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## NORTH AMERICAN FOREST COMMISSION

### TWENTY-SEVENTH SESSION

Madison, Wisconsin, USA, 11 - 13 June 2014

## VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTRY

### 1. Introduction

1. Tenure and its governance are crucial for the eradication of hunger and poverty. The livelihoods of many poor people, especially in rural areas, depend on access to and control over land and other natural resources, including forests. Natural resources are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth.

2. Decisions about resource tenure – or who can use what resources of the land for how long, and under what conditions – are most critical for the livelihoods of people in many contexts. Many tenure problems arise because of weak governance, and attempts to address tenure problems are affected by the quality of governance. Weak governance adversely affects social stability, sustainable use of the environment, investment and economic growth.

3. Tenure over forests is about access and rights to use or withdraw forest resources; to make decisions about use patterns or transformation; to decide who can use the resources and who is prevented from using them; and to transfer, sell or lease the resources. A change in forest tenure leads to changes in the distribution of rights among different stakeholders.(FAO, 2013)<sup>1</sup>

4. The situation regarding land and forest tenure might differ greatly depending on the country, but there are common issues:

- Unclear roles and responsibilities and insecure rights to land and natural resources can fuel conflict.
- Injustice and exclusion of the rights of poor and marginalized people, including women and forest-dependent communities, are common.
- Customary and indigenous rights and institutions are often not recognized when policies and laws are developed and implemented.
- Tenure holders often have low capacity to exercise their rights, manage forest resources sustainably and develop thriving livelihoods based on them.

<sup>1</sup> FAO, 2013: *Improving governance of forest tenure. A practical guide*. Governance of Tenure technical guide n.

2. Under preparation.

- Abilities of state institutions to support tenure holders and enforce regulations are largely inadequate.
- Lack of transparency and involvement of key stakeholders usually characterise decision making processes on tenure.

5. Strengthening the governance of forest tenure can significantly contribute to improved livelihoods, food security and poverty alleviation in a number of ways. Providing more secure and equitable access to and control of forest resources is key to enabling poor people living in and around forests to support their livelihoods and obtain the full economic benefits from forest resources. In addition, supporting traditional/customary forest management arrangements can help to ensure that all forest users, especially smallholders and local and indigenous communities, know their rights and responsibilities and have the capacity to obtain the benefits provided by forests. Involving the rural populations who are most dependent on the forest resources, and hence most interested in sustaining them, can improve forest conservation and reduce forest degradation (FAO, 2012)<sup>2</sup>.

6. Strengthening the governance of forest tenure would require improving the policy environment, regulatory framework and institutions to create the enabling conditions for smallholders and local communities to manage forest resources successfully.

## **2. Focusing on governance of tenure: The Voluntary Guidelines on the Responsible Governance of Tenure**

7. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the Guidelines) offer the first comprehensive, internationally negotiated global instrument on tenure of these resources and its administration (<http://www.fao.org/nr/tenure/voluntary-guidelines/en/>). The Guidelines were endorsed by the Committee on World Food Security in May 2012.

8. The Guidelines are based on the firm belief that significant positive tenure reforms are both vital and possible. In particular, the Guidelines recognize that effectiveness in addressing tenure problems depends to a large extent on the quality of governance.

9. Improving the governance of tenure is the objective of the Guidelines, which serve as a reference and set out principles and internationally accepted standards for responsible practices. The Guidelines provide a framework that States can use when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions, and the actions of others, constitute acceptable practices.

10. Being voluntary, the Guidelines are not legally binding. They do not replace existing national or international laws and commitments, nor do they limit or undermine any legal obligations that States may have under international law.

11. The Guidelines identify five general principles, according to which States should:
1. Recognize and respect all legitimate tenure right holders and their rights.
  2. Safeguard legitimate tenure rights against threats and infringements.
  3. Promote and facilitate the enjoyment of legitimate tenure rights.
  4. Provide access to justice to deal with infringements of legitimate tenure rights.
  5. Prevent tenure disputes, violent conflicts and corruption.

## **3. Promoting responsible governance of tenure through the Guidelines**

12. There are several ways in which the Guidelines can be used:

**...as a checklist against which existing strategies, policies, laws or systems can be assessed and then improved.**

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<sup>2</sup> FAO, 2012: Improving governance of forest tenure of land, fisheries and forests. *Land tenure Journal*, 1-2012.

13. As a first step, countries could assess their laws, systems and administrations against the principles and practices specified in the Guidelines. This would show how close the country's forest tenure governance comes to best practice.

**...as a model for developing new strategies, policies, laws, agencies or services.**

14. The second step is to identify areas for reform. It is useful to identify the priority areas where there is most need to make improvements and where the potential benefits are greatest. This is usually in areas where the country's system falls well short of the principles and practices in the Guidelines, particularly if a significant part of the population is affected.

15. Once these areas have been identified, the Guidelines can serve as a model for developing new strategies, policies, laws, agencies or services. New policies and laws can use the principles as foundations, and the practices can help governments and others design programmes.

16. An important principle in the Guidelines is that there should be continuous improvement. There needs to be monitoring and evaluation of reforms. Once change has been made, the first two steps should be repeated. In this way, development of responsible governance of tenure becomes an on-going process and one that can quickly and effectively respond when conditions change, including economic, social and environmental conditions.

**... to find guidance or direction when the laws and practices of a country are not clear.**

17. The Guidelines can give guidance or direction when the laws and practices of a country are not clear. Politicians, officials and others, including the private sector, are often faced with challenging questions regarding tenure, and the rights of existing owners or users.

18. Where the laws are silent, or there is no law at all, then the Guidelines can be used to give direction on what should be done, and on what the international community would expect to be done.

19. Therefore, the Guidelines can be used when considering initiatives that may affect existing tenure arrangements and as an input to policy development.

20. Similarly, in deciding court cases, judges might use the Guidelines in coming to their conclusions if the local laws are silent or the laws do not cover every aspect of the case. The Guidelines are consistent with and draw on international and regional agreements that address human rights and tenure rights.

**... to educate and support arguments or calls for strategies, policies, laws or systems, or for reform of existing strategies, policies, laws or systems.**

21. Another way in which the Guidelines can be used is advocacy, education and awareness raising, and for building support for reform.

22. The Guidelines can also be used by the wider community to understand what is expected of responsible governance of tenure and their responsibilities in this area. They can be used to educate people on what they should expect from their governments and others involved in natural resource management and utilization, particularly the officials and administrators who deliver services.

23. Owners and users can point to the principles and practices in the Guidelines when they are seeking to protect and promote rights to natural resources.

**... to define processes for developing good governance.**

24. Finally, the Guidelines point to processes for developing good governance, particularly participatory processes, where the people and communities affected take part in the decision making process before the decision is made. The Guidelines point to how governments should approach their tasks of improving tenure governance.

#### 4. Tools for addressing governance of forest tenure

25. The forthcoming Technical Guide on Improving Governance of Forest Tenure (FAO, 2013), will support the implementation of the Guidelines, by translating the general principles and the provisions into practical actions. The guide aims to inspire those wishing to improve governance of forest tenure and it describes how practical tools can be used to shape better governance of forest tenure.
26. First it is important to **understand** the current tenure and governance context, for example by recognizing present and historical arrangements and competing claims in forest tenure and by mapping the political and institutional context – identifying key stakeholders, institutions and policies that influence and are affected by forest tenure systems, and evaluating the fairness, transparency and effectiveness of these systems.
27. Secondly it is important to **organise**. For forest users to have policy influence, they generally need to have sufficient numbers and to organize into effective groups or institutions. At the community level, this entails developing the appropriate capacity and skills, and enhancing community-based organizations. It also requires a public sector that is responsive to the issues put forward by communities, and a private sector that operates fairly and inclusively.
28. Thirdly the different interest groups need to **engage**, in order to reach an agreement about changes to forest tenure systems that are fair, inclusive and likely to be implemented. Those interest groups should be able to articulate their needs and interests in a process of negotiation and consensus-building. Responsible governance of tenure is also about bringing stakeholders together to engage with each other while ensuring that such processes are inclusive and participatory, so that marginalized voices are heard and all interest groups are engaged effectively.
29. Finally, responsible governance of tenure is about **ensuring** that agreements, dialogue and promises translate into the right action. In particular developing monitoring, evaluation, transparency and accountability systems; establishing systems that enable groups to hold each other to account for commitments they made; understanding how international mechanisms and conventions can be used to strengthen transparency and to hold stakeholders to account.
30. In addition to the technical guide, FAO is mainstreaming the Guidelines' principles in various forestry events and activities. In December 2012 FAORAF organized the Capacity Development Workshop on Community-Based Forest Management to raise awareness and deepen understanding of the new guidelines to community – based forest management (CBFM) and the Guidelines. In January 2013, FAO, in collaboration with the Center for people and Forests (RECOFTC), implemented the training module in support of forest tenure reform processes within the framework of the Guidelines and based on FAO Forestry Paper 165- *Reforming forest tenure: Issues, principles and process*. The module focuses on specific competences to advance forest tenure reform in line with the governance and reform guidelines and principles.

#### 5. Moving toward Implementation

31. FAO is committed to supporting the implementation of the Guidelines in various parts of the world.
32. Thematic areas of this support include:
- Capacity development: preparing additional tools and aids;
  - Support to countries: responding to requests for assistance;
  - Partnerships: strengthening and developing collaboration on improved tenure governance at global, regional and local levels;
  - Monitoring and evaluation: developing new approaches and adapting existing ones.

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## **6. Points for consideration**

- The Commission may wish to invite countries to actively engage in the implementation of the provisions of the Guidelines, as a pathway to strengthening sustainable forest management and realisation of food security and overall livelihood needs of local people;
- The Commission may wish to request FAO to support countries' efforts to strengthen forest tenure systems within the wider framework of the Guidelines, for example by providing technical support to:
  - policy and legal reforms,
  - community based forest management,
  - forest tenure reforms,
  - multi-stakeholders platforms and dialogue.