



## **Outcome document of consultation meetings**

# **Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources**

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# Contents

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- 1. Introduction**
- 2. Regional, Civil Society and Private sector consultation outcomes**
  - I. Overarching objectives and principles
  - II. Policy, legislation and organizational frameworks
  - III. Technical areas
  - IV. Social Issues
  - V. Challenges
- 3. Next steps**

## Introduction

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FAO (Food and Agriculture Organization of the United Nations) and other development partners have been working together with countries to prepare *Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources* that will provide practical guidance to states, civil society and the private sector on governance of tenure. By setting out principles and internationally accepted standards for responsible practices, the Voluntary Guidelines will provide a framework and point of reference that stakeholders can use when developing their own policies and actions.

The Land Tenure Team of the FAO's Climate, Energy and Tenure Division (NRC) of the Natural Resources and Environment Department (NR) has conducted normative work on governance of tenure since 2005. The work on Voluntary Guidelines started in November 2008 with an Expert Group Meeting organized in Rome. The financial support given by IFAD and the governments of Germany and Finland made possible the establishment of a trust fund project, the main objective of which is the development of the Voluntary Guidelines. A series of multi-stakeholder discussions in thematic and regional consultation meetings took place between 2009 and 2010. These meetings brought together regionally representative, multidisciplinary groups to assess regional priorities and issues that should be considered when the Voluntary Guidelines are drafted.

This document synthesises the outcomes from the regional, civil society and private sector consultations held between 2009 and 2010 for the Voluntary Guidelines. The outcomes of each consultation meeting have been compiled into assessments which are available online<sup>1</sup>. They highlight the key principles and the strategic actions proposed in the meeting to be addressed and included in the Voluntary Guidelines. This *Outcome Document* serves to consolidate these results into a single volume providing the starting base for the drafting of the Voluntary Guidelines for the review of the open-ended working group of the Committee for World Food Security (CFS).

The outcomes of the following consultations were reviewed for this synthesis:

- **Southern Africa**, Namibia (September 2009);
- **Asia**, Vietnam (October 2009);
- **Private Sector**, England (Jan 2010);
- **Asia civil society**, Malaysia (March 2010);
- **Europe**, Romania (March 2010);
- **Latin America civil society**, Brazil (May 2010);
- **Latin America**, Brazil (May 2010);
- **Near East**, Jordan (May 2010);
- **Europe civil society**, FAO Rome (June 2010);
- **Francophone Africa**, Burkina Faso (June 2010);
- **Pacific**, Samoa (July 2010);
- **Central America**, Panama (September 2010);
- **Africa civil society**, Mali (September 2010);
- **Eastern and Anglophone West Africa**, Ethiopia (September 2010);
- **Commonwealth of Independent States**, Russia (November 2010).

Note that the assessment outcomes are only recorded and consolidated in this document; the data have not been processed or evaluated. Neither the structure nor the detailed content of this document reflect the eventual draft Voluntary Guidelines.

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<sup>1</sup> <http://www.fao.org/nr/tenure/voluntary-guidelines/events/en/>

## Regional, Civil Society and Private Sector Consultations Outcomes

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### I. Overarching objectives, principles and processes

This section consolidates the inputs that are of cross-cutting nature. Many points described below will be revisited in other sections when special contexts and circumstances deem it important to do so. This section first compiles issues to be considered appropriate for the overall aims and objectives of the Voluntary Guidelines. This is followed by a consolidation of principles which could be considered applicable for the Voluntary Guidelines. Finally the Voluntary Guidelines are placed into regional and international contexts.

The responsible governance of tenure of land and other natural resources should be set within the context of broader development aims. These include ensuring household food security, the reduction of hunger and poverty, sustainable development and environmental protection, responsible investments, improved living standards in the context of challenges including climate change and volatile prices of food and fuel, and supporting the potential of youths. Responsible governance of tenure should be mainstreamed into wider national, social and economic policies and strategies in order to achieve desirable economic and social outcomes, and should recognise that land has a social, economic and environmental function. The different roles that land and other natural resources have in the preservation of the cultural, economic, environmental and social balance should be noted.

Responsible governance of tenure should be based on the rule of law and respect for human rights including the right to adequate food. It should be non-discriminatory and gender sensitive and uphold the right of indigenous peoples for self-determination, autonomy, and free, prior and informed consent. Whilst respecting the diversity of beliefs and traditions, it should support common ethical and technical standards and frameworks. Procedures should try to prevent and eliminate corruption and promote: transparency, public participation, information accessibility, awareness raising, monitoring and capacity building.

*Transparency.* Decision-making and research process should be transparent and open. The contents of the decisions and the resulting rights and obligations should be made known to the population. Policy and legislative frameworks should be transparent, representative, responsive, competitive and accountable. Administrative reforms should address problems where processes are complex, costly and bureaucratic to ensure that the processes become transparent and accessible, and that appropriate technologies and accuracies are adopted. Appropriate oversight and accountability mechanisms should be in place.

*Participation.* Processes that balance national and community interest through participation of all stake-holders and integrated development programmes should be supported. Inclusive and participatory coordination mechanism at all levels of operation (policy, legislation, planning, management, monitoring), including mechanisms for inter-sectoral coordination, should be developed and institutionalized to ensure participation in processes of policy-making, review and reform. Principles and standards should be developed and implemented to ensure that members of the public, especially indigenous peoples, poor communities and vulnerable groups, are consulted in a meaningful way and are able to provide feedback and comment. Full and effective participation of indigenous peoples in decision-making policies for the management of land and other natural resources should be mainstreamed.

*Information accessibility.* Information should be accessible and available to all in an adequate, timely, legitimate, accessible, and useful manner. Relevant information systems should be developed to provide data, statistics and other information on the availability of resources and on the governance of tenure. Available information and studies should support decision-making processes at all levels and stages.

*Education, empowerment and awareness-raising.* Responsible governance of tenure should support appropriate education and awareness raising to empower individuals, vulnerable and special groups and communities to meaningfully participate in decision-making processes, including policy development and monitoring processes.

*Monitoring and ensuring accountability.* A comprehensive, integrated, and clear monitoring system should be established to monitor policies, actions and accountability of governments and other bilateral, regional and international institutions. Juridical instances for control, monitoring and sanctioning should be created and instances such as observatories, rapporteurs and citizens' courts should be promoted. The monitoring systems should ensure that viable mechanisms are available for communities to seek solutions, especially when their tenure of land, territories and natural wealth are threatened or violated.

*Resources and capacity building.* Implementing responsible governance of tenure will require adequate resources and capacity to address challenging issues. The technical and management capacities of institutions responsible of governance and management of land and other natural resources in all levels should be strengthened and enhanced. Governments, land agencies and the private sector should ensure they have well-trained, educated and motivated staff, and that the staff receive adequate pay for their services. Capacities and knowledge of civil society and vulnerable groups should be built. Governments should ensure that civil society and vulnerable groups have adequate capacity to claim their rights and to fully participate in decision making and in the management of natural resources.

Responsible governance of tenure should be binding and incorporated in the policy framework at national level.

Initiatives to improve the governance of tenure should link with relevant international, regional and national instruments. They should reflect commitment to the international instruments including those on human rights for women, children and indigenous peoples and the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD). They should support and link with ongoing national initiatives to improve governance of tenure such as through reforms in land and other natural resources policies, including initiatives from the civil society. Finally, they should support the implementation of land policies and laws in the countries.

Responsible governance of tenure should embrace emerging challenges including the threat of HIV/AIDS pandemic, climate change, land acquisitions for agricultural investment, rapid urbanization and land degradation. In addition they should build upon current innovations in land tenure and administration to improve tenure security and reduce costs.

## **II. Policy, legislation and organizational frameworks**

Policy, legislation and organizations form the frameworks in which tenure of land and other natural resources function. This section consolidates the inputs related to this topic. It begins with underlying principles and strategies and moves on to issues related to operational points of views.

### **Comprehensive and holistic**

Political will is key to the development of comprehensive, forward looking and fair land policies, legislation and organizations. Priority actions should focus on establishing a system that aims to ensure the security of land tenure.

Relevant policies and legislation should be designed in a holistic context. They should take into consideration the social, economic and environmental functions of land and other natural resources

and consider the linkages between poverty and tenure. Food sovereignty and long term resource needs should be prioritized. Policies should balance public and private interests and strive for investment balanced among various sectors.

### **Respect for human rights**

Policies, legal and organizational frameworks should be non-discriminatory. The rights of indigenous peoples, women and customary landowners including vulnerable groups such as youth and children should be considered in policies for development, and for the use of land and other natural resources.

Legislation should ensure secure access and tenure rights for vulnerable populations and should provide for legal aid to defend the rights of marginalized communities and respect for the notion of Free, Prior and Informed Consent (FPIC). Legislation should also recognize customary and pastoral rights and take into consideration customs as well as family law. National legislation should recognize, and explicitly protect indigenous territories and rights to land in the case of big investment projects, whether public or private, and should provide for adequate compensation in cases of loss.

States should establish mechanisms and institutions to redress violation of the fundamental rights of peoples and communities over resources. Public, private, and customary institutions should nurture the strengthening of the just, equitable, and sustainable use of land and natural wealth, and the sharing of territories by different social groups. Bilateral, regional, multilateral and international institutions should ensure that the rights and control of the peoples over land, territories and natural wealth are upheld.

### **Stable financial systems**

Stable financial systems require responsible governance of tenure. Governments and agencies responsible for land and other natural resources should be placed on a stable financial basis. Responsibilities for payments for services should be defined and publicised. Fees to be paid for services should be published and easily understood. An appropriate, secure system of finance should be open to all and not be exclusive or discriminatory.

### **Harmonized through clarification, coordination and cooperation**

Policies, legislation and organizations related to land and other natural resources should be clear, comprehensive, harmonized, complementary and coherent.

The law should play a role in harmonizing and clarifying land tenure systems. In addition, national legislation should be harmonized with the regional frameworks and international standards and guidelines. Legislation should be prepared in ways that allow new, appropriate and accepted methodologies and technologies to be introduced without requiring laws to be amended. Standardized definitions for words and terminologies should be prepared for use within countries.

Mechanisms to ensure consistency between the statutory and customary laws regarding land and natural resources management should be established. Coordination to link customary and government administrations should be improved. Public authorities should recognize the plurality of existing land rights so that they can respond to the security needs of different actors.

Responsibilities should be clearly identified for state, regional and local governments, and for agencies for land and other natural resources. Responsibilities should be divided where appropriate to provide checks and balances. Coordination between central and regional/local governments should be improved. Professional societies and governments should collaborate to create appropriate rules for responsible governance. Cooperation between agencies and organizations should be improved through greater multi-stakeholder collaboration. Unclear and overlapping institutional roles in administration should be clarified in order to reduce corruption and the lack of transparency and accountability.

“Public and private” partnerships and “public and public” partnerships should be developed where appropriate.

### **Taking into account local settings**

Relevant policies, legislations and organizations should take into account local policies, practices as well as traditional knowledge on natural resources. Amendments to legislation and/or the adoption of new legislative provisions should reflect strategies of access to agricultural land, urban property and natural resources that have been defined at local/municipal, national or regional level.

### **Impact Assessment of legislation and policies**

Thorough and comprehensive assessment with respect to the rights of peoples and communities should be carried out. Reforms should be promoted to ensure that legally required environmental and natural resource-valuations and community impact assessments are carried out prior to any project affecting land and other natural resources. Current laws on land and other natural resources should be reviewed, and revised or replaced, or complemented by new legislation to reflect responsible governance. Similarly, reviews should be implemented on impacts of policies with respect to the rights of peoples and communities to land and other natural resources.

## **III. Technical areas**

This section consolidates inputs related to issues on governance in the technical areas of tenure of land and other natural resources. This includes technical concepts and a range of mechanisms and activities.

### **Tenure**

Security of tenure is the certainty that a person or group’s rights to land and other natural resources will be recognised by others and protected in cases of specific challenges. People with insecure tenure face the risk that their rights to land and other natural resources will be threatened by competing claims, and even lost as a result of eviction. Tenure security is a prerequisite for food security, sustainable land use, and social and economic development. The security of tenure is achieved through predictable policy, regulatory and institutional framework and in particular through its efficient implementation, and with non-discriminatory access to justice. Implementation requires political will at the high level as well as adequate resources, also external, and capacities.

Secure tenure can be achieved under different of tenure arrangements, but it is only as good as the public perception on the arrangements. Doubts over the legitimacy of access to land contribute to insecurity of tenure. Security over a build property requires a right to reconstruct (e.g. an apartment building) which is ambiguous when separate tenure arrangements for land and buildings prevail. Security of tenure of pastoralists requires particular attention due to spatially flexible nature of rights including for example trans-national border grazing. Indigenous organizations, fisher folks and small scale farmers need support against commercial interest over their territories. Safeguards are needed so that external investments in agriculture do not result to loss of rights, lands and livelihoods. Development should not lead to forced evictions.

There should be protection against forced loss of rights to land and other natural resources. Compulsory acquisition of property should always be subject to due process of law and result in payment of adequate compensation. Stakeholders should have impartial access to efficient, independent, impartial and accessible judicial and non-judicial dispute resolution and mediation mechanisms. There should be a clear and feasible policy, regulatory framework and processes for governing the acquisition of land and other natural resources through adverse possession and prescription.

## **Agrarian Reform**

Excessive concentration of land ownership decreases access to land for small farmers, young families and women. Smallholder farmers struggle to be competitive in global markets and are often forced to cease farming which contributes to the depopulation of rural areas. Family farming is a fundamental factor in the preservation of biodiversity thus justifying support to, for example, farmer networks and local markets. Family farming should not be evaluated from a purely commercial and production points of view; social dimensions, agricultural and rural employment, quality of produced food, as well as impacts to biodiversity and environmental, landscape and cultural conservation should as well be accounted for.

Redistributive agrarian reform is a strategic option to improve access to land and other natural resources by peasants and indigenous populations, and to strengthen family farming as an alternative to industrial agriculture, and large scale extractive industries and infrastructure projects, as well as to prevent monoculture and to rectify discrimination over access to natural resources. Redistributive agrarian reforms should include alternatives to market-led agrarian reforms.

The just, equitable, and sustainable distribution and use of land, territories, and natural wealth should be promoted by both the states and communities via redistributive reforms to facilitate access to land. The lands to be reallocated should be accessed through fair and effective procedures for privatization, land markets and land consolidation and land banking.

Agrarian reforms that will engender responsible governance of land and natural resources tenure should be done in a way that will promote community governance and the effective participation of all groups in the ownership and management of land and other natural resources.

Areas under cultivation should not be expanded; instead the current cultivations should be made more efficient.

The land reform processes, rights and obligations should be well communicated through campaigns to target communities to prevent social exclusion.

The impacts of agrarian reforms should be monitored by for example land observatories. Redistributive reforms should provide the required post-settlement support (e.g. credit, extension, marketing, etc.) to beneficiaries (such as smallholder farmers) to develop capacity to achieve sustainable rural livelihoods. Specific programmes, such as credit schemes, should be created to support young people. Customary farming arrangements, small farmer networks and well organized communities and their management should be provided with capacity building and subsidies to enable them to be a credible alternative for large scale farming.

## **Land Markets**

Land is more than a market asset but is a complex resource that has many roles and purposes (e.g. production, housing, religious etc.). This presents challenges in the face of developing fair and socially, politically, culturally and environmentally considerate land markets. In the commercial sense land and natural resources present huge opportunities for economic growth, but also risks.

Equitable land markets require easy access by all to land markets, low transaction costs and high level of awareness among the public. Communities' rights to value sharing in development processes should be recognized. Tools such as pre-emption rights and targeted revenues should be considered to prevent speculation and to limit the impact of speculation.

Land markets are often imperfect and there are often no clear rules, regulations and enforcement mechanisms to guide land expropriation and forced evictions. In weak governance settings land



markets are characterized by (i) lack of vision, policy and control; (ii) insufficient regulation and standardization (iii) poor awareness; (iv) weak land administration; and (v) paucity of real estate laws.

Land markets, formal and informal, exist in all tenure arrangements. Purely economic/market-based models may lead to ecological destruction and other negative effects. Land literally hosts communities and at worst markets can cause displacement of people whose rights are not recognized. There is the need to ensure that market models do not compromise customary rights, environment, social impacts, gender, vulnerable groups etc. The diversity of land markets should be recognised and regulated. The co-existence of diverse markets should be promoted. While rural land market issues need to be differentiated from urban land market issues, the rural-urban continuum should be taken into account.

Entities responsible for land market administration and valuation practice should be effectively identified with clearly defined competence and receive appropriate capacity building. Academia should provide independent research on topical and critical issues affecting the land markets and the stakeholders, together with building capacities. Private sector should be active in developing codes of conduct on ethics and standards. Civil society should play an active role in bringing about a fair land market system, especially in terms of strengthening the capacity of communities and providing the checks and balances of power and different interests. Multilaterals should provide impartial platforms of capacity building, coordination and monitoring. Indigenous peoples' territories should be excluded from land markets.

Procedures should be established to ensure that the actual sales prices that were paid are correctly recorded in land registration systems. Sales information and valuation information should be collected to improve transparency in the land market.

### **Land valuation and compulsory acquisition**

Valuation systems should reflect social, cultural, regional and economic values that are consistent with international standards and practices, but also values arising from food security, water resource use, traditional medicines, firewood, biodiversity, other ecosystem services, etc. Principles of equity, transparency, uniformity and objectivity should be applied in valuation for public sector purposes (e.g. using market values to determine property taxes, and compensation in cases of expropriation). Various approaches for valuation should be adopted. Market based solutions for valuation may not be feasible in the context of vulnerable groups.

Compulsory acquisition, where essential, should be linked to appropriate compensation and livelihood assistance, which should prevent loss of livelihood and landlessness for farmers or urban dwellers whose land is acquired. People should not lose their customary or statutory rights to land and other natural resources without due process and the payment of adequate compensation including appropriate resettlement. Compensation in a case of compulsory acquisition should at least bring about similar level of living conditions of those affected. Processes for payment should be reformed to ensure they are not lengthy and inefficient.

### **Agricultural investments**

Responsible governance of tenure should promote responsible and sustainable development and should not be a barrier to investment in rural areas, which is needed in support of food security, rural livelihoods and employment.

Large scale investments on land at worst have led to forced eviction and loss of natural resources. "Land grabbing" and monoculture agriculture practices by both foreigners and locals has adversely affected the livelihoods, food security and land and natural resource rights and employment opportunities of rural communities contributing to social exclusions. Rangelands are taken as free lands ignoring nomadic rights on resources. Similarly small scale fishing suffers from the depredation

of industrial fishing, the destruction of ecosystems and the pollution of water bodies. However, land acquisitions have often been done in conformity with laws. The prevalence a lack of transparency, low state of rule of law, lack of dispute resolution systems and poor accountability creates for land grabbing.

A stable framework is needed to promote responsible investment and the sustainable use of land and natural resources, and to safeguard and protect the rights of women, indigenous peoples, immigrants, agricultural workers, urban dwellers and vulnerable or marginalized groups. Investments in agriculture should not compromise equitable access to land, should not jeopardize local and national food security as well as biodiversity and the sustainable use of land, and should not necessarily entail land acquisition (e.g. contract farming and other arrangements could be used) and should result to mutually beneficial deals. National policies, which should be developed in consultation and dialogue with smallholder farmers, should, in focusing on improving the productivity and incomes of smallholder farmers, 1) help them mobilize resources, e.g. agricultural inputs, agro-processing, and credit; 2) expand opportunities for them to invest in mutually beneficial partnerships with local and foreign investors; and 3) provide better access to markets. Education and training in managerial, marketing, and negotiation skills should be provided to enhance decisions and negotiations among stakeholders. Safeguards are needed to prevent speculation with farm lands. This requires transparency and inclusiveness in land transfer processes, monitoring mechanisms and application of tools such as taxation and land ceilings etc.

Medium- and large-scale investments on land, agricultural and non-agricultural, should be based on participatory planning that considers the environmental and social impacts, respects local land rights and knowledge, identifies livelihood options and the availability of human resources. Inclusive territorial development approaches enhancing the comparative advantages of regions and their links with peoples' culture and traditions are often desirable. Existing communal and individual rights should be identified, delimited and formally recognized. Privatization of commons should be prevented or effectively regulated. Citizens' participation is a key especially when population with indigenous groups or other poor communities are involved. The mandate for customary, local, and national authorities or leaders vested with the right to allocate land or other resources should be understood.

The principle of Free, Prior and Informed Consent should be applied. This requires strengthening the capacity of communities to enforce the principle and to be in control of decision making. It is necessary to clarify how consent is given, who gives the consent, whether decisions will be based on a majority rule or consensus, and whether a written, legally binding agreement is necessary. In implementing FPIC, a balance between the state, the general public interest, and affected community interests, particularly in the distribution of benefits, should be ensured. Involuntary displacements, forced evictions, and arbitrary displacements are not acceptable. For those displaced by investments, appropriate compensation and the identification and provision of alternative livelihoods, including needed resources and training, should be legally mandated.

Investors include national investors, many of which are small or medium size enterprises, home owners, investors from the informal sector, multinational organizations, and foreign sovereign wealth funds and state owned enterprises. Small-holder farmers, the majority of whom are women, are the principal investors in agriculture in the developing world. Serious investors, both families and private operators, need a legal framework that guarantees the security of investment. Investors should provide clear and complete investment plans that set out their intentions in a transparent manner. Investment plans should demonstrate the sustainability of investments in terms of the use of natural resources and the environment and the social and economic benefits for governments and local communities as well as for investors. Investors should seek all necessary information relevant to investment including about land tenure in the country.

Investments should respect fair labour practices, including health and safety. There should be unrestricted access to information on land acquisition initiatives for the public. Investors should

undertake reasonable steps to ensure that they are not complicit in human rights abuses, including avoiding silent and beneficial complicity.

States should monitor the operations of companies under their jurisdiction that invest in foreign countries. Bribing in foreign countries should lead to sanctions at home. International laws and legally enforceable mechanisms and actions should be established to discipline and sanction companies whose investments and activities in other countries, especially with new investment mechanisms on climate change such as carbon trading/offsets, REDD, agricultural funds, etc. violate human rights or cause damage to local communities.

### **Land administration**

Land administration systems, including registration and cadastral systems, provide a basis for good land management that contributes to sustainable development. They are a key also for land dispute resolution, for the protection and conservation of public lands as well as for property taxation and for monitoring investments in land and other natural resources. Land administration institutions are often very weak, inefficient and highly centralized public services that lack financial autonomy. Land records are limited in coverage and agencies are often inefficient. Strong asymmetry in access to land information, which hinders land certification and regularization and encourages corrupt practices, is commonplace.

Land administration systems should provide inventories of all tenure arrangements (e.g. private, state, public, customary, collective, communal, indigenous etc.), provide open access to land records, be inclusive, have transparent processes and resist internal corruption thus contributing to overall land governance. A core task of land administration is to provide a simple and effective system for registering and protecting rights on land. Cadastral and legal records should be parcel based and unified in one institution, and to include land use plans and 'accurate' cadastral maps. Land records should provide easily accessible reliable information.

The existence of informal markets complicates land administration. Countries should pursue land regularization to formalize land rights. This requires innovative land tenure arrangements, mass registration and mapping tools, low cost technology solutions, legally and socially validated approaches and innovative means of financing. The cost and time needed to obtain administrative land occupancy authorizations and land titles should be reduced. There should be coordination between customary land administrators and public agencies. Education, dissemination and training are needed for improving the culture of using and trusting on the services of formal land administration. Land administration services should be responsive to the needs of the private sector in order to encourage responsible investment.

Appropriate technologies and business models should be used for the provision of land administration services, with care being taken that the technologies and models employed are not discriminatory.

Institutional infrastructures should be developed to ensure that adequate systems and technical capacity are in place to efficiently maintain a high standard service of land records and administration with inherent and sustained integrity and accuracy. Performance standards for services (e.g. registration, obtaining of extracts, etc.) should be developed and publicized. Agencies should monitor and report on their performances. Land agencies commonly need capacity building programs due to the low resource base.

Weak and corrupt land administration and land management has negative consequences. Addressing corruption in land administration is an act to enhance overall development and good governance, and should be viewed as a priority. Full accountability and transparency are the basic requirements to prevent corruption. A system of sanctions is needed. Land administration performance, processes and services should be reviewed by an independent body and subject to appropriate checks and balances. This can be supported by the transfer of responsibilities and resources to local authorities, by citizen

oversight, land observatories and by computerizing land records and spatial data. Land administration procedures should be protected from misused political power.

Public-private partnerships can be used to improve service delivery in land administration. Services and records management should be decentralized. Decentralization of the decision-making power is preferable involving local and traditional authorities, NGOs and other relevant stakeholders in the land registration procedure. Alternatively, local access to information should be facilitated, promoting deconcentration. Agencies should operate with high level of financial autonomy enabling mobilization of adequate resources (e.g. human, financial, technical, etc) to provide efficient services and permit necessary investments.

Land administration services should introduce a one-stop-shop for land affairs, be simple and keep costs low to make registration feasible for the poor. Special procedures should be developed to improve tenure security for vulnerable groups who lack the identity and property documentation needed to acquire legally recognised rights to land, housing and other property. Land registration and cadastre offices should provide ex-officio registration (e.g. court decisions, inheritance, privatization, restitution, etc.)

### **Urban, rural and territorial planning**

Urbanization is often rapid and chaotic, and results in land being used for purposes other than intended by governments. It is not supported by appropriate plans, tools and strategies. Rapid urbanization can be a root cause of landlessness and it can happen at the expense of rich fertile lands. The formal processes for rural – urban conversion are often complex, costly and time-consuming. There is often a lack of appropriate policies, laws and regulations, and institutional accountability and transparency as well as cross sector coordination for land use planning. It results in (i) difficulty in acquiring affordable housing; (ii) urban sprawl affecting coastal areas and agricultural land; and (iii) speculation. The resulted culture of non-compliance undermines the rule of law and the security of investments. Appropriate data should be available to enable planning to operate at required scales and allow proper impact assessment of development projects. Plans should be made within the context of an overall framework of sustainability, and should integrate rural and urban planning that harmonizes agricultural, industrial, and urban policies by addressing pressures in peri-urban areas, transportation and other matters.

Governments should adopt rural policies and practices for the use of land and other natural resources to reduce rural to urban migration. Migration, immigration and rural development policies should be developed to accommodate and organize migration, particularly as it affects urban sprawl.

Good agricultural land should be prevented from inappropriate conversion. Urban dwellers' "right to the city" and squatters or slum dwellers' rights to stay or to shelter should be recognized. Informal settlements should be regularized and forced evictions avoided. Legal solutions should be established for the registration of illegal constructions. Services and infrastructure should be provided to communities that are regularized. Existing laws should be enforced to prevent future illegal constructions. Procedures for building permits, etc., should be simplified to reduce incentives for illegal constructions and to minimize opportunities for corruption. The adoption of a law on co-ownership would serve to promote access to housing and ensure the densification of residential areas.

While planning processes should be participatory, they should be designed and conducted in such a way that they are not over-long in reaching a conclusion. Responsibilities for planning should be decentralized to the lowest possible level. Land use planning institutions and their decisions should be subject to independent review.

## **Access to justice**

Dispute resolution systems are keys for preventing conflicts over land and other natural resources. Many countries need rapid and effective solutions for land disputes. All stakeholders should have access to fair, efficient, independent, impartial, affordable and accessible administrative, quasi-judicial and judicial dispute resolution mechanisms, including the ability to appeal. Judicial systems very often need strengthening to deal with tenure cases and sometimes it is necessary to create special courts.

Alternative conflict resolution systems (e.g. mediation and arbitration, intra-community systems etc.) provide an alternative to courts to resolve conflicts in an expeditious manner, ensuring affordable fees for the poorest population as well as transparency and fairness. Traditional communities should be entitled with the power to resolve land conflicts through traditional methods. This may be supported by the development of paralegal networks and groups to help women and other groups intervene in disputes over access to land and prevent forced evictions. In cases where the communities cannot come to an agreement, an independent third party, can be an arbiter of conflicts.

Communication campaigns and initiatives can help to prevent the criminalization of claims regarding land and other natural resources access. Transparent, participatory and justice-based resource management and conflict resolution systems should be established to manage cross-border natural resources, especially water, fisheries and pastures.

Dispute resolution mechanisms should be impartially monitored.

## **Land consolidation and land banking**

Land consolidation and land banking should provide a balanced approach for rural development by bringing land into production, providing opportunities for new farmers, allowing small farmers to expand their farms and protecting and enhancing the environment, and providing rural infrastructure.

Land consolidation should be guided by national policies that are socially, environmentally and economically sustainable, and legal frameworks that define clear, cost-effective procedures. Projects should catalyse the exchange of state and private land parcels and incorporate abandoned lands while providing appropriate protection to the rights of absent or unknown owners. Governments should actively inform rural citizens, communities and local governments of the benefits of land consolidation. Impact evaluation mechanisms should be introduced.

## **State land management**

Countries should adopt clear policies on state/public lands and establish and publish an inventory of state lands. This serves as the starting point for feasible mechanisms for the protection and conservation of state public lands. Clear procedures and regulations should be established for the transfer of state land through privatization, including through sales and leases.

The release of public lands through sales should be planned and implemented in ways that achieve the social goals while not disrupting the local land markets. Local communities or current users should have the right of first purchase for public lands in their community. Public and private interests should be balanced. Restitution should be finalized freeing state lands for other purposes than restitution.

## **Natural Resources Management**

The exploiting of natural resources may precede re-formulation of land policies, legal framework and institutional arrangements that affect local communities and their participation in the decision-making process. The management and control of natural resources should be decentralized allowing the participation of local communities, and be based on land-use plans of different levels.

Access to local genetic resources should be ensured for local populations. Accordingly, governments should implement international Conventions and Treaties such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) (in particular art. 6 and 9), the Convention on Biodiversity, etc. Patents on life forms should not be allowed.

Communal, traditional, customary, indigenous etc. rights over natural resources should be recognized. States should recognise communities' right to self-governance of their commons and work to protect and strengthen the commons. States should promote collective rights to access, govern, regulate, and manage the commons, and support community stewardship including recognizing customary institutions but also ensuring the rights of women. Communities should be empowered in natural resource management, which are often characterized by asymmetric power balance. The impacts of natural resources exploitation should be systematically monitored through statutory and social watch systems. Environmental regulation should include sanctions for misconduct in use of natural resources.

States should ensure that proper benefit sharing and compensation mechanisms are developed and implemented to support local population and smallholders in the implementation of policies for conservation or change in natural resources use practices (e.g. climate change mitigation policies or ecosystem services).

Territorial planning approaches can help to find a balance between competing uses and users of land and natural resources. Territorial planning addresses areas holistically involving stakeholders, inclusive of local institutions and civil society, in participative planning and social watch systems. Territorial planning should be accompanied by conflict mediation mechanisms.

### **Forestry**

States should promote forest policies that recognise the existence of multiple interests and rights over forest resources. Clarity and security of tenure of all forest lands should be ensured taking into consideration the complexity of the "forest ecosystem": land, trees, eco-system services (e.g. carbon, biodiversity, water etc.), products (timber and non-timber) and the intellectual property of traditional knowledge. Land registration systems and cadastres should be harmonized with forest tenure records creating coherent and compatible information. Costs and processing time for the regularization of rights to forest lands and for the related access to information should be reduced.

Different tenure systems including collective ownership and rights and use, access and management rights over forest resources should be recognised and respected. There should be defined and implementable standards and mechanisms to transfer the management (e.g. permitting, licensing, development incentives, supervision and monitoring) and control of forests and forest lands to local governments, communities and / or to private entities duly accredited, such as NGOs, owners associations and other entities interested in their conservation. Local institutions associated with the governance of tenure, conservation and the use of forests, including indigenous people and peasant institutions and organizations should be strengthened.

### **Fisheries**

Land, maritime and seabed boundaries should be properly demarcated through processes that meet the obligations of the United Nations Convention on the Law of the Sea (UNCLOS). Governments should complete the process of defining and registering their Exclusive Economic Zones. States should improve coastal planning, coordination and management of fisheries as provided for under the *Code of Conduct for Responsible Fisheries* and under other FAO guidance. States should harmonize marine laws for marine protected areas (MPA) and non-MPA areas.

Tenure rights of local fishing communities should be recognised and secured; this includes the access rights of women. States should guarantee (through ecosystem-based management (EBM) and integrated coastal management (ICM)) that land acquisition by investors, land use conversion for

coastal development, does not result in displacement and loss of landing sites etc. of small-scale fishers. Where necessary the displaced persons should be adequately compensated with due process.

Issues of tenure and other regulatory constraints in relation to small-scale and subsistence level aquaculture development e.g. reforming environmental regulations should be resolved. Aquaculture and small scale fishery should be promoted and developed on suitable identified land through various means including providing means for alternative livelihoods for coastal communities that co-exist with endangered species conservation initiatives.

A marine cadastre should be established that acknowledges and records existing use, access, capture and occupation rights, responsibilities and restrictions in spatial extent (horizontally and vertically) and in legal extent.

## **Water**

Governments should respect water as a public good and recognise the right of access to clean and affordable drinking water and include this into their guidelines, policies, regulations and laws. Proper and sustainable water management systems should be established to ensure appropriate allocations of water for agricultural, residential and commercial uses.

The rights of customary landowners should be respected when water resources are located on their lands. Traditional knowledge of natural resource and water management should be recognized and utilized in the formulation of policies/legislation.

## **IV. SOCIAL ISSUES**

This section compiles inputs related to social issues. They have been broadly grouped into customary tenure and indigenous peoples' issues as well as issues related to gender and others. These broad clustering do not reflect a rigid classification or definition of terms.

### **Customary Tenure and Indigenous Peoples**

#### **Respect of International Conventions**

Governments that have ratified the United Nations Declaration on the Rights of Indigenous People (UNDRIP), and other related international human rights instruments, should ensure that these rights are enjoyed, protected, considered and reflected in guidelines, policies, regulations and laws for land and other natural resources. Free, Informed and Prior Consent, as provided for under the United Nations Declaration on the Rights of Indigenous people and as stated in ILO Convention 169, should be respected.

States should recognize the role of indigenous peoples in preserving natural resources. National legislation should protect indigenous territories and rights to land in the context of large public or private investment projects. Mechanisms ensuring these rights should be enforced.

#### **Customary, indigenous and common tenure systems recognition**

In situations where customary and statutory tenure co-exist and interact with one another, the weaknesses of each form of tenure should be identified and addressed. The uncertainty, tensions and conflicts introduced by dual tenure systems, including between traditional leadership and local governments, should be removed. A holistic approach for governing land and other natural resources should be developed, which reflects the dynamic nature of both customary and statutory tenure.

Public and government institutions should recognize, strengthen and equally treat customary laws, which refer to traditional common rules, values or practices that have become an intrinsic part of the accepted and expected conduct in a community and which do not violate fundamental human rights. Communal property and traditional routes of nomads should be recognized and respected by law. In defining land boundaries of nomadic populations, flexibility should be applied in order not to jeopardize their livelihoods.

Different tenure options such as group ownership of common property resources, private ownership and leasehold should be recognised and respected. At the same time, collective ownership should be recognized as an important aspect to achieve good governance in the indigenous peoples' territories.

There is need for recognition, protection, adjudication and demarcation of indigenous customary land rights through cheap and affordable means. The complexity and flexibility needed to address customary tenure as well as statutory tenure require investments of human, financial and time resources.

### **Customary institutions and administrations**

There is a need to develop national land administration systems that are effective, culturally relevant and that strengthen customary and statutory normative systems and meet the needs of all members of society.

Governments should strengthen customary and indigenous peoples' institutions and juridical systems. Traditional authorities should take part in the administration of the territories and environment ensuring a concrete and effective participation of traditional groups in the processes of governance of natural resources. Customary institutions should be strengthened to administer common property rights.

### **Self governance, self determination and territorial approach (specifically related to Indigenous Peoples)**

The rights of rural people to govern and manage their ecosystems and territories should be supported. Local communities should have the primary responsibility to decide how resources are shared and governed. Governments, inter-governmental bodies and external development partners should take a supportive and facilitating role. Training of young people and indigenous leaders should be prioritized in order to strengthen indigenous leadership for the legal protection of their territories and for the formulation and implementation of plans and projects.

The terms and purpose of investment in land, territory and natural resources by public or private investors should be within the purview and decision making of the community. Privatization of natural resources should be monitored and regulated. An equitable redistribution of land and natural resources should take place to ensure indigenous peoples' rights and to enhance environmentally sustainable development.

States and institutions etc. should respect cross-national-border communities' rights on territory, land and natural resources.

Traditional visions of indigenous peoples should be recognized and respected. These visions concern the management of land, use of technology, role of youth and women and resolution of internal conflicts.



## **Gender and others**

### **Respect of international frameworks**

State should ensure that international and national laws and conventions guaranteeing the access of women to land and natural resources are observed and implemented in practice. It should put in place mechanisms for the monitoring, evaluation and adaptation of laws on women's access to land and other natural resources, facilitate and simplify access procedures, and guarantee that social and religious rules and practices are not discriminatory against women.

### **Rights, allocation of land, legal provisions**

Women, indigenous people, nomads, landless, youth, disabled, poor and others should have equitable and secure access to land and other natural resources. Land tenure systems should be responsive to the poor, disempowered and marginalized people.

Women's access to land and other resources should be guaranteed by national legislation. Women should receive equal rights and opportunities to use customary land. Land legislation should envisage the introduction of positive discrimination measures for the benefit of women (e.g. introduction of land parcel allocation quotas or registration of the names of both husband and wife on a land certificate).

Agrarian reform programmes should consider allocation of land to women, indigenous people and vulnerable groups. Gender sensitive initiatives should be mainstreamed in land reform and land titling projects as part of broader development programs.

### **Representation and recognition**

The creation of regional women's network on land is critical to build consensus, to monitor the implementation of national policies and laws, and also to adhere to regional and international commitments.

The role of women in agriculture should be recognized and no more considered as a complementary support to the work of men.

Informal settlements should be regularized in accordance with the Vienna Declaration with respect to the property rights of landowners.

### **Protection measures**

Gender-appropriate technologies and access to finances for women should be made available.

Actions concerning the situation of young people should aim, among other aspects, to ensure their protection. The educational system should better integrate environmental concerns to raise awareness among young people. In this connection, appropriate and flexible programmes of schooling for youths and literacy for adults should be designed. Youth should be integrated in rural development.

### **Land governance and issues on gender, Internally Displaced Persons (IDPs) and refugees**

Despite certain successes, resettlement policies of Internally Displaced Persons (IDPs) and refugees remain insufficient and are unable to guide the redistribution of land after conflicts and natural disasters. The lack of provision of social services to IDPs and refugees often cause the resettlement plans fail. Compulsory land acquisition by the state for the resettlement of the IDPs and refugees is often done without Environmental Impact Assessments (EIAs) and without compensation to the rights

holders. At the end of occupations, there is no plan on how to return this land back to its original owners or to provide them with compensation by the state in case land becomes public.

The repatriation and reintegration of IDPs and refugees should include fair and efficient procedures for restitution and resettlement. IDPs and refugees should be afforded free access to justice and be protected by the enforcement of decisions.

Displacement resulting from climate change and environmental degradation has not been adequately recognised and considered for by governments and by the international community. In particular, local governments and authorities are inadequately prepared to deal with these displacements.

## **V. Challenges**

This section consolidates the issues on governance of tenure related to specific contextual challenges, both emerging such as the climate change as well as persisting ones such as violent conflicts.

### **Climate change**

#### **Tenure and climate change**

States should ensure that in case of relocation of people because of climate change, displaced people receive secure tenure in the areas in which they are relocated. Intergovernmental cooperation is required when it becomes necessary to resettle large numbers of people over country borders.

States should carefully consider the relation between climate change effects and tenure, and adopt tenure policies and strategy in support of climate change mitigation. Governments should adopt adaptation and mitigation policies and risk management strategies for tenure of land and other natural resources that do not further exacerbate the impacts of climate change. States should ensure that climate change mitigation policies and associated payment mechanisms (including for REDD), do not represent a threat for forest dependent people (small owners, users, tenants, customary users etc), and that fair, transparent and accountable funding mechanisms should be established to ensure that payments are made to the appropriate resource users.

### **Tensions and conflicts over land and other natural resources**

In order to manage competition over land and other natural resources, their potential multiple uses and sometimes trans-boundary nature should be recognized. There is commonly strong competition between economic activities. Appropriate mechanisms (including financial instruments) should be developed to manage conflicts over claims for land and other natural resources, and to promote agreement and cooperation between those with different interests in the use of the land and other natural resources.

Regulations should be established to address conflicts between the use of surface resources (e.g. agricultural land etc.) and subsurface resources (e.g. water and oil extraction, sand and gravel mines, etc.) as well as for the access to trans-boundary natural resources (e.g. pastures, water, arable land etc.)

Countries should adopt the following measures during conflict and post-conflict times to ensure restoring of responsible governance in a due course:

- Record the list of the affected people and communities,
- Document violations and damages,
- Promote reconciliation,
- Reform policies, laws and institutions to ensure non-recurrence of the violation,

- Repair damages,
- Restitute forcibly occupied lands,
- Facilitate consensual return of the people,
- Guarantee of the right to adequate housing,
- Rehabilitate,
- Compensate and
- Bring those responsible to justice.

## Next steps

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The preparation of the Voluntary Guidelines will take into consideration the inputs from the regional, civil society and private sector assessments, as well as inputs from other sources.

In addition to the regional consultations that have taken place, an electronic consultation of the draft Voluntary Guidelines will be organised tentatively between 18 April and 18 May 2011. Interested organizations and individuals are invited to review and propose improvements on this draft. The electronic consultation will be hosted on the Voluntary Guidelines website (stated below).

The launching of this electronic consultation will be publicized and circulated widely. If you are interested in staying informed of the Voluntary Guidelines process, please email [VG-Tenure@fao.org](mailto:VG-Tenure@fao.org) to subscribe to the initiative's monthly newsletter.

A final draft Voluntary Guidelines will be submitted to FAO member countries and other stakeholders for review and endorsement.

Information on the Voluntary Guidelines and their preparation is available on the website:  
<http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

## Contact

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