



Analysis Grid

for the Assessment of Land-related
Digitalization Projects and Processes
from a Human Rights Perspective



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This analysis grid aims to provide a practical tool to assist all those (policy makers, implementation agencies, judicial authorities, affected communities and people, CSOs, etc.) who wish to assess land-related digitalization projects and processes. It is based on the Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests (Tenure Guidelines), referring to provisions that are particularly relevant in the context of the use of digital technologies in land governance. For each issue, the analysis grid provides a list of questions, which help to delimit problem areas, identify risks and define criteria for digitalization processes in the context of land that support the realization of human rights.

The grid was developed as part of a research process the findings of which are contained in the paper “Disruption or Déjà Vu? Digitalization, Land and Human Rights. Case Studies from Brazil, Indonesia, Georgia, India and Rwanda” (published by FIAN International in November 2020).

The authors acknowledge that this analysis grid may be further improved and developed in a dialogue with relevant actors.

I. GOVERNANCE: HOW DOES THE DIGITALIZATION PROJECT/ PROCESS CONTRIBUTE TO HUMAN RIGHTS-BASED GOVERNANCE OF TENURE?

1. To what extent and in what way does the project/process contribute to achieving the objectives and guiding principles of the Tenure Guidelines?

Relevant sections/paragraphs of the Tenure Guidelines

1.1, 3.1

In particular:

- Recognition and respect of all legitimate tenure rights holders and their rights
- Protection of legitimate tenure rights holders and their rights against threats and infringements
- Promotion and facilitation of the enjoyment and full realization of legitimate tenure rights
- Prevention of tenure disputes and conflicts

2. To what extent and in what way does the project/process prioritize vulnerable and marginalized people?

1.1

In particular:

- Women and girls
- Indigenous peoples and other communities/groups with customary tenure systems
- Small-scale food producers (peasant farmers, pastoralists, small-scale fishers etc.)
- Youth
- Other marginalized groups (please name these as applicable and according to the national/regional context)

**3B4, 4.6
section 9**

3. What measures are in place to ensure that all potentially affected groups and individuals can participate in all phases of the project/process (design, planning, implementation, monitoring), in particular vulnerable and marginalized people?

3B6, 4.10, 9.9

4. To what extent and in what way does the project/process address the most pressing tenure issues in the country/region?

In particular:

- Concentration/inequitable distribution of land, fisheries and forests as well as inequality **5.3**
- Lack of legal recognition and protection of legitimate tenure rights not protected by law, including customary tenure rights and systems, collective tenure rights and systems, and other so-called informal tenure rights and systems **4.4**
- Discrimination of certain groups (e.g. small-scale food producers, indigenous peoples and other communities/groups with customary tenure systems, women etc.) **3B2, 12.2, 9, 3B4, 4.4, 4.6, 5.3**
- Competing claims and conflicts over land, fisheries and forests **7, 21**
- Pressure on natural resources linked to extractive activities and/or financial investments as well as urbanization and infrastructure development **12.4, 12.6**
- Pressure on natural resources linked to land and environmental degradation as well as environmental protection, restoration and/or climate change mitigation measures **23**
- Lack of access to justice and remedy **3.1.4, 4.9, 21**
- Corruption **3.1.5, 5.8, 6.1**
- Violence against human rights defenders working on tenure-related issues **4.8**
- Other pressing issues as applicable and according to the national/regional context

5. Does the project/process recognize, protect/safeguard and promote different types and forms of tenure rights and tenure systems?

2.4, 3A1.1, 3A1.2, 3A1.3

In particular:

- tenure rights currently not protected by law **4.4, 10.1**
- collective tenure rights and systems **8.3, 17.1**
- customary tenure rights and systems **9**
- usage rights **7.1**
- rights over publicly-owned lands, fisheries and forests, including those that are collectively used and managed (“commons”) **8, 8.3**
- other relevant forms of tenure rights and systems as applicable and according to the national/regional context

6. How does the project/process promote the sustainable use of natural resources?

3B5, 4.3

7. To what extent does the project/process ensure human rights-compliance and accountability of states, and how do they ensure accountability in contexts where non-state actors, in particular business enterprises, as well as a mix of public and private actors are involved (e.g. in the context of public-private partnerships)?

**3B8, 3B9
3.1.2, 3.2**

In particular:

- What monitoring mechanisms are in place? **26.2**
- What remedy mechanisms are in place and how is it ensured that they are accessible? **3.1.4, 21**

8. What measures are in place/foreseen to ensure that all rights holders have effective access to justice and remedy?

3A 3.1.4

In particular effective access to

- impartial and competent judicial and administrative bodies
- affordable and effective means of resolving disputes over tenure rights as well as effective remedies, including a right to appeal, and their effective enforcement
- Alternative means of dispute resolution to provide fair, reliable, accessible and non-discriminatory ways of conflict resolution, especially at the local level

4.9

21.1

21.3

9. How is the project/process aligned with and supportive of broader policy objectives?

In particular:

- The realization and promotion of human rights, including the right to food and nutrition
- Poverty eradication, social stability, rural development and sustainable social and economic development?
- Sustainable food production and livelihoods, environmental protection and addressing climate change

1.1, 2.2, 4.1, 4.2

1.1, 4.1

20.5, 23

II. POLICY AND LEGAL FRAMEWORKS: DO POLICY, LEGAL AND ORGANIZATIONAL FRAMEWORKS ENSURE AND PROMOTE HUMAN RIGHTS-BASED GOVERNANCE OF TENURE?

1. Are existing policy, legal and organizational frameworks related to tenure consistent with states' human rights obligations and conducive for the responsible governance of tenure according to the Tenure Guidelines?

5

In particular, do they

- ensure non-discrimination and prioritization of vulnerable and marginalized people? (see I.2)
- ensure effective participation of all rights holders in their formulation, implementation and monitoring? (see I.3)
- address pressing tenure issues? (see I.4)
- ensure the recognition, protection and promotion of different types and forms of tenure rights and systems? (see I.5)
- ensure accountability of state and non-state actors, including in the context of public-private partnerships? (see I.7)
- contribute to the achievement of broader policy objectives? (see I.8)

2. Are policy, legal and organizational frameworks related to information and communication technology (ICT) in place, which are relevant to land digitalization projects/processes, and are these in line with states' human rights obligations?¹

In particular, do they ensure

- non-discrimination and effective measures to address the digital divide, including its rural and gender dimensions?
- data security and privacy as well as effective protection against the illegitimate appropriation of data and the benefits arising from its use?
- participation of all rights holders in the design, implementation and monitoring of such frameworks?
- accountability of state and non-state actors, including in the context of public-private partnerships?
- socio-cultural appropriateness of the use and regulation of digital data and technologies?

3. What changes to existing frameworks (related to tenure or ICT) are foreseen in the context of the project/process and are these compliant with human rights?

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In particular, what measures are in place/foreseen to ensure:

- non-discrimination and prioritization of marginalized people
- effective participation of rights holders in the design, implementation and monitoring of such frameworks
- comprehensive assessments of risks for and potential impacts on human rights, equity, gender equality, social stability and the environment
- accountability of state and non-state actors, including in the context of public-private partnerships
- support to the achievement of broader policy objectives

III. ADMINISTRATION: HOW DOES THE DIGITALIZATION PROJECT/ PROCESS SUPPORT ADMINISTRATION OF TENURE IN LINE WITH THE TENURE GUIDELINES AND HUMAN RIGHTS?

1. What is the process of identifying and recording tenure rights in the context of the project/process?²

4.4, 9.9, 11.5, 11.6, 3B6, 3B8

In particular: What measures are in place/foreseen to ensure

- non-discrimination, gender equality and prioritization of vulnerable and marginalized people 1.1, 3B2, 3B4, 17.3
- transparency and access to information by all rights holders 17.5
- effective participation of all rights holders, including in the definition of categories of rights that are considered legitimate 4.4, 3B6
- inclusion of all legitimate tenure rights, such as:
 - tenure rights currently not protected by law 4.4, 10.1
 - collective tenure rights and systems 8.3, 17.1
 - customary tenure rights and systems 9
 - usage rights 7.1
 - rights over publicly-owned lands, fisheries and forests, including those that are collectively used and managed (“commons”) 8, 8.3
 - other relevant forms of tenure rights and systems as applicable and according to the national/regional context

¹ | The Tenure Guidelines do not refer to ICT or related frameworks. However, it is important that these are taken into account in the context of land digitalization projects/processes, as they can have (direct or indirect) impacts on tenure and tenure governance.

² | This refers to rights that are recorded as part of the digitalization project/process, as well as rights that have been recorded elsewhere but that are used for the digitalization project/process.

2. Are tenure rights recorded in a way that ensures accessibility to all and socio-cultural appropriateness?

17.2, 17.3

In particular, what measures are in place/foreseen to ensure:

- That all rights holders are able to record their tenure rights and obtain information
- the identification and use of locally suitable technologies for the identification and recording of tenure rights
- that the use of digital registration methods and ICT does not lead to discrimination and/or lack of access to tenure-related information by marginalized people (e.g. costs for accessing records, digital devices as precondition for the access to information etc.)

17.3

17.4

17.2, 3B2, 4.6

3. To what extent is the project/process aligned with participatory spatial planning policies that promote the Tenure Guidelines' objectives?

20

In particular, what measures are in place/foreseen to ensure:

- the prioritization of public and community interest for various uses of land, fisheries and forests
- non-discrimination, gender equality and prioritization of vulnerable and marginalized people
- the promotion of diversified sustainable management of land, fisheries and forests, in particular agroecology

20.2

1.1, 3B2, 3B4, 4.6

20.5

4. What measures are in place/foreseen to ensure sufficient resources for ICT-based recording and administration of land and related natural resources?

In particular, regarding:

- the technical capacities of implementing agencies, including local governments, as well as judicial authorities
- the financial needs required to implement the digitalization project/process, including the maintenance and updating of the necessary ICT infrastructure
- the development of the capacity of rights holders and their organizations as well as civil society organizations

1.2.4, 6.1, 26.3

6.1, 8.10, 26.3

1.2.4

IV. TRANSFER OF TENURE RIGHTS: HOW DOES THE DIGITALIZATION PROJECT/PROCESS ENSURE THAT TRANSFERS OF TENURE RIGHTS ARE SUPPORTIVE OF RESPONSIBLE TENURE GOVERNANCE AND HUMAN RIGHTS?

1. Does the project/process aim to facilitate transfers of tenure rights and what forms of such transfers are foreseen?

In particular, to what extent does the project/process

- promote land markets and land-related investment projects?
- take into account non-market transactions regarding tenure rights?
- promote digitized and/or (partly) automatized land transactions based on ICT (e.g. 'smart contracts')?

11, 12

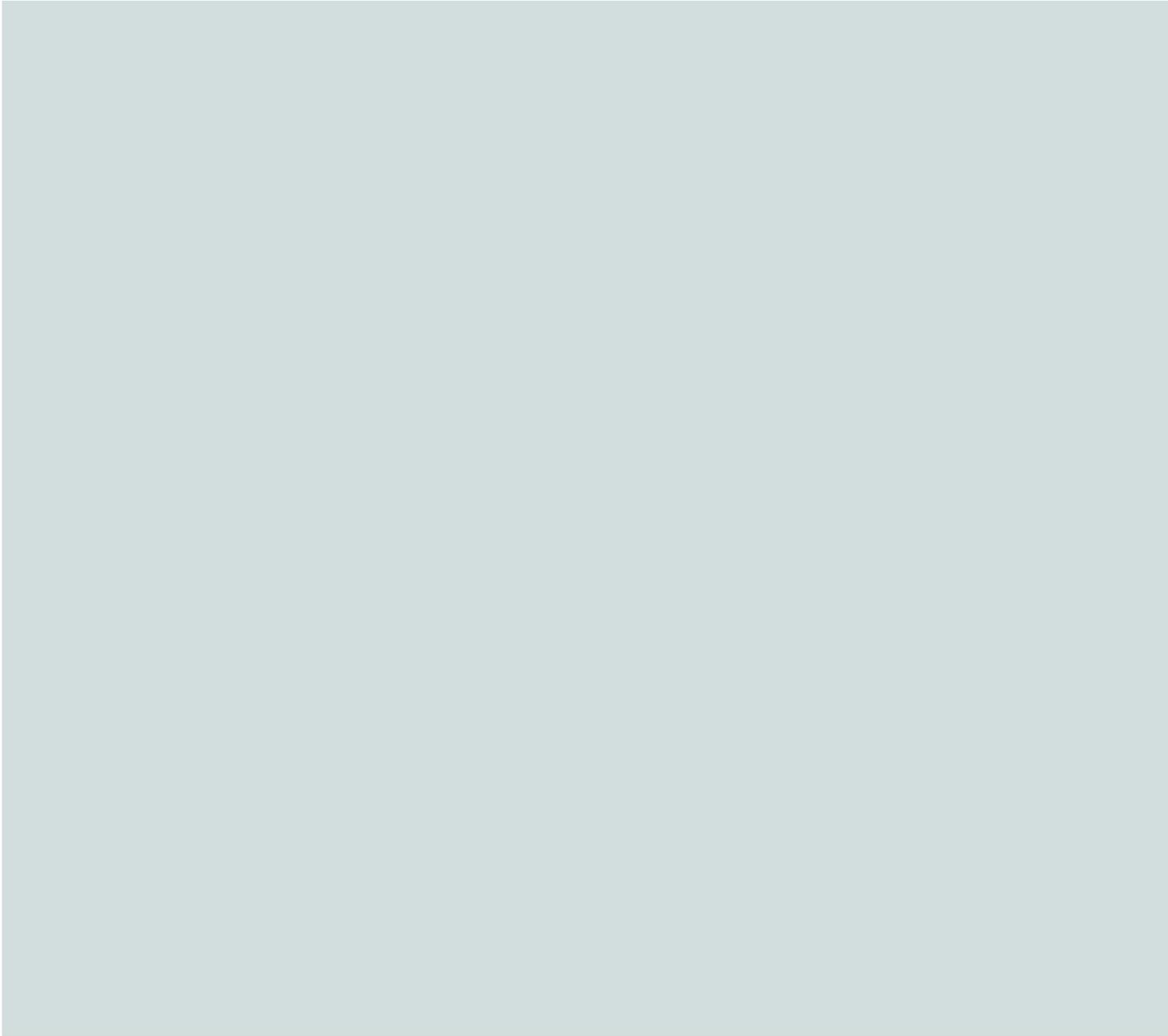
2. In case the project/process aims to facilitate transfers of tenure rights, what measures are in place/foreseen to

- address adverse impacts on local communities and the rights of vulnerable and marginalized people in the context of land markets, including land speculation and land concentration? **11.2**
- protect the tenure rights of small-scale food producers in the context of land markets and investment projects? **11.8**
- ensure that land-related investments are responsible and based on human rights? **12.4**
- put in place effective safeguards to protect and promote the tenure rights of legitimate tenure rights, in particular vulnerable and marginalized people, in the context of transfers of tenure rights and land-related investments?
- put in place specific measures to respect and protect legitimate tenure rights in the context of digitized and/or (partly) automatized land transactions based on ICT (e.g. 'smart contracts')? **7.1, 12.6**

3. What measures are in place/foreseen (as part of the project/process or in relevant regulatory frameworks) to ensure and promote the equitable distribution of land and related natural resources as a means to contribute to policy objectives, such as poverty eradication and support to sustainable livelihoods; the realization of the right to food and nutrition; the promotion of local food production systems; sustainable use of land; social stability and justice; rural development, etc.? **3B3**

In particular, what measures are in place/foreseen to ensure and promote:

- restitution of lands, fisheries and forests **14**
- (re)distribution of lands, fisheries and forests **15**



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