

## Article

# Strengthening Accountability for Responsible Land Governance: Linking Governance of Tenure to Human Rights

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**Abstract:** While there is no universal right to land enshrined in existing human rights treaties, access to land is intrinsically linked to the achievement of human rights. For example, the right to food, adequate housing, property and equality and non-discrimination are of special concern for smallholder farmers, pastoralists, women, and other marginalized groups. In this regard, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the context of national food security (VGGT) is considered a milestone document. They link binding human rights frameworks with universally agreed principles of responsible land governance. However, the implementation of the Guidelines is impeded by their voluntary nature and the absence of clear monitoring and accountability structures. The objective of this paper is to make a case for adopting human rights-based monitoring approaches that strengthen the implementation of the VGGT and, ultimately, responsible land governance. This policy analytical paper draws from a literature review, an analysis of secondary data gathered from National Human Rights Institutions working on land rights, as well as findings from two pilot case studies. The cases illustrate the need for a human rights-based land governance monitoring approach, relevant for policy-makers as well as land rights practitioners. Furthermore, this paper shows that there is currently no systemic approach that monitors the implementation of the VGGT from a human rights perspective. Therefore, the paper suggests that a human rights-based monitoring approach centered around established human rights monitoring and reporting mechanisms can provide a new, and urgently needed, impetus for implementing the VGGT. Linking VGGT implementation to human rights obligations by states can strengthen efforts towards responsible land governance reforms and contributes to holding governments accountable to their commitments.

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## 1. Introduction: The Link between the VGGT and Human Rights Standards and Principles

Land governance is often seen as a catalyst for sustainable development, contributing to the achievement of key development objectives. It is generally defined as “the rules, processes and structures through which decisions are made, implemented, and enforced about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed” [1] (p.9). Considering this, responsible land governance can protect land tenure rights, especially those of vulnerable people. Regulating access to the use and control of land as part of responsible land governance is closely interlinked to the realization of human rights. For example, human rights such as the right to food and the right to adequate housing can only be realized if smallholders have access and control over land resources. But also, the realization of the

right to freedom from discrimination plays a key role, for example, in women's access to land.

Numerous international frameworks for sustainable development highlight the importance of human rights for strengthening responsible land governance. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGT, also referred to as the Voluntary Guidelines) are the first internationally agreed guidelines. The first objective of the VGGT states that "all programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should be consistent with States' existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments" [2] (p.1). The VGGT explicitly shows how responsible governance of land is rooted in human rights obligations. Negotiated under the auspices of the Food and Agriculture Organization of the United Nations (FAO), the VGGT marked a major milestone towards reaching universally agreed criteria for incorporating human rights principles and standards in the land sector [2,3]. One of the fundamental goals of the VGGT is to safeguard legitimate tenure rights, with a special emphasis on marginalized and vulnerable groups whose tenure rights are most likely to be at risk of violation. The Voluntary Guidelines coined the term "legitimate tenure rights" to underscore the need to consider legally recognized (legitimated by law) and socially legitimized (legitimated by customary systems and social norms) land tenure rights [2,3]. The recognition of legitimate tenure rights is reflected in the International Labour Organization's Indigenous and Tribal Peoples Convention from 1989 (No.169) and the United Nations Declaration on the Rights of Indigenous Peoples from 2007. The VGGT extends this recognition beyond indigenous peoples. Furthermore, the VGGT highlights the recognition of all legitimate rights holders and their rights, whether formally recorded or not, as a key factor for realizing the human right to food [2,4].

With increasing pressure on land resources, the need for responsible land governance is of even more concern now, especially responsible land governance that recognizes the legitimate tenure rights of the most marginalized and vulnerable groups. Although the application of the VGGT has contributed to improving responsible land governance in many ways, human rights violations connected to land conflicts and even the risk of human land rights defenders are increasing. However, from a policy perspective, this link between VGGT implementation, or responsible land governance in general, and human rights is often not considered. Based on a literature review and secondary data, the objective of this policy analytical paper is to make a case for adopting human rights-based monitoring approaches that strengthen the implementation of the VGGT and, ultimately, responsible land governance.

## 2. Literature Review

### 2.1. *Relevance of the VGGT: Increasing Pressure on Scarce Land Resources*

The Committee on World Food Security (CFS) adopted the VGGT in 2012, at a time characterized by a rise in large-scale land acquisitions that were also increasingly linked to violations of legitimate tenure rights. One decade on, pressure on land resources continues to rise, fueled by the growing commercialization of land, rapid urbanization, power inequalities in acquiring land, and governance failures in countries with abundant natural resources [3]. To put this into context globally, 38% of the land surface is currently under agricultural use with demand for food continuing to grow, placing more pressure on available arable land [5]. At the same time, cropland per capita has continued to decrease, from about 0.45 ha in 1961 to 0.21 ha in 2016 [5]. According to Lowder et al. [6], 84% of farms globally consist of smallholdings of less than 2 ha; however, while accounting for only 12% of all agricultural land, smallholder farming produces 35% of food worldwide.

Increasing pressure on the availability of arable land and the lack of robust land governance frameworks in many countries all pose challenges for securing access to land for

many smallholder farmers. Inequality in accessing land is especially evident from a gender perspective. For example, only 15% of all landowners globally are women, and, on average, women own a smaller share of total agricultural land than men [7].

## 2.2. *Is There a Human Right to Land?*

Secure access to land is fundamental to the lives of many rural poor. Land determines economic activities and social identity and has ecological as well as cultural value [8]. Furthermore, for billions of smallholder farmers worldwide, access to food depends directly on access to land. Secure access to land is consequently a prerequisite for the realization of the right to food [8,9]. The right to food is enshrined in the 1948 Universal Declaration of Human Rights. Here, Article 25 (1) states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. It is also enshrined in the International Covenant on Economic, Social and Cultural Rights and several other international and regional human rights instruments.

The VGGT clearly emphasizes the need to design land governance in a way that categorically excludes human rights violations. Guidelines have been developed to promote the realization of the right to food in the context of secure access to land, such as the “Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security,” adopted by the FAO in 2004. In particular, guideline 8 B, “Access to resources and assets: Land”, emphasizes that “States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit” [10] (p. 27).

Secure access to land is not only important for guaranteeing the right to food [8], but it also impacts other human rights. For example, insecure land tenure increases the risk of violations of human rights to adequate housing, equality, and non-discrimination [8]. Land rights are typically regulated by national land laws and land use planning regulations. The right to land is further enshrined in international human rights instruments such as the United Nations Declaration on the Rights of Peasants and other People Working in Rural Areas (UNDROP) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). For instance, UNDROP, as adopted by the UN General Assembly in 2018, recognizes the “need for greater protection of the human rights of peasants and other people working in rural areas, and for a coherent interpretation and application of existing international human rights norms and standards in this matter” [12]. In article 26, UNDRIP states that “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and that “States shall give legal recognition and protection to these lands, territories and resources” [13] (p. 19). While indigenous peoples enjoy specific rights to land, land issues more broadly are covered under several of the nine legally binding UN human rights treaties [OHCHR:]. These particularly refer to the right to property, the right to an adequate standard of living (including food and housing), equality and non-discrimination, the right to culture, and the right to work. Responsible land governance also intersects with human rights related to the right to a healthy environment, the right to information, and various civil and political rights, such as the right to participation. In many cases, land conflicts lead to human rights violations through the various functions that land holds, especially for marginalized land users.

Land rights and legal frameworks are often overly complex. When referring to land rights, more than just ownership is concerned, as the right to land is characterized by access, control, and transfer of land [14]. As Gilbert [11] illustrates, the right to control land has often been instrumentalized for oppression, leaving marginalized smallholders land-

less. The link between human rights and land rights in this context can be further illustrated by provisions in the Convention on the Elimination of Discrimination Against Women (CEDAW). CEDAW and its implementation schemes are very important when aiming to achieve the full realization of equal rights for women, which also accounts for violations in the land sector.

A number of international human rights treaty bodies charged with overseeing the systematic implementation of specific treaties have adopted General Comments and Recommendations that are relevant to land rights and land governance. Most of these are not focused exclusively on land but address land issues through the lens of the rights enshrined in those instruments, with a view to clarifying the application of those rights to land, among other issues. As an example, CEDAW's General Recommendation No.34 addresses the rights of rural women (CEDAW/C/GC/34, 2016), while No.29 outlines the economic consequences of marriage, family relations, and their dissolution (CEDAW/C/GC/29). The UN Committee on Economic, Social and Cultural Rights (CESCR) has also issued several land-related General Comments, including on the right to housing and forced evictions (CESCR/ GC No.4 and CESCR/ GC No.7). In 2021, CESCR published a draft General Comment (No.26) on land and economic, social, and cultural rights for consultation [15]. Its objective is "to clarify the specific obligations of States parties relating to land and the governance of tenure of land under the International Covenant on Economic, Social and Cultural Rights" [15].

General Comments or General Recommendations constitute authoritative interpretations and guidance on the application of provisions of international treaties by their respective independent expert oversight bodies. They are not legally binding (i.e., not "hard law") and rather referred to as "non-binding soft law" [16]. However, they can contribute to the emergence of general principles of law, *opinio juris* (existing legal conviction of subjects of international law) at the international level. Thus, General Comments and Recommendations, which are issued by the supervisory committees of UN human rights treaties, can be a guide for states on how to implement these binding treaties. Moreover, these texts can be used to support a particular legal interpretation regarding states' human rights obligations (see, e.g., [17]).

The United Nations human rights monitoring system has three key pillars: the Universal Periodic Review (UPR) of the Human Rights Council; the Treaty Bodies established by the international human rights treaties; and Special Procedures of the Human Rights Council (these include special rapporteurs and independent representatives on specific issues, countries, or population groups). The observations and country-specific recommendations as well as General Comments and General Recommendations by Treaty Bodies, recommendations of the UPR, and reports and recommendations of the Special Procedures all aim to guide states to improve the protection of human rights in line with international standards. The recommendations of all these bodies can play a critical role in designing measures for strengthening responsible land governance [15,16,18].

### 2.3. Addressing Challenges of Implementation: The Voluntary Nature of the VGGT

The VGGT is not legally binding but represents an international agreement on a standard for responsible governance of tenure reached by UN member states following intensive negotiations. While their implementation is voluntary, they build on existing legally binding human rights standards and principles. As Cotula (2017) elaborates, the VGGT is a soft-law instrument and not an international treaty with binding norms or legal obligations. However, he argues, "the VGGT nonetheless present elements of normativity and have legal significance, which require lawyers to take their guidance seriously" [3] (p. 118).

Almost a decade after their endorsement, however, the VGGT continues to face implementation challenges. One of these is linked to the absence of robust monitoring frameworks at the national level [3]. Without such systematic monitoring, it is difficult to sustain coordinated implementation approaches beyond pilot activities, which further hampers

the generation of insights for broader application. This implementation challenge not only pertains to the VGGT but also to other voluntary instruments, such as the 2030 Agenda on Sustainable Development and related Sustainable Development Goals (SDGs).

Notwithstanding, both the VGGT and the SDGs provide a strong basis for effective and inclusive monitoring mechanisms. The VGGT, for example, allows for the incorporation of monitoring frameworks that draw on binding human rights commitments and obligations as well as the legitimacy of institutionalized human rights monitoring mechanisms.

#### 2.4. *What Is a Human Rights-Based Approach for Strengthening Responsible Land Governance?*

Although there is no universally acknowledged human right to land, the functions that land provide are intrinsically linked to various human rights, as illustrated above. As originally defined in the UN's Common Understanding of a Rights-Based Approach to Development (2003), a rights-based approach is articulated around three main principles [18]:

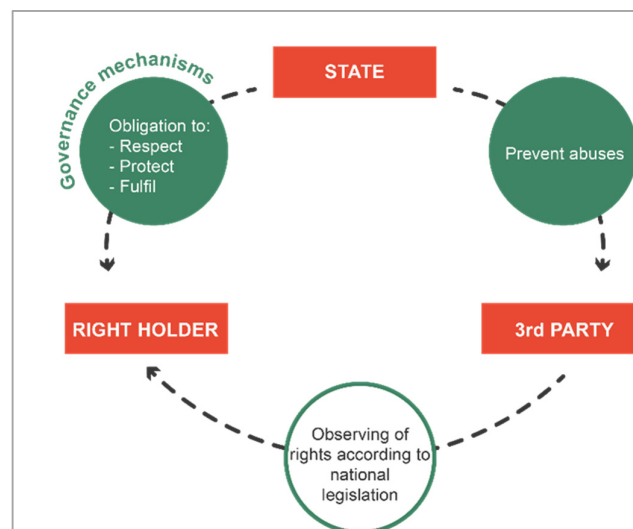
1. A Human Rights-Based Approach (HRBA) should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all aspects of the approach. These human rights principles include: universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; and accountability and the rule of law.
3. Human rights-based approaches contribute to the development of the capacities of "duty-bearers" to meet their obligations and/or of "rights holders" to claim their rights.

A human rights-based approach can therefore bring significant added value to land governance monitoring through providing the following [18,19]:

- A coherent normative framework, as well as clarity on the human rights obligations and responsibilities of all actors. The provisions of the VGGT are based on existing human rights standards, and, in most cases, this means that states have human rights obligations that correspond to its provisions. Human rights frameworks also clarify the responsibilities of other actors including the private sector, which plays a significant role in land issues.
- Accountability and legitimacy. Respect for human rights standards offers an important source of legitimacy, as well as an accountability framework, particularly in contexts where accountability gaps may exist. States' obligations to respect, protect, and fulfil human rights are overseen by international human rights supervisory bodies who provide authoritative guidance on every aspect of human rights fulfilment.
- Lessons from the experiences of human rights implementation. Human rights bodies provide extensive and detailed guidance, regular and systematized expertise, thematic and country-based qualitative analysis on thematic and country bases, and data aligned with international and regional human rights law. This wealth of experience, accumulated over decades, can inform land rights and land governance policy and practice.
- More equal and evenly distributed outcomes across society. A human rights-based approach examines and addresses inequalities and discrimination that hamper the realization of human rights. It is therefore indispensable in addressing these inequalities.

Grounding a rights-based approach to promote responsible land governance in human rights legislation holds the potential to contribute to strengthened accountability in the land sector. A human rights approach implies that the state has a threefold obligation to *respect, protect, and fulfill* the rights of its citizens as rights holders [9,20]. Complementing this threefold obligation are obligations of conduct and of result. In this context, three actors are key: the state as a duty bearer, individuals, or communities as rights holders, and third parties potentially infringing on the rights of the rights holders (see Figure 1). Considering the interrelation between all three actors in this regard is key to understanding the underlying causes of land conflicts. For example, it can include the state's role to provide and accordingly implement land laws by providing services to rights holders, such as issuing land certificates that are respected by third parties [18–20]. The different roles are defined as follows:

- (1) **State:** The state is responsible for providing and strengthening the appropriate governance mechanisms to respect, protect, and fulfill the rights of citizens (see the upper left circle in Figure 1). The state has the obligation to prevent rights violations by third parties through national legal frameworks (see the upper right circle in Figure 1).
- (2) **Rights holders:** Rights holders act within a certain governance environment. They depend on the state to introduce measures to respect, protect and fulfill their rights. An enabling environment allows them to enjoy their rights.
- (3) **Third parties:** Third parties can include individuals, private companies, or state actors. Through appropriate legislation and jurisdiction, the State needs to ensure that actions by third parties do not infringe on the rights of other rights holders.



**Figure 1.** A rights-based approach to responsible land governance (Source: own figure).

The obligations of the state to respect, protect, and fulfill human rights require the state to enact relevant legislation and put measures in place to ensure the realization of rights in practice. In the context of responsible land governance, this may include, for example, enacting laws recognizing the rights of legitimate tenure holders. It could also include implementation of specific measures to ensure the realization of rights in practice, such as the dissemination of information on the rights of rights holders and accessible as well as affordable land administration services, including tenure rights recording, land registration processes, transfer, and leasing arrangements. Furthermore, accessible and affordable grievance mechanisms as well as inclusive spatial planning are key governance mechanisms in the design of responsible land governance.

### 2.5. How Can Monitoring Support a Human Rights-Based Approach to Responsible Land Governance?

Human rights-based monitoring can add significant value to existing initiatives by translating universally agreed human rights standards and principles into operational and tangible attributes that can be measured. A human rights-based approach to indicators has been developed by the Office of the UN High Commissioner for Human Rights (OHCHR) and proposes three types of indicators—structure, process, and outcome—to measure states' commitments to human rights, the efforts to realize those commitments, and the outcomes or results of those efforts in the realization of rights, respectively. Thereby a human rights-based approach to monitoring does not only measure outcomes but can help to explain the “why” in relation to insecurity of tenure. A systematic human rights-based approach to developing indicators for monitoring land governance presents a real opportunity to reveal some of the critical underlying factors of good land governance, based on legally binding instruments.

Using a human rights-based approach can be an effective way of monitoring responsible land governance. The overall goal of monitoring is to systematically track the existence and quality of policies and laws, their implementation, and their outcomes. This systematic approach also measures the effectiveness of implementation. Monitoring tools can collect qualitative and quantitative data on the state of land governance. Participatory monitoring processes can play a critical role in strengthening responsible land governance and increased accountability in the land sector. A systematic record of contested land rights or rights violations generates evidence to hold governments accountable to their national and international commitments [21,22].

Although the link between land governance and human rights has been formulated in different guidelines, as illustrated above, there is no systematic approach so far that monitors the implementation of the VGGT from a human rights perspective. Examples of existing land governance monitoring initiatives are summarized in Table 1 below.

**Table 1.** Overview of selected global land governance monitoring tools.

Global Land Governance Index (LANDex): Index based on 33 indicators retained in a series of regional and global consultations with ILC members and partners. Data are based on three levels of indicators (structure, process, outcome), covering a range of broad land governance issues such as the legal and institutional framework, policy implementation, and perception of land tenure security. Only one of the 33 indicators has a direct connection to human rights “Legal and institutional framework in place at the national level to protect land and environment defenders”. For further reading: <a href="https://www.landexglobal.org/en/">https://www.landexglobal.org/en/</a>
Land Portal: The Land Portal is an online platform that collects datasets from over 51 data providers in order to have these accessible in the same place (World Bank Land Governance Assessment Framework Scorecards, VGGT monitoring, national official sources, global forest watch, land matrix, and landmark). It includes many cross-cutting themes such as land and gender and land and corruption. As it is a mix of datasets, very different methodologies are used, not necessarily allowing for comparability of data. For further reading: <a href="https://landportal.org/">https://landportal.org/</a>
<b>Indigenous Navigator:</b> Indicator-based data collection tools including indicators and questionnaires, focusing for example on the general enjoyment of human rights and fundamental freedoms without discrimination. Compared to other tools, this is developed by a human rights organization with a clear focus on linking human rights to indigenous peoples. However, country coverage is so far very limited and is not clearly linked to the VGGT. For further reading: <a href="https://navigator.humanrights.dk/">https://navigator.humanrights.dk/</a>
LandMark: LandMark is an interactive global platform visualized through maps. The data include, for example: a) indigenous and community land maps, b) percent of the country held by indigenous peoples and communities, c) indicators of the legal security of indigenous lands, and d) indicators of the legal security of community lands and many more. Here, data accuracy is an issue as data are based on different methodologies. Country coverage is also very limited. For further reading: <a href="http://www.landmarkmap.org/">http://www.landmarkmap.org/</a>
RFUK Mapping For Rights-Community Atlas: This tool is a “Central Africa Online platform”, using visualizations like mapping the presence of forest communities and their land use, backed up by evidence from community mapping. The tool demonstrates the presence of indigenous peoples, including where their land is not officially recognized or documented or where they have no tenure security. It demonstrates the conflicting use of land and rights to land; however, it only focuses on Africa. As the tool relies on extensive mapping by communities, it could have cost implications. For further reading: <a href="https://cbca.mappingforrights.org/">https://cbca.mappingforrights.org/</a>

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**Land Matrix:** Land matrix is an open access platform that includes a database, maps, and some analytical documents based on quantitative indicators. It provides detailed information about land deals in almost 100 countries, including intended, concluded, and failed attempts to acquire land through purchase, lease, or concession for a wide range of intended uses. As it is an open-access platform, data integration relies on those entering the data, which might be more difficult in countries with weaker civil society representation or limited research activities. For further reading: <https://landmatrix.org>

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**The World Bank LGAF:** The Land Governance Assessment Framework (LGAF) is an assessment framework and diagnostic tool used to assess the status of land governance at the country level in a participatory process. It defines 21 land governance indicators, covering the five key areas: rights recognition and enforcement; land use planning, land management, and taxation; management of public land; public provision of land information; and dispute resolution and conflict management. Each LGAF process is coordinated nationally. The indicators do not follow a typical human rights approach and are not explicitly linked to international human rights instruments. Also, direct linkages to the VGGT are weak. For further reading:

<https://www.worldbank.org/en/programs/land-governance-assessment-framework>

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**Sustainable Development Goals (SDG) Indicator 1.4.2:** this outcome indicator measures the proportion of the total adult population with secure tenure rights to land, (a) with legally recognized documentation and (b) who perceive their rights to land as secure, by sex and type of tenure. Overall, reporting of land-related SDG indicators at the country level is rather weak. In addition, most indicators focus on a single aspect, leaving for example open questions with regard to land use by different groups, different tenure types, and land outside official land registration processes.

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**SDG indicator 5.a.1 (a and b):** this outcome indicator measures the proportion of the total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) the share of women among owners or rights-bearers of agricultural land, by type of tenure.

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**SDG indicator 5.a.2:** this structural indicator measures the proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.

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The list provided in Table 1 is not comprehensive but it covers major international land governance monitoring initiatives where different methodologies are applied. Besides the global monitoring mechanisms, many national monitoring initiatives exist.

Only some of the land rights and land governance monitoring and data gathering initiatives in the table above use elements of a human rights-based approach to examine indicators. Landex, for example, adopts the structure–process–outcome method of designing indicators, although its indicators are not explicitly based on international human rights standards or the attributes of specific rights. However, it does cover a range of issues (10 areas) which are also covered by human rights standards, using the structure–process–outcome method. The Indigenous Navigator tool (which Landex also draws on) is explicitly built on human rights standards and uses a HRBA. Other land rights/governance monitoring tools that were included in this assessment are not explicitly based on indicators that are grounded in international human rights and labor standards, albeit these are implicit in some.

In addition, existing monitoring approaches are not explicitly linked to existing international human rights legal frameworks or recommendations. A land governance monitoring approach that establishes the link and draws on binding human rights commitments complements the existing monitoring initiatives and strengthens the implementation of the VGGT by linking a voluntary instrument to binding international law. National Human Rights Institutions (NHRI), as the mandated organizations to monitor the realization of human rights at the national level, play an important role in this context.

### 3. Materials and Methods

This policy analytical paper draws on a literature review and analyses of secondary data. The paper is developed in the context of a project to develop a human rights-based land governance monitoring framework, which is funded by the German Federal Ministry for Economic Cooperation and Development (BMZ). The project is implemented by TMG Research in cooperation with the Danish Institute for Human Rights (DIHR) and the Malawian Human Rights Commission (MHRC) [23].

First, secondary data were collected from different platforms. The secondary data were retrieved from two main sources: (1) the SDG Human Rights Data Explorer [24] and



(2) data and reports from National Human Rights Institutions (NHRI). The data were used in the following way:

- (1) The analysis of land governance recommendations from the human rights system was based on data of 2299 recommendations from the international human rights system extracted from the SDG-Human Rights Data Explorer, which covers recommendations up to 2020. The analysis provides an overview of land governance-related recommendations from the international human rights system and the types of human rights mechanisms used for land rights monitoring, the specific rights implicated, the affected stakeholder groups, and the variations across regions.
- (2) Furthermore, the experiences of NHRIs working on land rights were analyzed. The analysis covers 11 examples of NHRI experiences in monitoring land governance/land rights from nine countries (Argentina, Bolivia, Chile, Kenya (three examples), Indonesia, Malaysia, Niger, Peru, and South Africa). Eight of the examples relate to violations of indigenous peoples' rights to land. The examples cover different types of NHRI involvement:
  - Fact-finding missions and studies on specific rights violations (in Argentina, Kenya, and Niger)
  - National land inquiries and hearings in Malaysia, Indonesia, and South Africa; facilitation of dialogue between actors (Bolivia)
  - Facilitation of conflict resolution with local authorities (Kenya)
  - Involvement in land rights projects with multiple components including community capacity-building, advocacy, and dialogue (Kenya)
  - Development of an interactive map identifying and analyzing land conflicts (Chile)

In the second step, the results of the two case studies presented below were used to complement the analysis with the first empirical findings. The case studies drew from the pilot application of a human rights-based land governance monitoring in Ivory Coast and Kenya conducted in 2017–2018. The pilot studies were analyzed in the context of human rights monitoring mechanisms. They were conducted by TMG Research in collaboration with the Kenya National Commission on Human Rights, the Commission Nationale des Droits de l'Homme de Côte d'Ivoire, and the German Institute for Human Rights, and with financial contribution from the French Ministry of Europe and Foreign Affairs. In Kenya, the case study focused on the perspective of widows who faced challenges when it comes to inheriting land from their deceased husbands. In Côte d'Ivoire, the assessment analyzed governance deficits in the context of conflict situations surrounding classified forests in the Cavally region. The results were presented and discussed in a multi-stakeholder workshop in May 2018.

Based on the secondary data and the pilot studies, first conclusions are drawn to be able to better inform policy-making in the field of land governance and future application of the VGGT. At this stage, this paper aims to contribute to the policy and conceptual debate on responsible land governance from a human rights perspective.

## 4. Results

### 4.1. Making the Case for Human Rights-Based Land Governance Monitoring

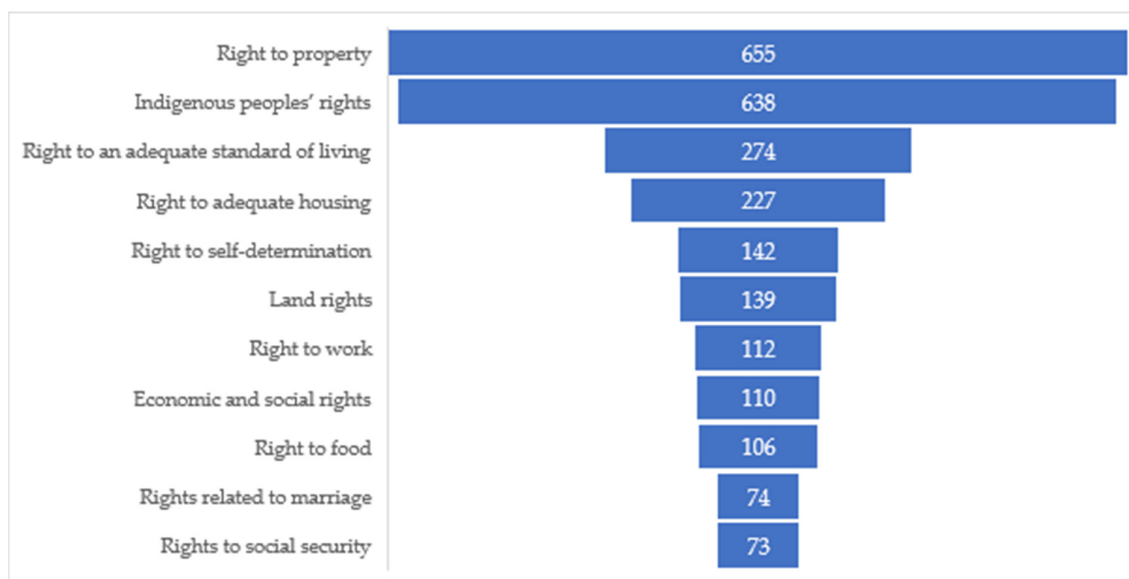
The literature review has shown that, from a human rights perspective, there is a gap in addressing land conflicts or land governance in general. The results presented here aim at illustrating the complementarity and potential for supporting the VGGT implementation of a human rights-based land governance monitoring tool. The analysis is structured into three parts: (1) analyzing land governance-related recommendations from the international human rights system (UPR, treaty bodies, and special procedures), (2) analyzing existing experiences of monitoring land issues from a human rights perspective, and (3) providing first evidence from two pilot studies in Ivory Coast and Kenya.

#### 4.1.1. Analysis of Land Governance-Related Recommendations from the International Human Rights System (UPR, Treaty Bodies, and Special Procedures)

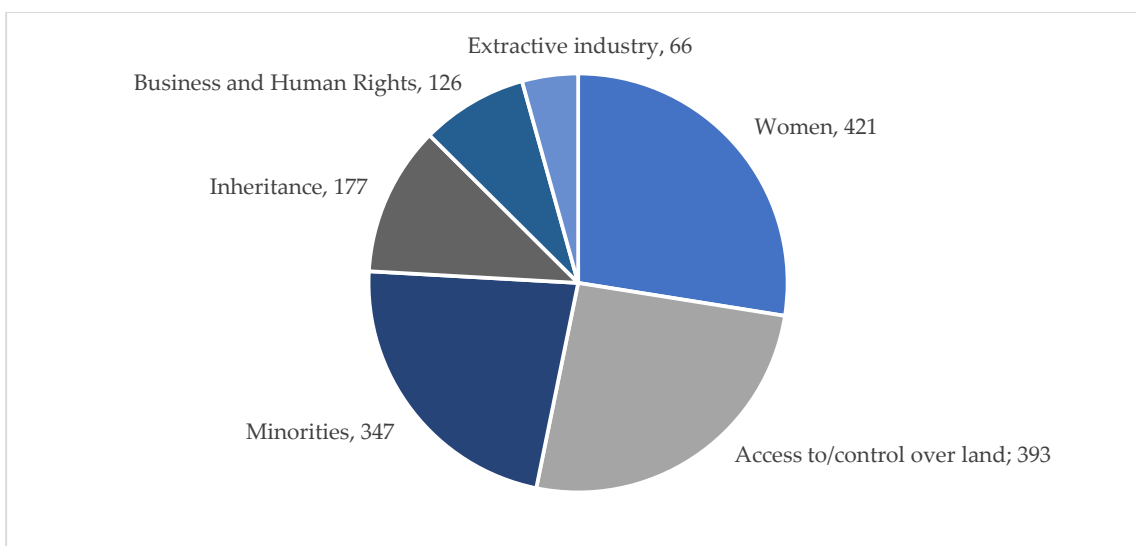
The analysis of the recommendations of the international human rights mechanisms found that out of the 130,543 recommendations contained in the DIHR SDG-HR Data Explorer, 2299 were explicitly linked to land-related issues. The majority (60%) of the 2299 recommendations were developed by the UN Human Rights Treaty Bodies (mainly CEDAW, CESCR, the Committee on the Elimination of Racial Discrimination (CERD), as well as from the Human Rights Council). Recommendations on land related issues from the Special Procedures mainly come from the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Adequate Housing, and the Special Rapporteur on the Right to Food. For several countries, recommendations are continuously repeated if not addressed. Other countries seem to receive more one-off recommendations, but this does not necessarily mean that land governance issues are solved or less worthy of attention for such countries.

The data also allows for an in-depth analysis of recommendations broken down by rights holder group. The highest number of recommendations concerns indigenous peoples (almost 900) followed by women (744). Recommendations concerning women and land emanate mainly from CEDAW and pertain to discrimination against women in land ownership, land allocation and acquisition practices, and inheritance and succession laws and practices. Both groups enjoy specific recognition in the human rights instruments relating to women (CEDAW) and indigenous peoples (UNDRIP and ILO Convention No.169). Interestingly, inheritance is rarely mentioned in the recommendations, but almost all references to inheritance relate to women and girls' rights to inheritance of land on equal terms with men and boys (170 out of 177). This addresses a very important aspect of tenure insecurity experienced by women due to both cultural and intra-household dynamics limiting their access to land [25]. The third group, with 543 recommendations, is a general category where the recommendations do not refer to a particular group but mention, for instance, citizens or people living in rural areas. However, one has to note that recommendations can refer to several groups at the same time.

The analysis also provided insights into which particular human rights were referred to in the context of land governance-related recommendations. In total, 11 rights are mentioned in this context (see Figure 2). The right to property and indigenous peoples' rights are most frequently referred to in the recommendations, with 655 and 638 recommendations respectively. This is followed by the right to an adequate standard of living, housing, health, self-determination, land, rights to work, other economic and social rights, food, family, and social security. Interestingly, the right to food has only been referred to in 106 recommendations, which is surprising according to the direct connection between access to land and food security in many countries where land conflicts occur (see Figure 2). Overall, rights violations concerning women and access to/control over land were most commonly referred to in the recommendations (see Figure 3).



**Figure 2.** Number of recommendations by human right [24].



**Figure 3.** Number of recommendations by topic [24]. An example of land governance-related recommendations in Cameroon.

Cameroon has received 39 land governance-related recommendations. Most of these concern indigenous peoples and come from CESC. It has also received some recommendations from CEDAW. The recommendations that Cameroon received from CEDAW concern rural women specifically, as well as questions related to marriage and family relations and access to justice. To give an example of CEDAW's latest land-related recommendations, they include the following aspects:

- Awareness-raising activities to ensure that customary court officials are familiar with CEDAW and the Committee's general recommendations so that their rulings do not discriminate against women, especially in land and property rights disputes, including the administration of family property, discrimination against women, and access to justice.
- Rural women's participation in decision-making processes, including at the community level and in development planning.

- Rights of indigenous women and women small-scale producers to ancestral and community lands ensuring that they can secure a livelihood for themselves.
- Ensure that women of marginalized communities such as the Mbororo communities and mountain and island populations have equal access to land, as well as microcredit facilities for income-generating activities.
- Removal of obstacles to land ownership, including by accelerating land reform and ensuring that domestic courts, including customary courts, apply CEDAW provisions, particularly in relation to women's land and property rights disputes.

Awareness-raising among traditional leaders about the importance of eliminating customary practices that discriminate against married women with regard to land retention.

#### 4.1.2. Documentation of NHRI Experiences in Monitoring Land Rights

National Human Rights Institutions (NHRIs) are independent state institutions mandated to promote and protect human rights domestically. As such, they are crucial elements of the good governance and institutional accountability architecture that is necessary to ensure the realization of human rights, including in relation to land. The independent nature of NHRIs, their bridging role between their country and the international human rights system, and their experience and expertise in monitoring and reporting on the implementation of human rights standards place them in the perfect position to play a critical role in the accountability architecture necessary for ensuring land rights and land-related good governance.

Although the number of land rights defenders at risk is increasing [26], and, as the analysis of recommendations above shows, land rights are an important area of concern in international human rights mechanisms, land rights monitoring is not a significant focus area for the majority of NHRIs researched. The analysis was conducted based on NHRIs' strategic plans, priorities, and the resources listed on their websites. In summary, the following experiences were observed:

- In the identified examples, the involvement has mostly been reactive and one-off (studies or inquiries), although some have been significant in scope, such as the national land inquiries in Indonesia and Malaysia.
- The development of an interactive map in Chile is an innovative example of land rights monitoring, but it is unclear whether the map is intended to be continuously updated and used (last updated in 2018).
- Only a few of the examples systematically assess human rights implications drawing on international human rights frameworks. There seems to be scope for NHRIs to use human rights frameworks more extensively to uncover rights issues and to leverage human rights mechanisms more effectively.
- The focus on violations of indigenous peoples' rights to land corresponds with the fact that most of the human rights recommendations related to land concern indigenous peoples' rights. The main references to human rights instruments are made in connection to UNDRIP.

Appendix A summarizes the key areas of interventions of NHRIs and the affected rights-holder groups. As also reflected in the recommendations above, the rights holder group of indigenous people has been of concern for many NHRIs. The role of smallholder farmers, peasants, or marginalized rural population groups, in general, has not been systematically addressed through monitoring approaches.

An additional example from Malawi shows that NHRIs are conducting individual investigations of land rights conflicts. The following case of a former tobacco farm in Kasungu, the Central Region of Malawi, was investigated by the Malawi Human Rights Commission in 2020.

In Kasungu, after ceasing tobacco cultivation, Press Agriculture decided in 2010 to close all its factories and sell some of the land area. This meant that the company did not

allow the former workers, who had been relocated to the area, to continue to stay on the land. The former workers were therefore evicted from the lands, and any further stay was considered trespass. As a result, the former workers and their families became landless. Since the plantations were located near some villages, some of the former workers tried to find land there, and village leaders allowed them to build temporary shelters. It is estimated that over 3000 families are still left landless. Currently, about 500 families are illegally settled in Estate 69 in the Mchinji District after the fallow estate was unilaterally occupied in 2018. This case has been reported to the Malawi Human Rights Commission through the active engagement of civil society, who published a report investigating the case in early 2020. The report says that “146 families are living in deprived conditions where the sight of utter poverty is palpable” [23] (p. 3). Some of the findings of MHRC provide a clear link to human rights violations such as [23]:

- The state violated the right to property of ex-laborers as enshrined in section 28 of the Constitution.
- The State violated the right to human dignity as guaranteed by section 19 of the Constitution as the ex-laborers were living on piecework which only provided them with hand-to-mouth livelihoods.
- The State failed to provide the ex-laborers with basic needs; in this case, land. Without land, they could not involve themselves in any activities to improve their conditions or develop their livelihoods.

This case further illustrates that land conflicts, such as the one in Kasungu, have multiple implications on human rights, not only on the right to food.

#### 4.1.3. First Lessons Learned from Case Studies on Human Rights-Based Monitoring of Land Governance in Kenya and Côte d’Ivoire

Two case studies from Kenya and Côte d’Ivoire have been analyzed with a perspective to identify the a) barriers to effective rights realization for rights-holders and b) reflections in relation to human rights recommendations for the countries. Whereas the case study in Kenya focused on the perspective of widows who face challenges when it comes to inheriting land from their deceased husbands, the case study in Côte d’Ivoire focused on governance deficits in the context of conflicts surrounding classified forests in the Cavally region.

In Kenya, the NHRI found that the state did not meet its obligation to protect the widows from interference by the traditional authorities. The women had sought to enjoy their legitimate rights to matrimonial property, but the state did not enforce the implementation of relevant laws to that end, i.e., the law of succession act, the matrimonial property act, and the community land act. The findings also highlight that ineffective and unlawful dispute resolution mechanisms as well as information dissemination channels work against the interest of women.

In Côte d’Ivoire, the NHRI analyzed the lack of implementation of the legal land governance framework and the legitimacy of existing conflict resolution mechanisms around the expulsion of smallholder farmers from protected forest areas.

Both case studies have shown that there are a number of barriers to justice and the enjoyment of rights by rights holders. These barriers were discussed and confirmed in a multi-stakeholder workshop, where the following four barriers were identified:

- legal barriers (e.g., lack of policy coherence and discriminatory laws),
- cultural barriers (traditional dispute mechanisms produce discriminatory outcomes for women),
- political and administrative barriers (corruption and lack of resources and competencies to implement land laws at the local level),
- and social-economic barriers preventing especially women and migrants from accessing legal aid and justice (lack of financial resources to pay fees, lack of access to information, lack of support structures, etc.).

The analysis of the human rights recommendations from the two countries indicates a potential to advocate for the implementation of the existing country-specific human rights recommendations. While there are relevant recommendations for addressing the issues identified in both countries, the limited volume and nature of the recommendations indicate a potential to utilize the mechanisms more frequently and efficiently.

The piloting activities have furthermore revealed that there is a widely shared agreement that human rights-based land governance monitoring can effectively complement and contribute to other ongoing global monitoring initiatives. The involved NHRIs, as well as the Network of African National Human Rights Institutions (NANHRI), confirming the need for a stronger focus on land conflicts in their human rights monitoring efforts.

## 5. Conclusions

This paper highlights the potential to strengthen the implementation of the VGGT through a monitoring approach that presents its provisions in the context of binding human rights obligations and mechanisms. The VGGT represent universally agreed principles for the responsible governance of tenure that are based on internationally agreed human rights standards and principles. While there is no human right to land, most land conflicts can be linked to the violation of human rights through the various functions that land holds for many land users, as well as implications for the fundamental principles and rights of non-discrimination, participation, and equality. Increasing pressure on global land resources combined with increasing inequalities in access to land put especially marginalized land users and tenure rights holders at risk of human rights violations. Therefore, a human rights approach to strengthen responsible land governance, as outlined in this paper, can be of great use to policymakers and researchers addressing increasing pressure on land resources. Such an approach enables them to investigate land conflicts from a human rights perspective where the legitimate tenure rights of rights holders are at the core of responsible land governance.

This policy analysis paper draws mainly on literature review as well as secondary data. As the human rights-based land governance approach is an innovative perspective of looking at responsible land governance, little evidence has been generated so far in terms of monitoring land governance from that particular angle. This hinders the paper from deepening comparative analyses. While numerous land governance monitoring initiatives exist both at international and national levels, a systematic linking of land conflicts and land governance to human rights monitoring is lacking. Similarly, while international human rights instruments and mechanisms do include land issues to some degree, there is great scope for including human rights implications related to land conflicts and the lack of responsible land governance more systematically in the established human rights reporting mechanisms. Here, more research is needed to compile case studies that a) investigate land conflicts from a human rights perspective and b) test the effectiveness of human rights-based land governance monitoring. In this regard, NHRIs can play a leading role in conducting such research.

The results of future research to be conducted jointly with NHRIs, can also allow NHRIs worldwide to play a significant role in strengthening the implementation of the VGGT. The research conducted with NHRIs can enable them to better advocate for rights-holders at the national level, but also to join the global debate on VGGT application through systematic monitoring of land governance from a human rights perspective. The mandate of NHRIs and the established human rights monitoring mechanisms provide valuable and complementary avenues to strengthen accountability in the land sector.

The fact that the VGGTs are an internationally agreed voluntary standard based on binding international legal frameworks, such as international human rights law, is a strong argument to put more emphasis on human rights-based monitoring. Such an approach will not only complement ongoing efforts to promote the recognition of the principles brought forward in the VGGT but also provide valuable insights for implementa-

tion mechanisms of other voluntary mechanisms and instruments. Through SDG indicators 1.4.2, 5.a.1., and 5.a.2, a direct implication for Agenda 2030's land indicators can be established, but a human rights-based land governance monitoring methodology can provide even more valuable insights beyond the land sector as well as a direct link to underpinning human rights principles, standards, and recommendations. Making use of established human rights monitoring and reporting mechanisms can provide a new and urgently needed impetus for the implementation mechanisms of other sectors addressed in the SDGs.

In times where multilateralism and accountability mechanisms are challenged, highlighting that the VGGT is based on existing and binding commitments by states holds the potential to strengthen their implementation and form new strategic alliances across communities of practice. TMG Research, the Danish Institute for Human Rights, and the Malawian Human Rights Commission are currently working on systematically linking the VGGT to existing human rights instruments and developing human rights-based land governance monitoring tools based on these interlinkages.

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## Appendix A

### Examples of land related human rights violations and investigations handled by NHRIs.

Country	Issues	Affected Right-Holder Groups	Role of NHRI and Methodology (Scope, Approach, Steps Taken)
Argentina	A large percentage of the country's indigenous communities do not have legal recognition of their lands according to their traditional use and occupation.	Indigenous communities (especially the Wichí community in the North, which is afflicted by land rights issues and human rights violations)	The Argentinian Defensoría has published reports (2017, 2018) about land rights within mapuche and the wichí communities, but there is no mentioning of the role of the NHRI within the reports.
Bolivia	General land rights issues in Bolivia (prior to the unrest of 2019) concern the violation of the territorial rights of indigenous people due to the development of infrastructure (dams and highways) [25].	Indigenous communities (between 62% of the population self-identify as indigenous)- 49.5% Quetchua, 40.6% Amayara. (Since 2007, Bolivia has identified as a plurinational state)	The Defensoría del Pueblo has created a Human Rights Unit of Indigenous Peasant Nations and Peoples (NyPIOC), in charge of addressing the issue of prior consultation with an objective of promoting spaces for analysis, dialogue, and understanding of the right to consultation for the involvement of all actors.
Chile	Violation of territorial rights of indigenous peoples. In the south, territorial rights to land are being	Indigenous communities (9 different recognized indigenous	The Chilean NHRI "INDH" published in 2015 (with updates in 2018) a tool/ interactive map identifying and analyzing 102 socio-environmental conflicts within the country. The intention is to

	violated due to industrial activities; in the north, land issues are more commonly associated with the mining industry.	groups—the Mapuche being the largest), mining communities	analyze socio-environmental conflicts from a human rights perspective.
Kenya	Violent evictions of the indigenous Sengwer communities	Indigenous Sengwer communities dwelling in the Embobut Forest	Sengwer/Embobut Forest fact-finding mission: The Kenya National Commission on Human Rights (KNCHR) is involved in multiple activities to promote and protect the rights of indigenous peoples (investigations, strategic litigation, awareness raising, training of HR defenders, and advocacy). Investigations have been conducted on violations of the rights of the Sengwer of Embobut forest and the Ogiek of Chepkitala, Mt. Elgon.
	Land disputes between community members involving traditional/cultural dispute resolution mechanisms (Njuri Ncheke)	Individual community members/male land holders	Facilitation of land dispute resolution involving traditional authorities KNCHR, in partnership with the Njuri Ncheke, worked towards enhancing the realization of human rights for Kenyans using Njuri Ncheke as a cultural institution. KNCHR facilitated the arbitration by Njuri Ncheke elders of land disputes in the Tharaka-Nithi country in 2012; here, 64 disputes were selected for the hearing.
	Women's right to own and inherit property (Luo community in the Nyanza province)	Women (members of the Luo community in Nyanza with a focus on widows)	Project on women's land rights KNCHR also addressed women's land rights and the role of cultural institutions in the Luo community in Nyanza. The project involved a study of the legal, policy, and structural framework in Kenya on the ownership and inheritance of property, a national consultative forum with government and civil society to get further guidance on ways of working with cultural structures (Luo council of elders).
	A growing number of land dispute cases implicating indigenous forestlands (release of forestry permits impacting IP territories)	Indigenous communities (Masyarakat Hukum Adat-MHA) (Specifically, 31,957 villages located in and around the forest zone).	The National Commission on Human Rights (Komnas HAM) organized a National Inquiry into Indigenous Peoples' Rights on their Territories in the Forest Zone (2014–2015). The inquiry in Indonesia was comprehensive in aiming not only at conflict resolution but also public education. 40 MHA cases were selected, studied, and heard in public hearings across 7 regions.
Malaysia	Land disputes due to increasing large-scale concessions/plantations/encroachment on indigenous lands/customary lands and untitled land.	Indigenous peoples/communities in Sabah, Malaysia (72+ ethnic and sub-ethnic groups).	The Malaysian Human Rights Commission (SUHAKAM) organized a National Inquiry into the Land Rights of Indigenous Peoples (2011–2012). The aim was to describe dilemmas and uncover the sources of conflicts over customary land and the exercise of rights. The analysis covers 12 case studies. An online database of complaints and conflicts was set up by SUHAKAM with data from SUHAKAM, Partners for Community Organizations of Sabah, and newspaper coverage from 2005–2011. Locational maps were used.
Niger	Land grabbing of pastoralist grazing land for commercial purposes (ranches, resource extraction) which leads to violation of the territorial rights of indigenous peoples/pastoralists in Niger.	Indigenous peoples/herders/pastoralists/nomads/transhumants in Niger who derive their livelihood from pastoral natural resources and whose lands are occupied or polluted.	The Commission Nationale des Droits Humains (CNDH) receives complaints related to land rights on an ongoing basis. CNDH conducted case studies and visits in different localities of the country for 3 successive years to document violations of the user rights of pastoralists to pastoral lands in Niger. The intention was to map the various conflicts related to access and control over pastoral resources in the country and to issue recommendations related to the resolution of the conflicts.
Peru	Violation of the territorial rights of indigenous peoples. Amazon basin deforestation, illegal logging, mining, and state-imposed water systems jeopardizing the Amazonian ecosystem, directly influencing indigenous peoples.	Indigenous communities—more than 4 million people, the majority being the Quechuas—87% of the indigenous population.	The Peruvian Defensoría collaborated with different ministries to gather data with the objective of evaluating the progress and difficulties in the implementation of the public policy of recognition and titling of peasant and native communities (Ministry of Agriculture of Peru, Ministry of Culture, and more).
South Africa	Challenges in connection with the implementation of the Restitution of Land Rights Act involving the right of a person or community dispossessed of property after June 1913 because	Persons and communities in South Africa who were dispossessed of property after June 1913 because of past racially discriminatory laws or practices.	The South African Human Rights Commission (SAHRC) receives a number of complaints and queries on a regular basis relating to land restitution. In November and December 2013, the SAHRC convened an investigative hearing with the aim to: 1. Receive information and hear evidence from the respondents and other relevant parties relating to the systemic challenges affecting



of past racially discriminatory laws or practices.	the land restitution process in South Africa; 2. Analyze evidence brought before the panel; 3. Make appropriate findings; 4. Enable the Commission to make recommendations.
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Sources: all information summarized in this table is publicly available information used from the respective websites of the NHRIs.

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