

REACHING CONSENSUS ON THE GOVERNANCE OF TENURE

DEVELOPMENT OF THE VOLUNTARY GUIDELINES AS SEEN BY STAKEHOLDERS



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The author worked in FAO's land tenure team from 2008 to 2013, participating in all the different stages of the development of the Guidelines. This working paper would not have been possible without the participation of 25 people who kindly agreed to share their experiences of the development process of the Guidelines.

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1. Characteristics of the reformed CFS

List of Abbreviations

AfDB	African Development Bank
AUC	African Union Commission
CFS	Committee on World Food Security
CSM	Civil Society Mechanism
CSOs	Civil Society Organizations
FAO	Food and Agriculture Organization of the United Nations
F&G	Framework and Guidelines on Land Policy in Africa
Guidelines	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
ICARDD	International Conference on Agrarian Reform and Rural Development
IFAD	International Fund for Agricultural Development
IPC	International Planning Committee for Food Sovereignty
LPI	Land Policy Initiative
NGOs	Non-Governmental Organizations
OEWG	Open-Ended Working Group of CFS
UN	United Nations
UNECA	United Nations Economic Commission for Africa
WFP	World Food Programme

1. Introduction

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (Guidelines) represent an unprecedented global consensus on principles and actions (see Box 1). They were endorsed on 11 May 2012 by the Committee on World Food Security (CFS), the top forum of the United Nations (UN) for reviewing and following up on policies concerning world food security, and one of the governing bodies of the Food and Agriculture Organization of the United Nations (FAO).

Box 1. What are the Voluntary Guidelines on the Responsible Governance of Tenure?

The Guidelines outline principles and practices to which governments and other actors can refer when defining policies, making laws and administering legitimate tenure rights to land, fisheries and forests. By definition the Guidelines are voluntary, meaning that they do not replace existing laws, treaties or commitments.

The Guidelines promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. Providing poor and vulnerable people with rights to land, fisheries, forests and other natural resources is a key condition for sustainable livelihoods.

The Guidelines are the first global instrument on tenure and its governance to be developed through negotiations conducted in the United Nations system. These Guidelines thus represent the greatest extent of “common ground” on tenure that has been found to date in a global forum. The Guidelines are also the first framework that can be applied equally to land tenure, fisheries tenure and forest tenure, recognizing their important similarities and also the inter-sectoral linkages between these natural resources.

For more information on the Guidelines you can visit the dedicated website (www.fao.org/nr/tenure) where you can:

- download the Guidelines in all official FAO languages;
- receive the latest information on the application of the Guidelines;
- watch interviews of people involved in the negotiations;
- access articles on the development and the application of the Guidelines;
- read background documentation published during the development of the Guidelines.

The Guidelines were developed through multiple phases, starting with the exploration of ideas and conduct of background research, followed by consultations with stakeholders, preparation of an initial draft of the Guidelines and e-consultation, and ending with intergovernmental negotiations taking place under the auspices of the CFS. A number of stakeholders representing governments, civil society, the private sector, academia and regional and international organizations were associated with the different phases of the process. This working paper explores the viewpoints of these stakeholders on the development of the Guidelines.

This working paper provides an outlook on the way in which people and their organizations were engaged in the development of the Guidelines, highlights their key experiences and draws lessons learnt. Through these explorations the aim is to understand the uniqueness of the process, describe the dynamics that were created between parties and provide a closer look at the synergies established.

The paper is based on semi-structured interviews conducted with 25 people between October 2013 and March 2014.¹ These people represent the main stakeholder groups (governments, civil society, the private sector, academia and regional and international organizations) that were involved in the different stages of the process (i.e. development of the concept, consultations, drafting, negotiations and endorsement) and come from a number of regions of the world. Even if there is a good distribution of people interviewed, by no means does the paper aim to be inclusive or exhaustive. It is rather a collection of best practices and experiences related to a process that has been globally recognized as participatory and as a milestone achievement. The issues and ideas put forward in the paper can thus inform other similar processes or increase understanding on the different dynamisms of a global policy process.

This paper is complementary to other pieces of work published on the Guidelines, in particular to articles of the thematic issue of the FAO Land Tenure Journal on the development and application of the Guidelines.²

¹ For the purpose of the study 37 people were contacted, of which 25 responded positively. The interviews that were conducted lasted around 45 minutes each. It was agreed with the interviewees that no direct quotations would be attributed to individuals, countries or organizations. If the names of individuals, countries or organizations appear in this paper, this means that their role in the Guidelines process is generally recognized or known. Thus, points of view are rather identified in terms of larger stakeholder groups.

² <http://www.fao.org/nr/tenure/land-tenure-journal/index.php/LTJ/issue/view/5>

2. Finding common ground: The development process of the Guidelines

This part looks at the different phases of the development of the Guidelines, highlighting ways in which stakeholders were engaged in the process and the types of internal and external synergies they created. Background information on the key elements of the development process is also put forward.

2.1 Motivations for engagement

For a number of stakeholders the development of the Guidelines offered an opportunity to engage in a global policy dialogue on tenure. The Guidelines were seen as an important policy process in which it was relevant to participate in order to advance some aspects of governance of tenure at the international level. The subject matter was considered as being highly relevant because of the centrality of tenure of land, fisheries and forests for the development of any country. The interviewees thus saw the process as an opportunity to associate the development of the Guidelines to ongoing discussions and activities in countries and regions. Indeed, real life situations were informing the conception of the Guidelines and the global dialogue on the governance of tenure was inspiring policy discussions and activities in countries even during the early elaboration stages of the Guidelines. The development process was also an opportunity to raise issues that might not have been addressed by earlier instruments. Synergies were thus created between global, regional and national levels.

For others, the development of the Guidelines was a continuation of previous international policy processes such as the Right to Food Guidelines (“*Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*”) that were adopted by the FAO Council in 2004, and the International Conference on Agrarian Reform and Rural Development (ICARRD) that was held in Brazil in 2006. As a follow-up to these initiatives, FAO had looked at how the Right to Food Guidelines and the ICARRD perspectives could inform each other and be mainstreamed into the work on the governance of tenure. Thus by addressing land, fisheries and forest tenure, some interviewees saw in the development of the Guidelines an opportunity to contribute to the implementation of the Right to Food provisions and in particular its Guideline 8B on land (see Box 2). If the linkage towards the Right to Food Guidelines was promoted by representatives of member states and civil society, the ICARRD perspectives were put forward strongly by civil society organizations. The interviewees also noted the prevalence of food security concerns in the international policy agenda when the development of the Guidelines was first discussed with the member states in 2008-09. This gave political leverage for the development process of the Guidelines.

In a number of instances, the governance of tenure of land, fisheries and forests, together or individually, corresponded to the mandate, policies, strategic objectives and/or programme of work of many member states, civil society organizations, professional associations and international organizations whose representatives were interviewed. The development of the Guidelines therefore offered a setting for addressing the governance of tenure in a more comprehensive manner inside institutions and organizations, for contributing to a global policy process, and for raising one’s profile among tenure professionals.

Box 2. Land tenure as mentioned in the Right to Food Guidelines

GUIDELINE 8B

Land

8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.

In addition to creating synergies with outside players, the process was seen as a way to link with people inside one's own institution or organization to exchange experiences and to engage in mutual learning. Some other stakeholders felt that the theme of governance of tenure touched upon key questions on which they were working, such as human rights (see Box 3). The development of the Guidelines thus provided an avenue for contributions to ensure that these aspects are addressed when talking about the tenure of land, fisheries and forests.

Box 3. Some themes to which the interviewees associated the development of the Guidelines

Tenure security
Tenure rights
Land reform
Investments
Right to food
Right to housing
Rural development
Livelihoods
Legal empowerment of the poor
Human rights
Rights of Indigenous Peoples

Another way of getting engaged in the process was through partnerships with FAO or with other organizations that were participating in the development of the Guidelines. In particular, many technical experts and organizations were associated with the process from the very beginning, based on professional collaboration they had developed with FAO over the years. In many cases, the Guidelines offered a leverage to strengthen these contacts and to engage in a global policy process. Direct participation in various technical meetings and regional consultations or financial support towards the initiative ensured that member countries, civil society organizations, professional associations and intergovernmental organizations closely followed the process until the end. As one interviewee put it, the process managed to

create a core group of people and their organizations who were contributing to, supporting and following it since the beginning. This certainly created leverage for expanding the partnerships at later stages of the process.

Where stakeholders and their constituencies were closely involved in the development of the Guidelines, it was not uncommon for them to seek approval and inputs from higher levels (including the Cabinet of the Prime Minister in the case of some member countries). These higher levels were subsequently informed of the evolutions of the development of the Guidelines. Most of the interviewees reported that committees or working groups on food security, natural resources management or even on tenure were in place in countries, institutions or organizations, and those committees or groups later became natural homes to discuss the content of the Guidelines and to define political positions in view of the intergovernmental negotiations. They were often inter-disciplinary and inter-institutional, including a variety of stakeholders from the government, civil society, academia and the private sector. Through these committees and groups an important range of actors was mobilized for the development of the Guidelines. These dynamics are further explored in the following sections that concentrate on the different phases of the development process of the Guidelines.

2.2 Development of the concept

FAO started to work on the governance of land tenure and its administration as an explicit topic in 2005 when the idea of a code of conduct and an associated field programme was explored. The initial work towards the development of the Guidelines included research, publication of background papers, organization of expert meetings and conducting of surveys on corruption in the land sector. The results of this work showed the need to improve governance of tenure and its administration in all regions of the world. As one of the interviewees framed it – there was a need to talk about tenure in a broader political sense that also established linkages with other natural resources.

The start of the process was made possible by support received from key partners. A number of member countries, organizations and institutions reported that they kept an interest in the development of the Guidelines throughout the process. Their contributions were crucial in framing the objectives and scope of the initiative and in securing funding in 2008-09.³ In particular, countries that were developing tenure policies and legislation on aspects of governance and participation provided valuable technical inputs at the start of the process and were drawn into the initiative as key partners and champions.

The initial seed money and the trust funds that followed permitted FAO to conduct technical studies, explore lessons learnt of other similar processes, and design a

³ FAO received initial seed money from Finland to conduct background research on the governance of tenure and its administration. This was followed by additional trust funds from IFAD (International Fund for Agricultural Development) and Germany that supported the consultations. These consultations also received support from other parties, including the German Technical Cooperation (GIZ), France, Global Land Tool Network (GLTN) and Conseil Supérieur du Notariat. Funding from the European Commission supported the negotiations, and funding from Switzerland also contributed to the initiative at an early stage.

programme of work for the development of the Guidelines. An interdisciplinary and interdepartmental team of technical staff was formed as the initiative progressed in FAO. This technical dedication of FAO towards the whole development process of the Guidelines was seen by some of the interviewees as one of the keys for success.

A wide range of stakeholders was involved in the development of the Guidelines from the outset, of which the inclusion of the Civil Society Organizations (CSOs) and other Non-Governmental Organizations (NGOs) was seen by the interviewees as having been crucial. Importantly, the design of the projects funded by IFAD (International Fund for Agricultural Development) and the Government of Germany reserved a notable part of the funds for consultations by civil society. As soon as this funding was operational, FAO entered into contracts with CSOs to enable them to organize themselves. The CSO engagement was channelled through the International Planning Committee on Food Sovereignty (IPC), with FIAN International being responsible for leading the consultation process at the global level and appointing facilitators to mobilize constituencies in Latin America, Africa and Asia.

As reported by the interviewees and raised in an initial scoping study, it was seen as essential to ensure the participation in the process of different civil society constituencies (e.g. indigenous peoples, fisher folk, pastoralists, foresters, farmers' organizations, women's organizations, etc.) that came from a variety of natural resource sectors. One of the interviewees explained that in addition to recruiting regional facilitators, a global team was established, bringing together around twenty civil society representatives. This team held meetings to decide on the methodology to be adopted for the civil society consultation process and to identify overarching key themes. The team defined messages to be communicated to constituencies, the way in which contributions would be gathered together, the criteria for the organization of the regional consultations, and the identification of key people to be invited. As mentioned by the interviewee, this first gathering helped the civil society constituencies to organize themselves and it set a basis for coordination mechanisms that was followed throughout the process.

2.3 Consultations

It was foreseen from the beginning that a consultative process would provide stakeholders with opportunities to identify issues and actions to be included in the Guidelines. The process for defining the contents of the Guidelines thus started from an open page and included in the beginning the organization of 15 meetings around the world during 2009 and 2010 (see Box 4). In total, these meetings brought together over thousand people from around 133 countries and who represented the public and private sectors, civil society, academia, and regional and international organizations. Each consultation meeting produced an assessment recording the key aspects of governance of tenure in the region.

FAO, together with partner countries and organizations, coordinated the regional and private sector meetings while IPC/FIAN was responsible for the four civil society consultations. The interviewees found that the partnerships created for each consultation meeting further ensured the engagement of a number of countries and organizations in the process. Many of these partners became part of an advisory group on the Guidelines and later contributed to the e-consultation and the

intergovernmental negotiations. At the very beginning, the role of partners was helpful in suggesting people to be invited to the regional consultations. Indeed, the consultation process demanded the mobilization of a wide network of contacts around the world. Finding key participants became gradually easier when countries, civil society organizations and professionals started to be aware of the process either through FAO communications or through partners and participants of previous consultation meetings. Above all, the consultations brought together a large number of technicians and professionals working on tenure around the world.

Box 4. Consultation meetings organized prior to the initial drafting of the Guidelines

Regional consultation meetings

- Southern Africa (Windhoek, Namibia; 28-30 September 2009).
- Asia (Hanoi, Viet Nam; 19-22 October 2009).
- Europe (Bucharest, Romania; 22-24 March 2010).
- Near East and North Africa (Amman, Jordan; 2-4 May 2010).
- Latin America (Brasilia, Brazil; 20-21 May 2010).
- Francophone Africa (Ouagadougou, Burkina Faso; 23-25 June 2010).
- Pacific (Apia, Samoa; 14-16 July 2010).
- Central America and Caribbean (Panama City, Panama; 6-8 September 2010).
- Eastern and Anglophone Western Africa (Addis Ababa, Ethiopia; 20-22 September 2010).
- Commonwealth of Independent States (Moscow, Russian Federation; 23-25 November 2010).

Civil society consultation meetings

- Asia (Kuala Lumpur, Malaysia, 24-26 March 2010).
- Latin America (Brasilia, Brazil, 19 May 2010).
- Europe and Central and West Asia (Rome, Italy, 7-9 July 2010).
- Africa (Nyeleni, Mali, 8-10 September 2010).

Private sector consultation meeting

- Global (London, United Kingdom, 25-26 January 2010).

2.4 Initial drafting of the Guidelines

The regional, private sector and civil society consultation meetings established the basis for the design and preparation of the Zero Draft of the Guidelines. As the consultation process drew to a close, the issues presented in the regional, private sector and civil society assessments were compiled together to inform the outline and contents of the Zero Draft. As a result, key aspects to be covered by the Guidelines were defined, relevant material that already existed was identified, and possible gaps were recognized. These preliminary steps were followed by the initial drafting of the content during a couple of months in early 2011 by the FAO team that was working on the initiative. A quality control meeting was organized with a small group of outside partners and experts to review an interim version of the Zero Draft. Their inputs were reflected in the final version of the Zero Draft, which was launched, in all six official FAO languages, at a “Rome Reading” at FAO Headquarters on 15 April 2011.⁴

⁴ The official FAO languages are Arabic, Chinese, English, French, Russian and Spanish.

Some of the interviewees recognised the openness of the drafting process, i.e. the drafting started only after the last consultation meeting was completed, which enabled the voices of those who attended the later consultation meetings to still be heard. By building on the consultation meetings, the proposals of participants were used to inform the design and content of the Guidelines. As highlighted by the same interviewees, attention paid to the results of the consultation meetings and their integration in the Zero Draft further ensured that a link was built between the consultation and negotiation processes.

Some interviewees also recognised the intensity of the drafting process and the limited timeframe to conduct the exercise. The quality control meeting was thus seen as a key step to ensure that the Zero Draft had no “killer problems” (i.e. problems that would derail the initiative) but in addition it led to changes to improve the clarity of the document, e.g. removing ambiguities, etc. At that stage, the main objective was to produce a document that could be applied to real situations faced by people. As expressed by some interviewees, the Zero Draft had to consider the governance of tenure broadly enough to be applicable to and relevant for a number of contexts and regions of the world.

2.5 E-consultation

The launch of the Zero Draft was followed by a month-long e-consultation during April-May 2011. All people who had participated in the consultation phase were contacted, FAO permanent representatives were informed, and the event was widely publicized to provide an opportunity for the general public to provide suggestions on the draft Guidelines before their negotiation by the member countries of the CFS.

Many people interviewed for this paper highlighted the importance of the e-consultation phase. First, it allowed different organizations to make systematic comments on the Zero Draft and thus contribute directly to the contents of the Guidelines. As a result both civil society and government representatives felt that important changes were introduced and the quality of the document was significantly improved through the public consultation. The revised draft – becoming the First Draft – was published in early June 2011. Second, the e-consultation generated a greater interest in the development of the Guidelines and served as a starting point for the preparations towards the intergovernmental negotiations. In fact, the e-consultation phase was a moment when many countries and organizations decided to get more actively engaged in the process if they had not yet done so. The interviewees also reported that mobilizations at regional levels started to appear during the e-consultation. Overall, the development of the Guidelines was little by little moving from a technical process towards a political one.

A number of interviewees representing governments highlighted that the e-consultation was a moment to become more closely engaged with the Guidelines’ process and make specific contributions. For these countries it was important to react to the Zero Draft to ensure that their key issues were taken into account or introduced in the First Draft. At the stage of the e-consultation contributions were often based on previous position papers on tenure or drawn from national development strategies and policies. These points were mostly discussed in working groups that brought together relevant Ministries and, in some cases, subject matter specialists, professional

organizations, scholars and civil society organizations. These structures, the formality of which varied from case to case, were then those that also prepared country positions for the intergovernmental negotiations. On many occasions existing food security working groups were used as a stepping-stone to constitute specific groupings on the governance of tenure. At the stage of the e-consultation, a number of countries also started to exchange information with their peers at the regional level to ensure the coherence with regional policies and instruments.

The e-consultation was also a way for CSOs, NGOs, professional associations, international organizations and other coalitions to engage with their members, raise awareness on the Guidelines and animate discussions with a wider public. Some CSO representatives mentioned that they used the opportunity of the e-consultation to engage a number of actors at the country level, including government representatives, to discuss the contents of the Guidelines. Others indicated that they contributed to the discussions of already existing working groups in countries. These multi-stakeholder discussions were held with diverse success, varying from active contribution in the formulation of country positions to overall awareness raising of the Guidelines. In addition to multi-stakeholder dialogue, many parties invited their own constituencies and staff members to provide comments on the Zero Draft. In some instances, these comments were then consolidated before being transmitted to FAO. Similarly to member states, the responses of civil society to the Zero Draft drew from earlier internal policies, from positions made on national policy and legal processes or from concrete field experiences. Therefore, great use was made of previous work, inputs and consultation processes.

2.6 Intergovernmental negotiations

2.6.1 Preparations for the intergovernmental negotiations

FAO's work towards the preparation of the Guidelines had been presented to several FAO governing bodies, of which the CFS became the most relevant. The early findings of the consultation process were reported to the CFS in October 2010 and the body encouraged the continuation of the process with a view to submitting the Guidelines for the consideration of the CFS in October 2011. At the same time the CFS decided to establish the Open-Ended Working Group (OEWG) through which the intergovernmental negotiations took place. Indeed, as highlighted by one government representative it was seen to be crucial to open the discussion on the Guidelines so that all member states as well as civil society and private sector participants could express their opinions and have their voices heard. This was possible through the OEWG arrangement.

The OEWG constituted for the Guidelines was chaired by the United States of America and received important support and advice from the CFS Chair, Bureau and Secretariat on the design and implementation of the negotiations. In addition, a Technical Secretariat of around twenty people worked behind the scenes and helped the Chair of the OEWG by providing technical clarification on the text, assisting with the scribing, taking care of urgent demands, and supporting the work on defining the rules.

As already noted, many constituencies started to define their positions during the e-consultation on the Zero Draft of the Guidelines. The interviewees reported that working groups were established and multi-stakeholder dialogues were activated. These initial processes were followed by actions to develop the official positions for the intergovernmental negotiations on the First Draft of the Guidelines. The interviewees highlighted different ways and steps used in reaching common ground at the country or organizational levels. Some countries and organizations drew on already existing position papers on the governance of tenure or referred to their own policies and programmes. Existing studies were also used to build a coherent overall vision, and advice was sought from a wide range of specialists. These existing documents and processes were seen to be helpful in building a common position, preparing for the negotiations and formulating precise comments during the intergovernmental negotiations. The processes that led to the development of positions were often iterative and participatory, taking place in formal or informal working groups. A great collective effort was made in establishing a common vision. Overall, the preparations were seen as crucial in ensuring responsiveness during the intergovernmental negotiations and being able, for instance, to propose alternative text on the negotiation floor.

The positions established at country or organizational levels were often further negotiated within regional Caucus Groups or within the Civil Society Mechanism (CSM) before they were brought to the plenary where the negotiations took place. Indeed, countries were organized under their regional groups with the objective of speaking with one voice. The same applied to civil society and the private sector, whose coordination mechanisms brought together a range of organizations and individuals with a variety of backgrounds. This meant that positions were established and reviewed at various levels before they were actually negotiated. The interviewees confirmed that the regional Caucus Groups and the CSM held a number of preparatory meetings prior to each round of negotiations and also exchanged points of view during the negotiations. Different options, inputs and strategies were discussed. “Red lines”, i.e. issues which did not correspond to defined positions and on which parties did not want to negotiate, were agreed upon. Spokespersons were identified, for example, depending on who would be the best placed to raise a particular issue in order for it to be addressed effectively during the negotiations. The members of the Caucus Groups and the CSM were also allocated different roles: while some people concentrated more on defining appropriate wordings, others led the political process. Where possible, some of the groups also ensured that English native speakers were always present in the plenary as the document in which changes were introduced was written in English. This was considered important even though simultaneous interpretation was provided in all official FAO languages.

The agencies and organizations represented in the intergovernmental negotiations as participants or observers also reported that they prepared written submissions which were shared with the members and other participants. These submissions were often technical in nature and concentrated on analysing the First Draft of the Guidelines from thematic and technical points of view in line with their organizations’ mandates. The interviewees mentioned that internal clearance procedures had been closely followed before any observations were published. They also found that these submissions were often warmly welcomed by the member countries and other participants who saw the technical contributions as an important background resource.

Some of the viewpoints also ended up inspiring the positions of country negotiators and the participants of the civil society and the private sector.

2.6.2 Holding of the intergovernmental negotiations

In the end the OEWG met four times. An initial meeting of the OEWG was organized in June 2011 to work through the First Draft of the Guidelines and receive comments based on the positions of countries and organizations. This was followed by three rounds of intergovernmental negotiations in July and October 2011, and in March 2012. Some 98 member countries of the CFS, as well as the European Union as a member organization, attended the negotiations. As a result of the recent CFS reforms (see Annex 1), the negotiations also included CSOs, farmers' organizations, private sector representatives and international organizations as participants and a number of other actors as observers. In practice, the new rules meant that only member countries were able to decide on the final wording but participants had the right to propose text and express their viewpoints. The observers mainly provided technical clarifications or directed attention to certain issues where relevant and permitted by the Chair of the OEWG.

Many of the interviewees felt that the preliminary meeting in June 2011 was useful in recording the positions of different member countries, identifying allies and taking note of possible contentious points. All the comments made during the meeting were subsequently published in an annotated version of the First Draft, which became known as the "Bracketed document". Member countries and CSOs referred to this document when preparing their positions before and during the negotiations. The June 2011 meeting was certainly interesting in recording different positions but the interviewees also felt that the tight schedule of the negotiations meant that countries and CSOs were not properly prepared for it.

The initial schedule called for successfully negotiated Guidelines to be presented to the CFS at its annual meeting in October 2011. This, in turn, allowed for one negotiation round in July as documents for the CFS would be submitted for translation in August. However, as some interviewees pointed out, it became clear from the outset that more time was needed, particularly as the members and participants requested the negotiations on the Guidelines to proceed paragraph by paragraph and only in the Plenary (as opposed to negotiations being carried out in different thematic groups). The length and the complexity of the Guidelines, which also introduced many political dimensions related to the questions of governance of tenure, meant that more time was required in order for the intergovernmental negotiations to be successfully concluded. In the end, three rounds were needed to come to an agreement. Some interviewees observed that the negotiations started to become more real and serious during the second round in October 2011. In fact, at this point member countries had had sufficient time to prepare themselves and they brought in larger delegations from their capitals.

The size of the delegations varied from country to country as did the back-up received from capitals. While some countries were represented only by their Permanent Representative based in Rome others also brought experts from capitals. The largest delegations thus included representations from Rome as well as specialists in aspects of tenure, agriculture and law. Some delegations also received back-up from capitals

during the negotiations. Interviewees reported that from time to time the negotiators had to refer to their line Ministries, Ministries for Foreign Affairs and to the working groups established on the Guidelines to ensure that the proposed text was in line with their country's policies and engagements. They also sought advice on "red lines". Indeed, sometimes unanticipated issues arose, for which advice was sought from the very highest decision-making level. In general, the interviewees reported that they received feedback very quickly thanks to the responsiveness of colleagues and working groups who had a clear vision on the country positions and on the most sensitive issues. These colleagues were then kept up-to-date as the negotiations moved forward.

The intergovernmental negotiations were carried out in plenary with simultaneous translation in all official FAO languages. Occasionally the Chair of the OEWG requested a "Friend of the Chair" to form a group of people to work on the side to address issues raised by the plenary. An additional group, the Language Harmonization Group, was initially formed to ensure that the language proposed was in line with that of other international instruments, to put forward definitions and roles of state and non-state actors, and to ensure that certain texts being negotiated were consistent with already-negotiated text, but this group was later tasked with developing proposals for some sections that had stalled in the plenary. A core group of approximately ten people, representing different regions and backgrounds, participated in the work of the Language Harmonization Group and technical support, clarifications and new insights were also provided by some observers. Similarly, the Friends of the Chair arrangement allowed for the resolution of points on which there was a lack of consensus between a small number of parties. By referring the matter to a Friend of the Chair, the development of proposals took place in a small group of people who were the most concerned about the matter, and so allowed negotiations to continue on other text in the plenary. The proposals developed by these groups were passed to the plenary for consideration and approval.

After each round of negotiations an updated version of the First Draft of the Guidelines was published and translated in all official FAO languages. Member countries, participants and observers were informed about the progress of the negotiations through dedicated websites of the CFS, Permanent Representative, FAO and CSM. In addition, briefings to member countries were organized before each round of negotiations to provide a review of the situation. This constant updating on the progress of the negotiations was seen as important, in particular by parties who were not able to attend the negotiations themselves but who were closely involved in the development of the Guidelines and wished to apply them to the preparation of country strategies and programmes.

2.6.3 Consensus building

Great effort was required to come up with a consensus document. The negotiations thus required careful preparation and continuous exchange between parties in and outside the plenary sessions.

A key element for the negotiations was the regional caucus groups around which member countries were organized. A number of these groups spoke with a single voice, meaning that much preparatory work and pre-negotiations took place prior

presenting ideas to the plenary. The interviewees recognised the challenge in doing so as countries had to put aside their specific contexts and immediate interests and try to perceive the challenges at a regional level and from a longer-term perspective. Yet, this preparatory work ensured that the negotiations were conducted in a smoother and more efficient manner than would have otherwise been the case. Many of the interviewees were impressed by the mobilization of the member countries around the Caucus Groups and by their energy, flexibility and internal organization. The interviewees who had participated in the work of Caucus Groups reported that they met with the representatives of other countries on several occasions prior to and during the negotiations to review positions, discuss current issues and draft compromise language. Exchanges of ideas between the negotiations were also possible through systems of coordination such as email lists.

The Caucus Groups and individual countries also organized outreach meetings with other parties, nurtured contacts with like-minded countries and CSOs, and met with the Chair of the OEWG on a regular basis. These contacts, especially with the CSOs, were often a continuation of the preparatory processes that had already started in the capitals. A number of countries were already engaged in open dialogue. The interviewees stressed the importance of having been able to interact directly with other parties involved to understand the sensitivities of each and every one. In particular, these interactions opened a way for finding a compromise regarding particular subjects of discord. From time to time, the technical agencies present in the negotiations were asked to provide expert opinion on precise questions. In doing so, these agencies helped the Caucus Groups to build their own positions and increase understanding on some technical points. In particular, attention was paid to ensuring consistency with existing global and regional agreements and instruments such as the Framework and Guidelines on Land Policy in Africa (F&G).

The CSOs were organized in a similar manner and often brought their forces together around the CSM with an idea of speaking with one voice. This equally meant that positions had to be negotiated in advance and agreement reached among the different organizations and interest groups. The CSOs also reported having entered in active communication with member countries and undertaken “corridor lobbying”. Yet, as stressed by the interviewees, the negotiations on the Guidelines were one of the first times that CSOs were included in plenary discussions of an international policy arena and given the opportunity to voice their concerns.

These examples of the organization of the Caucus Groups, member countries and the CSOs show that a number of formal and informal tools were used for consensus building. Indeed, the negotiations did not take place only in the plenary but also during breaks, behind closed doors, and prior and between the rounds of negotiations. The interviewees noted that they developed strategic approaches towards the negotiations. For example, some parties decided to intervene only if their key points were not mentioned by others. Others established clear strategies on how to respond to difficult points. A re-analysis of the sessions was often done at the end of each day to revise the strategies and to run through the programme of the following day. All the parties who were interviewed reported to have gone through extensive preparations for the negotiations by analysing the Guidelines paragraph by paragraph.

The general feeling from through the interviews is that the negotiations were led in a trustworthy and respectful atmosphere, which then allowed the informal consultations between parties to take place. As one interviewee expressed, no one wanted to take the responsibility over a possible failure of the negotiations. This ensured that everyone was working towards finding a common ground with a great sense of listening and understanding of each other. The Guidelines are thus a consensus document owned by all parties involved in its formulation.

The final and negotiated draft of the Guidelines was endorsed in the 38th Special Session of CFS on 11 May 2012 in the presence of the Chair of the CFS and the Director-General of FAO. In addition, IFAD, WFP (World Food Programme) and Biodiversity International, which are located in Rome, also attended the session, which was followed by a press conference that included representatives of the different stakeholder groups.

3. Looking back: Experiences of the development process of the Guidelines

This chapter highlights key elements for success and identifies the main challenges encountered throughout the development process of the Guidelines. By looking back and reflecting on the experiences of the interviewees, the objective is to bring in lessons learnt (see Box 7) that can inform other similar policy processes.

3.1 Building a coherent and inclusive process

The development of the Guidelines took place over a number of years. At its origination in FAO, it was always intended as a political instrument although the initial focus was as a technical initiative that received support and interest from key partners and FAO's governing bodies. The process grew gradually, becoming more known and attracting attention of member countries, tenure professionals, civil society organizations and the general public.

A momentum had been created for the development of the Guidelines but, as observed by the interviewees, it became important to balance the momentum against the time needed for extensive consultations, drafting and intergovernmental negotiations. The interviewees recognised the need for a balance: on the one hand the overall process should not be too long in order not to lose the momentum, but on the other hand enough time should be allocated for maturing ideas, building a common understanding and developing a sense of compromise. In particular, some felt that the work at the beginning should not be rushed and that time should be taken to build a solid plan and develop a good quality First Draft. Yet, other interviewees felt that the consultation process could have been quicker but at the same time they recognised its importance for the overall process and for its inclusiveness. Time constraints were also seen as a concern for the intergovernmental negotiations. If the initial plan was to conduct the negotiations in one round, this optimism quickly disappeared. The interviewees thus noted the importance to be realistic from the outset, setting aside more time and consequently more resources for the political process. Nonetheless, a little healthy pressure was seen as necessary to capture the attention of the political players towards the agenda.

Important intellectual and financial investments in the process, as well as the mobilization of wide expertise, were important to come up with a good quality First Draft. The interviewees highlighted the importance of FAO providing a dedicated multi-disciplinary group of people and a programme of work that together ensured that sufficient attention and priorities were given to the process and to developing solid partnerships.

However, it could be sensed through the interviews that the consultation and negotiation processes were often perceived as being two separate undertakings without a clear continuation between them. This was in particular a feeling shared by government representatives whose line Ministries often engaged in the process only at the start of the intergovernmental negotiations. In fact, different actors usually participated in these phases and with little or no interaction between them. In some cases, the negotiators were not fully aware that their countries had participated in the consultation meetings and in which manner. At times, the participants of the

consultation meetings did not necessarily follow the intergovernmental negotiations and were therefore unaware of the political dimension of the Guidelines, although the distribution list for newsletters disseminated after each negotiation round included all participants of the consultation meetings. The participation was seen to be more continuous among the civil society as a number of organizations had been following the process since the beginning and also attended the intergovernmental negotiations.

This perceived discontinuity might also explain the various views gathered on the Zero and First Drafts as well as on the Final Guidelines. Several people felt that the Zero and First Drafts were significantly improved and strengthened when they became objects of public contributions (i.e. through the e-consultation in the case of the Zero Draft, and the intergovernmental negotiations in the case of the First Draft). These political processes thus ensured the development of more inclusive Guidelines that corresponded to the aspirations of people. Some interviewees pointed out that the richness of the regional debates could also have been brought more to the attention of the negotiators and therefore been reflected during the plenary discussions. Overall, the consultations enabled a number of players to engage in the process of raising awareness on the governance of tenure and increasing visibility of the development of the Guidelines. Above all, the negotiations made it possible to develop a common global understanding on the governance of tenure.

3.2 Seeking inspiration from the CFS-led intergovernmental negotiations

The intergovernmental negotiations that were led by the CFS gave political legitimacy to the Guidelines. The negotiations ensured that political dimensions of tenure were fully considered, technical ideas were refined, and text proposed by the states was adopted. Some of the interviewees also saw the negotiations as a moment for sharing experiences from the field and exchanging ideas as a part of the consensus building. The negotiations thus gave power to the Guidelines, without which they would have remained a technical document of FAO.

The CFS became the political home for the Guidelines and the intergovernmental negotiations took place in the context of the CFS reforms (see Annex 1). The negotiations on the Guidelines were one of the first programmes of work of the reformed CFS and a test in itself. While the CFS continues to have countries as its members, one of the key characteristics of the reformed CFS is the inclusion of the civil society, the private sector and international organizations as participants. During the negotiations, the participants were able to share their viewpoints and propose text while the final decision-making was reserved for the member states. In addition, observers were allowed to be present in the audience and to participate in the discussion upon approval of the Chair of the OEWG.

This openness of the CFS towards different constituencies was appreciated by all interviewees, who viewed the participation of the civil society, the private sector and international organizations as the highlight of the development process of the Guidelines. What then makes this participation in the intergovernmental negotiations remarkable? In particular civil society representatives and those involved in other global policy processes embraced the negotiations for their inclusiveness and innovativeness especially when compared to other UN-led negotiations. Indeed, they explained that in many other intergovernmental negotiations civil society can

influence the process only through lobbying outside the plenary, while in the CFS-led negotiations on the Guidelines they had a right to express their ideas directly to the negotiators and other participants. The civil society representatives highlighted that it was crucial for them to be part of the negotiations. They saw themselves as the actors who brought real experiences from the ground – experiences that might not otherwise have been touched upon. In other words, the openness of the CFS-led negotiations made it possible to give a voice to people who deal with the governance of tenure in their everyday lives. The transparency of the whole development process was also appreciated by civil society representatives who were interviewed. They were grateful to FAO and the CFS for having created a respectful environment among the stakeholders and for following the principles of engagement of the reformed CFS. Overall, the Guidelines were developed in a constructive and respectful environment appreciated by all actors involved.

Could the model of the CFS-led negotiations then be something to be transposed to other UN bodies as well? This question came up in several interviews. In particular the civil society representatives stressed that other processes could look at ways to bring in the civil society and provide them with a right of expression. This inclusiveness could be a means of building a dialogue and trusted relationships between stakeholder groups and thus increase the legitimacy of the negotiated texts. The interviewees proposed that the positive experiences of the CFS-led negotiations could be presented to other UN bodies and some action in this direction was reported to be taken, for example in Geneva, by civil society and human rights organizations as well as by some member states. Some interviewees also observed that the openness of the CFS process might not only have effects outside Rome but might also influence other FAO governing bodies and FAO's partnership policies.

The interviewees considered that it was essential to communicate the positive experiences of the CFS-led negotiations, including increasing the visibility of the Guidelines as an instrument for use by other UN-bodies. It was recognized that there is a challenge in considering the Guidelines as a worldwide instrument and not only something internal to the CFS and the UN Rome-based agencies of FAO, IFAD and WFP. Indeed, the interviewees highlighted that other Committees and Bodies should consider the Guidelines as well. The Guidelines should become something that is automatically referred to when creating new instruments that have tenure dimensions. This was seen to be crucial in order to avoid duplication and to harmonize texts and practices inside the whole UN system.

In fact, after the endorsement of the Guidelines by the CFS, the UN General Assembly encouraged its member states and bodies to apply the Guidelines, and their implementation is also encouraged in the Rio+20 Declaration. Yet, some interviewees recognized that all parties involved in the development of the Guidelines can play a role in their dissemination and in raising awareness of them. Through individual and institutional action, people can spread the word, increase the understanding on the Guidelines and ensure that the Guidelines are systematically referred to in other policy instruments.

3.3 Negotiating in a constructive and respectful atmosphere

As described in the second chapter of this Working Paper, the negotiations involved formal and informal interactions between parties and interest groups which worked at different levels. The process took place over several months and demanded substantial investment from the parties involved in order to reach a mutually acceptable document. The interviewees often identified people who made individual contributions and whom they viewed as being key for reaching a satisfactory end result. These people were seen as honest brokers and, in particular, trustworthy relationships were built between them and the Chair of the OEWG. However, the results of the negotiations were overall a joint effort of many people.

The overall impression given by the interviewees on the intergovernmental negotiations is very positive. The interventions and the diplomatic debate were considered to be constructive. All stakeholders, negotiators, participants and observers were given an opportunity to be involved in the process and the internal organization of some Caucus Groups and the CSM were appreciated. Indeed, great efforts were made within these groups to find common positions on key issues before they were raised in the plenary. This was seen to make the overall negotiations smoother and more efficient. The interviewees also appreciated the transparency and the democracy of the process – they described that there was no smuggling in of text, decisions were always taken in the plenary, and no single country had a control over the process. These factors certainly contributed in creating positive energy and conditions for the negotiations to take place successfully. Overall, people were committed to reaching consensus, meaning that they were open to discuss the text and understand the viewpoints of others. They were ready to recognize that the negotiated text would affect them in one way or another and thus took the exercise seriously. Compared with previous similar experiences the interviewees highlighted that the intergovernmental negotiations on the Guidelines were constructive and, in the end, were completed in a short time of three weeks of negotiations.

3.3.1 Organizational solutions to reach an agreement

Of course, all negotiations also involve power plays and challenging moments. These were particularly centred on the “red lines” that the member countries had defined. The interviewees reported that it often took a great effort for them to define what lines could or could not be bypassed. Consequently long discussions in the plenary and with Friends of the Chair were often required to reach acceptable solutions. The Language Harmonization Group was another mechanism that eased the running of the negotiations as it allowed space for more technical and legal discussions to take place without the exchange being too politicized. Indeed, the interviewees noted that the Language Harmonization Group played a key role in clarifying points that could have otherwise been a source of tension. With time, the members of the Group accumulated knowledge of the positions of one another, which in turn eased their deliberations.

The use of the Friends of the Chair and Language Harmonization Group mechanisms became smoother as the negotiations progressed and more experience was gained with the process. Some interviewees felt that more responsibilities could have been given to the Language Harmonization Group from the outset, as this could have helped to cut some repetitive discussions from the plenary. However, from another perspective,

it was recognised that too much reliance on the Friends of the Chair and the Language Harmonization Group mechanisms would have been problematic if people leading the discussion in these groups were able not to be neutral and to distance themselves from their country's or organization's position. A way out of this challenge would be to call for a wide range of "Friends" that represent different political views, geographic backgrounds and interest groups. However, the use of the Friends of the Chair mechanism was limited at the request of countries with small delegations as they were not able to participate in the plenary and more than one group of a Friend of the Chair.

These organizational solutions were seen as important keys for success in a situation where the negotiated text itself was found to be rather complex, making the negotiations time consuming. Indeed, the negotiations were conducted paragraph by paragraph, which led the negotiators to enter into debates of words rather than of concepts. However, working through the Guidelines by word, by sentence, and by paragraph was seen as important for the legitimacy and the ownership of the document.

3.3.2 Importance of clear rules

A set of rules was defined by the Chair of the OEWG to provide the basis for the holding of the negotiations (see Box 5). The aim was to develop acceptable codes of conduct and follow them no matter how difficult it might be to do so. If some interviewees considered that these rules were not quite clear in the beginning, they were clarified with time and, towards the end, the stakeholders had reached a common appreciation of them.

In particular, at the beginning, the role of the civil society and the rules guiding their participation lacked clarity, which created some tensions during the first round of the negotiations. Therefore, as one interviewee noted, it was helpful to distinguish the discussion phase from the decision-making one. The civil society participants could contribute to the first one while the second was reserved for member states only. For the same interviewee this helped to reduce situations where countries might have already found an agreement that was not considered to be satisfactory by some civil society representatives who might have wished to continue with discussions on additional proposals.

Box 5. Rules used during the intergovernmental negotiations

Below are extracts of rules that were communicated by the Chair of the Open-Ended Working Group (OEWG) to the members, participants and observers through a process letter prior each round of negotiations. These rules were refined as the negotiations progressed. The process letters were published on websites of FAO, CFS and Permanent Representatives.

General

The negotiations will follow the rules established by the reformed CFS and implemented by the OEWG on the Guidelines.

Continued

Box 5 continued

Participation of different players

The negotiations will be opened and closed by the Chair of the CFS and the negotiations will be facilitated by the Chair of the OEWG assisted by the Chair's representative. The Chair's representative will facilitate the proceedings and perform all the functions of the Chair during his absence.

The Technical Secretariat will engage in proactive manner when called upon. It will assist by introducing each section of the Guidelines and will be present to answer to technical questions regarding the Guidelines. The Technical Secretariat will also provide scribing services to capture amendments made to the Guidelines.

Only members can engage in decision-making.

The Civil Society Mechanism (CSM) is entitled to five spokespersons at any one time; the CSM will choose these spokespersons and rotate at their discretion. They will advise the Chair of the OEWG who will represent them at the start of each session.

Observers may be present in thematic groups and in plenary, and participate at the discretion of the Chair of the OEWG.

Holding of the negotiations

Prior to the negotiations, all members, participants and observers are encouraged to review the consolidated versions of the First Draft and take note of the sections and paragraphs that remain to be negotiated. All delegations are urged to arrive with clear instructions/mandate to finalize the Guidelines and are encouraged to work with the Regional Chairs.

The negotiations will start promptly and no time will be allocated for opening statements. Each plenary session will last for three hours.

Text already agreed upon in the plenary (and marked by asterisks) will not be reopened by the Chair of the OEWG. The members, participants and observers are encouraged to avoid repetitive and duplicative language. They are also advised to avoid creating new definitions for terms that have already been defined under accepted instruments.

As the negotiations proceed, the Chair of the OEWG will ask the Technical Secretariat to introduce each section as it arises. Then the Chair of the OEWG will move through each paragraph of that section asking participants and members for changes, amendments, or deletions. These will be captured by the scribes in the Guidelines. 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 has found consensus among members.

Continued

Box 5 continued

Friends of the Chair and Language Harmonization Group

The Chair of the OEWG will be assisted by Friends of the Chair. At his discretion, the Chair of the OEWG may call upon the Friends of the Chair or other members and participants to assist with reaching an agreement on language if agreement cannot be reached during the negotiations in the plenary. The discussions of the Friends of the Chair will be held in English. The plenary session will continue while the resolution under the Friends of the Chair arrangement is taking place.

The Chair of the OEWG will be calling for a Language Harmonization Group to assist with ensuring that language, once agreed to, is consistent throughout the document. Any member or participant may volunteer to assist with the Language Harmonization Group. However, the Chair of the OEWG will ensure broad-based participation in this group to facilitate its work.

Any consensus reached in the Language Harmonization Group or by the Friends of the Chair will be submitted to the plenary to be adopted.

Language

The negotiations in the plenary will be conducted in all official FAO languages and simultaneous interpretation will be available. The work of the Language Harmonization Group or the Friends of the Chair will be conducted in English. Recommended changes to the text are written down in English. Any iterative copies provided during the negotiation weeks will be in English. A consolidated version of the First Draft will be produced in all FAO languages after each round of negotiation.

3.4 Encouraging stakeholder participation to ensure further application of the Guidelines

The engagement with a number of stakeholders during the development process was seen as being crucial in order for the Guidelines to be more widely publicized and applied. The interviewees considered that the parties who were part of the process would certainly make efforts in disseminating the Guidelines and encouraging people to apply them. Through their personal and/or organizational involvement, people became the co-owners of the Guidelines and would thus become engaged in using them as a reference document in their work. For this reason, it was seen as important to bring together a large array of government, civil society, and private sector representatives. The participation of donors and international organizations was equally appreciated as this provided a means to increase their engagement in the governance of tenure. Indeed, a large-scale mobilization of actors took place during the development of the Guidelines and the interviewees noted that very few other processes had given opportunities for so many people to express their views.

3.4.1 Active engagement of the civil society

The importance of the participation of the CSOs was highlighted by several interviewees. Civil society as a stakeholder group was closely involved in the development process from the outset and was considered as a key player. The

engagement of CSOs was seen to be constructive and professional, which helped to create a fruitful dialogue with governments and other stakeholder groups. During the negotiations they strove for talking with a united voice that demanded organization of and coordination among the CSM members. Their responsiveness to the changing situations of the negotiations was also recognized. They were, for instance, able to bring forward key activists at the right moment to convince member countries of the importance of considering issues affecting the human rights, participation and livelihoods of people. Their motivation for bringing the process to a successful conclusion – even if it meant changes to their initial positions – was particularly appreciated by the government representatives who were interviewed.

Yet, a question was raised on the definition and representativeness of the civil society. It is a diversified group with an array of viewpoints on the governance of tenure, depending of the geographical background and thematic focus of its members. The specialized smaller organizations acting at the national level might have different approaches to the governance of tenure compared with that of the global non-governmental organizations, which specialized in advocacy and a wide array of other subjects. Consequently, some members of the civil society felt that it was challenging to push ideas forward among the CSM members and to ensure that context-specific issues were taken seriously. At times, some CSM members felt that it was beneficial to approach the regional Caucus groups to establish a direct dialogue and to share context-specific knowledge. The large number of avenues for participation throughout the development process of the Guidelines ensured that different civil society voices were heard. During the negotiations the Friends of the Chair and other working groups were seen as spaces that permitted more individualized and context-specific contributions. Some government representatives also observed that the participation of the civil society could have been wider and more inclusive. This would have given space for a larger array of opinions to be expressed.

3.4.2 Technical support provided by international organizations and agencies

Another group of actors, whose involvement in the intergovernmental negotiations was highlighted by a number of interviewees, comprised international governmental organizations, international financial institutions, technical agencies, professional associations and other similar coalitions. Their contributions were seen to be helpful in ensuring that the Guidelines are consistent with existing standards, instruments and human rights principles.

In general, the interviewees appreciated the advice provided by these players to the member countries and the CSOs. Sometimes this advice was specific to certain Caucus Groups and linked to ongoing initiatives, for instance at the regional level (see an example of the African Land Policy Initiative in Box 6). It was also considered helpful that FAO brought in experiences stemming from the consultation phase and explained the reasoning behind the issues and actions included in the First Draft of the Guidelines. In general, the flexibility of the Chair of the OEWG in giving space for these technical interventions was seen as positive and helpful, in particular for the smaller delegations composed mainly of policy makers.

**Box 6. Ensuring coherence with ongoing regional initiatives:
an example of the African Land Policy Initiative**

The consortium of the African Union Commission (AUC), the United Nations Economic Commission for Africa (UNECA) and the African Development Bank (AfDB) launched a joint Land Policy Initiative (LPI) in March 2006. The initiative coordinated the development of *Framework and Guidelines on Land Policy in Africa* (F&G). This process included regional assessments and consultations in all five regions of Africa as well as expert group meetings at the continental level. It concluded with the endorsement of the F&G and the adoption of a *Declaration on land issues and challenges in Africa* by the African Union Heads of State and Government in July 2009. The declaration was followed by the Nairobi Action Plan in October 2011, which addressed the question of large-scale land based investments. FAO has been a partner of the LPI initially during the development of the F&G and subsequently during the implementation of the Declaration.

Throughout the development of the Guidelines, attention was paid to ensuring consistency with the F&G and enhancing synergies with the secretariat of the LPI. Consequently, the LPI secretariat was closely involved with the development of the Guidelines from the beginning. In particular, it co-organized the Eastern Africa Consultation Meeting in 2010 and participated in other consultation meetings, worked on the initial Drafts of the Guidelines by proposing alternatives in line with the F&G, and provided technical support to the African member countries during the intergovernmental negotiations.

The interviewees who worked closely on tenure issues in Africa found that the Guidelines allowed governance aspects of land policies to be addressed, and also provided the opportunity to discuss questions that had not been fully integrated in the F&G. The development of the Guidelines was thus an opportunity to launch a discussion on specific questions also at the continental level of Africa. Above all, the support provided by the LPI secretariat to the African member states was widely appreciated. These member states were able to rely on something that was already negotiated and on which consensus had been found at the very highest level of policy-making. As one interviewee mentioned, the African countries thus had the advantage of conducting discussions at various levels starting from national policy processes, going to regional and continental discussions and finishing with a global initiative. These processes offered avenues for sharing experiences, learning and establishing contacts.

In particular, the engagement of UN organizations was seen to be positive and was considered to help the future application of the Guidelines. Some civil society representatives pointed out that the involvement of international financial institutions in the whole process could have been even stronger to further encourage the integration of the Guidelines to their programmes of work and to discuss the implication of their policies on tenure rights. Nonetheless, it should be noted that the World Bank Group, which was represented at the negotiations, has publicly announced its commitment to the Guidelines: a statement issued at the World Bank's Conference on Land and Poverty in 2013 endorsed the Guidelines and their use as a reference by the World Bank in its own procedures and guidance to clients.

3.4.3 Wider engagement of interest groups needed

While more variety in the representation of governments, CSOs and professional bodies was something wished for, their engagement in the development of the Guidelines was generally considered to be good. In contrast, there were several stakeholder groups whose participation in the process was considered to be thin.

For instance, some interviewees felt that the indigenous peoples' groups were not included widely enough in the process from the beginning, thus resulting in conflicting views and a narrower discussion on indigenous peoples' rights.

The desire for more active engagement of academia was also expressed in order to be able to learn from the latest research results and field experiences. Also emphasized was the view that the regional consultation meetings could have involved more farmer's organizations and representatives of fisheries and forestry sectors.

A wider participation of professional networks and international organizations was also wished for to help to create linkages with ongoing programmes and projects in countries as well as to build a solid basis for the application of the Guidelines in practice. Indeed, it was seen as a challenge to engage international organizations at the level of their regional, national and project towards the elaboration of the Guidelines. The knowledge and understanding of the Guidelines among these institutions were seen as crucial in situations where new country strategies, programmes and activities were discussed. Their closer participation in the elaboration of the Guidelines, together with member states, would also have ensured a deeper political debate at national levels as well as built the capacities of officers to start to apply the Guidelines in practice.

But above all the participation of the private sector, especially when compared with the engagement of the civil society, was seen as a missed opportunity of the whole process. It is true that the CFS's Private Sector Mechanism participated actively in the process, as did organizations of tenure professionals, such as notaries and surveyors.

Nonetheless, all interest groups interviewed wished for a stronger involvement of the private sector but also recognised the difficulty of building contacts with it as an interest group, given its diversity.

What would then explain this thin participation of the private sector? Some observers put forward the individualized nature of the private sector and the traditionally little involvement of some of its major actors in tenure activities. The lack of contacts and established relations with private players were also seen as impediments. Others viewed that the type of consultations and intergovernmental negotiations conducted are not adapted to the demands and the expectations of the private sector, who might not see an added value in "discussion" workshops because of the cost of valuable time or might not consider the topic to be relevant. Perhaps some private players may have been cautious about the discussions and the possible negative publicity in a context where the questions of large-scale agricultural investments became internationally more prominent in 2008. Yet, the inputs of the private players in terms of experiences and good practices would certainly have enriched the overall debate on the

governance of tenure and might have created a text that represented the views of an even broader group of participants.

How then to increase the involvement of the private sector in a similar global policy process? First, it was proposed to approach them through actors and mechanisms that are familiar to them. For instance, the international/regional financial institutions could create linkages as they are more accustomed to work with business players. An engagement with the UN Global Compact could also have been a way in opening doors for the private players or at least for ensuring the integration of the Guidelines in frameworks directly designed for them. Second, it was noted that a more customized approach towards the private sector might be needed where the UN organizations would participate in private sector events or where specific short meetings are held only for them. The idea is that one needs to concentrate on practical issues and seek the advice of the private sector on well-defined subjects. From this perspective, the management of time of the policy processes and consultation meetings are found to be crucial starting points to encourage the private sector attendance.

Nonetheless, despite their absence in the negotiating forum, some major private sector enterprises, such as the Coca-Cola Company, PepsiCo, Cargill and Nestlé, have subsequently given their support to the application of the Guidelines.

3.5 Strengthening partnerships and learning mutually

The development of the Guidelines would not have been possible without the engagement of donors and other partners. Their support allowed the undertaking of the initial explorations, consultation and drafting carried out by FAO, the conducting of the negotiations and the later focus on the application of the Guidelines. The funding partners became part of a Steering Committee established for the Guidelines initiative and physical meetings were held with them twice a year. In addition, key partners played a role in providing advice through their membership of an advisory board and were kept informed of the evolutions, including through meetings that were held at the time at other fora, such as the World Bank's annual Conference on Land and Poverty. All partners, including people who had attended consultation meetings, were kept informed through monthly newsletters. Throughout the process, new parties were brought in as the process moved forward and became more known. However, the existence of a core group of people was seen as essential by some interviewees to ensure continuity and the expansion of the process.

The development of the Guidelines provided FAO with an opportunity to link with partners and other actors around the world. Equally important, as highlighted by the interviewees, was their own linking with other actors. Partnerships were reported to be built at all levels and by all players – either new connections were established or existing ones were enhanced. For instance, a number of civil society organizations reported to have mobilized their constituencies in countries to discuss the governance of tenure and to have activated contacts with government representatives. In particular, new synergies were created where people had improved knowledge of the positions and approaches of each other. A value of the Guidelines is thus in the process of their development as it permitted people working on the governance of tenure to link to others. These connections are now being followed for instance to

develop common activities, exchange information or simply continue the dialogue at another level.

The development of the Guidelines was reported as being a mutual learning process for the parties involved. First, it was a learning process in terms of the subject matter. The exchange created during the consultations and negotiations allowed the enhancement of knowledge on the governance of tenure in general and in relation to different country contexts in particular. Second, the development of the Guidelines was a learning process in terms of the approach adopted. The multi-stakeholder discussions required interest groups to exchange opinions, enhance their listening skills and master their negotiation abilities. Several interviewees mentioned that sometimes the positions initially put forward by others were too radical for them to accept but the most important aspect of the negotiations was the willingness to enter into a dialogue and seek for a commonly acceptable solution. As a consequence, the Guidelines are a carefully negotiated instrument that brings together a variety of viewpoints. But above all the Guidelines represent a process that brought together a great number of actors who created a dialogue on the governance of tenure.

**Box 7. Some lessons learnt from the development of the Guidelines
as seen by stakeholders**

Background work. There is a need for mobilizing a dedicated group of people, elaborating a clear programme of work, and attracting wide financial and technical support. The development of a good quality first product will offer a solid basis for political negotiations.

Continuity between phases. Clear linkages and synergies between different development phases are needed. In the case of the Guidelines, the experiences stemming from the consultation meetings and regional experiences were brought forward into the drafting of the Guidelines, but it would have been preferable for the linkages between the phases to have been even stronger.

Planning of the negotiations. Forward-looking and realistic planning is necessary to allow actors to prepare themselves in technical and financial terms as well as to conduct negotiations in effective manner.

Rules. Be clear, from the beginning, about the rules that apply to the whole process or some stages of it. In particular, clearly express the way in which different stakeholder groups can participate in the process. Ensure that there is a common understanding and agreement on the rules.

Transparency, openness and inclusiveness are essential elements of a policy process to be able to elaborate an instrument with wide legitimacy and ownership.

Participation. Engage people at all levels. Ensure wide and representative participation of different interest groups.

Partnerships. Build on the worldwide networks of organizations and associations. Strengthen and widen partnerships. Create complementarities with other ongoing processes.

4. Conclusion

It became clear from the interviews conducted for this working paper that a major strength of the Guidelines lies in the process they went through. The consultation and negotiation processes raised awareness on the governance of tenure, offered an opportunity for people to contribute to the elaboration of an international voluntary instrument and ensured that a relevant and appropriate text was formulated. Above all, the process engaged people towards finalizing the Guidelines. Individuals, civil society organizations, private sector representatives, academics and member states were part of the process and are now seen as the champions for the application of the Guidelines. And it is here – in the practical application – where the value of such an international voluntary instrument lies.

On several occasions the interviewees pointed out the uniqueness of the development process of the Guidelines. They mentioned that it is possible to conduct a similar process and engage in high-level diplomatic debate only with regard to subjects that are widely regarded to be important and which have a strong political dimension. There was certainly a momentum for the elaboration of the Guidelines.

First, the subject matter in itself – responsible governance of tenure – is central to the politics of any state and is closely linked to the livelihoods of billions of people around the world. The Guidelines also received global visibility through the debate on large-scale agricultural investments during 2008-09. These factors ensured strong interest and engagement of parties towards the elaboration of the Guidelines.

Second, the Guidelines were the first international instrument to be negotiated under the auspice of the renewed CFS. The CFS provided a political dimension and legitimacy to the Guidelines but above all it set a precedent for international negotiations to include civil society, the private sector and international organizations in the process as participants, even if not as negotiators.

Third, the development of the Guidelines benefited from a situation where much time and financial resources were invested towards the process. The Guidelines could not have come into being without the engagement of thousands of people who contributed to their elaboration in one way or another, as individuals or as representatives of member states, civil society organizations, the private sector, and academia and research institutes.

The Guidelines are thus a great example of a joint effort for finding the common ground on the governance of tenure. Benefiting from a great momentum, the development process of the Guidelines grew from a technical initiative to a highly political one that has since received attention at the very highest level of international policy-making. As mentioned by one of the interviewees it is time for the Guidelines to start to live their own life and to consolidate their position as a global reference document on the responsible governance of tenure.

Annex 1. Characteristics of the reformed CFS

In October 2008 the member nations of the CFS agreed to embark on a reform of the Committee so that it could fully play its role in the area of food security and nutrition.

The reform was designed to redefine the CFS' vision and role to focus on the key challenges of eradicating hunger; expanding participation in CFS to ensure that voices of all relevant stakeholders are heard in the policy debate on food and agriculture; adapting its rules and procedures with the aim to become the central United Nations political platform dealing with food security and nutrition; strengthening its linkages with regional, national and local levels; and supporting CFS discussions with structured expertise through the creation of a High Level Panel of Experts (HLPE). The following is a summary of key reform principles.

Vision

The reformed CFS will constitute the foremost inclusive international and intergovernmental platform for a broad range of committed stakeholders to work together in a coordinated manner and in support of country-led processes towards the elimination of hunger and ensuring food security and nutrition for all.

Role

The roles of the CFS will be:

- Coordination at global level. Provide a platform for discussion and coordination to strengthen collaborative action among governments, regional organizations, international organizations and agencies, NGOs, CSOs, food producers' organizations, private sector organizations, philanthropic organizations, and other relevant stakeholders, in a manner that is in alignment with each country's specific context and needs.
- Policy convergence. Promote greater policy convergence and coordination, including through the development of international strategies and voluntary guidelines on food security and nutrition.
- Support and advice to countries and regions.

The CFS will gradually take on additional roles such as:

- Coordination at national and regional levels.
- Promote accountability and share best practices at all levels.
- Develop a Global Strategic Framework for food security and nutrition.

Composition and modalities of participation

The CFS is and remains an intergovernmental Committee. It will be composed of members, participants and observers and will seek to achieve a balance between inclusiveness and effectiveness. Its composition will ensure that the voices of all relevant stakeholders – particularly those most affected by food insecurity – are heard.

Members

The membership of the Committee shall be open to all Members of FAO, World Food Programme (WFP) or International Fund for Agricultural Development (IFAD), or non-member states of FAO that are member states of the United Nations.

The members take part fully in the work of the Committee with the right to intervene in plenary and breakout discussions, approve meeting documents and agendas, submit and present documents and formal proposals, and interact with the Bureau during the inter-sessional period. Voting and decision taking is the exclusive prerogative of Members including drafting the final report of CFS Plenary sessions.

Participants

The Committee shall be open to participants from the following categories of organizations and entities:

- Representatives of UN agencies and bodies with a specific mandate in the field of food security and nutrition and representatives of other relevant UN System bodies whose overall work is related to attaining food security, nutrition, and the right to food.

- Civil society and non-governmental organizations and their networks with strong relevance to issues of food security and nutrition with particular attention to organizations representing smallholder family farmers, artisanal fisherfolk, herders/pastoralists, landless, urban poor, agricultural and food workers, women, youth, consumers, Indigenous Peoples, and International NGOs whose mandates and activities are concentrated in the areas of concern to the Committee. This group will aim to achieve gender and geographic balance in their representation.
- International agricultural research systems.
- International and regional Financial Institutions.
- Representatives of private sector associations and private philanthropic foundations active in the areas of concern to the CFS.

Participants take part in the work of the Committee with the right to intervene in plenary and breakout discussions to contribute to preparation of meeting documents and agendas, submit and present documents and formal proposals. They commit to contribute regularly to inter-sessional activities of the CFS at all levels and interact with the Bureau during the inter-sessional period through the Advisory Group established by the Bureau.

Observers

The CFS or its Bureau may invite other interested organizations relevant to its work to observe entire sessions or on specific agenda items. Such organizations or bodies may also apply to the CFS for Observer status to participate particularly, regularly, periodically or exceptionally on specific issues subject to the decision of the CFS or its Bureau. Such organizations could include:

- Regional associations of countries and regional intergovernmental development institutions.
- Local, national, regional and global CSOs/NGOs, other than those attending as participants, which are active in areas related to food security, nutrition, and the right to food, particularly organizations which are linked to a regional or global network.
- Other networks or associative organizations including local authorities, foundations and research or technical institutions.

Observers at CFS sessions may be invited by the Chair to intervene during discussions.

Consultation/Coordination mechanisms and activities

Civil society organizations/NGOs and their networks will be invited to autonomously establish a global mechanism for food security and nutrition which will function as a facilitating body for CSO/NGOs consultation and participation in the CFS. The activities of the mechanism will include:

- broad and regular exchange of information, analysis and experience;
- developing common positions as appropriate;
- communicating to the CFS and, as appropriate, its Bureau through representatives designated by an internal self-selection process within each civil society category;
- convening a civil society forum as a preparatory event before CFS sessions if so decided by the civil society mechanism.

Private sector associations, private philanthropic organizations and other CFS stakeholders active in areas related to food security, nutrition, and the right to food are encouraged to autonomously establish and maintain a permanent coordination mechanism for participation in the CFS and for actions derived from that participation at global, regional and national levels. They are invited to communicate a proposal to that effect to the CFS Bureau.

Source: CFS. 2009. *Reform of the Committee on World Food Security. Final version.* Rome, Thirty-fifth session of the CFS. Available at:

www.fao.org/fileadmin/templates/cfs/Docs0910/ReformDoc/CFS_2009_2_Rev_2_E_K7197.pdf

