Land governance _ drafting Voluntary Guidelines for responsible governance of land and NR tenure

Maastricht; ERD consultation

ECDPM , 18- 19 May /2011

Paul Mathieu - FAO
2. Why is TENURE important?

Tenure
is the relationship among people with respect to land and associated natural resources.

Rules of tenure
define how property rights are to be allocated within societies.

Tenure systems
determine who can use what resources for how long and under what conditions.

Equitable and secure access to natural resources is important
3. Why is GOVERNANCE OF TENURE important?

Land governance
land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed

Problems in governance cause
• Weak policy, legal and institutional frameworks
• Low capacities, incentives and motivation
• Corruption

Global Corruption Barometer 2009 (Transparency International)
15 % of people being in connection with land services reported paying a bribe
Many tenure related problems stem from weak governance

- Insecure tenure leaves people marginalized and vulnerable to eviction from their land
- Inappropriate tenure policies may lead to over-exploitation and over-grazing
- Inappropriate tenure policies may lead to “quick and dirty” investing in land and natural resources
4. What are VOLUNTARY GUIDELINES?

Voluntary Guidelines

... set out principles

... provide a benchmark

... are voluntary

... do not replace laws or treaties
4. What are VOLUNTARY GUIDELINES?

**Family of instruments**

- Code of Conduct on the Distribution and Use of Pesticides
- Code of Conduct for Responsible Fisheries
- Voluntary Guidelines on Right to Food
  
  - Voluntary Guidelines on Fire Management
  
  - Voluntary Guidelines on Responsible Management of Planted Forests
FAO is developing **Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources**

5. How are the Voluntary Guidelines PREPARED?

Background research

- 2006: FAO, WB leaflet. Good governance in land administration
- 2007: Land Tenure Studies 9. Governance in land tenure and administration
- 2007: Land Reform Bulletin. Thematic issue on governance
- 2008-2010: Regional and thematic case studies on governance of tenure
5. How are the Voluntary Guidelines PREPARED?

15 consultations meetings (Sept 2009 - Nov 2010)

1000 people from 130 countries
Public sector, civil society, private sector and academia
5. How are the Voluntary Guidelines PREPARED?

Each consultation resulted in an assessment looking at:
• Issues of governance of tenure in the region/sector
• Actions to be taken into account by the VGs

Assessments are published on Internet

Results are summarised in an Outcome document.
• Taken as a basis for the development of the **Zero and First Draft** of the Voluntary Guidelines
• Available in all FAO languages
5. How are the Voluntary Guidelines PREPARED?

Themes covered in the assessments/consultation meetings:

- Tenure security
- Tenure reform
- Land markets
- Valuation and taxation
- Compulsory acquisition
- Agricultural investments
- Land administration
- Urban, rural and territorial planning
- Access to justice
- Land consolidation and land banking
- State land management
- Natural resources management (Forestry, Fisheries, Water)
Production of the First Draft through an inclusive process

15 April: Publication of the Zero Draft in FAO

18 April – 16 May: Review of the Zero Draft
- Member countries
- VG Advisory group
- High Level Panel of Experts
- e- consultation
www.fao.org/nr/tenure/voluntary-guidelines

19 – 30 May: Production of First Draft

1 June: Submission of the First Draft to the Open Ended Working Group of CFS
2 June – 19 July: Regional and stakeholder reviews of the First Draft

25 – 28 July: Review of the Zero Draft by the Open ended Working Group of CFS

15 August: Submission of the Final Draft for the consideration of CFS

18 – 22 October: Consideration by the 37th session of the CFS
VG Resp Governance of tenure _zero draft

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CONTEXT: the processes

- Big, often “external’ capital looking for land: many types of actors, aims, contexts, and outcomes.
- Land grabbing and speculation by national elites.
- Increasing competition for land (ownership and access). Land becoming a global asset and coveted good.
- Rising scarcity and monetary value of agricultural land.
- Long term structural global change_ global restructuring of agro-food (fuels) production and control.
Rural poverty, rural people and land in SSA

- ±73% of people in SSA live in rural areas, 90% of agricultural production is done by small-scale producers. Smallholders transitions. Various categories of smallholders and family farms.

- *De jure* the state owns most land but + 80% of rural land is untitled and *de facto* owned under diverse tenure systems • Women tend to have weaker land rights but are the main producers.

- Pastoralists use 40% of all land in SSA.

- Some land under-utilised, but very little is not owned/claimed, vacant or not used at all.
Current dynamics of land tenure

- Customary rural land rights not formalized, and most often not legally secure and protected.
- State land administrations often costly, with difficult access for the poor and not literate, not much « public service minded », rent-seeking, corruption.
- Unclear ‘rules of the game’, weak institutions, and insufficient human resources, ambiguous roles of various authorities (customary, statutory, judiciary, local administrations, local politicians).
- Most of the above = problems of land governance, « social working of law », how institutions really operate and perform
Responsible & effective land governance - (i) Why and what is it?

- A definition: « the way in which public institutions and decision-makers exercise authority (i) to define public policies, and (ii) to produce and deliver the public goods and services ».

- Why needed? – More demands and competition for land entail the need for effective institutions: clear and legitimate ‘rules of the game’, more and better coordination, less tensions and conflicts, protecting the weaker groups.

- Consequences of bad land governance include:
  - Weak institutions and legal frameworks;
  - Weak incentives to produce and deliver public services;
  - High levels of corruption;
  - The poor and vulnerable groups are most affected because excluded from the benefits of public services.
Responsible & effective land governance: (ii) What needs to be done?

- Well informed decisions and transparent decision processes, particularly when it is necessary to make choices between competing interests.
- All public decision-makers and public servants are responsible and accountable for their actions. Rights and obligations of all actors and land-users/land owners are clearly defined.
- The rule of law is enforced and applicable to all.
- Administrations and public agencies are correctly funded and staffed. Public services are accessible to all.
- Process, work in progress; multi-actors, various levels of actions: international, national, local.
- FAO and partners are preparing Voluntary Guidelines for Responsible Governance of Land Tenure.
Large land acquisitions: QUESTIONS

- Who decides? - who benefits?

- Is this beneficial for rural development?
  - for poverty alleviation?
  - Answer: “it will depend”...

- Risks and opportunities?
  - particularly for rural people and small producers currently using the lands?

- How to minimize the risks and maximize the opportunities and benefits for all ...but primarily for the rural poor?
Rural economies in development and land tenure: what needs to be done?

- Clarify and legalize customary land rights (communal and/or individual): fast, massive, cheap programmes needed.
- Easing the use of land (i) as economic asset for the investments of family farms, (ii) as a livelihood and economic safety net for the poorest households;
- Protecting the smallholders against evictions or compulsory land acquisitions without fair compensation.
- Protecting the weaker groups (women, pastoralists, migrants, holders of secondary rights) against the risks of losing ‘partial land rights” (use, rental)
- Improving effective and “fair” functioning of land markets (institutions, access to institutions, governance)
Legalizing land tenure rights for development: what needs to be done?

- Clarify and legalize customary land rights: not an easy task, no blueprint, context specific, political will.
- But it can be done: Ethiopia, China, Vietnam, Madagascar etc.: examples of good practices and tools.
- Some requirements: -clear and adapted land policies, with strong political backing and legitimacy;
  -adapted and realistic land legislations;
  -capacity building in land administrations;
  -responsible land governance: transparency, accountability, equity, public service.
- Beyond laws: good legislations matter, but are not enough: the ‘social working of law’ really matters.
Minimize risks for small farmers: HOW?

Secure land rights for small producers:
- Massive and affordable legalization of existing land rights
- Community land demarcation and legalization
- Fair and accessible public institutions to manage land rights and land transfers. Transparent and effective land administration systems. Good governance of land tenure in general.

Legal empowerment to secure land rights
- > education, awareness, capacities to document and assert land rights. Collective action and bargaining power of communities and farmers organisations.
- Strengthening capacities to seek and obtain legalization of non formalized land rights; compliance & incentives for better public service (land administration).

Improved land governance