Land, fisheries, forests and other natural resources provide a platform for livelihoods and a basis for social, cultural and religious practices. Pressure on these resources is increasing as areas are sought for cultivation, are overtaken by urban expansion, and as people abandon rural areas because of degradation, climate change and conflicts.

In response to this pressure, the Food and Agriculture Organisation (FAO) of the UN and its partners initiated the preparation of internationally accepted guidelines to enhance governance of tenure of land, fisheries and forests (Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security).

The Guidelines promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. They were officially endorsed by the Committee on World Food Security on 11 May 2012.

The development of the guidelines built on and supported the Voluntary Guidelines on the Right to Food and the International Conference on Agrarian Reform and Rural Development (ICARRD) that was held in 2006.

“The Voluntary Guidelines will play an important part in answering the challenge of ending hunger and assuring food security of every child, woman and man in an economically, socially and environmentally sustainable way” Graziano Da Silva Director General Food and Agriculture Organization of the United Nations (FAO)

During 2009 to 2010 the United Nations Committee on World Food Security (UNCFS) held regional consultations in Brazil, Burkina Faso, Ethiopia, Jordan, Namibia, Panama, Romania, the Russian Federation, Samoa and Vietnam.

These regional consultations brought together
Restrictions a big threat to fishing communities

By Moegsien Ismail

DAVID Gonqgose, from Dwesa–Cwebe on the Wild Coast of the Eastern Cape who has been a fisherman for 11 years, and whose family has been fishing for generations, fears that government restrictions are threatening their traditional forms of livelihoods.

Gonqgose say that his father is still a fisherman, and so were his grandfather and all the others before them. His mother, wife and sisters harvest black mussels and other marine resources, an economic activity conducted by the women in his family and community for generations.

The Dwesa Cwebe Nature Reserve and the Marine Protected Area in the reserve prevents the traditional fishing community from fishing. Gonqgose understands tenure, and knows about the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, and how different forms of tenure impact his community.

“We live in seven villages around the Dwesa Cwebe Nature Reserve, which is managed by the Eastern Cape Parks Board,” says Gonzgose.

“In the nature reserve is a hotel, which belongs to the community, and which also employs members of the community, but, because the government has placed a ban on fishing, very few people now come to the hotel, and it is not profitable.”

He believes that many tourists come to the Nature Reserve to fish, and the fishing closure caused fewer people to visit the reserve and overnight at the hotel.

Gonqgose and other fishers in Dwesa Cwebe fish on a subsistence permit, which allows them only to catch a certain amount of fish per day, for consumption and not to sell. This for him is a sore point, since they regard themselves as proper small-scale commercial fishers making a living off harvesting the resources of the seas.

The men catch many species of fish from the shore of the ocean and the banks of some of the rivers running through the reserve and at the mouth of the ocean.

The women harvest black mussels and other marine resources on the rocks on the shores.

Like so many other fishers in his community, Gonqgose has also been arrested many times and fined for earning a living. Besides being denied access to the sea, as a community they are also denied to gather other important resources from the forest in the nature reserves.

For centuries our people gathered wood to make poles from which we built our homes. “We used to collect wood to carve walking sticks and to make fences for our kraals, in the forests of what is today the Dwesa Cwebe Nature Reserve.”

“Our women always collected firewood in the forests, we do not have electricity, and many do not have paraffin stoves, and even those who have paraffin stoves, still use firewood to cook their food and to keep their homes warm.”

The government is in consultation with the community, to transfer the ownership of the nature reserve and the land to the ownership of the community, but, ironically, Gonqgose says they did not consult the community, and just arbitrarily closed fishing activities in the MPA.

The transfer of the land to the communities seems like it will come with tight nature conservation conditions.

Gonqgose says the people living in the seven villages around the reserve are extremely poor and that he would like to see certain things put in place to alleviate the poverty.

Some important changes he would like to see are that all fisherman and women be issued with permits to fish and harvest marine resources on a commercial scale.
Many municipalities have been mishandling the commonage land either through selling, renting it out to commercial farmers or developing leisure parks such as golf estates.

It is important to note that such practices are contrary to the purpose for which the commonage land was granted in the first place, that is, addressing the land needs of the poor residents. It is therefore within the rights of the landless and small scale farmer organisations and movements to hold municipalities accountable, and demand access to existing commonage land and resist and challenge any form of mismanagement of commonage land.

Municipalities in the Overberg and Langeberg continue to ignore the constitutional provisions for the poor communities in the Western Cape, by putting the commonage land on sale.

We have come across a number of newspaper adverts in areas such as Barrydale, Stellenbosch and Swellendam, where such land is put up for sale.

The land in question – municipal commonage - is a special category of municipal land and poses a unique opportunity for rural development and agrarian reform. In the 1880s many “white” towns received surrounding land for free under state land disposal laws, under stringent and restrictive conditions to ensure that the land remained in the ownership of a municipality. Municipalities could not alienate the land (by sale, donation or swap) without the consent of the Governor (later, without the consent of the State president) and the land was to be made available for the use of the towns’ residents for farming purposes. Due to racist laws it was mostly white people who accessed commonages.

With the transition to democracy in 1994 and the introduction of democratic municipalities as the form of local government, all town residents became entitled to access municipal commonage with emphasis on those who were previously excluded.

Our municipalities are obliged under the Constitution to contribute to the progressive realisation of fundamental human rights. While they are not obliged to initiate and undertake land reform, they are obliged to participate in national land reform programmes.

The Mawubuye Land Rights Forum, previously disadvantaged black Barrydale farmers and the Trust for Community Outreach and Education (TCOE) are engaging a legal process to stop the sale of the Barrydale land.

In this case, the municipality has deliberately used misleading tactics in order to create a perception that the correct channels are being used in selling Commonage Land by placing an advert after the land has seemingly already been sold.

After several failed attempts to stop the sale of land earmarked for the community by the Swellendam municipality, small scale farmers decided to hold a march to voice their frustrations to the municipality.

They demanded a halt of the sale, an audit of commonage land in Swellendam, details of such land leased to commercial farmers and the granting of such land to small-scale farmers.

Zukile Tom is the Campaigns Co-ordinator for The Trust for Community Outreach and Education.
Recently, the Food and Agriculture Organisation (FAO), an agency of the United Nations Organisation (UNO) adopted ‘The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests’. They aim to protect the poor, vulnerable and marginalised from being rendered landless, jobless and with no access to earning a living.

Guidelines? Do we expect a set of guidelines to protect our rights? However, I am very interested to hear how these new guidelines will help us.

You are quite right, guidelines are not laws but are sometimes called soft laws which cannot be enforced. Governments can however use them as a standard to develop and adopt good laws and practices.

In South Africa, we already have the Small Scale Fisheries Policy, which is great for small scale fishers. But, there is always a chance that it will be badly implemented and mismanaged.

We the farmworkers and the rural poor and other people live insecure lives due to food scarcity and the insecurity of land tenure.

The ‘guidelines’ can then, in a South African situation, be used to develop a best practice on how to implement the SFP policy.

The ‘guidelines’ must benefit all people from all countries, but its main emphasis is to help the poor, vulnerable and marginalised.

Tenure means the right to hold something, not necessarily to own it. For instance, traditionally, we the people in forests grew and felled the trees, fishers worked the sea and farmworkers tilled the land. We did not have papers to declare ourselves owners of the land, seas and forests, but we worked and owned it communally.
Since colonialism this changed, and apartheid made it worse, but they could not remove us from the land completely, ban us from going out to sea or to grow our forests.

Much was done to dispossess us, although much has changed since 1994, many of us still live insecure lives.

Today, many fishing communities have tenure to harvest the resources of the sea, but with no tenure of land. It is no different for farmers, the rural poor and foresters.

It is important for us to have rights to work, to fish, to farm, to grow and harvest trees, and the tenure of land. We cannot have the one without the other.

Many of us were removed from where we once earned a living. In the place of our homes, tourist attractions, hotels, holiday homes, and nature conservation parks were developed. We are in a constant struggle for land tenure, the right to work, and practise the traditions of our forebears.

Yes, but nature conservation is many times a smokescreen to develop huge tourist attractions for the rich, which we cannot get access to, locking us out from the sea, where we earn a living.

The guidelines are for all people who suffer and struggle like us. A set of guidelines to help governments develop policies, legislation and practices that will bring about food security, eradicate hunger and poverty. Helping to bring about social stability, housing security, rural development and environmental protection.

It must bring an END to Corruption! It must stop government officials from taking and demanding bribes, causing overfishing and environmental degradation. The rich pays bribes, and in the process, destroy the environment. As the poor, we cannot accept this, it destroys our communities!
Tenure legislation and policy in South Africa: Unsettling terrain and territory

The social, political and economic relations around who uses and controls land, forests and marine and other natural resources in SA reflects the histories of colonialism and apartheid. Over centuries, laws and policies have dispossessed black South Africans from their ancestral lands and territories, depriving them of access to and control over resources.

After 1994, the country’s new constitution laid the foundation for legislative reform that addressed the issue of tenure.

Section (25) of the Constitution places a responsibility on the State to enact legislation that will ensure either restitution or to equitably redress and to address tenure relations.

Over the past 20 years the government has developed a plethora of laws and policies to give effect to this aim of the Constitution. However to date, the conditions of many Black South Africans have not changed much. In some cases, reforms have made inequities worse.

Communities who were removed during Apartheid due to racist conservation laws to make way for the establishment of National Parks and Protected Areas, face specific challenges when reclaiming their land and sustainable use of their resources. In most cases, the policy reforms that have been introduced have failed to take notice of the living customary law of local communities.

Within each different sector, namely Land, Forestry and Fisheries, the State has developed a range of different policy instruments. With regard to Land, proposed policy changes have been highly contested. For example, ‘the new Communal Land Tenure Policy (CLTP), like the Communal Land Rights Act (CLRA) of 2003 proposes to transfer the ‘outer boundaries’ of ‘tribal’ land in the former Bantustans to ‘traditional councils’ (the new name for the tribal authorities created during the Bantustan era). The policy proposes that the units of land transferred will be defined according to the tribal boundaries created in terms of the controversial Bantu Authorities Act of 1951” (PLAAS 2014).

In Forestry, the Department introduced the National Forest Act (NFA) of 1998 to address the three types of tenure systems for forests: namely state, freehold and communal traditional authority areas. Despite this, there is still a gap in the governance of forestry resources and communities still experience a loss of use rights, and not all communities have been able to regain their rights to govern their forestry resources.

In Fisheries and marine and aquatic resources, there remains widespread exclusion. However, the Small-scale fisheries policy, with its human rights based approach, offers some hope.

It commits the State to recognising any rights to marine resources that arise in terms of customary law, common law or statutory legislation.

This SSF policy only applies to marine fisheries. There is currently no legislation addressing the rights of small-scale fishers in inland fisheries.

DAFF has also recently gazetted draft regulations for public comment that outline a new system of tenure relations for small-scale fisheries. Unfortunately the draft regulations fail to recognise and accommodate small-scale fishing communities that live on communal land, and who live under systems of customary law and governance. This applies to nearly all the communities living in or adjacent to MPAs in the Eastern Cape and KwaZulu Natal as well as other communities in these provinces. It is estimated that this applies to as many as 56 SSF communities. The Constitution and the MLRA Amendments oblige the Minister to recognise the rights of such communities. The DAFF Draft regulations impose a ‘one size fits all’ model of tenure on the SSF that fails to take cognisance of pre-existing tenure rights, systems and institutions. It also fails to recognise the principle of preferential access for traditional SSF to their waters and resources as outlined in the Code of Conduct on Responsible Fisheries (6.18), and it fails to devolve powers and authority for decision-making to recognised rights holders at community/local level.

The continued discrimination against communities with respect to their tenure happens despite the fact that these tenure rights, and related human rights are protected in a range of international legal instruments, such as the Universal Declaration of Human Rights, the Declaration on the Rights of Indigenous Peoples and the African Charter on Human and Peoples’ Rights (ACHPR).

Many communities in South Africa face insecure tenure to their land, forests and fisheries and the other natural resources upon which they depend for their livelihoods and other human rights.

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Many communities in South Africa face insecure tenure to their land, forests and fisheries and the other natural resources upon which they depend for their livelihoods and other human rights. Legal reforms since the beginning of democracy have failed to recognise their tenure rights in practice. These communities now turn to the VG Tenure Guidelines for support in their struggle to secure their tenure rights.
Land Tenure in Rural Areas

DESPITE efforts by the government to correct the imbalances in land ownership, eradicate food insecurity and to create security of land tenure, people in rural areas still face many challenges which might take a long time to overcome.

Boyce Tom, a researcher with the Trust for Community Outreach and Education (TCOE) in Mowbray, Cape Town, mainly works with communities in the Western Cape rural areas, and says that there have been successes and failures.

After the 1990s, many farmers started to evict people from their farms, and many informal settlements started to develop in rural towns, with farmers making use of seasonal workers, and only keeping skeleton staff in the off-season.

The post 1994 democratic government launched a land reform programme, which included a combination of land restitution and land reform, to transfer land ownership to the landless.

The government placed many farms in the hands of emerging farmers, and provided them with loans and grants to make the farming operations successful. Title deeds were handed over to individuals and groups, but, there was a great failure rate in the programme.

“A new law is now in place which makes the beneficiaries tenants of the farms for five years before they can take ownership.”

Boyce says that there are different tenure categories under which emerging farmers can gain access to land for farming purposes.

One of which is commonage, which is a general feature amongst the groups that he works with in the Breede Valley and Winelands Districts of the Western Cape.

“Commonage is mainly implemented by local municipalities in the rural areas.

The municipality rents a piece of land to an emerging farmer or a group of beneficiaries for three and a half years, in which time they have to set up a successful operation.”

After the three-and-a-half years, the lease will be renewed, and if the farming operations are not successful, the emerging farmer or others can bid to continue farming on the stand.

This presents emerging farmers with many challenges, and can be risky.

“Firstly, it is difficult to get finance from the government for such a programme, who will only finance properties with at least a five year lease.”

Other problems include the fact that people will lose the investments that they have made in the farming, like fences they erected, water systems they installed and tools they bought.

Commonage creates expectations of a better life, security of food and land tenure, but at the same time, it also creates the same insecurities.

Farm workers in rural areas still face many hardships and insecurities in many aspects of their daily existence.

Being thrown off the farm because of a labour, pay or any other dispute with the farmer is still a daily reality on many farms.

There are laws and organisations that work hard to protect the rights of farmworkers, but at the end of the day, when outsiders who intervene on behalf of the farmworker, leaves the farm, the farmworker have to face the farmer on his own.

Boyce says that farmers use many mechanisms to keep those who advocate for farm reforms, off their farms.

“He will use access control, giving a reason who you visiting, why you visiting and how long you going to stay, and, if your answers are not satisfactory to him, he will refuse you entry.”

Certain rights like accommodation, electricity, water and sanitation are also tools the farmers use to control the lives of farmworkers.

“Striking farm workers and trouble makers on the farm can have their electricity and water cut off easily by the farmer, and even be threatened with evictions.”

Boyce says that seasonal workers suffer from food insecurity for most of the year, and only have a reprieve during the season, and in the off-season most of them suffer from hunger.

According to Boyce, people in rural areas suffer from land and food insecurities, and even the emerging farmers sometimes suffer the same fate.
Workshop aims to empower participants

SEVENTY delegates from civil society organisations in land, forestry and fisheries are this week attending the Tenure Workshop organised by Masifundise.

The workshop aims to increase the use of the Voluntary Guidelines on the Responsible Governance of Tenure of land, Fisheries and Forests among civil society and grassroots organisations in South Africa.

Small scale producers, fishers, peasants, farmers, indigenous peoples and local communities face insecure tenure, increased poverty and food insecurity, due to land and ocean grabbing, but, this can all change, should governments all over the world, and in South Africa, agree to implement the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT).

“This workshop is examining how different communities within the fisheries, agriculture and forestry sectors are affected by tenure arrangements,” said Mandla Gqamlana, from Masifundise.

The VGGT, which was adopted by the FAO in 2012, seeks to address and redress the imbalances created by insecure tenure regulations, which cause landlessness, poverty, hunger and insecurity.

Even in South Africa, where a range of laws have been passed since 1994, to correct the imbalances of the past, communities continue to face increasing insecurity of tenure to land and other resources.

“We hope to raise awareness amongst community organisations about the Tenure Guidelines and also to have communities come up with their own strategies of how they can use the Guidelines for their benefit” he continued.

Important objectives of the workshop include:
1. To raise the awareness of small-scale fishers, small scale farmers and other rural landless communities about the contents of the VGGT.
2. Enable participants to identify their tenure systems and to understand their tenure rights.
3. Facilitate a process whereby participants can unpack how policies, processes and current governance frameworks challenge local ideal tenure arrangements.
4. Facilitate a process whereby community members can establish a plan of action to mobilise for change using the tenure guidelines as a tool for change.

Tenure defines people’s relationships with the land, marine and other natural resources. It directly speaks to their access to important resources they have for centuries accessed in a traditional, communal and customary manner, with no hindrance placed upon them by modern and oppressive laws and regulations which deny them access to their tenure (VGGT, 2012).

Denying people access to their tenure is tantamount to denying people their basic human rights, because it denies them the right to lead secure and sustainable lives.

“Hosting this workshop on the VGGT is most important because it is one of the many small steps to restoring to people their customary, traditional, and communal and human rights for sustainable livelihoods,” said Masifundise’ Michelle Joshua.

Masifundise invited role-players from small scale fishing, farming and forestry communities, together with experts working in these sectors. Representatives from the Food and Agriculture (FAO), FoodFirst Information and Action Network (FIAN), the Trust for Community Outreach (TCOE) and Institute for Poverty, Agrarian and Poverty Studies (PLAAS) are presenting on the various aspects of the guidelines.

Sofia Monsalve from FIAN is introducing the concept of tenure and the background of the Guidelines. Her presentation will focus on why the guidelines are important and how they were developed.

As one of the key persons who was involved in the process of elaboration and negotiation of the VGGT, she explained the significance of this experience particularly in the context of people’s movements and their struggles for equitable and secure tenure.

Delegates attending the workshop are also receiving presentations on how the Guidelines can be used as a tool for change with specific relations to food security and a presentation on tenure in the South African context with specific focus on inland farming communities, focusing on the features and challenges of tenure in SA by Moenieba Isaacs (PLAAS) and Mercia Andrews (TCOE) respectively.

The workshop is supported by the Food and Agriculture Organisation (FOA) of the United Nations.