

Conflict, Population Displacement and Land Tenure: The potential for application of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in humanitarian settings

Side Event at the 64th Session of the UNHCR Standing Committee Report

1. Introduction

The Federal Department of Foreign Affairs, Swiss Agency for Development and Cooperation (SDC), supported the Ecumenical Advocacy Alliance (EAA) to organize and convene a side event on “Population Displacement and Return, and Land Tenure” on 6 March 2014, during the 64th session of the UNHCR Standing Committee. The event featured senior representatives and experts from the UN High Commissioner for Refugees (UNHCR), the Food and Agriculture Organization (FAO), UN-Habitat, and World Vision International (Somalia Program). The objectives of this event were:

- Through the presentation of case studies from relevant operational contexts, to illustrate the salience and practical challenges of governance of land (and related resource) tenure in humanitarian responses to population displacement.
- To raise awareness of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), and their application in operational humanitarian settings with regard to temporary and durable solutions for displaced populations, and in breaking cycles of conflict.

2. Background

Context

Globally, it is estimated that 525 million families depend on land tenure and access rights as the foundation of their livelihoods, for farming, livestock keeping, fishing and collecting forest products. Many of these people have no documented land titles or rights, but exercise their land tenure and access rights under customary/traditional law. At the same time, smallholder farmers – who may often be among those who lack documented land titles – are the producers of an estimated 70% of all food consumed around the world, so securing their tenure and access rights is a matter of global importance.

A complex relationship exists between conflict, population displacement, land tenure, and food (in)security. Disputes over land and other food-producing resources are often – particularly where governance of tenure of such resources is weak – a key driver of conflict. This causal relationship is expected to increase in the context of climate change and its impacts on food security. Forced displacement of local (and often food-producing) populations typically accompanies the outbreak of armed conflict, with

obvious impacts on food security for those populations and for the wider society. Providing temporary refuge, as well as ultimate return/resettlement/local integration of such displaced populations, can often lead to tensions with host communities, and potentially to fresh cycles of conflict.

There is therefore an evident need for the international humanitarian community to address challenges related to tenure of land and related resources on which food production is based, in order to reduce conflict risk, to help de-escalate existing conflicts, and to achieve security and justice for both displaced populations and host communities.

Population displacement, and land tenure challenges

In humanitarian responses to population displacement, clear and unambiguous rights of tenure, access to and use of land are critical for populations uprooted by conflict and natural disasters, both in the context of temporary refuge as well as in the implementation of any of the three 'durable solutions' – return, resettlement and local integration. These issues, if not clearly resolved and negotiated with host communities, can lead to tensions (related to resource competition) and (further) conflict.

In many countries/localities of the greatest humanitarian concern, systems of governance of tenure of land (and related productive resources) and for resolution of disputes concerning the same are often weak or absent, or may be subject to manipulation by more powerful domestic or international interests.

As noted above, many smallholder food producers and vulnerable communities are not protected by formal recognition of their rights of tenure, access and use, and rely on customary/traditional authorities for the protection of those rights. The significance of such forms of authority is even greater in conflict situations, where formal/legal governance has often been weakened or broken down, and where traditional/customary forms of authority may remain the only effective or trusted source of authority. But customary/traditional leadership frequently demonstrates shortcomings from a human rights perspective, particularly so far as women's rights are concerned.

Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests

Concluded in 2012, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) promote responsible governance of tenure of land, fisheries and forests with respect to all forms of tenure: public, private, communal, indigenous, customary and informal. They were developed through a highly inclusive multi-stakeholder consultation process convened by the UN Committee on World Food Security (CFS). The VGGT now serves as a recognised benchmark, and sets out principles and internationally accepted standards for the responsible governance of tenure.



Through addressing land tenure, the VGGT aim to contribute towards the eradication of hunger and poverty, based on the principles of human rights and sustainable development, and recognising the centrality of land to development by promoting secure tenure rights and equitable access to land, fisheries and forests.

Human rights principles provide a particularly important substratum for the VGGT, which reference the Universal Declaration of Human Rights and other international human rights instruments, place emphasis on the situation of vulnerable and marginalized people – including indigenous peoples and small-scale producers, stress gender equality and women’s rights in the context of land tenure, and engage specific legal and moral responsibilities of states under international human rights law.

The VGGT address a wide audience and array of circumstances relevant to national food security, but give specific consideration to displaced communities and transboundary matters, making them relevant to governmental policy-makers, UN agencies, and national and international NGOs engaged in humanitarian response, and ultimately to individuals and communities which have been, or may be, forced to flee their homes due to conflict or natural disaster.

The Guidelines are based on the following key principles for responsible governance of tenure:

- recognising and respecting legitimate tenure rights and the people who hold them;
- safeguarding legitimate tenure rights against threats;
- promoting and facilitating the employment of legitimate tenure rights;
- providing access to justice to deal with infringements; and
- preventing tenure disputes, violent conflicts and opportunities for corruption.

The Guidelines are global in scope and, as such, need to be interpreted and applied in accordance with national legal systems and their institutions.

In the present context – where the specific focus is on population displacement, primarily as a result of conflict – particular reference is drawn to three sections of the VGGT:

- Section 21 – Resolution of Disputes over Tenure Rights, in which States are encouraged to provide legal access to vulnerable and marginalised persons to ensure safe access to justice, without discrimination;
- Section 22 – Transboundary Matters, in which States are encouraged to harmonise legal standards of tenure governance and to work together to protect tenure rights, livelihoods and food security of migrating populations while on their respective territories; and
- Section 25 – Conflict in Respect to Tenure of Land, Fisheries and Forests, in which all parties are encouraged to take proactive measures to help ensure that tenure issues do not lead to conflicts and that appropriate steps are taken to resolve any such problems through peaceful means. This section draws specific attention to two important points:
 - refugees, IDPs and others affected by conflict should be settled in safe conditions in ways that protect the tenure rights of host communities; and
 - legitimate tenure rights of refugees and displaced persons should be recognised, respected and protected.

Entry points in the cycle of conflict

a) Conflict risk situations involving disputes about land/resource tenure, access and use

Disputes and competition concerning land and other food-producing resources can give rise to risk of conflict between communities. Such competition and disputes are likely to increase with the advance of climate change and its impacts on food security. Maintaining the peace, resolving the underlying disputes, and preventing conflict from breaking out over such issues should be a first priority. The VGGT can provide a framework and toolkit for addressing such conflict risk situations.

Understanding peoples' needs and addressing natural resource management as an integral part of livelihood security, conflict prevention and resolution is essential in virtually all humanitarian operations. The collapse of livelihoods from environmental stress, overuse of assets or poor governance results in three main coping strategies – innovation, migration and competition (UNEP, 2009). Combined with other factors, the outcome of competition can be violent. For this reason, encouraging and supporting sustainable livelihoods based on clear and appropriate tenure systems is a must.

b) Armed conflict situations, and resulting population displacement

Even in conflict situations, the VGGT may still be a useful tool in addressing underlying disputes concerning land and other food-producing resources, and thereby de-

escalating the conflict. In such situations, trust in and the effectiveness of formal/legal authorities may have been weakened, often leaving customary/traditional leaders as the only effective source of authority and dispute resolution. The VGGT specifically seeks to engage with such customary/traditional forms of authority, whilst at the same time applying a strong right-based approach.

Displacement of populations – either as refugees or as IDPs – is generally associated with overt conflict. Camps or settlements for temporary refuge are often a key component of the immediate humanitarian response. The duration of such temporary camps or settlements can vary considerably, with some persisting for decades. Issues of land tenure, access and use may have to be negotiated with local host communities, in order to secure the humanitarian situation of the displaced population whilst protecting the rights of members of the host community, and to avoid tensions arising from competition for resources. Humanitarian actors should take these considerations into account from the earliest possible moment, once emergency needs have been met. The VGGT can provide a reference point in building a secure foundation for a temporary humanitarian response, the duration of which may often be protracted, within the wider framework of national land tenure governance and food security strategies.

c) Post-conflict return, resettlement and/or local integration

Where peace has been restored after a period of conflict, and it is deemed safe for people to return home, communities must once again rebuild their livelihoods. However, their homes and farms may have been destroyed, or occupied by others. The matter of being able to provide legal proof of ownership thus become crucial and requires timely interventions by the relevant state authorities. Together with the 'Pinheiro Principles' (United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons), the VGGT addresses these issues and provides guidance for government response.

In the context of implementing the other possible durable solutions – resettlement, and/or local integration – the challenges surrounding land tenure, access and use may be even greater. The VGGT states that “Any provision of alternative land, fisheries, forests and livelihoods for displaced persons should not jeopardise the livelihoods of others”. Particular attention needs to be given to the host community in such instances, recognising also the many potential benefits which displaced people may bring to their host communities, e.g. in terms of agricultural expansion and diversification, added food productivity and increased opportunities for commerce. Understanding, appreciating and engaging local and traditional systems in relation to land tenure, access and use become especially important in such contexts.

Looking to the future

Given the variability of land tenure systems between, and even within, some countries, a flexible approach is called for in finding and putting into place appropriate solutions. Competing systems (especially formal/legal vs customary/traditional) and interests

(national, community and individual), the current lack of international harmonisation of land tenure governance, issues relating to property restitution and redistribution, and proof of title are among some of the many issues which are confronted in the context of humanitarian operations. Often, however, these issues are not brought to the surface give their complexity and difficulty of resolution.

Addressing these matters – which may require consideration being given to a suite of economic, political, cultural, religious and environmental matters – needs a holistic approach in which land tenure, access and use are not seen as distinct stand-alone concerns, but as essential foundations for food security, poverty reduction and effective international humanitarian action.

Recognising that land rights are deeply embedded in power relations, the VGGT offers a new opportunity for all those concerned to engage in participatory dialogues, allowing different stakeholder groups to contribute. States especially should take maximum advantage of the opportunities offered by the VGGT to address these issues in a comprehensive, evidence-based and participatory fashion in order to promote social justice and political stability. At the same time, community leaders and other stakeholders from civil society need to be afforded the means to be heard in the context of implementation of the VGGT.

The VGGT do not replace existing national or international laws with regard to land tenure, access and use. Nor do they replace other complementary instruments such as the “Pinheiro Principles”. The VGGT are voluntary in nature, intended to help inform and guide policy-makers and practitioners to consider a situation from a range of angles, assimilate this information and then be in a position to take informed decisions.

These Guidelines offer an important opportunity for refugee- and IDP-hosting countries to re-assess their current legislation, mechanisms and practices in governing land tenure which could, in many instances, lead to important and long-term benefits for displaced populations and host communities alike. Priority should be given to promoting and supporting mechanisms which integrate customary/traditional systems, whilst correcting for human rights defaults.

Above all, the VGGT provide a framework for systems of land governance that do not simply strengthen the strong while further weakening the weak, but ensure that the rights of vulnerable and marginalised communities are recognised, helping to break the cycle of conflict.

3. Side event on “Population Displacement and Return, and Land Tenure,” 6 March 2014

An audience reaching approximately 40 persons attended the side event.

Opening statements

EAA Executive Director **Mr Peter Prove** introduced the purpose of the event, and the linkage between a policy instrument created for enhancing national food security policy (the VGGT) and humanitarian response to population displacement.

In this regard, he also highlighted the relevance of humanitarian sector engagement in current discussion in the Committee on World Food Security (CFS) on the Zero Draft of the Agenda for Action for Addressing Food Insecurity in Protracted Crises, (<http://www.fao.org/cfs/cfs-home/cfs-fipc/en/>) which includes Principle 5 'Safeguard the access of small-scale food producers and family farmers to productive assets and natural resources, promoting the stable and equitable governance of tenure of land and other natural resources before, during and when emerging from protracted crises'.



Ms Janice Marshall, Deputy Director, Division of International Protection, UNHCR, noted that land tenure issues can be the cause of IDP/refugee displacement, as well as presenting challenges during their displacement and upon their return. It would help if UNHCR could get a handle of these issues through tools such as the VGGT.

Forced displacement (i.e. Rwanda, West Sudan), local context of armed conflict (i.e. DRC, Mali) are examples of where these issues cause displacement, whether crossing an internal border or not.

Camps and other temporary arrangements demand land, so there need for interaction with local customary law and legal frameworks. If the VGGT could help ease those conflicts, that would be useful. The situation of refugees and IDPs could be greatly improved if the VGGT could give us a more stable, fairer way to deal with land tenure issues.

When refugees/IDPs return to their lands, they need to deal with restitution and conflict with those who have moved in. Civil registration, water, education services are hard to attain when they are in living in precarious situations. And there's the case of stateless people; when people don't hold nationality in the country that they've lived their whole live, land tenure and use becomes a challenge.

There's often a lack in clarity between custom and laws. When authorities are under resourced, they are unable to do what they need to do, resulting in inconsistent applications of existing laws, which complicates the conflict.

Better governance of land tenure and of housing, land and property can help to establish stable land use for residential and business purposes and can improve prospects of reintegration when IDPs/refugees return home.

But land tenure is a much bigger problem than just its applications in humanitarian contexts. It needs to be included in national development plans and all UN agencies

need to be fully engaged to ensure that the complexities can be resolved over time and conflicts and displacement avoided.

Introduction to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

Ms Francesca Romano, Land Tenure Officer, Natural Resources Management & Environment Department, FAO:

FAO hosts the Secretariat of the VGGT and has been involved since the very beginning, from the development to the application.

The VGGT have a special relevance in land tenure disputes that often play out in operational humanitarian situations. 'Part 5: Administration of tenure' and 'Part 6: Responses to climate change and emergencies' which address issues of resolution of disputes over tenure, transboundary matters, and conflicts.



In addition to tenure of land, the VGGT also cover fisheries and forestry. The VGGT were shaped to look at the interface of these aspects in the context of national food security, with the ultimate objective of achieving food security.

Governance is the way in which access to and control over resources is managed in a society. It includes, among other things, how competing priorities and interests of different groups are reconciled.

Problems of weak governance of tenure can include: i) inequitable access to land, ii) discrimination, iii) state capture, iv) tenure rights not recognized, v) forced eviction, vi) limited capacity, vii) bribery, viii) expensive and difficult procedures, ix) no accountability or transparency and x) contradictory laws and policies.

Governance institutions have not adapted to the growing intensity of competition. Causes for the increased competition for natural resources include i) population growth, ii) urbanization, iii) changing diets and iv) demand for energy.

Why is there a need to improve the governance of tenure? To improve food security but also to enhance poverty eradication, sustainable livelihoods, social stability, conflict prevention, housing security, rural development, environmental protection and sustainable social and economic development.

Key characteristics of the VGGT:

- The first global soft law instrument on tenure
- Consensus on "internationally accepted practices" that already exist
- Negotiated by governments, with participation of civil society and private sector
- A reference for improving the governance of lands, fisheries and forest tenure

Development of the VGGT started 6 years ago through a very long process of consensus building, which included more than 10,000 people around the world. The VGGT were endorsed by CFS IN May 2012, and implementation has been encouraged by G8, G20, Rio+20, and UN General Assembly.

The VGGT are an unprecedented international agreement on tenure governance and have received unprecedented recognition. For example, the VGGT are part of the ongoing discussion of the World Bank (WB) Safeguards Framework and the WB's reference instrument on governance of tenure.

The implementation and mainstreaming of the VGGT is a priority for FAO. The primary audience for the VGGT is governments, but FAO encourages their use by other UN agencies, NGOs/CSOs, and the private sector. Despite their 'voluntary' nature, member states have committed to their development and have reached consensus on best practices for governance of tenure.

What are 'legitimate' tenure rights? No specific definition, but the VGGT cover not only what is formally recognized by the law but also what is recognized by customary tenure systems.

VGGT are divided in 7 parts and cover a broad range of issues.

General Principles are to i) recognize and respect legitimate holders of tenure rights, and their rights, ii) safeguard legitimate tenure rights against threats, iii) promote and facilitate the enjoyment of legitimate tenure rights, iv) provide access to justice to deal with infringements and v) prevent tenure disputes, conflicts, and opportunities for corruption.

The VGGT could assist in humanitarian settings i) by addressing root causes of tenure-related disputes and conflicts, ii) by assisting resolution of disputes over tenure rights, and iii) in responding to emergencies, disaster prevention and preparedness programs, and recovery and reconstruction phases.

In general, there are four key factors can create vulnerability to disputes and conflict: i) insecurity of tenure, ii) acute resource scarcity, iii) alternative, competing bodies of law, and iv) long-standing grievances.

In closing, Ms Romano thanked the organizer for the opportunity to present to an audience that is not one that FAO usually speaks to and for connecting the dots and bridging discourses between the UN agencies.

Case study presentations

UN-Habitat land program in Eastern DRC

Mr George Deikun, Director of the UN-Habitat Geneva Office:

UN-Habitat bridges the emergency to development continuum, and brings with it more than 30 years of



experience in that arena. The UN-Habitat program in Eastern DRC has been undertaken in close collaboration with UNHCR since the main beneficiaries are of mutual concern.

The root causes of crises and the humanitarian consequences of land disputes are i) issues of protection (violence, killing, displacement), ii) human rights (forced eviction, unequal justice, discrimination against women), iii) food insecurity and lack of revenue (low agriculture production) and iv) the negative impact on social cohesion (ethnic tensions).

Means used to prevent and resolve land disputes include i) building capacity for mediation of land disputes at local and provincial levels (traditional authorities, civil society, judiciary, women's associations, land administration); ii) local dispute prevention and resolution initiatives; iii) tools for land dispute mediation; iv) community dialogues on land; v) rapid response mechanisms to monitor and resolve land disputes (mobile teams, early warning systems); vi) advocacy and lobbying to prevent abuses from land disputes; and vii) awareness raising on land issues to build social cohesion.

World Vision International (Somalia Program): Transitional shelter in Garowe and Burtinle cities in Puntland State, Somalia



Mr Jeremiah Kibanya, World Vision International (WVI):

Somalia is a fragile context without functional central government, relatively weak State governments, and lacking the capacity to adjudicate land/property ownership regulatory matters. A mix of customary ('Xeer') and religious (Sharia) laws are the main sources of authority for resolving disputes.

This project in Garowe and Burtinle cities in Puntland State, Somalia, originated as a transitional shelter project to address the needs of 1,200 families that were displaced, some from conflicts, some by the tsunami, some the drought of 2010-2011. However, through an extensive process of consultation and negotiation with local land owners, authorities and local communities, permanent tenure was secured, and permanent housing could be developed.

In the process, WVI helped the Puntland State Directorate of IDP Affairs achieve reputation, credibility and basic infrastructure.

Radio and television broadcasts were used to help cement agreements between community (landowners), government and the displaced families.

With the establishment of the housing project as permanent villages, the local community and authorities have accepted and fully integrated the resettled community members.

Sustainable social integration for the IDPs depends on relationships built in the consultation and engagement process, and is essential to reduce stigma and marginalization.

Plenary Discussion

Mr George Deikun described best practice in bringing together customary law and practice land with formal legal frameworks. It is necessary to look both at the formal process of land administration and less formal customary practice. Through self-enumeration, UN-Habitat brings the community together and have the people identify who owns and uses what land. In this way acceptance is promoted, and the groundwork is laid for formal agreement. This allows for life to continue while the more formal systems - the whole administration systems - catches up.

Ms Francesca Romano noted that both cases illustrate how important it is to design a project that takes into account the local context. The current tenure situation, gender implications, etc. are all fundamental principles of the VGGT. It is crucial to design a process that starts from the people that are on the grounds and then scale it up to legal and policy framework. But titling processes often don't take into account the traditional tenure system. But on the other hand, abuse of power by some traditional chiefs often causes problems.

Mr Jeremiah Kibanya observed that "the government doesn't own land in Somalia, citizens do. WVI organized a discussion with the Mayor and the Minister of the Interior to discuss where would be the most ideal space to set up 600 families. They surveyed the land and engaged those who owned the selected plots and who else can we call in to help negotiate with these people. Encouraged by i) their faith as 'benevolent brothers', by ii) their public esteem, and iii) considering the customers that such an agreement would bring to their businesses, they agreed to cede their land permanently to the IDPs. The discussion is what kept this program going through to what it is now." But how can the VGGT be implemented in contexts like Somalia where the central government is weak or non-functional?

Ms Ana Maria Suarez-Franco, Policy Officer at FIAN International, added that, from her experience, causes of land conflicts include a question of power relations, where we have to see how people's right to food, housing etc. is realized. The implementation of the VGGT requires the harmonization of existing property laws and customary law. This requires the revision of existing civil and administrative law and the change in the legal culture and judicial practices, in order to recognize the priority of the most marginalized and disadvantaged and to ensure that their rights are protected and authorities are accountable. Guidelines are a good basis for this but their implementation require specific steps, as national strategies, adopted in a participatory way, giving the priority to the affected constituencies. What is the role of UN agencies in the debate and adoption of these strategies? They should ensure that in these national dialogues the voices of affected communities and right to food constituencies are heard and that priority is given to these groups in the adoption of policies.

Mr Ojulu Ojot, Policy Officer at Lutheran World Federation, asked why the issue of land grabbing was left out of the presentations, especially since land grabbing is one of the factors that triggered the process leading to the VGGT.

Mr Daniel Oberko, GAWU, the Ghana affiliate of IUF, added that land is a political issue. Transnational corporations (TNCs) who wish to invest in land do so by contacting the local chiefs. The chiefs are in most cases not well equipped to negotiate for the benefit of their citizens so we need to build up their capacities to negotiate to ensure that they benefit the communities.

Ms Francesca Romano explained that the VGGTs were developed to provide a space for fair dialogue between parties that would normally not be at the same table. What the FAO tries to do, in the countries that they're moving into, is to offer a space through workshops, thematic discussions, and multi-stakeholder dialogue for parties to take and engage with the government. This requires state involvement but also need to be accountable to others involved in the process. The VGGT set out best practices, but nothing is new. What is new is that opportunities are for people to come together at the table. The VGGT are voluntary, but they have a high level of recognition and commitment.

Sandra Aviles, FAO, Geneva, asked to what extent UNHCR has examined land tenure issues and changed their programming accordingly?

UNHCR's programming is in the process of changing, responded **Ms Janice Marshall**. UNHCR is going to take back a lot of these ideas to feed into relevant discussions and processes. UNHCR can assist in promoting the implementation of the VGGT, and start collecting best practices under the VGGT.

In closing, Ms Marshall explained that "the case studies presented give us hope for the future and help us understand when internal displacement ends and when acceptance by the community begins. They help us ask ourselves at what point do IDPs feel like they belong where they are. Nationality doesn't mean acceptance. The engagement and the process that World Vision went through were to build that kind of acceptance. Those kinds of examples are what are scalable."

4. Follow Up

- UNHCR highlighted the VGGT at the conference "Planned Relocations, Natural Disasters, and Climate Change: Consolidating Good Practices and Preparing for the Future" held in San Remo, 12-14 March 2014; convened by UNHCR, Brookings Institute and Georgetown University. During the conference, they took stock of what guidelines existed and were surprised how many people didn't know about the VGGT. UNHCR has agreed to put together a resource library, including the VGGT.
- UNHCR is considering bringing the VGGT into the IASC Sub-Committee on Land and Housing. The COP Roundtable on Solutions was mentioned as a potential

opportunity to speak about solutions and draw on donors for financial, technical and political support. "HLP is ripe for that situation."

- Relevant content will be included in the UNHCR Annual NGO Consultations in June 2014.
- UNHCR mentioned that it would be important to encourage FAO to include the humanitarian sector/context in its follow-up. FAO works mostly with governments, but less with humanitarian agencies. This can lead to parallel structures/processes.
- UNHCR noted a connection with the 'Peninsula Principles' on land, property and climate change. OHCHR has circulated the Peninsula Principles to all the embassies/consulates in Geneva. However there needs to be better contact with the FAO on related issues going forward.
- SDC monitored how these issues at the 2014 Annual World Bank Conference on Land and Poverty, Washington DC, 24-27 March 2014.

The presentations and materials used at the event are available at <http://www.e-alliance.ch/index.php?id=522>, and photos can be downloaded from <http://www.flickr.com/photos/e-alliance/sets/72157642198973473/>.

More information about the VGGT is available at <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>.