



Asia Regional Assessment for the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources

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This assessment is based on the discussions and outputs of the Asia regional consultation meeting on the *Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources* held in Hanoi, Viet Nam 19-20 October 2009. The views expressed in this assessment are those of the participants of the consultation meeting and do not necessarily reflect the views of FAO.

A. Background

Land and other natural resources provide a platform for livelihoods and a basis for social, economic, cultural, political and religious practices and well-being. Rights of access to these resources and the associated security of tenure are increasingly affected by population growth, urbanization, climate change, natural disasters, violent conflicts and evictions, skewed land distribution, global warming and growing demands for land for food production, for new energy sources such as bio-energy and for large scale mining. Weak governance of tenure is a factor in many tenure-related problems, and failing to address these problems hinders reform efforts and boosts potential for grabbing of land, water and other natural resources. In contrast, responsible governance of tenure can help to reduce hunger and poverty, support social and economic development, reform public administration, and positively address issues such as environmental protection and climate change.

FAO (Food and Agriculture Organization of the United Nations), Germany, IFAD (International Fund for Agricultural Development), Finland, GTZ (Gesellschaft für Technische Zusammenarbeit), UN-Habitat, World Bank and UNDP, and IPC (International NGO/CSO Planning Committee for Food Sovereignty), Food First International Action Network (FIAN), ILC (International Land Coalition), FIG (International Federation of Surveyors) and other development partners¹ are working together with countries to prepare Voluntary Guidelines that will provide practical guidance to states, civil society, the private sector, investors, donors and development specialists on the responsible governance of tenure. By setting out principles and internationally accepted standards for responsible practices and with associated technical guidance, the Voluntary Guidelines will provide a framework and point of reference that stakeholders can use when developing their own policies and actions.

Regional consultations on the proposed Voluntary Guidelines are an important part of the process. They bring together regionally representative, multidisciplinary groups to assess regional priorities and issues that should be considered when the Voluntary Guidelines are drafted. The regional consultation for Asia was held in Hanoi in conjunction with the 7th FIG Regional Conference “Spatial Data Serving People: Land Governance and the Environment – Building the Capacity”. The regional consultation was co-sponsored by UN-Habitat and FIG, with local organizational support provided by the Vietnam Association of Geodesy, Cartography and Remote Sensing. It was attended by 50 people from 15 countries of the region (Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Lao People’s Democratic Republic, Malaysia, Maldives, Mongolia, Nepal, Philippines, Sri Lanka, Thailand and Viet Nam) and some 20 academics, experts and others from outside

¹ - AU AfDB ECA Land Policy Initiative, AUSAID Asia Pacific program, European Commission, RICS Royal Institution of Chartered Surveyors, MCC Millennium Challenge Corporation, GRET Groupe de recherche et d'échanges technologiques, SNV Netherlands Development Organisation, RDI Rural Development Institute, IDLO International Development Law Organization, TI Transparency International, Birzeit University Palestine, University of Jordan, NID Namibia Institute for Democracy, GRAF Groupe de Recherche et d'Action sur le Foncier Burkina Faso, Ministry of Lands, Resettlement and Rehabilitation in Namibia and ANCPPI Agenția Natională de Cadastru și Publicitate Imobiliară România.

the region. All brought a rich and extensive range of expertise derived from their experiences in the public sector, private sector, civil society and academia.

B. Issues and actions identified at the Regional Consultation

1 Implementing responsible governance of tenure of land and other natural resources will require commitment and political will at high level, adequate resources and the capacity to address challenging issues

- Substantial political will and willingness, and respect for human rights, will be required to implement responsible governance of tenure of land and other natural resources, regardless of whether under private, communal or government ownership, and this should be promoted by building up the social consensus on its importance.
- Policy and legal frameworks governing tenure of land and other natural resources are often weak, overlapping and contradictory and should be strengthened and streamlined through participatory and transparent processes.
- Sustainability of institutions responsible for land and natural resources tenure, and their capacities, is a challenge. Decentralization could provide benefits, but may result in unsustainable structures unless supported by a feasible institutional framework. The capacities and incentive structures need to be addressed and the capacities of institutions should be enhanced through developing them into effective service providers with appropriate technology resources, open access to information and strong public awareness.
- The importance of security of tenure should be recognised, and the type of tenure may not be so significant.
- Land cannot be seen in isolation from other natural and productive resources and the strong correlation between security of tenure and food insecurity should be recognized.
- The negative consequences of weak and corrupt land administration on land management should be noted.
- Tenure insecurity should be addressed for all groups and individuals, with legal recognition of customary and indigenous rights, rights in forest resources, rights of women and vulnerable groups, etc.
- The relationships between land tenure, land use, land rights, human rights and agrarian reform should be seen as cross cutting and integrated.
- Cooperation between agencies responsible for administration of land and other natural resources should be improved through greater multi-stakeholder collaboration.
- Importance of inclusively and transparently established land records and cadastral maps as basis for good land management should be recognized.
- The importance of land administration to support sustainable development, formal/informal/customary dispute resolution and reduction of social conflicts should be promoted.
- The importance of land administration for accurate cadastral surveys, transparent land registration and resolving disputes on boundaries and rights should be noted.
- The importance of improving policy and inventories on state/public land (inclusive of local communal and private claims on land) and making available related information to the public should be noted.

- The importance of establishing feasible mechanisms for the protection and conservation of state public lands should be recognised.
- The importance should be noted of efficient, independent, impartial and accessible judicial and non-judicial dispute resolution and mediation mechanisms on often unbalanced competition over land and natural resources in preventing conflicts.
- The importance of increased donor support and coordination to improve governance of tenure of land and natural resources should be noted.
- The importance of increased donor support in capacity building in land administration should be noted.
- Safeguards against and monitoring of foreign direct investments involving land purchases or leasing particularly in areas with communal land tenure arrangements are needed to prevent land grabbing. Specifically, there must be interim protective measures to ensure effective protection against land grabbing and dispossession.
- The importance of combating corruption in land administration as a mean to enhance overall development and good governance should be promoted.
- Government performance on the International Conference on Agrarian Reform and Rural Development (ICARRD) recommendations should be monitored and FAO initiatives on follow-up ensured.

2 The governance of tenure of natural resources, although different in some respects from that of land, should share similar actions in response to the challenges

- The possible impacts of government programmes of classification, demarcation and clarification of different types of use and ownership of natural resources and land (including demarcation of private lands for titling or identifying suitable public lands for investments etc.) should be monitored and accountability ensured through greater public participation and public decision making, and through improved access to and transparency of information.
- Common property resources are often undervalued and subject to increasing privatisation. Laws and policies that address common property resources and their management should be fairly and fully implemented in the spirit of the rule of law ensuring local institutions and communities independent and accessible court systems and alternative dispute resolution processes.
- Public information about natural resources and their tenure should be made available to inform and empower the public, and civil society should be encouraged to increase their involvement and effectiveness, particularly by grassroots education and awareness-raising including by calls for accountability.
- Suitable modalities of communal tenure systems should be promoted.
- Finding the appropriate balance between the competing goals of development, environmental protection and equity should be promoted by promoting community management of land and natural resources and coordinated and integrated administration of land and natural resources at all levels.
- Income sharing mechanisms and recognition of local tenure arrangements for the benefit of settlers and small farmers in investments like those under the UN-REDD program should be adequately established.

3 Gender, indigenous people and vulnerable groups including landless peasants, bonded labour, pastoralists, fishing folks, informal sector workers and internally displaced persons and refugees, should be supported in the Asia region in the context of responsible governance of tenure of land and other natural resources

- Comprehensive agrarian reform programmes should consider allocation of land under secure tenure to women, indigenous people and vulnerable groups, including arable land to long-term tillers and resettled former bonded labourers.
- The importance of supporting access to facilities and financing for the poor landholders as means for preventing duress sales and landlessness should be recognised.
- IDPs and refugees in post-conflict and post-disaster settings should be supported in their return to their properties.
- Key stakeholders should be sensitized to issues of gender, indigenous people and vulnerable groups' equity through appropriate education and information.
- Women, families, indigenous and vulnerable groups, particularly the long term landless, should be provided with legal protection and support that includes the prior assessment of possible socio-economic and environmental consequences of large investment policies and projects, free, prior informed consent for any land conversion or development projects, the provision of redress mechanisms and legal assistance, including fair and appropriate compensation and resettlement programmes for those affected by development projects.
- Mandatory representation of women, indigenous people and vulnerable groups in governance structures and monitoring of their impacts in decision making to improve social accountability at local level should be noted.
- Disaggregated data by gender, indigenous peoples and vulnerable groups and research on access to and control of land and natural resources (forests, fishing resources, water, etc) should be collated to enable more objective assessment and better understanding of use and relations with land and natural resources, and to promote better informed policies including in relation to social accountability and environmental sustainability.
- Women's rights to land and other natural resources should be fully recognized and recorded appropriately, and the standard practice of recognizing only the husband as the household head replaced with joint recognition.
- Gender-appropriate technologies and access to finance for women should be made available.
- Statutory recognition should be given to/speeded up for indigenous peoples' ancestral land and customary rights, including in relation to forestry and mineral rights and support provided to indigenous peoples for negotiating and enforcing laws. Laws that violate such rights should be repealed to ensure their security of tenure and the extent of progress in implementation of relevant international instruments should be monitored.
- Legal protection or convention should be provided in the case of landlessness and bonded labourers. National governments should work to provide alternate sources of employment and ensure economic security of landless farmers and bonded labourers.
- Protection and compensation should be provided for tangibly and intangibly affected communities (i.e. loss of land and livelihoods, air and water pollution and other nuisance) in cases of large scale mining.

4 Land use and urban planning should be transformed through responsible governance to achieve sustainable cities and communities

- Land use and urban plans should have long-term vision, should be made within the context of an overall framework of sustainability, should integrate rural and urban planning, and should take into consideration national policies and strategies. Cities should not be developed in isolation but should bring all stakeholders, including the urban poor and voiceless, to participate in the development of plans within the rights and resources available in the cities.
- Well functioning cities should work for the people, allowing allocation of land and ensuring the rights of people to social housing, clear rules and roles governing subdivision of lands in urban areas, etc.
- The importance of responsible, gender and culture sensitive and inclusive planning and efficient and effective dispute resolution mechanisms to achieve sustainable cities and communities should be recognized.
- Planning and administration systems in urban areas, underpinned by the principles of good governance and international human rights, should be designed to ensure that there is accountability and transparency in government agencies, coordination among land use agencies including in relation to natural resources issues, appropriate mechanisms and instruments for land disputes arising from land use planning, and that political will and appropriate resources and incentives are available to implement plans properly.
- Appropriate data and computerization should be available to enable planning and administration systems to operate at required scales and allow proper impact assessment of projects
- Rural-urban linkages should be addressed in order to harmonize agricultural, industrial, and urban policies, addressing particularly pressures in peri-urban areas, transportation and other related challenges.

5 Good governance of tenure should be an essential feature of sustainable cities and their management

- Recognition of rights of squatters or slum dwellers should be through rights to stay or to shelter so that they will not be subject to eviction. Different forms of rights should be considered according to circumstances to ensure security of tenure, with preference for community land tenure rather than individual plots for the poor and with communities empowered to control the processes through education and mechanisms for participation.
- Recognition that rapid urbanization and policies promoting it are root causes of landlessness should be universal.
- Compulsory acquisition of land and compensation are important issues in relation to urban development and expansion. Expropriations, 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.

- There should be recognition of urban dwellers' "right to the city", which is equitable enjoyment and use of the cities and its public spaces within the principles of sustainability, democracy, equity and social justice. This includes the recognition of urban family dwellers' need for urban services, full exercise of their rights to adequate living standards and their need for support to function in complex legal systems, post-conflict and disaster aftermaths and with rising property prices and commercial interests.

6 Land is a complex (production, housing, religious etc.) resource whose nature presents challenges in the face of developing fair and socially, politically, culturally and environmentally considerate land markets

- Land is more than a market commodity. It also represents cultural identity, critical source of food security, the living environment, community livelihood and social cohesion. These different characteristics affect land tenure and markets and their operation. Their implications should be recognized, with appropriate checks and balances being in place to ensure a balance between land markets and non-economic values, and that user rights are respected and secured.
- Government policy on land allocation / (re-)distribution and development (infrastructure) should not only consider economic purposes, but take into account the multi-dimensional nature of land.
- Land markets and other access mechanisms should be effective and efficient with a transparent, accountable and participatory regulatory framework which ensures adequate access to land for all people. Land valuation systems should be independent and accountable, based on fair and transparent processes. Transparent and accessible information systems should be developed as a prerequisite for a fair land market.
- Land is also a community affair. Participatory planning and regulatory framework should be set in place to ensure effective, efficient and sustainable development with justice and equality. Communities' rights to benefit from value increases should be recognised and appropriate sharing of the benefits of development between the developer, the government and the farmer/provider of the land. Transparent and accessible information systems should be developed in order to achieve effective land management.
- Compulsory acquisition of land should be minimized although it may be a necessity for public benefit including for agrarian reforms. Assessment of compensation (considering also social and environmental aspects) is a very important issue and compensation for those affected by compulsory acquisition should at least bring about similar level of living conditions of those affected.
- Safeguards are needed to prevent market-assisted land reforms from displacing vulnerable people from their land.

7 Government, academics, private sector, civil society and multilaterals and others should all have important roles in the context of developing land markets

- Government should set up legal and institutional frameworks to build an effective, socially equitable, and just land market system to ensure equitable access to land and use rights of land, as well as peoples' participation and environmental sustainability.
- Governments should ensure that the costs of land development are not externalized and borne by the vulnerable. Governments should enable society to be a beneficiary of equitable land rents and land value, e.g. by property taxation and leasehold and benefit-sharing schemes.
- Complicated laws and overregulation are symptoms of weak governance. Government interventions in the operation of markets are better done using financial incentives, such as property taxation, than through administrative constraints and barriers.
- 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 could 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.

C. The next steps

The Asian consultation is the second in the planned series of regional consultations, and will be followed by similar meetings in other regions of Africa, Asia-Pacific, Latin America, the Near East (Arabic speaking countries) and Europe. In addition two civil society and one private sector themed consultations will be held. The outcomes of these meetings, along with a global electronic consultation, will provide feedback on what should be considered when the Voluntary Guidelines are prepared.

The preparation of the Voluntary Guidelines will begin following the regional consultations. The draft version of the Voluntary Guidelines will be reviewed through a broad, participatory process. Participants of this workshop expressed keen interest to monitor this process its regional follow up in part through national and regional knowledge networks. The participants will be invited to review the draft and to propose improvements to make the Voluntary Guidelines more effective.

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

Participants of this meeting will be kept informed of the schedule for the preparation of the Voluntary Guidelines.

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