards to protect the rights of those people most vulnerable to land rights violations: the Voluntary

Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT). Research by TMG and others has shown that vulnerable populations often lack the tools to protect their rights and to campaign for responsible land governance (TMG/APIC 2021, TMG 2021, ILC 2021).

This working paper introduces the Human Rights and Land Navigator, an online tool designed to strengthen responsible land governance by rendering explicit the links between the VGGT and binding obligations under human rights law. It was developed in response to a globally deteriorating tenure security situation and aims to help make the VGGT a universally applied standard. The Human Rights and Land Navigator is designed to be used by states, NGOs, National Human Rights Institutions (NHRIs), and other actors to support more coherent and effective implementation of the VGGT.

The VGGT: Guiding responsible land governance

The VGGT, which were endorsed by the United Nations' Committee on World Food Security (CFS) in 2012, are the foremost international guidance framework for responsible land governance. They outline principles that governments and other actors can refer to in policymaking, legislation, land administration, and any other activities related to land governance. They inform judgements on whether the actions of governments, civil society, the private sector, and citizens are respecting legitimate land rights (Munro-Faure/Palmer 2012). While the guidelines are not in themselves legally binding, they are linked to mandatory international human rights standards.

Land and land-related resources have long been under pressure due to population growth, large-scale exploitation and urbanization. More recently, the role of land use in climate change mitigation has become a major topic in climate policy debates, adding further to the pressure on land. The VGGT were developed in response to growing pressure on tenure systems and vulnerable populations (Munro-Faure/Palmer 2012). Weak governance has been recognized as one of the key obstacles to reducing pressure on tenure and land rights (Müller 2012).

The VGGT are the first internationally agreed framework for strengthening tenure rights and responsible land governance. The Guidelines originated in 2005 when the FAO began working on a code of conduct related to land governance. These deliberations led to the inclusion of land issues in the Global Corruption Barometer 2009 (Palmer et al 2012). An interdisciplinary FAO team began working on a document that

would eventually become the VGGT through a series of partners' meetings, ten regional consultations and four consultations with civil society. These consultations brought together almost 700 people from 133 countries, representing the public and private sectors, civil society, and academia (Palmer et al 2012). Through a series of drafts and feedback rounds and three rounds of negotiations, a final document emerged, which was endorsed by the CFS. The final text reflects the common ground achieved between diverse interests and experiences.

The Guidelines call upon states to:

1. Recognise and respect all legitimate tenure right holders;
2. Safeguard legitimate tenure rights against threats and infringements;
3. Promote and facilitate the enjoyment of legitimate tenure rights;
4. Provide access to justice to deal with infringements of legitimate tenure rights; and
5. Prevent tenure disputes, violent conflicts, and corruption (Munro-Faure/Palmer 2012).

A central objective of the VGGT is to ensure that vulnerable populations do not lose their livelihoods due to changes in tenure (Munro-Faure/Palmer 2012). The VGGT stress that this requires legal recognition of legitimate tenure rights that are not currently protected by law. The Guidelines also encourage policymakers to take action to deal

with the effects of climate change and recommend that land tenure issues be included in disaster preparedness programmes. However, the relevance of the VGGT to climate change goes far beyond these two aspects mentioned in Articles 23 and 24. Coherent and broad-scale implementation of the VGGT would ensure that legitimate tenure rights and particularly the rights of vulnerable populations are protected. They would also prevent unintended negative consequences of climate change adaptation and mitigation measures. Coherent implementation of the VGGT therefore means protecting human rights.

How can implementation of the VGGT be strengthened?

Ten years after the adoption of the VGGT a debate is emerging about their effectiveness and the need to scale up and strengthen implementation. While some argue that the impact of the VGGT has been limited (Myers & Sanjak 2022), this is difficult to confirm. Not only is it hard to evaluate the normative and indirect effects of soft law instruments (Cotula 2017), but due to the absence of a comprehensive monitoring mechanism for the VGGT it is almost impossible to reach final

conclusions about the scale or effectiveness of their implementation (Kramer et al 2021). Because the guidelines are voluntary, some leverage is needed to ensure their implementation. Linking the VGGT explicitly to binding legal instruments in relation to human rights can provide such leverage.

TMG Research, the Danish Institute for Human Rights, and the Malawi Human Rights Commission with support by the German Ministry for Economic Cooperation and Development have responded to the challenges posed by the voluntary nature of the VGGT and their weak implementation by developing a tool that assesses land governance from a human rights perspective and links the VGGT to hard legal instruments. This brings human rights actors squarely into the field of land tenure governance and strengthens the coalition of actors working towards the protection of land rights and the environment. National Human Rights Institutions have a legal mandate to investigate human rights abuses, to advise policymakers, and to educate the public on human rights (DIMR 2018). They can thus serve a key ally in the struggle for responsible land governance.

The Human Rights and Land Navigator

The **Human Rights and Land Navigator** supports more effective implementation of the VGGT by explicitly linking the Guidelines to legally binding human rights. This enables land rights activists and environmental defenders to advocate for human rights while safeguarding legitimate tenure rights. It also supports the work of National Human Rights Institutions (NHRIs) in investigating and reporting on human rights violations. While land rights are technically part of the mandate of NHRIs, current engagement with land issues is limited (Kramer et al 2021).

How the Navigator is designed

The Human Rights and Land Navigator is an online database that provides a systematic overview of the links between the VGGT and international human rights standards, including legally binding obligations. Each paragraph of the VGGT is mapped against the following international instruments:

- **Core international treaties**, notably the UN Covenants on civil, political, social, economic and cultural rights; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of Persons with Disabilities (CRPD); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW); and the

Convention on the Rights of the Child (UNCRC).

- **UN Declarations**, particularly the Universal Declaration of Human Rights, the Declaration on the Rights of Indigenous Peoples, and the Declaration on the Rights of Peasants and Other People Working in Rural Areas.
- **ILO Conventions**, notably the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- **Other UN standards** such as the UN Guiding Principles on Business and Human Rights (UNGPs).

The links between the VGGT and human rights law are based on prior identification of the main human rights aspects of the VGGT. These have been clustered into 15 themes in the section on 'land issues'. Users can explore the database using search terms or filters selected from a range of options. Search results can then be exported to Excel and PDF

Limitations of the Navigator

There are some limitations to the scope of the Human Rights and Land Navigator. Regional human rights treaties and conventions have been excluded, and only a restricted number of ILO Conventions (i.e., ILO Conventions No. 111 and 169) have been included, even though several other ILO conventions, such as those on child labour, forced labour, freedom of

association and collective bargaining, are relevant to the VGGT. These limitations are due to a necessary trade-off between comprehensiveness and practicality.

The navigator also specifically links to the sections of the VGGT that refer to what states should do, rather than those referring to what they may do, as the former represents a stronger and more explicit formulation of states' responsibilities. The linkages presented in the mapping refer to states' obligations under international human rights law. The responsibilities of other actors, such as businesses, can also be identified and are, in some cases, explicitly mentioned in the Guidelines.

Who can use the Navigator and how?

When communities are displaced from their ancestral lands, this not only jeopardizes their livelihoods and identities, but also violates their fundamental human rights. Communities like the Ogiek in the Mau Forest of Kenya's Rift Valley have fought years to have their land rights recognized. When the Ogiek were evicted from the forest without prior consultation they fought back through the courts until in 2017 the African Court on Human and Peoples' Rights, the judicial arm of the African Union, found that the Kenyan Government had violated seven separate articles of the African Charter on Human and Peoples' Rights by persistently denying Ogiek land rights as well as their rights to religious and cultural practices (MRG 2016). The case of the Ogiek

underlines the need for land governance to respect and protect human rights. The VGGT offers a guidance framework to do so.

National Human Rights Institutions (NHRIs) can use the Human Rights and Land Navigator as a supporting tool when researching land-related cases. For example, in relation to women's inheritance rights, the Navigator highlights the relevant VGGT sections and corresponding human rights instruments. This provides a basis for reporting on infringements with reference to binding obligations. It also offers a starting point for civic action in support of women's land rights by civil society actors. By drawing this link between the VGGT and human rights instruments, the limitations inherent in the voluntary nature of the VGGT can be mitigated. The Navigator can thus help to forge strong alliances between actors defending land tenure rights and those defending human rights, building pressure on governments to protect the legitimate tenure rights of vulnerable people. Finally, the Navigator can function as a resource base for researchers.

Outlook:

Linking land rights to human rights

To ensure coherent and broad-based implementation of the VGGT, communities and civil society organizations must first know about them. Moreover, state actors must know how to apply the VGGT and investors should be aware that compliance with the VGGT is monitored, and that states and communities will hold them to account.

The role of NHRIs in raising awareness, investigating, handling complaints and monitoring human rights abuses makes them key allies for defenders of land rights, the environment and tenure-insecure communities. The Human Rights and Land Navigator will empower NHRIs to engage more meaningfully with land issues and enable land governance actors to more actively collaborate with human rights actors. Through processes such as the [Universal Periodic Review](#), NHRIs can report on adherence to human rights standards in land governance and thus influence policymaking and policy implementation. Engagement by NHRIs with land governance issues helps to raise awareness of the links between human rights and land rights, and of land governance as a core social and economic development issue.

The Navigator may also help to resolve land-related conflicts since human rights violations are frequently central

to the most severe, long-term land conflicts. Uncovering human rights violations is a key step in conflict resolution, especially where power relations are asymmetrical. A legal case based on human rights violations can tip the scales in favour of the violated party by generating greater attention and a stronger sense of urgency.

In the medium-term, the Human Rights and Land Navigator can be complemented by monitoring tools to assess VGGT implementation in specific contexts. Monitoring is crucial to ensure that voluntary instruments such as the VGGT gain more traction. It can help to ensure participatory implementation of the VGGT, strengthen their impact on public and private action, and provide guidance for implementation (Jansen 2020). TMG Research and its partners are currently working on an indicator framework for VGGT monitoring which will be published in 2022. A reporting tool for local communities, and specifically women, whose tenure rights have been violated is also being developed together with the Kenya Land Alliance. This is planned for release in 2024.

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