



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

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This assessment is based on the discussions and outputs of the Near East and North Africa regional consultation meeting on the *Voluntary Guidelines on Responsible Governance of Tenure of Land and other Natural Resources* held in Jordan 2-4 May 2010. The views expressed in this assessment are those of the participants of the consultation meeting and do not necessarily reflect the views of their organizations and communities or those of FAO

A. Background

“Land is a source of life.” With this statement, the West Asia and North Africa 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 threatened by occupation, wars, land expropriation from the original land owners and prevention of accessing their natural resources, and the new neo-liberal economic policies. All of these are conditions specific to the region which prevent individuals from their legal rights to have full sovereignty over their land and to control its natural resources which precludes development and sustainable livelihood.

In addition, there are factors that distinguish the region from other parts of the world such as population growth, urbanization, climate change, laws related to nature protection, 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 contribute to peace-building. In the region, two particular challenges were highlighted: the impact of occupation, land expropriation, internal and external wars, and land-related conflicts as well as the link between the neo-liberal economic policies and the privatization of natural resources and their impact on land and water governance.

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, academic and research institutions, 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-Ghawi, 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. The workshop provided an opportunity for the participants to discuss their ideas and share their experiences, which led to the formulation of common conclusions reflecting the region’s specificities and its related priorities.

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

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

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.
- 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. International financial, trade and investment institutions intrude and influence national policy-making, urban planning, and distribution of investments and public assets.
- 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.
- 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 (e.g., setting up of protected areas and nature reserves).
- 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 policies.
- 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 preserve coastal areas, limit the construction of touristic complexes, protect resources, preserve natural/panoramic sites, protect against 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 single agency or public institution for land rights, land use and urban planning. There are unclear and overlapping institutional roles in land

administration which are characterized by 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 in the process.
- Infrastructure for systematic capacity building through professional education and training programs at all levels should take into consideration local cultures and be developed in order to strengthen public institutions responsible for land and natural resource management.
- Regional good as well as bad practices should be identified, shared and lessons drawn.
- Reforms to improve governance of land and natural resource management should be introduced and sufficient resources (human and financial) should be 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 promoted.

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.
- 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).
- Governments should comply with ratified international instruments (MDGs, environmental/human rights conventions...) as they apply to good governance in land and natural resource management.
- A review of all laws relating to land and natural resource management should take place resulting in a harmonization of the different land tenure systems (customary, nomadic, Islamic, and statutory legal systems).
- Reform of land laws is required to strengthen sustainability principles, gender equality, protection of “all” land rights, especially recognition of customary and pastoral rights.
- 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.
- Capacity of land administration professionals and practitioners should be strengthened for use of appropriate tools for the implementation of laws and regulations.
- 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.

- 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 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 profit-maximizing development 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 caused by the dominance of neo-liberal economic policies and the resulting weakness of environmentally sustainable policies, including natural resources privatization, especially of water resources, and by monopolies should be limited. These policies have led to increased poverty among a large number of people, the expropriation of their property, an increase in ecological disasters, groundwater depletion, increased levels of salinity caused by sea-water intrusion, pollution of resources, floods and soil erosion, desertification and the destruction of natural habitats.
- Depletion of fishing stock due to (i) overexploitation of resources by fishing folks; (ii) lack of governments' capacity to monitor international and bilateral agreements; and (iii) illegal fishing activities should be minimized.
- Impact of climate change should be limited since it causes significant damage to groups which are least able to adapt, such as the poor, women, children, indigenous peoples, farmers, fishermen, and island and desert inhabitants, due to an increase in the drought

season, the loss of and degradation of agricultural land, a decrease in agricultural and food production, an increase in water scarcity, and a loss of fish species as well as the destruction their natural habitats. Pollution should be reduced and oversight and accountability mechanisms should be put in place to hold polluters accountable by governments as well as by communities exposed to pollution such as representatives of local communities and civil society, farmers and fisherfolk.

- Capacities of civil society and vulnerable communities (e.g., fisherfolk and farmers) need 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) and to seek reparation for countries where such crimes have been committed .

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 nomadic livelihoods

- Currently, the common property of nomads and their traditional means of mobility are not recognized by law. Sedentarization (permanent settlement) is seen as the solution. However, permanent settlement of the nomads might lead to a change in the pattern of their lives; the loss of their traditional knowledge; and the weakening of their role in preserving natural eco-systems, especially vulnerable ones. Simultaneously, settlement increases the pressure on services and basic infrastructure which are often weak. This challenge needs to be addressed in a comprehensive and fair manner to reach solutions

based on consultation and to strengthen nomads' capacities to identify their rights and express their needs.

- 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 framework of sustainability and should integrate rural and urban planning

- 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

- No land market 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' economic 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 may 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, environment, etc.
- 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 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 at once a source of conflict as well as a peace-building and conflict resolution mechanism. In the region land issues and conflict are closely interlinked as land is at the heart of the matter as well as a national security issue.

Causes of conflict may be internal and/or external. Internal causes may include:

(i) population growth; (ii) extremist ideologies, national, religious and political conflicts, as well as the desire to impose and assert national identity; (iii) demographic manipulation; (iv) competition over control of land with the water and other natural resources it contains; (v) land confiscation; (vi) contradictions between different life styles (vii) absence of appropriate development; (viii) lack of partnership between governments and citizens; (ix) absence of just laws and/or lack of enforcement; (x) corruption in public administration; and (xi) public-sector mismanagement.

External factors may include:

(i) globalization and/or colonial ambitions; (ii) extremist ideologies, national, religious and political conflicts, as well as the desire to impose and assert national identity; (iii) demographic manipulation; (iv) international complicity and double standards; (v) competition over control of land including its water and natural resources; (vi) creation and feeding of conflicts in pursuit of markets for various commodities, especially military equipment; (vii) the lack of agreements for the management of resources shared between and among states, especially water resources; (ix) climate change and its consequences, especially drought; and (x) imposition of certain policies, such as privatization of natural resources.

War, occupation and conflict have impacts at several levels, bringing about:

- Population transfer, including the implantation of settler colonies by the occupier, leading to indigenous people's internal (IDP) or external (refugee) displacement;
- Control of land and water resources through confiscation of land, denying their access by the land's owners either directly (e.g., by issuing military laws) or indirectly, through threats and intimidation to prevent the occupied people from accessing their lands. Sometimes this involves destruction of land by placing landmines, uprooting trees, contaminating land and ground water by military waste. Often such breaches often bring about a while variety of consequences from environmental damage;
- Illegal alterations to urban planning regimes of occupied towns and villages, in addition to nonrecognition of villages and communities, leading to foreclosure of inhabitants' access to land and natural resources and/or erasure of the communities;
- Loss of cultural identity and memory: loss of social customs due to estrangement from the land, and social dismemberment. Changes in village names erase cultural identity and memory for future generations;
- Use and management of natural resources by the occupier to impose occupation ("protected" areas that then are transferred to settler colonies);
- Wholesale change of land features (e.g., removal of entire villages) and/or partial changes (e.g., by removing the top soil);
- Occupation often increases pressure on scarce resources, leading to an increase in land prices in the few remaining non-occupied areas, and erodes hope in the future;
- Exploitation of ambiguities in the regulations and laws that facilitate the process of forgery and fraud.

Recommendations:

At the international level:

- Given the scarcity of water in the region and its geopolitical implications, international mechanisms between and among neighboring states for transparent, participatory and justice-based resource management and conflict resolution need to be established to manage cross-border natural resources, especially water;
- International organizations need to respect and apply international law without discrimination toward any party;
- Perpetrators of crimes and illegal activities related to land (ownership, pollution, vandalism, etc.) and housing should be prosecuted in accordance with international law and treaty obligations;
- International organizations should be reformed in order to apply international humanitarian law and human rights law, especially to combat all forms of discrimination and racism wherever they may exist;
- Fair and participatory agreements should be concluded for the management of natural resources shared between and among states in cases where they are not covered adequately by current norms and conventions.

At the local level:

Taking into consideration both treaty obligations and constitutional provisions, governments should put in place appropriate laws, policies, programs and budgets to combat and prevent violations resulting from poor land and natural resource management, and consider:

- Carrying out a thorough legal review and research to implementation and enforce the law and its provisions;
- Establishing a transparent system of land management with oversight and accountability mechanisms;
- Setting standards that ensure equitable land distribution;
- Combating all forms of administrative corruption related to land issues;
- Developing the judicial system to implement just, rapid and effective solutions for land disputes;
- Distributing services among the country's different regions in order to reduce internal migration;
- Establishing and implementing a migration policy that corresponds to human rights and ensures sustainable social development;
- Setting a land administration policy with an eye to indigenous social development;
- Ensuring effective objection mechanisms in advance of, and full reparations and remedy in the actual event of all forms of damage resulting from land and natural resource mismanagement.
- In light of into consideration both treaty obligations and constitutional provisions, government should develop and implement laws, policies, programs and budgets to combat violations resulting from poor land and natural resource management, including the following measures consistent with the established principles of transitional justice:
 - Preserving memory of the events and circumstances involving the violations against affected persons and communities;

- Documenting and publication, including records of the testimonies of affected persons and the damages arising from the violations;
- Promoting reconciliation within the concept of justice;
- Reforming policies, laws and institutions to ensure nonrecurrence of the violation;
- Ensuring reparation of damages that includes:
 - Restitution, whenever possible, that restores the victim to the original situation before the violation of international human rights law or serious violations of international humanitarian law occurred, including the restoration of liberty, enjoyment of all human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property ;
 - Consensual return to the affected people's land and housing;
 - Guarantee of the right to adequate housing with consent of the affected people;
 - Comprehensive rehabilitation;
 - Compensation for losses not subject to restitution;
 - Commitment of the violator not to repeat crime under penalty of law; and
 - Affected people's satisfaction with the reparations.

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 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/>