



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

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This assessment is based on the discussions and outputs of the Southern Africa regional consultation meeting on the *Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources* held in Windhoek, Namibia 28-30 September 2009. The views expressed in this assessment are those of the participants of the consultation meeting and do not necessarily reflect the views of FAO.

A. Background

Land and other natural resources provide a platform for livelihoods and a basis for social, economic, cultural and religious practices. Rights of access to these resources and the associated security of tenure are increasingly affected by population growth, urbanization, climate change, natural disasters, violent conflicts, and growing demands for land for food production and for new energy sources such as bio-energy. Weak governance of tenure is a factor in many tenure-related problems, and failing to address these problems hinders reform efforts. In contrast, responsible governance of tenure can help to reduce hunger and poverty, support social and economic development, reform public administration, and positively address issues such as climate change and HIV/AIDS.

FAO (Food and Agriculture Organization of the United Nations), GTZ (Gesellschaft für Technische Zusammenarbeit) 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 Southern Africa was hosted by the Ministry of Lands and Resettlement of Namibia and was opened by the Minister, the Hon. Alpheus !Naruseb. The consultation was co-sponsored by BMZ (Ministry for Economic Development, Germany) and FAO, with local organizational support provided by the Namibia Institute for Democracy. It was attended by 57 people from 11 countries (Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe) who brought a rich and extensive range of expertise derived from their experience in the public sector, private sector, civil society and academia.

B. Issues and actions identified at the Regional Consultation

1. The Voluntary Guidelines should be linked to regional and national initiatives.

Regional initiatives include the “Declaration on Land Issues and Challenges in Africa” by the Heads of State and Government at the African Union Thirteenth Ordinary Session in Sirte, Libya (1-3 July 2009), and the 2009 “Framework and Guidelines on Land Policy Development and Implementation” which was prepared by the African Union Commission, the UN Economic Commission for Africa, and the African Development Bank, with support provided by FAO and others.

2. The typically long term and multi-stakeholder process for improving governance of tenure should be recognised.

- Wide support and legitimacy for reforms, including policy development and implementation, should be generated through the development of a national consensus that involves all stakeholders including local communities, civil society organizations and the private sector.
- Appropriate priorities should be established in light of the scarce human and financial resources and the long time required to implement complex reforms.

- Governments should plan for a clear step-by-step process to develop appropriate policies, laws and operational frameworks, and in advance identify appropriate resources and technical assistance.
- 3. Access to land and other natural resources and the associated tenure security should be non-discriminatory.**
- Women, the poor, indigenous people, landless, youth, disabled and other vulnerable and marginalized groups should have equitable and secure access to land and other natural resources.
 - Representation and participation in processes of policy-making, review and reform should be open to all in order to address discrimination in customary and statutory law which favours the powerful over the weak. Some forms of discrimination are entrenched in custom and law, while other forms have arisen recently because of changes in society, HIV/AIDS, etc.
 - International and national laws that recognise the rights of women and other groups should be brought to reality on the ground.
 - Access to justice is necessary to address unequal relationships of power which have resulted in inequitable and insecure access to land and other natural resources.
- 4. Customary and statutory tenure should be addressed in a common policy framework in African countries.**
- Customary and statutory tenure co-exist and interact with one another in countries of the region. They are sometimes distinct but at other times they merge, with the interface between them often being unclear. Neither form of tenure will replace the other, but the weaknesses of each form of tenure (e.g. with regard to discrimination, etc.) should be identified and addressed. The uncertainty, tensions and conflicts introduced by dual tenure systems (including between traditional leadership and local governments) should be removed.
 - Different tenure options (private ownership, leasehold, common property resources, etc.) should be recognised: the security of tenure may be more important than the form of tenure.
 - A goal of responsible governance of tenure should be a national system of land administration that is culturally relevant and effective, that strengthens customary and statutory normative systems, and which meets land access and livelihood needs of all members of society.
- 5. Legal and organizational frameworks for tenure should be harmonized and simplified.**
- A holistic approach for governing land and other natural resources should be developed which reflects the dynamic nature of both customary and statutory tenure.
 - Coordination should be improved to effectively link customary and government administrations. Improved coordination is also needed within government to address situations where various agencies have responsibility for different kinds of land uses (agricultural, urban, water, forests, environmental, pastoralism, etc.)
 - Interaction with decentralized and other local stakeholders including local communities and civil society organizations should be enhanced to ensure that policy and decision-making and the provision of services are not unduly centralized.

- Legal reforms should address problems where legislation for land and other natural resources is complex, poorly enforced, and open to different interpretations. The complexity and flexibility needed to address customary tenure as well as statutory tenure require investments of human, financial and time resources.
- Administrative reforms should address problems where processes are complex, costly and bureaucratic to ensure that the processes become transparent and accessible, and that appropriate technologies and accuracies are adopted, so that:
 - Land registration systems provide tenure security and support land markets;
 - Land use planning systems take local needs and alternative land users into account and promote the sustainable use of the land.
- Good information bases should be developed to provide statistics and other information needed for decisions related to policy, public lands, land markets, investment, etc.

6. Land markets, valuation and taxation should be documented and appropriately regulated.

- Increased transparency should be introduced in land markets, recognising that they exist in both customary and statutory tenure. There should be a national dialogue on land markets, while recognising the local nature of land markets and the needs of local people.
- There should be a comprehensive assessment and documentation of informal and formal land markets and their impacts, particularly focusing on the poor.
- The operations of land markets should be regulated to empower the poor and vulnerable.
- Land valuation systems should be transparent and reflect social, cultural and economic values, and should be consistent with international standards and practices.
- Land taxation systems should be equitable, progressive and support the provision of social and physical infrastructure and other policy objectives.

7. Competition for land and other natural resources should be managed to minimize conflicts and ensure sustainability of livelihoods and the environment.

- The management of competition over land should recognise the multiple uses of land and other natural resources. Appropriate mechanisms should be developed to manage conflicts over claims for land and other natural resources, and to promote agreement and cooperation between those with different interests in the use of the land and other natural resources.
- Tenure policies and strategies should be developed to mitigate and combat climate change. The effects of climate change should be considered in relation to the tenure implications of national and regional practices and any international agreements.
- Safeguards should be put in place to ensure that people do not lose their customary or statutory rights to land and other natural resources without due process and the payment of adequate compensation including appropriate resettlement.
- Adequate safeguards should be put in place when land is acquired for large scale agricultural and other investments, including assessments of effects on biodiversity and climate change. More equitable sharing of benefits between governments, private sector and host communities should be devised.

- Responsible governance of tenure should be integrated into wider national social and economic policies and strategies in order to achieve desirable economic and social outcomes.

8. Capacity of all stakeholders should be increased in order to ensure effective participation in processes of tenure and its administration.

- There is a need for a long term consultative framework that builds awareness, understanding and education.
- Training, education and organization of the poor and vulnerable, women and other traditionally disadvantaged groups are needed to enable them to claim their rights of representation and participation.
- Post-settlement support (e.g. credit, extension, marketing, etc.) is needed for land reform beneficiaries to develop capacity, thereby allowing them to enjoy sustainable rural livelihoods.
- Capacity building is a huge task and requires the involvement of all sectors (public sector, private sector, civil society and academia).

C. The next steps

The Southern Africa consultation will be followed by similar meetings in other regions of Africa, Asia and Pacific, Latin America, the Near East (Arabic speaking countries) and Europe. The outcomes of these meetings, along with a global electronic consultation, will provide feedback on what should be considered when the Voluntary Guidelines are prepared.

The preparation of the Voluntary Guidelines will begin following the regional consultations. The draft version of the Voluntary Guidelines will be reviewed through a broad, participatory process. Participants of this workshop are part of this process and will be invited to review the draft and to propose improvements to make the Voluntary Guidelines more effective.

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

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

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