



## **Eastern and Anglophone Western Africa Regional Assessment for the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources**

Addis Ababa, Ethiopia  
20-22 September 2010

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This assessment is based on the discussions and outputs of the Eastern and Anglophone Western Africa regional consultation meeting on the *Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources* held in Addis Ababa, Ethiopia 20-22 September 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**

Land and other natural resources are fundamental to economic, social-cultural and the political development of nations. The tenure and access to these resources is therefore of primary importance. Moreover, global population increase and rapid urbanization continue to place great pressure on these resources, making their governance a priority for most nations. Good land governance promotes equity, social cohesion, economic growth and poverty reduction. Weak and poor governance on the other hand leads to inefficiency in land administration, poverty and hunger and also undermines peace and security.

Efforts to promote good governance of land and natural resources in the region must keep in mind the need for a reasonable interplay between land governance and political economies without which there may be a breakdown of land administration, inequitable access, conflicts and internal displacements. The pursuit of good governance practices must also embrace and build upon current innovations in land tenure and management. The region has experienced positive changes from the implementation of good governance programs. Tenure reforms are placed high in the agenda. Improvements are seen in the recognition of customary land rights. Good progress is made in the process of decentralization. As a sample of innovative approaches to tenure, the spread of regularization options have expanded to commonly cover leasing, ownership certification, written agreements and forms of co-ownership, communal and group titles. However, good governance must also embrace emerging challenges including the threat of HIV/AIDS pandemic, climate change, land acquisitions, land grabbing, land degradation and the access to land by women.

Appreciating this, the Food and Agriculture Organization of the United Nations (FAO), together with a number of partners, is developing *Voluntary guidelines on responsible governance of tenure of land and other natural resources* (the Voluntary guidelines) to assist states, civil society and the private sector to respond to the problems of weak governance in land tenure.

The development of these Voluntary guidelines will draw input from multi-stakeholder regional assessment workshops organized around the world. The workshops bring together representatives from governments, development partners, civil society, indigenous people, private sector, farmers associations, fisher folks and academia. The regional assessment workshops help in identifying the key regional issues and priorities recommending actions and responsibilities for key groups. The workshops will also help in reviewing the specific features of governance of tenure in each of the regions and also provide feedback on the contents of the Voluntary guidelines and their eventual implementation.

The Eastern and Anglophone Western Africa Regional Assessment meeting was organized by a task force consisting of FAO, the United Nations Economic Commission for Africa (ECA), African Land Policy Initiative (LPI), the United Nations World Food Programme (WFP), United Nations Development Programme (UNDP), the International Fund for Agricultural Development (IFAD) and the United Nations Human Settlements Programme (UN-HABITAT) officials in Ethiopia. The meeting was hosted by UN-ECA and overseen by the Ministry of Agriculture and Rural Development Ethiopia and it was made possible by funding from the UN-HABITAT's Global Land Tool Network and financial support from the Government of Germany and IFAD.

The workshop was the 9<sup>th</sup> in a series of others held in Southern Africa (Namibia), Asia (Viet Nam), Europe (Romania), Near East and North Africa (Jordan), Latin America (Brazil), West and Central Africa (Burkina Faso), Pacific (Samoa), Central America and Caribbean (Panama) and one held for the private sector in the United Kingdom (London). It brought together 51 participants from 13 countries in Eastern and Western Africa. These countries were Rwanda, Burundi, Uganda, Tanzania, Kenya, Somalia, Ethiopia, Sudan, Sierra Leone, Liberia, Ghana, Cameroon and Nigeria.

The workshop commenced with opening remarks from representatives of FAO, IFAD, UN-HABITAT and the African Union (AU) - ECA - the African Development Bank (AfDB) consortium. The opening remarks focused mainly on the importance and commitment to the process and the need to maintain synergy and linkage to the AU-ECA-AfDB driven continental land policy process and other regional and global initiatives.

During the main presentations, issues peculiar to the region such as the prevalence of parallel formal and customary systems after colonization, tenure insecurity, land degradation, gender discrimination, rampant abuse of communal and public land, inefficiency and corruption in land institutions were highlighted. Others included: rapid urbanization, climate change, poor access to land information, HIV/AIDS pandemic, the internal displacement of persons, large scale land acquisitions, tenure insecurity for communities due to oil and mineral exploitations, weak formal and customary land governance systems, the need to improve capacity in land institutions and civil society, the need to recognize customary land rights as either individual or collective private land rights (as oppose to public land rights) and the need for a human rights approach to land tenure and management.

It was also observed that in response to these challenges, most countries in the region had embraced land reforms, which are at different stages of development and implementation. However, it was observed that the implementation of the policies and laws developed through these reform initiatives remains a major challenge in most countries.

## **B. Key Issues and Actions identified during the Regional Assessment**

### **1. Linkages to regional and national initiatives, emerging challenges and innovation**

#### **Issues, actions and recommendations**

- The Voluntary guidelines should provide synergy with the *Framework and Guidelines for Land Policy in Africa* which was adopted through a *Declaration on Land Issues and Challenges* by the 13th Ordinary Session of African Union Assembly of Heads of States and Governments in Sirte, Libya in July 2009. The Framework will be launched in Lilongwe, Malawi on 28th October 2010 and it provides AU member States with a policy framework to guide the formulation, implementation and tracking of land policy processes.
- There is need for the harmonization, coordination and convergence of regional initiatives within the region (Economic Partnership Agreements (EPAs), the East African Community (EAC), the Common Market for Eastern and Southern Africa

(COMESA), the Economic Community of West African States (ECOWAS), LPI/AU, GLTN, the New Partnership for Africa's Development (NEPAD) etc).

- The Voluntary guidelines should be linked to on going national land reform initiatives in each of the countries, including those from the civil society. They should in particular support the implementation of the newly developed land policies and laws in the countries within the region.
- The Voluntary guidelines should embrace emerging challenges including the threat of HIV/AIDS pandemic, climate change, land acquisitions, rapid urbanization and land degradation.
- The Voluntary guidelines should embrace and build upon current innovations in land tenure and management including tenure instruments such as leases, ownership certificates, written agreements, co-ownership, sectional titles, communal and group titles.

## **2. Land tenure, customary land tenure and land administration**

### **Issues, actions and recommendations**

- There is need for proper categorization of land and a clear indication of the institutions with authority over each category of land.
- There are many incidents of abuse of private, public and customary land rights in the region. The Voluntary guidelines should help to enhance the security of tenure of communal and public land and confront the problem of land grabbing.
- The capacity and the accountability of land institutions should be improved in order to ensure accountability and transparency and prevent corruption.
- The Voluntary guidelines should help to promote equitable access to land rights and the protection of land rights of the poor and vulnerable, including the rights of hunter/gatherers and pastoralists.
- The Voluntary guidelines should take into account that rangelands are often considered as open access resources or free lands and have been susceptible to land grabbing.
- Public lands should be properly defined and mapped. There is need for recognition, protection, adjudication and demarcation of indigenous customary land rights through cheap and affordable means.
- The prevalence of poverty and hunger in the region is high. There is need for the Voluntary guidelines to focus on the reduction of these two. The Voluntary guidelines should also embrace a human rights approach to land tenure and management.
- The Voluntary guidelines should help to enhance institutional capacity and efficiency and improve the protection and management of public and communal land. Stakeholder inclusion in governance processes should be ensured. Costs of land information and transactions must be kept affordable.
- There is need for appropriate education and awareness to empower individuals and communities to meaningfully participate in decision making processes and to prevent all forms of land grabbing and land use conversion.
- The Voluntary guidelines should promote the recognition and acceptance of customary rights as legal and private; the recognition of the legitimacy of customary institutions to manage land tenure; and the harmonization and integration of the formal and customary systems of land tenure.

- There is a need to democratize governance: support and strengthen traditional/formal institutions in protecting customary/community rights, govern transparently and to be accountable.
- The rights and responsibilities of customary land tenure among different communities should be documented.
- Government/state should not abuse land that it is holding in trust for its citizens.
- There is a need to institutionalize land use planning as a mandatory procedure inclusive of all stakeholders with strict adherence to the regulatory frameworks.
- Political will is a key - the political establishment is important to involve in the development of comprehensive and fair land policies.
- National laws should consider legal protection in the processes of compensating the original land owners.
- There is need to engage civil society in policy formulation and in monitoring of the policy implementation.
- There is need for massive awareness campaigns to discourage land grabbing that deprive humanity and access to housing, agriculture, water, land and livelihoods.
- Land grabbing is a human rights offence. The Voluntary guidelines should highlight and criminalize local and international Land Grabbing as a crime against humanity.
- It is important to sensitize communities and campaign against the threats to biodiversity by the massive push for plantations and new agriculture models, which are being promoted e.g. Genetically Modified Organisms (GMOs), agro fuels, bio char etc.

### **3. Natural resources tenure (including forestry, fisheries and water)**

#### **Issues**

##### **Policies and institutions affecting governance of tenure**

- There is lack of harmonised policies between different sectors dealing with land and other natural resources, as well as lack of adequate inter-sectoral coordination between the ministries, agencies etc.
- In many countries the discovery of minerals in particular leads to a re-formulation of land policies, changes in legal framework and institutional arrangements that affect local communities and their participation in decision making.
- Very often customary institutions, which are formally recognised by the government, lack of accountability to the local communities leading to corruption and abuse of power.

##### **Communication and participation**

- The common use of complex language in legislation, rules, regulations and agreements, creates a barrier to negotiation processes on issues of tenure.
- There is a lack of organisational framework at national levels to address right issues, effective community participation and benefit sharing in the context of emerging issues such as the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), etc.
- Platforms and participatory mechanisms for joint decision making and dialog and negotiation are often weak.

### **Power relations and revenue sharing**

- Commonly the state maintains the monopoly on mineral resources and other valuable resources (e.g. timber).
- States can also be unwilling to devolve ownership, control and build the capacity of the local population for decentralised management of natural resources.
- There is an imbalanced power relation between parties affecting the entire processes of participation, decision making, benefit sharing, etc.
- There is a lack of transparency and inequitable benefit sharing arrangements for the process of natural resources exploitation.

### **Tenure security**

- The recognition and integration of customary tenure systems in regard to community ownership rights and control of natural resources (valuable natural resources) is commonly limited. In particular the common property resources (CPRs) should be recognised as “private property”.
- There is a lack of proper recognition of indigenous/traditional knowledge in the management of natural resources.
- Free, informed and prior consent as provided for under the United Nations Declaration on the Rights of Indigenous people and as stated in ILO Convention 169, is not applied in many countries.
- Fishing communities have often insecure tenure rights to beach fronts, in particular due to land acquisition by investors; land use conversion by investors and due to a lack of involvement of local fishing communities in the whole process of decision making.
- Large scale acquisitions, land grabbing as well as beach front and fishing ground acquisition have led to displacement and forced eviction of rural population/farmers/fisher folks.

### **Trans-boundary conflicts**

- The exploitation of trans-boundary resources creates trans-boundary conflicts (e.g., in regard to water, wildlife migration etc.).

### **Actions and recommendations**

- Harmonise policies to address issues of land and other natural resources.
- Establish mechanisms for better inter-sectoral coordination of all institutions that deal with natural resources management.
- Decentralize state ownership, control and management of natural resources.
- Give recognition to customary ways of land management.
- Increase community participation in decision making.
- Promote the formulation and use of popular instruments parallel to formal documents, with easy and accessible language.
- Develop effective legislation and proper institution arrangements.
- Enact laws in support of the Free, Prior and Informed Consent (FPIC).
- Build capacity of customary institutions to manage natural resources.
- Develop local accountability mechanisms to community leaders.
- Train community representatives on negotiation skills over natural resources.
- Create an equal platform for all actors in natural resources.

- Ensure transparency and equitable benefit sharing arrangements for the process of natural resources exploitation.
- Recognise and protect community rights on, and control of, natural resources and in particular valuable natural resources.
- Enforce mechanisms for better management of trans-boundary natural resources.
- Recognise and promote application of TK in the use and management of natural resources.
- Develop mechanism to ensure that development efforts do not lead to forced evictions.
- Preserve the right of the community to the use of customary commons.

#### **4. Land governance and issues on gender, internally displaced persons (IDPs) and refugees**

##### **Issues**

##### **4.1 Women and land tenure**

###### **Customary law**

- Land ownership is anchored in patriarchy. Customarily women do not own land or do not have recognized land rights. This practice has been perpetuated through social systems (including the payment of bride price and the non recognition of single parent women, which undermine women in relation to men).
- Customary tenure conveys use rights to women through male relatives either through marriage, brother, uncle, father or brother in law. Thus women mostly have secondary or derived rights to land.
- Communal land ownership and land acquisition processes in rural communities often exclude women.
- There is systemic exclusion of women from land governance both at the community and national level, because land is a finite and a critical factor of production.

###### **Statutory law**

- Statutory law has conveyed land rights to women in a lower degree than subscribed in the international commitments that nations have committed themselves under the Committee on the Elimination of Discrimination against Women (CEDAW) and the Convention on Economic and Social Rights and other regional treaties and conventions. Principles of equality in land ownership and control have not been upheld.
- Statute books contain legal rules and principles that are or can be seen as legitimizing the subordination of women as secondary and derived owners of land.
- The structure and administration of laws occasionally subordinate women on land.
- The socioeconomic and patriarchal realities prevent the translation of abstract rights as incorporated in the law into real substantive rights.
- Even in Islam, where women do inherit land, the principles of equality are not upheld.
- The deeply engrained cultural practices have hindered the comprehensive response to the need for women's rights to land to be recognized and upheld as human rights.

- There is lack of gender disaggregated data on land governance to back up the case for women's right to land.

#### **Women and governance of natural resources**

- The burden of the effects of droughts and desertification as a result of land degradation disproportionately lies more on women than on men. This includes displacement, forced migrations, loss of income and employment, loss of housing, burden of dependent care and violence, amongst others.
- As peasant farmers, women are most hit by land degradation resulting into drought and desertification as their farm lands are continuously washed away either due to excessive flooding, farming, gully and coastal erosion.
- There are no palliative measures in place to address women's economic activities in the management of natural resources. With the introduction of UN-REDD, men have taken over the economic angle to natural resource use and management.
- Women are exploited or poorly remunerated in the mining and natural resource sectors because of an unregulated market.
- Where there is policy regulation, men benefit more than women because women are kept out of the public domain.
- The policy framework in the governance and management of dry lands has excluded the participation of women, who have always conserved and taken care of these lands.

#### **Women and commercialization and commoditization of land**

- Because women often are either secondary users of land or have derived ownership of land their interests are hardly taken into account in the negotiation of land transactions. In result they suffer the brunt of these transactions and often end up as slum dwellers.
- Forced evictions have broken social support structures leading to loss of economic livelihoods. This aggravates the marginalization and vulnerability of women.

#### **Women and urbanization**

- Women are often low income earners and because urbanization doesn't take this into account, they form the majority of slum dwellers with limited or no livelihood options. Women and children are the most affected by rapid urbanization.
- The needs and point of views women are commonly not considered in policy and decision making in urban planning. This exacerbates their plight as the urban poor.
- Despite the fact that the social status of women is improving (through the increase of women entrepreneurs for example), the lack of transparency in land administration and management has excluded women who often have limited knowledge on these processes of securing their rights to land.

#### **Budgetary allocations not gender sensitive**

- Government budgets as well as donor support are gender blind on issues of land, urbanization and natural resource governance.



## **4.2 Internally Displaced Persons (IDPs)**

- Despite the success of certain resettlement programs of IDPs (such as in Rwanda), there remains an insufficiency of resettlement policies that effectively guide the redistribution of land after conflicts and natural disasters.
- Foreseen displacement as a result of climate change and environmental degradation has not been adequately considered for by states. There is inadequate preparedness to deal with these migrations, with particular reference to local governments and local authorities.
- Compulsory land acquisition by the state for the resettlement of the IDPs is often done without Environmental Impact Assessments (EIAs) and without compensation to the rights holders. At the end of occupations, there is no plan on how to revert this land back to its original owners or to provide them with compensation by the state in case land becomes public.
- The lack of provision of social services to the internally displaced people often cause the resettlement plans fail.

## **4.3 Refugees**

- Refugees resulted by climate change (or other non violent conflicts) have not got appropriate recognition and there is no clear government policy on this matter.
- Climate change refugees have not got special recognition because their status is unrecognized in local laws and by the international community.

## **Actions and recommendations**

- Promote good practice in land governance including innovations that simplify and demystify land administration, minimize vulnerabilities, close loopholes and ban misuse of land held in public trust.
- Undertake robust analyses of the political economy of land and rules of engagement to combat deep-seated political (grand) and administrative (petty) land corruption that thrive on parochial systems and cultures.
- Develop capacities at all levels to innovate land policies and laws administration, land information systems to meet the needs of hitherto neglected segments of society, women, non-state actors and marginalized communities.
- Undertake a comprehensive review of land laws to harmonize land rights and responsibilities, prevent forced evictions, prescribe all types of discrimination (e.g. based on gender, age or ethnicity), protect land rights of the poor and other vulnerable groups, resolve conflicts amicably and promptly, redress historical injustices, etc.
- Initiate citywide and comprehensive urban planning approaches such as slum upgrading and all inclusive planning that favour the timely provision of infrastructure and services.
- Initiate continent wide research on gender and land issues in light of the Framework and guidelines for land policies in Africa.
- The creation of an African regional women's network on land is critical for the building of consensus and monitoring of progress in the implementation of national policies and laws and also the adherence to regional and international commitments.

## **5. Land use planning, urban development and land conversion**

### **Issues**

- There is a weak integration of the rural-urban continuum while decentralisation of governance remains a challenge. The rapid urbanization is not supported by appropriate plans, tools and strategies to guide land use planning at national and regional levels.
- Communities lack organizational capacity to engage and the relationship between land and people is complex. Policies and regulations are not pro poor, leading to the forced evictions of the poor and vulnerable.
- Absence of land use planning is an impediment to the governance of land and there is a multiplicity of institutions and laws involved in land administration. There is lack of appropriate laws and regulations, institutional accountability and transparency.
- There is lack of proper land administration, planning processes and management tools (land banking, land pooling, land registration). The existence of informal markets complicates land administration.
- Legal instruments providing for compensation are missing or inadequate. In addition, valuation of land is unreliable (weak capacity and lack of transparency) and compensation mechanisms are lengthy and inefficient. The land market is imperfect and there are no clear rules, regulations and enforcement mechanisms to guide land expropriation and forced evictions.
- There is lack of integrated planning and development to cater for the needs of all citizens including women, youth, IDPs, refugees and vulnerable groups.
- There is lack of recognition of urban development approaches and their contribution to national economic development.
- Implementation of decentralisation has been slow and there is a weak integration of the urban-rural continuum and peri-urban development.

### **Actions and recommendations**

- The Voluntary guidelines should encourage the development of appropriate policies, laws, strategies and tools for land use planning and urban management.
- The Voluntary guidelines should ensure the development of appropriate policies, laws and regulations to govern land conversions, compensation, forced evictions, valuations and the operation of land markets.
- The Voluntary guidelines should encourage focused study and management of rural-urban linkages and peri-urban developments.
- Introduce environmental and social safeguards, Local Economic Development plans and protection of cultural, religious and social heritages.
- Empower and build capacity of planning authorities to enable them carry out their respective roles and responsibilities and make them accountable as well.
- Mainstream urban issues in all disciplines e.g. education.
- Enhance the processes of decentralisation to all levels of government and improve the capacity of planning committees.
- Ensure that decentralisation is accompanied by adequate allocation of human and financial resources.
- Ensure institutionalization of an inclusive and participatory coordination mechanism amongst all stakeholders including but not limited to service providers, private

developers and land owners. Ensure that all stakeholders have access to information on national urban agenda.

- Ensure establishment of dialogue forums/participatory forums on urban agenda.

## **6. Impact of investment on land rights**

### **Issues**

- Small-holder farmers, the majority of whom are women, are the principal investors in agriculture in the developing world and need to be placed at the centre of national development paradigms and agricultural investment policies.
- “Land grabbing” in the context of land acquisitions by both foreigners and locals has adversely affected the land rights and livelihoods of many individuals and communities. Some of these acquisitions have been done in conformity with existing laws and procedures. In addition, other investments and practices, e.g. monopolies on agricultural inputs, have affected small holder farming.
- These activities have adversely affected the livelihoods, food security and land and natural resource rights of rural communities. Forced evictions of populations have occurred in some cases.
- National development paradigms and land policies should, in focusing on improving the productivity and incomes of small holder farmers, 1) help them mobilize resources, e.g. agricultural inputs, agro-processing, and credit, 2) expand opportunities for them to invest in mutually beneficial partnerships with local and foreign investors, and 3) provide better access to markets.
- The development of national development paradigms and agricultural policies should be developed in consultation and dialogue with small holder farmers. Investments, foreign or local, large or small, in agriculture and other natural resources should be placed within the context and be consistent with these national paradigms and policies.

### **Actions and recommendations**

**In order to protect and safeguard the land rights and livelihoods of small holder farmers and communities, the following are proposed:**

- Agricultural investments should be carried out in compliance with international human rights.
- Agricultural investments should recognize and respect local land rights and knowledge. Essential to agricultural investment is the securing of local land rights as a first step.
- A legal framework and/or provisions are needed to safeguard and protect the rights of women, immigrants, and vulnerable or marginalized groups.
- The impact upon local and national food security should be considered in any agricultural investment.
- Environmental sustainability and protection, including biodiversity, should be a key component of all agricultural investments. In particular, large-scale monoculture should be carefully evaluated for its long-term impact.

### **In allocating land and other resources for investments**

- The mandate for customary, local, and national authorities or leaders vested with the right to allocate land or other resources should be clearly and transparently understood and communicated to all stakeholders.
- Decisions regarding investments should be based upon land use planning which considers both agricultural and non-agricultural uses. As part of planning, the identification of livelihood options and alternatives and the availability of human resources should be included.
- There should be full disclosure of all investors (foreign and local) and all those involved in decision-making to all stakeholders.

### **In order for small holder farmers and communities to maximize their potentials**

- Education and training in managerial, marketing, and negotiation skills should be provided that will enhance decisions and negotiations among stakeholders. Access to reliable and correct information and capacity building of the small scale farmers e.g. prices through internet, mobile technology should be provided.
- Full transparency and accountability should be ensured in the investment process.
- Investments should be mutually beneficial to all parties and should provide opportunities for partnerships, e.g. outgrower, business plans and “fair trade” models, and for equitable sharing of benefits and risks.
- For those displaced by investments, sufficient monetary compensation and the identification and provision of alternative livelihoods, including needed resources and training, should be legally mandated.

## **7. Need for capacity building for land institutions and civil society**

### **Issues, actions and recommendations:**

- There is insufficient capacity for institutions (in central and local government) handling land governance. The guidelines should support the development of technical and management capacity of land institutions within the region.
- Civil society should act as a watch dog for society in matters relating to: the rights of the poor, the vulnerable and marginalized groups, addressing discriminatory laws and practices, utilization of public funds, vetting of land distribution and act as whistle blowers during public and communal land grabbing and finally champion in the rights of women. To be able to perform this role more effectively, support should be given for the growth and enhancement of the capacity of civil society associations in the region.

## **C. The next steps**

The preparation of the Voluntary Guidelines will begin following the regional and sector consultations late 2010. The draft version of the Voluntary Guidelines will be reviewed through a broad, participatory process early 2011. Participants of this workshop expressed

keen interest to monitor this process. 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 is expected to be submitted to FAO member countries and other stakeholders for review and endorsement in 2011.

Information on the Voluntary Guidelines and their preparation is available on the website: <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>, which is where the final version of this assessment will be published.