

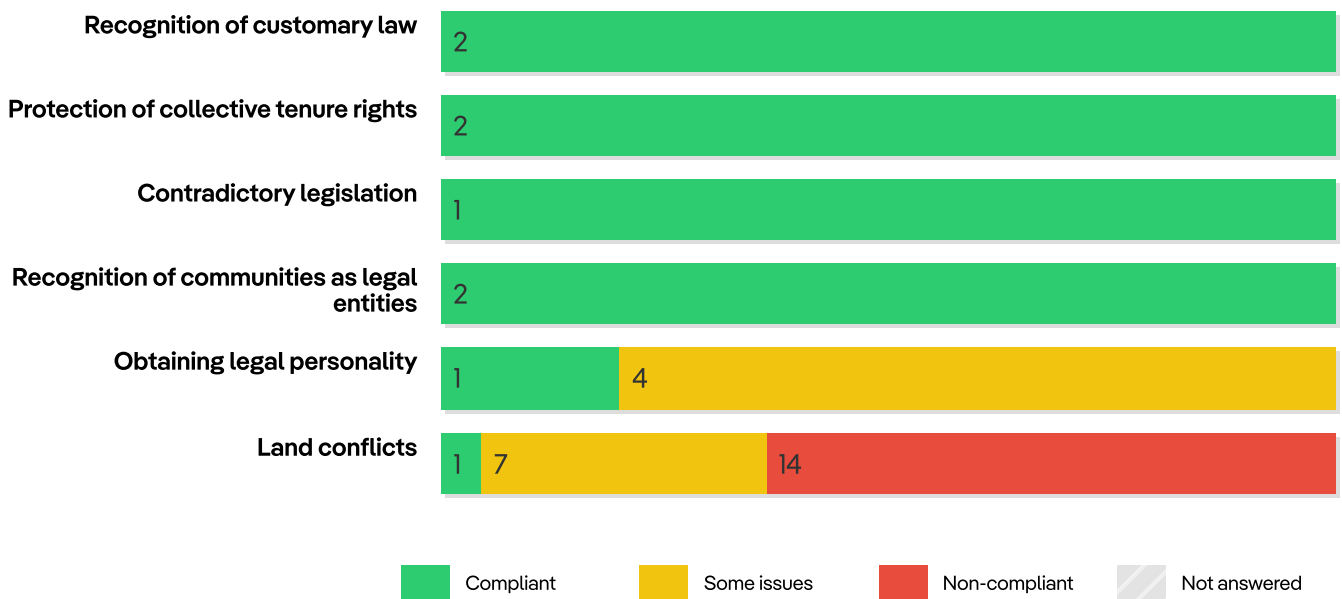


Malawi - national assessment

Malawi

Africa | 2022 | Published

1. Protection of legitimate tenure rights



The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Recognition of customary law

Guidance

Lack of recognition of customary rights to land, property and resources is often a major challenge for the protection of these rights in practice.

The provisions of the VGGT are intended to cover all legitimate tenure holders. In many countries, there are communities whose use of land is regulated by customary law. It is therefore important to assess whether this is recognised and protected in national legislation.

Many aspects of land governance are regulated through customary law and therefore, if it is formally recognised in national law, it can provide additional recognition and security of customary forms of tenure.

1.16. Does the Constitution or national legislation recognise customary law as it relates to land, property and resources?

Yes, the law fully recognises customary law as it relates to land, property and resources.

1.18. Does the Constitution recognise customary law but state that gender-based discrimination in customary law (where it exists) is superseded by the principle of non-discrimination in the Constitution?

Yes

Protection of collective tenure rights

Guidance

Lack of recognition of collective rights to land, property and natural resources is often a major challenge for the protection of these rights in practice.

Collective or communal land, property and resource rights are a common feature of rural communities including but not limited to indigenous peoples. Collective land, property and resource rights can also be related to legally- or informally- constituted groups of individuals working in a common interest such as cooperatives, associations or other types of groups.

Collective rights to land, property and resources are linked to a range of human rights, which are enshrined in numerous human rights treaties and declarations. More specifically, international human rights standards such as those on the rights of indigenous peoples (the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169) and on the rights of peasants (the UN Declaration on the Rights of Peasants) protect collective tenure rights.

1.19. Do national laws allow for collective or communal ownership or possession of land and other forms of property?

Yes, fully: There are no significant restrictions on collective ownership or possession of land, property or resources in the national legal framework.

1.20. Does national legislation recognise that collective or communal land and property rights may be held in perpetuity?

Yes

Contradictory legislation

Guidance

Sometimes laws governing different aspect of land, property and resource rights contradict each other. This can create confusion about which provisions apply in a specific situation, and which national body is responsible for that particular issue. Often, these contradictions can also result in denial of legitimate tenure rights.

1.22. Do national laws contradict each other when it comes to the protection of land, property and resource rights for individuals or groups?

No – there are no contradictions

Recognition of communities as legal entities

Guidance

If the law does not provide for a community to be recognised in its own rights as a legal entity for the purposes of legal ownership or possession of land it can be difficult to claim collective rights, even if the law does provide for them.

The situation differs significantly from country to country and region to region. Some countries do not allow for any type of collective land rights for communities, some have much broader possibilities.

In some countries the law allows for a community to legally possess land, property or resources without first having to register as a legal entity. If a community can apply for a collective title without having to register as a legal entity then this also presupposes that they are already recognised in law as a legal entity.

1.24. Does the law allow for a community to legally possess or own land, property or resources without first having to register as a legal entity?

Yes, the law fully enables communities to legally possess or own land, property or resources without first having to register as a legal entity

1.25. Does the law allow for a community to register as a legal entity for the purposes of legally possessing or owning land, property or resources?

Yes, the law fully enables communities to be registered as a legal entity for the purposes of managing, using, possessing or owning land, property or resources.

Obtaining legal personality

Guidance

The recognition of legal personality is often a precondition for obtaining legally recognised or formal rights to land, property and resources. Often, procedures for obtaining legal personality are complicated, difficult to understand and can be costly. If adequate, accessible procedures are not in place then this may preclude that tenure rights are recognised.

1.27. Is information about procedures for the recognition or obtainment of legal personality for the purposes of registration and management of property, land and resources publicly available?

Partially, some information is made available, but the information is not complete

Is it made accessible:

In formats other than writing (such as audio or visual)? No

In languages spoken by minorities in the country? No

How is it made accessible? (click the answer that applies)

On request - documents/information can generally be obtained within 1 week of request

Does it cost anything to get this information? (click the answer that applies)

No, it is free of cost

Land conflicts

Guidance

This indicator seeks to capture the types of land conflicts most prevalent in the country. As comprehensive data on land conflicts will rarely be available, the responses will often be based on an assessment of for example complaints received by the National Human Rights institution, comments from international human rights bodies, information from legal aid institutions/departments, civil society organizations working on land rights, media reports and similar.

1.29. Have conflicts over any of the following occurred in the last 3 years:

The value of land/valuation	Yes, but few
Evictions or forced evictions	Yes, but few
Destruction of land and property	Yes, but few
Multiple sales/allocations of land	Yes, common
Access to and control over natural resources	Yes, common
Compensation, resettlement or restitution	Yes, common
Boundaries	Yes, common
Payment for using/buying land, property and natural resources	Yes, common
Inheritance or bequeathment of property or land	Yes, common
Land grabbing	Yes, common
Ownership due to lack of land registration	Yes, common
Other reason (Please specify in comment box)	No, rare

1.30. Over the past 3 years, has the number of conflicts been:

Other reason (Please specify in comment box)	Don't know/no data
--	--------------------

The value of land/valuation	Don't know/no data
Access to and control over natural resources	Stable
Inheritance or bequeathment of property or land	Stable
Evictions or forced evictions	Stable
Destruction of land and property	Stable
Multiple sales/allocations of land	Increasing
Compensation, resettlement or restitution	Increasing
Boundaries	Increasing
Payment for using/buying land, property and natural resources	Increasing
Land grabbing	Increasing
Ownership due to lack of land registration	Increasing

2. Responsible governance of tenure



The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Mapping and registration process

Guidance

This indicator monitors states' implementation of a fair, independent, impartial, open and transparent process, with participation of concerned rights-holders, to recognize and adjudicate their rights to land and resources.

International human rights bodies have made specific observations and recommendations on the necessity of ensuring adequate demarcation, mapping and registration of land with a view to ensuring adequate protection of land, property and resource rights. These include the:

- Human Rights Committee
- International Committee on Economic, Social and Cultural Rights
- International Committee on the Elimination of All Forms of Racial Discrimination
- Committee on the Rights of the Child
- ILO's Committee on the Application of Conventions and Recommendations (for Conventions No. 169)
- Human Rights Council
- Human Rights Special Procedures

2.1. Has the State adopted procedures for identification, demarcation, mapping and registration of lands and resources of all legitimate rights holders that claim rights to those areas?

Yes, all relevant procedures are adopted

2.2. Have procedures been adopted in relation to both individual and collective rights?

Yes, both individual and collective rights

2.3. Is information about the procedures for identification, demarcation, mapping and registration of lands publicly available?

No, it is not publicly available

Is it made accessible:

In formats other than writing (such as audio or visual)? No

In languages spoken by minorities in the country? No

How is it made accessible? (click the answer that applies)

On request - documents/information can generally be obtained within 1 week of request

Does it cost anything to get this information? (click the answer that)

Yes, there is a fee, and it would likely be too costly for those with low-income

applies)

Protection of informal tenure rights

Guidance

This indicator assesses whether there is a formal process for regularising informal tenure either in a comprehensive way at national level or through addressing it partially or in specific areas.

2.4. Has the state adopted any procedures for the conversion of informal tenure into formal tenure?

Yes on a national scale

Resources for policy implementation

Guidance

The VGGT paragraph 6.1 states that “[...] States should ensure that implementing agencies and judicial authorities have the human, physical, financial and other forms of capacity to implement policies and laws in a timely, effective and gender-sensitive manner. Staff at all organizational levels should receive continuous training, and be recruited with due regard to ensuring gender and social equality”.

This indicator and questions align with LANDex indicator 3B questions 2 and 3.

2.5. Do implementing agencies have the funding required to implement land, property and natural resource policies and laws in a timely, effective and gender-sensitive manner?

Partially, there are some funding gaps

2.6. Over the last 3 years, has funding

Remained more or less the same

**2.7. Adequate institutional support:
The government has made necessary institutional arrangements and appointed qualified personnel to carry out measures including identification, mapping and registration**

Partial support provided. Significant institutional arrangements and personnel have been dedicated to the issue, but not enough.

2.8. Over the last 3 years, has the capacity in terms of qualified personnel to implement diverse tenure and production systems

Remained more or less the same

Access to land registration information

Guidance

Section 17 of the VGGT provides specific guidance on how States should record tenure rights. For example, VGGT 17.4 specifies that “implementing agencies should link information on the rights, the holders of those rights, and the spatial units related to those rights. Records should be indexed by spatial units as well as by holders to allow competing or overlapping rights to be identified. As part of broader public information sharing, records of tenure rights should be available to State agencies and local governments to improve their services. Information should be shared in accordance with national standards, and include disaggregated data on tenure rights”.

In VGGT 17.5 it is specified that “States should ensure that information on tenure rights is easily available to all, subject to privacy restrictions. Such restrictions should not unnecessarily prevent public scrutiny to identify corrupt and illegal transactions. States and non-state actors should further endeavour to prevent corruption in the recording of tenure rights by widely publicizing processes, requirements, fees and any exemptions, and deadlines for responses to service requests”.

Questions about searchability, accessibility and affordability align with LANDex indicator 8B, block 1 and 2 questions.

2.9. Does the land information registry include information about (tick all that apply):

Customary rights

All types of land and property

Individual rights

Collective rights

2.10. Can the public access information about land ownership and control?

Yes

2.11. Can land registry information be disaggregated by gender?

No

2.12. Is the land registry digital (on computers and servers)

No

2.13. The records in the registry can be searched by (tick all that apply):

Right holder name

2.14. Land information records are easily accessed

Copies or extracts of documents recording rights in property can be

obtained by anyone who pays the necessary formal fee, if any.

2.15. Access to records is affordable

Records in the registry are accessible, but with a cost that is prohibitive for most.

2.16. There is a timely response to requests for accessing registry records

Copies or extracts of documents recording rights in property can generally be obtained within 1 week of request.

3. Dispossession and land grabbing



The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Requirement for impact assessment

Guidance

Numerous international human rights and ILO supervisory bodies have stressed the importance of prior social and environmental impact assessments in relation to land.

The UN Declaration on the Rights of Peasants states that any exploitation of the natural resources traditionally held or used by peasants or persons working in rural areas should be subject to a duly conducted environmental and social impact assessment.

Likewise, international instruments on the rights of indigenous peoples stipulate that States should conduct social, spiritual, cultural and environmental impact studies prior to any planned development activities that may affect them.

Failure to conduct impact assessments (including environmental, social, human rights or other types of impact assessment) of activities of the state or businesses that affect land, property or natural resources of rights-holders can negatively impact on a large range of human rights.

The question aligns with the two Land Portal indicators:

- [Environmental impact assessments](#)
- [Social impact assessments](#)

3.2. Does national law require that impact assessments (including environmental, social, human rights or other types of impact assessment) are conducted prior to, during and after activities of the state or businesses that affect land, property or natural resources of rights-holders?

Yes, for state and third-party activities

Expropriation procedures

Guidance

The right to information underpins this indicator and is a precondition for adequate and meaningful participation.

VGGT Section 16.2 specifies that “States should ensure that the planning and process for expropriation are transparent and participatory. Anyone likely to be affected should be identified, and properly informed and consulted at all stages [...]”

3.3. Is information about official procedures to be followed prior to expropriation of land, property and resources easily available to the public?

Yes, it is available

Is it made accessible:

In formats other than writing (such as audio or visual)? No

In languages spoken by minorities in the country? No

How is it made accessible? (click the answer that applies)

Not in focus

Does it cost anything to get this information? (click the answer that applies)

No, it is free of cost

Independent certification of impact assessments

Guidance

Independent scrutiny of environmental and social impact assessments can help ensure that they are conducted in accordance with the law, respect human rights, provide an objective assessment, and are not tied to vested interests.

Numerous international human rights and ILO supervisory bodies have stressed the importance of social and environmental impact assessments in relation to land.

Failure to conduct these can negatively impact on a large range of human rights.

The UN Declaration on the Rights of Peasants states that any exploitation of the natural resources traditionally held or used by peasants or persons working in rural areas should be subject to a duly conducted environmental and social impact assessment.

Likewise, international instruments on the rights of indigenous peoples stipulate that States should conduct social, spiritual, cultural and environmental impact studies prior to any planned development activities that may affect them.

As independent state institutions, national human rights institutions (NHRIs) are statutory bodies charged with the promotion and protection of human rights in their country. Some NHRIs are mandated to receive and review environmental and social impact assessments. This enables an independent review of these assessments to be undertaken from a human rights perspective.

The indicator aligns with LANDex 9A question 6 but has been modified to not only include assessments by corporate actors.

3.4. Is there an independent institution charged with reviewing or certifying that environmental, social, human rights or other types of impact assessments undertaken by state and non-state actors are sound, and have been done in a participatory and inclusive manner?

No.

Cases of dispossession/eviction

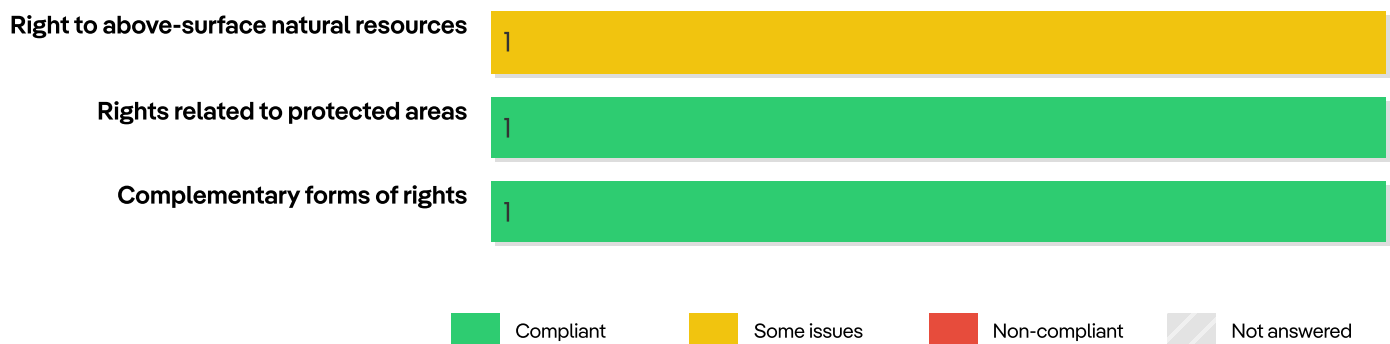
Guidance

As comprehensive data on dispossession, eviction, displacement or relocation of legitimate tenure rights holders without adequate consultations with rights-holders will rarely be available, the responses will often be based on an assessment of for example complaints received by the National Human Rights institution, comments from international human rights bodies, information from legal aid institutions/departments, civil society organizations working on land rights, media reports and similar.

3.6. Have there, in the last 3 years, been incidences of dispossession, eviction, displacement or relocation of legitimate tenure rights holders without adequate consultations with rights-holders?

Yes, this is a widespread phenomenon

4. Multiple functions of land, fisheries, forests



The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Right to above-surface natural resources

Guidance

The indicator measures whether communities or individuals with customary or legally recognized land also have ownership rights to the natural resources pertaining to that land, including in protected areas which have been established on pre-existing community or customary land.

The right to natural resources pertaining to land is explicitly recognized in the UN Declaration on the Rights of Indigenous Peoples, the UN Declaration on the Rights of Peasants and ILO Convention No. 169. It can also be protected by numerous other human rights instruments through different rights.

The indicator and related questions concern above-surface natural resources such as flora and fauna, and not sub-surface resources such as minerals and metals, which are usually addressed in a different way in legislation.

The indicator partially aligns with LANDex (questions 8-9 under LANDex indicator 3A) but have been expanded here to cover all above-surface natural resources including but not limited to trees and water.

4.1. Does the law recognize that rights to community land include ownership of all above-surface natural resources on their land?

Partially, the law recognizes rights to some above-surface natural resources on community land.

Rights related to protected areas

Guidance

The indicator and questions draw on international human rights standards and in particular those on the rights of indigenous peoples, and peasants, which maintain that rights to natural resources are inextricably linked to land rights as well as the right to an adequate standard of living. In many cases, protected areas may have been established on community land, meaning that rights of communities to use and manage resources within these areas may be curtailed.

The indicator is distinct from the previous indicator about rights to use resources on community land as it only refers to protected areas.

4.2. Does the law allow for communities to participate in the use, management and conservation of natural resources in protected areas?

Yes, the law fully recognizes the right of communities to participate in the use, management and conservation of natural resources in protected areas

Complementary forms of rights

Guidance

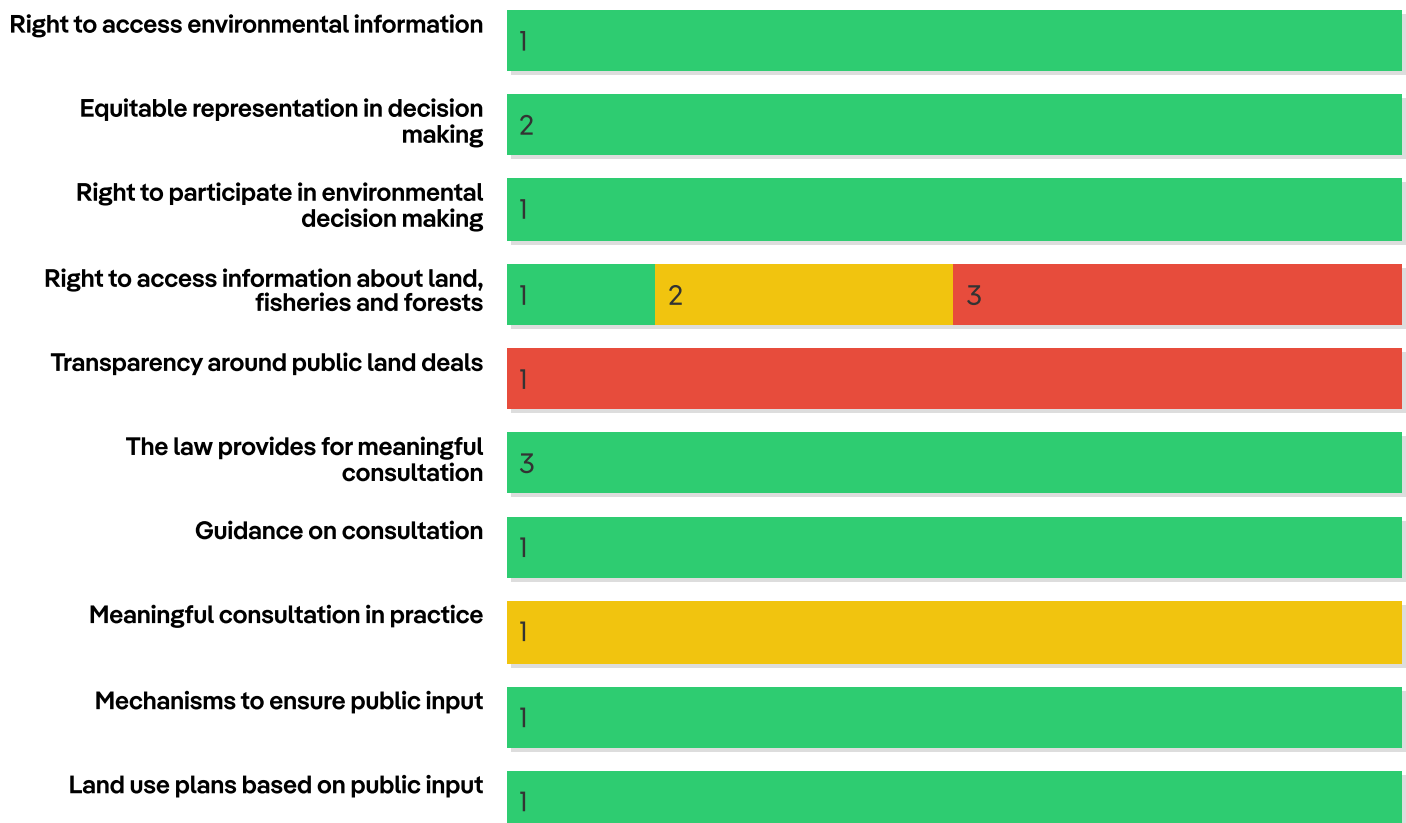
The indicator measures whether the law recognises diverse tenure and production systems, including tenants, sharecroppers, and pastoralists. In some countries and regions multiple legitimate rights holders use the same resource in different or complementary ways. For example, pastoralist or transhumant populations may need access rights to certain land in different seasons. Hunter-gatherer communities may use land and resources within protected areas or areas used by other communities.

This is an issue affecting a large range of human rights, and it is often the case that the law protects certain communities or types of tenure rights-holders better than others. International human rights bodies have raised this issue in respect of the rights of indigenous peoples and other communities, and the issue is specifically addressed under ILO Convention No. 169 as well as reflecting a broad range of human rights enshrined in other instruments.

4.3. Does the law recognize complementary forms of rights in cases where rights to property, land and resources are not held exclusively by a single (group of) rightsholders?

Yes

5. Information, consultation, participation



Compliant Some issues Non-compliant Not answered

The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Right to access environmental information

Guidance

In this case, the rights to participation and to information are linked to environment-related rights such as the right to a healthy environment and the right to development which are also internationally recognized human rights covered by a range of international human rights instruments.

In the European region, the [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) (The Aarhus Convention), and in the Americas, [the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean](#) (The Escazu Agreement), both provide extensive guidance on access to environmental decision-making from a human rights perspective.

In the Aarhus Convention, 'Environmental information' means information in written, visual, aural, electronic or any other material form on for example activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment and cost-benefit and other economic analyses and assumptions used in environmental decision-making.

In the Escazu Agreement, 'Environmental information' means any information that is written, visual, audio, and electronic, or recorded in any other format, regarding the environment and its elements and natural resources, including information related to environmental risks, and any possible adverse impacts affecting or likely to affect the environment and health, as well as to environmental protection and management.

5.1. Do national legal frameworks protect the public right to access environmental information?

Yes. There is comprehensive legislation ensuring the right of access to information with any exceptions in law to the right of access to information being subject to strict "harm" and "public interests" tests

Equitable representation in decision making

Guidance

The indicator concerns the protection of the right to participation, specifically in matters relating to laws and policies on land, property and resources. The related questions also intend to capture any specificities relating to legal protections for public participation of specific groups who are likely to be affected by new or revised laws and policies.

The questions are intended to capture a broader legal or policy environment than more specific questions on participation in environmental decision-making. They are also separate from another question relating to consultation and participation in decision-making about projects that may affect land, property and resources due to the need to capture both aspects of participation and consultation, and to the different nature of the two situations.

The first two questions align with LANDex indicator 7A (block 1 questions 1 and 2).

5.2. Do national laws, policies and procedures call for public participation in decision-making processes when laws and policies relating to land and natural resources are being devised or revised?

Yes

5.3. Do national laws, policies and procedures call for the equal representation of women and men in decision-making processes when laws and policies relating to land and natural resources are being devised or revised?

Yes

Right to participate in environmental decision making

Guidance

The indicator concerns the legal recognition of the right to participate in and gain access to environmental decision making as environmental decision-making is often a separate process from land-related decision-making, although the two are linked.

The right to participate in environmental decision making is based on the right to participation and the right of access to information. These rights are manifested in different ways in a large number of international human rights and ILO instruments.

In this case, the rights to participation and to information are linked to decisions that may have a significant effect on the environment and thus linked to the right to a healthy environment which is also an internationally recognized human right.

In the European region, the [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) (The Aarhus Convention), and in the Americas, [the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean](#) (The Escazu Agreement), both provide extensive guidance on access to environmental decision-making from a human rights perspective.

5.5. Does the law recognise the right of affected rights-holders to participate in environmental decision making?

Yes

Right to access information about land, fisheries and forests

Guidance

The indicators measures whether the legal framework adequately protects the right of the public to access information about planned and ongoing changes to land use and land classification (including zoning), and that if there are restrictions in place that they can be justified in accordance with strict legal principles.

The right to access information about proposed changes to land classification is closely linked to the right to participation. The right to prior information, communicated in a timely manner, is an essential corollary of that right.

5.6. Does the law require that information about actual or planned changes in land use or land classification is made available to the public?

Yes. There is comprehensive legislation ensuring the right of access to information about actual or planned changes in land use or land classification; and any exceptions are subject to strict “harm” and “public interests” tests.

5.7. Is information about planned changes in land use or land classification publicly accessible?

Partially, some information is made available, but the information is not complete

Is it made accessible:

In formats other than writing (such as audio or visual)? No

In languages spoken by minorities in the country? No

How is it made accessible? (click the answer that applies)

On request - documents/information can generally be obtained within 1 week of request

Does it cost anything to get this information? (click the answer that applies)

Yes, there is a fee, and it would likely be too costly for those with low-income

Transparency around public land deals

Guidance

Transparency and accountability have been identified as among the key attributes of good governance by the Human Rights Council. Publishing information about large scale investments, including contractual documents, and related revenue and tax are essential elements of these principles.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) states that: 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures' (article 2.1). This means that states have a duty to ensure that they have the maximum available resources to progressively realize human rights, meaning they should ensure their domestic resource (among other things, tax) mobilization is fit for purpose to raise the adequate funds.

The questions align with LANDex indicator 8B (block 3, questions 1 and 2).

5.9. Does the government publish information about large-scale land deals and land investments?

No, large-scale land deals and land investments are not published in any form.

5.10. Does the government publish information about tax or revenue it might gain from these investments?

No, tax or revenue gained from these investments are not published in any form.

The law provides for meaningful consultation

Guidance

The concept of meaningful consultation and participation are key human rights concepts and fundamental to ensuring the protection of legitimate land, property and resource rights. [See "concepts" for guidance on what adequate consultation could look like.](#)

The indicator aligns with LANDex 9A question 5.

5.11. Does the law provide for communities' meaningful participation before, during and after projects or other measures that affect their rights to land, property and natural resources?

After the projects or other measures Yes

During the projects or other measures Yes

Before the projects or other measures Yes

Guidance on consultation

Guidance

The indicator and related questions aim to ascertain whether official procedures and mechanisms to ensure meaningful and participatory consultation exist and are in line with international human rights standards.

5.12. Do official procedures and mechanisms exist for undertaking consultations with legitimate tenure rights holders likely to be affected by decisions regarding land, property and natural resources exist?

Yes

5.13. Are the process, roles and responsibilities, and financing clear from the procedures?

Yes, the process, roles and responsibilities, financing is clear

Meaningful consultation in practice

Guidance

5.14 In the last 3 years, have consultations generally taken place with affected tenure rights-holders prior, during and post projects or other measures affecting their property, land and resources?

Partially, consultations take place but not consistently or adhering to international human rights principles and guidance

Mechanisms to ensure public input

Guidance

This indicator and related questions assess whether mechanisms for public input from for example civil society organizations, research institutions, national human rights institutions into laws and policies on land, property and resources exist.

According to international standards, ensuring the participation and consultation of rights-holders or the public in the development of laws and policies is also a critical element of the right to participation, among other rights. In order to ensure that this happens systematically, institutional mechanisms for public input are essential.

Such mechanisms may include consultation forums and organized public input processes during legislative revisions, the setting up of statutory consultation or advisory bodies for matters relating to land or natural resources in general, with members from civil society, indigenous peoples and other stakeholders.

5.15. If there has been revisions of existing legislation and policies, or new legislation and policies on property, land and resources in the last 5 years, was there opportunity to provide public input?

Yes

Land use plans based on public input

Guidance

The indicator assesses the degree of public input, closely related to the right to participation and access to information in the context of rural land use planning.

Land use plans and zoning can apply to public land of all descriptions, including protected areas, forests, and other types of public land.

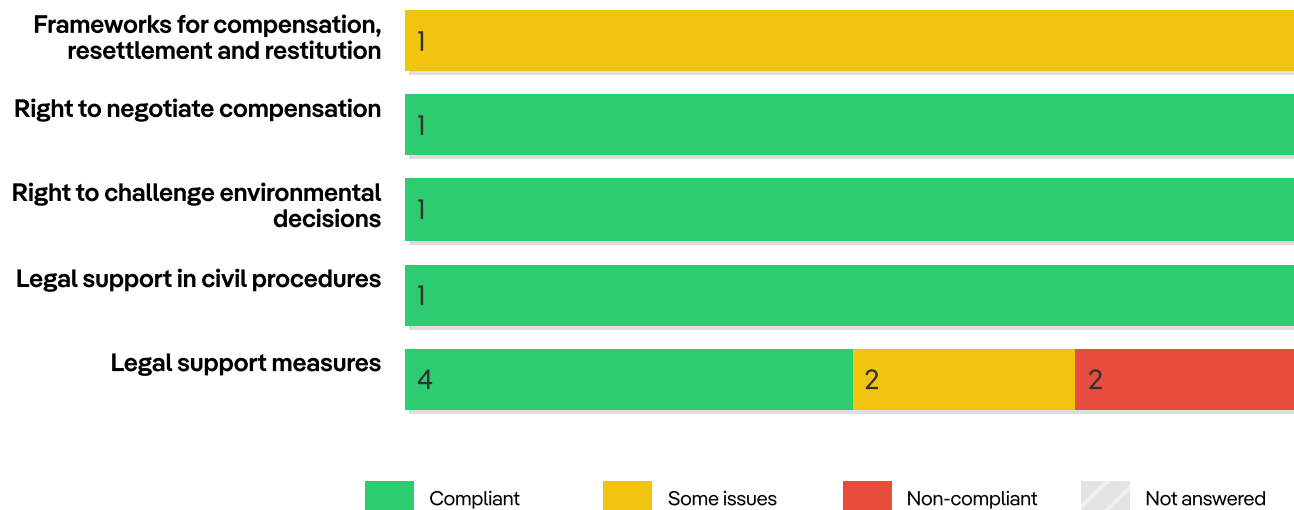
The VGGT section 20.4 establishes that “States should ensure that there is wide public participation in the development of planning proposals and the review of draft spatial plans to ensure that priorities and interests of communities, including indigenous peoples and food-producing communities, are reflected. Where necessary, communities should be provided with support during the planning process. Implementing agencies should disclose how public input from participation was reflected in the final spatial plans [...]”

The indicator and related questions align with LANDex 7B.

5.16. Are rural land use plans and changes in these plans – including rezoning – based on public input?

Yes. Public input is sought in preparing and amending rural land use plans (including rezoning) and relevant decisions are arrived at in a transparent and public process.

6. Access to remedy



The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Frameworks for compensation, resettlement and restitution

Guidance

The indicator and questions assess whether the full spectrum of compensation, resettlement and restitution are considered and provided for in national law.

Both the VGGT and international human rights and labour standards address this issue.

Broadly, the right to remedy covers numerous possibilities and compensation, resettlement and restitution would all be considered as a part of this right. As with all human rights, this is a right that applies to everyone, regardless of characteristics, and should be available for all types of human rights violations.

In respect of indigenous peoples, the UNDRIP provides for just and fair redress and equitable compensation. ILO Convention No. 169 provides for restitution (“right to return”) compensation with lands of quality and legal status at least equal to that of the lands previously occupied as well as for peoples concerned to express a preference for compensation in money or in kind.

In respect of other communities, the UNDROP also provides for just, fair and lawful compensation when return is not possible.

6.1. Do national legal frameworks provide for compensation, resettlement and restitution in the case of dispossession and displacement?

Partially. The legal framework provides for some types of compensation, resettlement and restitution in cases of dispossession and in relation to most types of tenure in this regard with exceptions

Right to negotiate compensation

Guidance

The indicator and related questions reflect the VGGT Section 16.3, which provides that “States should ensure a fair valuation and prompt compensation in accordance with national law.” Furthermore, section 16.6 provides “All parties should endeavour to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal.” This is closely linked with the right to remedy.

The indicator aligns with the Land Portal VGGT indicator based on Section 16.3 of the VGGT.

6.3. Do national laws provide for a right to negotiate compensation levels?

Yes, the law fully provides for a right to negotiate compensation levels

Right to challenge environmental decisions

Guidance

The right to formally challenge public decisions is an important element of access to justice and accountability, and a right to remedy. Such challenges could be in the form of a judicial review, or in the form of an appeal against a decision, but can also take other forms depending on the legal system in a given country.

6.4. Does the law recognise the right of legal persons to challenge public decisions in relation to environmental decision-making?

Yes

Legal support in civil procedures

Guidance

From a human rights perspective, legal support (including legal advice and representation) is essential for ensuring access to justice and the right to remedy, in particular for those who experience, or are at risk of experiencing, discrimination, but also in general for all rights-holders.

VGGT paragraph 6.6. specifies that “States and other parties should consider additional measures to support vulnerable or marginalized groups who could not otherwise access administrative and judicial services. These measures should include legal support, such as affordable legal aid, and may also include the provision of services of paralegals or parasurveyors, and mobile services for remote communities and mobile indigenous peoples.”

The indicator, question and response options align with the FAO Legislation Assessment Tool (no. 27).

6.5. Do national laws make provisions for legal support in civil procedures?

Yes, primary law

Legal support measures

Guidance

Availability and clarity of information on how to access legal proceedings and provisions for access to legal support including the conditions for receipt of legal aid are essential for vulnerable groups to access justice.

From a human rights perspective, legal support (including legal advice and representation) is essential for ensuring access to justice and the right to remedy, in particular for those who experience, or are at risk of experiencing, discrimination, but also in general for all rights-holders.

VGGT paragraph 6.6. specifies that “States and other parties should consider additional measures to support vulnerable or marginalized groups who could not otherwise access administrative and judicial services. These measures should include legal support, such as affordable legal aid, and may also include the provision of services of paralegals or parasurveyors, and mobile services for remote communities and mobile indigenous peoples”.

6.6. Is information on how to access legal support for civil proceedings publicly available?

Partially, some information is made available but the information is not complete or fully available

Is it made accessible:

In formats other than writing (such as audio or visual)? No

In languages spoken by minorities in the country? No

How is it made accessible? (click the answer that applies)

On a website available to anyone searching for it

Does it cost anything to get this information? (click the answer that applies)

No, it is free of cost

6.7. Are there specific provisions for access to legal support for vulnerable individuals and groups?

Yes

6.8. Is legal support made accessible to all who would not otherwise be in a position to access legal proceedings because of cost?

Yes. The threshold and conditions for receipt of legal aid ensures that all relevant groups who would not be able to access legal proceedings because of cost are able to qualify for receipt of legal aid.

6.10. Are legal support services funded and staffed sufficiently to meet the needs of all those seeking legal support?

Partially, there are some gaps in funding and staffing

7. Prevention of corruption

No corruption principles in land legislation



Compliant Some issues Non-compliant Not answered

The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

No corruption principles in land legislation

Guidance

Multiple sections of the VGGT specify how the State should endeavour to prevent corruption in the governance of tenure. It is an overarching principle of responsible tenure governance (VGGT section 3A), and the VGGT specifies that the State should endeavour to prevent corruption in relation to policy and decision-making processes (5.8), in the delivery of services (6.9), in the allocation of tenure rights, in relation to customary tenure systems (section 9.12), and informal tenure (10.5), markets (11.7), redistributive reform programmes (15.9), in processes related to expropriation and compensation (16.6), in the recording of tenure rights (17.5), in taxation administration (19.3), in spatial planning (20.4), and in dispute resolution processes (21.5).

This question aligns with LANDex 8A block 3 question 2.

7.1. Are principles of no tolerance to corruption embedded in national legislation, related specifically to land or otherwise?

Yes

8. Promotion of responsible investments

National Action Plan on Business and Human Rights



Compliant Some issues Non-compliant Not answered

The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

National Action Plan on Business and Human Rights

Guidance

It would be a sign of efforts towards promoting responsible investments and implementing state obligations to protect and business obligations to respect human rights if a National Action plan on business and human rights exists and includes action points related to land tenure, property and resource rights and human rights due diligence of business activities.

8.1. Is there a National Action Plan (NAP) on business and human rights?

No, there is no NAP on business and human rights

8.2. Does the plan include action points related to land tenure, property and resource rights?

Not in focus

8.3. Does the plan include action points on human rights due diligence/impact assessment?

Not in focus

8.4. Are there specific initiatives in place to implement the action plan?

Not in focus

9. Protection of human rights defenders

Recognition of human rights defenders

1

Recognition of human rights defenders



The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Recognition of human rights defenders

Guidance

This indicator measures whether the role of human rights defenders is recognised in national law or policy and whether these include land rights defenders.

Recognising the role of human rights defenders in the promotion of human rights, democracy and the rule of law is an essential component of ensuring their protection.

9.1. Are there provisions in national legislation or policy that recognize human rights defenders, including land and environmental defenders, as persons who, individually or in association with others, promote and strive for the protection and realisation of human rights

Partially

Recognition of human rights defenders

Guidance

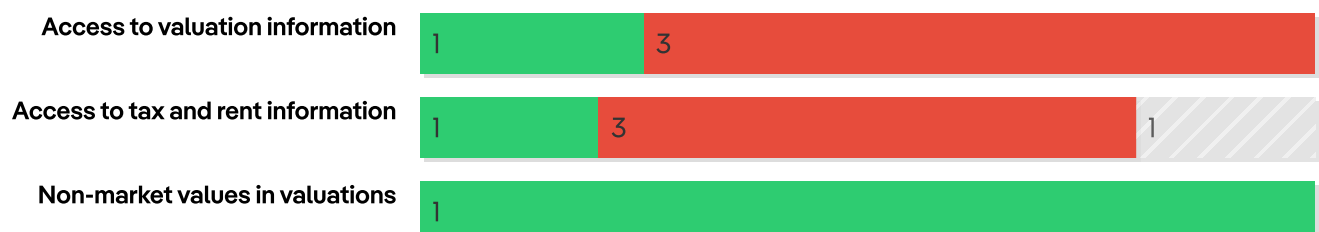
This indicator aligns with the global SDG indicator 16.10.1 which focuses on the number of verified cases of killing, enforced disappearance, torture, arbitrary detention, kidnapping and other harmful acts committed against journalists, trade unionists and human rights defenders on an annual basis. The focus here is on human rights defenders in land and natural resource matters.

The binding regional treaty “Regional Agreement on Access to Information, Public Participation and Justice In Environmental Matters in Latin America and the Caribbean”, known as [the Escazú Agreement](#), from 2018 Article 9 specifies that States shall take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer.

9.2. Have there been any verified cases of the following against human rights defenders working on issues related to land or natural resources over the last three years in this community

Not known

10. Taxation and valuation





The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Access to valuation information

Guidance

Valuations are important in ensuring fairness when dealing with exchanges and acquisitions of land tenure rights. Valuations are required by governments for taxation, spatial planning, calculation of compensation for expropriation, and infrastructure development among other important aspects. Reliable and transparent valuations can provide reassurance to individuals and businesses regarding the fairness of transactions in tenure rights and help reduce disputes.

The VGGT section 19 specifies that “assessments of valuations and taxable amounts should be made public”. This links to the right to information and the human rights principles of transparency and accountability which have been identified as among the key attributes of good governance by the Human Rights Council.

The indicator aligns with LGAF Module 7 part 1.1.2 “Valuation rolls are publicly accessible”.

10.1. Are valuations of land, property and natural resources made publicly available?

Partially, some valuation information is made available, but the information is not complete or fully available

Are they made accessible:

In formats other than writing (such as audio or visual)? No

In languages spoken by minorities in the country? No

How are they made accessible? (click the answer that applies)

On request - it generally takes at least a few weeks after request/or it is not unusual that documents/information cannot be produced in response to a request

Does it cost anything to get this information? (click the answer that applies)

No, it is free of cost

Access to tax and rent information

Guidance

The VGGT section 19 on taxation specifies that “assessments of valuations and taxable amounts should be made public”. This links to the right to information and the human rights principles of transparency and accountability which have been identified as among the key attributes of good governance by the Human Rights Council.

Taxation is also an important tool for raising resources for human rights realisation and ensuring that rights-holders benefit from investments and economic development. The International Covenant on Economic, Social and Cultural Rights (ICESCR) states that: ‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’ (article 2.1). This means that states have a duty to ensure that they have the maximum available resources to progressively realise human rights, meaning they should ensure their domestic resource (among other things, tax) mobilisation is fit for purpose to raise the adequate funds.

10.2. Is national land tax and rent information made available to the public?

No, it is not publicly available

Is it made accessible:

In formats other than writing (such as audio or visual)? No

In languages spoken by minorities in the country? No

How is it made accessible? (click the answer that applies)

Not relevant

Does it cost anything to get this information? (click the answer that applies)

No, it is free of cost

Non-market values in valuations

Guidance

The VGGT paragraph 18.2 underlines that “policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable”.

Market value is value-in-exchange and mainly influenced by the economic benefits that the tenure rights are capable of generating. Market values (or prices) are revealed when tenure rights are exchanged.

Non-market value reflects non-economic qualities including social, cultural and environmental benefits that the tenure rights confer. An example of non-market value might be value that is ascribed to a community’s ancestral land.

10.3. Do the standards/method for valuation of land tenure rights take into account market values and non-market values such as social, cultural, religious, spiritual and environmental values where applicable?

Yes, the standards/method takes into account non-market values

Right to appeal valuations

Guidance

Section 16.6 of the VGGT specifies that "All parties should endeavour to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal”.

10.4. Do national laws provide for a right to appeal a public valuation of land, property and natural resource?

Yes, the law fully provides for a right to appeal valuations

11. International cooperation

Conflict related to cross-border activities

1

Agreements on cross border tenure rights

1

 Compliant Some issues Non-compliant Not answered

The diagram shows the number of compliant issues for each indicator. The length of the bar is in relation to total number of questions

Conflict related to cross-border activities

Guidance

This indicator is relevant in situations where communities in the country traditionally or customarily uses land and resources across nation state boundaries. It aims to capture whether they have been prevented from doing so, or restrictions have been placed on these activities. This would apply to transhumant, fisher, pastoralist and hunter-gatherer communities who use land on a seasonal basis.

11.1 Are there customary activities relating to land and resources that take place across nation state boundaries?

No

11.2 Have there been incidences of these activities being restricted or prevented

Not in focus

Agreements on cross border tenure rights

Guidance

This indicator concerns agreements protecting the tenure rights of communities that use and access land and resources across borders. This would apply to transhumant, fishing, pastoralist and hunter-gatherer individuals and communities who use land and resources on a seasonal basis.

11.5. Are there bilateral agreements guiding the governance of customary tenure rights that cross international boundaries?

No. There are no bilateral or regional agreements to protect customary tenure rights that cross international boundaries.