



Process for CFS Intergovernmental Negotiations on the Voluntary Guidelines (VG) for the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security

Dr. Gregory Myers, Chair of The Open-Ended Working Group - VG

12 December 2011

This process letter advises Members and Participants on the next round of negotiation for the Voluntary Guidelines, and strategy for on-going work of the Language Harmonization Group.

I am happy to announce that upon unanimous agreement the Bureau for the Committee on World Food Security (CFS) has decided to re-convene the Intergovernmental Negotiation on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VG) at UN FAO in Rome, Italy, 5-9 March 2012. I applaud the commitment of the Bureau and the Regions they represent to complete the negotiations during this period. The goal of the negotiations is to reach agreement on a final version of the Voluntary Guidelines in English by Friday, 9 March 2012. The final document will then be translated into all official languages before it is considered for adoption by a special Session of CFS tentatively planned during the week of 14-18 May 2012.

As with the meetings in July and October, the Intergovernmental Negotiation will follow the rules established by the reformed CFS, and implemented by the Open Ended Working Group (OEWG) on the Voluntary Guidelines. The Intergovernmental Negotiation will be opened and closed by the Chair of the CFS, Ambassador Yaya A.O. Olaniran, and negotiations will be facilitated by the Chair of the OEWG, Dr. Gregory Myers. As in the past, Dr. Myers will be assisted by the Chair's Representative, Ms. Elisabeth Kvitashvili.

The CFS Bureau has also unanimously decided that negotiations will be conducted during ten sessions over five days (preferably without evening sessions). Each session will last 3 hours, and will be translated in all official languages. The Technical Secretariat will engage in a proactive manner when called upon, and will also provide scribing services to capture amendments to the Voluntary Guidelines. Negotiation in Plenary will be conducted in all Official languages.

The negotiation will work with the consolidated First Draft of the Voluntary Guidelines, produced by the Secretariat and available on the CFS website (<http://www.fao.org/cfs/cfs-home/land-tenure/en/>), which presently has the following notations:

1. Text discussed and approved in plenary is marked by the Secretariat in asterisks.
2. Text approved in working or thematic groups during the July and October negotiations but not yet seen in plenary is shown in brackets by the Secretariat along with the name of working or thematic group that made the proposal.
3. Text discussed but for which no consensus was achieved, either in plenary or in working or thematic groups, is highlighted in yellow by the Secretariat.
4. Text not negotiated in July or October in plenary is unmarked in the document.

The negotiations in March will advance sequentially, beginning with section 4 (paragraph 4.9) of the Voluntary Guidelines and progress forward to the end of the document. Text agreed to in plenary in July and October (marked by asterisks by the Secretariat) will not be reopened by the Chair.

As the negotiations proceed, the Chair will ask the Secretariat to introduce each section as it arises. The secretariat will be asked to outline the principles of each section and to point out previous references to this principle to guide the plenary which are the new aspects that still need to be discussed. Then the Chair will move through each paragraph of that section asking Participants and Members for changes, amendments, or deletions. Changes, amendments, or deletions will be captured by the scribes in text. Those changes not contested by Members will be accepted. If different or multiple suggestions are made for the same section, the Chair will facilitate a negotiation. The Chair will announce when the body is seeking consensus among Members.

The Chair of the Intergovernmental negotiation (OEWG) will continue to be assisted by Friends of the Chair (FoC). This FoC group may consist of the CFS Chair, the OEWG Chair, Chairs of the Regional Delegations, the Civil Society Mechanism Coordinator and the CFS Bureau. At his discretion, the OEWG Chair may call upon the FoCs or other Members and Participants to assist with reaching agreement on language if agreement cannot be reached during the negotiations in Plenary. In such situations, the FoC moderating such a discussion should verify if the consensus reached is also supported by other countries/regions to allow for easy adoption in plenary. The discussions will be held without formal interpretation. While this resolution is taking place, the Plenary will continue.

The OEWG Chair will call upon the Language Harmonization Group (LHG) to assist with ensuring that language, once agreed to, is consistent throughout the document, and to assist with reaching agreement on the annexes. Any Member or Participant may volunteer to assist with the Language Harmonization Group; however, the Chair will ensure broad-based participation in this group to facilitate its work. Discussions in the Language Harmonization Group will be conducted in all official languages.

Any consensus reached in the Language Harmonization Group or by any FoC will be submitted to the Plenary of the Intergovernmental Negotiation to be adopted.

The CFS Bureau has determined that the LHG may continue its work under the supervision of the Chair of the OEWG and led by FoC Mr. Michael Windfuhr over the next several weeks before reconvening of the Intergovernmental Negotiations in March. A number of Members and Participants already stated their interest to be involved in the e-discussion (see below). Others are invited to join by sending an email to VG-Tenure@fao.org, stating their interest to participate.

The LHG will operate prior to the next round of negotiations of the VG in the following way:

With regard to Annex 1 (Glossary) of the Voluntary Guidelines:

- The LHG will hold a first round of electronic consultations on the terms to be included in the glossary (proposed list see Annex 1) between 15 and 31 December. During this period members of the LHG may comment on the inclusion/exclusion of terms in the glossary. Comments should be sent to the following email address: VG-Tenure@fao.org
- Following this, the Technical Secretariat in cooperation with OHCHR will post a revised Glossary with the selected terms and their definitions on 16 January.
- Between 16 and 31 January, members of the LHG may comment on definitions via the same electronic process.
- These comments will be presented to all CFS members and participants for consideration 3 weeks before the start of the next round of negotiations in March (approximately by 13 February 2012).

With regard to Annex 2 (List of Instruments) of the Voluntary Guidelines:

- The VG Secretariat and the OHCHR will prepare a revised list of instruments as requested by LHG in October by 31 December.
- In January 2012, the members of the LHG may comment on this revised list. Comments should be sent between January 1 and 31 to the following email address: VG-Tenure@fao.org

- In February 2012, VG Secretariat and the OHCHR will prepare another revised list of instruments based on the comments from the LHG in January.
- The Chair of the OEWG will post to the CFS and Permanent Representatives' websites a revised Annex 2 three weeks prior to the next round of negotiations in March.

The Chair of the OEWG strongly urges Participants and Members to review the consolidated First Draft, posted on the CFS website in all official UN languages, prior to the negotiations in March and to take note of the fact that approximately 50 paragraphs remain to be negotiated. In doing this, the Chair of the OEWG supports the CFS Bureau proposal to use the time between now and March to hold informal consultations among and between regional groups to identify and discuss any controversial issues which would help advance the negotiations in March. All delegations are urged to arrive with clear instructions/mandate to finalize the Voluntary Guidelines, and are encouraged to work with Regional Chairs.

I wish to re-iterate the historic importance of completing the negotiations. This will constitute an important step towards improving the lives and livelihoods of many we endeavor to help around the world.

In closing, I also wish you all warm regards as we close 2011 and best wishes as we start a new year. I look forward to seeing you all in March.

Kind regards,

A rectangular box containing a handwritten signature in black ink that reads "Gregory Myers".

Gregory Myers
Chairperson
Open Ended Working Group on Voluntary Guidelines
on the Responsible Governance of Tenure of Land, Fisheries, and Forests
in the Context of National Food Security

Annex I: Glossary Content

During the October negotiations, the LHG identified the following terms that should be maintained in the glossary (although not all will require a definition).

- Discrimination
- Expropriation and compensation (check later, if the VG-Text is sufficient)
- Forced eviction
- Gender sensitive
- Governance
- Human Rights
- Human Rights defenders
- Implementing agencies
- Investments (check later, if the VG-Text is sufficient)
- Land consolidation and readjustment
- Land, forests, fisheries and pastoralists
- Land markets (check later, if the VG-Text is sufficient)
- Redistributive reforms (check later, if the VG-Text is sufficient)
- Restitution (check later, if the VG-Text is sufficient)
- Rule of law
- Sustainable development (best taken from Rio declaration 1992)
- Tenure, subsidiary tenure rights, customary tenure rights, informal tenure rights

All other terms were seen as unnecessary. Some terms we negotiated in the LHG and only need to be approved in plenary. Others still need to be negotiated in the LHG. The LHG may remove some additional terms from the Glossary if it determines that they are sufficiently defined in the text of the VG. In the first round of electronic consultation this list shall be open for amendments by Members and Participants in the negotiations.

Principles for Defining Terms

The LHG also discussed and agreed to the following principles for defining terms in the Glossary:

- (1) The definitions should be as short as possible.
- (2) The terms should be relevant for the use in the Voluntary Guidelines; other broad and general terms do not need to be defined here.
- (3) They should be based on the most accepted source of international law or practice (agreed language for definitions)
- (4) Where relevant, the most recent international law text should be used.
- (5) The terms should be defined in a way that is not policy prescriptive (such as “states should”).
- (6) Where a term has been defined in the negotiations of the VG, the term should be taken out of the Glossary in order to avoid a second round of negotiation on the same term.
- (7) If the Voluntary Guidelines use a term different from the agreed international definition it should be explained why it is used differently.

These principles should be explained in a chapeau to the glossary.

Annex 2: LHG members who so far indicated interest to participate in e-discussion

The following persons have indicated that they would like to be on the electronic discussion and exchange list; however it is incumbent on these individuals and any other Members and Participants to submit comments directly to the LHG at the email address noted above.

Catherine.ivkoff@international.gv.ca (Catherine E. Ivkoff, Canada)
stemmetpa@foreign.gov.za (André Stemmet, South Africa)
sullivanDB@state.gov (David B. Sullivan USA)
jmunoz@worldbank.org (Jorge A. Muñoz, World Bank)
patrice.talla@fao.org (Patrice Talla, FAO, legal office)
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