



Photo: Florian Kopp

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests

A new tool for Governments and Civil Society Organisations to address land issues

Why are the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests important?

After having been the source of livelihood of most of the earth's population for thousands of years, land and other natural resources have become objects of speculation, appropriation and expectations for profit of elites, international companies and private equity funds, state funds and companies. It is estimated that up to 80 million hectares have been the object of transboundary land transfers in the last few years, where the envisioned land use is agriculture, of which 60 million are located in Africa (<http://landportal.info/land-matrix/media/img/analytical-report.pdf>).

Often these actors do not consider the interests of local people in their decision making. Therefore mechanisms are required that give weight to local interests. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VG on Land) determine in detail why and how such mechanisms should be established, how laws and public institutions should consider

land and natural resource rights. They also specify the responsibilities of governments, donors, international organizations and others.

It is estimated that on a global level 525 million peasant families depend on land as their source of livelihood, for farming, livestock keeping, fishing and collecting forest products. These people are most vulnerable to losing their land to investors. Many of them have no written land rights or documented land titles, but live under customary law.

In Africa often land is given to families verbally by traditional chiefs. In many places land and forests are used under collective ownership. Tenure rights can be shared or be overlapping. Nutrition and survival of the family, but also cultural, traditional, religious and historical meanings of land and belonging plays a central role here. 75 per cent of the world's population suffering from hunger and malnourishment live in rural areas. Land grabbing increases rural poverty and hunger. The VG on Land can be a helpful tool to prevent land misappropriation and to defend land rights and the poor's access to natural resources.

What are the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests?

The VG on Land have been elaborated as a response to the mentioned threats and to specify the Voluntary Guidelines on the Right to Food, which were adopted by the FAO in 2004, and determine in chapter 8 the importance of access to land for the realization of the right to food. The international legally binding document which is the basis for both guidelines is the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations in 1966 (see: <http://www2.ohchr.org/english/law/cescr.htm>).

The VG on Land have been approved by the Committee on World Food Security (CFS) on May 11, 2012 after a three years process of regional consultations with governments, civil society and the private sector. The CFS is an intergovernmental body established in 1974 to serve as a forum of the United Nations System. In 2009 the members of CFS have agreed on a wide-ranging reform that aims to make CFS the foremost inclusive international and intergovernmental platform dealing with food security and nutrition. The potential for civil society participation in CFS decision making is significant (see: www.fao.org/cfs/en/).

In light of the growing “land grabbing” and the predominance of rather weak global regulation standards, such as the much criticized World Bank Principles for Responsible Agricultural Investment (RAI), representatives of smallholder producers, fisherfolk, pastoralists, indigenous people, urban poor, migrants, agricultural workers and non-governmental organizations (NGOs) have strongly supported the development and negotiations of the VG on Land. Despite of some shortfalls in the final document, civil society stakeholders have welcomed the VG on Land and are now advocating for its implementation (see the Joint political statement on the VG on Land of civil society organizations which have actively participated in the process of developing these Guidelines under www.csm4cfs.org/policy_working_groups-6/land_tenure-6/).

The VG on Land are voluntary standards, but this does not mean that they are toothless. The VG on Land refer to existing standards of international law, such as the participation of affected parties, the principle of non-discrimination, the access to legal examination, human dignity, equity and jus-

tice, gender equality, transparency and accountability (see paragraph 3B).

Due to the urgency of the issue it is useful to have a concrete and applicable instrument ready to use now. The alternative would have been going through the long process of consensus reaching for an internationally binding agreement based on the least common denominator. The VG on Land are directed towards States as well as non-state actors such as private companies, NGOs and civil society in general. Within contexts where national laws and regulations on land, fisheries and forests are already strong and further developed, but not sufficiently implemented, the VG on Land can serve as a tool to advocate for better implementation. Where limitations of the national law and administration are obvious, the VG on Land can serve as a tool to be used in the dialogue between governments and civil society stakeholders anew.

Within fragile contexts as well as under authoritarian regimes and conflictive environment with high risks for civil society engagement, the VG on Land might not be the first instrument to work with. However, specific paragraphs could serve as tools to open a constructive dialogue. Further, international actors are challenged to comply with the VG on Land and can take up the issue in bilateral cooperation.

Key messages of the VG on Land

Principles

The VG on Land contain principles for States and non-state actors, including business enterprises. According to paragraph 3A, States should

- recognize and respect all legitimate tenure rights and the people holding these rights (even if there are no written documents);
- safeguard legitimate tenure rights against the loss of these rights (e.g. by forced evictions);
- promote and facilitate the enjoyment of legitimate tenure rights (e.g. by providing services);
- provide access to justice to resolve disputes over tenure rights;
- prevent tenure disputes, violent conflicts and corruption.

Recognition of existing tenure rights

The VG on Land protect existing individual and collective tenure rights, even if they are not of

officially recorded: “Where States intend to recognize or allocate tenure rights, they should first identify all existing tenure rights and right holders, whether recorded or not...” (paragraph 7.3)

Customary and informal tenure

The VG on Land provide many recommendations for customary tenure, which is declared to be valuable and is to be protected by the States. Specific attention is also given to indigenous communities and their rights. These recommendations are useful when strengthening the customary and informal tenure which is the common tenure system in most African and many Asian and Latin-American countries, with individual and/or collective ownership:

- “States and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value... (paragraph 9.1);
- States should provide appropriate recognition and protection of the legitimate tenure rights of indigenous people and other communities with customary tenure systems... (paragraph 9.4);
- ...communities with customary tenure systems should not be forcibly evicted from such ancestral lands. (paragraph 9.5);
- ...There should be full and effective participation of all members or representatives of affected communities...when developing policies and laws related to tenure systems of indigenous people and other communities with customary tenure. (paragraph 9.7);
- States should protect...communities with customary tenure systems against the unauthorized use of their land, fisheries and forests... (paragraph 9.8);
- States should promote policies and laws to provide recognition to such informal tenure. (paragraph 10.1)”.

Land transfers and investment in land

The VG on Land acknowledge that land and resources are sold and leased. They also recognize the importance of responsible public and private investments for food security, but point to the necessity to regulate land markets in order to avoid negative effects of land transfers and transfers of fish resources and forest rights. They ask for “...fair and transparent sale and lease markets (paragraph 11.1)”, with objectives such as “...to promote participation under equal conditions...for mutually beneficial transfers;... increase participation by the poor. States should take measures to prevent undesirable

What is tenure?

This has not been defined by the CFS. But the FAO has some very good definitions: Tenure is the relationship, whether defined legally or customarily, among people with respect to land (including associated buildings and other structures), fisheries, forests and other natural resources. The rules of tenure define how access is granted to use and have control over these resources, as well as associated responsibilities and restraints. They determine who can use which resources, for how long, and under which conditions. Tenure systems may be based on written policies and laws, as well as on unwritten customs and practices. Tenure rights may be held by individuals, families, indigenous peoples and other communities, associations and other corporate bodies, and by States and their various bodies. Within a country a wide range of tenure rights may exist, including ownership rights, lease rights and use rights, including subsidiary tenure rights.

Source: FAO, *Land Tenure and Rural Development, in Land Tenure Studies 3*, Rome, 2002, www.fao.org/DOCREP/005/Y4307E/y4307e00.htm#Contents

impacts on local communities....that may arise from... land speculation, land concentration and the abuse of customary forms of tenure...States...should recognize that values...are not always served well by unregulated markets. (paragraph 11.2)” Possible risks and threats of unregulated land markets are clearly spelled out.

The following paragraphs include some proposals how States should strengthen the role of the poor:

- “...States should simplify administrative procedures in order to avoid discouragement of market participation by the poor and most vulnerable. (paragraph 11.3);
- States should establish appropriate and reliable recording systems, such as land registers...to increase tenure security... (paragraph 11.5);
- States should ...protect the tenure rights of small-scale producers (paragraph 11.8);
- ...States should support investments by smallholders as well as...smallholder-sensitive investments. (paragraph 12.3);
- Responsible investments should do no harm, safeguard against dispossession...and environmental damage... (paragraph 12.4);



Photo: Christoph Püschner

- *States should...provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights... (paragraph 12.5);*
- *States should provide safeguards to protect legitimate tenure rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights... (paragraph 12.6)."*

The VG on Land also provide recommendations on the monitoring of large-scale investment and its impact, corrective measures, ensuring participation in negotiations etc. Rights and obligations of States towards affected indigenous communities like Free Prior Informed Consent (FPIC) are stressed (12.7). For all other affected communities the VG on Land refer to "...*principles of consultation and participation of these Guidelines...*" (various paragraphs Chapter 12) as well as appropriate participation within monitoring and examination mechanisms (12.14).

Land reform: restitution and redistribution

Land reforms are explicitly mentioned in two chapters of the VG on Land. In case of the loss of legitimate tenure rights the restitution of the original parcels or fair compensation should be applied (chapter 14). In order to improve the broad and equitable access to land and to reduce high ownership concentration with related rural poverty, redistributive land reforms should be considered (chapter 15).

Land reform processes must be transparent and participatory. Beneficiaries should be clearly defined and supported with necessary measures

such as access to credit, inputs, markets, technical assistance etc. People should have access to legal assistance, if necessary. It is important that beneficiaries should be selected through fair and transparent processes, preventing that "friends" of the authorities are favored. Beneficiaries should receive protected and officially recorded tenure rights and it should be avoided that they lose their land if they don't comply with expectations.

Expropriation and compensation

The loss of tenure rights in favor of large-scale agricultural production, mining and exploitation of natural and mineral resources, urbanization and industrialization is frequent in most countries. Often affected people are evicted, lose their livelihoods and become vulnerable. The guidelines address this issue in chapter 16, spelling out that "...*States should expropriate only where rights to land, fisheries and forests are required for a public purpose. States should clearly define the concept of public purpose in law....They should respect all legitimate tenure right holders..., by...promptly providing just compensation...* (paragraph 16.1)". The VG on Land recall the right of affected people to be informed and consulted (paragraph 16.2).

Evictions and relocations have to be consulted with the affected population, alternatives have to be examined, transparency and prompt compensation secured, all under the condition of consistency with the States' obligations to respect, protect and fulfill human rights (paragraphs 16.7-16.9) Nobody should be rendered homeless and vulnerable to the violation of human rights (paragraph 16.9).

Land and tenure records

The registration of land and tenure rights is expensive and inaccessible for many smallholders. Chapter 17 of the VG on Land call for systems to record individual and collective tenure rights, in socio-culturally appropriate ways, which also consider community tenure traditions.

The land records should be accessible to everyone, including women, poor and vulnerable groups (paragraph 17.3). Unbureaucratic procedures with low costs are recommended (paragraph 17.4). Records can increase tenure security and identify overlapping rights which may lead to conflicts.

Disputes over tenure rights

Land and resource conflicts are frequent and increasing with population growth, migration, climate change and land grabbing. The VG on Land dedicated chapter 21 to the national level of resolve, calling for “States ... to provide access through impartial ... bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such conflicts (paragraph 21.1)... States should strive to provide legal assistance to vulnerable and marginalized groups to ensure for all safe access to justice without discrimination (paragraph 21.6)”. Within Chapter 22 also transboundary matters with regard to disputes and resolution mechanisms are taken up.

Not clearly defined are disputes over land where international stakeholders are directly or indirectly involved. Also dispute regulation within conflict situations and under presence of armed groups is not explicitly mentioned.

Crosscutting issues

Two main crosscutting issues are the rights of women and the prevention of corruption. The VG on Land highlight in different chapters the need to realize the rights of women and girls in land and resource issues. Women’s tenure rights are not always compatible with traditional customary rights. In some countries, for example, widows are evicted from the family’s house and land after the death of the husband. The VG on Land explicitly spell out the need to consider women’s and girls’ rights in all land rights aspects. In different chapters the VG on Land address the prevention of corruption in the different processes related to land, by participation, consultation and empowerment of communities, as well as other means.



Photo: Thomas Lohnes

How can civil society organizations make use of the Voluntary Guidelines?

The VG on Land can serve as an important toolbox for lobby and advocacy activities on just and transparent policies for land rights and the poor’s access to resources. Where rights and responsibilities are not fulfilled and rights are not respected, the VG on Land might seem to be a rather weak instrument. However as the VG on Land refer to International Agreements, Commitments and Obligations, they might also under non-supportive environments serve as a new tool to refresh the dialogue on the shortcomings and to lobby for the fulfillment of national and international obligations. Various paragraphs call for the obligation of the State to provide transparency and to prevent corruption. In others the right of communities or their representatives to participate in processes to elaborate land and tenure laws and policies is highlighted.

Civil society organizations in the South and in the North can use the VG on Land to examine and monitor land transfers. The VG on Land provide a lot of ideas how secure land rights and the poor’s access to resources can be established. Civil society organizations can use them in trainings on land grabbing and tenure rights. The VG on Land can be used when negotiating with investors or with government representatives such as district or provincial administrations or land authorities.

Civil society organizations can use the VG on Land in public hearings and meetings with poli-

ticians and private companies to point out shortcomings and injustice, in cases of unfair land acquisitions and land grabbing, when land deals are intransparent, when communities suffer from land concentration in the hands of a small elite etc.

The VG on Land can be used in media such as newspapers, internet, radio and TV when current land issues and conflicts are taken to the public.

They can also be used in public interest litigation, using the principle of non-discrimination and the right to access to legal examination as standards based on international law to bring cases of evictions, unjust land transfers and others to court.

Finally they can be used in awareness building campaigns with local communities on the rights of women and girls or when the responsibilities of traditional authority in customary tenure systems are analyzed.

Who will continue to work on the issue?

The States are responsible for the implementation of the VG on Land (paragraph 26.1). Civil Society should monitor this obligation.

NGOs in different parts of the planet working on land rights and the poor's access to resources need to cooperate through regional networking and joint lobbying. MISEREOR and Bread for the World – Protestant Development Service are lobbying for implementation at the German and international level and encourage partner organizations to lobby for the implementation of the VG on Land in their areas of action.

Further information

If you have any questions on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VG on Land) or the Voluntary Guidelines on the Right to Food please contact:

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The full text of the guidelines can be downloaded under www.fao.org/fileadmin/user_upload/nr/land_tenure/pdf/VG_Final_May_2012.pdf.

More information on the VG on Land and their background is given on the following pages: www.fao.org/nr/tenure/voluntary-guidelines/en/.

Information on the Committee on World Food Security on www.fao.org/cfs/en/.

Information on the Civil Society Mechanism of the CFS and Land Tenure on www.csm4cfs.org/policy_working_groups-6/land_tenure-6/.

FIAN is the international NGO lobbying for the implementation of the right to food, giving special emphasis to the land issue (www.fian.org/programs-and-campaigns/access-to-land).

The NGO GRAIN provides updated information on land grabbing (www.farmlandgrab.org).

A detailed study on land rights published by the International Land Coalition is found under www.landcoalition.org/cpl/CPL-synthesis-report.

The Land Matrix Project has a lot of useful information on land grabbing. Their database shows the dimension in the different countries and contains documents to the respective cases (<http://landportal.info/landmatrix>). There will be a collection of national treaties, laws and regulations (see example here: <http://landportal.info/area/africa/east-africa/kenya%20>).

A collection of relevant studies, briefing and policy papers on land rights, land conflicts and natural resource management can be found on the English website of the Working Group Peace&Development/FriEnt (www.frient.de/index.php?id=56&L=1).

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