

ActionAid International Commentsⁱ on the Zero Draft of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests

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A. General comments

ActionAid International is a supporter and member of the CSO contact mechanism and endorses the statement on Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. It welcomes this opportunity to provide further inputs into zero draft. There are currently many international documents related to land and land-related investments—including the VGs, the Principles for Responsible Agricultural Investment (RAI) and the African Framework and Guidelines (F&G) on Land Policy. Governments and other stakeholders will benefit from some analysis and comparison between these – particularly highlighting areas of overlap and contradictions if any.

The VGs will benefit from an explicit link to the right to food to anchor it in internationally recognized law that defends and protects the rights holders.

It is important to note that the right to adequate food is included in the Universal Declaration of Human Rights (article 25 paragraph I); and elaborated in article 11, paragraph I and II of the International Covenant on Economic, Social and Cultural Rights. In both cases, it was encompassed in the broader concept of *adequate standard of living* that includes a set of rights as important as the right to food.

Looking at the supplementary documents in more detail, one sees further connections. For example, General Comment 12ⁱⁱ on *The Right to Adequate Food* clearly recognizes a strong connection between the right to food and the issue of governance of tenure of land. “The roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food.” Paragraph 14 explains that “*Availability* refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems”. The General comment states that “socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes (paragraph 13)” and calls for special attention also to “many indigenous population groups whose access to their ancestral lands may be threatened”. Furthermore, paragraph 26 asks for special provision to guarantee both “equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property” and the maintenance of “registries on rights in land (including forests).”

Given the connection between land tenure and the right to food, it is surprising that the conversion of agricultural land into the production of biofuels is not mentioned in the VGs. ActionAid urges the FAO to promote land policies which strengthen policies that provide incentives to family farmers, such as access to land, sustainable food production and increased tenure security – land markets may not help the most vulnerable and poorest.

The current reality on the ground is that smallholder farmers are being stripped off their land from bigger farmers and/or large scale agribusiness who “offer” to purchase their tenure rights for a price that seems relatively high to farmers, but in fact, that may not be sufficient for them to find new livelihoods. The result is that many farmers become agricultural wage labourers without tenure rights, and ultimately, become poorer than they were before. ActionAid believes that the Zero Draft does not adequately address this particular problem.

ActionAid believes that it is a serious omission for the Voluntary Guidelines (VGs) not to take into account power relations prevailing among different social groups—including States, private sectors, peasants, Indigenous Peoples, fisherfolks, pastoralists and other rights holders. ActionAid therefore urges the FAO to recognize the different needs and priorities of diverse stakeholders and to ensure that marginalised groups in

particular are encouraged to hold governments and other public and private actors accountable for their actions and decisions.

B. Specific issues

1. Objectives, nature and scope of the VGs

- The VGs recognize land, forests and fisheries, but fall short of acknowledging other critical land based resources: water and range land. Therefore, ActionAid urges the FAO to bring water and range landⁱⁱⁱ into the scope of discussion.
- The issue of concern is not just land tenure, but also access to resources without which food production and biodiversity protection cannot happen.
- “Voluntary” in the title of the guidelines implies that States have the freedom to choose whether to implement or discard them. ActionAid believes that the guidelines should be binding on all stakeholders particularly the State as the duty bearer; and that there should be accountability mechanisms to monitor compliance.
- ActionAid believes that the VGs though primarily focused on the role of the State as the duty bearers; is sidestepping the issue of concentration of land by few private sector companies, whether domestic/foreign or small and medium-sized enterprises (SMEs)/transnational corporations (TNCs). Therefore, ActionAid requests that adequate attention is paid to define more clearly the parameters for the commercial for-profit private sector. FAO should promote parameters coherent with human rights, including the right to food. Furthermore, the parameters should be focused on the types of land tenure that will ensure access and control by smallholder farmers particularly women smallholders, fisherfolk and forest dwellers that depend on land based livelihoods for their food and income security.

2. Guiding principles, responsibilities, policy, legal and organizational framework and delivery of services

- The use of language within the VGs is generally vague. For instance, that all parties should take “reasonable measures” in Part 2, para 3.1(1) is largely ambiguous and demands further elaboration.
- The VGs do not clearly address the various situations in which land rights can be violated. Furthermore, the Zero Draft does not inform where people can go to claim their rights and whom they should contact for support. ActionAid urges the FAO to identify independent jurisdictions that are nationally and internationally competent so that rights holders are duly protected and that they can claim their land to grow food and ensure food security.
- Part 2, para 6.2 observes that States should serve the entire population, delivering “equal services to all, including those in remote locations”. ActionAid suggests that States prioritize on the remote areas that may be the largely affected but invisible from rights violations. Furthermore, VGs should also include provisions on supporting the most marginalised communities that may have the most limited access to information than others, so that not only equal services, but *justice* can be delivered.
- The VGs lack strong commitments on delivering a land information system that will allow transparency and scrutiny of land deals, as well as strengthening people’s access to justice.
- The VGs should include guidance including where appropriate sanctions towards international financial institutions that sometimes fund land investments that result in negative implications for local livelihoods and food security.

3. Legal recognition and allocation of tenure rights and duties

- Part 3, para 7.2 observes that communities that are affected should be included in the consultation and decision-making processes. Nonetheless, the VGs do not recognize the unequal power relations that may impede the participation of local communities, and do not inform *how* such consultation may take place.
- Part 3, para 9.8 makes a crucial point that States and other parties should hold “good faith negotiations” with communities and that negotiations should be done “without intimidation and be conducted in a climate of trust”. What ActionAid finds problematic here is that “good faith” may

mean different things for different stakeholders; for instance, TNCs may equate it with higher profits and returns on investment, whereas smallholders may equate it with diversified livelihoods and increased household food security. Therefore, ActionAid urges the FAO to set clear boundaries to minimize any misunderstanding between stakeholders and to avoid unjust exploitation of smallholders.

- Part 3, para 10.3 suggests that States should ensure “cooperation between implementing agencies and bodies responsible for different aspects of legalization” of informal tenure. Nonetheless, the question of *how* this should come about is inadequately explored. With no duty and responsibility assigned, holding agencies accountable will be impossible.
- The VGs, rather than placing strong emphasis on the revocation of titles for fraudulently acquired land, talk softly of remedy measures. Furthermore, the VGs do not properly include the concept of “forced evictions” and in no way detail the cases in which evictions are justified.
- The VGs do not properly address the issue of fisheries which require a specific section. The VGs lacks specifics regarding the peculiar nature of sea as natural resource. The distinct use of territory and resources by fisherfolk makes this sector different from any other. The VGs do not adequately address the problem of the exploitation of natural resources perpetrated by big companies at the expenses of the small ones.

4. Transfers and other changes to tenure rights and duties

- Redistributive reforms in the Zero Draft are progressive insofar as they take into account gender issues. In many African countries, women still do not have access to land. This question should be considered seriously in the next draft so that women can secure the access and control over land and other natural resources.
- Part 4, para 15.2 notes that redistributive reforms should also follow the “rule of law”. However, in countries where corruption and oppression are rampant, more emphasis must be directed to the rule of “just law” so that the people are duly protected from exploitation.
- The section on markets (Part 4, para 11) seems to provide for state facilitation of market processes that lead to land acquisition and concessions, rather than the protection of the most vulnerable.
- Part 4, para 11.2, by simply juxtaposing market-friendly policies, such as transparent market operation and non-discriminatory access, seems to remain a rhetorical tool rather than a concrete guideline. Furthermore, “promotion of high levels of ethical behaviour” in the same paragraph is void of elaboration on what makes a market transaction “ethical”.
- Part 4, para 12.3 demands states to provide “professional assistance” to help potentially affected families and communities during their negotiation with investors for large-scale acquisitions of tenure. Again, no word is spent on how to ensure the independence and transparency of such assistance. Communities will not benefit if assistance systems are not independent, highly committed to social justice and have clearly defined objectives.

5. Administration of tenure

- Taxation proposals in Part 5, para 19 should take into account not just social benefits but also social costs of different tenure systems.
- Part 5, para 20.1 suggests that States should conduct spatial planning and territorial planning to meet broader social, environmental and economic objectives. Although such planning is essential, the VGs don’t mention the importance of impact assessments and risk assessments before the completion of negotiations which may have more relevance for local communities on the ground.

6. Responses to emergencies

- The VGs do not mainstream climate change across the whole of the document; rather the guidelines discuss the issue as a standalone topic towards the tail end of the document (Par 6, para 23). This in part explains why there is little regard to impacts of land use options beyond the confines of a territory and mutual interdependences among territories (territoriality).

- Furthermore, the VGs do not take into account the types of land use by large-scale land investors that may exacerbate the negative consequences of climate change, and how the brunt of these ramifications will be on the shoulders of local communities.

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ⁱⁱ <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9>

ⁱⁱⁱ [Open land for grazing farm animals](#)