

# **Towards a culture of good governance: Implementing the Voluntary Guidelines on the Responsible Governance of Tenure**

**Marcela Villarreal, Ph.D.<sup>1</sup>**

## **Introduction**

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forestry in the Context of National Food Security (VGGT) were approved in 2012 by the reformed Committee on World Food Security (CFS) after three years of consultation, drafting and negotiation between United Nations member countries, civil society organizations and the private sector. The reform of the Committee was essential to produce an instrument that is widely considered legitimate, as the non-state actors participated equally with the state actors in the negotiations.

In the less than five years since their approval, the VGGT are being implemented in more than 60 countries. In some cases this process has already produced robust results such as new full-fledged land policies formulated through multi-stakeholder processes.

An emerging literature on the VGGT asserts their capacity to contribute to the resolution of post-conflict land related issues, tackling corruption in land governance, and addressing land legacy issues in agribusiness investments among others.

This article draws on the experience of countries where implementation of the VGGT is well underway to single out major factors of success and hindrance in the process. It argues that the implementation of the VGGT is creating a new governance model that may well have strong spillover effects in areas beyond land, fisheries and forestry, as it helps build a culture where the formulation and implementation of policies is necessarily participatory, transparent and with clear accountabilities.

## **The VGGT and the CFS**

The VGGT are the first international instrument on the governance of tenure<sup>2</sup>. They comprise a set of internationally accepted principles and standards and provide a framework that States can use when developing their own strategies, policies and legislation. They address public, private, communal, indigenous, customary and informal systems of tenure<sup>3</sup>.

The VGGT were endorsed by the Committee on World Food Security (CFS) at its Thirty-eighth (special) session in 2012 after a process of world-wide consultations and multi-stakeholder negotiations (2009-2011).

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<sup>1</sup> Director of the Partnerships, Advocacy and Capacity Development Division, in charge of the implementation of the VGGT at the Food and Agriculture Organization of the United Nations, FAO

<sup>2</sup> Full text: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

<sup>3</sup> Munro-Faure and Palmer "An Overview of the Voluntary Guidelines on the Governance of Tenure" Land Tenure Journal

The CFS, which is the United Nation's forum for discussing, reviewing, agreeing and following up on policies concerning world food security and nutrition, had been reformed in order to respond better to the concerns that arose due to the severity of the 2007-08 food price crisis. The reforms turned the Committee into the only fully multi-stakeholder and multi-agency UN committee, where civil society and the private sector can express their voices alongside with the governments, exchange views and experience, interact and negotiate with them. This characteristic was crucial not only for the legitimacy but also for the effectiveness of the implementation of the VGGT. Indeed, the participation of international agencies, civil society organizations, farmer's associations, private sector enterprises, academia and research institutions contributed to the robustness of the instrument, and indeed to the model of good governance that it is based on.

The relatively long period of consultation and negotiation that concluded in the endorsement of the VGGT was vital for a number of reasons:<sup>4</sup>

- It allowed the development of a globally relevant negotiated document with a broad consensus and a strong sense of ownership among governments, civil society and private sector
- It facilitated a dialogue among actors who deal with governance of tenure at national, regional and global levels.
- It enabled critical elements of awareness raising and capacity development and advocacy across all stakeholder groups
- It provided the stage to establish or expand networks and partnerships across actors and regions at global and local levels

The VGGT establish two sets of principles: five general (recognition and respect of all legitimate tenure right holders; safeguard legitimate tenure rights against threats and infringements; promote and facilitate enjoyment of legitimate tenure rights; provide access to justice to address the infringement of these rights; prevent tenure disputes, violent conflicts and corruption) and ten implementation principles (human dignity; non-discrimination; equity and justice; gender equality; holistic and sustainable approach; consultation and participation; rule of law; transparency; accountability; and continuous improvement).

### **What is good governance?**

Although the concept of good governance is not new, as some of its basic elements can be traced back to ancient Greece and earlier, the recognition of its centrality for achieving development goals is recent. The links were made very explicit throughout the decade that defined the Millennium Development Goals (MDG), and indeed, reference to them are found in the major UN conferences of the 1990s and 2000s. The Millennium Declaration explicitly states that good governance underpins the achievement of the agenda, as it is indispensable for creating a

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<sup>4</sup> Anni Arial, David Palmer, Margret Vidar, Juan Carlos Garcia Cebolla, Francesca Romano and Leila Shamsaifar: "Governance of Tenure: Making it Happen" Land Tenure Journal

conducive environment for the eradication of poverty and is a prerequisite for exercising the respect of human rights. In 1998 Kofi Annan made the oft cited quote that “good governance is perhaps the single most important factor in eradicating poverty and promoting development”. However, the MDG agenda did not include governance in its set of objectives or targets.

The Sustainable Development Goals (SDGs), which replaced the MDGs also acknowledge good governance as a fundamental element of long term development but, unlike the MDGs, gave a step forward to crystalize it in a goal. SDG 16 is about promoting “peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. It may well be the goal with more inherent difficulties, having the highest number of targets and the lowest means of implementation. Although it scarcely mentions the word governance in its text, it is about ensuring “responsive, inclusive, participatory and representative decision-making at all levels” (target 16.7), addressing conflict, overcoming corruption, respecting human rights, all of which are elements of good governance. SDG 16’s lack of specific quantitative targets alongside with the inherent difficulties of measurement of governance aspects, and the possibility of different interpretations by different countries, pose clear methodological problems and compound the difficulty to assess progress, all the more so at the global level.

The Institute on Governance defines governance as “a process whereby societies or organizations make their important decisions, determine whom they involve in the process and how they render account”<sup>5</sup>. Although there are many definitions of good governance, the literature agrees on a set of basic pillars that can be summarized as follows:

- Participation and voice: all women and men, regardless of their social or economic status, or of any other characteristic, should have a voice in the decisions that will affect their lives. The voice can be expressed either directly or indirectly through intermediate institutions that represent their intention. This principle has its foundation in the equality of all persons, and presupposes the respect of freedom of association and speech, as well as the possibility for all to develop their capacities to participate in an active and meaningful way.
- Transparency: all relevant information is open, available and accessible to all
- Accountability: all decision makers are accountable to the public, whether they are in government, the private sector, civil society organizations or any part of society
- Rule of law: legal frameworks should be fair and enforced regardless of power, influence or wealth.

In addition, some literature refers to the existence of strategic vision and direction, long-term perspective, effectiveness and efficiency in the delivery of results and responsiveness to the needs of all stakeholders as essential elements of good governance.

Although some sources include legitimacy as one of the pillars of good governance, actually, legitimacy is the outcome of applying the above mentioned pillars. If actors act or processes are

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<sup>5</sup> John Graham, Bruce Amos and Tim Plumptre, Principles for Good Governance in the 21<sup>st</sup> Century, 2003, Institute on Governance Policy Brief no. 15.

implemented following the principles of participation, transparency and accountability within the law, they will be perceived and accepted as being legitimate actors or processes by other social actors.

In spite of the wide acceptance of the term good governance and its embeddedness in development literature and instruments, some critics call attention on the shortfalls of the term and their potential consequences. In particular: the fact that there are numerous definitions creates confusion and perpetual need for clarification; the lack of added value in relation to other concepts such as well functioning liberal democracies; and the associated problems for evidence-based research in terms of theory formulation and testing of related hypothesis due to the ease of accommodating a definition to the fit of existing data<sup>6</sup>.

For the purposes of this article, good governance is defined along the pillars described above, as they are widely used in the current development agenda, subscribed by close to 200 countries, that aims to achieve the Sustainable Development Goals by 2030.

### **Sierra Leone**

In November 2015 the Cabinet of Sierra Leone approved a new National Land Policy. The process to develop the policy was based on the VGGT and the final text includes the full set of the VGGT principles and refers to the VGGT in more than 90 paragraphs. Less than two years before that, in 2014 the Government, with technical support from the Food and Agriculture Organization (FAO) and the financial support from the Ministry of Agriculture of the Federal Republic of Germany, launched a project to initiate the implementation of the VGGT. A multi-stakeholder platform was set up to convene state and non-state actors from all VGGT related sectors (land, fisheries and forests) to hold a dialogue on tenure governance. More than 100 stakeholders including national and local government representatives, traditional leaders, civil society organizations, the private sector, academia and international development actors, met periodically to discuss and present recommendations on tenure governance priorities and to discuss ways forward for the implementation of the VGGT. All stakeholders had a formal opportunity to discuss with government in a public arena how the tenure of land, fisheries and forestry are managed in the country.<sup>7</sup>

An institutional framework for action and ownership, in order to ensure effective follow-up and implementation of the recommendations made by the Platform was established. It consists of: a Multi-stakeholder Technical Working Group, which follows up on the implementation of the recommendations through the respective ministries; a Steering Committee that liaises with the government; and an Inter-Ministerial Task Force that provides a cross-sectoral approach to issues of tenure. It is composed by the Ministries of Agriculture, Forestry and Food Security; Ministry

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<sup>6</sup>Rachel Gisselquist, 2012 "What Does 'Good Governance' Mean?"

<https://unu.edu/publications/articles/what-does-good-governance-mean.html>

<sup>7</sup> See FAO 2016 "A good practice on the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure. A multi-actor and multi-sector approach in Sierra Leone" <http://www.fao.org/3/a-i6270e.pdf>

of Fisheries and Marine Resources; Ministry of Land, Country Planning and the Environment; Ministry of Justice, and the Ministry of Local Government and Rural Development.

The constitution of the inter-ministerial committee, for the first time in the country, is of great significance. The tenure of land, fisheries and forestry cannot be addressed from the perspective of a single ministry and the committee helped institute the realization of the value added of inter-ministerial work. Other topics that require an inter-sectoral approach, such as nutrition and food security, are already benefitting from this approach in Sierra Leone. The application of the VGGT is thus contributing to create a culture of inter-sectoral work.

A substantial multi-year capacity development programme was set to improve government and non-state actors' capacities for developing cross-sectoral policy frameworks and to participate effectively in the processes. In addition, a learning programme to enhance participants' knowledge and competencies for achieving gender-equitable land tenure governance<sup>8</sup> resulted in the inclusion of the principles of gender-responsive tenure governance into the long-standing framework to regulate investments at district level. Another learning programme was put in place for safeguarding land tenure rights in the context of large agricultural investments across different government sectors.

The process of implementation of the VGGT, with the participation and voices of all relevant actors from central and decentralized levels contributed to the institutionalization of a model of good governance, and to the legitimacy of the new Land Policy. The process of implementation of the policy needs to ensure the same level of participation with a clear and robust accountability framework and means to ensure transparency.

## **Senegal**

Senegal has launched a process to reform land tenure based on the VGGT principles and process. The National Land Reform Commission, created in 2012, opted for an inclusive approach based on the establishment of platforms and open dialogue throughout the country. A national multi-actor platform was set up at the first VGGT workshop (2014) supported by the Ministry of Agriculture and Rural Equipment (MAER), FAO, the Initiative Prospective Agricole et Rurale (IPAR), and the National Council for Consultation and Rural Cooperation (CNCR). Funding was provided by the Governments of Italy and France, as well as by IFAD. A multi-stakeholder Steering Committee was set up and meets regularly. It is co-chaired by government (MAER) and civil society (CNCR) and is composed by, inter alia, the National Commission on Land Reform, the Ministry of Fisheries and Maritime Economy, the Ministry of Livestock and Animal Production, the National Agency to Promote Investments and Major Projects and civil society organizations including ActionAid, Enda Pronat, the NGO Council for Development, the Innovation Environment Development, the Senegalese Association of Lawyers and the IPAR.<sup>9</sup>

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<sup>8</sup> See FAO: "Governing Land for Women and Men. A technical guide to support the achievement of responsible gender-equitable governance of land tenure" <http://www.fao.org/docrep/017/i3114e/i3114e.pdf> and the e-learning course <http://www.fao.org/elearning/#/elc/en/course/VGG>

<sup>9</sup> See FAO 2016 "A good practice on multi-actor dialogue. The Voluntary Guidelines at the heart of Senegal's tenure reform" <http://www.fao.org/3/a-i6271e.pdf>

The National Commission on Land Reform undertook more than 118 decentralized consultations which produced numerous integrated reform proposals.

A Project Management Manual (2016) was produced in order to ensure clarity on roles and responsibilities of platform members, avoid duplication and disputes and guide effective coordination between the different actors of the multi-actor mechanism. It thus contributes to clarify accountabilities and to ensure transparency.

Targeted capacity development activities supported by the Kingdom of Belgium and FAO have enabled numerous non-state stakeholders to actively participate in the work of the platform and to engage with the state actors. This has been especially significant for women and youth and all actors at decentralized levels, allowing for inclusiveness.

The success of the process to date has been based on a number of factors: 1) a strong political will from the Government at all levels and throughout its different sectors; indeed, involving different sectors, as in the case of Sierra Leone, has been as important as involving different actors; 2) the active participation of an active and well organized civil society: the CNCR is a transparent network with an internal mechanism of accountability to its members; 3) clarity of roles, responsibilities and accountabilities; 4) an inclusive and consensus-seeking Steering Committee in charge of decision-making, managing and monitoring agreed activities, with a technical working group; 5) an effective capacity development programme.

The process has not been without challenges. Multi-actor approaches require significant investment of time and other resources to reach common ground bridging across a wide range of differing and sometimes contradictory interests and priorities. In addition, the actors have different levels of capacities, awareness and understanding of the issues. The participation of the different actors is not always homogeneous and in the case of Senegal, that of the private sector was much lower than that of government and civil society actors.

## **Mongolia**

Mongolia is in the process of preparing a law on pastureland, following the VGGT. A multi-stakeholder, multi-level, gender-sensitive process is being implemented with the financial support from the Governments of Germany and Switzerland and technical support of FAO. A series of multi-stakeholder workshops held in 2014, 2015 and 2016 provided a forum for inclusive dialogue on the VGGT and governance of pastureland tenure, as well as an opportunity for decision-makers to become aware of the contributions of their specific sectors. A multi-stakeholder technical group coordinated by the Ministry of Food and Agriculture and a local NGO, People Centered Conservation in Mongolia was set up to support the implementation of the VGGT.

Based on a capacity needs assessment, a multi-year learning programme specific to the VGGT was designed for the different stakeholders. It includes dispute resolution capacities, which figured prominently in the needs assessment. A critical mass of people from government agencies, CSOs, the private sector, academia and farmers organizations has been formed and was involved throughout the process of discussion of the law on pastureland. The learning

programmes were delivered in sequence with the multi-stakeholder workshops so that ideas and recommendations emerging during the training could be proposed to the Technical Working group to be included in the annual VGGT implementation plans. As a result, Mongolia has significantly improved its capacity for developing cross-sectoral policy frameworks and for human resource and organizational development with regard to improved governance of tenure. In particular, the learning programme “Governing land for women and men” has contributed to enhance stakeholders’ capacity for effectively addressing gender issues in tenure.

The process has also contributed to the development and strengthening of partnerships among CSOs, private sector, academia, farmers organizations and government agencies around food security and nutrition outcomes.

Following the experience with pastureland, a VGGT-based framework for assessing forest tenure was developed and tested to evaluate forest tenure related policies, laws, institutions, and administration. It aimed to identify areas for improvement with respect to the VGGT principles, as well as to identify and prioritize actions for strengthening governance of forest tenure in the country.

The Mongolia case shows how an inclusive multi-stakeholder process with ample participation and a strong capacity development programme can address a highly sensitive issue characterized by a high level of tension and conflict, such as the governance of pastureland. Moreover, it shows that the process of implementation of the VGGT can have spillover effects to other sectors, such as was the case with the forestry sector, and help promote a culture of good governance. The process also produced significant advances in terms of improving gender equality and women’s empowerment in the country.

## **Results**

The factors for successful implementation of the VGGT include: i) political will from the government in order to drive necessary policy and legal reforms as well as to include all relevant stakeholders in the process; ii) an institutional framework with clear mandates, roles and responsibilities to ensure effective follow-up and implementation of the recommendations made by the multi-stakeholder platform; iii) an inclusive steering committee with representatives of all stake holder groups; iv) a well-functioning multi-stakeholder platform that guarantees voice to all relevant stakeholders at central as well as decentralized levels; v) ensuring that all participating actors are able to develop the capacities to participate effectively in the multi-stakeholder platform and to perform the roles and responsibilities assigned to them in the implementation process; and vi) strong accountability mechanisms for all actors engaged in the process, including the United Nations.

Results from the analyzed countries show that the inclusive process and open dialogue between state and non-state actors has strengthened the ownership by all of the actors, as well as the accountability and sustainability of the implementation of the VGGT.

Regarding the challenges , they include: i) the need to strengthen private sector engagement in several countries, as it is central to ensure responsible investments that support development

outcomes, but has been less present than civil society organizations in the process; ii) the need to ensure the participation of some key constituents that do not always take part in the process, such as indigenous peoples, youth, some marginalized groups; iii) the fact that equal gender participation is sometimes overlooked, even if it is a fundamental part of the Guidelines; iv) the lack of recognition of some key actors, mostly of civil society, by the governments in some countries; v) the need to ensure decentralized participation, which is costly and requires strong coordination mechanisms; vi) the length of the process of setting up a multi-stakeholder platform, although its results pay in time.

## **Conclusion**

In spite of numerous challenges in the process of implementation of the VGGT at country level, results obtained to date clearly indicate that the process itself contributes to create the basis of a culture change towards good governance. The multi-stakeholder platforms together with accompanying institutional frameworks that recognize the legitimacy of the voice of all stakeholders in policy decisions and implementation provide the foundations of a culture of respect and shared power, where actors have the right to contribute but also clear responsibilities. The implementation of the VGGT is contributing to enshrine the principles of participation, transparency and accountability, essential pillars of good governance<sup>10</sup>.

The VGGT have shown to contribute to create trust among the different stakeholders. Especially in post-conflict situations, experience in applying the VGGT has shown that an initial lack of trust between the representatives of civil society organizations and the government, or the frequent lack of trust between these organizations and large landowners, is dissipated with the processes of discussion in the multi-stakeholder platform. Co-chairing roles, such as in the case of the Steering Committee in Senegal, or the Technical Group in Mongolia, have also demonstrated to increase the level of trust among different actors.

Capacity development of all participating actors is a key element, not only for the success of the implementation of the VGGT<sup>11</sup> (and constitutes, indeed, one of its principles), but also for the establishment of a good governance model. The principle of inclusion and effective and meaningful participation rests on the assumption that all actors have the necessary capacities to participate equally. Indeed, all actors need to be able to access the necessary information, and they need to have the capacities and the means to do so.

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<sup>10</sup> The VGGT themselves explicitly state principles of good governance in their implementation principles: consultation and participation, transparency, accountability, equity and justice and the rule of law.

<sup>11</sup> Strong and targeted capacity development programmes are a main element of FAO's programme of implementation of the VGGT. After capacity needs assessments are carried out for each of the relevant actors, a capacity development programme is designed. A comprehensive set of materials including technical guides, e-learning courses, guidelines and brochures has been produced. See:

[http://www.fao.org/nr/tenure/e-learning/en/?no\\_cache=1](http://www.fao.org/nr/tenure/e-learning/en/?no_cache=1)

<http://www.fao.org/nr/tenure/information-resources/en/>

The implementation of the VGGT was instrumental in improving gender awareness and gender-equitable land tenure governance. In Sierra Leone and Mongolia participants of the gender learning programmes contributed to the formulation of gender-sensitive programmes and policies in other domains. Advancing towards gender equality is an important element of good governance and it is an enabling factor for central pillars such as inclusive participation.

Furthermore, accountability, a pivotal element of the model of good governance, also depends on the different actors having adequate capacities. As the VGGT are by definition voluntary, and constitute a soft law instrument, their effectiveness in producing actual change relies on having effective mechanisms to hold decision-makers to account. When people's representatives and civil society organizations, for example, have the capacities to hold the private sector and government institutions to account, the soft law instrument can acquire the force, for practical purposes, of a binding law instrument.