

Elements of the Responsible Governance of Water Tenure Background for the Development of Principles

Freshwater is essential to food security, livelihoods, public health, and healthy and resilient ecosystems. Yet approximately 4.4 billion people globally continue to lack access to safely managed drinking water and over 2 billion people live under conditions of high-water stress. With the global population projected to reach 10 billion by 2050, it is expected that agricultural production will need to increase by almost 50% to meet food demands. Yet water for agriculture already accounts for 72% of global water withdrawals and demand for other sectors is also increasing, as is pressure to safeguard our freshwater ecosystems from unsustainable land use practices, pollution, and the impacts of climate change. Without urgent action to ensure inclusive, equitable, and sustainable water allocation and use, competing demands for freshwater will lead to even greater poverty, disparities in wealth, food insecurity, health risks, and water-related conflicts.

Water tenure is a key aspect of water governance. Water tenure arrangements govern how water is allocated across different water use sectors and users. They define who can use water, how much, for what purposes, and under what conditions. Water tenure includes legal water rights such as permits and concessions, but also includes the rights of Indigenous Peoples', customary arrangements based on local traditions, informal arrangements, and arrangements to ensure the functioning of ecosystems, such as environmental flow regimes. In accounting for all legitimate users, a water tenure approach promotes fair and inclusive access to water. Water tenure does not equate to private property rights to water but recognizes and supports the fact that most countries consider water to be a public good to be allocated for the benefit of all. Water tenure approaches acknowledge that community organizations often manage and allocate water and that these tenure arrangements must be recognized and protected. Finally, water tenure is concerned with how water is allocated at the national and sub-national levels and is not focused on the sharing of water between countries, which are governed by international agreements on shared watercourses.

Globally, tangible progress has been made in the legal recognition and protection of land, forest, and fisheries rights, attributable in large part to the policy consensus and guidance emanating from the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests, and Fisheries (VGGT). A critical aspect of this consensus is the need to prioritize tenure rights of the rural poor, whose livelihoods, food and water security depend on secure and equitable access to resources. Despite the progress in land, forest and fisheries tenure, water tenure has lagged behind. This has left a critical gap in many countries in which all legitimate users and uses of water are not accounted for in national laws, planning, and allocation decisions across relevant sectors. Responsible governance of water tenure provides a framework to ensuring the water and food security of all, in particular the most vulnerable and marginalized, including Indigenous Peoples, smallholder farmers, pastoralists, fisherfolk, and other rural communities.

The FAO Committee on Agriculture has mandated FAO, with UN partners, to launch a "Global Dialogue on Water Tenure" with the goal of developing Principles for the Responsible Governance of Water Tenure. These Principles will provide guidance for Governments, civil society, community-based organizations, Indigenous Peoples, rural communities, the private sector, and other rural communities to: (1) develop strategies, policies, legislation, programmes, and activities to improve the responsible governance of water tenure; (2) ensure that these provisions are fairly and accountably implemented and enforced; and (3) support Indigenous Peoples, smallholder farmers, pastoralists, fisherfolk, and others in their efforts to advocate for the recognition and protection of their water tenure.

Based on the evidence drawn from water tenure assessments across diverse country contexts, expert research and analysis, multiple stakeholder consultations, and lessons learned from the development and implementation of the VGGT, FAO and its partners have distilled the following core elements of responsible governance of water tenure.

The core elements of responsible governance of water tenure include:

1. **Identification, recognition and protection of all legitimate water tenure arrangements:** countries should recognize and protect all legitimate water tenure arrangements, including Indigenous and customary tenure arrangements and other legitimate arrangements not currently recognized by statutory law. Rights to access and use water resources should be associated with responsibilities to ensure sustainable water use.
2. **Reforms affecting the governance of water tenure should be evidence-based and tailored to national circumstances:** policy and legal reforms should be based on a comprehensive assessment of existing water tenure arrangements and uses linked to reliable water accounting and modelling information. Implementation should be based on continuous and accurate monitoring, making the most of user reporting and new technologies.
3. **Security of water tenure:** legal and administrative mechanisms should promote the security of water tenure arrangements to enable the fulfilment of livelihood needs and other economic activities, promote responsible investments based on reliable water accounting, and ensure accountable and predictable allocation and reallocation in line with prioritization criteria, especially during periods of water scarcity, while respecting and protecting all legitimate tenure arrangements.
4. **Policy and legal coherence:** policies, laws, regulations and decision-making procedures relating to the governance of water tenure should be aligned and harmonized within the water sector and with other relevant sectors (including but not limited to land, agriculture, forestry, and fisheries, industry, mining, and power generation) to promote fair allocation, support tenure security, and avoid conflict.
5. **Fair and inclusive water allocation:** the governance of water tenure should be non-discriminatory, paying special attention to the interests of Indigenous Peoples, rural communities, small-scale farmers, pastoralists, fisherfolk, and other marginalized groups. Opportunities for active, free, and meaningful participation in decisions impacting water tenure should be provided, particularly in the context of water allocation and measures for sharing water in periods of scarcity and to prevent conflicts.
6. **Gender Equality:** legal and policy frameworks impacting water tenure should be gender sensitive and provide for the clear recognition and protection of equal rights for women and girls, including rights to participate in resource governance and decision-making.
7. **Accountability and transparency in water allocation:** roles, responsibilities, and processes related to the planning, regulation, implementation and enforcement of water allocation and use should be clearly identified to ensure that individuals, public agencies, and non-state actors are held responsible for their actions and decisions according to the principles of the rule of

law. Measures should be put in place to ensure coherence and accountability across customary, local, basin (catchment), and national level institutions and rules.

8. **Rights-based approaches:** States and other actors should develop and implement rules for water tenure governance that prioritize, promote, and protect the rights to water, food, and a clean and healthy environment.
9. **Sustainability:** to ensure the sustainability of aquatic ecosystems, tenure governance should balance human and ecosystem needs, maintaining the health of aquatic ecosystems through robust regulatory mechanisms that include allocations for environmental flows and control pollution.
10. **Resilience:** legal and administrative mechanisms should balance the need for security of water tenure with the flexibility required to adapt to changing availability and quality of water. These mechanisms, including customary and local approaches, should be inclusive and accountable and protect water tenure arrangements in line with prioritization criteria for allocation and reallocation, particularly in times of water scarcity.
11. **Enforceability and accessibility:** the governance of water tenure should include practical measures for reform, implementation and enforcement, including adequate finance measures. Legal and administrative measures for regulating water allocation and use, such as permitting or licensing systems, should ensure measures are included to provide security for all legitimate tenure arrangements and avoid overly burdensome requirements that inhibit reasonable accessibility of these systems to all water users.
12. **Access to justice and dispute resolution:** Water tenure governance arrangements should provide for meaningful access to dispute resolution procedures and recourse where conflicts arise or legitimate water tenure arrangements are threatened or extinguished.