

Private Sector Assessment for the Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources

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A. Background

Land tenure determines access to the land and other natural resources upon which ultimately all livelihoods and human wealth, well-being and culture depend. This covers both land in a rural and urban sense, and refers to both land and improvements such as buildings etc. Responsible governance of tenure provides the foundation for responding to the challenges of access to these resources posed by population growth, urbanization, economic development, natural disasters and climate change. Without it societies are unable to respond to the pressures from growing demand for land for food production, new sources of energy, industry and housing and are vulnerable to land degradation, violent conflicts and exploitation. By contrast, the responsible governance of tenure can help to reduce hunger, alleviate poverty, support social and economic development, create wealth and enable cultural aspirations to be realized, as well as addressing issues such as the reform of public administration, corruption, environmental protection and climate change, and discrimination and gender inequality.

FAO (the Food and Agriculture Organization of the United Nations) and its development partners¹ are working together with countries to prepare Voluntary Guidelines that will provide practical guidance to states, the private sector, civil society, academia, donors and development specialists on the responsible governance of tenure. By setting out principles and internationally accepted standards for responsible practice and associated technical guidance, the Voluntary Guidelines will provide a framework and point of reference that stakeholders can use when developing their own policies and actions. For the private sector this includes principles that can be used in formulating policies for trade, investment, employment and supply chain management when developing land and natural resources in partnership with governments and local communities so that projects are mutually beneficial and reduce risks when operating in unfamiliar areas where there is a lack of clarity. They can be used in corporate social

¹ GTZ, UN-HABITAT United Nations Human Settlements Programme, GLTN Global Land Tool Network, UNDP United Nations Development Programme, World Bank, FIG International Federation of Surveyors, RICS Royal Institution of Chartered Surveyors, FIAN International, ILC International Land Coalition, TI Transparency International, RDI Rural Development Institute, IDLO International Development Law Organization, AU AfDB ECA Land Policy Initiative, AUSAID Asia Pacific program, European Commission, NID Namibia Institute for Democracy, Ministry of Lands, Resettlement and Rehabilitation in Namibia, ANCPI Agentia Nationala de Cadastru si Publicitate Imobiliara Romania, Birzeit University Palestine, University of Jordan, GRET Groupe de recherche et d'échanges technologiques, SNV Netherlands Development Organisation, and GRAF Groupe de Recherche et d'Action sur le Foncier Burkina Faso

responsibility and environmental, social and governance policies to enable the private sector to address more effectively issues concerning land and natural resources.

The consultations on the proposed Voluntary Guidelines are an important part of the process of exploring what they should contain and building the necessary consensus for their eventual implementation. They bring together representative, multidisciplinary groups to assess regional and sector priorities and issues that should be considered when the Voluntary Guidelines are drafted. The private sector consultation was held in London and organized, hosted and co-sponsored by the Royal Institution of Chartered Surveyors. It was attended by 76 people from 22 countries, who brought a rich and extensive range of expertise derived from their experience in the private sector, the professions, public sector, civil society, research and academia in a wide range of countries and UN agencies.

B. Issues and actions identified at the Private Sector Consultation

I The Voluntary Guidelines should recognize diversity of conditions, actors and initiatives

1. The Voluntary Guidelines should recognise that the private sector is diverse.

The private sector includes national and international businesses and investors, land professional groups, and farmers across a broad range of economic activities in both rural and urban environments.

a. International and national investors

Investors include national investors, many of which are small or medium size enterprises, home owners, investors from the informal sector, multinational organizations, and foreign sovereign wealth funds and state owned enterprises.

- Investors should provide clear and complete investment plans that set out their intentions in a transparent manner.
- Investment plans should demonstrate the sustainability of investments in terms of the use of natural resources and the environment.
- Investment plans, as appropriate, should set out the social and economic benefits for governments and local communities as well as for investors.
- Investment plans should demonstrate how they will respect and safeguard the human rights of the stakeholders.
- The important role of national investors should not be overlooked in the natural desire by governments to improve the welfare of their people by securing inward investment.
- National investors include those investing in enhancing land and natural resources over which they hold rights of ownership or use.

b. Land professional groups

Land professional groups include engineers, construction and project managers, lawyers, architects, planners, surveyors, valuers, economists, resource managers, accountants, and financial services. This broad grouping recognizes the diverse nature of land, its place in promoting development and the cross-cutting nature of its governance.

- Land professionals should base their advice relating to investments on ethical principles and the need to safeguard human rights.
- Land professionals should recognize that they must act in their clients' best interests and not to accept instructions in situations in which there is a potential conflict with their own interests and that they have an obligation to society as a whole to safeguard its interests in a responsible and ethical fashion
- Land professionals should undertake due diligence to the best of their ability when providing professional services for investors, including informing investors on all relevant land tenure aspects of proposed investments, irrespective of whether it is specifically requested.
- Land professionals should provide non discriminatory and gender sensitive advice to policy makers, investors and local communities to enable all parties to make decisions in an informed manner and promote genuine participation by stakeholders.
- The capacity of land professionals and their professional associations should be enhanced in order for them to play a responsible role, including improving their service delivery function.
- Professional bodies should set appropriate rules of ethics and professional codes of conduct for their members that satisfy national standards and practices in conformance with international norms, and that compliance with these rules and codes should be monitored and enforced.

c. Farmers

Farmers, particularly local small-scale farmers, are an important, and often neglected, part of the private sector. Their involvement in trade and investment is a key contributor to the economic well-being of their communities.

- Governments should ensure that farmers are recognized as stakeholders in investment decisions and ensure that they are not marginalized as a result of their limited wealth and power.
- Governments should ensure that farmers have adequate capacity to fully participate in decision-making so that they are able to give informed consent to proposed private sector developments that impact upon them.
- The capacity of farmers and their professional associations should be enhanced in order for them to play a responsible role.

2. The Voluntary Guidelines should also provide for guidance for diverse themes in key settings, including urban, peri-urban and rural issues in the context of urbanization and empowering of communities.

3. **The Voluntary Guidelines should be linked to national and regional initiatives, such as the Framework and Guidelines on Land Policy in Africa and similar initiatives in other regions.**
4. **The Voluntary Guidelines should support responsible and sustainable development and should not be a legal barrier or disincentive to investment.**

II A stable framework based on the rule of law and respect for human rights should be provided to promote responsible investment and the sustainable use of land and natural resources.

a) Non-discrimination

- Responsible governance of tenure is gender sensitive and non-discriminatory.

b) Secure tenure

- Responsible governance of tenure is the foundation for encouraging sustainable investment and developments that enhance the well-being of all stakeholders.
- Security of tenure is achieved via predictable long term policies and regulatory frameworks guiding access to land via timely public service.
- Doubts over the legitimacy of access to land, whether legal or social, seriously undermine the security of tenure.
- Security of tenure includes secure use of land and natural resources.
- Security of tenure should include security of formal, informal and customary tenures.
- Security of tenure includes confidence that rights that are lost as a result of factors beyond the control of the owners or users can be recovered, for example in the case of the collapse of an apartment building where land is owned by a third party such as the state.

c) Land administration

- Professional societies and governments should work together to create appropriate rules for responsible governance and administrative frameworks.
- Public private partnerships for the delivery of land administration services should be enabled where appropriate.
- Access to land administration information and services should be transparent and open to all.
- Land administration institutions should be impartial and depoliticized.
- Land administration services should be responsive to the needs of the private sector in order to encourage responsible investment.
- Land administration services should meet the needs of the private sector as a whole in a non-discriminatory manner.
- Land administration performance, processes and services should be reviewed by an independent body and subject to appropriate checks and balances.

- Appropriate technologies and business models should be used for the provision of land administration services, with care being taken that the technologies and business models employed are not discriminatory.

d) Land use planning

- Planning procedures need to be participatory and transparent in order to safeguard the public interest and ensure the equal treatment of investors and stakeholders.
- Security of investments is enhanced by predictable land use planning.
- Land use planning institutions and their decisions need to be subject to independent review.
- The complexity of land uses in urban areas should be recognized including informal settlements.
- The planning system needs to be accessible to all stakeholders.
- Right of access to the planning system includes access to fair and affordable appeal mechanisms.
- Planning processes should be participatory but should be designed and conducted in such a way that they are not over-long in reaching a conclusion.
- Responsibilities for planning should be decentralized to the lowest possible level.

e) Dispute resolution

- All stakeholders should have access to fair, affordable and efficient dispute resolution mechanisms, including the ability to appeal.

f) Finance

- An appropriate, secure system of finance should be open to all and not exclusive or discriminatory.
- Stable financial systems require responsible governance of tenure.

g) Information

- Information, including on rights, transactions, markets, taxes, compensation practices, financial mechanisms, dispute resolution mechanisms and community participation mechanisms should be accessible and available to all.
- Clarity of information can be improved through clear land administration and management systems, respect for the rule of law, and adherence to the Universal Declaration of Human Rights provisions with respect to freedom of thought and conscience, opinion and expression, and peaceful assembly and association.
- Countries should enact 'right to information' legislation and ensure that information is able to flow to all levels.
- Investors should recognize that they have the obligation to carry out 'due diligence' and not to rely unduly on advice or guidance from any interested party (i.e. investors and their advisers should seek all necessary information relevant to investment).
- Investors have the obligation to inform themselves about land tenure in any country in which they undertake business and should recognize the need to do so.

- Investors should undertake reasonable steps to ensure that they are not complicit in human rights abuses, including avoiding silent and beneficial complicity (i.e. investors should not benefit from the improper actions of others even if they themselves are not directly involved).
- The application of new technologies such as mobile telecommunications should be used for the provision of timely information to as broad a community as possible.

h) Legal framework

- Information about laws and regulations should be freely available.
- The legal framework should be workable and be able to be complied with by all parties.
- The rule of law should prevail so that investment can take place within a predictable and stable environment.
- Laws and regulations should avoid perverse incentives and provide incentives for all parties to do the right things.

i) Model contracts

- Contracts should be based on ethical and human rights principles.
- Contracts should reinforce the responsible governance of land tenure. Model contracts should be made available to promote good governance, good practice and innovation, for example, for the introduction of public-private partnerships.

j) Standards

- Whilst respect should be shown for the diversity of beliefs and traditions, there are universal ethical principals that should govern the activities of land professionals, investors and governments and underlie ethical and technical standards.
- A platform of broad international understanding should be developed so that investment agents and land professionals work to the same framework.
- Well-established professional bodies with developed ethical, educational and technical standards should be willing to share their experience and expertise with countries in which these are not as well developed, whilst respecting their autonomy and diversity, and should work towards enhancing universal capacity.
- Administrative requirements, including compulsory acquisition, compensation and property taxation, and the wide range of value-based decisions in relation to land, require assessments of value and the availability of appropriate professional skills following national standards and practices that are in conformance with international valuation standards.
- Standards and technical guidance should be produced on topics such as land reform, compulsory acquisition, valuation in data-poor environments and carbon trading.
- Standards and policy in land governance and land tenure do not stand alone but need to be linked to related international standards and guidance.

k) Dealing with corruption

- Land professionals should not exploit the monopoly position regulations may grant them.

- The ethical principles and codes for land professionals should outlaw bribery and corrupt practices, including acting as an agent or facilitator for corrupt practices by investors, clients or officials.
- Land administration staff should be paid a fair wage to reduce the temptation to supplement their income with bribes.
- International investors should recognize that there can only be one set of ethical standards for behaviour irrespective of where within the world they operate.
- Corrupt practices thrive where there is a lack of clarity over land tenure rules, regulations and procedures and can be tackled by open access to information and open and transparent competition amongst service providers.
- Investors should not use joint ventures with national entrepreneurs as a vehicle for distancing themselves from corrupt practices.

III Making investments legitimate

a) Partnerships

- Partnerships will be variable in form but are most likely to comprise investors, government and the community.
- Solutions should be developed whereby all stakeholders gain from the relationship (a “win-win-win” outcome) and that all stakeholders should recognize the importance of this.
- All stakeholders and parties, including investors, governments, civil society and local communities, should be identified and their rights and responsibilities defined.
- It should be recognized that land has multiple uses and users across many different sectors of the economy and both urban and rural in nature. It includes those who make use of it on a seasonal or sporadic basis, such as pastoralists and nomads.
- Where a central issue is the relationship between the investor and the community, community representation should genuinely involve the participation of the community.
- All parties should seek to understand the perspectives of others.
- All sides should be empowered through the provision of appropriate technical and professional support.

b) Social, economic and environmental benefits

- Investments should not compromise food security.
- Investments should ensure the sustainable use of natural resources, including flora and fauna.
- Investments should respect fair labour practices, including health and safety.
- Investment should promote the quality of formal and informal settlements and enhance the health and safety of their residents.
- Investments should support the responsible governance of land and natural resources.

C. The next steps

The private sector consultation is the third in the series of regional and sector consultations, and will be followed by similar meetings in Africa, Asia-Pacific, Latin America, the Near East (Arabic speaking countries) and Europe. In addition four civil society themed consultations will be held. 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 and sector consultations. The draft version of the Voluntary Guidelines will be reviewed through a broad, participatory process. Participants of this workshop expressed keen interest to monitor this process its follow up in part through national, sector and regional knowledge networks. 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 will be submitted to FAO member countries and other stakeholders for review and endorsement in 2011.

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/>