

Near East Regional Assessment for the FAO Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources

Amman, Jordan
2-4 May 2010

A. Background

“Land is a source of life”. With this statement, the Near East regional consultation was launched to discuss the importance of land and other natural resources in securing livelihoods and in ensuring social, economic, and cultural development. Rights of access to these resources and the associated security of tenure are increasingly affected by occupation, neo-liberal economic policies, population growth, urbanization, climate change, natural disasters, violent conflicts, and growing demands for land for food production and for new energy sources such as bio-energy. Weak governance of tenure is a factor in many tenure-related problems, and failing to address these problems hinders reform efforts. In contrast, responsible governance of tenure can help to reduce hunger and poverty, support social and economic development, reform public administration, and prevent conflict. In the region, two particular challenges were highlighted: the linkages between land and water governance as well as the impact of war, occupation and conflict on land-related issues.

The Food and Agriculture Organization of the United Nations (FAO) and several development partners¹ are working together with countries to prepare Voluntary Guidelines² that will provide practical guidance to states, civil society, the private sector, donors and development specialists on the responsible governance of tenure. By setting out principles and internationally accepted standards for responsible practices, the Voluntary Guidelines will provide a framework and point of reference that stakeholders can use when developing their own policies and actions.

Regional consultations on the proposed Voluntary Guidelines are an important part of the process. They bring together regionally representative, multidisciplinary groups to assess regional priorities and issues that should be considered when the Voluntary Guidelines are drafted. The regional consultation for the Near East and North Africa was organized by Birzeit University, hosted by the University of Jordan under the patronage of H.E. Mr. Ali El-Ghzawi, Minister of Municipal Affairs. The consultation was attended by 42 experts from 11 countries (Bahrain, Egypt, Iran, Jordan, Lebanon, Mauritania, Morocco, Palestine, Sudan, Tunisia, and the United Arab Emirates) who brought a rich and extensive range of expertise derived from their experience in the public sector, private sector, civil society and academia.

B. Issues and actions identified

1. Policy, institutional, and regulatory frameworks related to land and natural resource management should be holistic and be based on good governance principles

a) Policy frameworks should be holistic, sustainable and monitored

- Governments should be responsible for protecting the rights of citizens regarding land and natural resource management.

¹ See <http://www.fao.org/nr/tenure/voluntary-guidelines/partners/en/>

² See <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

- Currently, in the region, there is a lack of defined land and water policies. However, there are in place policies that promote exploitation of natural resources and land grabbing as well as the privatization of public property and natural resources. There is an intrusion and influence of international funding institutions in national policy-making, urban planning, and distribution of investments, encouraging privatization.
- Land policy formulation should be based on public consultations to identify national strategies and objectives (e.g., food production vs. financial speculation).
- The science that informs land policies should include traditional knowledge, and research processes should be transparent and accountable.
- Sustainable management practices should be put in place because unsustainable use of resources aggravates conflicts (fighting for a smaller piece of the pie).
- Policies for protection of natural resources are needed to be developed in participatory manner to ensure sustainable development while safeguarding the rights of the local communities and their traditional customs and ensuring that their lands and natural resources are not expropriated.
- Land policies have to be seen in a holistic context: in order to protect rural livelihoods, access to land is necessary but not sufficient: there is also a need for access to markets, credit, health, education and other services.
- Migration and rural development policies (rural-urban, and immigration) should be developed to accommodate and organize migration, particularly as it affects urban sprawl and land use.
- Balanced investment among various sectors should be promoted, instead of the current emphasis on the services sector at the expense of the productive sectors (agriculture, industry) and development.
- A sustainable tourism policy should be developed and implemented (to guarantee free access to public resources, preserve coastal areas, mountains and natural resources, limit the construction of touristic complexes, protect against urban and cultural invasion).
- Policies for ensuring not only food security but also food sovereignty should be developed and implemented.
- The relationship between poverty and land tenure and linkages with housing policies in urban areas and slums should be considered when developing national land policies.
- The social, economic and environmental impacts of land policies should be monitored; meaningful stakeholder participation should be created; and mechanisms for the adjustment of ineffective policies should be put in place.

b) Institutional frameworks should be clarified and made more transparent and accountable

- At present, there is an absence of a sole reference public institution for land rights, land use and urban planning at a national level. There are unclear and overlapping institutional roles in land administration which are characterized by lengthy administrative procedures, corruption and lack of transparency and accountability.
- Systems and procedures that promote good governance and decrease corruption in land and natural resource management should be put in place with the appropriate oversight and accountability mechanisms.
- Land registration procedures should be simplified and costs should be reduced, in order to make it more accessible to the poor and to increase transparency and efficiency in the process.

- Capacity of land administration professionals and practitioners should be strengthened for use of appropriate tools for the implementation of laws and regulations.
- Infrastructure for systematic capacity building through professional education and training program at all levels should be developed in order to strengthen human resources of public institutions responsible for land and natural resource management.
- Reforms to improve governance of land and natural resources should be introduced and sufficient resources (human and financial) allocated to guarantee their implementation.
- Decentralization of the decision-making power, to involve local and traditional authorities, NGOs and other relevant stakeholders in the land registration procedure should be enhanced.

c) Legal frameworks should be consistent and enforced

- In the region, there is a pluralism of legal frameworks (statutory, customary, Islamic), inconsistency/conflict in existing laws and regulations, and poor compliance/enforcement of adequate laws.
- Reform of land laws is required to strengthen sustainability principles, gender equality, protection of “all” land rights, especially recognition of customary and pastoral rights.
- Governments should comply with ratified international instruments (MDGs, environmental/human rights conventions...) as they apply to land and natural resource management.
- A review of all laws relating to land and natural resource management should take place resulting in a harmonization between the customary and nomadic land tenure systems and the statutory legal system.
- Law enforcement should be improved and legal instruments should be developed for the application of the laws related to land and natural resource management (e.g., responsible exploitation of natural resources).
- The judicial system should be modernized and its capacity built in order to resolve disputes related to land and natural resources management in a just, efficient, and timely manner.
- Secured access and tenure rights for vulnerable populations should be guaranteed under laws and regulations.
- Legal aid to defend the rights of marginalized communities, such as nomads, should be made available.
- Customary systems of conflict resolutions should continue to be promoted and strengthened, especially since they can be useful mechanisms for conflict resolution and for sharing territories among different user groups (e.g., farmers, fisherfolk, and pastoralists).
- A transparent and accountable committee should be established, which includes representatives of local communities to build consistency between the statutory and customary laws regarding land and natural resources management.
- Laws regulating land administration should take into consideration customs as well as family law and should not be limited to regulating sale and purchase of land and land tenure.
- Right of the farmers to freely exchange seeds and plants should be ensured and should not be subjected to intellectual property laws and regulations.

2. Access to land and other natural resources and the associated land tenure should be non-discriminatory and should ensure rights of vulnerable groups

a) Land

- Good governance of land tenure means that the rights of women, nomads, displaced and other vulnerable groups are respected. Currently, land tenure systems are not responsive to the poor and disempower marginalized groups. The practice of land confiscation and enforced eviction due to urban expansion and occupation is common thus decreasing availability of agricultural lands and threatening livelihoods, and endangering food security. Furthermore, private land ownership is limited to the surface land area; minerals and underground resources remain public property.
- Land is a public domain and needs to take into account social responsibility and political and local participation.
- A participatory framework in urban planning and inclusion of stakeholders and civic participation in land management should be promoted.
- Registration of land should be context specific and linked with urban planning and land use (e.g., common land use).
- Temporary re-affirmative action should be introduced to guarantee access to rights and basic services for marginalized groups. For example, protect the rights of small land owners and women by creating incentives for setting up and strengthening of cooperatives and solidarity groups, following a bottom-up approach.

b) Natural Resources

- Environmental and natural resources rights should be considered as human rights issues.
- Depletion of natural resources is currently taking place due to: (i) greed and collusion between those in power and those that have the financial resources; (ii) poverty; and (iii) lack of awareness on the value of land, poverty and degradation of living standards.
- Economic hegemony and privatization of resources as well as monopoly by foreign companies, especially for managing water resources contribute to the poor governance of natural resource management.
- The environmental impacts of irresponsible governance of tenure are substantial including over-exploitation of ground water, thus increasing levels of salinity; pollution of resources due to lack of oversight; and destruction of natural habitats (e.g., mangroves in Bahrain).
- Loss of fishing opportunities are currently taking place due to (i) overexploitation of resources by fishing folks; (ii) lack of capacity to monitor international and bilateral agreements allowing foreign countries to fish in Exclusive Economic Zone (EEZ); and (iii) illegal fishing activities.
- Climate change is adding to the complexity, with changing patterns of consumption and a changing framework.
- Oversight over polluting factories is needed and accountability mechanisms to control polluters should be put in place and enforced.
- Capacity of civil society needs to be built in order to monitor environmental and natural resources issues and to be able to use the international complaint mechanisms available under international law.

- Countries incapable of protecting themselves from illegal fishing activities should be provided with legal and logistical assistance.
- Local communities should be provided with the means and tools to manage and control their resources and livelihoods.
- Privatization of natural resources should be monitored and regulated and an equitable redistribution of land and natural resources should take place with a view of ensuring indigenous peoples' rights and environmentally sustainable development.
- Farmers and fisher folk should be supported and not be treated as another element of the international market.
- An international environment court should be established under the UN system to prosecute countries and companies that commit environmental crimes (including those resulting from occupation and exploitation of natural resources and environmental pollution by multinationals) and to seek reparation for countries where such crimes have been committed (similar to the court established following the Kuwait invasion and where Lebanon, Palestine and Iraq can lodge formal complaints).

c) Ensure women's rights and build their capacity

- The current regional context is the following: (i) women living in male-dominated societies; (ii) women represent a minority in the workforce; (iii) high percentage of physical abuse in rural areas; (iv) women don't seek help, seeming to accept their situation; (v) unequal access to land for women; (vi) a large number of slum-dwellers are women and children; and (vii) women's participation is low in this region.
- In some cases laws are favorable to women but they are not properly implemented for cultural reasons; in other cases laws need to be reviewed to ensure women's rights are respected.
- Equal land rights for women only makes sense if there is land justice for the entire community (half of nothing is still nothing).
- An increase in the number of women surveyors in implementation of land guidelines is recommended.

d) Revive and apply customary systems to ensure sustainability of nomadic livelihoods

- Currently, the common property of nomads and their traditional means of mobility are not recognized by law. Sedenterization is seen as the solution.
- Communal property of nomads and traditional routes of mobility should be recognized and respected by law.
- Customary systems of conflict resolution should be taken into consideration in order to resolve access to land and natural resources disputes.
- Social organizations of nomads, etc... should be strengthened and supported and be given formal recognition so they can represent their own concerns and defend their rights; customary institutions need to be strengthened for the implementation of common property rights.
- Where good laws exist but are not implemented, governments should ensure adequate incentives for lawyers to defend the rights of marginalized communities.
- In defining land boundaries of nomadic populations, flexibility should be applied in order not to jeopardize their livelihood.

3. Urban planning, land use and markets

a) Land use and urban planning should be made within the context of an overall participatory framework for sustainability and should integrate balanced development of rural and urban areas

- Presently, there is a lack of urban planning policies with regard to the sustainable and equitable use of natural resources resulting in (i) difficulty in acquiring affordable housing; (ii) urban sprawl affecting coastal areas and agricultural land; and (iii) price speculation. There is rapid urbanization at the expense of rich fertile lands (infrastructure, private housing...) and inequitable distribution of economic activities (centralized development) in select urban areas versus neglect of rural areas. Urban planning is characterized by poor coordination between planners, implementers and target groups and lack of transparency in land use planning and development policies.
- Spatial and Territorial Plans should be developed and implemented by (i) reviewing recommendations from existing studies and conducting additional research if needed; (ii) developing a national vision and plans for land use, taking into consideration the future expansion of urban areas, protection and free access to natural resources for current and future generations' needs.; and (iii) developing strategic sectoral goals and bylaws that ensure balanced development and sustainability of productive sectors, namely industry and agriculture.
- Affordable housing should be included from the onset in urban planning and financial instruments should be made available to facilitate home-ownership by the poor (e.g., financial support, mortgage, interest rates...). Those financial instruments should include incentives for appropriate and green technologies to ensure healthy living standards.
- Informal settlements should be regulated and forced evictions should be avoided.

b) Land markets and valuation should be regulated, standardized and developed in a consultative manner to protect the rights of the most vulnerable

- No land market principles and policies should violate human rights.
- At present land markets in the region are characterized by (i) lack of vision and implementation policy of the real estate market and absence of control; (ii) insufficient regulation and standardization in the valuation system and land market; (iii) poor awareness of land markets' socioeconomic impact; (iv) weak land administration system concepts, understanding and implementation; and (v) paucity of real estate laws.
- Land markets present opportunities for economic growth, but also risks. Regional awareness of land markets should be raised, within the concept of effective land administration, to ensure that they are properly understood and transparent; to enable appropriate environmental, social and market safeguards and practices to be instituted; and to respect formal and informal land rights.
- Supporting development of valuation practice and adapting appropriate international standards in this area to the requirements of individual countries within the region are important to enable adoption and implementation of best practices.
- Public-private partnerships are essential for ensuring that all relevant stakeholders are involved in developing appropriate tools (e.g., regulations for mortgage, brokerage, etc...).

- Entities responsible for aspects of land market administration and valuation practice should be effectively identified and established with clearly defined competence.
- Capacity building in the context of land markets and valuation practice is important for the countries of the region and requires investment in appropriate training, workshops, dissemination of best practices, etc.
- Confidence in the land market should be built through transparent regulations and ethical standards to prevent price speculation.
- Purely economic/market-based models lead to ecological destruction and other negative effects. There is the need for appropriate mechanisms to ensure that such models do not compromise customary rights, socioeconomic and environmental rights.
- The valuation mechanisms and tools to control the land market should be monitored and the land base price should be updated according to the land market value.

4. Access to information, greater public awareness, and increased capacity building of all stakeholders is needed to ensure effective land and natural resource management

- Currently, there is very limited access to information, with lack of/poor data regarding land issues and lack of awareness of citizens' rights and how to demand them. In addition, high illiteracy rates and availability of resources and documents in foreign languages impede access to information.
- Women, nomads and other vulnerable groups are unaware of their rights, therefore education and public awareness to strengthen their legal literacy (in appropriate languages and media) is key, as well as the creation of safe spaces for people to talk about their rights.
- Access to information related to land should be ensured by all levels of government as well as outside institutions, such as aid agencies.
- Media freedom should be guaranteed since the media plays a very important role in raising awareness and uncovering corruption which is rampant in land cases.
- Capacity building and awareness-raising of decision-makers is important in order to modify laws and legislation.
- The availability and quality of land tenure data should be improved.

5. War, occupation and conflict are prevalent in the region. Land and natural resource management can be both a source of conflict as well as a peace-building and conflict prevention and resolution mechanism

In the region land issues and conflict are closely inter-linked. "Land is at the heart of the matter" and "Land is a national security issue".

- Importance of distinguishing between land disputes, land management, land administration and land occupation and in the context of conflicts the use of appropriate terminology should be recognized.
- There are two categories for the causes of conflict: internal and external. The reasons for internal conflicts are complex and may include: (i) population growth; (ii) different lifestyles; (iii) absence of appropriate and sustainable development; (iv) lack of partnership between governments and citizens; (v) absence of and/or lack of enforcement of just laws; (vi) corruption in public administration; and (vii) poor public management. As to the external factors that lead to conflict, they include: (i) neo-colonialism; (ii) extremist

ideologies; (iii) sectarian, religious, political conflict and nationalism; (iv) international complicity and double standards; (v) desire to control land including its water and natural resources; (vi) search for new export markets, including for selling military equipment; (vii) climate change which increases risk of drought; (viii) cross-border resource management (especially water); and (ix) policies of international financial organizations and the imposition certain policies, such as privatization of natural resources.

War, occupation and conflict have impacts at several levels:

- Population movements: Displacement of population, as either internally displaced or refugees and the use of vacated land for new settlements.
- Control of land and water resources: confiscation of land. Denial of access to and use of land either directly by issuing military laws or indirectly. This leads to a high pressure and price increases on the remaining land which is accessible and to loss of hope in the future – a “use it or lose it” attitude. Destruction of land by placing landmines, uprooting of trees, land and water contamination by military equipment. Removal of topsoil rendering land unfit for agricultural use. Overexploitation of occupied land and depletion of its resources. Environmental harm such as extinction of certain species due to setting up of physical barriers.
- Legal land management systems, such as urban planning and natural resource management, captured to serve a conflict party’s interests. Lack of recognition of traditional villages and local communities. Villages have been erased.
- Loss of cultural identity and memory: loss of social customs due to lack of access to land and social breakdown. Change in villages’ names to erase cultural identity and memory.

Recommendations:

At the international level:

- Given the scarcity of water in the region and its geo-political implications, international mechanisms for participatory resource management and conflict resolution based on justice need to be established to manage cross-border natural resources, especially water.
- Nations and international organizations need to apply without discrimination the principles of international law.
- Perpetrators of illegal activities regarding land and housing should be prosecuted under international criminal law.
- International organizations should apply international humanitarian law, to respect human rights, and to fight against all forms of discrimination and racism wherever they may exist.

At the local level:

- Good governance in land and resource management should be promoted by the local authorities in the areas they control. Administrative and fiscal decentralization should be implemented in order to improve governance in land and natural resource management.
- Specific recommendations related to conflict: Preservation of memory and culture, documenting and specifying the damages, promotion of reconciliation within the context of justice, putting in place policies and laws to prevent the recurrence of the violations, recovery of lost land, voluntary return to land, compensation for physical and psychological losses, and commitment of violator not to repeat violation.

6. Recommendations to FAO on Voluntary Guidelines' Process

- Regional, multi-stakeholder committees should be established to monitor implementation of the voluntary guidelines.
- Voluntary guidelines should be disseminated widely and promoted so that there is wide awareness about them and they are implemented.
- Regional assessments should be made available for all participants of the regional meetings creating a global network on the guidelines.
- Public awareness campaigns regarding the Voluntary Guidelines should be carried out in appropriate language and media to reach vulnerable groups.

C. The next steps

The Near East consultation is the fourth in the series of regional consultations and will be followed by similar meetings in Africa, Asia-Pacific, Latin America, and the Commonwealth of Independent States. Furthermore, consultations with the private sector have been held and additional ones will be organized with civil society. 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/>