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SUSTAINING LAND GOVERNANCE REFORMS

Lessons from the European Union Land Governance Programme

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and the Framework and Guidelines on Land Policy in Africa (F&G) are important international and continental instruments for improving the governance of tenure of land, fisheries and forests for improved food security and nutrition. They are useful for dealing with the many tenure challenges confronting developing countries and set the standards and frameworks for improvement. Through the European Union Land Governance Programme these instruments are applied in 18 countries dealing with country-specific tenure challenges. This policy brief discusses the key tenure challenges that arose, the achievements in project implementation, key lessons learned and emerging issues that affect tenure governance. It calls for sustained political will and commitment of policy-makers as well as long-term engagement of development partners in tenure reforms.

Introduction

Land is a major contributor to the social and economic development of many countries in Africa. Its long-term management and use have a profound effect on the environment as well. The livelihoods of millions of people depend on secure and equitable access to land, fisheries, forests and other natural resources. They are the source of food and shelter, the basis for their social, cultural and religious practices, and a central factor in economic growth. However, a considerable percentage of these lands (more than 60 percent of lands in sub-Saharan Africa) are held under customary arrangements, posing particular challenges for tenure security that may come from external interests in their lands. In such communities, security of rights to land depends on the legitimacy accorded by the social norms of the community and not on documentary proof of rights to the land. Inadequate and insecure tenure rights to land and other natural resources often exacerbate poverty and food insecurity, which is worsened in situations of weak tenure governance, land related conflicts and unaccountable systems.

Consequent to the endorsement of the VGGT (FAO-CFS, 2012) by the Committee on World Food Security (CFS) in May 2012, the European Union (EU) initiated a land governance programme, supporting 18 countries globally (14 in Africa – see Figure 1) to promote the use of this international instrument to improve governance of tenure in the respective countries.

In Africa, the application of the VGGT was complemented with the F&G (AUC-ECA-AfDB Consortium, 2010), through the Declaration on Land Issues and Challenges in Africa (African Union, July 2009).

Key messages

Sustain land issues at the heart of the development agenda through sustained political will, commitment and drive from policy makers to maintain the momentum and effort towards tenure reforms.

Continuous capacity development at all administrative and community levels for responsible land governance, based on assessments, to address the shortfall in the required capacities.

Promote the use of fit for purpose technologies and methodologies to accelerate the process of securing tenure rights for all, using innovative solutions to meet specific needs.
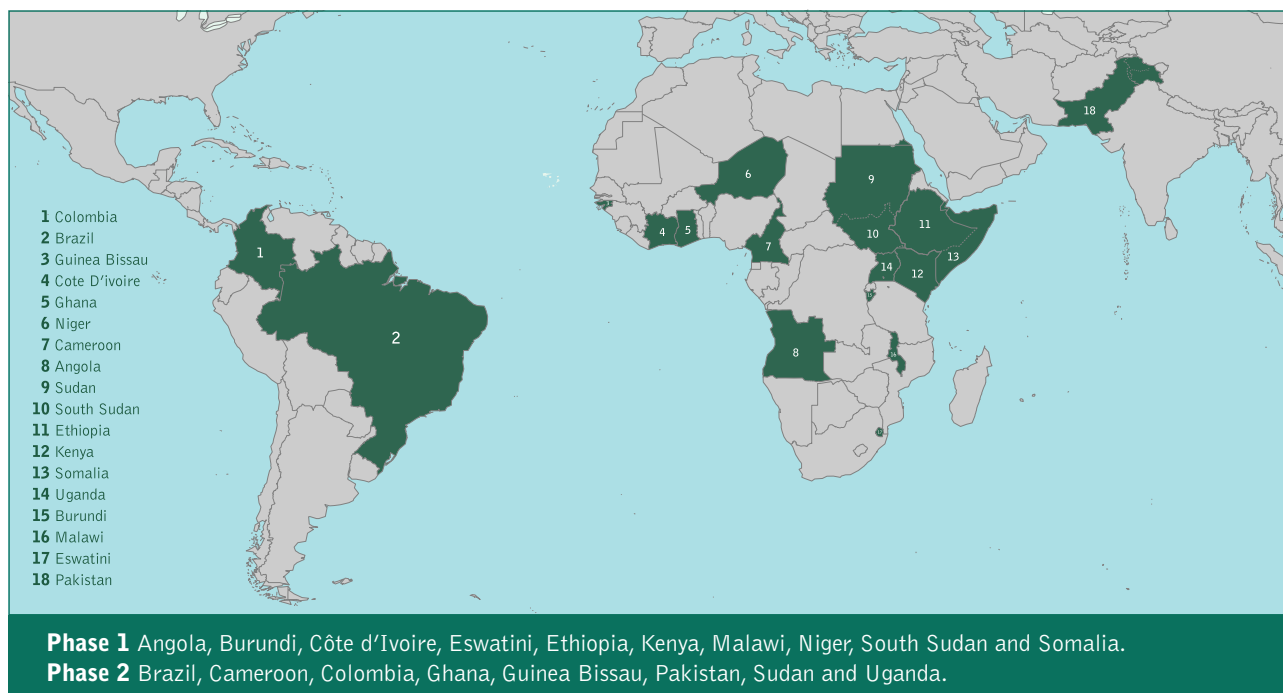
Fix gaps in existing legal and institutional frameworks through comprehensive legal and institutional assessments to identify weaknesses, overlapping institutional mandates, and appropriate structures and frameworks.

Integrate gender and women's land rights issues in all land governance reform programs including in laws, institutions and customary practices to guarantee women's land rights.

Integrate customary tenures in formal land administration systems through institutional and legal reforms and capacity development.

Encourage development partners to sustain their support for tenure governance reforms over long-term, while governments are encouraged to sustain the political will, commitment and increase budgetary support to improving the governance of tenure.

Figure 1 - Transversal projects

1 Colombia
2 Brazil
3 Guinea Bissau
4 Cote D'ivoire
5 Ghana
6 Niger
7 Cameroon
8 Angola
9 Sudan
10 South Sudan
11 Ethiopia
12 Kenya
13 Somalia
14 Uganda
15 Burundi
16 Malawi
17 Eswatini
18 Pakistan

Phase 1 Angola, Burundi, Côte d'Ivoire, Eswatini, Ethiopia, Kenya, Malawi, Niger, South Sudan and Somalia.
Phase 2 Brazil, Cameroon, Colombia, Ghana, Guinea Bissau, Pakistan, Sudan and Uganda.

Source: FAO, 2020, conforms to Map No. 4170 Rev. 19 UNITED NATIONS October 2020

The boundaries and names shown and the designations used on this map do not imply the expression of any opinion whatsoever on the part of FAO concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers and boundaries. Dashed lines on maps represent approximate border lines for which there may not yet be full agreement.

The VGGT are a soft law instrument with persuasive effect and they, with a human rights lens, set the standards and frameworks for improving governance of tenure, land policy frameworks, land administration systems, land use planning, etc. They signify global engagement for dealing with challenges of tenure governance by promoting transparent and accountable tenure structures and administrations at all levels of governance.

The projects

The European Union Land Governance Programme (EULGP) focuses on country-specific tenure challenges (discussed below) with the overall objective of contributing to the eradication of hunger and poverty, to sustainable development and to the sustainable use of the environment[1].

This is to be achieved by improving secure access to land, fisheries and forests and protecting the legitimate tenure rights of millions of people, recognizing that:
- The eradication of hunger and poverty, and the sustainable use of the environment, depend in large measure on how people, communities and others gain access to land, fisheries and forests.
- The livelihoods of many, particularly the rural poor, are dependent on secure and equitable access to land resources.
- Many tenure problems arise because of weak governance, and the quality of governance affects the attempts to address tenure problems.

The EULGP also includes the FAO transversal project[2], which provides support to the country-level projects in capacity development, the capitalization of experiences and documentation of lessons learned, support for monitoring and evaluation (M&E). It also provides a platform, through capitalization meetings and an online forum, for exchange of experiences, lesson learned and capacity development. Lessons learned, experiences gained, best practices and challenges encountered in the implementation of the projects are documented to aid policy and legal reforms, institutional and organizational improvements, advocacy and ensuring that the VGGT and F&G principles underpin improvements in land governance to achieve food security and nutrition, tenure security and environmental sustainability. In addition, key emerging issues likely to impact the sustainable governance of tenure are identified and documented. FAO and the Land Policy Initiative (LPI)[3] joined forces for a cohesive application of the F&G and of the VGGT in the projects in Africa.

[1] The detailed project documents for all the countries are available at www.africalandlandpolicy.org/eu-programme.
[2] Support to and capitalization on the EU Land Governance Programme (Phases I & II) are available at www.africalandpolicy.org/eu-programme.
[3] The LPI was created in 2006 through a consortium of the African Union Commission, the United Nations Economic Commission for Africa (ECA) and the African Development Bank (AfDB) to provide support to Member States in land policy formulation, implementation and monitoring and evaluation.

Key tenure challenges

The key tenure challenges addressed by the projects are country specific but can be clustered into the following:

- Inadequate legal, administrative and institutional framework for land governance, typified by absence of comprehensive land policies and lack of implementation of land laws where they exist – the situations in Eswatini, Malawi, Kenya, Burundi and Angola.
- Low capacity in all the countries – human, institutional, technological and financial – for effective improvement in the governance of tenure. They included capacities of national and local government structures, municipal administrators, customary institutions and civil society organizations (CSOs). The situation is worsened by institutional uncertainty, inadequate coordination amongst different government institutions, overlapping, scattered and unclear mandates, and lack of division of roles and responsibilities amongst government agencies, capacity gaps and high staff turnover.
- Legal recognition of customary tenures and administrative structures for the governance of tenure, particularly pastoral tenures and forest tenures. More than 60 percent of land in all the project countries in Africa are managed under customary structures. In these countries, customary tenures overlap with statutory tenures, creating sources of disputes between the two systems. Generally, there are challenges in reforming customary tenures and integrating customary institutions into statutory structures, whilst land policy is not always developed in a way that reflects traditional customary practices.
- Gender inequalities, in all the countries, in the governance of tenure, including lack of security of women's land rights, low participation and representation of women in capacity development and tenure governance activities, and lack of solutions for securing the land rights of women.
- Tenure related disputes between the state and local communities regarding state lands, between communities regarding ownership, boundaries and access to land, land uses between pastoralists and sedentary farmers, and between small scale fisherfolk and real estate developers along fish landing beaches. These were observed in Burundi, Côte d'Ivoire, Ghana, Kenya, Niger, Sudan, Uganda, Colombia and Pakistan.
- Weak and manually operated land information systems in all the countries, which are not current nor up to date on information, seriously undermining the effective administration of the tenures. Less than 10 percent of the rural lands in the countries are recorded in government land registration systems.
- Weak institutional framework and coordination challenges for the management and monitoring of responsible agricultural investments in Ethiopia.
- Low recognition of pastoralism and weak governance of pastoral resources in Niger – routes, access to water and water points, safeguarding pastoral spaces and resources needed for breeding purposes, veterinary services points, etc., land use and tenure conflicts, absence of accurate mapping of the pastoral resources and safeguarding the pastoral routes for sustainability.

Key achievements

The projects have made significant contributions to food security and nutrition through improved governance of tenure of land, fisheries and forests. The key achievements are summarized below:

- Principles of responsible governance of tenure were integrated into local, national and regional level policies and programmes in all the countries, ensuring that the VGGT and F&G are used to capacitate key stakeholders and secure legitimate tenure rights. These principles included non discrimination and consultative processes; respect for human dignity; gender equality; transparency, accountability, inclusiveness, participation, holistic and sustainable approaches and continuous improvement through effective monitoring and evaluation. They led to the recognition, protection and promotion of enjoyment of legitimate tenure rights. More than 80 percent of disputes were resolved at the community level using Alternative Dispute Resolution (ADR) mechanisms in Côte d'Ivoire, Uganda, Burundi and Eswatini.
- Human capacities were developed across the board – local communities, CSOs, government agencies, customary authorities. Key areas included understanding the application of the VGGT and F&G to improve the governance of tenure, gender issues and women's land rights, principles of Free, Prior and Informed Consent (FPIC) in land administration, securing and recording the legitimate tenure rights of land users and safeguarding legitimate tenure rights in agricultural investments. The project raised awareness of more than 2 000 people at high level meetings to increase the knowledge of policy makers, continental institutions and key stakeholders on the importance of using the VGGT and the F&G in an integrated way to improve the governance of tenure. Capacities of 735 change agents (30 percent women) were developed. This formed a critical mass of well capacitated beneficiaries around whom tenure reforms could be woven for sustainable change. The change agents are from government institutions, civil society, private sector and customary institutions. All the countries participating in the Programme had their capacities developed and their knowledge base increased. Additionally, 4 197 persons (31 percent women) were reached through the dissemination of knowledge products including the VGGT and F&G and their technical guides. The translation of the VGGT from English into Amharic enhanced uptake and usage to improve responsible agricultural investments in Ethiopia.

- Innovative approaches (fit for purpose) in using enabling technologies were used for mapping, recording and management of tenure rights, generating good quality data for tenure governance. Most of the projects used open source software for the recording of customary rights and their administration and to meet country-specific needs and requirements. These included QGIS in Burundi, STDM (Social Tenure Domain Model) in Kenya, FAO's Open Tenure in Angola and for clam fisheries tenure in Ghana and ODK (Open Data Kit) in Eswatini. The mapping and recording of community/customary rights improved security of tenure and reduced land related disputes in Angola, Burundi, Côte d'Ivoire, Eswatini, Ghana, Malawi, Niger and Uganda.
- In Angola, more than 50 community lands were delimited to secure them and create tenure security for the users. In Burundi, 1 552 public lands in five communes covering 11 470 ha were inventoried, reducing conflicts associated with the use of public lands and ensuring tenure security for the land users. In Eswatini, 13 174 homesteads and 17 400 land parcels were mapped and recorded in 21 chiefdoms in four pilot regions. This improved the security of tenure for the land users, with the potential to increase investment and productivity of the land. In Niger, 7 756 out of 11 404 (68 percent) pastoral resources in agricultural zones were inventoried, creating certainty for the use of pastoral lands and reducing conflicts between pastoralist and sedentary farmers.
- Open discussions on the importance of improving the governance of tenure, its linkages to social and economic development and for the sustainable use of the environment as well as the necessity to recognize and protect women's land rights were carried out at country level. By so doing, some of the complex tenurial issues were untangled and demystified – sensitivities of tenure discussions, uncertainty of tenure rights, complex tenure and gender relationships, improved certainty of tenure rights and reduction of tenure related conflicts. Legal recognition of customary rights and registration of the same with certificates of title were undertaken in Côte d'Ivoire, Angola and Malawi.
- A transversal learning platform enabled the sharing of experiences and lessons learned in improving the governance of tenure among the project countries, thereby fostering a good network among the project implementers for continuous learning and exchanges. The platform also enabled monitoring of project implementation at country level, capitalizing and documenting of success stories, peer learning and sharing of experiences.

Lesson learned

The wide range of key lessons learned and experiences could form the basis for sustaining improvement in the governance of tenure, land administration frameworks and multi-stakeholder and participatory processes and for dealing with the issues and challenges that emerged:

- The VGGT and the F&G are valuable tools for generating evidence to convince governments to improve land governance and land administration at country level. Awareness creation and advocacy for responsible land governance should be sustained at all times.
- Amendments of existing legislation and policies or formulation of new ones should be based on identification of existing gaps and available evidence based information and done in close collaboration with the affected local communities through participatory and inclusive processes.
- Institutional stability is fundamental for implementing changes and improving tenure governance. Institutional frameworks should provide clear structures at both the national and local level. There must be a clear division of responsibilities and roles to avoid lack of coordination between and within institutions and departments providing land services.
- Women's participation in land governance processes is still minimal in many countries and promoting women's land rights requires more advocacy.
- Functioning customary institutions play a critical role in managing tenure rights. It is therefore important to ensure that the practices are grounded in the statutory laws such as the case with the Community Land Act of Kenya, 2016 and the Customary Land Act of Malawi, 2016.
- A well functioning land registry forms one of the key infrastructure pillars for a good land administration system. It requires sustained political will, dedication of financial and competent human capacities, and a valid legal basis to support the system.
- In order to establish an effective and accessible tenure governance system, decentralization of land-related services to local authorities is important. Local land commissions or boards responsible for land governance are necessary for efficient decentralization.
- Involvement of affected landowners and local communities are a prerequisite for successful mapping and recording of land rights. Participatory and systematic demarcation techniques are useful in this regard. They ensure legitimacy and acceptability of the results, creating a more sustainable land administration system.
- Capacity development should be comprehensive and target all key stakeholders. They should be conducted from the outset and throughout project implementation. Tailored trainings enhance performance; specific modules should therefore be developed to target all stakeholders, making use of VGGT and F&G capacity development tools.
- Participatory and inclusive processes involving all stakeholders improve project ownership and achieve positive results in project initiation and implementation.

Emerging issues

A number of issues emerged which are essential to establishing sustainable land administration systems for all countries and should be addressed:

Climate change, resilience and adaptation

Climate change is very likely to cause disruptions in existing tenure arrangements as local communities struggle to cope and adapt to its effects – floods, droughts, land degradation, migration to more habitable environments, etc. Governance of tenure should include considerations regarding climate change, and determination and evaluation of possible climate related impacts on natural resources with appropriate policies that secure the rights of the land users and increase their resilience related shocks.

Migration and land governance nexus

Migration is a response to a number of factors that either attract migrants from the rural areas to urban areas, push them away from the rural areas or move them from one rural community to another. Poor governance of tenure leading to insecure tenure rights is likely to be one of the many factors that underlie migration. Responsible governance of tenure would require transboundary administration of tenure related to migration, land use changes, and tenure related conflicts between states.

Preserving agricultural land uses

Rapid urbanization and increasing population growth put high pressure on agricultural land, particularly in the peri urban areas, leading to loss of agricultural lands needed to feed the cities. Effective and participatory land use planning and management should form part of the responsible land governance practices to ensure preservation of agricultural lands.

Youth involvement in responsible land governance

The youth is a key component and player in responsible land governance. Their involvement in the decision-making processes is crucial to ensure peace and stability in the local communities. They are also important in modernizing agriculture and raising productivity. Youth involvement in land governance and access to land for youth are, however, limited in many countries. Youth involvement should be integrated in all responsible land governance programmes.

Policy recommendations

The VGGT and F&G are game changers and their application is endorsed in these recommendations.

Sustain political will

Sustain land issues at the heart of the development agenda through sustained political will and drive from policy-makers, awareness raising and advocacy necessary to maintain the momentum and effort towards tenure reforms, integrating them into policy processes and linking the same to the long-term vision of the land sector. Governments should be prepared to increase budgetary support for improving the governance of tenure. Where relevant, technical activities should be used as entry points for reforming policies.

Continuous capacity development

Continuous capacity development at all administrative and community levels for responsible governance of tenure, based on capacity assessments, to meet the shortfall in the required capacities. This remains a main challenge for sustainable tenure governance.

Increasing use of fit-for-purpose technologies and methodologies

Promote the use of fit-for-purpose technologies and methodologies to accelerate the process of securing tenure rights for all, using innovative solutions to meet specific needs. This means that the chosen technology and methodology should not be more advanced than needed at the moment, as long as the approach is sufficient and scalable when future adjustments are needed.

Improve legal and institutional framework

Fix gaps in existing policies, legal and institutional frameworks through comprehensive assessments to identify the weaknesses, overlapping institutional mandates, and appropriate structures and frameworks to be established, as this is essential in ensuring responsible tenure governance.

Gender equity

Integrate gender and women's land rights issues in all land governance reform programs including in laws, institutions and customary practices to guarantee women's land rights and to enable rural women to access opportunities associated with secured tenure. More women should be involved in the decision-making processes regarding the governance of customary tenures, especially those living in communal lands. Capacity development should also target changes in attitude, behavior and customs to reduce culturally related resistance and discrimination to improve gender and women's land rights.

Integration of customary tenure

Integrate customary tenures in formal land administration systems through institutional and legal reforms and capacity development. Resistance from various actors, including traditional leaders and communities should be removed. Sufficient support and resources should be allocated to support these efforts.

Long-term engagement of development partners

Development partners are encouraged to sustain their support for tenure governance reforms over long-term, while governments are encouraged to sustain the political will,

commitment and increased budgetary support to improving the governance of tenure. Tenure governance systems are complex and require long-term engagements to ensure that the needed reforms and improvements are maintained.

One off projects may achieve results in localized communities and may catalyse reform processes, but they are not enough to sustain the results. Partners should be prepared to engage for much longer periods.

Acknowledgements

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