

Introduction to the Responsible Governance of Tenure

Implementing Responsible Governance of Tenure



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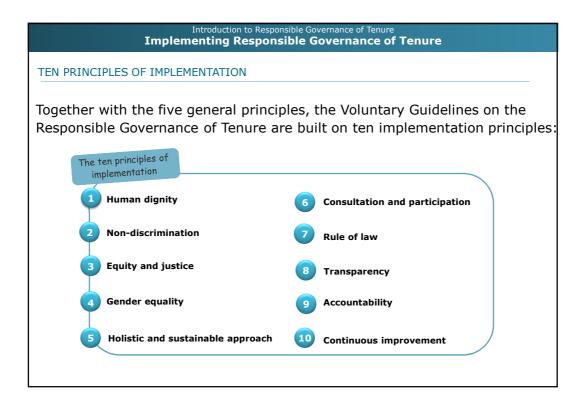


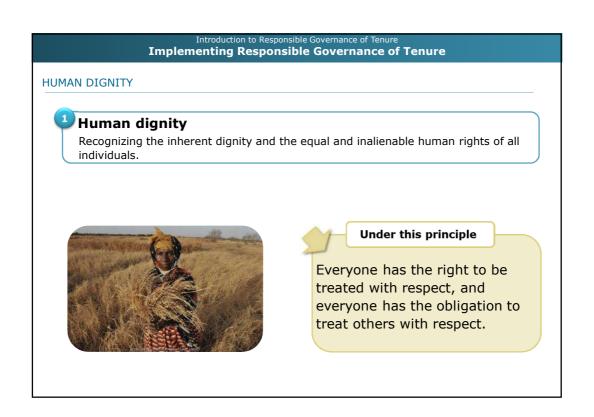
Introduction to Responsible Governance of Tenure Implementing Responsible Governance of Tenure

LEARNING OBJECTIVES



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





NON-DISCRIMINATION



Non-discrimination



Under this principle

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

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EQUITY AND JUSTICE



Equity and justice

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





Under this principle

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

GENDER EQUALITY

Gender equality

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



Under this principle

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

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TEN PRINCIPLES OF IMPLEMENTATION



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

- Human dignity.
- Non-discrimination.
- Equity and justice.

HOLISTIC AND SUSTAINABLE APPROACH



Holistic and sustainable approach

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



Under this principle

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

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CONSULTATION AND PARTICIPATION



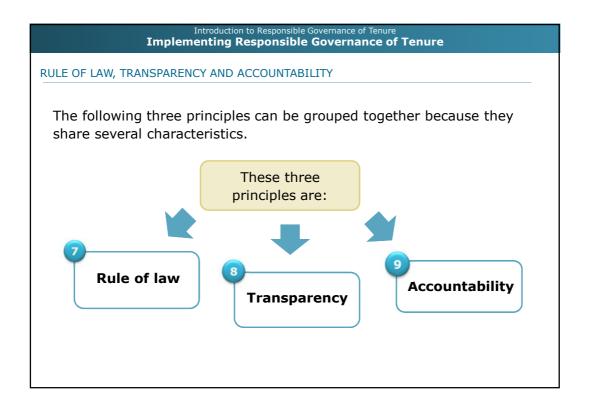
Consultation and participation

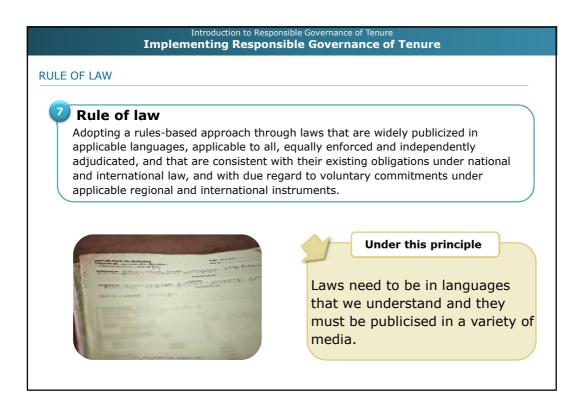
Engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective,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





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





TRANSPARENCY



Transparency

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





Under this principle

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

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ACCOUNTABILITY



Accountability

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





Under this principle

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

CONTINUOUS IMPROVEMENT



Continuous improvement

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



Under this principle

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

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THINK ABOUT YOUR COUNTRY

Think about your country...



Think about governance of tenure and tenure rights in your country.
Can you indicate if and how the ten implementation principles have been adopted and applied?

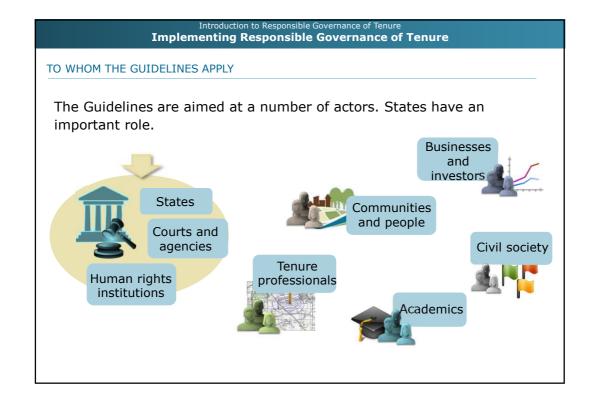
Do you know about cases of failures in the application of the ten implementation principles?

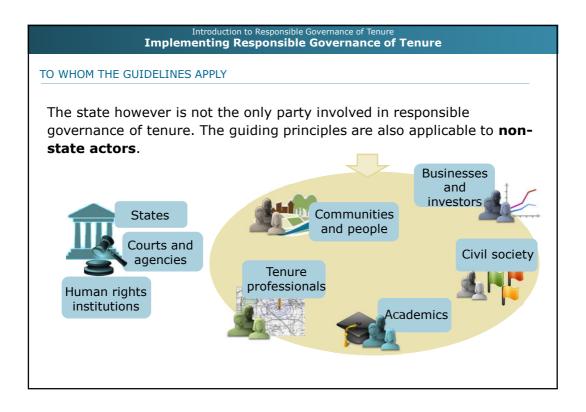
TEN IMPLEMENTATION PRINCIPLES

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

- **A.** Before creating new irrigation channels, the government held many meetings with local people to discuss how to minimize the impacts on their lands and on natural resources.
- **B.** The government has recently approved a financial disclosure law which requires local public officials to divulge the source of their income and assets.
- **C**. The new registration programme implemented by the government includes an ongoing reporting to identify the program's main critical issues, to develop responses and to monitor how the responses are working in practice.

- 1.Transparency
- 2. Consultation and participation
- 3. Continuous improvement





Introduction to Responsible Governance of Tenure Implementing Responsible Governance of Tenure A SPECIAL ROLE FOR THE PRIVATE SECTOR Businesses have several specific duties. They should: act with due diligence; adopt appropriate risk management systems that prevent adverse impacts; cooperate in non-judicial mechanisms to provide remedies; identify and assess any actual or potential impacts on legitimate tenure rights in which they may be involved.

A SPECIAL ROLE FOR THE PRIVATE SECTOR

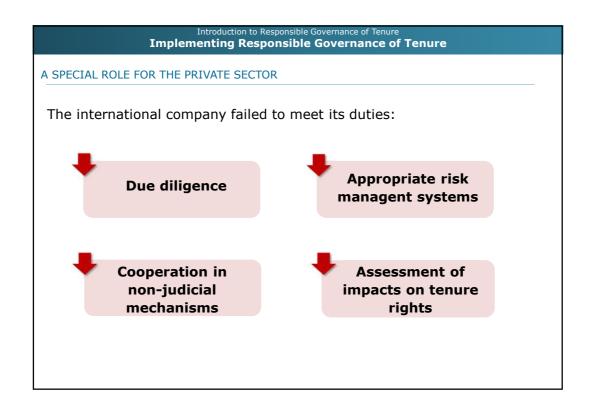
Read this case-study...



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

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

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



THINK ABOUT YOUR COUNTRY

Think about your country...



Do you know about similar stories in your country?

What was their impact?

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

What measures could they have taken to prevent the damage?

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WHY SHOULD BUSINESS ENTERPRISES FOLLOW THE GUIDELINES?

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



Legislation and penalties



Duties of all tenure holders



Good corporate citizen



Self interest

WHAT ARE SAFEGUARDS?



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

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

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

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WHEN ARE SAFEGUARDS USED?



Safeguards should be used:

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

When there are changes to the landscape itself.

When the **government implements a program**.

WHEN ARE SAFEGUARDS USED?



The regional government has decided to launch a program for formal recognition and recording of people's tenure rights.

Safeguards should be planned and implemented:

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

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WHAT DO THE GUIDELINES SAY ABOUT SAFEGUARDS?

The Guidelines recommend that states:

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

WHAT DO THE GUIDELINES SAY ABOUT SAFEGUARDS?

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



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

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

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



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WHAT DO THE GUIDELINES SAY ABOUT SAFEGUARDS?



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

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

WHAT DO THE GUIDELINES SAY ABOUT SAFEGUARDS?

What went wrong?



The state had not established appropriate safeguards.



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

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CONCLUSIONS

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



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



SUMMARY



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

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

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

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