



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

Bucharest, Romania
22-24 March, 2010

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This assessment is based on the discussions and outputs of the European regional consultation meeting on the *Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources* held in Bucharest, Romania 22-24 March 2010. The views expressed in this assessment are those of the participants of the consultation meeting and do not necessarily reflect the views of FAO.

A. Background

The European Region encompasses a range of conditions of governance of tenure of land and other natural resources. In many European countries governance is well established, often based on a long tradition of land tenure and land administration and constantly being improved (e.g. through electronic governance or “e-governance”). However, even these countries face new challenges and demands in the field of natural resources, on the one hand by international interests and issues (e.g. European Union, international standards and rules, conflict between use of land for food or energy, climate change, etc.) and on the other hand by an increased demand for transparency, accountability and participation by local stakeholders. In other countries, the governance of tenure is sometimes still largely affected by transition issues. Typical transition issues are related to completion of land reforms, creation of appropriate institutional and legal frameworks, and adoption of EU rules and regulations (*acquis communautaire*) for the accession countries, etc.

A further major issue for the transition countries, and also for some Western European countries, is that the current agrarian structure is not competitive and economically viable in today’s globalized economy. This might exclude many small and fragmented farms from sustainable agricultural activities. At the same time, excessive concentration of land into very large farms has introduced social and environmental problems. A result is increased pressure on competitiveness and structural change in the rural sector with its implication on the use of land and other natural resources. Rapid, unplanned and informal urbanization and the erection of illegal structures place further pressures on the land. All these factors require new or adapted approaches to governance to ensure that land and other natural resources continue to provide the platform for livelihoods and the basis for social, economic, traditional and cultural practices.

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

Regional consultations on the proposed Voluntary Guidelines are an important part of the process. They bring together regionally representative, multidisciplinary groups to assess regional priorities and issues that should be considered when the Voluntary Guidelines are drafted. The regional consultation for Europe was hosted by the National Agency for Cadastre and Land Registration, Romania, and was opened by Ms Irina Alexe, the Secretary of State, Ministry of Administration and Interior. The consultation was co-sponsored by the National Agency for Cadastre and Land Registration, Romania; GTZ (Gesellschaft für Technische Zusammenarbeit) and BMZ (Ministry for Economic Development), Germany; the World Bank and FAO. It was attended by 91 people from 28 countries and territories of the region who contributed their substantial knowledge and experience of the public sector, private sector, civil society and academia. Regional participants came from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Italy, Kosovo, Latvia, Lithuania, The Former Yugoslav Republic of Macedonia, Moldova, Montenegro,

Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland and United Kingdom.

B. Issues and actions identified at the Regional Consultation

- 1. The Voluntary Guidelines should support the development of tenure policies and practices that ensure the right to adequate food, household food security, sustainable development and environmental protection, and improved living standards in the context of new challenges and potential conflicts including climate change, and volatile prices of food and fuel that have fostered competition between food and bioenergy production.**
- 2. The Voluntary Guidelines should be linked to international and regional initiatives.**
 - They should reflect commitments to international agreements such as the Convention on Biodiversity, the Ministerial Conference on Protection of Forests in Europe, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the International Covenant on Civil and Political Right (ICCPR), the International Covenant on Economic, Social and Cultural Right, etc.
 - They should recognise the important role of the European Union in setting standards and approaches, including the Rural Development Programme, Natura 2000, Water Framework Directive, INSPIRE, LEADER, etc.
- 3. Access by women and vulnerable people to land and other natural resources should be enhanced and protected.**
 - Awareness programmes should be designed and implemented to raise awareness of women regarding their tenure rights, and registration of joint property should identify wives as well as husbands as owners.
 - The repatriation and reintegration of Internally Displaced Persons (IDPs) should include fair and efficient procedures for restitution and resettlement. IDPs should be afforded free access to justice and be protected by the enforcement of decisions.
 - Improved security of tenure should be an integral part of improving the standard of living of marginal groups such as the Roma. Resources should be allocated to promote participatory approaches to assist such groups to make their development decisions.
 - The public participation of IDPs, Roma, and other vulnerable groups should be ensured in relevant spatial/urban processes. Informal settlements should be regularized in accordance with the Vienna Declaration with respect to the property rights of landowners.
 - Special procedures should be developed to improve tenure security for vulnerable groups who lack the identity and property documentation needed to acquire legally recognised rights to land, housing and other property. Land registration and cadastre offices should provide ex-officio registration (court decisions, inheritance, privatization, restitution, etc.)
 - Legal support and legal information should be provided for vulnerable groups.
 - Special assistance should be given to members of vulnerable groups to ensure rights of inheritance.

4. Frameworks for policy, legislation and organizations related to tenure should be fair, clear, efficient and cost-effective.

a) Policy frameworks

- Policies should be forward-looking and anticipate the effects of climate change and the reduction in availability of fossil fuels which are likely to affect the use of natural resources such as forests, and food production.
- Policies should balance public and private interests by respecting and protecting the rights of land owners, the public needs for limitations on rights, and the needs of the most vulnerable.
- Policies for land and other natural resources should be clear, comprehensive and harmonized.
- Policy development should be based on a multidisciplinary approach and should include participation by people who would be affected by the policy as well as a wide range of other stakeholders including marginalized and isolated social groups, women, youth, etc.
- Policies should be realistic in terms of what can be implemented with the financial and human resources available.
- Policies should encourage the development of a single land registration/cadastre institution in order to manage more efficiently the real property records within the executive entities.

b) Legal frameworks

- Legislation should respect the rights of individuals, families, legal entities and groups and communities (e.g. indigenous people) to land and other natural resources.
- Enabling legislation for land and other natural resources should be clear and simplified. Over-regulation can be as counter-productive as under-regulation. Legislation should be prepared in ways that allow new, appropriate and accepted methodologies and technologies to be introduced without requiring laws to be amended.
- Standard definitions for words and terminologies should be prepared to promote clarity and common understanding of the legislation.
- Regulations should be implemented and enforced.
- Where appropriate, national legislation should be harmonized with the general legal framework of the European Union, taking into consideration the diversity of states.
- Legislation regarding land markets should reflect the double roles of the state in setting rules and in being an owner of land, and should ensure there is no conflict between these roles.

c) Organizational frameworks

- Responsibilities of state, regional and local governments, and of land agencies, should be clearly identified. Responsibilities should be divided where appropriate to provide checks and balances.
- Organizations at the same level of government, and at different levels of government, should coordinate their activities and harmonize their procedures.

- Organizations should cooperate and coordinate in the establishment of databases and sharing of information to ensure that data collected by one organization can be used by others.
- “Public and private” partnerships and “public and public” partnerships should be developed where appropriate, acknowledging that experience shows that such partnerships can be difficult to establish.

d) Human resource development

- Governments, land agencies and the private sector should ensure they have well-trained, educated and motivated staff, and that the staff receive adequate pay for their services.
- Appropriate courses and curricula should be prepared, and best practices should be collected, to ensure that people have appropriate knowledge.
- Policies should be designed and implemented to improve gender equality of land professionals in management and technical levels of land agencies.
- Governments should ensure that all sectors of society are informed of their land rights and responsibilities by introducing campaigns using public media, school education, etc.

e) Universities

- The central role of universities in the education of land professionals (e.g. surveyors, lawyers, valuers, planners, etc) should be recognised.
- European universities should be encouraged to develop appropriate courses through the TEMPUS programme, etc., and to strengthen collaboration between universities.

f) Financial management

- Governments and land agencies should be placed on a stable financial basis.
- Responsibilities for payments for services should be defined and publicised.
- Fees to be paid for services should be published and easily understood.

5. Procedures should try to prevent and eliminate corruption, and promote transparency and public participation.

a) Corruption and transparency

- Procedures should be based on the rule of law and respect for human rights in accordance with international human rights obligations.
- Procedures should eliminate opportunities for inappropriate personal influence on legislation and reforms.
- Transparency and broad access to information are required at all levels of government, and in all operations.
- Electronic governance (“e-governance”) should be introduced to improve access by citizens and others to tenure information.
- Action plans for fighting corruption should be established and implemented continuously to reduce the number of unnecessary, unreliable and over-priced projects.

b) Public participation

- Principles and standards should be developed and implemented to ensure that members of the public are consulted in a meaningful way and are able to provide feedback and comment. Public consultations should come early in a process.
- Information prepared for public consultations should be clear, easily available and timely.
- A continuous programme of information, principles, procedures, education and awareness raising should be developed and delivered to ensure effective participation.

c) Professional ethics and standards

- Land practitioners in the public and private sector should adhere to ethical and professional standards.
- Professional associations should take a leading role in the preparation and enforcement of ethical standards.

6. Natural resources should be addressed within an integrated framework.

- The governance of tenure of natural resources (renewable and non-renewable) should be addressed.
- Greater incentives (including financial) should be provided for sustainable practices for natural resource use (including reform of the Common Agricultural Policy) based on a proper evaluation of ecosystem and management services.
- Access to local genetic resources should be ensured for local populations. Accordingly, governments should implement international Conventions and Treaties such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) (in particular art. 6 and 9), the Convention on Biodiversity, etc. Patents on life forms should not be allowed.
- Participation by all stakeholders should be ensured in natural resource management, including management planning and impact assessment for strategic and implementation plans and projects. People affected by the proposals should be included in the decision-making process, in accordance with international human rights standards.
- National and European regulations related to the environment and natural resources should be implemented and enforced, particularly in relation to biodiversity and land management.

7. Rights and responsibilities should be defined to improve clarity, and address competition and promote cooperation.

a) Rights and responsibilities for land and related resources

- Land ownership is often guaranteed by the constitutions of countries, and people should not lose their rights to land and other natural resources without due process and the payment of adequate compensation.
- Limits of ownership rights should be clearly defined and regulated by law, and implemented through specific administrative tools. Uses should be limited as appropriate to protect natural resources and ensure their sustainable use. Information on limitations to rights should be easily available.
- Owners and users of land and other natural resources should ensure the sustainable use of those resources.

- Concentration of land ownership can prevent people (e.g. young people) who wish to become farmers from acquiring land. Policies should be designed and implemented to improve access to agricultural land for future generations and to create agricultural and rural employment.
- Where appropriate, rights of people to produce their own food should be ensured.

b) Competing interests in land and related resources and enhancing cooperation

- Mechanisms should be established to address different views between public and private sectors, e.g. the desire by government to protect natural resources under Natura 2000, and the wish of owners to keep those resources under production.
- Regulations should be established to address conflicts between the use of surface resources (e.g. agricultural land) and subsurface resources (e.g. water and oil extraction, sand and gravel mines, etc).
- Financial instruments should be developed as appropriate to manage conflicts between property rights and restrictive regulations of natural resource use.

8. The quality of land administration services should be improved.

a) Protection from misuse of political power

- Procedures should be established to ensure that political power is not misused to inappropriately influence the technical decisions and work of land agencies.

b) Adequate resources

- Land agencies should have adequate resources (human, financial, technical, etc) to provide the required level of services to their customers, and to enforce regulations.

c) Judiciary

- Many countries have well functioning judiciaries, but in some cases the role of an independent judiciary should be promoted, safeguarded and strengthened where necessary.

d) Land registration and cadastre

- Many European countries have invested significantly in improving land registration and cadastre services. However, there are still cases where the quality of registry and cadastral information should be improved.
- The core task of land registries should be to safeguard registered rights.
- Registration and cadastral data should be easily accessible.
- Performance standards for services (such as registration, obtaining of extracts, etc.) should be developed and publicised. Agencies should monitor and report on their performances.

e) Land use planning and regulation

- Spatial (territorial) planning should address linkages between urban and rural areas in an integrated manner, and should make use of approaches such as LEADER.
- Horizontal and vertical coordination between sectors should be improved to ensure that sectoral plans do not conflict, and be harmonized to improve conditions for rural and urban inhabitants, and to lead to sustainable development.

- The planning of urbanization should be strengthened. Urbanization is often rapid and chaotic, and results in land being used for purposes other than intended.
- Implementation measures should be developed for the monitoring, evaluation and enforcement of land use plans and related regulations.
- Agricultural land should be protected to prevent its inappropriate conversion for other purposes and the associated loss of biodiversity. Increasing rural to urban migration is resulting in increasing demand for land for construction, but the process for conversion is complex, costly and time-consuming. Clear and transparent procedures should be established to regularize changes of land use, to enable public participation in the process, and to limit the conversion of land for commercial and residential purposes for what is actually needed. Bureaucratic and time-consuming procedures for building permits, etc., should be simplified in order to reduce incentives for illegal constructions and minimize opportunities for corruption.
- Legal solutions should be established for the registration of illegal constructions. Services and infrastructure should be provided to communities that are regularized. Existing laws should be enforced to prevent future illegal constructions.
- The skills and expertise of land use (spatial) planners should be improved through education programmes.
- Access to spatial data (geo-data) should be improved for use in spatial planning.

f) Valuation

- Valuation standards, based on international valuation standards, should be adapted to national and local conditions as required.
- Valuation systems should be transparent and fair.
- Different approaches for valuation (e.g. market value or other types of values when there is no market) should be adopted as appropriate for different purposes. Market based solutions for valuation may not be feasible for vulnerable groups.
- Valuation activities should be regulated by ensuring that sufficient capacity is built in the public and private sectors.
- Minimum education qualifications should be established for valuers.
- When transaction costs (e.g. registration fees, transfer taxes, etc) are high and based on the declared sales prices, there is often an agreement to under-declare the prices paid for property. Procedures should be established to ensure that recorded transaction values reflect the actual sales prices that were paid.
- Sales information and valuation information should be made publicly available to improve transparency in the land/property market.
- Principles of equity, transparency, uniformity and objectivity should be applied in valuation for public sector purposes (e.g. using market values to determine property taxes, and compensation in cases of expropriation).

9. The re-allocation of land should be facilitated through the development of fair, effective procedures for privatization, land markets, and land consolidation and land banking.

a) State, municipal and community land

- Countries should identify and address requirements for matching demand and supply of land. Considerations may include providing access to a broad range of

applicants, or to establish targets for groups such as qualified farmers, small farmers, young people who wish to farm, etc. Public and private interests should be balanced.

- Restitution should be accelerated and finalized in order that state land may be used for other purposes than restitution.
- Clear procedures and regulations should be established for the transfer of state land through privatization, including through sales and leases.
- Local communities or recognised users of public lands should have the right of first purchase for public lands in their community for social or public needs, and in accordance with clearly defined criteria.
- The release of public lands through sales should be planned and implemented in ways that achieve the social goals while not disrupting the local land markets.

b) Land markets

- The necessary public infrastructure (regulatory framework, institutions, educated experts) should be developed to enable a functional land market. Institutions should provide easy access by all to land markets, and keep transaction costs as low as possible. Confidence in the market should be provided through transparent regulations, regulators working to ethical standards, and the provision of information.
- Ethical standards and educational requirements should be required for professionals who provide land market services.
- Tools (e.g. pricing policy, tax systems) should be developed to prevent speculation. States may consider introducing pre-emption rights.
- Leasing markets should be facilitated and promoted to address land abandonment, land fragmentation and to facilitate viable farming.
- Measures should be developed to support the creation and sustainability of family farms, and also to support the creation of a diversified and sustainable rural economy in order to provide additional opportunities for employment. Such measures are needed to address problems such as those where small family farms are unable to compete with large agribusiness companies, and are forced to exit from farming and sell their land cheaply to the agribusiness companies. The excessive concentration of land under the control of large companies may adversely impact rural development and the diversity of the rural economy.
- Transnational companies should respect human rights and rights to land and other natural resources when investing in agriculture land in foreign countries. States have extra territorial obligations in accordance with international law, and should monitor the operations of companies under their jurisdiction that invest in agricultural land and other natural resources in foreign countries.

c) Land consolidation and land banking

- Land consolidation and land banking should provide a balanced approach for rural development by addressing needs to bring land into production, provide opportunities for new farmers or allow small farmers to expand their farms, protect and enhance the environment (nature protection, measures against fires and floods), and provide rural infrastructure. Projects should catalyse the exchange of state and private land parcels to support rural development.

- Countries should develop their own tailor-made approaches for land consolidation and land banking, while drawing on the best practices from other European countries.
- Countries should prepare national policies or strategies that are socially, environmentally and economically sustainable, and should establish appropriate legal frameworks that define clear, cost-effective procedures, recognising that land consolidation and land banking projects could be financed through the use of national funds or co-funded by the EU in the case of member states.
- Governments should actively inform rural citizens, communities and local governments of the benefits of modern approaches to land consolidation, particularly in transition countries where land consolidation was used to deprive people of their land rights in former times.
- Indicators and frameworks should be established to evaluate land consolidation and land banking initiatives including their impact on rural development and agricultural production.
- Procedures should be developed to incorporate abandoned land in land consolidation and land banking projects, while providing appropriate protection to the rights of absent or unknown owners.

C. The next steps

The European consultation is the third in the series of regional consultations and will be followed by similar meetings in Africa, Asia-Pacific, Latin America, the Near East, and the Commonwealth of Independent States. There are additional private sector and civil society themed consultations. The outcomes of these meetings, along with a global electronic consultation, will provide feedback on what should be considered when the Voluntary Guidelines are prepared.

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

A final draft of the Voluntary Guidelines will be submitted to FAO member countries and other stakeholders for review and endorsement in 2011.

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

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