



## SESSION 10 - Background reading **Logic and principles of the VGGT**



### How are the VGGT organized?

The VGGT state five general principles and 10 implementing principles that summarize the basic elements of the responsible governance of tenure. The five general principles are directed, in the first instance, to states and encourage them to:

1. Recognize and respect all legitimate tenure rights holders and their rights.
2. Safeguard legitimate tenure rights.
3. Promote and facilitate the enjoyment of legitimate tenure rights.
4. Provide access to justice.
5. Prevent tenure disputes, conflicts and corruption.

The five general principles, with the 10 implementing principles (see below) provide the basic elements of a good system of governance of tenure. Where they all exist in policies, laws, institutions and services, then responsible governance of tenure emerges for the benefit of individuals, groups, businesses, society, the economy and the national community. The principles can also guide the action of states towards responsible governance of tenure consistent with their human rights obligations.

The VGGT are built on the general principles with the ten implementing principles.

The 10 implementing principles are:

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

The five general principles and the ten implementing principles are called the guiding principles of responsible governance of tenure, and they create the framework for the rest of the document.

In detail, here are the five principles which summarize the basic elements of responsible governance of tenure:

### 1. Recognize and respect all legitimate tenure rights holders and their rights

States should recognize tenure rights holders and their rights, whether these rights are legally formalized or not. States should also respect rights holders and their rights. They should leave holders to occupy or use the natural resource peacefully and refrain from infringement on their tenure rights – e.g. not go onto land, into forests or disturb the aquatic environment where people have rights. Respecting others' rights applies not only to states but to anyone with tenure rights, including businesses and the broader public. In having our rights recognized and respected, we must also accept that we have duties to the broader society and the environment.

### 2. Safeguard legitimate tenure rights

States should put in place measures that stop others from threatening or infringing on people's rights, physically, legally or economically, such as:

- polluting;
- damaging or destroying the natural resource or associated constructions or improvements;
- trespassing;
- stealing, taking;
- denying owners and users access, or forcing them to leave;
- making fraudulent claims on or transactions with the rights.

States should also protect rights owners against arbitrary loss, which can be caused by the state itself as well as by other individuals or companies.

### 3. Promote and facilitate the enjoyment of legitimate tenure rights

People 'enjoy' their tenure rights when they occupy or use a natural resource as well as when they sell, mortgage, or lease the rights.

States can play an important role when people use their rights in a way that involves third parties, such as trading or leasing their rights.

If someone wants to sell or lease their rights, or use their rights as security for a loan, then they often need the support of clear, well-defined laws to carry out transactions and also a registration system to record them.

In many countries, women can acquire tenure rights, but they are restricted by tradition or custom from making the most of their rights. Therefore, if women are going to enjoy their tenure rights, then they often need special provisions in the law or access to services to overcome the discrimination or disadvantages that they face. Similarly, the state may need to intervene to ensure that marginalized groups and minorities are not discriminated against.

#### 4. Provide access to justice

Responsible governance of tenure requires that there should be some state sponsored means of redress to deal with the infringement. The VGGT call on states to provide effective and accessible mechanisms to resolve disputes over tenure rights, affordable and rapid enforcement of the outcomes, and rapid and just compensation when tenure rights are infringed upon as a result of projects or investments deemed to be for the 'public good'.

#### 5. Prevent tenure disputes, conflicts and corruption

It is usually better to stop disputes arising rather than to let them occur and then have to try to resolve the disputes or deal with the consequences, which can include violence, destruction and even death.

The fifth principle calls on states to take active measures to prevent tenure disputes from arising and from escalating into violent conflicts, as well as to prevent corruption.

Also importantly, this principle encourages states to endeavour to prevent corruption and abuse of power in all forms, at all levels, and in all settings.

Corruption can arise in many circumstances and take many forms. No matter what form it takes, corruption means that the owners and users of tenure rights face additional costs, hurdles, difficulties and other problems when they want to take some actions that involve officials, such as registering their transaction or inheritance, seeking approval for some activity with their land, forest or fishing rights, or simply obtaining information.

The last paragraph of the General Principles specifically addresses non-state actors:

- Non-state actors, including business enterprises, have a responsibility to respect human rights and legitimate tenure rights.
- Business enterprises should act with due diligence. This means that companies should act with care in order to avoid and prevent infringing the human and legitimate tenure rights of others through their operations. It includes appropriate risk management mechanisms and human rights assessments.
- States have a role to play in providing access to remedies when human and tenure rights are violated by business enterprises.
- In the case of transnational corporations, home states should ensure that they are not involved in abuses of human rights and legitimate tenure rights.

## In detail – The ten implementation principles

### 1. Human dignity

Recognizing the inherent dignity and the equal and inalienable human rights of all individuals. This principle makes it clear that everyone has the right to be treated with respect, and that everyone has the obligation to treat others with respect.

*Under this principle: Governments and officials should ensure that coercive measures do not infringe on the human dignity of the persons affected. The poor and vulnerable should have the same respect and entitlement to equal treatment as everyone else in society.*

### 2. Non-discrimination

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

Policies and laws sometimes result in some groups within society being treated less well than others, either by:

- direct discrimination, which implies direct exclusion from some entitlements or services; or
- indirect discrimination, such as providing information only in one language, therefore excluding minority linguistic groups from equal access to services or entitlements.

*Under this principle: In relation to their tenure rights, no group should experience a worse status or treatment than others because of their particular gender, race, colour, age or other status, including physical status, or because they have certain religious or political beliefs.*

### 3. Equity and justice

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

The third principle is different from equality, which is about treating everyone the same. It is more about achieving a fair outcome for everyone by redressing discrimination and other imbalances that might be a barrier to equity.

*Under this principle: Governments can include special provisions in policies and laws to correct the balance, or provide special services for those who have difficulties with enforcing their rights (women, ethnic or linguistic minority groups, the young or the old).*

#### 4. Gender equality

Ensuring the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary.

Women are commonly excluded from ownership of land, fisheries and forests, despite the fact that they often provide a significant part of the labour associated with these resources. 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. Women who are already socially and economically marginalized are particularly vulnerable when tenure governance is weak. Improving gender equality is important as women often have fewer and weaker tenure rights to land, fisheries and forests. This inequality is due to a number of factors, including biases in formal law, in customs, and in the division of labour in society and households.

*Under this principle: The VGGT call on states to take policy, legal and practical steps to ensure a more equal situation for men and women.*

#### 5. Holistic and sustainable approaches

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

The fifth principle reminds us that land, fisheries and forests do not exist in isolation. For many people, in particular indigenous people and those who live in a common resources tenure system, there is no separation between resources and the area that they occupy and use – they are considered as one and the same.

*Under this principle: Agencies responsible for natural resources need to share information and treat the environment as an integrated system, rather than something that is divided into various parts that are managed separately by individual agencies.*

#### 6. Consultation and participation

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

This principle is directed at how to work with people when improving governance of tenure and delivering services. It is relatively straightforward: the people who will be affected by changes need to be involved in the decision-making process.

*Under this principle: States need to consult with legitimate tenure rights holders and relevant stakeholders when developing new policies or services. They need to create open channels of communications with the public and the private sector. Consultation and communication are important elements of responsible governance of tenure and a more efficient way to administer tenure, particularly from a long-term perspective.*

## 7. Rule of law

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

We are all subject to the law. The government bodies are subject to the laws of the country and obey them. In this way, no one can be above the law, whether they are politicians, officials, the wealthy or the powerful. But we must know about the laws if we are to follow them. The rule of law is the application of the laws and rules with equity, fairness, justice and impartiality in determining conflicting claims. It is a fair and just legal framework coupled with impartial and effective implementation.

*Under this principle: Laws need to be in languages that are understood and they must be well publicized in places other than just official journals or gazettes. The essential elements of the laws should be communicated in a variety of media, including radio and television, as well as in print.*

## 8. Transparency

In the context of the VGGT transparency refers to 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. It should be relatively easy to find relevant information on laws, policies and procedures for government services. Statistical data should be made available for independent analysis. Government agencies should issue annual reports. The courts should be open to the public and their decisions should be published.*

## 9. Accountability

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

Accountability closely follows:

- the 'rule of law' principle, since it requires that the consequences of the law apply to everyone, including politicians and officials;
- the 'transparency' principle, because only if all the information is available is it possible to hold public agents and non-state actors responsible for their actions.

*Under this principle: There should be no cases where individuals, public institutions or companies avoid investigation or penalties that would normally apply. No one should be able to act with impunity no matter how important, wealthy, powerful or well-connected they are. There should be clear standards for government agencies to satisfy, and if officials do not satisfy those standards, then appropriate action should be taken. Complaints should be investigated and the complainant should have access to the results.*

## 10. Continuous improvement

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

Improving governance of tenure is an ongoing process that takes into account changing conditions, needs, attitudes and technological developments.

*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. There needs to be a regular review of procedure to see if laws, regulations, services or programmes are meeting their objectives.*

The guiding principles of responsible governance of tenure provide a framework that states can use when developing their own strategies, policies, legislation, programmes and activities. At the same time, they can be a valuable tool for civil society organizations in their advocacy and awareness-raising activities, in legal assistance, and in the development of capacities for people to be able to enjoy and protect their tenure rights, and to foster responsible governance of tenure.