



FAO's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

SECURE and equitable access to land is central to achieving food security, eradicating hunger and reducing poverty. It is also crucial to promoting sustainable livelihood and healthy ecosystems.

This is one of the biggest lessons from the food crisis from 2007 until 2008 and the rationale behind the formulation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (hereafter referred as Voluntary Guidelines).

Landlessness or the lack of secure and equitable access to and control over land, fisheries and forests by local communities has long been argued by civil

society groups as one of the major causes of perennial hunger in rural areas. Among Asian countries, between 13 to 71% of farmers are landless or near-landless and without security of tenure over their farms and homesteads.

This problem has been particularly dire for small-scale farmers, rural women, indigenous people and other marginalized groups, hence the need to prioritize their interests in the Voluntary Guidelines now being discussed.

The Food and Agriculture Organization (FAO) began work on the voluntary guidelines in 2005, but consultations with experts, private sector,

On 11 May 2012, the Committee on World Food Security (CFS) officially endorsed the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in Rome. FAO led 15 multistakeholder consultations from 2009 to 2011 across 130 countries. The Guidelines were finalized through CFS-led intergovernmental negotiations. These negotiations involved 98 countries, and included participation by nongovernmental groups, civil society organizations, international agencies, farmers' associations, private-sector representatives and research institutions. For more information, visit <http://www.fao.org/nr/tenure/lt-home/en/>. This ANGOC article was written as negotiations were finalized, hence, some final points may have been missed. (Editor)

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civil society, and other stakeholders started in 2008. From 2009 to 2010, the FAO's Committee on World Food Security (CFS) carried out an expanded consultative process. The result was a Zero Draft of the guidelines, released in 2011. Further consultations took place leading up to the 37th session of the FAO's Committee on Food Security in October 2011, where the First Draft of the guidelines was presented.

These guidelines are intended for adoption by governments. They are "voluntary", or non-binding, unlike an international treaty or convention.

This briefing paper looks at the process of consultations among the different stakeholders in the preparation of the draft document, highlighting civil society's participation as well as its concerns over some parts of the guidelines. A section is devoted to the position of the Asian Non-Government Coalition for Agrarian Reform and Rural Development (ANGOC), for whom the issue of land rights and tenure is particularly important.

ANGOC and Agrarian Reform

The guidelines on tenure are particularly important to ANGOC, because its advocacy is rooted in land and its inextricable link to livelihood. For more than 30 years, ANGOC has advanced the agrarian reform agenda in the Asian region, which is home to about 70% of the world's farming households.

Ensuring land rights for the millions of rural poor who depend on land for livelihood – through policy advocacy and capacity-building – has been a priority of ANGOC's work in the past three decades.

Together with Land Watch Asia partners, ANGOC recently carried out a scoping study of eight countries in South and Southeast Asia

(Bangladesh, India, Nepal, Pakistan, Sri Lanka, Cambodia, Indonesia and the Philippines) to the legal and policy environments relating to access to land and agrarian reform. The findings show that while land reform laws are in place, their execution has been poor, and governments have been ambivalent and half-hearted in implementing genuine reforms. Instead, land is increasingly being allocated for special economic zones, agribusiness ventures, and capital and labor-intensive extractive industries like mining and similar commercial undertakings.¹

ANGOC's general comments below on the issue of governance have been articulated in

various consultations, including those that took place with the International Land Coalition. They also form part of its preliminary inputs to the zero draft of the Voluntary Guidelines.²

On Land and Markets

As a guiding principle, prior redistributive reforms must be instituted before land markets can be considered. Market-assisted land reform policies (including market mechanisms and land funds) are insufficient instruments in the context of highly unequal societies, where there is no level playing field.

On Conflict Resolution

In terms of resolution of disputes over tenure rights, to the extent possible, the capacities of local institutions should be strengthened for resolving local conflicts. Also, several CSO experiences have highlighted the vital importance of involving women in major peace negotiations;

¹ See ANGOC (2009). *Securing the Right to Land: A CSO Overview on Access to Land in Asia*. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development. Note that an expanded second edition of this book is to be published in 2012.

² Refer also to ANGOC (2005). *Asian NGO Perspectives on Agrarian Reform and Access to Land*. ANGOC Policy Discussion Paper prepared by Antonio B Quizon. Quezon City: Asian NGO Coalition for Agrarian Reform and Rural Development.

hence it is important to include women as conflict mediators.

Need for Emphasis on Women's Access to Land

Women with land would have greater bargaining power, which would enable them to negotiate more equal allocations in the family and higher wages in the labor market. Formal land titles and entitlements would contribute to improving women's access to production credit. Titles would also empower women to assert themselves better with external agencies that provide inputs and extension services. Until today, many extension service providers still do not recognize women as farmers. Land rights would further empower women by improving the treatment they receive from other villagers, and by increasing their access to rural decision-making bodies as well as to farmers' institutions.

On Land Rights for Indigenous Peoples

Ensuring "land rights and access" for indigenous peoples goes far beyond common definitions of "land reform" or "agrarian reform". It includes the right to self-governance, through indigenous cultures, institutions, systems of law and justice, and use of resources. Beyond the uplands and forestlands, ancestral domains extend over rangelands, plains, river systems, and even coastlines, and traditional waters and fishing grounds.

On Land Administration

Reforming land administration itself is *not* land reform; nor should land administration projects be designed to replace *redistributive* agrarian reforms. Good land administration may indeed ensure the efficiency of the land titling system. A technically-sound cadastral system will establish the territorial boundaries between two plots of land, but the system itself will not (and should not) determine ownership or proprietary rights.

Rationale and Features of the Voluntary Guidelines

Why governance of tenure?

The FAO acknowledges that land is the most valuable resource on which continued progress depends; the organization further recognizes that ensuring equitable access and secure tenure to land and other natural resources is an issue of governance. FAO also believes that weak governance creates tenure problems and should therefore be addressed.

Weak governance is found in both formal statutory land administrations as well as in informal and customary tenure arrangements. It flourishes where the law is complex, inconsistent or obsolete; where people who work in land agencies lack motivation and are poorly trained and paid; where decision-making processes are not transparent; and where civil society is weak. Weak governance of tenure discourages social stability, investment, widespread economic growth, and sustainable use of the environment. The impact of weak governance can be severe for vulnerable groups and to women who have weaker rights to land. – Excerpt from *Governance of Tenure: Finding Common Ground*, an FAO brochure on the Voluntary Guidelines.

The Voluntary Guidelines, developed as a result of collaboration among different groups of stakeholders – governments, civil society, private sector, academe – are intended to provide a framework for responsible tenure governance that supports food security, poverty reduction, sustainable resource use, and environmental protection. They set out principles and internationally-accepted practices that may guide the preparation and implementation of policies and laws related to tenure governance. They will neither establish binding applications nor replace existing laws, treaties and agreements.

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The proposed document will have a global nature and will recognize the national sovereignty of member-countries, and the cultural and religious sensitivities and diversities of groups concerned with tenure governance. It will be consistent with international human rights principles.

While voluntary, the guidelines are supposed to be negotiated with government. The Voluntary Guidelines will follow the format of other FAO voluntary instruments that set out principles and internationally-accepted standards for responsible practice. Examples of these are the Voluntary Guidelines on the Right to Food, the Code of Conduct for Responsible Fisheries and the International Code of Conduct on the Distribution and Use of Pesticides, among others.

The non-binding character of the Voluntary Guidelines has been a sticky point especially among civil society organizations (CSOs), demanding a firm commitment from governments and accountability by the private sector, especially transnational corporations (TNCs). CSOs say it would be worthwhile to examine the experience of implementing similar non-binding international instruments.

The FAO argues, however, that the non-binding nature of the guidelines is in fact an important element of the framework. Because of the sensitive nature of land tenure, the FAO believes that reaching an agreement among various groups would be close to impossible. With a voluntary document, there is greater chance of incorporating strong issues than with a binding document.

Consultation Process and CFS-led negotiations

From 2009 to 2010, the FAO Secretariat conducted 15 meetings involving around 1,000 people from 133 countries, including participants

from civil society groups. Separately, civil society took part in 10 regional consultation meetings.

Each FAO-led meeting produced an assessment report and all these reports were compiled in an outcome document, becoming the basis in producing a “zero draft” of the guidelines. The zero draft was the subject of a month-long electronic consultation among various stakeholders (April 2011). The suggestions and comments on the zero draft were incorporated into the first draft. One of the global organizations that have been working alongside the FAO since the beginning of the consultation is the International Land Coalition (ILC). The ILC is an alliance of 116 member organizations in more than 50 countries, including UN agencies and other global organizations, farmers’ organizations, research institutes, NGOs and community-based organizations.

Using the zero draft, the ILC Secretariat undertook wide consultation with members, experts, organizations and individuals belonging to its broader network. The process yielded 36 submissions representing the vast experience and expertise of a significant range of stakeholders, with the aim of strengthening the profile of people-centered land governance within the Voluntary Guidelines.³

The first draft of the Voluntary Guidelines was then negotiated in July and October 2011 by States Members of the CFS through an Open-Ended Working Group. Civil society participated in this Working Group through the Civil Society Mechanism (CSM), which is the autonomous mechanism for international civil society groups’ participation in the discussion, negotiation and decision-making processes within the framework of the CFS.

In October 2011, consensus was reached on 75% of the reviewed parts of the voluntary guidelines.

³ For the ILC Network Submission please visit: <http://www.landcoalition.org/news/ilc-network-submission-voluntary-guidelines>

Hence, an additional meeting of the Open-Ended Working Group of CFS is still necessary to complete negotiations, whilst adoption is expected for the 38th session in 2012.

What are the concerns of Civil Society?

The Civil Society Mechanism under the CFS has taken positions on several contentious issues around which it is drafting concrete proposals for discussion in thematic working groups and plenary sessions.

These issues pertain to: a) the primary purposes of the guidelines; b) reference to international human rights and the states' obligations; c) protection of local communities from market mechanisms, investments and concessions; d) inclusion of water and other natural resources in the guidelines; e) the need for restitution and redistributive reforms; f) the coherent distinction of the respective roles of states and non-state

actors; and coherent spatial planning from a *sustainable development* perspective.

For the full report of the CSM consultations, see <http://cso4cfs.files.wordpress.com/2011/06/cfs-vg-civil-society-negotiating-positions.pdf>.

Similar concerns emerged during the consultations conducted by the ILC. Based on these, a report was put together and made the basis for a Briefing Note to participants in the 11-15 July 2011 negotiations of the Open-Ended Working Group (OEWG) on the voluntary guidelines.

An outcome from this consultation is a consensus that the initial draft of the guidelines fails to address adequately the linkages between land governance and food security, and to prioritize the needs and interests of the vulnerable groups. In order to advance and strengthen people-

centered governance, the outcome report cites four cross-cutting elements that should be covered in the guidelines. They are:

1. People-centered land policies that prioritize the interests and vulnerable groups, whose livelihoods depend on land, including the landless, land-poor and rural workers

Land policies should support the diverse interests of land users, with special attention to the needs of the most vulnerable. Such includes promoting and respecting human rights, including labor rights, and addressing power asymmetries by prioritizing explicitly the interests of vulnerable groups, whose livelihood depend on land and other natural resources. This should take into account models of investments in agriculture and other natural land-based activities that are socially, economically, and environmentally sustainable, that respect the free, prior and informed consent of the affected communities and that reduce poverty and hunger.

2. Democratic decision-making over land that includes the full spectrum of land users

Land governance should allow for meaningful and timely participation of the full spectrum of land users and their organizations – in national policy dialogues and local decision-making over territorial development. Democratizing decision-making over land also implies promoting gender equality in access to land and land tenure; ensuring political and administrative decentralization; and supporting national-level monitoring based on transparent and accessible land-related information. Land users and their organizations, as well as grassroots communities, should be empowered to participate in decision-making at all levels.

3. Diverse, flexible and plural tenure systems and the protection of the commons

Land policies should recognize and protect diverse, flexible and plural tenure systems, including those of indigenous peoples and pastoralists, fisherfolk,

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and users of collectively-owned, used or otherwise acquired common pool resources.

4. Agrarian reform and land redistribution to counteract excessive land concentration and landlessness

Secure and equitable access to and control over land are preconditions for sound and sustainable land governance, but also for peaceful and stable societies. Agrarian reform and land distribution are an important policy tool, particularly in countries where past policies have created vast inequalities, and where control of land is highly concentrated in the hands of the few due to the intensified and increasingly unequal competition for land and natural resources.

In addition, the *ILC Briefing Note to the OEWG* breaks down major observations/comments

under seven different themes⁴, consistent with a people-centered land governance:

Theme 1: Scope and purpose of the VGs: The lack of secure and equitable access to land for the rural poor is widely recognized as one of the main factors leading to the 2007-08 global food crisis. Yet the First Draft of the VGs fails to adequately address the links between land governance and food security, and to prioritize the needs and interests of vulnerable groups.

The ILC Secretariat proposes the explicit mention of the promotion of people-centered policies in the guiding objectives and principles of the Guidelines.

The Special Rapporteur on the Right to Food proposes the following insertion in the section on implementation, monitoring and evaluation: *States should implement these guidelines at national level as a full part of their national strategies for the*

⁴ For the full ILC Briefing Note, including amendments proposed, visit: <http://www.landcoalition.org/news/ilc-network-submission-voluntary-guidelines>

progressive realization of the right to food in order to improve consistency with the Voluntary Guidelines on the Right to Food.

Theme 2: Land reform, including redistribution and expropriation:

Secure and equitable access to land and other natural resources is a precondition for responsible governance. Policies that improve access to resources are fundamental to the sustainability of smallholder farming systems, improving the potential of all rural producers, mitigating their risks related to food price volatility and achieving long-term food security. Yet the First Draft does not address the negative implications that excessive land concentration has for the environment, economies and societies at large. It ignores the power asymmetries and does not go far enough to secure land rights for women and vulnerable groups.

The ILC Secretariat proposes the following insertion in the Document's guiding objectives and principles: *Promote secure and equitable access to and control over land, fisheries and forests to reduce poverty, promote sustainable development, sound land governance, healthy ecosystems, and contribute to identity, dignity and inclusion.*

Theme 3: Investments and concessions (balancing pro-investment and safeguards):

Given the intensified and unequal competition for land and natural resources, there is a need for models of investment that are socially, economically, and environmentally sustainable. The particular section on investments and concessions in the First Draft is still prone to critical misinterpretation in its provisions. States should not merely *encourage* responsible investments, but instead authorize only responsible investments and concessions.

The ILC Secretariat proposes the following statement to be incorporated in the investments and concessions section of the guidelines: (i) *The state should nominate an independent appeal*

body, such as a court, human rights commission, or ombudsman, to which tenure holders, corporations and other key actors may refer complaints and bring actions concerning the non-observance of the conditions of any investment. States should write into the law provisions for the termination of a concession or land lease for non-observance of the conditions of a concession or land lease. (ii) States must ensure that labour rights in national and international law are reflected in all contracts and agreements and subsequently realized for all workers and producers, both women and men. Guarantees about employment as an alternative or supplementary livelihood for those who lose tenure rights to land and other natural resources must be clear, specific and enforceable.

The ILC Secretariat further proposes the following in the same section: *States and non-state actors should avoid investments that contribute to land grabbing. This includes local-level land grabs, particularly by powerful local elites, within communities or among family members. It also includes large-scale land grabbing, which is land acquisition or concession that is one or more of the following: (i) in violation of human rights, particularly the equal rights of women; (ii) not based on free, prior and informed consent of the affected land users; (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and; (v) not based on effective democratic planning, independent oversight and meaningful participation.*

This new paragraph is proposed for inclusion in the same section by the European Union: *Investors have a corporate responsibility to respect human rights. Business enterprises must act with due diligence to avoid infringing on human rights within their sphere of influence. They should include appropriate risk management systems to prevent or address adverse human rights impacts. Investors have the responsibility to provide adequate non-judicial access*

to remedy including effective grievance mechanisms for victims of human rights abuses. Investors should consider assessing the human rights impacts of their investments. States have the obligations to provide access to effective judicial access to remedies from human rights abuses by investors. Investing nations or nations supporting investments in other nations must ensure that their actions are respecting their relevant obligations and voluntary commitments to applicable international and regional human rights norms and standards.

Theme 4: Language harmonization with international agreements: The VGs should be adequately linked to the existing and binding international human rights framework. The language used should be fully consistent with international human rights standards and definitions, so that the VGs will not be used to avoid compliance with existing norms, especially on critical issues.

The language in some sections of the guidelines appears to set the bar lower than already-accepted human rights commitments. Language should be strengthened to reflect the commitments that state parties have made.

Theme 5: States and non-state actors and their roles: Democratic land governance, through the meaningful participation of the full spectrum of land users, allows governance of land tenure to be shaped by all who use land and natural resources, in particular those whose livelihood are land-based, and who are at risk of being marginalized in non-participatory land-related processes.

The VGs fail to respond to a world that is more and more democratically defined. Rights, roles and responsibilities of different actors within societies are not addressed. Beyond the welcome concepts of transparency and accountability, the need for a democratization of decision-making over land governance and territorial development is not recognized.

Women play key roles as farmers, yet their access to land and control over land are extremely limited, as is their participation in decision-making at all levels over land governance.

To address this weakness in the Guidelines and emphasize the role of land users and actors as equal partners, the ILC Secretariat proposes the following new paragraph in the section on rights and responsibilities: *States should facilitate efforts by organizations representing various groups of land users to be involved as equal partners in the governance of land and other natural resources, and should ensure that they promote human rights through democratic governance, promotion of gender equality, and pro-poor policies for marginal groups and individuals.*

The ILC Secretariat also suggests the following text for the section on implementation, monitoring and evaluation: *States should periodically report on the relevant activities and progress achieved in implementing the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests, to the Committee on World Food Security (CFS) within its reporting procedures. The Committee welcomes country-specific information arising from multi-stakeholder national dialogues and civil society. Once received, the Committee will publicly share and disseminate documents containing this information.*

Theme 6: Women's land rights: Women play key roles as farmers, yet their access to land and control over land are extremely limited, as is their participation in decision-making at all levels over land governance. Given this context, the VGs should be instrumental in addressing and overcoming gender disparities in tenure of natural resources, while recognizing and unleashing the potential of women farmers.

The United States says the following paragraph should be inserted in the section on rights and responsibilities: *State should remove and prohibit all legal and regulatory forms of discrimination and, where appropriate, address discriminatory social norms.*

The EU proposes the following provision in the policy, legal and organizations frameworks of the

Guidelines: States should consider the particular obstacles faced by women and girls with regard to tenure and associated property rights and take measures to ensure that legal and policy frameworks provide adequate protection for women, and that laws that recognize women's tenure rights are enforced and implemented. States should ensure that women can legally enter into contracts concerning tenure rights on the basis of equality with men and should provide legal services and other assistance to enable women to defend their tenure interests.

Theme 7: Customary and informal tenure and the commons:

A small minority of poor people who use land for their livelihood holds private titles to land; many users depend on customary tenure systems that have no legal support. The commons are an important safety net against absolute hunger or poverty for those unable to lay claim to their own land, or those who have few other livelihood options.

The First Draft treats the commons and indigenous/customary rights as permissive/use rights awarded by the state rather than as primary territorial rights, recognized and protected by the state. Where necessary, in accordance with the principle of diversity, the VGs should recognize the diversity of tenure systems and promote the recognition of customary land law, in accordance with the international human rights law.

In relation to this, the ILC Secretariat proposes the incorporation of the following in the section on land investments and concessions: *States should refrain from entering into and endeavor to amend investment treaties which allow or encourage land-based investments that do not recognize or protect existing customary or informal land rights.*

The Committee on Food Security held its 37th Session from the 17 to 22 of October 2011 in Rome, Italy. Prior to this, intergovernmental negotiations led by the CFS took place (10 to 15 of October 2011) at the FAO Headquarters and

were attended by approximately 70 countries, 45 CSOs, and one private sector organization.

The negotiations were seen as a success and took place in a positive, constructive and inclusive atmosphere. Significant progress was made with 75% of the Voluntary Guidelines reviewed. A strong sense of ownership of the Voluntary Guidelines was shared by members, civil society and private sector organizations.

The Committee on World Food Security, at its 37th session:

- acknowledged the outstanding efforts of all stakeholders regarding the negotiations of the Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security;
- recognized that additional time will be required to complete the process, and endorsed its continuation and finalization;
- acknowledged the substantial progress gained to date and recommended building on the solid base which has been achieved, while concentrating on remaining paragraphs and respecting and maintaining the spirit of understanding reached during the July and October negotiations;
- appreciated the commitment of Member States to the completion of the Voluntary Guidelines; and
- mandated the CFS-Bureau, in consultation with the Advisory Group and the Secretariat, to call for an additional negotiation session with the intent of finalizing the Voluntary

Guidelines as soon as possible, taking into consideration the Committee's overall work program and available resources.

POSTSCRIPT:

At the time of writing, the intergovernmental negotiations of the VGs has been successfully finalized in March 2012. A special session of CFS in May 2012 will be convened for its final approval. □

References:

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