Food and Agriculture Organization of the United Nations

GOVERNANCE OF TENURE
TECHNICAL GUIDE
12

Strengthening civic spaces in spatial planning processes

A technical guide on regulated spatial planning and tenure to balance societal priorities in the use of land, fisheries and forests

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A technical guide on regulated spatial planning and tenure to balance societal priorities in the use of land, fisheries and forests

Prepared through a multi-actor process by TMG Research – Thinktank for Sustainability

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Foreword

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO, 2012; referred to in this guide as the Guidelines) were unanimously adopted by the Committee on World Food Security (CFS) in 2012. The Guidelines provide guidance on how to recognize, protect and support legitimate tenure rights, including extra-legal individual and collective tenure rights, and those arising under customary and indigenous governance systems.

Decisions over tenure – who gets access to land, fisheries and forests, for how long, and under what conditions – have important implications for people's livelihoods. Spatial planning procedures can have a considerable impact on the legitimate tenure rights of the respective rights holders and, in the long term, can affect livelihoods. This technical guide on regulated spatial planning and tenure acknowledges this link and provides guidance on the importance of recognizing legitimate tenure rights in spatial planning processes. *Strengthening civic spaces in spatial planning processes* focuses on the practical challenges of implementing spatial planning objectives and considering peoples' tenure over land, fisheries and forests. Given the focus on vulnerable and marginalized communities in the Guidelines, a human-rights based approach to spatial planning is required which sees individuals and communities as rights holders, and the state as a duty bearer that has committed to uphold human rights. Access to information, meaningful participation, accountability and access to justice are essential elements in a human rights-based approach to spatial planning and are pivotal for spatial planning processes that are in line with the principles of the Guidelines. Therefore, the strategies presented in this technical guide seek to strengthen these elements.

Acknowledgements

This technical guide on regulated spatial planning and tenure has been prepared by a team led by Jes Weigelt and Anna Katharina Kramer and has been drafted by Anna Katharina Kramer, Samie Blasingame and Sonja Scheele from TMG Research – Think Tank for Sustainability. This work could not have been realized without the close collaboration of Paul Munro-Faure, who provided crucial feedback and guidance throughout the entire process of drafting the technical guide.

A two-day workshop with technical experts in the fields of spatial planning and tenure, held in October 2018 in Berlin, provided an opportunity to plan a first outline of the guide and to gather comments on the further development of its structure and content. A second workshop, held in February 2019, supported the development of the case studies, which added substantial value to the strategies brought forward in this technical guide. Lastly, a peer review by a wide range of technical experts in the field of spatial planning and tenure provided significant feedback.

The drafting team would like to thank everyone who has contributed to the technical guide by participating in the technical workshops, with case studies and providing feedback in the peer review. Special thanks goes to Luky Adrianto, Safia Aggarwal, Larissa Stiem-Bhatia, Sumana Chatterjee, Uchendu Chigbu, Cecilie Ravn-Christensen, Ario Damar, Jennifer Devine, Erlinda Dolatre, Jean Maurice Durand, Fabrice Edouard, Fiona Flintan, Mathias Hack, Eric Hiariej, Louisa J.M. Jansen, Patrick Kalas, Felix Knopf, Eric Koomen, Andreas Lange, Giacomo Lepri, Marije Louwsma, Samuel Mabikke, Rebecca Metzner, Dolores Nuevas, Henry Pacis, Alain Paz, Philip Seufert, Gregario Velasco, Raul Villanueva and Babette Wehrmann.

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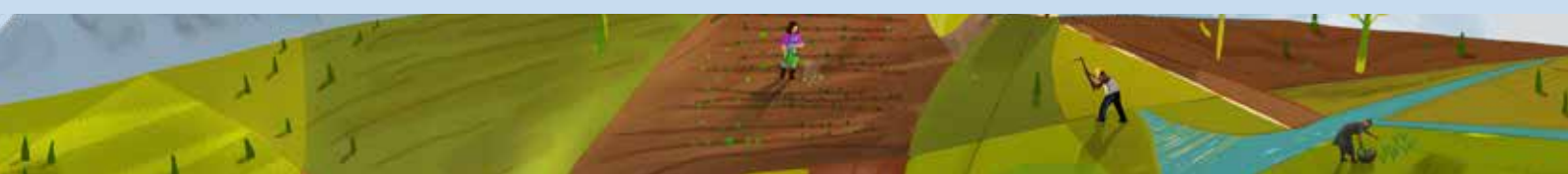
1
Introduction

- ✓ **1.1 Scope and audience of the technical guide**
- ✓ **1.2 Structure of this technical guide**



1. Introduction

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO, 2012; hereafter referred to as the Guidelines) were unanimously adopted by the Committee on World Food Security (CFS) in 2012. They have enjoyed broad recognition and support internationally and have been celebrated for the inclusive and participatory process by which they were developed. Their adherence to existing international human rights law, which outlines obligations and responsibilities of state authorities and non-state actors to uphold the responsible governance of tenure, is also seen as a critical asset. The Guidelines represent internationally agreed guidance on how to recognize, protect and support legitimate tenure rights, including extra-legal individual and collective tenure rights, and those arising under customary and indigenous governance systems.

This technical guide on regulated spatial planning and tenure is the twelfth in a series of technical guides in support of the implementation of the Guidelines. Referring in particular to paragraphs 20.1 to 20.5 of the Guidelines, it aims to provide guidance on the importance of safeguarding legitimate tenure rights in spatial planning processes when reconciling and harmonizing different objectives concerning the use of land, fisheries and forests. It focuses on strategies that strengthen access to information, meaningful participation, accountability and access to justice in spatial planning processes to ensure that such processes adhere to the principles put forth in the Guidelines and respect the tenure rights of people, communities and others. This focus is based on an understanding of spatial planning as an inherently social process meant to guide decisions on society's use of a given space. Given the focus on vulnerable and marginalized communities and those often affected by a lack of recognition of their tenure rights in the Guidelines, this technical guide takes a human-rights based approach to spatial planning with the aim of strengthening civic space and encouraging spatial planning processes in line with the objectives set out by the Guidelines.

1.1 Scope and audience of the technical guide

The Guidelines build on existing human rights obligations that states should abide by in the context of governing land, fisheries and forests. As spatial planning is a state-mandated activity, this technical guide addresses state authorities involved in spatial planning processes, national governments and local authorities, and those operating on behalf of the state or within customary governance systems. It provides strategies on how to strengthen, protect and promote legitimate tenure rights in spatial planning processes at the local, regional and national levels. However, this guide does not provide a technical, step-by-step manual on how to conduct spatial planning. Instead, the Annex provides an overview of existing manuals for spatial and land use planning, as well as other technical guides with notes on their relevance for regulated

spatial planning. The strategies provided in this technical guide, furthermore, specifically refer to some of those resource documents for more detailed guidance on certain aspects. While this technical guide acknowledges the importance of an enabling environment for spatial planning, including appropriate legal frameworks, institutional mandates and coordination mechanisms, transparent and accessible recording and registration processes, functioning cadastral offices and transparent valuation processes, it is beyond its scope to provide detailed guidance on how to create such an enabling environment. The overview in the Annex does, however, provide entry points for more guidance on these preconditions.

It is important to understand that the strategies for access to information, meaningful participation, accountability and access to justice brought forward in this technical guide are not ends in themselves. Rather, they are tools that support setting up spatial planning processes that are in line with the principles of the Guidelines, and hence help to protect legitimate tenure and to uphold human rights obligations in the process. Further, this guide acknowledges the importance of bottom-up approaches and grassroots initiatives that seek to close the gaps that can be left by weak governance structures. Subsequently, this technical guide not only provides guidance for state authorities but also for decentralized government and non-governmental actors, such as civil society organizations (CSOs) that often support communities in asserting their rights throughout the spatial planning process. The term CSO not only relates to non-governmental organizations (NGOs), but to groups and communities that are represented by their organizations at a grassroots level, such as small-scale food producers, urban poor, women, youth or indigenous communities. People, communities and others affected by spatial planning processes might find the suggested strategies helpful to hold their governments accountable when their tenure rights are not upheld or respected. The private sector, especially investors considering land-based and agricultural investments, might equally find the strategies informative to ensure that their involvement in spatial planning processes is in line with the principles of the Guidelines. The guidance is applicable to different levels including national and sub-national levels where improvement of the spatial planning process is critical to advance more sustainable natural resources management, including the conservation and sustainable use of biodiversity.

1.2 Structure of this technical guide

This technical guide is based on the outputs of a consultation process involving a broad range of actors. A workshop bringing together tenure rights experts and spatial planning practitioners to discuss spatial planning and tenure issues in the context of the Guidelines was held in October 2018 in Berlin. It provided the basis for conceptualizing the scope, focus and emphasis of the technical guide. Subsequent consultations and a workshop with specific case providers provided additional input and guidance. A sounding board representing a wide range of topical expertise assisted in reviews of the technical guide at multiple stages throughout the conceptualization and writing processes.

The technical guide is structured in three main parts:

- **Chapter 2** introduces the Guidelines and its link to spatial planning, provides a definition of regulated spatial planning and highlights its importance in the context of food security. It also reflects upon one of the main challenges to the upholding of the principles of the Guidelines in spatial planning processes, that is, power imbalances between people, communities and others involved in the process.
- **Chapter 3** presents strategies to strengthen legitimate tenure rights in spatial planning processes through four elements of a human rights-based approach: access to information, meaningful participation, accountability and access to justice. These four elements are tools to strengthen civic space and ensure that spatial planning processes are in line with the principles of the Guidelines. Case studies help to illustrate how the strategies can be practically implemented and reflect common spatial planning scenarios in the context of land, fisheries and forests from around the world. It should be noted that the cases provide a non-exhaustive range of examples, and that different spatial planning scenarios may be common elsewhere.
- **Chapter 4** provides an overview of lessons learned throughout this technical guide and how to integrate these lessons into the spatial planning process.

2
The Guidelines, regulated spatial planning and tenure

- ✓ **2.1 The role of regulated spatial planning in respecting tenure**
- ✓ **2.2 Regulated spatial planning and food security**
- ✓ **2.3 Regulated spatial planning: the risk of marginalization through power imbalances**
- ✓ **2.4 A human rights-based approach to spatial planning**

2. The Guidelines, regulated spatial planning and tenure

The Guidelines are formulated "for the benefit of all with an emphasis on vulnerable and marginalized people" (paragraph 1.1). Their objective is to contribute to the progressive realization of the right to adequate food in the context of national food security. The Guidelines call upon states to recognize, respect and protect legitimate tenure rights, whether formally recorded or not, and declare that all programmes, policies and technical assistance to improve the governance of tenure while implementing the Guidelines should be consistent with a state's existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments (paragraph 1.1). Consequently, the Guidelines call upon states to design their spatial planning processes in line with their existing human rights obligations. This mandate is reiterated in paragraph 20.1 which indicates that "states should conduct spatial planning [...] in a way that promotes the objectives of these Guidelines."

Many aspects of the Guidelines apply to spatial planning processes, including the following objectives: improve tenure governance, enhance transparency and strengthen the human and institutional capacity of implementing organizations (paragraph 1.2), general principles - recognition of legitimate tenure rights; safeguarding legitimate tenure rights; promoting and facilitating the enjoyment of legitimate tenure rights; providing access to justice and preventing tenure disputes, violent conflicts and corruption (paragraph 3A) - and principles of implementation - human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approach, consultation and participation, rule of law, transparency, accountability, continuous improvement (paragraph 3B). This technical guide aims to translate these objectives and principles into strategies useful for upholding and protecting tenure rights in spatial planning processes.

2.1 The role of regulated spatial planning in respecting tenure

Spatial planning is an important instrument to address globally occurring trends that compromise international development objectives for inclusive, sustainable development and increased food security. Local, national, regional and globally occurring trends include widespread changes in land use (e.g. the conversion of agricultural land for various non-agricultural purposes, or deforestation of forest land for agricultural purposes or extractive industries), increased urbanization, a rising demand for food and fuel by fast-growing populations, population displacement as

a result of conflicts or changes in climatic patterns including more frequent extreme weather events (Smith *et al*., 2015), and unprecedented rates of biodiversity loss (IPBES, 2019). Establishing responsible spatial planning procedures is pivotal to address these trends and strengthen sustainable development and food security.

Spatial planning is a government-mandated activity that sets the overall frame within which land, fisheries and forests are used, thereby influencing tenure rights and duties, and regulating the access to and use of resources between different actors. In doing so, it can contribute considerably to the achievement of social, economic and environmental sustainability (FAO, 2015b). It can positively impact social sustainability by considering the needs of local populations and by safeguarding healthy and safe living environments. Economic and environmental sustainability can be fostered through designating specific areas for production and protection purposes, thereby creating an environment that both induces investment and addresses environmental risks (FAO, 2015b).

Additionally, spatial planning is characterized by three main functions related to the governance of natural resources: developmental, regulatory and coordinating functions. The developmental function serves to outline the spatial distribution of infrastructure projects, natural resource use, landscape regeneration and the provision of public services. In its regulatory function, spatial planning can result in rules and regulations that determine the use of land, fisheries and forests and protect ownership and sustainability of these resources. And finally, the coordinating function presents itself in the necessary alignment of various actors and institutions that represent the interests of people, communities and others aiming to achieve a common goal (FAO, 2015b).

Due to the different sectors that spatial planning addresses and the different functions it assumes, spatial plans can take many forms: land use plans, forest use and management plans, development plans, disaster risk management plans, conservation plans, coastal management plans or management plans for (marine) protected areas, to name a few. In this context, the principle of subsidiarity is key. Subsidiarity refers to locating spatial planning processes (plan formulation, implementation and monitoring) at the lowest governance level possible unless action on a higher level is more efficient (GIZ, 2012). Further, spatial planning often constitutes a highly technical process which needs to integrate the different development sectors and their institutions at various administrative levels.[1] The need to harmonize spatial plans for different sectors and objectives is often further complicated by a lack of institutional capacities, overlapping legal mandates and/or lack of coordination between institutions. These challenges are evident in the common scenarios highlighted in the strategies and case studies presented in chapter 3.

Balancing the different dimensions of sustainability reflected in the objectives of various spatial plans at times requires reconciling competing interests. If well designed, the spatial planning process can contribute to good governance and the strengthening of civic space. It also has the potential to significantly impact the legitimate tenure rights of the people, communities and others involved. If safeguards such as compensation

[1] For more detailed information and guidance on the spatial planning cycle and steps, please consult the references provided in the Annex.

for changes in tenure through financial or territorial means are weak or non-existent, this can have far-reaching consequences especially for marginalized and vulnerable communities who often are not in a position to effectively protect their tenure rights. The livelihood opportunities of these communities are often directly affected when spatial plans limit access to and control over land, fisheries or forests. The classification of a certain use has an impact on the value of land, fisheries and forests; in particular, when land use changes, property tax may be affected (such as when land use changes from forest to agriculture, or from agriculture to residential).

The Guidelines aim to ensure that all forms of tenure, including those not currently protected by law, provide all persons with a degree of tenure security that legally protects legitimate tenure right holders within existing obligations under national and international law (Guidelines paragraph 4.4). Furthermore, paragraph 20.1 of the Guidelines acknowledges the direct link between spatial planning and tenure by stating that "regulated spatial planning affects tenure rights by legally constraining their use." In this context, it is important to note that legitimate tenure rights not only pertain to owning land, fisheries or forests but to a range of other rights including access, management and withdrawal rights (see Box 1). Legitimate tenure rights can be legally recognized (that is, legitimate through the law) or socially recognized (that is, legitimate through broad social acceptance even without legal recognition). Therefore, spatial planning processes need to take the existing de facto tenure situation in potentially affected areas into consideration to respect all

BOX 1.
THE BUNDLE OF RIGHTS

Tenure is the relationship between people and the resources provided by land, fisheries and forests. Tenure regulates the use of, access to and transfer of these resources. However, different groups of individuals or communities can have different rights related to the same resource (see the examples to follow). This complex relationship that exists between people and land and other natural resources is commonly referred to as the 'bundle of rights' (FAO, 2002). This complexity needs to be considered in spatial planning processes; for example, in expropriation and compensation processes. The person or community with legal ownership over a particular resource are not the only ones affected by tenure, as impacts are also felt by those with usufruct rights.

- **Access:** Access rights allow people, communities and others to enter an area.
- **Duration:** Duration measures the temporal permanence of allocated rights.
- **Exclusion:** Exclusion is the ability to refuse another individual, group or entity access to and use of a particular resource.
- **Management:** Management can be defined by the legal limits of other rights and can also be used to empower a community to articulate its rights to alienation or the exclusion of particular resources.
- **Alienation:** The right to alienate one's property is the right to transfer one's rights to another entity.
- **Withdrawal:** Withdrawal rights are the right to benefit from forest products for subsistence or commercial purposes.
- **Due process and compensation:** These are the right to due process and compensation in cases of eminent domain.

Adapted from *Rights and Resources,* 2019

existing legitimate tenure rights. The Guidelines (paragraph 4.4) promote the use of widespread public participation to ensure all legitimate tenure rights are respected. Recognizing and respecting tenure rights and the security of such rights must be an integral part of spatial planning processes.

2.2 Regulated spatial planning and food security

Besides its potential to promote economic, social and environmental sustainability on the local and national levels, spatial planning is a key tool to address global goals. One of the overarching goals of the Guidelines is to promote responsible governance of tenure of land, fisheries and forests as a means of achieving food security. Food security can be defined as "[…] when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life" (World Food Summit, 1996). This definition highlights the different dimensions of food security, including: the availability of food in sufficient quantity and quality; access to food and the availability of sufficient resources to acquire food; the utilization of food to reach a state of nutritional well-being; and stable access to food resources (FAO, 2006). An increasing demand for food, coupled with an increase in population exerts increasing pressure on land, fisheries and forests (Carey *et al.*, 2011).

With these challenges in mind, spatial planning processes can contribute in different ways to food security. Firstly, spatial planning is an important tool to create sustainable food systems by balancing economic, environmental and social interests in the context of determining access to and use of land, fisheries and forests (European Union and URB ACT, 2016). Secondly, spatial planning processes can strengthen the access to, rights to and use of these resources by aligning with principles for upholding tenure such as those presented in the Guidelines. This is crucial because insecure tenure rights can negatively impact investment in and productivity of land, fisheries and forests (USAID, 2016). This is particularly relevant for the tenure rights of women who comprise a large share of the agricultural work force, but often face tenure insecurity (USAID, 2016). The strategies in this technical guide aim to strengthen the tenure rights of people, communities and others. They encourage the consideration of customary tenure rights systems in spatial planning processes as well as the rights of women.

2.3 Regulated spatial planning: the risk of marginalization through power imbalances

Balancing the different interests at stake in spatial planning procedures entails complex decision-making processes. However, the contributions spatial planning can make to sustainable social, economic and environmental development and the achievement of global goals, such as food security, can be compromised by power imbalances between different actors that hinder a balanced reconciliation between different interests. The Guidelines recognize the existence of power imbalances

that require consultation and participation processes. They assert that "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" is a major responsibility of the state (paragraph 3B6). Power imbalances manifest themselves between the state and mandated government authorities engaged in spatial planning, (local) communities and third-party actors. Power imbalances emerge where one group influences spatial planning processes through technical expertise, financial resources, political power or control over decision-making power to achieve a strategic advantage vis-à-vis other parties involved (Boanca, 2012). Responsible governance structures are, therefore, critical to realize and uphold human rights, ensure food security, and maintain sustainable livelihoods.

Weak governance structures tend to be characterized by low levels of transparency, lack of accountability and inconsistent rule of law, which, in turn, undermine objectives related to spatial planning such as social stability, investment, broad-based economic growth and sustainable development (Transparency International and FAO, 2011). Increased pressure on land, fisheries and forests has made these sectors increasingly prone to corrupt practices, both administratively and politically, when designing development plans, defining zones for industry, housing and investments, offering lease contracts or deciding on proposed land use changes. Administrative corruption in the form of monetary bribes for resource-related services such as title registry are widespread and tend to make such services inaccessible to many legitimate right holders, rendering their tenure legally insecure (Transparency International and FAO, 2011). Political corruption and inequity emerge in decisions related to who controls and has access to which resources. Spatial planning decisions about resource use and specific locations are often negotiated in a way that leaves those with less political leverage with an inequitable share of potential benefits. This subtle form of corruption often functions in upper levels of power in both the public and private sector and can include, for example, the privatization of public or common resources and large-scale land acquisitions of traditionally communal or customary land, fisheries and forests (Transparency International and FAO, 2011). Also, compulsory acquisition of land in low-income communities often occurs for lower market value uses (e.g. agriculture instead of residential; forests instead of infrastructure) while land of more affluent neighborhoods is allocated for higher market value uses such as commercial real estate. Both political and administrative corruption can reinforce existing power imbalances and have the potential to make it even more difficult for tenure right holders to claim their legitimate rights in spatial planning processes.

Power-dominated decision-making processes and corrupt practices in the land, forest and fishery sectors reinforce the need to strengthen responsible governance structures. The Guideline's principles of implementation (paragraph 3B) highlight elements that are crucial for responsible governance structures; namely,

transparency and accountability. Further, the Guidelines recognize the importance of these elements through a focus on consultation and participation (paragraph 3B.6) to ensure engagement and support of legitimate right holders who may be affected by spatial planning decisions. In regard to delivery of services (paragraph 6), states should adopt and enforce measures such as checks and balances along with clear rules and regulations. Safeguards against improper use of power in spatial planning, particularly regarding changes of regulated use of land, fisheries and forests, should be established along with compliance reporting by implementing agencies (paragraph 20).

2.4 A human rights-based approach to spatial planning

The Guidelines build on existing human rights principles and inherently represent a human rights-based approach to the governance of land, fisheries and forests which aims to contribute to the progressive realization of the right to adequate food. The human rights-based approach considers individuals or groups of individuals as right holders, whereas the state acts as the duty bearer, based on its obligations under the human rights framework. Under human rights treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), states have a threefold obligation to respect, protect and fulfil the rights of right holders (UN General Assembly, 1966). The obligation to respect requires that states refrain from directly or indirectly interfering with the enjoyment of human rights. The obligation to protect means that states must prevent third parties (e.g. individuals, armed groups or companies) from interfering, directly or indirectly, with the enjoyment of human rights. And, finally, the obligation to fulfil obliges states to adopt legislative, administrative, budgetary, judicial and other necessary measures to achieve the full realization of human rights (GIZ, 2014). At the individual level, everyone is entitled to their own human rights but should equally respect the human rights of others (OHCHR, n.d.).

Human rights principles include the principles of non-discrimination and equality, as well as the principles of interdependency and indivisibility. These principles are reflected in the strategies presented within this technical guide. While acknowledging the indivisibility of human rights, this technical guide and its strategies for spatial planning have specific relevance for the realization of the right to equal protection of the law and to effective remedy by competent tribunals including the right to fair public hearings and independent tribunals in the determination of one's rights; the right to freedom of peaceful assembly; the right to own property; and the right to adequate living standards including housing and food.

This technical guide's objective is to strengthen the legitimate tenure rights of all right holders within spatial planning processes, with a particular focus on vulnerable and marginalized individuals. It does so along four elements that are crucial to a human rights-based approach to regulated spatial planning and in line with the principles of the Guidelines: access to information, meaningful participation, accountability

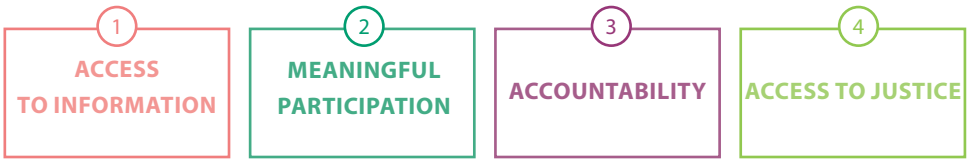
and access to justice. Taking a human rights-based approach to spatial planning is meant to uphold and protect the legitimate tenure rights of people, communities and others involved in the spatial planning process and supports approaches towards addressing existing power imbalances through the strengthening of civic space. States can only meet their human rights obligations concerning the right to adequate food and other rights that rely on secure access to land and other natural resources if they adopt policies for the responsible governance of these resources (FAO, 2010). Developing human rights-based strategies for spatial planning contributes to strengthening the responsible governance of tenure of land, fisheries and forests by supporting spatial planning processes that are in line with the principles of the Guidelines.

3
Strategies

- ✓ **3.1 Access to information**
- ✓ **3.2 Meaningful participation**
- ✓ **3.3 Accountability**
- ✓ **3.4 Access to justice**

3. Strategies

Strengthening regulated spatial planning in accordance with the principles of the Guidelines supports the achievement of overarching sustainable development goals including food security and poverty reduction. This goal requires applying appropriate strategies to widen civic space and strengthen legitimate tenure rights within spatial planning processes. This chapter, therefore, introduces four elements of a human rights-based approach in support of spatial planning processes aligned with the principles of the Guidelines:



THE FOUR ELEMENTS OF A HUMAN RIGHTS-BASED APPROACH

This chapter provides a set of strategies relevant to each of these elements with the aim of advancing responsible governance of tenure of land, fisheries and forests. The objective of spatial planners should not be to apply all strategies outright; rather, the strategies should be used as support to develop context-relevant spatial planning processes that are in line with the Guidelines. The strategies do not target specific steps within the spatial planning process; instead, each strategy should be considered throughout the process as appropriate and necessary. This means that some of the strategies might address similar principles within spatial planning activities, such as the principle of subsidiarity[2] for example, but do so with regard to their relevance for the different elements, whether it be access to information or accountability.

The elements of a human rights-based approach are inter-related and generally build on one another in the order they are presented in this Guide. Access to information is an essential precondition for equitable and participatory processes. If combined with effective human and institutional capacity enhancement, it enables people to meaningfully participate in spatial planning processes, particularly for those who belong to vulnerable and marginalized groups. This civic empowerment, in turn, enables right holders to hold one another and their governments properly accountable and, ultimately, helps to strengthen access to justice. On the other hand, the elements are also tools for governments and government-mandated authorities to hold right holders accountable to whether they are cultivating and using land, fisheries and forests according to existing policies.

The proposed strategies included in this chapter have been developed in response to real, immediate and prevalent challenges related to regulated spatial planning processes and their effect on tenure rights. They are based on practical experience from around the world and are designed to inspire positive actions in support of strengthening legitimate tenure within improved regulated spatial planning processes. The strategies

[2] Subsidiarity refers to the principle of locating spatial planning processes at the lowest governance level possible unless action on a higher level is more efficient.

are a collection of useful tools pulled from experiences outlined in case studies and the expertise gathered throughout the consultation process of developing this technical guide. The strategies are not exhaustive and therefore provide a basic guidance toward a more human rights-based approach to spatial planning. Other specific strategies may be relevant in light of issues that arise within land, fisheries and forest planning processes that are not highlighted in this technical guide.

Additionally, there is no one-size-fits-all solution for strengthening or protecting the tenure rights of individual right holders and vulnerable and marginalized communities. Thus, the strategies presented in this technical guide should be applied consistent with an understanding that regulated spatial planning and its tenure-related implications are context-specific and can affect a multitude of rights as outlined in Box 1. The strategies are presented in a non-hierarchical order and may relate to multiple elements of the human rights-based approach presented in this technical guide. Readers are encouraged to cross-examine the strategies under the different elements, using them, as appropriate, in conjunction with one another. Like a tenure-respective spatial plan, this technical guide and its proposed strategies should be considered holistically; applying a human rights-based approach to spatial planning requires addressing all elements throughout the planning process. Chapter 4 provides more information on how the strategies can be integrated in the spatial planning process. State authorities, vulnerable and marginalized communities, CSOs, the private sector and other actors are encouraged to find inspiration relevant to their specific situation and to use the strategies to begin working towards practicable, contextualized solutions.

1 3.1 ACCESS TO INFORMATION

Throughout the Guidelines, the importance of providing relevant information, and in appropriate languages, for people, communities and others is made clear. This includes, for instance, information on the policy, legal and organizational frameworks related to tenure (paragraph 5.8), delivery of services (paragraph 6.5), allocation of tenure rights (paragraph 8.9), land consolidation and other readjustment processes (paragraph 13.6), expropriation and compensation (paragraph 16.2), the recording of tenure rights (paragraph 17.3 and paragraph 17.5) and the promotion, implementation and evaluation of the Guidelines (paragraph 26.5). Each of these areas is relevant for regulated spatial planning and reflects the importance of access to information for spatial planners and for those who are potentially affected by a spatial plan throughout the planning process.

The strategies enlarged upon below seek to strengthen access to information. They are most useful for spatial planning authorities and those working on their behalf, as well as for CSOs and other groups supporting affected people, communities and others throughout a spatial planning process. The main target groups of these strategies are individuals and communities potentially affected by a proposed spatial plan and in need of information for proper decisionmaking.

It is important to make clear that access to information in the spatial planning context is a two-way street. This means that on the one hand, spatial planners and those working

on their behalf should ensure that clear information is provided in full and in a timely manner to those people, communities and others potentially affected. On the other hand, spatial planners and those working on their behalf should be gathering and gaining information from potentially affected people, communities and others when creating and implementing spatial plans. Information provided by spatial planners is particularly important at the start of the planning process; for example, ensuring that affected communities are aware of: spatial planning intentions; the potential implications on legitimate tenure and the associated bundles of rights; the steps of the spatial planning process and mechanisms for participation; knowledge of related laws and policies; and relevant governmental mandates and responsible bodies. Information is also required at the end of the process in terms of the participatory monitoring of the spatial plan. In contexts where FPIC is required, provision of this information is a precondition for any activity to take place (FAO, n.d.). Information that should be gathered by spatial planners at the start of a spatial planning process include, for example, information concerning existing tenure arrangements and right holders, existing and overlapping claims, local descriptions of the area(s) potentially affected by a spatial plan, envisioned uses within land, fisheries and forests, and implications for property taxes.

Access to information is crucial for an iterative spatial planning process. It is imperative that communities are continuously informed in a timely manner and that they have access to independent sources of information (FAO, 2014b) to ensure that all parties are able to understand the extent to which they could be affected by a spatial plan. Where accessible and appropriate, modern technology and social media can operate as important tools. However, spatial planners should ensure that strategies chosen to enable access to information are adapted to the local context; i.e. the socio-cultural and economic context, the languages spoken, the location and level of literacy. Further, communication and awareness-raising strategies can only be effective if they are designed and implemented early on in the spatial planning process and if they equally consider those whose tenure rights are not formally recognized. *The Communication for rural development sourcebook* (FAO, 2014a) expands on how to develop communication strategies that are appropriate and cost-efficient to reach out to and interact with all intended actors.

BOX 2.
FREE, PRIOR AND INFORMED CONSENT

According to the Declaration on the Rights of Indigenous Peoples, states must obtain free, prior and informed consent from indigenous people before implementing measures that may affect them.

This entails that:

- Consent is given without coercion or manipulation (free).
- Consent is sought well enough in advance to enable indigenous people to find consensus according to indigenous consultation/consensus processes (prior).
- Consent is given based on the availability of in-depth information about the proposed project (informed).

Adapted from Free, prior and informed consent of indigenous people (OHCHR, 2013)

Strategy 1

Invest in and adapt outreach strategies to the local context to ensure access to information for all people, communities and others before and during spatial planning processes

Meaningful access to information requires that information be presented in a manner that allows communities and other parties to process spatial information, to make sense of the implications and to formulate informed opinions about spatial planning measures. This requires a thorough understanding of the local context by spatial planning actors and authorities, including the socio-economic context of the communities, institutional set-ups, formal and informal governance mechanisms, the power dynamics within and between affected communities, literacy levels (including acknowledgement of communities whose traditions are held orally), means of communication and exchange within the communities, preferred media and spoken languages in the region. Adapting outreach and communication strategies to the local context requires cultural sensitivity and an understanding of local governance systems as well as the legal frameworks behind them. Local knowledge dissemination frameworks should be used to spread information about spatial planning. In any case, prioritizing effective and inclusive outreach strategies, and adapting them to local contexts, requires resources that should be adequately reflected in any planning budget. The following list of communication tools and measures have proven useful in different spatial planning contexts:

a. Understand local governance structures and institutional arrangements before starting the spatial planning process: who needs to know what, when and how

Understanding local governance frameworks as well as formal and informal institutional arrangements is an essential first step in any planning procedure as it informs spatial planners about who the actors are, the jurisdictions and legal frameworks involved, what are their roles, and what kind of rights could be affected or reinforced. Gaining this understanding could help inform the human and institutional capacity enhancement strategy to adapt the communication strategy, information type and participation scheme throughout the spatial planning process. For example, national and local state authorities may not have a full understanding of the functioning of customary governance structures. In the forestry sector, statutory laws often overlook customary uses entirely. A thorough understanding of the relevant legal context should be ensured to identify who to involve in decision-making processes and who, how and when to inform throughout the spatial planning process. Ensuring that responsibility throughout the spatial planning process is delegated to lower levels of governance according to the principle of subsidiarity can ensure the sustainability of spatial plans in the long term.

see also
Access to information, Strategy 3

b. Ensure information dissemination throughout the entire spatial planning process through a variety of media outlets and information communication technologies (ICTs) to reach all potentially affected people, communities and others

Using social media and other modern ICT technologies, such as mobile phones, interactive radios or knowledge centres, can be an effective tool to reach geographically widespread communities or communities with many members. Social media and technology allow communities to keep updated about the spatial planning process, thereby enhancing transparency of the procedure. Social media platforms can provide effective outlets to connect with each other, exchange information and share experiences amongst actors that find themselves in similar situations. Encouraging the use of social media, however, requires caution to ensure that the information shared is objective and verified. Moreover, the application of ICTs needs to be "people-centred" rather than technology-driven while paying particular attention to avoid increasing existing marginalization through a digital divide (FAO, 2017). At the same time, relevant data and information need to be provided in a manner that recognizes that some communities have limited access to internet and computers and/or use mobile phones that are not necessarily suited for internet connections. Should postal service infrastructure exist, the use of print media in the form of thematic maps, flyers, billboards or letters is suggested. In other cases, community members might live far from village centres and will be unable to retrieve information about planning procedures displayed at central locations in the village. In such situations, information should be made available in a manner that allows it to reach remote living community members such as through radio broadcasting.

c. Provide all relevant information in official and local languages

In multi-ethnic and multi-cultural environments, a variety of languages and local dialects may exist next to official languages. To ensure an understanding of the information provided and the implications that spatial planning decisions may have, this information should be communicated in the language(s) that prevail in the area affected by the proposed spatial planning measure. Translation requirements should be accounted for within the overall spatial planning budget.

see also **Accountability, Strategy 3B**

d. Use communication tools appropriate to the cultural traditions or local knowledge of people, communities and others affected by the spatial planning process

Communication tools should be adapted to the mode of communication within the areas that could be affected. Where infrastructure is developed, postal services are reliable and literacy levels are high, sending letters to those right holders who are directly affected, informing them of the potential impacts of proposed spatial planning measures on their tenure rights and the options for voicing their concerns, can be an effective instrument to spread information. By contrast, in areas where the primary mode of communication is oral, print media is not always suitable to inform right holders. Instead, efforts need to be made to spread information verbally and face-to-face, through traditional meeting spaces or community celebrations.

see also **Access to information, Strategy 2B**

Case study 1: Securing customary rights to forests in Toba lake area

Country: Indonesia

Case Provider: Eric Hiariej with Kelompok Studi dan Pengembangan Prakarsa Masyarakat or Study Group for the Development of People's Initiative (KSPPM)

Background

In 2010, the Government of Indonesia, through a centralized spatial planning decision, granted 188 055 hectares of forest land as a concession to a pulp factory company for the rights to plant and harvest eucalyptus in the area around Toba Lake, North Sumatra Province. Of this granted land, 5 172 hectares have been customarily and communally managed by local communities in Pandumaan and Sipituhuta villages for generations. They have used the forest, called *Tombak Haminjon*, to plant and grow trees that produce incense, a product that has provided an important source of livelihood for the communities (Silalahi, 2015).

The communities, in alliance with a local NGO, Kelompok Studi dan Pengembangan Prakarsa Masyarakat [Study Group for the Development of People's Initiative] (KSPPM), claimed that communication with the Government was one-way, impeding their ability to claim their rights and hold the Government accountable. The conflict was aggravated by the power imbalance between these two sets of actors which highlights a common scenario across the Archipelago: that state-sanctioned forests are, in reality, customarily inhabited and managed by local communities without tenure security (Manalu, 2009). The communities have always sought to have their customary rights recognized and protected.

Assisted by KSPPM and supported by a network of local and national CSOs, the local communities started to making their voices heard and, subsequently, set up a movement claiming their rights to the customary land and forest affected by the concession rights. The movement has been protesting for three different types of regulation: 1) to secure their rights, there must first be a regulation that takes the customarily managed forest out of the concession area; 2) the Pandumaan and Sipituhuta must be legally recognized as customary communities; and 3) there must be a regulation that formally recognizes their right to the forest.

Applied strategies

The movement has been working through three different strategic phases. At first, the Pandumaan and Sipituhuta communities were insufficiently organized to raise their concerns. The initial phase, therefore, focused on enhancing and solidifying the understanding of Pandumaan and Sipituhuta as customary communities and developing a network of support at the local, regional and national levels.

Social media played a key role in spreading information to a wider public about the concession and spatial planning process, and decisions concerning the movement.

see also **Access to information, Strategy 1B**

Local knowledge dissemination frameworks played a key role in information dissemination by KSPPM. The church, mosque and various local customary forums provided the main venue for meetings. Village heads and customary leadership boards played leading roles in conducting meetings and providing the basis for dialogue. This approach not only allowed information to reach different members of the community, but also facilitated the spread of information in the various local languages that exist in the region. Since the local communities had always relied on these knowledge dissemination frameworks, the CSO also used them to engage with and assist the community. This strategy led government officials to acknowledge the usefulness of these frameworks to engage with the communities over the course of negotiations.

see also **Access to information, Strategy 1F**

see also **Access to Information, Strategy 1C**

see also **Access to information, Strategy 1A**

The next phase focused on achieving a better understanding about how regulation on land and land rights work. To accomplish this phase, KSPPM supported local communities to formalize their customary spatial plans by transforming oral accounts of tenure into written documents that reflected the shared understanding of customary spatial plans within the communities. The use of conflict-resolution mechanisms which helped the communities to understand their case and formulate claims towards the Government were also supported. Cooperation with larger civil society networks helped to access information concerning national and local spatial planning processes and regulations on customary tenure rights. Cooperation with independent bodies, such as the National Forestry Body and National Commission on Human Rights, further helped the communities to strengthen their claims. Although these bodies only had an advisory role, they had a strong public appeal, and their advice was taken seriously by the public, which helped in the negotiations between the communities and the Government (Silalahi, 2015).

see also **Accountability, Strategy 2C**

see also **Access to justice, Strategy 3B**

The foundations were laid at this point for the movement to focus on phase three; that is, to substantiate their claims to remove customary land from the concessions, recognize Pandumaan and Sipituhuta as customary communities and restore the customary land rights of the communities. The communities, KSPPM and their network of supporters started to have direct consultation with the Government at both local and national levels. They went to the street until the Government agreed to consider their demands. They also put much effort into building connections with certain figures within bureaucracy (both local and national), with politicians and with high-profile activists in Jakarta to build strategic alliances within and outside of Government (Silalahi, 2015; Interview with a local leader). Such strategic allies helped to pave the way for the establishment of a consultation process in spatial planning that involves local communities and takes local knowledge into consideration when producing regulations.

see also **Meaningful participation, Strategy 2A**

see also **Meaningful participation, Strategy 2B**

Outcome

After almost a decade, the movement was able to attract the attention of the Indonesian president who promised that his Government will recognize and protect the communities' customary rights. The Government issued a ministerial decree taking out the forest from the granted land in late 2016. In July 2018, a local law was passed recognizing Pandumaan and Sipituhuta as customary communities. The movement is now focused on achieving the regulation that recognizes Pandumaan's and Sipituhuta's rights to the forest. According to law, this regulation will be in the form of a ministerial decree.

This example shows that spatial planning can have considerable impact on the tenure and livelihoods of communities. But it also shows that communities, when organized and united, can claim their legitimate tenure rights and even reverse top-down spatial planning decisions that have been taken without their consent. It highlights the importance of strong community organization, support from external networks, strategic (political) alliances and, finally, openness at the highest levels of government to give effect to such claims where regular spatial planning processes initially did not respect the legitimate tenure rights of the communities.

e. Hold meetings in areas of communities affected by spatial planning processes to make attendance possible for all right holders or enable representatives to travel to meetings

Holding facilitated meetings with communities is an effective way to inform many community members about spatial planning procedures at once. These meetings should be designed in a manner that allows all community members to participate; for example, taking into account daily schedules and routines of different members of the community, considering the place of the meeting and its access for different members as well as possible power dynamics. In particular, the attendance of women may be affected if these factors are not duly considered. Women might not always be able to attend meetings far away from their neighborhoods, due to household duties. In a similar vein, these household responsibilities might restrict them from attending meetings at specific times of the day. Therefore, it is important to hold meetings that women are comfortable to attend, both in terms of time and place. The chosen setting should encourage all members to participate, and to bring their knowledge and experience as well as their expectations or visions for the spatial planning procedure. Further, planners should ensure that individuals attending meetings have a mandate to represent their communities. If holding meetings in communities is impossible, for reasons such as distance, community members should be enabled to travel to meeting locations and be reimbursed for their travel, food and accommodation. Finally, it is important to consider a neutral facilitator (either individual or organizational) to address possible power dynamics, foster dialogue, build consensus and enable collective prioritization (Committee on World Food Security High Level Panel of Experts (CFS-HLPE), 2018).

see also **Meaningful participation, Strategy 1D**

f. Utilize local and customary social institutions for knowledge dissemination about the spatial planning process and related changes in land tenure with specific focus on women's access to information

Local knowledge dissemination frameworks (working through, for example, churches, mosques, local customary fora, town halls, community associations and farmer cooperatives) can be an effective way to spread information about spatial planning procedures and associated rights. However, it is important to acknowledge that multiple local frameworks are likely to exist and that not all community members are part of these frameworks. Power relations or social differences (including religion, gender, ethnicity and languages) may require that the same information has to be disseminated to multiple groups at different places and at different times. This approach is necessary to account for the heterogeneity of communities and to ensure that all members, including women as well as men, marginalized groups and those with more relative power, are equally well-informed. Understanding how cultural norms shape access to information, how information outlets such as social media are used by different individuals and how such information is processed are all important aspects to consider (FAO, 2019).

Strategy 2

Enable target groups to absorb, process and contextualize information about the spatial planning process and related changes to resource use and land tenure

The implications of regulated spatial planning decisions for legitimate tenure rights and land use, as well as possible consequential changes in livelihood situations, might be difficult to envision or fully comprehend. Enabling effective access to information requires presenting it in local languages and using appropriate forms of dissemination. However, additional interventions are also needed to ensure that communities understand the information concerning spatial planning procedures, their timetables and the potential impacts of planning decisions on their legitimate tenure rights. The information to be shared may also be dependent on the target group; it should be considered that within the range of legitimate tenure right holders there are property owners (including absentee owners), usufruct right holders, rural and urban residents, organizations as well as individuals, landless peoples and private companies. Each of these target groups require information relevant to their status and may be affected in different ways by the same spatial plan.

a. Explain the relevance of the proposed plan, its implications for tenure and what mechanisms of influence exist

People will be differently affected by proposed spatial planning measures and their legitimate tenure rights and associated obligations may be differently impacted. Access to information relates not only to the plan itself, but also to information about the changes that the respective spatial plan is likely to trigger, its objectives, risks and impacts, including how spatial plans affect legitimate tenure rights and obligations through changing future land access and use (See Box 3). Identifying these potential impacts requires conducting social, economic, human rights and environmental impact assessments. Such assessments help communities and individuals to understand the implications of the plan on their legitimate tenure rights and associated livelihood opportunities so that they can take more informed decisions. In the absence of such comprehensive assessments, facilitating an exchange of experiences with communities in similar situations or sharing examples from other countries may also be a useful input to better assess the potential impacts of planning measures. Access to information also entails informing communities about opportunities to object to the plan through disseminating knowledge about legal and other measures that communities can take to voice their discontent and to claim their rights.

see also **Meaningful participation (paragraph 3A) and Strategy 2D**

see also **Access to information, Strategy 3**

see also **Access to justice, Strategy 3A and 3B**

BOX 3.
SPATIAL PLANNING – MORE THAN A MAP
SOURCE: DAMAR, 2015

The spatial planning process produces a number of output documents which include much more than a map of the affected area, even though the specific requirements in spatial planning processes are context-specific. Spatial plans typically include documents such as: information concerning the consultation process and comment period of a plan, including the approval process, (paragraph 3A) and, a map highlighting the areas of concern, impact assessments, and information regarding available grievance mechanisms and monitoring plans.

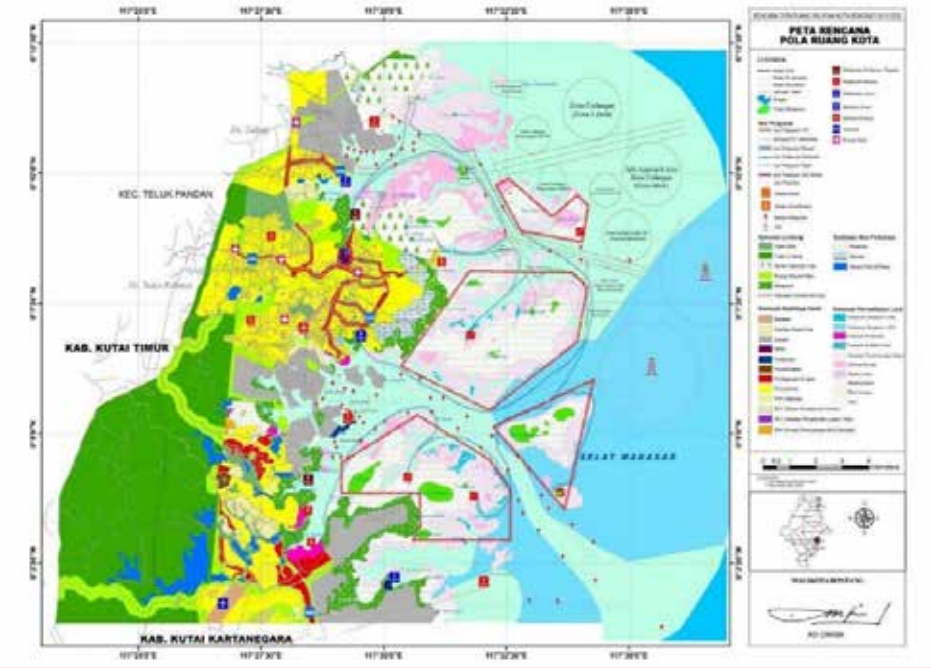


FIGURE 1.
IMPLEMENTATION OF INTEGRATED COASTAL AND MARINE SPATIAL PLANNING OF BONTANG, INDONESIA

Spatial plans can be presented in a number of ways depending on the resources available. For example, as the image above shows, modern GIS tools can support the creation of a spatial plan in the form of an information-intensive map with layers of information regarding different sectors, de facto tenure rights, resource use patterns, etc. Such maps are very comprehensive and can provide extensive information in one resource. Alternatively, spatial plans can be presented as a simple map drawn manually along with accompanying documents regarding relevant laws, necessary information for the public and resource use agreements made relevant to the spatial plan. A variety of methods exist to include affected individuals and communities in the spatial planning process through social planning, participatory spatial planning or participatory land use planning methods.

b. Plan several sessions and sufficient time for communities to absorb and process the information provided to them about the spatial planning process and potential impacts

Spatial planning procedures are often technically complex and unfamiliar to people, yet they may have considerable implications for the lives of those affected. Investing sufficient time in informational meetings and ensuring that communities and individuals understand the implications of any given planning measure and are able to voice their concerns are critical for the successful implementation of regulatory spatial plans. Trying to rush through the process is likely to result in poor and unacceptable plans, conflict, loss of trust of the community and other actors, and impacts on the credibility of the responsible state authorities. This is a particular challenge in areas already affected by conflict where there is only limited access to public services, where state authorities' effective control and access may be restricted and where decision-making processes are usually highly centralized. Information meetings should not be one-time events. Due to the complexity of regulated spatial planning processes and the impacts of decisions, the process should allow communities and other actors sufficient time to process the information and discuss the implications of the plan collectively. Further, those involved should be able to ask questions, raise concerns, and clarify aspects that are unclear to them (FAO, 2014b). The outcomes of the information meeting should be recorded and made accessible to all parties so that participants see how their involvement was taken into consideration. This is essential to render consultation and information procedures more transparent and effective (FAO, 2015a). Taking up and meaningfully responding to the concerns, ideas and thoughts raised by the communities helps to build trust in the planning team and local authorities and works to ensure the continued positive participation of local communities (World Bank, 2015).

see also **Meaningful participation, Strategy 2A**

c. Engage specific experts to explain information clearly and in more detail if needed

To make informed decisions, governments should enable communities to access independent sources of advice and information throughout the course of the planning process. Contracting a third-party expert on specific topics might be required to ensure that communities get a complete and objective picture. Experts with sound socio-cultural and socio-economic background knowledge of the affected area are recommended. Ideally, communities should have the opportunity to choose between potential facilitators or to suggest one themselves (Food and Agriculture Organization of the United Nations (FAO), 2014b.

Case study 2: Land consolidation for integrated regional spatial development

Country: the Netherlands

Case Provider: Marije Louwsma, Advisor - Cadastre, Land Registry and Mapping Agency

Background

Compared to other land policy instruments that governments have at their disposal, land consolidation offers a comprehensive, integrated approach towards regional spatial development. In the past – particularly between 1950 and 1990 – land consolidation in the Netherlands aimed to improve the allocation of land for agricultural holdings by reducing the number of distant parcels and enlarging the parcel size. Together with measures in the field, such as drainage or improvement of infrastructure (new or upgraded roads), and autonomous developments such as mechanization and the introduction of fertilizers, food production increased considerably. Today, land consolidation also plays an important role in terms of improved water management, liveability of rural areas, landscaping, and as a means to enlarge and connect nature conservation areas.

The procedure for land consolidation has been described in Dutch legislation since 1932. Currently, the prevailing Rural Areas Development Act (2007) describes two forms of land consolidation: a regular, formal form (initiated by the Government for development purposes) and a voluntary form (initiated by three or more landowners upon request). The regular form is discussed here.

The underpinning principle of land consolidation is the exchange of land rights among right holders to optimize the allocation of land and land uses in accordance with proposed spatial development goals. All right holders within the delimited area are part of the project, though their land rights are not necessarily exchanged with other right holders. Right holders within the delimited area do not have the possibility to opt out, which accounts for the many safeguards in place. The aim is to guarantee legal certainty for every right holder involved.

Applied strategies

Before the start of a land consolidation project it is common practice that the province appoints a land consolidation committee, through which tasks are delegated to execute the project. The committee consists of six to eight members representing the interests of various stakeholder groups; including the municipality, the water board, farmers' associations, and the nature conservation sector. A surveyor advises the committee on technical and procedural issues to guarantee legal certainty for all involved right holders. Public participation may further be initiated by organizing sessions to discuss the draft reallocation plan or even to co-create (parts of) the reallocation plan.

see also **Meaningful participation, Strategy 1B**

see also **Access to information, Strategy 2C**

see also **Meaningful participation, Strategy 2B**

see also **Meaningful participation, Strategy 1A**

At the start of a land consolidation project, a list of all legitimate tenure holders within the delimited area is put together based on the cadastral registry. This list is published for public inspection, so that any omissions or errors in the information from the cadastral registry can be corrected before the allocation rights are determined. Many forms of land lease exist in the Netherlands although agricultural land lease is not registered in the cadastre. Therefore, tenants or landowners involved in agricultural land leasing have the possibility to submit their lease contract to be included in the land consolidation. Normally, only those with a regular lease contract (six years) are taken into account, but the committee can decide to deviate from this guideline depending on the local situation and customs regarding lease of land. In a land consolidation project in Scheerwolde, for example, the committee decided to include customary land lease as this was de facto common practice in this region. It would not have been just to the right holders to exclude this type of tenure in this project.

see also **Access to information, Strategy 1D**
Meaningful participation, Strategy 1E
see also **Access to information, Strategy 2A**
see also **Access to information, Strategy 1B**

Information about land consolidation projects is disseminated in multiple ways. At the start of a project one or more public information meetings are organized at a central location within the project area and mostly in the evenings, to allow a majority of people to attend. These meetings aim to explain the project, process, procedure and implications on tenure rights, and the rights and responsibilities of involved stakeholders. Once the list of right holders has been established, all right holders receive personal information by mail. Furthermore, all official decisions from the Government are published in the *Gazette*, which is accessible online and in a local newspaper to ensure outreach to as many stakeholders as possible.

see also **Access to justice, Strategy 3B**

Following official decisions from the Government or the land consolidation committee (e.g. publication of the spatial plan, the list of right holders, the reallocation plan and the list of financial settlements), people have the possibility to file an objection. The procedure and rights of involved stakeholders in relation to these conflict resolution mechanisms are described by law. When the committee and right holder do not settle the objection, the objection is forwarded to court. The court, as an independent authority, also checks the work of the committee and can hold them accountable. To keep the procedure accessible for all, a small, reasonable fee is to be paid when a right holder goes to court and, the opposing party, i.e. the committee, is sentenced to pay the court fee.

see also **Access to justice, Strategy 3A**

Outcome

Experience shows that, on average, about 30 to 40 percent of the land rights in a land consolidation project are exchanged, with all other right holders remaining in their original location within the delimited area. The obligatory participation in the project enables governments to deliver location-bound land use types in the interest of the public, for example, uses for infrastructure, measures for water management or nature conservation. Due to the 'obligatory' nature of the instrument, multiple safeguards, largely based on legislative regulations, are put in place to guarantee the legal certainty of involved right holders. A general requirement that applies throughout the whole project is that right holders should experience an improvement or should have a similar allocation compared to their existing situation.

Strategy 3

Strengthen human and institutional capacities among communities to decentralize knowledge bases and strengthen spatial planning in the future

Capacity development is understood as a holistic, system-wide approach to empower people and to strengthen organizations and institutions as well as the enabling policy environment (Kalas, 2019). Weak governance structures and a lack of human and institutional capacity can make it difficult to support communities in their access to information. One way to address this is to empower communities to share strategies, tools and mechanisms for success with other communities that are in a similar situation. This collaboration strengthens efforts to empower vulnerable and marginalized communities on a larger scale. On the other hand, good governance structures recognize that access to information is a two-way street, meaning that as much as spatial planning authorities need to be providing information, they also need to be gathering and obtaining information from those who could be affected by a spatial plan. In these cases, it is important to ensure and support individuals and communities in compiling and sharing information relevant to spatial planning procedures. This type of information could include tenure arrangements, locations of sacred sites, resource-sharing agreements, proposed land uses or community development visions and needs. It should be noted that capacity building is an important and resource-intensive task. For this reason, the overall spatial planning budget should reflect the need for capacity building where appropriate.

see also **Accountability, Strategy 3B**

a. Designate and empower community members to have an active role in the spatial planning process through specialized capacity development and learning opportunities, and by strengthening the capacities of organizations and institutions to complement individual learning opportunities

A lack of human capacity can be a critical bottleneck in spatial planning processes. Designating community trainers in spatial planning processes where applicable can help to address this challenge. For example, a select number of community members can be trained as village legal workers in land legislation and spatial planning provisions. These legal workers can then be encouraged to share their new knowledge with other community members and can be available to answer questions for the community about issues related to spatial planning (ILC and IFAD, 2013). This peer-to-peer support can also be provided on other specific measures of spatial planning such as boundary delineation, land use mapping or the use of effective conflict-resolution mechanisms. Financial and logistic support for such knowledge exchange needs to be ensured.

Organizational and institutional capacities relevant to spatial planning processes include formal or informal collective action mechanisms, institutional mandates, vertical and horizontal coordination mechanisms, networks as well as multi-

stakeholder/actor processes and platforms. It is advisable to take stock and to assess existing capacities and those to be strengthened while formulating strategies to improve the desired mechanisms to optimize spatial planning processes within communities.

b. Support communities to reach out to other communities in similar situations

Vulnerable and marginalized communities can designate members to support other communities in similar spatial planning situations through knowledge exchange on topics related to the protection of legitimate tenure (FAO, 2014b). Exposure to other communities where spatial planning processes have been conducted successfully can be an effective means of peer-to-peer learning, sharing and strengthening of community efforts. Strong networks can provide important platforms for concerted efforts towards strengthened rights of vulnerable and marginalized communities. Based on their networks and knowledge, CSOs and trusted international organizations can be useful in helping communities to identify and get into contact with other communities (FAO, 2014b).

2 3.2 MEANINGFUL PARTICIPATION

Meaningful participation is crucial in achieving ownership of and commitment to a spatial plan by all affected parties and is ultimately imperative to its success and sustainability. A human rights-based approach to spatial planning requires a high degree of participation especially by vulnerable and marginalized communities, civil society, minorities, women, young people and indigenous peoples (UNFPA, n.d.). The Guidelines encourage states to ensure wide public participation in the development and review of planning proposals (paragraph 20.4) and to engage with and seek the support of legitimate rights holders who could be affected by spatial planning decisions, taking into consideration existing power imbalances (paragraph 3B.6). Where appropriate, formal planning systems should consider planning methods used by indigenous peoples and communities with customary tenure systems (paragraph 20.2).

The strategies that follow reflect the main principles of meaningful participation as enlarged upon in the ensuing paragraphs. They are useful for spatial planning authorities, CSOs and local communities alike. The target group for these strategies are both the potentially affected right holders and the CSOs supporting them, as well as spatial planning authorities and the private sector.

Meaningful participation does not constitute a one-time act of consultation, but is a genuine inclusion of relevant actors to ensure that spatial planning is conducted in a way that is conducive to the realization of human rights and the protection of legitimate tenure rights. It ensures that public and private interests are equitably balanced within the process of developing a spatial plan. Meaningful participation challenges common power imbalances by empowering vulnerable and marginalized communities to articulate their expectations towards the state and other actors (including the private sector); it allows them to be active decision-makers regarding issues that affect their livelihoods (HRBA Portal, 2018). As such, meaningful participation is not a goal in itself. Meaningful participation in spatial planning is only truly meaningful if it supports a proper balancing of interests through the strengthening of civic space within spatial planning processes. Moreover, to fully enable meaningful participation and inclusion in spatial planning processes, targeted individual and institutional capacity enhancement are important for technical and soft skills (e.g. negotiation), particularly among marginalized actors (HLPE, 2018).

Meaningful participation is a measure that should be applied consistently throughout the spatial planning process. It may require different forms of participation at different stages and a continuous clarification of roles and responsibilities. For example, a first step in meaningful participation within spatial planning processes is to have an inventory of all legitimate tenure and associated bundle of rights in order to identify the groups and individuals who may possibly be impacted by a spatial plan. This should be done with the participation of communities themselves in a process that identifies existing rights and claims, holders and parcels, especially where rights are unclear or undocumented (FAO, 2017a). This represents a clear connection to the

see also
Access to Information

previous element of a human rights-based approach to spatial planning and shows the truly iterative nature of meaningful participation. Meaningful participation is needed to identify who should be accessing what information and how, as well as for discussions about the actual spatial plan, its implementation and so on.

Detailed provisions on how to achieve meaningful participation at different stages of a planning process – participatory mapping, inventory of rights, reaching agreements, conflict resolution – have been documented in the technical guide, *Respecting free, prior and informed consent* (FAO, 2014b). Suggestions such as adhering to local participation and decision-making processes are useful in the context of regulated spatial planning. FPIC is particularly focused on indigenous communities and their right to self-determination, though it also clearly states that steps in following FPIC can and should be applied to local communities regardless of indigenous status. This technical guide considers the principles of meaningful participation to apply to all stakeholders involved in the planning processes but, at the same time, acknowledges that prevalent power imbalances often prevent vulnerable and marginalized groups from meaningful participation in such processes. For the purposes of this technical guide, many of the principles of FPIC apply to the meaningful participation of vulnerable and marginalized communities within spatial planning.

Strategy 1

Ensure proper representation to allow meaningful participation of affected actors within spatial planning processes

Meaningful participation is highly dependent on the proper representation of all parties, including those who may be affected by the implementation of a spatial plan, those proposing certain measures and those for whom the overall spatial planning process is most relevant. An understanding of the scope of a spatial plan will enable implementers to identify the relevant governmental bodies and civil society organizations needed for efficient and holistic spatial planning implementation. Similarly, an inventory of rights and right holders will allow for the meaningful participation of all individual legitimate right holders. Spatial planning implementors should make efforts to ensure that all parties are properly represented and should be aware of social and cultural dynamics that may hinder proper, meaningful participation.

a. Produce an inventory of all legitimate rights and right holders, recognizing all forms of tenure and including informal rights, in cooperation with the people, communities and others in the areas affected by the spatial planning process

An overview of who will be affected by the planning procedure is essential to ensure proper representation of affected parties. The inventory should be done at the beginning of the planning procedure, and should include all legitimate tenure rights and right holders (formalized, usufruct, migratory and customary – see Bundle of rights Box 1), as well as lease contract holders and informal tenure arrangements,

and should be made public for affected communities to review and contest. Sources of information include cadastres, property registers and other databases that decentralized governments could have developed. These should be assessed with regard to the legal instruments that form the legal basis of the respective tenure rights. Modern technologies such as open-source systems can also be employed in these endeavours, under the condition that affected communities have access to such technologies and can use them effectively. For example, FAO's Solutions for Open Land Administration (SOLA) Open Tenure software application provides a system for communities to jointly map their claims to tenure and includes checks on claims by the communities themselves (SOLA, n.d.). Processes to identify right holders and to ascertain the legal status of land are also described in detail in the technical guides on *Improving ways to record tenure* (FAO, 2017), *Creating a system to record tenure rights and first registration* (FAO, 2017) and *Respecting free, prior, and informed consent* (FAO, 2014b). In general, as producing an inventory of tenure rights is a highly sensitive activity in which power asymmetries may be at play (FAO, 2017a), consultation processes carefully designed with affected communities are required. Clear accountability mechanisms based on states' human rights obligations as well as safeguards against the improper use (e.g. for purposes of land speculation) of such information should be established. The act of recording tenure rights should be done within the aim of ensuring benefits to individual right holders and the broader society. The design of such a recording system should be appropriate for and consented to by the right holders in question (FAO, 2017a).

see also **Meaningful participation, Strategy 2A**

b. Include relevant sectors, governmental bodies and civil society organisations to protect all tenure rights throughout the spatial planning process, including those of migrating communities and informal settlers

A holistic spatial plan must consider cross-sectoral and sometimes transboundary matters as well as different jurisdictions. In order to ensure an effective and sustainable spatial plan, all potentially affected groups and individuals should be proactively included in initial scoping meetings to establish responsible entities toward the implementation of the spatial plan. Inadequate communication between authorities at different planning levels and jurisdictions is often a hindrance to effective spatial planning. The roles and responsibilities of the people, communities and others involved should be clearly defined, involving state authorities and third parties as duty bearers in relation to the legitimate tenure rights of individuals, local communities and the private sector. An acknowledgement of existing power imbalances between those actors is recommended with particular attention to the needs of vulnerable and marginalized actors due to the common trend of powerful third parties outweighing the interests of people, communities and other less powerful entities. All parties should work together to protect the legitimate tenure rights, livelihoods and food security of local and migrating communities (FAO, 2012) and to ensure that informal settlers are considered when formulating spatial planning objectives.

see also **Accountability, Strategy 1A**

Case study 3: Implementation of integrated coastal and marine spatial planning of Bontang

Country: Indonesia

Case Provider: Ario Damar and Luky Adrianto - Centre for Coastal and Marine Resources Studies, IPB University Bogor, Indonesia

Background

Both land and marine spatial planning in Indonesia are regulated separately by two different national laws. As a consequence of these two laws, the spatial planning process treats land and marine uses separately, often with the marine realm being neglected completely. In the Bontang City area, intensive economic activities in the coastal zone include human settlements, power plants, oil and gas industries, ports, aquaculture, marine transportation, fisheries and tourism. Intense conflicts between these stakeholders are common due to lack of an integrated land-marine spatial planning framework to balance interests, as is the degradation of biodiversity and ecosystems due to lack of legalized spatial allocation.

Integrated Coastal Zone Management (ICZM) provides a solution to integrate land, coastal and marine ecosystems into spatial planning. A group of young and enthusiastic middle level governmental staff of Bontang City who were very keen on ICZM proposed a process to update the 'old' Bontang City Spatial Plan, which focussed more on land-based considerations than marine aspects. With support of the local government, NGOs and local people, Bontang City was able to harmonize the management of its landscapes and create one comprehensive, integrated spatial plan.

Applied strategies

see also **Accountability, Strategy 3B**

Overcoming the administrative obstacles was one of the first steps. In the end, the head of Bontang City Development Board was convinced to support this idea and committed to fund the revision of spatial plan for Bontang City.

The solution involved combining the two different planning approaches – land and marine – into one integrated process. Based on Indonesia's legal system, land and marine spatial planning are guided by different regulations and are time-intensive and complicated processes. By combining them in one approach, substantial contents of ecosystem management are included in one integrated land and marine spatial planning document.

see also **Accountability, Strategy 1B**

Initiating discussions with various stakeholders of Bontang City was an important step. A multi-sectorial stakeholder committee was created by selecting key persons from each stakeholder group (e.g. local fishermen and shrimp farmers, transportation and industrial sectors, and the Government).

see also **Meaningful participation, Strategy 1B**

A series of discussions were held with this committee in order to formulate the spatial plan.

An ecosystem-based spatial analysis of the area was conducted. Ecosystem links and functions were analysed and mapped. Environmental and socio-economic profiles of the area were identified and spatially projected into a map based on each topic. Various experts collected field data and information as well as issues related to each aspect. Environmental and social profiles were analysed to identify the main issues, root problems, spatial conflicts, causes for ecosystem degradation, poverty level, environmental protection efforts, management efforts, etc.

see also **Meaningful participation, Strategy 2A**

see also **Meaningful participation, Strategy 2D**

see also **Accountability, Strategy 2A**

see also **Meaningful participation, Strategy 2B**

Outcome

The new Bontang City Land-Coastal-Marine Spatial Plan, presented in a single spatial planning document, was adopted by the local parliament in 2012 and is being implemented in parts. The new spatial plan now includes both land and marine areas with its mangroves, coral reefs and seagrass beds located within four miles of the shoreline. It is the first example of the implementation of the Indonesian Law No 26/2007 on Spatial Planning and Law No 27/2007 on Coastal Area and Small Islands Management to be applied in coastal districts and cities in Indonesia. The process of ICZM that was applied has also inspired its adoption in other coastal districts in Indonesia.

Improvement of the quality of coral reef and mangrove ecosystems through setting up coastal and marine protection zones in Bontang City, as well as enhanced upland area management has been observed. Reduction of spatial conflicts among stakeholders in the Bontang City area has been noted, leading to improved multiple-use of the coastal zone. In the long run, it is expected to facilitate economic capital investment in the area, improving livelihood opportunities. The plan has also encouraged improvement of capture fisheries production; hence, improvement of local fisher's income leading to poverty reduction.

c. Identify, support and include local forms of community organization in spatial planning processes where these support a stronger inclusion of marginalized members of communities

see also **Access to information, Strategy 1F**

Local forms of organization such as religious institutions, local customary fora, community associations and farmer cooperatives can provide efficient means for the dissemination of information and for ensuring that marginalized groups are represented. Caution needs to be applied where these forms of community organization perpetuate power imbalances that further marginalize certain groups (e.g., women). Spatial planning procedures should work to identify existing organizations and involve them in spatial planning processes as appropriate. Supporting local forms of organization can strengthen local institutions and the services they provide to the community both in relation to spatial planning processes and in support of local livelihoods. Local knowledge also helps in the creation of spatial plans that are respectful of local conditions, community needs and livelihoods relevant to tenure.

d. Provide mechanisms to identify proper representation of affected communities in spatial planning decision-making processes

In negotiating impacts of a spatial plan, potential compensations and/or benefit-sharing agreements, spatial planners should do their due diligence to ensure that the designated representatives of all groups, especially of marginalized and vulnerable communities, are legitimate. This diligence can and should happen through processes of communities choosing such representatives themselves. This has been found to be specifically relevant where, for example, the state misrepresents local communities by failing to meaningfully include them in political processes, or when indigenous status is used to elicit personal benefits related to land titles and tenure rights although legitimate indigenous status is not actually held by that individual. These challenges can be overcome by making sure that persons attending have a mandate to represent their communities. Attention should be paid to gender and other socio-cultural dynamics that may produce unequal representation in some communities.

e. Be aware of and develop procedures to overcome social and cultural dynamics that hinder participation in spatial planning processes

The timing and place of meetings as well as intra-household dynamics often have an unequal effect on the participation of some members of society. This is especially true for women, who often lack formal tenure to the land they manage and from which they produce a livelihood. The global community is addressing these issues in part with the establishment of UN Sustainable Development Goal 5A which calls for states to undertake reforms to give women equal rights to ownership and control over land and other forms of property (United Nations, 2015). The strategies that should be applied to ensure the dissemination of information among different members of affected communities also apply in ensuring their proper representation in spatial planning procedures. Building gender-equitable participation processes is context-specific, involves local-level advocacy and sensitization, and is often accomplished

see also **Access to information**

over longer periods of time through multi-actor community-based dialogue (FAO, 2013a). It should be noted that within some vulnerable and marginalized communities, other groups or individuals exist who are further marginalized (e.g. women within marginalized pastoralist communities). A local expert on socio-cultural dynamics should be involved to identify these right holders and be sure that they are represented properly.

STRATEGY 2

Empower affected communities to be partners in decision-making processes through meaningful engagement throughout the spatial planning process

As regulated spatial planning following a human-rights based approach is an inherently social (as well as a political and economic) process, efforts should be made to address power imbalances by ensuring vulnerable and marginalized communities' voices are heard when it comes to negotiating priorities in proposed land use objectives. Processes of decision-making are context specific, stemming from national legal and institutional frameworks. Following the principle of subsidiarity, certain decisions can be made at local level following local priorities such as co-management agreements, urban regulations or disaster risk management plans, whereas decisions regarding, for example, national safety and transport networks, may only be finalized at the national level. Nonetheless, meaningful participation should be used as a tool to balance the interests of various actors, and to support affected communities to assert their rights throughout the spatial planning process.

a. Establish a process for consultation and negotiation throughout the spatial planning process designed in cooperation with the right holders themselves to respect local customs and governance structures

Meaningful participation is an iterative process that should not be regarded as a one-time activity. It is also a context-specific activity due to cultural norms and thus, the design of meaningful participation procedures is best accomplished in cooperation with the affected individuals and communities themselves. They should be able to influence the time, place, and number of exchanges taking place, in particular, where local governance structures must be respected in spatial planning processes. Should an agreement between the parties not be possible by ordinary means, grievance mechanisms should be referred to in order to settle disputes. Duty bearers and other spatial planning actors should work to support such processes; decisions as to who participates, how and why, have an important bearing on the legitimacy of decision-making spaces (CSM, 2016). In addition, the outcomes of such meetings should be recorded and made accessible to all parties so that participants see how their involvement was taken into consideration. This is key to render consultation and information procedures more transparent.

see also
Access to justice, Strategy 3B

Case study 4: Securing land access for women in Burkina Faso

Country: Burkina Faso

Case Provider: Larissa Stiem-Bhatia, TMG Research gGmbH

Background

Tenure insecurity is a key obstacle to sustainable rural development, and women are often the most affected by it. In many societies around the world, socio-cultural traditions result in inequitable access to and control over natural resources for women. While women constitute a large share of the agricultural workforce in Africa, they control and have access to less than a quarter of agricultural land. Recognizing and respecting women's tenure rights is an important precondition for their active involvement in spatial planning processes. Current spatial planning procedures often do not adequately consider the participation of women. Intra-household agreements, where the head of the household grants female members of the family land use rights, are an opportunity to achieve tenure security for women within communities, strengthening their abilities to participate meaningfully in spatial planning processes.

In Burkina Faso, most land in rural areas is still managed under customary law. Women often only receive access rights to degraded land for subsistence farming. Once the condition of the land has improved, they will have to rotate to another degraded plot of land, resulting in insecurity of access to better quality land for the women. Under the land law established in 2009, women, like men, are allowed to obtain formal land possession certificates as well as to inherit land. The land law further promotes allocation of at least 30 percent of state-owned agricultural land to women. Current land policies do not, however, actively endorse instruments to address women's restricted access to land within the family and the designation of land ownership as practised under customary law. Formalizing intra-household agreements for the allocation of land user rights to women can thus be an important first step in recognizing women's tenure rights in spatial planning processes.

Applied strategies

To address part of the complex issue of tenure insecurity amongst women in south-western Burkina Faso, a pilot project was initiated by a Burkinabé network of experts specialized in land governance: Groupe de Recherche et d'Action sur le Foncier (GRAF) in collaboration with TMG Research. Locally-led and culturally sensitive processes were applied with the aim of changing traditional tenure arrangements at village level. Intra-household arrangements on tenure were negotiated between the head of the household and his spouse or other female relatives. The objective of these negotiations was to change existing tenure arrangements towards enhanced equality and security for women. The arrangement aimed to build on traditional systems of governing land by transferring land user rights of family plots, where appropriate, from men to women.

see also
Access to Justice, Strategy 1B

Building confidence and consensus among all stakeholders was the main challenge throughout the project. Therefore, special attention was given to effective and inclusive participation of local actors. These actors included the local community, their traditional leaders, village committees on land governance, the district administration, and public extension service providers. These stakeholders were involved from the start and given decision-making power over the design and implementation of the land securing process. Multi-stakeholder workshops, village assemblies, focus group discussions, and informal meetings gave space for regular dialogues and awareness-raising activities and geographical locations of transferred fields, were discussed. Once agreed upon within the household, GPS recording was used to identify and document secured fields.

see also **Meaningful participation, Strategy 1B**

see also **Access to information, Strategy 2A**

see also **Meaningful participation, Strategy 2C**

This high level of interaction and discussion about the benefits and risks associated with the newly proposed tenure arrangements contributed greatly to the transparency of the process. The process was prolonged and adjusted at various points due to the time it took for some men to move past patriarchal norms and practices. This process was very important for positive, long-lasting impacts as it allowed participants to take decisions at their own pace. Endorsement of the land right transfers by traditional village leaders, village committees and the district administration, as well as close accompaniment by local experts speaking the local language underpinned the trust built between the local community, GRAF and other local partners. Educating the community on the economic benefits of women's secure access to land also contributed greatly to men's willingness to cede land user rights. Furthermore, the land allocations were accepted by the village community because the process was carried out in congruence with traditional practices of transferring land rights, that is, the inclusion of the official landowner (Chef de Terre), while also respecting the statutory law which calls for the use of a collective document to register the intra-household tenure arrangements. The community's acceptance as well as the endorsement by important local actors strengthened the social legitimacy of these land tenure transfers. In case of contestation, the village's conciliation committee members intervened to mediate disputes.

see also **Meaningful participation, Strategy 2A**

see also **Accountability, Strategy 2A**

see also **Access to justice, Strategy 3B**

Outcome

Unequal and insecure access to land has the potential to undermine the sustainability of spatial planning procedures. The strategies previously described provide solutions to improve tenure security for women at the household level. While these processes do not result in land owning rights, but rather in land use rights, which are not formally registered in national cadastres, these recognized rights nonetheless allow women to be active partners in spatial planning processes. These rights can be used, for example, as the basis to make claims, for instance for compensation, or for a better involvement of women in decision-making processes.

Three factors were key to the success of this process: 1) effective participation and ownership by local actors; 2) transparency and trust; and 3) social legitimacy. In the village of Tiarako, South-western Burkina Faso, where this mechanism was tested, over 228 women today have secure access, individually or collectively, to 189 fields amounting to a total of over 400 hectares.

b. Take local knowledge into account to inform spatial planning regulations where different land and resource use needs may lead to conflicts among local land, fisheries and forest users

Regulated spatial planning undertaken in a top-down manner, with no or limited local participation, does not reflect the principles of the Guidelines. It jeopardizes sustainability by neglecting to position the spatial planning process within the communities to ensure their buy-in to the implementation of spatial plans. As de facto land uses, and in particular land use changes, may not always be formally registered, it is important to ascertain the realities on the ground concerning actual land use and tenure arrangements. This should be done through meaningful consultation with the affected communities with the aim of creating space for decisions to be made in a decentralized manner. For example, there are many cases of conflicts arising between settled farmers' and pastoralists' communities due to increasing pressure on resources (both land and water) resulting from expansion of agricultural areas in environments where rights have been customary and neither documented nor formally recognized. Pastoralist communities are increasingly limited in their mobility, for example, by settled agriculture that interrupts traditional transhumance routes and access to water points. Regulated spatial planning can act as a potential solution in such circumstances, but it requires the meaningful participation of all parties in discussions aimed at reaching a common agreement that ensures that various legitimate tenure rights and livelihood needs are respected (FAO, 2016a).

Case study 5: Decentralization of land administration and spatial planning at municipal level

Country: Honduras

Case Provider: Alain Paz, Unidad Administradora de Proyectos del Instituto de la Propiedad (UAP-IP) and Fabrice Edouard, Investment Center, FAO

Background

At the beginning of the 2000s, the World Bank financed a land administration project in Honduras called Programa de Administración de Tierras de Honduras (PATH). One of the objectives of PATH was to pilot the decentralization of the national cadastre at the municipal level. It aimed to align de facto tenure arrangements with officially registered tenure rights in order to guarantee legal security of tenure across the country. Additionally, experiences from Hurricane Mitch (1998) helped to revive attention to the issue of tenure in disaster risk management plans, as well as the need to implement territorial geospatial planning instruments in municipalities to ensure tenure security and land use regulation.

With the approval of the Property Law in 2004, the Property Institute (IP) was created. IP has since become the national lead institution unifying the cadastre and registry in a unique body. Before the law, each municipality had its own cadastre where spatial matters and land uses were documented, most often manually and on paper. The new legal framework and the Government's intention were to clarify the functions of and between municipalities and IP (at the national level) regarding the management and enhancement of the national cadastre.

The municipality of Comayagua was given special attention in this decentralization and cadastre project. Comayagua is located in the centre of the most developed economic corridor in Honduras and Central America. This makes it apt for investments, leading to sustained demographic growth in the area higher than the national average due to increased employment opportunities in industrial projects. This high rise in population as well as the various pressures regarding land use and development relevant to the area inspired the municipality of Comayagua to create a Municipal Development Plan (MDP) based on the information gathered in the Unified System of Registries (SURE). This engine tool of tenure registration and geospatial identification of land uses was developed by IP and PATH and piloted from 2004.

Applied strategies

To ensure that municipalities could properly engage with and contribute information to SURE, the IP also put in place trainings on cadastre and national geospatial tools and involved municipalities in updating the cadastre. This helped to initiate the process of documenting land use and tenure information and was considered a first step in creating the MDP, which was developed in a participatory manner.

see also **Meaningful participation, Strategy 2C**

see also **Meaningful participation, Strategy 1A**

see also **Meaningful participation, Strategy 1B**

All local administrative units and social arrangements of the municipality made their contributions to the MDP through the representatives of civil society institutions such as churches, labor unions and water boards, in addition to official staff of the municipality. Thematic workshops were held to inform communities of various aspects of the proposed spatial plan. For example, cartographic information including the identification of the risk areas vulnerable to flooding and landslides was reviewed in order to identify options for relocation.

see also **Access to justice, Strategy 3C**

The final MDP document is then submitted to a public review process which lasts 30 days in which community members can read it and provide their observations or comments. After such comments are integrated, the MDP must be approved in a public Assembly of Citizens (Cabildo Abierto), an opportunity for the population to undertake a final review of the proposal and to confirm its approval.

see also **Meaningful participation, Strategy 2A**

see also **Accountability, Strategy 3A**

The implementation and monitoring of the MDP is done through the Municipal Transparency Commission, which is composed of five representatives of civil society selected from the Cabildo Abierto for a term of two years. Additionally, all planning instruments are available to the general public at the municipal offices, where a geoportal is being developed, and also through the IP geoportal (geoportal.sinap.hn) and webpage (www.sinap.hn).

see also **Access to information, Strategy 1B**

Thanks to the generation of local capacities, the municipality received a national certification in 2018 which led to the IP signing an agreement with Comayagua for it to become a Municipal Associated Center. This designation allows the municipality to connect and interact through the internet with SURE, updating geospatial and alphanumeric data of parcel and owners. It also allows the municipality to receive funds from the national Government in order to maintain and update information on property and tenure within its territorial scope.

see also **Accountability, Strategy 3B**

Outcome

As a result of this participatory process to create the MDP, the Comayagua cadastre has now georeferenced 90 percent of the urban and rural parcels that make up the municipality. Each of the public services provided by the municipal government is now based on geospatial planning and the cadastre-registry information contained in SURE, and the base for the calculation of the property taxes was updated. This has allowed the efficient and timely provision of public services, such as more localized facilities to register tenure rights, the provision of drinking water, the identification of disaster-risk measures and relocation areas, and in general, the efficient management of social infrastructures such as the paving of streets, the construction of bridges, the development of sanitary sewer systems and more efficient design of routes for waste collection.

The citizens of Comayagua now have a higher level of awareness of spatial planning processes including better knowledge of their territory with respect to its limits, the rural and urban macro-zoning, risk areas, the inventory of tenure rights, the use of land, and the cadastral value of the properties. This enhancement of social engagement will enable the municipality to implement spatial planning that will allow it to prepare for new challenges in infrastructure, public services and social projects improving the quality of life of its citizens.

c. Use spatial planning tools and technologies appropriate to local contexts and necessary for informed decisions

A visualization of the areas affected by a spatial plan can help communities to understand the implications on their tenure. User-friendly, open-source technologies based on GPS systems can, for example, be used to map and ascertain legitimate tenure rights within the territory in question. Ensuring that these technologies are used in participation with affected communities can help to develop ownership of the spatial plan and appreciation for spatial planning processes (FAO, 2017a). More so, the training of local community members in the use of these modern technologies supports their more wide-spread applicability and facilitates the enhancement of skill sets useful in land administration units. Consideration must, however, be given to the fact that local communities may prefer other ways of visualizing (e.g. drawing a map on paper or on the ground, or a mix of the two). In these cases, priority should be given to ways in which affected communities choose to and prefer to map their territories. Mapping should only be done once consent is given by the people of the territory in question.

see also **Access to information, Strategy 3A**

d. Conduct impact assessments with affected communities to ensure awareness of potential impacts of spatial planning decisions

Effective and adequate impact assessments depend on local knowledge and community engagement as realities on the ground are not generally readily visible to external spatial planners, including the critically important consideration of customary rules and uses of land, fisheries and forests (FAO, 2014b). Impact assessments provide a tool for decision-makers to identify the potential impacts of proposed projects, to evaluate alternative approaches, to design and incorporate appropriate prevention or mitigation strategies, to adapt management structures and to conduct monitoring measures (FAO, 2015a). These should be done before the spatial planning procedure begins, as findings of the impact assessments should be incorporated into the design of the spatial plan to mitigate any negative impacts and help to identify the implications of the proposed spatial plan on the livelihoods of affected actors, particularly vulnerable and marginalized people and communities. For example, certain parts of forests may be viewed as "idle" when they are, in fact, part of the fallow cycle or water catchment areas. Such lands are particularly vulnerable to reallocation through spatial planning processes and should thus be considered more intentionally during initial assessments.

Properly conducted impact assessments can also serve as baselines for monitoring at later stages of the spatial planning process and its implementation. Independent third-party experts should be brought in to confirm that impact assessments are objective, that they fulfil the purpose of identifying potential negative and positive impacts of a spatial plan, and that they are technically sound (FAO, 2015a). Conducting impact assessments can therefore be a time, cost and capacity-intensive activity which needs to be planned and budgeted for. Even though impact assessments are a critical activity in view of a human rights-based approach to spatial planning that intends to

see also **Access to justice, Strategy 3C**

see also **Accountability, Strategy 3B**

respect and protect the tenure rights of all legitimate right holders, they might not always be carried out due to their cost implications and capacity demands. If this is the case, participatory monitoring and evaluation procedures need to be established to ensure that affected people and communities are able to participate meaningfully throughout the planning and implementation processes.

see also **Accountability, Strategy 3A**

Case study 6: The spiny lobster in the Yucatan Shelf – inter-community agreements as the basis for equitable management of small-scale fisheries

Country: Mexico

Case Provider: Raul Villanueva - Fisheries and Aquaculture Bio-Economics professor at Universidad Marista de Mérida

Background

In 1994, Mexican fisheries were in transition to an open market approach in which the private sector would be allowed to harvest and commercialize most of the commercially important fishing species. As a counter-balancing mechanism, the Mexican Government formalized historical fishing rights of traditional fishing communities by granting federal concessions to, among other fishing organizations and traditional lobster fishing cooperatives. Following this national plan, small-scale fishers in the Yucatan Shelf formally received exclusive rights to harvest Caribbean spiny lobsters in the waters bordering their coastal communities. This top-down planning process, however, did not sufficiently acknowledge the usefulness of local knowledge from the traditional lobster fishing communities of San Felipe and Rio Lagartos, which provided that the availability of the lobster is not bound to a certain area but rather changes every season. Exclusive fishing rights to a specific area would, therefore, not lead to equitable access to lobster resources, but instead would be an element of potential conflict between lobster fishers of neighbouring communities.

Applied strategies

In order to achieve the goal of maintaining equity in access to the lobster resource despite the exclusive fishing rights, the neighbouring fishing communities of Río Lagartos and San Felipe agreed to share the exclusive rights designated in their individual concessions. This required that both communities recognize the legitimate right of one another to harvest the lobster.

see also **Access to justice, Strategy 2B**

Key for the success of these agreements were: 1) acknowledging that traditional knowledge (i.e. lobster resource distribution) could contribute to an equitable agreement; 2) recognizing amongst one another the traditional fishing rights of each community involved; and 3) developing a formal umbrella organization (Federación de Cooperativas de Oriente) that included fishing cooperatives of the communities concerned in the process.

see also **Meaningful participation, Strategy 2B**
see also **Meaningful participation, Strategy 1A**
see also **Meaningful participation, Strategy 1C**

The first leaders of Federación de Oriente acknowledged that Río Lagartos and San Felipe, as neighbouring fishing communities, should jointly pursue equitable access to the lobster resource. Following the establishment of this common objective, an inter-community cooperation scheme for the sharing of corresponding fishing areas was

see also **Access to justice, Strategy 2A**

discussed at internal fishing cooperative assemblies, agreed by all the members and finally recorded as an agreement in the books of the two cooperatives. This course of action was performed completely by the fishers themselves within the framework of their formal organizations. Local government institutions only stood by as witnesses to the agreement process.

Although this cooperation agreement has not yet received de jure recognition by Government institutions, it is accepted as de facto by the local communities and authorities, enabling a self-determined local process within official federal spatial planning procedures. The permanence of this arrangement is discussed periodically by fishers of the involved communities as part of meetings between their fishing cooperatives. The positive perception of benefits and legitimacy of this inclusive and democratic process has led to the agreement being renewed every time it has been brought to discussion.

see also **Meaningful participation, Strategy 2A**

This relationship of cooperation between fishers of neighbouring communities has also enabled the enforcement of additional rules. Recently, in order to protect local populations of spiny lobsters, the involved fishing cooperatives agreed to increase by one additional month the current official (4 months) closed lobster-fishing season. While official regulations of the Government are monitored by federal fishing inspectors and the federal navy, compliance with local agreements is enforced through self-surveillance. The democratically elected directive boards of the fishing cooperatives enforce compliance to the internal community agreements by selecting a group of coop members (i.e. 'a commission') to undertake surveillance activities such as patrolling the area and/or inspecting the fishing boats. Where there are violations of local agreements, the corresponding penalties are decided by the cooperatives' directive board according to the transgression made, all within the framework of the cooperative's internal rules. Transgressors could face fines and even the possibility of being withdrawn from their fishing cooperative, in which case they would be banned from access not only to the fishing grounds close to their community but to the whole shared area.

see also **Accountability, Strategy 3A**

see also **Access to justice, Strategy 3B**

Outcome

This arrangement and accompanying set of rules has led to high levels of compliance between the fishers of the involved communities. This case study shows that at the local level, reaching an inter-community agreement and enforcing local regulations formalized by democratic organizations such as fishing cooperatives is a good way to support equitable access to and sustainable management of resources within an official, regulated spatial plan. The fishery management scheme followed by local cooperatives in this case has contributed, among other factors, to maintain the local stocks of spiny lobster at healthy levels, as has been recognized by the federal fishing agency. In addition to the fishing resource being successfully managed, research shows high levels of equity and fairness between small-scale lobster fishers working within a territorial/spatially managed scheme (Villanueva *et al.*, 2017).

3 3.3 ACCOUNTABILITY

Accountability is one of the guiding implementing principles of the Guidelines and a fundamental human rights principle. It refers to "holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the rule of law" (paragraph 3.9). In the context of spatial planning, accountability refers to "monitor[ing] and evaluat[ing] compliance with [spatial] plans" (paragraph 20.1) and "ensuring that there is wide public participation in the development of planning proposals […] to ensure that priorities and interests of communities are reflected" (paragraph 20.4).

The strategies listed below present opportunities to achieve a broader public participation in the planning processes. They are, thus, useful for spatial planning authorities, CSOs and local communities alike. The target group for these strategies are both the potentially affected right holders and the CSOs supporting them, as well as spatial planning authorities and the private sector.

A key factor to strengthen accountability in spatial planning processes is observing the principle of subsidiarity. This contributes to the spatial plan corresponding to de facto tenure arrangements and the needs of affected communities and individuals. This is particularly relevant in the forestry sector with most public forests not legally recognizing customary uses and statutory laws, and consequently often overlooking them entirely (FAO, 2013b). The principle of subsidiarity might thus require devolution and more decentralized planning processes. Land governance structures are often characterized by complex regulatory frameworks and administrative processes that can result in horizontal and vertical overlaps of governmental mandates. Horizontal overlap refers to situations where responsibilities of authorities in relation to natural resource governance overlap; for example, by jurisdiction or between different sectors. Vertical overlap refers to the overlapping of such governance-related responsibilities between different levels of administration (Kameri-Mbote, 2016). Even where a comprehensive legislative land governance body exists, laws and regulatory frameworks can contradict each other or overlap (Mulolwal, 2016). As a consequence, unclear responsibilities and rivalry between different ministries and agencies can contribute to tenure insecurity when conflicts emerge over issuance of title deeds, renewal of leases, holding of land registers and other land registration and management issues. Lack of transparency in land governance legislation can provide a window of opportunity for fraud and corruption (Transparency International and FAO, 2011). Limited knowledge among members of communities about spatial planning and/or land governance mandates and overlaps between responsible agencies restricts the affected communities' ability to hold their representatives accountable, even more so when, for example, customary forest user rights are not formally recognized. Overlapping mandates and multiple spatial plans can also perpetuate conflicts over land use and run contrary to the aim of balancing interests in the use of land in an equitable manner (GIZ, 2013).

Inter-sectoral and subsidiary spatial planning that allows right holders to hold their governments accountable, enables participatory planning processes. The integration

of local land use and other management plans in regional and national frameworks requires the harmonization and clarification of mandates for the governance of land, forests and fisheries. Inter-ministerial platforms bringing together ministries and sub-national entities support improving the horizontal and vertical coordination of natural resource governance. These platforms should seek to clarify roles and responsibilities to help determine policy priorities and objectives. The tasks of such a platform should include identifying the roles and responsibilities of ministries, existing mandate inconsistencies and instruments to address these, and determining an institutional framework that coordinates the ministries and allocates sufficient budget for these activities (FAO, 2015a).

However, accountable spatial planning procedures cannot solely be achieved through legal amendments but require continuous collaborative working relationships and political will amongst the ministries and their devolved governance structures. It is also critically important for effective accountability that the design of a spatial plan allows for service provision as close as possible to the affected communities and ensures that the checks and balances necessary for compliance with spatial plans are locally based and owned (FAO, 2007). In some cases, this might require cross-jurisdictional boundary coordination, between municipalities, regions or even across state boundaries; for example, where spatial planning measures affect transhumance routes. In this last context, the Guidelines provide that for those states where transboundary matters related to tenure rights arise, parties should work together to protect such tenure rights, livelihoods and food security of the migrating populations while on their respective territories (paragraph 22.1). While accountability in regulated spatial planning depends strongly on well-designed and transparent spatial planning and land governance legislation (paragraph 20.2), local planning processes can contribute to more accountability even when framework conditions do not yet meet those requirements.

Strategy 1

In situations where institutional and legal mandates overlap and undermine accountability in land governance, local approaches and coordination should be encouraged

Fragmented or overlapping legal mandates in land governance pose a challenge to accountability in sustainable spatial planning at local levels and the integration of local spatial plans in regional and national spatial planning frameworks. These challenges occur because legal and administrative processes are unclear, or are not properly implemented, slowing down the implementation and coordination of the plans. Harmonizing spatial plans at the municipal level reduces these overlaps. To be accountable to the affected local communities, spatial plans should be harmonized based on the inputs of communities and the application of participatory planning tools (GIZ, 2013). Further, spatial planning processes should adhere to the principle of subsidiarity to locate action at the lowest effective governance level to strengthen accountable approaches in spatial planning.

a. Provide clear information regarding legal mandates, potential overlaps and their impact on local level spatial planning processes

Drawing up feasible spatial plans requires knowledge about existing institutional and legal mandates relevant to spatial planning as well as their overlaps. Communities and other actors need to know which ministry or agency holds what mandate and at what level to enable them to direct their concerns effectively. For example, they may need to know whether title registration is handled by national or subnational entities, what kind of land use changes can be determined at what level, or which department is responsible for a certain infrastructure requirement. Government and CSOs should make available and disseminate information to raise awareness within communities regarding responsible persons and their roles within the spatial planning process. The government should strengthen efforts within their own devolved structures as well as the capacities of CSOs to implement these measures and promote transparency in land administration (USAID, 2013). These measures should be particularly focused on and well adapted to women, poor, illiterate and other vulnerable populations.

see also
Access to information

b. Encourage local governments to harmonize land use and other management plans, such as forest or integrated coastal zone management plans, in a comprehensive spatial plan based on participatory planning processes

The harmonization of spatial plans enables environmentally, socially and economically sustainable objectives for land and other natural resource uses to be effectively met by integrating different ecosystems and land uses into a single spatial planning document. Harmonizing spatial plans by integrating different existing plans into one core document also supports the identification and resolution of conflicting or overlapping claims and mandates. Achieving harmonization requires capacitating local governments to review existing guidelines and policies. Harmonizing municipal land use and other management plans should start at the community level. Important steps at the community level are organizing the community, the orientation and mobilization of local officials from the different mandated authorities and the community, an assessment and analysis of available resources, prevailing land uses and legitimate tenure rights, and finally, plan formulation and implementation. It is important to include seasonal uses of specific resources and groups, such as the use of different forest resources by different forest user groups, in such plans. Community based forest arrangements are often unmapped and untitled, and risk being adversely affected if not properly recognized in those planning processes. The information derived at the community level should feed into spatial planning conducted at the municipal level. Including communities through participatory planning creates ownership for the plan within the community and contributes to communities adhering to, for example, zoning ordinances (GIZ, 2013).

Case study 7: Integrated ecosystem management approach for disaster risk management

Country: Philippines

Case Provider: Dolores Nuevas, Erlinda Dolatre, (GIZ) and Andreas Lange (GIZ)

Background

The Philippines is third on the list of the world's most vulnerable countries to disasters and climate change impacts. The population of the country is growing fast, as is the demand for land, while the choices of location for agriculture and human settlements are often unsustainable. The Philippines suffer every year from a large number of natural hazards, especially typhoons. This puts pressure on natural resources and on people's livelihoods, yet the Government units responsible for planning and management efforts have not been able to respond adequately to these challenges.

Under the Local Government Code of 1991 (Republic Act 7160), local (municipal) governments are mandated to prepare Comprehensive Land Use Plans (CLUPs) to ensure the best use of natural resources and the implementation of zoning regulations in order to guide the sustainable development of a municipality. However, according to estimates of the Housing and Land Use Regulatory Board (HLURB) in 2012, almost two-thirds of municipalities had outdated CLUPs or no management plans at all. Local governments often lack capacities and expertise to formulate comprehensive plans and, in many instances, spatial plans are externally developed. This results in such plans not being used by local governments due to a missing sense of ownership and community acceptance. The legal and institutional frameworks also do not support integrated approaches as the planning and management of land is usually handled by various governmental units and is segmented into three different types: public (forest, mineral lands), private lands and the ancestral domains of indigenous cultural communities.

In response to these pressing issues and in cooperation with national and local partners, the Environment and Rural Development Program has developed the Sustainable Integrated Management and Planning for Local Government Ecosystems (SIMPLE) approach along with the Integrated Ecosystem Management (IEM) framework to help local governments undertake integrated comprehensive land use planning on their own and to manage land and other natural resources more effectively. The approach is "integrated" because it emphasizes that landscapes interact and depend on each other and, therefore, need to be managed from "ridge-to-reef" – from the central forest areas over the upland and lowland to the coastal and marine zones. This implies the integration and harmonization of land use plans for forest, agricultural, coastal and other resources in an all-inclusive, joint planning document. Cross cutting

themes, such as conflict management, gender, disaster preparedness and, eventually, budgeting and expenditure management form integral parts of this approach.

Applied strategies

SIMPLE along with the IEM framework encourages local governments to harmonize existing land use plans and focus on the inclusion of climate change adaptation and disaster risk management (DRM) measures. As a first step in the planning process, a Barangay (village) General Assembly is held to inform all households that a planning activity will be undertaken and that all actors should be present. The planning teams encourage community participants to draw and document their recall of disasters through a historical timeline, allowing the community itself to articulate what their priorities are for disaster preparedness alongside existing national guidelines.

see also **Meaningful participation, Strategy 1B**

see also **Meaningful participation, Strategy 2B**

Conflicting land claims and tenure arrangements, especially including tenure insecurities of vulnerable and marginalized members of the community, are identified during this process. The subsequent documentation is used in a process for monitoring which includes conflicts prevailing in a barangay or on a wider scale such as boundary disputes. This enables the planning teams to see whether tenure-related conflicts have been reduced over time and to assess compliance with and the impact of spatial plans at regular intervals.

see also **Meaningful participation, Strategy 1A**

see also **Access to justice, Strategy 3C**

Localized climate change data are presented and analysed with community members to discuss the long-term implications of disasters exacerbated by climate change. Representatives of the Department of Environment and Natural Resources, the Department of Agrarian Reform and other land-related agencies are invited to share their perspectives and technical advice with the community participants and to cross-validate with the community priority actions as to their technical soundness and sustainability.

see also **Meaningful participation, Strategy 2D**

With the assigning of proper land uses and monitoring for compliance, negative effects stemming from land conversions or uncontrolled urban growth can be limited. Prime agricultural lands can be maintained, crucial eco-systems will continue to provide services and disaster-prone areas can be clearly identified. Local planners and facilitators are empowered to apply all tools provided, such as software solutions, guidebooks or ready-to-use facilitation techniques. Localized trainings are conducted to build capacity among community members, which will lower the costs for planning in the future as local planners are trained to conduct planning on their own.

see also **Access to information, Strategy 3A**

Outcomes

A number of local governments were able to formulate spatial plans using the SIMPLE IEM framework before super typhoon Haiyan (Yolanda) hit the Eastern Visayas Region on 8 November 2013, resulting in significant loss of lives and damage to properties. These plans guided rehabilitation after such a disastrous event. In the case of Tacloban City, the plan was used to convince the National Housing Authority (NHA) to provide a budget for the relocation of community members affected by the

typhoon on condition that the resettled families would be provided with Certificates of Occupancy connected to their new locations. This provision is the first step towards granting tenure rights to vulnerable and marginalized communities. Without the plan showing local level tenure arrangements and disaster-prone sites, the NHA would not have agreed to provide the needed budget.

Through the implementation of IEM spatial planning, the number of municipalities without CLUPs has been reduced to around ten percent. Municipalities receiving the IEM intervention show strengthened capacities to engage in DRM especially with regard to technical and planning measures, enhancing predictability and preparedness to deal with natural disasters. HLURB has integrated a large part of the SIMPLE-approach into its three-volume national guideline, the *Comprehensive land use plan guidebook*, which was approved in 2014 and has developed a national training program to assist regions and provinces in developing a spatial plan.

Strategy 2

Ensure greater accountability through fostering participatory planning approaches at the lowest possible governance level

A number of approaches can help ensure that spatial planning processes are adapted to local realities, contributing to their effectiveness through more accountability in spatial planning. Spatial planning should foster participatory approaches that integrate land, fisheries and forest use needs of local communities and their local knowledge about those resource uses and their relationships. Locating spatial planning processes at the lowest possible governance level, including customary governance, further helps to respect legitimate tenure rights and build ownership amongst the communities, which is vital for the successful implementation of plans.

a. Understand the socio-political context of the area that the spatial plan affects, including the rights to use land, fishery and forest resources

Spatial planning processes should be based on a profound understanding of the history and region where the spatial plan intervenes. Regional experts such as anthropologists, geographers or, in rare cases, historians who are familiar with the social, political and historical landscape of the area concerned can be hired to inform spatial planning experts about power relations, political and economic factors or historical artefacts that influence the outcome of the spatial planning process. These experts should provide insight into prevailing land right debates and disputes. They should analyse local power relations so that decisions can be made about appropriate ways to solicit participation by actors and to avoid designing projects that recognize one group's land claims over another's. This supports broad accountability through the design of processes that balance the interests of different groups affected by the spatial plan.

Even where opportunities to integrate regional experts in the process to assess the history of land and other natural resource uses and associated rights across the relevant jurisdiction are limited, these aspects should not be neglected in the planning process. Including them in the spatial planning process is key to enhance accountability. This can be achieved through integrating the actors involved across the whole range of land, fishery and forest resource users and right holders with, if necessary, appropriate professional support as outlined above. This ensures that prevailing land, fishery and forest use and rights, and potential conflicts are appropriately integrated into the planning process.

b. Acknowledge existing local land, fishery and forest uses where those uses exceed single administrative units and encourage joint spatial planning across administrative boundaries

Some uses of land, fishery and forest may not be confined to a single administrative unit (for example, grazing areas of pastoralist communities, harvest areas of cross-municipal-boundary fishery resources, a watershed with a mix of land uses, or a landscape in integrated landscape management) (Buck *et al.*, 2019). These complexities further contribute to the challenges of defining the accountable authorities. Spatial planners must think beyond administrative boundaries and seek cooperation amongst affected communities. In particular, input from local communities on such aspects as

resource use patterns and the need for changing seasonal rights to ensure access, is vital for the design of sustainable land use, forest management and coastal management plans. Joint village or municipal spatial planning between neighbouring villages or municipalities can help to identify commonly shared resources, such as forest and fishery resources, grazing land or water points. Joint village or municipal resource use mapping, and planning should aim at producing joint resource use agreements institutionalizing the sharing of those resources. This entails negotiations between and within different interest groups, including forest user groups, fisher folks, settled farmers and pastoralists, and the cooperation between different administrative units. Joint village or municipal planning can be a resource-intensive process that might require external support, but it is a tool to enhance accountability in planning processes that require cross-border coordination. Joint resource use plans can help to address the needs of different users in terms of land and resource use changes avoiding conflict between them and encouraging an accountable approach to spatial planning.

c. Record orally communicated, traditional resource use arrangements where appropriate and contribute to higher tenure security of affected communities

Individual social, cultural and historic experiences shape the relation to and use of land, fisheries and forests of communities (Newsom, Lengel and Cassara, 2011). Empowering local knowledge on customary spatial planning to be incorporated into regulated spatial planning processes is vital to acknowledge local resource use arrangements in the spatial planning process, even those not legally recognized. Often, knowledge of customary spatial planning is unmapped or exists only in oral form, communicated by stories and memories of local elders. These testimonials should be documented to have a record of customary land uses to support the inclusion of customary rights in spatial plans. Where appropriate, this can strengthen the legitimate tenure rights of individuals and communities under customary tenure systems, making the spatial plan more accountable to the needs of affected actors. Where appropriate, local tenure arrangements can be formalized through certificates of occupancy to increase tenure security.

d. Include communities in boundary delineation and encourage participatory mapping to recognize customary rights and empower local communities in spatial planning processes where appropriate

Participatory mapping is an empowering tool and can be used in negotiations to strengthen customary rights. Including indigenous and locally used names in maps makes spatial plans more responsive to the local environment. Accountable spatial planning activities need to be informed by legitimate tenure rights on the ground. Members of affected communities should support spatial planners in the delineation of boundaries and the (multiple) land, fisheries and forest resource uses of the areas in question**.** Not including local knowledge in spatial planning can have harmful results for local users; for instance, when infrastructure development projects compromise the movement of pastoralist groups or when proposed measures restrict access to unmapped community-based forest or local fishery use arrangements. The importance of including knowledge of local users and the pitfalls that cooperating civil society organizations can step into are well documented (ILC and IFAD, 2016). General aspects to be considered in participatory mapping are enlarged upon in the technical guide on *Respecting free, prior and informed consent* (FAO, 2014b).

Case study 8: Intercommunal spatial planning in pastoralist Tanzania

Country: Tanzania

Case Provider: Fiona Flintan - International Livestock Research Institute (ILRI)

Background

There are several pieces of legislation that govern tenure of, access to and use of land in Tanzania, such as the National Land Policy 1995, the Land Act No. 4 of 1999, the Village Land Act No. 5 of 1999 and the Land Use Planning Act No. 6 of 2007. This policy and these acts are meant to protect the rights of all land users. However, these rights are not always ensured and groups such as pastoralists often miss out. Due to the mobile nature of their livelihood system, pastoralists tend to be marginalized from decision-making processes including how village land use is allocated and they face ongoing problems in terms of protecting their rights when they do get them. Grazing lands (or rangelands) have increasingly been lost to crop farming, urban areas, mining, tourism and conservation areas. This loss happens despite the fact that livestock contributes 7.5 percent to Tanzania's GDP, and cattle in Tanzania account for 11 percent of the African cattle population (Michael, Stapleton and Shapiro, 2017).

Village land use planning in Tanzania is provided for by the aforementioned policy and acts, as well as by Government guidelines that advocate for a participatory, accountable and inclusive approach. By law, each village is expected to produce a village land use plan that sets out the major land uses, together with a set of bylaws for governing and managing them. Given the significant number of livestock in many villages, adequate amounts of land should be allocated for grazing. However, because pastoralists are often marginalized, decisions are made in their absence resulting in the provision of limited or no grazing land. This leads to land use conflicts between pastoralists and other land users. Furthermore, where grazing land is allocated, administrative boundaries can fragment grazing areas and limit the use of other resources such as water, customarily shared between villages, and/or limit mobility between these areas.

In response to this situation, since 2010 the Sustainable Rangeland Management Project (SRMP) has been supporting the piloting and later, up-scaling of joint village land use planning (JVLUP) in two districts where there are sizeable numbers of pastoralists, and where land-based conflicts were common. Though JVLUP was highlighted as an important mechanism for protecting and facilitating shared resource use in policy and legislation it has not been implemented due to lack of resources and capacity.

Applied strategies

see also **Accountability, Strategy 2D**

SRMP partners working closely with local Government and communities commenced a process of JVLUP in a cluster of three (later four) villages called OLENGAPA (a name made up from their individual village names) by supporting villagers to carry out a participatory mapping of rangeland and other resources and their distribution. This approach was used to develop a base map for the village land use planning process, including showing which resources are shared by the villages and where they are situated.

see also **Accountability, Strategy 3A**

SRMP, working with the village land use management committee (VLUM) and the district participatory land use management team (PLUM), then facilitated village members to come to agreement over the individual village land use maps and plans, as well as the joint village land use map and plan, and the joint village land use agreement (JVLUA) for shared resources. Those resources included the grazing land, water points, and livestock routes. All village members had the opportunity to take part in this process and extra steps were taken to ensure that pastoralists did so by, for example, giving them prior notice of village meetings. Reaching agreement between the different land users was no easy task and at times was highly politicized. It often required lengthy consultations, negotiations and compromises, but the common interest of protecting village land including grazing land for village livestock incentivized villagers to, eventually, find a solution.

see also **Access to justice, Strategy 2B**

see also **Meaningful participation, Strategy 1B**

see also **Access to justice, Strategy 3B**

Bylaws were established detailing access, management and grievance mechanisms. Reaching agreement was a protracted negotiation process between the villages and within villages between different interest groups, involving many community meetings and substantial investment of resources. The JVLUA was adopted by each village assembly in the cluster of villages. The role of the project was to introduce, guide and facilitate the JVLUP process rather than drafting the plan themselves (ILC and IFAD, 2013).

see also **Meaningful participation, Strategy 2A Accountability, Strategy 3B**

see also **Accountability, Strategy 2B Access to information, Strategy 2C**

see also **Accountability, Strategy 2C**

Though the JVLUP and JVLUA in themselves provided a level of security over the rights to use and access of the grazing land, security of tenure was formalized by way of group or collective certificates of customary rights of occupancy (CCRO). Once the JVLUP was completed, it was possible for CCROs to be issued to the grazing land users who had formed the OLENGAPA livestock keeper's association (OLKA), and for these CCROs to be integrated into the official inventory of rights by the village councils. The shared grazing area is covered by four group CCROs issued to OLKA – one from each village for the part of the grazing area that falls under its jurisdiction. Signboards and beacons marking the boundary of the shared grazing area have been put in place.

see also **Meaningful participation, Strategy 1A**

Within each village a village tribunal exists, made up of seven members from the village assembly, of which three must be women. The tribunal is there to mediate and/or reconcile two disputing parties. Any case can be taken to the tribunal including land disputes. If a village tribunal fails to find a solution then the matter will be referred to the ward tribunal, or the district land and housing tribunal, and later to the high court land division, and if necessary, to the Tanzania Court of Appeal.

see also **Access to justice, Strategy 3B**

Outcome

Following the piloting of the approach in OLENGAPA, it was upscaled in three new clusters of villages and is now being implemented in another district. To date, this approach has resulted in JVLUAs across 180 000 hectares of land. It has provided a clear demarcation of priority land uses, though not preventing multiple use as appropriate. The adjudication, clarification and certification of legitimate tenure rights resulted in a resolution of major land use conflicts across the villages and provided a firm foundation for investing in the land to improve productivity and management. At the same time the profile of livestock keepers including pastoralists has been raised in the villages, and their capacity built to optimize the opportunities of being part of a national association of livestock keepers, enabling greater access to decision-making processes.

Strategy 3

Establish participatory and regular monitoring and evaluation procedures to increase accountability in implementation and enforcement of spatial plans

Effective monitoring and evaluation procedures are an important tool to strengthen accountability and ensure the implementation of spatial plans. Monitoring and evaluating the implementation of the spatial plan are key requirements for realizing the goals agreed to in the plan and are pivotal to responsible governance. For all actors involved in the spatial planning process, this is an important tool to hold one another accountable to commitments (GIZ, 2012). In regard to the protection of legitimate tenure rights, monitoring and evaluation is crucial to ensure the observance of local resource use agreements such as community-based forest agreements or cross-municipal fishing arrangements. When monitoring is implemented in an effective manner with results fed into national databases, it can help to track land use changes and can complement cadastre systems.

a. Include communities in drafting spatial plans at the local level as the basis for a joint monitoring and evaluation of the implementation of the plan

Following the principle of subsidiarity, the planning process should be located at the lowest level possible. Where applicable, communities and individuals should be included in the different steps that entail drafting a spatial plan, i.e. the situational analysis and the plan formulation. This inclusion ensures that communities and individuals have an opportunity to play a role in the implementation, monitoring and evaluation of the spatial plan. Communities should help decide the activities to be monitored, the methods to be applied in monitoring, including choice of indicators, and how the results are recorded and shared with the community (FAO, 2014). The monitoring system should be designed in a way that allows it to be jointly implemented and adapted to the context of the local community (Ministry of Lands and Resettlement Namibia and GTZ, 2010). This process creates accountability mechanisms that serve both the government and the communities. On the one hand, the communities are included in drafting and implementing the spatial plan, which allows them to develop their sense of ownership and creates stronger incentives to hold governments accountable if plans are not implemented or objectives in the plan are not achieved. On the other hand, governments are able to hold landowners and land users accountable to observe the decisions made in the spatial plan.

b. Ensure that activities and measures identified in spatial plans are supported by a budget that considers those measures as well as the costs of procedural requirements to ensure participatory and inclusive processes

Matching the planning priorities of the spatial plan to existing financial capacities and available funds is key to ensure the implementation of the plan (GIZ, 2013). Engaging with affected communities in a meaningful manner requires that the corresponding activities are designed in a way that is cognizant of the existing financial framework. In practice, this means that aspects of the planning process, such as supporting communities through information sharing procedures, consultations and means for participatory planning need to be accounted for in the budget and monitored accordingly.

Case study 9: Participatory village land use planning in the state of Odisha

Country: India

Case providers: Sumana Chatterjee and Felix Knopf (GIZ)

Background

Spatial planning in India is mostly limited to urban areas, although about two-thirds of the land area in the country is classified as rural (i.e. villages). The state of Odisha, located in the south-eastern part of India, is one of the least urbanized states in the country, where spatial planning and land use regulations are only limited to a few urban areas. Though District Planning Committees (DPCs) constituted in Odisha prepare district development plans for the entire district encompassing its rural and urban areas, these plans are entirely budgetary in nature and lack the spatial component mandated by the Seventy-Third Constitution Amendment Act of India, 1992. The villages also prepare the Gram Panchayat Development Plans (GPDPs) for their jurisdictions, but these only focus on schemes (without spatial land use planning), which often lack integration with state policies. For example, the state Agriculture Department promotes organic farming schemes for villages, but such proposals and their spatial demarcations on land are not visible in GPDPs.

To address the above concerns, GIZ, in bilateral partnership with the Government of Odisha, is implementing a Land Use Planning and Management project in Odisha. The primary objective is to prepare a state land use policy that integrates different sectoral policies and local priorities through community participation. The application of the policy is being demonstrated through preparation of a district spatial land use plan for Ganjam district and a local level land use plan (including 1 town and 14 surrounding villages) within the district. The idea is to integrate the two spatial levels of planning and to feed the outcomes into state level policy. Extensive village level participation has been undertaken to ensure the aspirations and needs of communities are reflected in the state policy.

Applied strategies

The bottom-up process of village land use planning conducted in each of the villages by a local NGO, Ekta, involved a high degree of participation focusing on vulnerable and affected sections of the community. Ekta conducted a training program prior to execution of the planning exercise in which two to three trainers were selected from each of the villages. This was done to ensure maximum acceptance of the spatial plan within their own village community. The monitoring and training team of Ekta (including village members and NGO staff) successfully conducted different methods of monitoring and evaluation with the villagers, enabling an opportunity for informed decision-making.

see also
Access to Information, Strategy 3

see also
Meaningful participation, Strategy 2D

To create informed decision-making, the concept of and need for spatial land use planning was explained to the villagers. The villagers reported losses in agricultural productivity due to use of chemical fertilizers but were unaware of alternative practices. As the state of Odisha was promoting an organized effort toward organic farming, the villagers were informed about the benefits of organic farming and the spatial planning implications the new practice will have on existing land uses.

see also **Access to Information, Strategy 2A**

In order to institutionalize the participatory planning processes, Ekta helped to form a Village Development Committee (VDC) with village representatives. The Committee was set up to meet at regular intervals for planning, implementation, steering and monitoring of land use plan preparations.

see also **Meaningful participation, Strategy 2A**

The villagers were engaged in social mapping and resource mapping. Local resources were used as tools for planning. For example, maps were drawn with chalk and powder colours on roads and the open grounds of villages. This process helped the villagers to easily identify the current and potential uses of lands along with possible areas of land conflicts. Should such conflicts arise, the villagers were trained in methods of prioritizing land uses based on community needs and in alignment with existing regulations.

see also **Meaningful participation, Strategy 2C**

see also **Meaningful participation, Strategy 2B**

Impact assessments of several potential development schemes of the Government were undertaken with the community. For example, the benefits of Water User Associations (Pani Panchayats) created in different villages under the State Agricultural Policy (2013) had not provided better irrigation facilities to the farmers. Through participatory planning, the villagers realized the untapped potential that they can harness and agreed to work collectively towards directing a substantial share of funds towards irrigation facilities.

see also **Meaningful participation, Strategy 2D**

Outcomes

The implementation of the strategies introduced a new culture of spatial planning in the villages. At the state level, the Government is currently reviewing the draft of the Odisha State Land Use Policy that has been prepared by integrating the views of the community perceived during the village planning exercises in addition to sectoral land use conflicts and priorities in land management. The state has also proposed the development of an information manual for the demonstrated participatory approach to be integrated into the GPDP. This manual will improve the capacities of other communities and will enable peer-to-peer learning.

The project recommends that the Government institutionalize this bottom-up approach for planning and policy-making. The exercises undertaken and explained in this case study show that without the knowledge from villages, including existing tenure arrangements, any spatial land use plan of a district developed by the Government or private consultants will be misrepresentative. The most significant outcome of the participatory planning was that it empowered the community to make informed decisions which up until that point had been made by elected representatives and Government authorities. This case shows how individuals and communities can be integrated throughout the spatial planning process to create ownership for the plan and to adapt it to local realities on the ground. Throughout all steps of the process, the impact on tenure rights and potential changes thereto need to be addressed in discussions and participatory approaches.

4 3.4 ACCESS TO JUSTICE

Providing access to justice is clearly stated in the Guidelines as one of the essential principles contributing to the responsible governance of tenure (paragraph 3A.4). The principles of implementation refer to equity and justice and indicate 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" (paragraph 3B.3). A second justice-related and essential principle of implementation for the Guidelines is the rule of law which enshrines a rules-based approach supported by the wide publication and equal enforcement of laws which are independently adjudicated and consistent with national and international laws and voluntary commitments (paragraph 3B.7).

Access to justice can be strengthened in several ways. The strategies brought forward in this section address both aspects of justice: law and equity. These strategies are targeted at spatial planning authorities, CSOs and local communities alike.

In terms of the law, justice relates to strengthening the ability to voice complaints in a meaningful way and improve access to conflict resolution mechanisms. In terms of equity, access to justice involves balancing diverging interests within a spatial plan and ensuring that all actors involved benefit appropriately from produced benefits. Spatial planning processes can support the creation of a level playing field considering existing power imbalances between different actors, particularly by supporting vulnerable and marginalized communities in claiming their legitimate tenure rights. Such processes should build on the recognition of legitimate tenure rights, whether formally recorded or not, by strengthening processes that lead to their legal protection.

States should provide timely, affordable and effective means of accessing justice to everyone through judicial authorities or other means of dispute resolution, including the right of appeal (paragraph 4.9). States should provide prompt, just compensation where tenure rights are taken for public purposes (paragraph 3.1). Remedies for disputes over tenure rights may include restitution, indemnity, compensation and reparation (paragraph 4.9). States should also establish safeguards against improper use of spatial planning powers, particularly relating to changes in regulated use, and they should produce monitoring reports to ensure compliance with these safeguards (paragraph 20.4).

In terms of equity, where appropriate, states should consider providing non-discriminatory and gender-sensitive assistance to those who are unable through their own means to acquire tenure rights to sustain themselves, to gain access to the services of implementing agencies and judicial authorities, or to participate in processes that could affect their tenure rights (paragraph 4.7). States may consider allocation of public, or expropriation of private land, fisheries or forests to fulfil public purposes,

including, where appropriate, under a national context, redistribution (paragraph 15.1). States and other parties should also consider additional measures to support vulnerable or marginalized groups who could not otherwise access administrative and judicial services with necessary support, including, for example, legal support such as provision of paralegals (paragraph 6.6).

This support is especially needed where customary tenure rights are concerned, as these tenure rights are often not recorded and under pressure even in situations where existing national laws recognize customary tenure structures. Spatial planning processes can support the legal protection of rights by acknowledging the legitimate tenure rights of communities and individuals within a governmental spatial plan. Ensuring conflict resolution mechanisms are in place and accessible in order to claim such legitimate tenure rights when equity is not ensured, or when tenure rights are infringed upon is, therefore, necessary. Legal or paralegal support for vulnerable and marginalized communities is equally essential, particularly within a human rights-based approach to spatial planning.

Strategy 1

Promote equity and justice within spatial planning processes by making the protection of legitimate tenure rights an explicit objective of the spatial plan, even if the spatial plan can lead to a restriction of these rights

Due to existing power imbalances between actors involved in spatial planning processes – for example, state authorities, regional entities, private investors, civil society and marginalized communities – spatial planning procedures must take care to protect and enhance the tenure rights of all actors, especially vulnerable and marginalized members of communities, in order to achieve equitable outcomes and uphold the principles of equity and justice in the Guidelines.

a. Seek guidance from existing international safeguards in spatial planning procedures to protect legitimate tenure rights

Environmental and social safeguards that can support the protection of legitimate tenure rights in spatial planning processes, particularly those of vulnerable and marginalized communities, exist and, in many cases, have even been endorsed by national governments.[3] These safeguards should be consulted and adhered to by spatial planning implementers in order to uphold human rights, the Guideline's principles and to avoid infringement of legitimate tenure rights. States, for example, are obliged to follow specific safeguards when taking a credit loan or grant from financing institutions such as the World Bank. If the state is found not to be following the provisions within such safeguards, civil society can register complaints with the respective conflict resolution mechanism. However, loans that are taken from institutions that do not have such safeguards in place will equally not provide access

[3] For example, the UN Declaration of Human Rights and subsequent human rights treaties and instruments, ILO Convention 169, the World Bank Environmental and Social Framework or Ise-Shima Principles for Promoting Quality Infrastructure Investment.

to associated conflict-resolution mechanisms. Under these circumstances, holding governments accountable to uphold the principles of the Guidelines in regulated spatial planning processes by making use of existing international safeguards in this regard is an important avenue for strengthening access to justice.

b. Consider supporting access to resources for marginalized groups where lack of access restricts the ability to make a livelihood and where national food security benefits are limited

In situations where agricultural land is scarce, spatial planning can help designate land for use by marginalized and vulnerable members of society, such as women and youth. Gendered inequity in land access due to cultural traditions is commonplace in many parts of the world. Youth unemployment and access to farmland by young farmers is a critical issue in many countries as well, including in industrialized countries of the Global North. Especially where public land can be repurposed for use by groups or individuals with commitments to sustainably manage the land for agricultural purposes, efforts should be made to allow for this within the spatial plan. Frameworks for accessing such land should be made in line with participatory planning processes outlined in the meaningful participation strategies in this technical guide.

c. Establish agreements with participation of local communities as a precondition for third-party investments that require transfer of tenure rights

The involvement of third-party investors in spatial planning processes, such as in instances of large-scale land acquisition which are commonplace in extractive industries and large-scale agriculture projects, involves the risk of negative effects on the livelihoods of local land, fishery and forest users, and for society at large (e.g. pollution, loss of biodiversity). In cases where regulated spatial planning allows for industry concessions that require large-scale transfer of tenure rights, under the assumption that such concessions were allowed following free, prior and informed consent of local communities and have been decided upon after evaluating other options, according to paragraph 12.6 of the Guidelines, a memorandum of understanding should be established which outlines the duties of the acquiring company in relation to the local communities. State authorities, as duty bearers, should facilitate the creation of, and be responsible for, the respect by all parties to such an agreement through meaningful consultations. In the case of expropriation, just compensation to communities should be facilitated. Such agreements should be informed by impact assessments and could include specific obligations such as a certain number of jobs reserved for the local community, procedures for (potential) environmental damages including legal liability, and/or corporate social responsibility projects that benefit the local community directly (FAO, 2015a). Establishing such an agreement helps to ensure equity for affected communities in situations where a powerful third-party actor exercises pressure to secure their interests, both on communities as well as on state authorities, that are not in line with spatial planning goals or development aspirations important to local people, communities and others.

see also **Meaningful participation**

see also **Access to justice, Strategy 3D**

see also **Meaningful participation, Strategy 2D**

Case study 10: Public access to land for sustainable agriculture and youth employment

Country: Italy

Case Provider: Giacomo Lepri, Founder and President, Cooperativa Agricola Coraggio

Background

Outside the bustling centre of Italy's capital city, Rome, the Lazio region is characterized by vast areas of abandoned or underutilized land. One of these areas is known as Borghetto San Carlo, a 22-hectare green area initially acquired by a private development company with the intention of building commercial real estate and villas. The area was ultimately found to be unfit to build on due to environmental and agronomic standards. It was then returned to the municipality and classified as public land.

To recover this underutilized land, bring agriculture closer to the city, and provide work for young people who had no or little opportunity to buy land for farming, young farmers and other members of civil society came together in 2011 to start a movement for the land to be used in the name of sustainable agriculture and food production. One of these groups was the Agricultural Cooperative Coraggio whose story demonstrates the benefits of new green spaces for citizens close to city centres where healthy products are grown and where youth can find new employment opportunities.

Applied strategies

Agricultural Cooperative Coraggio's interest in Borghetto San Carlo was rooted in four simple demands: the need for work, the need for space, the need for a liveable city and the use of abandoned public spaces. Their efforts coincided with the rise of the Roman Coordination for Access to Land which included groups of young and aspiring farmers, agricultural cooperatives, associations representing agricultural interests, trade unions and environmental associations. These communities worked together to assert their rights in a united effort to support sustainable agriculture and public access to land.

see also **Access to information, Strategy 3B**

The Coordination made a strong campaign to ensure that the land in question was to be used for agricultural purposes. They held sit-ins at local land authority offices, held training events, seminars and raised awareness through the media. They planted trees in public flowerbeds and collected signatures from citizens, mostly through online platforms. These efforts drew attention to their cause and gave them a chance to participate at institutional planning meetings. In these meetings they made the

see also **Access to information, Strategy 1B**

see also **Meaningful participation, Strategy 2A**

case for awarding access to land to unemployed and landless farmers, particularly the youth, and the importance of multifunctional agriculture in efforts toward food security.

In order to convince local authorities, it was crucial to build a broad alliance. The campaign involved consumer organizations and environmental groups and focused on advocating towards local authorities and members of the city parliament. A key aspect of the campaign was to keep the lands public (not to privatize them) and to make sure that they are used for the benefit of society.

see also **Meaningful participation, Strategy 1B**

see also **Meaningful participation, Strategy 1B**

Outcome

Ultimately, the Coordination helped to prevent the sale of about four hundred hectares of agriculturally viable public properties north of Rome. In 2014, the municipal authorities were convinced to release the first public property tenders after decades of inactivity. Agricultural Cooperative Coraggio was ultimately granted temporary ownership over Borghetto San Carlo through lease contracts. Their success so far in managing and developing the land has led them to be recognized and rewarded as representatives of a new way to understand farming in relation to the city. It has demonstrated that an enhanced quality of life by way of ecologically focused, multifunctional agriculture and food sovereignty, including employment and training opportunities, is possible. They have shown that this is a model that can be applied to public lands in Europe as well as other densely populated and highly developed parts of the world.

The case shows the importance of a holistic approach to spatial planning, where multiple objectives should be taken into account and decided on through meaningful, participatory planning. The Cooperative is an example of how widespread societal benefits in terms of regional food security can be implemented and can add to the territorial development of food systems surrounding the urban centre of Rome. Although the young farmers succeeded in securing access to and secure, albeit temporary, tenure over public land, transparency in institutional processes should be strengthened. Transparency is needed to ensure there are avenues for continuously coherent and democratic, regulated spatial planning which serves public interest in the future.

see also **Accountability, Strategy 1**

see also **Accountability, Strategy 3A**

Strategy 2

Strengthening access to justice for local communities by ensuring equitable access to land, fisheries and forests through support of community-based resource management

Community-based resource management can serve as a tool both to protect natural resources in the context of land, fisheries and forests, and to provide tenure security for local communities. Spatial planning procedures should be sensitive to those dynamics that often lead to inequitable access to land, fisheries and forests for local communities, as well as to the power imbalances that exist between different actors. Sensitive resource management supports local communities in resolving potential conflicts by recognizing de facto uses that contribute to sustainably managing land, fisheries and forest resources. Community-based resource management can also provide more equitable access to the benefits of those resources.

a. Encourage the establishment of community-based management structures through spatial planning processes to strengthen equitable access to and sustainable use of natural resources where communities otherwise lose their livelihood basis.

Community-based tenure and resource management systems are tools that can help recognize and protect de facto tenure arrangements and usufruct rights while also protecting the natural resource base. For communities living in multi-use zones within, for instance, protected areas, the security to tenure rights offered by these structures is imperative and should be seen as the basis for their legal protection. There are many cases worldwide of national parks and protection zones suffering high deforestation rates, regardless of spatial plans being put in place that contain strict land use regulations prohibiting resource extraction. In these cases, the establishment of community-based resource management agreements have helped to secure the sustainable management of resources while also contributing to the enhancement and full enjoyment of the tenure rights of local communities. As called for in paragraphs 20.5 and 3A.3 of the Guidelines, spatial planning implementers should aim to designate, where appropriate, resource management and sharing arrangements that benefit local tenure right holders and larger development objectives simultaneously. Community-based natural resource management has proven to be more effective in the protection of natural resources than strict, no-use regulations (Devine, 2018). Although these management arrangements are common, in the forestry sector they are often made without including spatial demarcation or issuing proper titles. This makes communities and smallholders particularly vulnerable to losing rights (even when formally recognized) during spatial planning processes. Spatial plans should work to facilitate the creation of such management structures and ensure the legal protection of the associated tenure rights, where applicable and well-suited for the local community.

b. Empower local communities to establish resource-sharing agreements among themselves to overcome conflicts related to inequitable access where spatial plans limit access to shared resources.

Regulated spatial planning undertaken in a top-down manner can overlook the spatial distribution of resources by, for instance, granting exclusive use rights over areas where species are harvested that move between such exclusive use-right areas, as is the case with fish, for instance. Local knowledge and cooperation can help to overcome conflicts arising as a consequence of the inaccessibility to specific groups of resource users. Resource-sharing agreements between communities can provide alternative governance mechanisms, ensuring equitable access to resources for all communities involved, regardless of whether the resource in question is within the boundaries of the exclusive resource use area of that community. Resource sharing agreements introduce an element of flexibility that allows for equitable access for all members of the communities. Such agreements should be incorporated into broader spatial plans or consulted in the creation of new ones. Impact assessments and enforcement mechanisms should be supported to ensure that such agreements are adhered to and equity and justice are continuously upheld.

see also **Meaningful participation, Strategy 2C**; **Accountability, Strategy 2C**

see also **Meaningful participation, Strategy 2D**

Case study 11: Harmonizing conservation and development through community forestry

Country: Guatemala

Case Provider: Jennifer A. Devine - Assistant Professor of Geography at Texas State University

Background

Guatemala's 21 602 square kilometres of the Maya Biosphere Reserve (MBR) was created in 1990 as part of UNESCO's Man and Biosphere Programme. Biospheres are protected areas designed to reconcile biodiversity conservation with sustainable development. To achieve this aim, the MBR, like the more than 650 biospheres worldwide, is comprised of core zones of strict conservation in the form of national parks and biotopes, a multiple-use zone permitting sustainable extraction of natural resources, and a buffer or transition zone with few land use restrictions.

Indigenous Maya and non-indigenous workers for the Wrigley's Chewing Gum Company founded many of the villages located in the multiple-use zone of the reserve in the early 1900s. Following the creation of the MBR, the Guatemalan Government granted these communities legal residency, but prohibited land ownership and restricted usufruct rights in the newly defined protected area. Following nearly a hundred years of customary land tenure and land use, these communities experienced the creation of the MBR and its restrictions on resource extraction, farming and hunting as land dispossession.

Shortly after the reserve's creation, villagers became aware of the Guatemalan Government's plans to grant industrial timber concessions to private companies. MBR residents and neighbouring villages identified themselves as the rightful managers of the MBR's forests and began to organize themselves politically. Forest residents created cooperatives and CSOs under an umbrella organization, the Association of Petén's Forest Communities (ACOFOP), in order to obtain community forest concessions and defend their tenure rights.

Applied strategies

From 1994 to 2000, ACOFOP negotiated the successful creation of 12 community forest concessions with the Guatemalan Government ranging between 5 000 and 83 000 hectares in size. This process entailed participatory mapping exercises with state officials from the Ministry of the Environment and the Council on National Protected Areas (CONAP) and included recording of oral histories documenting villagers' customary land uses. Including these elements in the planning process allowed spatial planners to produce an inventory recognizing all forms of tenure and include communities in the boundary delineation process.

see also **Accountability, Strategy 2C**

see also **Meaningful participation, Strategy 1A**

see also **Accountability, Strategy 2D**

The concessions enable the cooperatives to co-manage their land with CONAP and exclusively harvest timber and non-timber forest products for a period of 25 years. With the technical and financial assistance of national and global conservation organizations, community concessionaires have received training in forestry, human resources and international business management. The sustainability of community forestry is monitored by annual plans of operation approved (or denied) by CONAP and the Forest Stewardship Council that identify which trees from which section of the concession will be harvested.

see also **Access to information, Strategy 3A**

see also **Accountability, Strategy 3A**

For MBR residents, community forestry is first and foremost a land rights and social justice strategy (www.acofop.org). Community forestry takes the form of providing livelihoods and land management mechanisms that result in increased food security as well as the protection of natural resources and sacred indigenous sites. Guatemalan community foresters help develop capacity for community-based resource management elsewhere, including Belize, Colombia and Brazil, by showing future community resource managers how their model works in practice through grassroots' forms of capacity development and knowledge exchange. These *in situ* workshops enable community leaders from these countries to visit the MBR and community forestry production operations with ACOFOP members. These exchanges are funded by the UN, FAO and NGOs like the Ford Foundation, PRISMA and as well as by bilateral aid, like USAID.

see also **Access to justice, Strategy 1B** and **Strategy 2A**

see also **Access to information, Strategy 3B**

Despite these successes, community forestry in the Maya Biosphere is threatened by organized crime and proposed large-scale tourism development of the reserve's archaeology sites. As such, the need for transparent and accessible conflict-resolution mechanisms is high. In the MBR these mechanisms include the Forum for Environmental Justice and the Mirador Roundtable. The Forum for Environmental Justice is a non-profit organization that coordinates government agencies, NGOs and community foresters in order to denounce and prosecute environmental crimes in the MBR including land usurpation, cattle ranching, and timber, flora and fauna poaching by organized crime. The Mirador Roundtable is a mediation forum without legal recourse that aims to resolve spatial planning and land use conflicts between tourism developers, archaeologists, and community foresters. These forums are based on voluntary participation and compliance by member organizations and have been successful in increasing democratic participation, resolving conflict and strengthening the rule of law.

see also **Access to justice, Strategy 3B**

Outcomes

Guatemala's MBR illustrates that spatial planning that supports community-based resource and land management in protected areas can result in more effective governance and conservation outcomes than strict conservation regulations characterizing national parks. Since the creation of the MBR, the two national parks in the western half of the reserve have experienced some of the world's highest deforestation rates (Hodgdon *et al.*, 2015). Drug trafficking organizations have illegally deforested these parks in order to plant pasture, claim drug smuggling territory, and

launder money through cattle ranching (Devine *et al.*, 2018). By contrast, the reserve's multiple-use zone that is home to the community forest concessions has fared much better; deforestation rates are close to zero percent in the concessions (Davis and Sauls, 2018) and population densities of endangered species like the jaguar are some of the highest in the reserve (Moreira *et al.*, 2011).

Today, community foresters in Guatemala manage nearly 500 000 hectares of land, making the Maya Biosphere Reserve one of the largest communally managed forests in the world. In addition to achieving conservation goals and improving forest governance, community forestry generates USD 5 million in profits annually from timber and leafy palm sales that benefit 14 000 people directly, 70 000 indirectly, and fund improved infrastructure, staffing and resources in village schools and public health clinics. The case of community forestry in the Maya Biosphere illustrates that regulated spatial planning that creates communally managed lands can strengthen the rule of law and regional governance by empowering marginalized and vulnerable groups to implement regulated land-use legislation.

Strategy 3

Ensure continuous and contextualized avenues for justice before, during and after any process of a spatial planning initiative

To strengthen access to justice, avenues for justice must be provided throughout the spatial planning process. This is relevant for infrastructure projects, disaster risk management processes, and any other spatial planning undertaking that impacts tenure and livelihood opportunities. Access to justice involves continuous processes of meaningful participation to reach an agreed spatial plan and to ensure its implementation. Legal support in claiming tenure rights or appealing to spatial planning decisions that infringe on rights may be necessary before, during or even after a spatial plan is put in place, especially when compensation measures are needed. It should be noted that there is often a constant need to improve official judicial systems in order to receive and handle complaints adequately. In some cases, this may mean relaxing rules of court proceedings in order to accommodate the needs and capacities of all legitimate tenure right holders (FAO, 2016b). Activities to ensure justice will depend on the spatial plan in question, but the following are common points to consider within spatial planning processes. In many cases, strong CSOs and producer organizations can assist in providing access to justice for entire communities.

a. Offer free or affordable legal advice to people, communities and others who cannot afford such support

Spatial planning processes, its legal implications and the impact it may have on one's livelihood opportunities can be difficult to understand. Providing free or affordable legal advice, including the assistance of paralegals in negotiation processes, contributes to an enhanced understanding of those implications. Spatial planning processes should ensure such services are available and wherever possible, aim to train and support the development of paralegals and other specialists within the affected communities themselves. Communities should also be encouraged to share such knowledge with neighbouring communities similarly affected by a spatial plan. These efforts support the creation of a level playing field between all actors and allow vulnerable and marginalized communities to take action in claiming their legitimate tenure rights.

see also
Access to information, Strategy 3

b. Strengthen conflict resolution and grievance mechanisms that are accessible and agreed to by affected right holders

In many cases where resolution of conflicts over land uses must be negotiated, finding a commonly held agreement is not always conflict-free. This situation calls for conflict resolution mechanisms that coordinate all affected parties, including government agencies, NGOs, affected community representatives and private sector interests. States, as duty bearers, should ensure that appropriate processes to recognize, respect and ensure safeguarding of legitimate tenure rights be integrated into regulated spatial planning. These processes should be available, accessible and comprehensible to all, and particularly to vulnerable and marginalized groups. This

see also
Access to information

may involve devolving national justice systems and establishing dispute resolution mechanisms at more local levels (FAO, 2016b). CSOs can play an important role in this context, helping communities to channel their dissatisfaction into a meaningful formulation of demands. Additionally, referral mechanisms should not only work on the community level. If the case cannot be resolved to the satisfaction of all parties involved, opportunities should be made available to take the case to a higher level of appeal. In cases where tenure rights have been violated, communities should be provided justice through landscape restoration and compensation as called for in paragraph 4.9 of the Guidelines.

Besides the direct link to justice, confidence that appeal processes are legitimate and independent helps to avoid protests or conflicts which could escalate into violence (FAO, 2009a). Agreements on the design and availability of conflict resolution mechanisms should be made in consultation with the affected communities early in the spatial planning process in order to have instruments readily available, and context specific, when and if conflicts arise (FAO, 2014b). Setting up a process for consultations ensures a designated time and space for feedback on a spatial plan to be provided and conflict resolution mechanisms to be jointly agreed upon.

see also **Accountability, Strategy 3A**

see also **Meaningful participation, Strategy 2A**

c. Review environmental and social impact assessments to determine the spatial distribution of the impacts, both positive and negative, of a spatial plan

Spatial planning activities can impact the access to and use of natural resources. It can influence the value of tenure rights, for example, through zoning or infrastructure projects, as well as access to specific services. It is important to ascertain a spatial plan's social, cultural, environmental and economic implications to assess its overall impact on livelihoods and human rights. Distributional impact analysis of spatial plans should be carried out, before and after the implementation of spatial planning measures, by the state, civil society or assisting third parties to assess any gains and losses produced by a spatial plan and to make them more transparent. This analysis supports the permanence of livelihoods associated with legitimate tenure rights and assesses to what extent different parts of the communities are affected by a regulated spatial plan. It also is a possibility to ensure that remote communities have secure access to basic services.

see also **Meaningful participation, Strategy 2D**

d. Where necessary, provide just compensation that is equivalent to the loss effected by expropriation under a regulated spatial plan

Regulated spatial planning can impact legitimate tenure rights holders by, for example, measures of expropriation due to a proposed infrastructure project (such as a new road through part of an agricultural community). In such cases, compensation will be specific to the legal provisions of any given jurisdiction and should be just; that is, compensation should ensure that affected parties are in a position that is equal to or better than before the spatial plan was implemented (FAO, 2009a). Compensation

may include restitution for time, resources or income lost during the process (see technical guide on *Valuing land tenure rights* (FAO, 2017d) for more detailed information regarding this complex area). Access to such compensation should be made available through judicial systems or grievance resolution mechanisms that are readily available, easily accessible and contextually comprehensible.

see also
Access to justice, Strategy 3B

BOX 4. COMPENSATION

Before engaging in spatial planning procedures, compensation guidelines need to be drafted that lay the foundation for compensation processes. They should provide clear and publicly accessible responses to questions such as:

- **When is compensation applicable?** The Guidelines (paragraph 16.1) state that expropriation rights to land, fisheries or forests should only be done by national authorities when it is for a public purpose. The definition of public purpose should be clearly defined in law.
- **How should losses be compensated?** The Guidelines (paragraph 16.3) state that compensation may be in cash, rights to alternative areas or a combination of the two. Fair compensation aims to ensure that the affected tenure right-holder is, after expropriation, in a position that is no better or worse than before.
- **How is the loss determined?** Value is contextual and the amount of compensation will depend on the degree to which tenure rights have been affected. Independent and impartial valuers should be appointed to assess expropriated tenure rights and to determine the appropriate amount of compensation to ensure fair valuation (paragraph 16.3)
- **Who should be compensated?** Compensation relevant to one's livelihood is to be provided to tenure right holders whose rights have been altered or transferred and may also be required for landowners whose tenure has been devalued by the result of nearby infrastructure developments (e.g. noise from a new road).
- **When should tenure right holders be compensated?** The Guidelines (paragraph 3.1.4) state that just compensation should be provided to tenure right holders promptly (i.e. immediately) when tenure rights are taken for public purposes.
- **Who is eligible to expropriate?** Compensation for state expropriated land should be done following clear and publicly available regulations, while acquisition of land by private parties (e.g. large-scale investors) is often done following individual negotiations with affected tenure right holders. In these cases, objective and impartial independent valuers are key when determining compensation for expropriation. Transparent and decentralized processes and services are useful to help prevent corruption (paragraph 16.6).

Adapted from the Guideline's technical guide on Valuing land tenure rights, pp. 28–34 (FAO, 2017d). For more information on compensation, especially following private investment, please refer to this publication.

Case study 12: Fair compensation for construction of bicycle lane

Country: Denmark

Case Provider: Cecilie Ravn-Christensen – Land Tenure Expert

Background

In the process of building a new bicycle path in a town outside Aarhus in Denmark, a number of landowners needed to relinquish a part of their properties for the realization of the public infrastructure project. The majority of these landowners came to a voluntary agreement with the authorities regarding compensation for their land. However, the authorities could not reach an agreement with one landowner who claimed a very high compensation.

The main reason for the disagreement regarding the level of compensation was that the property was included in a new local plan which was put in place in 2016 to enable subdivisions for an adjacent and growing residential area. The landowner's property thus changed status from agricultural to residential land, with a smaller portion (less than 3 percent of the landowner's total property) dedicated to a future bike lane. Before the bike lane was constructed, the children in the neighborhood used the main road for biking to and from school. The residential area was rather big, producing heavy bike traffic on the road, resulting in a number of dangerous situations. As the residential area was to be expanded, the municipality found that there was a great need to establish a bike lane to avoid any accidents.

The landowner claimed that every square metre of his land had an equal value, whereas the authorities claimed that the price for the land should be differentiated depending on its future usage as stated in the local plan. After considering various alternative options, the authorities decided to carry out an expropriation of the land in question and implement a process of compensation for the landowner in order to build the bike lane.

Applied strategies

Danish law rules that where authorities and landowners cannot reach an agreement regarding the level of compensation, a local, independent valuation commission is to be involved. The inclusion of the commission is cost free for the landowner and fully paid by the authorities to ensure justice for the landowners from which land is expropriated.

see also **Access to justice, Strategy 3B**

The approach for determining the right compensation varies from case to case. The principle used in Denmark determines that the landowner should be offered the highest value for his or her property. In a case where the spatial plan does not increase the land price, fair compensation should be determined based on the market price, if

see also **Access to justice, Strategy 3A**

such exists. In cases where the use value exceeds the market value, the compensation should be based on the use value; (e.g. in the case of a specially designed house for a disabled person where the market value of the property would be determined by non-handicapped persons and would be lower than the use value).

If both parties cannot accept the land valuation set by the commission, a superior (regional) valuation commission can be appealed to, free of cost for the landowner. After addressing these two administrative bodies, the question can be taken to the official, judicial court system with the costs to be borne by the plaintiff. Independent valuation commissions thus contribute to access to justice in spatial planning processes that affect tenure in several ways: the state provides a grievance mechanism free of charge, providing a venue to find a just agreement for expropriated landowners.

see also
Access to justice, Strategy 3D

Outcome

The landowner in this case was ultimately compensated according to the value and the land uses determined by the local plan. The case nonetheless illustrates how national legislation can help to achieve access to justice for every landowner in spatial planning processes. Measures can be put in place to ensure that there are clear and fair mechanisms for compensation and valuation, with little or no cost to the landowner, in response to a spatial plan that leads to the need for expropriation.

The case shows how spatial plans have a direct impact on the value of a property by changing regulated and future uses of that property. In such cases, it is important to acknowledge the different perspectives involved (for example, those of the landowner versus those of the spatial planning authorities), and to establish processes where agreement can be reached and some form of justice achieved for affected parties.

4
Practical implementation of the strategies on the ground

- ✓ **4.1 Strengthening tenure rights during the spatial planning process**
- ✓ **4.2 Spatial planning and tenure rights: leaving no one behind**

4. Practical implementation of the strategies on the ground

Chapter 3 has provided an array of strategies to strengthen civic spaces in spatial planning processes through enhanced access to information, meaningful participation, accountability and access to justice. The impacts that spatial planning can have on tenure rights of people, communities and others require the design of planning processes that are inclusive and take into account existing power imbalances. Strengthening civic spaces helps to ensure that spatial planning processes are conducted with respect to the principles of the Guidelines and in support of governments fulfilling and respecting their human rights obligations in those processes.

This chapter links the strategies brought forward in chapter 3 to the spatial planning process. Acknowledging the range of step-by-step guides on spatial planning and corresponding tools for implementation that already exist, this chapter does not provide guidance on how to implement the different steps of a spatial planning process; rather, it highlights which strategies practitioners should pay attention to during each step of the process. The strategies can also be applied in different contexts and linked to existing safeguards on, for instance, land-based investments that may not always be based on broader spatial planning processes. Integrating the strategies into safeguards helps to ensure that investors respect the tenure of affected stakeholders in large-scale land-based investment projects. It limits the negative impacts on stakeholders by identifying and engaging them in a manner that is in line with the principles of the Guidelines. Integration is particularly important in situations with overlapping claims or with a high degree of undocumented or unmapped tenure rights. CSOs, vulnerable and marginalized people, communities and others involved in spatial planning processes can be equally inspired by the examples below.

Applying the strategies in the framework of a spatial planning procedure requires four important considerations. First, it is important to note that some strategies feature more prominently in the table below than others. For instance, strategies strengthening access to information and meaningful participation appear most frequently, though that frequency does not reflect a greater degree of importance related to individual strategies; rather, it shows that providing access to information and space for meaningful participation are an important basis on which to root all other strategies during each step of the planning process. Second, tenure-respective spatial planning along the principles of the Guidelines must prioritize the sound integration of people, communities and others during the preparatory stages of the spatial planning process, as they form the basis for later steps in the process. Including

people, communities and others in the preparatory steps enables their meaningful participation in later stages of the process. Third, an important tool to strengthen tenure rights in spatial planning processes is making the recognition of tenure rights a specific objective in the formulation of a spatial plan (UN Habitat, 2016). Fourthly, inclusive spatial planning requires a system-wide capacity enhancement approach that interdependently empowers people, strengthens organizations, institutions and the enabling policy environment to foster ownership and commitment to achieve more sustainable results (Kalas, 2019). Beyond individual trainings, this includes strengthening organizational processes, mandates, coordination mechanisms as well as multi-stakeholder/actor platforms.

Spatial planning is an iterative process (see Figure 2) commonly consisting of different steps that include analysing the overall situation that the plan is addressing, plan formulation and approval, implementing the plan, monitoring the plan and adapting to emerging issues (GIZ, 2012). Some steps, such as the situational analysis and the plan formulation, go hand in hand as the formulation of the plan depends to a large extent on the results produced by data collection and analysis (GIZ, 2012). The iterative nature of this process allows for adaptation to those changes that impact the implementation of the plan and the inclusion of new findings. This process might require the revision of decisions or a return to previous steps to account for current and future land use and spatial planning needs (FAO, 2015b).

FIGURE 2.
ADAPTED SPATIAL PLANNING AS AN ITERATIVE PROCESS

Source: GIZ, 2012

4.1 Strengthening tenure rights during the spatial planning process

Table 1 shows what tasks are typically carried out in each step of the spatial planning process and what strategies from this technical guide can be applied to each step. The table supports spatial planners to understand what strategies can be integrated into planning processes on the ground, enabling them to identify these at a quick glance.

All four elements of the human rights-based approach to spatial planning are essential throughout the entire spatial planning process. Firmly applying strategies for access to information, meaningful participation, access to justice and accountability in the early steps of the planning process reinforces the likelihood that they will be adhered to at later stages.

Table 1 outlines the relevant strategies for specific steps and activities of a typical spatial planning cycle that will help to strengthen civic space and tenure within the planning process.

4.2 Spatial planning and tenure rights: leaving no one behind

This chapter has provided examples of how strategies can be incorporated systematically into inclusive spatial planning processes. While these processes are implemented at the local, regional or national levels as well as at the landscape level, the concluding section shows how spatial planning, in line with the Guidelines, is necessary to achieve targets for sustainable development and to respond to challenges which arise in the context of global agreements.

First, spatial planning in line with the Guidelines is crucial for the achievement of Sustainable Development Goals (SDGs). The 2030 Agenda should be seen as a network of interconnected targets, where the achievement of one goal will have a related impact on other targets. An integrated approach is required when developing strategies for the implementation of individual SDG goals. Responsible land governance as promoted by the Guidelines plays a crucial role for a wide range of the SDG indicators and not only those where tenure and access are specifically referenced. To illustrate with just a few examples, Goal 5, which aims for gender equality, strives to "undertake reforms to give women equal rights to economic resources as well as access to ownership and control over land and other forms of property" (SDG Target 5A). Only when tenure aspects are duly considered in spatial planning processes, can equal access to land for men and women be ensured.

This mindfulness holds true for other goals. SDG Target 9.1. aims to "develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all." Infrastructure processes can only support human well-being if the planning processes preceding infrastructure projects have taken tenure rights into due consideration. SDG Target 13.1 calls for strengthening "resilience

and adaptive capacity to climate related hazards and natural disasters in all countries." As the case from the Philippines has shown, comprehensive land use planning is key for disaster-risk responsiveness. Respecting existing tenure rights is an important, although not the only, pre-condition to plan effectively for natural disasters. Further, Target 15.3 aims to achieve a land degradation-neutral world by 2030. Integrated land use planning is viewed as the central tool to achieve land degradation neutrality and it entails the promotion and implementation of, for example, forest restoration and sustainable land management projects and activities. Again, achieving this target ultimately depends on whether or not tenure has been respected in the planning process. Overall, the pledge of "Leaving no one behind," which provides the framework of the SDGs, requires that the needs and tenure rights of vulnerable people and communities, especially those directly dependent on land resources for their sustenance and livelihood, need to be carefully considered when planning and implementing spatial planning processes. This technical guide provides entry points to fulfill these requirements in the context of spatial planning.

Second, international agreements call for concerted efforts to protect biodiversity, combat climate change and ensure food security which often requires changes in land use. Combating climate change requires the implementation of afforestation and reforestation measures, which are key instruments in mitigation efforts. In practice, this implementation entails maintaining or increasing forest areas and requires the conversion of non-forest land into forest land (Naaburs *et al.*, 2007). Other mitigation and adaptation instruments include conservation agriculture, agro-forestry measures and other land restoration measures. The FAO report, *How to feed the World in 2050*, estimates that to meet food demand for a world population of 9.1 billion in 2050, arable land needs to expand by 20 percent to ensure food security (FAO, 2009b). The 2018, an Intergovernmental Panel on Climate Change (IPCC) report estimates that, depending on the pathway chosen, keeping global warming to 1.5° requires, amongst other things, the conversion of up to 6 million km^2 of pasture land into agricultural land for energy crops, and up to a 9.5 million km^2 increase in forest land by 2050 in comparison to 2010 (IPPC, 2018). Moreover, a recent Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) Global Assessment lays bare the unprecedented rates of biodiversity loss and the subsequent risk to key life support systems (IPBES, 2019). These examples show that responding to global challenges such as climate change and biodiversity food security requires large areas of land to be converted. However, almost no parcel on the Earth's surface remains unoccupied or under no form of legitimate tenure claim from people directly depending on the resources that land, forests and fisheries provide. The changes in land use required by international agreements will, therefore, inevitably bring about changes in land tenure. Spatial planning processes informing and determining these land use changes thus need to be in line with the principles of the Guidelines. They must respect the legitimate tenure of people, communities and others to ensure that activities undertaken in the context of international agreements truly contribute to sustainable and inclusive development. Applying a human rights-based approach to spatial planning by strengthening civic spaces in the planning processes allows tenure right holders to claim their legitimate rights. It supports the recognition of tenure in the achievement of SDGs that require changes in land use.

Table 1. Strategies relevant for different steps and activities of a typical spatial planning cycle

(Adapted from GIZ, 2012)

Step	Key task	Key Strategy
DEFINITION OF GOALS, OBJECTIVES, ETC	✓ Set team which steers and coordinates the process of developing a planning strategy ✓ Liaise with different stakeholders at different levels (e.g. relevant institutions, village assemblies); clarify the demand and objective for spatial planning; delimit the planning area; assess the necessary preconditions for planning and implementation; engage in sensitization to the planning objectives.	(1) **ACCESS TO INFORMATION** 1a. Understand local governance structure 1b. Ensure information dissemination through a variety of media outlets 1c. Provide all relevant information in official and local languages 1d. Use appropriate communication tools 1e. Hold meetings in areas of affected communities 1f. Utilize local and customary institutions for knowledge dissemination 2a. Explain relevance of proposed plan 2b. Plan for several sessions and sufficient time 2c. Engage specific experts and facilitators (2) **MEANINGFUL PARTICIPATION** 1a. Produce an inventory of all legitimate rights 1b. Include all relevant governmental sectors, bodies and social institutions 1c. Identify, support and include all forms of community organization 1d. Provide mechanisms to identify proper representation of affected communities 1e. Be aware of and develop procedures to overcome social and cultural dynamics 2a. Establish a process for consultation and negotiation designed in cooperation with right holders 2b. Take local and scientific knowledge into account to inform spatial planning 2c. Use spatial planning tools and technologies appropriate to local contexts 2d. Conduct impact assessments with affected communities (3) **ACCOUNTABILITY** 1a. Provide clear information regarding legal mandate 1b. Encourage local governments to harmonize land use and other management plans 2a. Understand socio-political context of the area affected 2b. Acknowledge existing local land, fishery and forest uses where those uses exceed single administrative units (4) **ACCESS TO JUSTICE** 1a. Seek guidance from existing international safeguards in spatial planning procedures to protect legitimate tenure rights 1b. Consider supporting access to resources for marginalized groups 1c. Establish agreements with participation of local communities as a precondition for third-party investments 3a. Offer free or affordable legal advice 3b. Strengthen conflict resolution and grievance mechanisms

Step	Key task	Key Strategy
SITUATIONAL ANALYSIS	✓ Understand the social, economic and environmental challenges that influence the planning environment ✓ Clarify the legal provisions; collect information on existing plans ✓ Identify and map past, current and future land uses; land use objectives ✓ Identify and map land use, and land use conflicts, challenges and visions ✓ Conduct impact assessments ✓ Identify existing tenure rights ✓ Identify individual and institutional capacities to (a) meaningfully engage in spatial planning processes and (b) implement the outcomes (i.e. what skills and knowledge are needed to level the playing field? What's the current institutional set-up for spatial land use planning? Strengths, weaknesses, improvements? Coordinating mechanisms, mandates and resources?) ✓ Methods for data collection: Stakeholder analysis; questionnaires; group discussions ✓ Include local communities and local knowledge in data collection and data analysis (consider local communities as data sources, data collectors, data analysts)	(1) **ACCESS TO INFORMATION** 1a. Understand local governance structure 1b. Ensure information dissemination through a variety of media outlets 1c. Provide all relevant information in official and local languages 1d. Use appropriate communication tools 1e. Hold meetings in areas of affected communities 1f. Utilize local and customary institutions for knowledge dissemination 2a. Explain relevance of proposed plan and mechanisms of influence 2b. Plan for several sessions and sufficient time 2c. uide Engage specific experts (2) **MEANINGFUL PARTICIPATION** 1a. Produce an inventory of all legitimate rights 1b. Include all relevant governmental sectors, bodies and social institutions 1c. Identify, support and include all forms of community organization 1d. Provide mechanisms to identify proper representation of affected communities 1e. Be aware of and develop procedures to overcome social and cultural dynamics 2a. Establish a process for consultation and negotiation designed in cooperation with communities 2b. Take local and scientific knowledge into account to inform spatial planning 2c. Use spatial planning tools and technologies appropriate to local contexts 2d. Conduct impact assessments with affected communities (3) **ACCOUNTABILITY** 1a. Provide clear information regarding legal mandate 1b. Encourage local governments to harmonize land use and other management plans 2a. Understand socio-political context of the area affected 2b. Acknowledge existing local land, fishery and forest uses where those uses exceed single administrative units 2c. Record orally communicated, traditional resource use arrangements 2d. Include communities in boundary delineation and encourage participatory mapping (4) **ACCESS TO JUSTICE** 1a. See guidance from existing international safeguard 3a. Offer free and affordable legal advice 3c. Review environmental and social impact assessments

Step	Key task	Key Strategy
PLAN FORMULATION	✓ Formulate and draft the spatial plan with corresponding maps and documents based on results of situational analysis ✓ Negotiate and engage in decision-making with key stakeholders ✓ Discuss and present the plan in public; conflict management; voting; ✓ Decide on the land use plan	(1) **ACCESS TO INFORMATION** 1a. Understand local governance structure 1b. Ensure information dissemination through a variety of media outlets 1c. Provide all relevant information in official and local languages 1d. Use appropriate communication tools 1e. Hold meetings in areas of affected communities 1f. Utilize local and customary institutions for knowledge dissemination 2a. Explain relevance of proposed plan 2b. Plan for several sessions and sufficient time 2c. Engage specific experts 3a. Designate and empower community members, to have an active role in the spatial planning process through specialized capacity development and learning opportunities, and by strengthening the capacities of organizations and institutions to complement individual learning opportunities (2) **MEANINGFUL PARTICIPATION** 1b. Include all relevant governmental sectors, bodies and social institutions 1c. Identify, support and include all forms of community organization 1d. Provide mechanisms to identify proper representation of affected communities 1e. Be aware of and develop procedures to overcome social and cultural dynamics 2a. Establish a process for consultation and negotiation designed in cooperation with right holders 2b. Take local and scientific knowledge into account to inform spatial planning 2c. Use spatial planning tools and technologies appropriate to local contexts 2d. Conduct impact assessments with affected communities (3) **ACCOUNTABILITY** 1a. Provide clear information regarding legal mandate 1b. Encourage local governments to harmonize land use and management plans 2b. Acknowledge existing local land, fishery and forest uses where those uses exceed single administrative units 2c. Record orally communicated, traditional resource use arrangements 2d. Include communities in boundary delineation and encourage participatory mapping 3a. Include communities in drafting spatial plans at local level 3b. Ensure that activities and measures are supported by budget

Step	Key task	Key Strategy
		4 **ACCESS TO JUSTICE** 1a. Seek guidance from existing international safeguards in spatial planning procedures to protect legitimate tenure rights 1b. Consider supporting access to resources for marginalized groups 1c. Establish agreements with participation of local communities as precondition for third-party investments 2a. Encourage the establishment of community-based management structures 2b. Empower communities to establish resource-sharing agreements among themselves 3a. Offer free or affordable legal advice 3b. Strengthen conflict resolution and grievance mechanisms 3c. Provide just compensation

Step	Key task	Key Strategy
IMPLEMENTATION & APPROVAL	✓ Approve plan by responsible authorities ✓ Set up institutional structure (formal or informal) to manage and govern the implementation of the spatial land use plan ✓ Implement annual work plans defining measures, responsibilities, contributions, time frames, rules ✓ Assist with, and monitor and control, planning and implementation ✓ Include the organizations, institutions and other stakeholders that were involved in the preparatory stages of the implementation of the plan	1 **ACCESS TO INFORMATION** 1a. Understand and strengthen local governance structure 1b. Ensure information dissemination through a variety of media outlets 1c. Provide all relevant information in official and local languages 1e. Hold meetings in areas of affected communities 1f. Utilize local and customary institutions for knowledge dissemination 3a. Empower communities to support the spatial planning process 3b. Support communities to reach out to other communities 2 **MEANINGFUL PARTICIPATION** 1b. Include all relevant governmental sectors, bodies and social institutions 1c. Identify, support and include all forms of community organization 1d. Provide mechanisms to identify proper representation of affected communities 1e. Be aware of and develop procedures to overcome social and cultural dynamics 2d. Conduct impact assessments with affected communities 3 **ACCOUNTABILITY** 1a. Provide clear information regarding legal mandate 3a. Include communities in drafting spatial plans at local level 3b. Ensure that measures are supported by budget 4 **ACCESS TO JUSTICE** 1a. Seek guidance from existing international safeguards in spatial planning procedures to protect legitimate tenure rights 3a. Offer free or affordable legal advice 3b. Strengthen conflict resolution and grievance mechanisms 3d. Provide just compensation

Step	Key task	Key Strategy
MONITORING & UPDATING	✓ Monitoring needs to take place during all stages of the planning phase; results need to be integrated into ongoing planning processes ✓ Monitor impact and progress ✓ Monitor the implementation of the plan ✓ Update the plan if necessary, based on new insights generated ✓ Monitor commitment and interaction of involved actors ✓ Monitor and update needs to reflect the inclusiveness of the preparatory stages	**1 ACCESS TO INFORMATION** 1b. Ensure information dissemination through a variety of media outlets 1c. Provide all relevant information in official and local languages 1f. Utilize local and customary institutions for knowledge dissemination 2b. Plan for several sessions and sufficient time 2c. Engage specific exports 3a. Empower communities to support spatial planning processes **2 MEANINGFUL PARTICIPATION** 1b. Include all relevant governmental sectors, bodies and social institutions 1c. Identify, support and include all forms of community organization 1d. Provide mechanisms to identify proper representation of affected communities 1e. Be aware of and develop procedures to overcome social and cultural dynamics 2a. Establish a process for consultation and negotiation designed in cooperation with right holders 2b. Take local and scientific knowledge into account to inform spatial planning 2c. Use spatial planning tools and technologies appropriate to local contexts 2d. Conduct impact assessments with affected communities **3 ACCOUNTABILITY** 1a. Provide clear information regarding legal mandate 2b. Acknowledge existing local land, fishery and forest uses where those uses exceed single administrative units 2c. Record orally communicated, traditional resource use arrangements 2d. Include communities in boundary delineation and encourage participatory mapping 3a. Include communities in drafting spatial plans at the local level **4 ACCESS TO JUSTICE** 1a. Seek guidance from existing international safeguards in spatial planning procedures to protect legitimate tenure rights 1b. Consider supporting access to resources for marginalized groups 2a. Encourage the establishment of community-based management structures 2b. Empower local communities to establish resource-sharing agreements 3a. Offer free or affordable legal advice 3b. Strengthen conflict resolution and grievance mechanisms 3c. Review environmental and social impact assessments 3d. Provide just compensation

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Annexes

ANNEX

The obligation for states to respect, protect and fulfil the rights of legitimate tenure right holders through responsible governance of tenure is at the core of the Guidelines. Previous technical guides provide extensive advice for states and third parties to improve on different aspects that pertain to responsible governance of tenure and which are relevant in spatial planning processes. The following table provides a selection of the broad range of guides available in the context of spatial planning and land use that can be consulted by practitioners from different sectors.

TABLE 2. GUIDES AND MANUALS LINKED TO SPATIAL PLANNING

Related guides and manuals	Link to regulated spatial planning
Land use planning. Concept, tools and applications (GIZ, 2012)	This guide highlights the many areas where spatial planning constitutes an important tool such as in territorial development, sustainable natural resource management, protection of biodiversity, climate change adaptation and mitigation, and conflict prevention and resolution. The guide outlines the process of spatial planning and provides a toolbox that supports the implementation of the process, including the plan preparation, data collection and analysis, plan formulation, negotiation and decision-making, implementation, and monitoring and updating.
International Finance Cooperation (IFC) Environmental and social performance standards (2012)	These standards highlight important tools to consider, especially where inclusive spatial planning processes are not in place or where they disregard the rights of affected people. Performance Standard 5 on Land Acquisition and Involuntary Resettlement, for instance, recognizes the adverse impacts that project-related land acquisition can have on communities by limiting the use of that land and establishes certain requirements for the company, such as providing conflict resolution mechanisms and establishing fair compensation mechanisms.
TG on Governing land for women and men (2013)	This TG highlights the importance of understanding gender dynamics in spatial planning processes and provides recommendations on how to respect women's tenure rights in different aspects of spatial planning, such as when recording tenure rights, land surveying, titling and registration, or in land use planning.
TG on Improving governance of forest tenure. a practical guide (2013)	This TG highlights the importance of organizing forest communities to enable them to engage in dialogue and negotiation with decision-makers and to lobby effectively for their rights.

Related guides and manuals	Link to regulated spatial planning
TG on Respecting free, prior and informed consent (2014)	This TG highlights the importance of free, prior and informed consent of indigenous and local communities in situations of land acquisition. It provides practical advice on how to identify right holders when mapping the claims to and use of land, or when identifying decision-making institutions.
Principles for the responsible investment in agriculture and food systems (2014)	The objective of this set of principles is to align all stakeholders in the promotion of responsible investment in agriculture and food systems that contribute to food security and nutrition. This objective is in line with a regulated spatial plan that directs investment to certain areas with the aim of balancing interests and ensuring sustainable use of natural resources.
TG on Safeguarding land tenure rights in the context of agricultural investment (2015)	This TG focuses on providing technical guidance especially relevant for government authorities conducting regulated spatial planning for public infrastructure projects, but also for third-parties or private investors who are involved in the investment cycle through public-private partnerships. Issues of power imbalances are highlighted.
TG on Responsible governance of tenure and the law (2016)	This TG provides guidance on aspects related to access to justice within and throughout spatial planning processes. Issues such as compensation measures and conflict resolution mechanisms are explained in more detail than provided within this technical guide.
TG on Improving governance of pastoral lands (2016)	This TG points at the difficulties that pastoralists face in spatial planning due to a widespread absence of considering pastoralism in such plans. Many of the existing planning tools are not equipped to address the specific issues of pastoralism such as the inability of static maps to account for mobility and flexible tenure rights.
TG on Responsible governance of tenure: a technical guide for investors (2016)	This TG provides guidance for investors in land, fishery and forest-based projects by highlighting the importance of consultation and negotiation with local communities and the risks associated with overlooking such an important part of the project planning process. It discusses investors' critical role in food security, human rights, environmental protection and sustainability and gives lessons on how investors can uphold this responsibility.
TG on Governing Tenure Rights to Commons (2016)	This TG expands on the need for legal recognition of commons which requires mapping of boundaries and registering the legitimate tenure rights of different user groups, such as pastoralists, fishing communities and farmers. It also calls for participatory spatial planning procedures to co-develop rules concerning the use of common resources as the basis for legal registration.

Related guides and manuals	Link to regulated spatial planning
Tenure responsive land use planning. A guide for country level implementation (UN Habitat, 2016)	This manual enlarges upon the process of organizing land use sustainably to address the goal of achieving tenure security.
TG on Improving ways to record tenure rights (2017)	This TG addresses questions of how recording systems can deliver services of the appropriate quality, at the time and place needed, at costs that are affordable, and on a continual basis.
TG on Creating a system to record tenure rights and first registration (2017)	An important precondition for spatial planning to be conducted along the principles of the Guidelines is that legitimate tenure rights are legally protected. This protection requires some form of formal recognition. A record of legitimate tenure rights is a key element of National Spatial Data Infrastructure (NSDI) and central to spatial planning processes as it provides the necessary information concerning legitimate tenure rights of specific parcels relevant to, for instance, managing disasters and emergency situations, or for planned infrastructure projects and other public developments. Where, as in many developing countries, formal records of legitimate tenure rights are non-existent or incomplete, approaches taken to ensure that legitimate tenure right holders are appropriately engaged should include measures to ensure that such rights are formally recognized and legally protected, including, where possible, appropriate first registration and recording systems.
TG on Improving ways to record tenure rights (2017)	This TG discusses challenges and positive examples of systems to record tenure rights and provides guidance on best practice to improve such systems, both in breadth and efficiency, in the future.
TG on Valuing land tenure rights (2018)	This TG provides insight into the different connections between tenure and valuation and the ways in which spatial planning impacts the value of tenure rights by legally constraining their use. It highlights how planning policies, such as redistributive measures, directly impact tenure rights necessitating specific guidance relevant to potential changes in land value.

Governance of tenure **technical guides**

FAO. 2013. *Governing land for women and men: a technical guide to support the achievement of responsible gender-equitable governance of land tenure.* Governance of tenure technical guide No. 1. Rome.

FAO. 2013. *Improving governance of forest tenure: a practical guide.* Governance of tenure technical guide No. 2. Rome.

FAO. 2014. *Respecting free, prior and informed consent: practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition.* Governance of tenure technical guide No. 3. Rome.

FAO. 2015. *Safeguarding land tenure rights in the context of agricultural investment: a technical guide on safeguarding land tenure rights in line with the Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, for government authorities involved in the promotion, approval and monitoring of agricultural investments.* Governance of tenure technical guide No. 4. Rome.

FAO. 2016. *Responsible governance of tenure and the law: a guide for lawyers and other legal service providers.* Governance of tenure technical guide No. 5. Rome.

FAO. 2016. *Improving governance of pastoral lands: implementing the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.* Governance of tenure technical guide No. 6. Rome.

FAO. 2016. *Responsible governance of tenure: a technical guide for investors.* Governance of tenure technical guide No. 7. Rome.

FAO. 2016. *Governing Tenure Rights to Commons: A guide to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.* Governance of tenure technical guide No. 8. Rome.

FAO. 2017. *Creating a system to record tenure rights and first registration.* Governance of tenure technical guide No. 9. Rome.

FAO. 2017. *Improving ways to record tenure rights.* Governance of tenure technical guide No. 10. Rome.

FAO. 2017. *Valuing land tenure rights. A technical guide on valuing land tenure rights in line with the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.* Governance of tenure technical guide No. 11. Rome.

Spatial planning procedures can have a considerable impact on the legitimate tenure rights of the respective right holders and, in the long term, affect their livelihoods. It is important to acknowledge the link between spatial planning and tenure and to safeguard such legitimate tenure rights when reconciling and harmonizing different objectives and interests concerning the use of land, fisheries and forests.

This technical guide takes a human-rights based approach to spatial planning with the aim of strengthening civic space through planning processes. It provides strategies on how to strengthen, protect and promote legitimate tenure rights of people, with a particular emphasis on vulnerable and marginalized communities, in spatial planning procedures at the local, regional and national levels to ensure that such processes adhere to the principles and promote the objectives of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

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