

Proposals from French Development Cooperation



Proposals from French stakeholders to improve the use and application of the VGGT

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The Technical Committee on “Land Tenure and development” is an informal think tank composed of experts, researchers and officials from the French Cooperation. It was set up in 1996 to provide strategic support to the French Cooperation and supervise land tenure initiatives through a network of French and international actors. Initiatives by the Committee include the White Paper on land governance and security of tenure in developing countries produced by actors in the French Cooperation, and numerous other works and tools aimed at improving our understanding of land issues in developing countries and our ability to meet the challenges they present. These can all be found on the Land Tenure and Development website (www.foncier-developpement.org).

The French Inter-Ministerial Food Security Group, created in April 2008 to provide a joint response to the food crisis, is a reflection and exchange group focusing on food security; it brings together five Ministries, research organizations, civil society and the private sector:

- *Ministry of Agriculture, Agri-Food and Forestry (MAAF)*
- *Ministry of Foreign Affairs and International Development (MAEDI)*
- *Ministry of Ecology, Energy, Sustainable Development and Sea (MEEDDM)*
- *Ministry of Economy, Industry and Digital Affairs (MEIN)*
- *Ministry of National Education, Higher Education and Research (MENESR)*
- *General Secretariat of European Affairs (SGAE)*
- *Centre International de Recherche Agronomique pour le Développement (CIRAD)*
- *Institut de Recherche pour le Développement (IRD)*
- *Institut National de la Recherche Agronomique (INRA)*
- *Agriculteurs Français et Développement International (AFDI)*
- *NGOs members of the Agriculture and Food Commission (C2A) of Coordination SUD*
- *FARM Foundation*
- *Agence Française de Développement (AFD)*



Proposals from French stakeholders to improve the use and application of the VGGT

In May 2012, the international community gathered at the Committee on World Food Security (CFS) endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT). Those guidelines have lent impetus to the global movement to make governance of tenure of land and natural resources central to the international agenda.

France welcomes the holding of an event dedicated to the VGGT at the 43rd session of the CFS, as part of the monitoring process examining implementation of the decisions and recommendations of the CFS, and as a response to recommendation 26.4 of the VGGT, which advocates the organisation of an experience-feedback initiative with regard to application of the VGGT. In addition to the consultation organised by the CFS Secretariat, France wished to conduct an exercise with national stakeholders to monitor implementation of the VGGT. It consequently launched an inclusive initiative that mobilised its two multi-stakeholder platforms on land-governance (the Technical Committee on “Land Tenure and Development” – CTFD) and food-security (the French Interministerial Group on Food Security – GISA), as well as representatives from the private sector. A day of discussion was organised on the 13th September 2016 to identify causes of success and failure in the use and application of the VGGT. The ideas exchanged at that conference have provided material for this document.

I. Factors of success and pitfalls to be avoided in ensuring application of the VGGT

Since they were adopted in 2012, numerous initiatives aiming at promoting the use and application of the VGGT have been implemented. Since the programme is voluntary, ensuring the involvement of all stakeholders is a key factor, but not in itself sufficient to allow the level of application of the guidelines and their impacts on the improvement of land governance to be measured.

● **Political will, dialogue, coordination and expertise: key issues in the application of the Voluntary Guidelines**

The discussions enabled identification of a certain number of key factors which must be combined to ensure that the VGGT are effectively applied.

The political will and involvement of governments: the issue of land tenure is now on the agenda of many international, regional and multilateral groups. Ensuring that land governance remains a long-term priority for governments, the private sector and civil society is a major factor of success in applying the VGGT. However, it also requires governments to show the political will to incorporate the guidelines into their national legal frameworks. This inclusion must be more than just an introductory reference in land policy documents. The VGGT throw light on compliance with human rights and their promotion in the context of

land governance. The recommendations of the VGGT should inspire a full commitment to land-reform procedures and the identification of the needs of different groups – especially the most vulnerable – in terms of access to land. Sharing of experience – on a regional level especially – is an approach that should strengthen political will and support for application of the VGGT. The CFS has a key role to play in continuing to work on issues of land governance and the monitoring of VGGT implementation.

The consultation and involvement of multi-stakeholder platforms related to national land-tenure debates: bringing together, on multi-stakeholder platforms, all those concerned by the issue of land tenure enables a grasp of the issues involved and a shared understanding of the main principles of the VGGT, which are necessary for the implementation of inclusive land reforms. Mobilisation of those platforms also enables stakeholders to take part in a constructive dialogue in order to contribute to the planning of public policies. The VGGT are the result of a participatory and inclusive process on an international scale. Their national implementation must be based on similar dynamics. Particular care must be taken to include vulnerable and marginalised populations in the process.

Donor coordination: adoption of the VGGT resulted in increased mobilisation of donors with regard to this issue. So donor coordination within the Global Donor Working Group on Land (GDWGL) within the framework of the Global Donor Platform on Rural Development is intended to facilitate cooperation and collaboration on land issues among 24 bilateral and multilateral donors. The work done within the coordination organisation has led to an appeal for the inclusion of a land indicator within the Sustainable Development Goals (SDGs) based on the VGGT (indicator 1.4.2 associated with SDG 1 on poverty eradication).

The development of skills and expertise: over the last four years, many initiatives have been launched to turn the VGGT into operational tools and develop knowledge and expertise. The FAO has especially produced e-learning modules and a series of thematic technical guides. Organising national workshops and training activities for many stakeholders – political decision-makers, civil society organizations, members of parliament, journalists, etc. – has enhanced awareness. Familiarity with the VGGT and their principles among a broad range of stakeholders, combined with initiatives favouring the development of multidisciplinary technical expertise (legal, sociological, operational, agronomic, etc.) is a factor in their successful application. However, a lot remains to be done locally, nationally and internationally in this area, even among those States and institutions with a strong interest in land-tenure issues.

● Pitfalls to be avoided

Inconsistencies between different sectoral policies: Promoting the VGGT and supporting and ensuring their application also requires other policies to be examined in order to achieve greater coherency. Different sectoral policies may be contradictory. For example, land policy may express the intention of making access to land secure for all stakeholders – particularly small farmers and pastoralists – but, at the same time, sectoral policies may promote models of agricultural production and water use that require infrastructure that does not fully take into account the needs of these small farmers and pastoralists, implies population displacements, and so on. Without opposing these different sectoral policies (which can each have advantages in terms of sustainable development), it is essential to rationally consider their objectives as a whole to make them consistent, while paying particular attention to compliance with human rights and the needs of vulnerable groups, in the spirit of the VGGT.

There is also an issue of coherency between national sectoral policies and the international commitments of governments. In all these contexts, the VGGT should serve as a reference tool, used to analyse land governance issues.

Avoid standard land rights registering policies as a universal response to implementation of the VGGT: Approaches to the use of the VGGT on a national level tend to be standardised and based on the registration of private and individual property deeds using geographical and cadastral information systems, in the hope of increasing transparency and accountability. These technical solutions often tend to ignore the political and social challenges of land governance and provide systems that are relatively inaccessible and unsuited to local contexts¹. They may even result in a loss of access to land for certain vulnerable groups. So the pitfall of a response based solely on a standardised technical tool must be avoided, so as not to induce opposite effects to the results sought.

Ending the proliferation of ‘pilot’ approaches: Many ‘tools’ and ‘initiative frameworks’ intended to facilitate application of the VGGT have emerged since their adoption. This dynamic has led to an increasing number of guides and references for application of the VGGT. While such efforts can adapt to various frameworks of intervention and so enable communication with a broad range of stakeholders, proliferation can also lead to confusion. It is particularly necessary to ensure that this phenomenon does not result in a ‘levelling down’ of application of the VGGT. Finally, the implementation of VGGT a monitoring mechanism within the framework of the CFS should enable us to put the proliferation of pilot approaches applied by different stakeholders over the last few years behind us.

II. Recommendations for effective application of the VGGT

These French recommendation proposals are based on both national experience and, more broadly, analyses collectively carried out by the members of France’s multi-stakeholder platforms for land governance and food security. They are shaped by the conviction that **secure land rights can play a major role in achieving the economic development of territories, the reduction of inequalities, the elimination of poverty, the supply of food and nutritional security, conflict limitation and the response to environmental challenges.**

For this reason, the VGGT are a major tool that can facilitate the achievement of sustainable development goals. The proposals also take into account the very limited time step for assessing the results of efforts to implement the VGGT, just four years after their adoption. So the French proposals must be considered in the light of that constraint.

● Developing the understanding of the VGGT and knowledge and expertise on land governance

The major campaign of information and awareness raising must be pursued

An enormous campaign of promotion and dissemination has been conducted by different stakeholders over the last four years. The initiatives involved have stimulated reform dynamics in countries already engaged in institutional reforms, along with behavioural changes on the part of companies who are aware of the risks to their reputation. In spite of this, though, a great deal of work remains to be done to ensure that all stakeholders are familiar with the VGGT, especially on a local level, so that governments invest in reform processes and more responsible investment is encouraged.

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1. The Land Tenure and Development Technical Committee produced an analysis on this subject following the adoption of the VGGT – “The formalisation of land rights in developing countries: moving from past controversies to future strategies.”

Several approaches and strategies could enhance these initiatives:

- >> intensifying and developing strategic dialogue with partner countries to help them apply the VGGT;
- >> assisting the implementation of multi-stakeholder platforms on a national level to enable dissemination of the VGGT and discussions about land-policy choices and the land-tenure impacts of other sectoral policies, and develop the ability of local stakeholders to fully understand land-tenure issues. The setting-up of these platforms – with a particular attention paid to the most vulnerable groups – should be accompanied by capacity development activities for local stakeholders, ensuring that they completely master and understand land issues at stakes;
- >> it is necessary to improve the capacities of civil-society organisations and other stakeholders in order to increase the mobilisation of citizens with regard to land issues. Awareness-enhancement initiatives and training for land administration services, decentralised local authorities and members of parliament could fuel civil discussions on the VGGT.

The need to develop expertise on land tenure to apply the VGGT

One of the difficulties encountered in applying the VGGT is a lack of national and international technical land-tenure expertise that is operationally available and usable by all stakeholders. Land tenure involves a variety of advanced skills in the fields of law, sociology, economics, facilitation, etc. Human resources in this domain are rare, notably on a national level.

- >> Creating university courses and occupational-training modules to develop the expertise needed to design and implement land reforms and national sectoral policies with an impact on land tenure.
- >> Raising awareness among the national staff of donors (embassies, agencies), NGOs and the private sector, familiarising them with the VGGT and the importance of land tenure for development.

● **Maintaining the global dynamic and improving coordination related to land issues**

To maintain the international dynamic triggered by the adoption of the VGGT and other international frameworks means regularly monitoring progress in their application and continuing the coordination of donors on land governance, especially in relation to responsible agricultural investments.

- >> Continuing the development of synergies with regional and international executives in relation to environmental issues, food security, gender, deep-rooted causes of migration and intervention in contexts of fragility.
- >> Supporting the implementation within the CFS of a solid, lasting, international mechanism to monitor application of the VGGT based on national multi-stakeholder platforms, linked with CFS and the monitoring process of the SDGs land indicator.
- >> Fully integrating land-tenure questions within the intervention frameworks of international donors. Land governance must be included in bilateral development projects as a key to sustainable territorial economic and social development, so that it is recognised as a global issue that receives suitable attention and funding.
- >> Continuing to support donor coordination in the framework of the Global Donor Working Group on Land and promote even more transparent information sharing related to interventions, results achieved and lessons learned. On a national level, this coordination should result in the development of joint programming frameworks and consultation processes.

● Incorporating the VGGT into the social and environmental due diligence of public and private investment with an impact on land tenure

The profusion of discussions on responsible investment has led to the publication of many reference works and guides whose aim is to deal with land issues related to major agricultural investments. Production of these guides has provided a partial response to the difficulties encountered by aid organisations and private-sector operators in making the VGGT operational. Nevertheless, certain concrete initiatives could improve these stakeholders' use of the VGGT:

- >> Integrating the principles of the VGGT in the social and environmental due diligence of aid agencies, multilateral and regional development banks, and companies. Particular care should be taken over the management of land legacy, the free, prior and informed consent of all parties concerned and the existence of effective conflict-resolution processes, especially on a local level (judiciary and/or alternative processes);
- >> Using available guides and partnerships to set up training programmes for staff involved in operational initiatives, project funding and risk management;
- >> Mobilising the VGGT to deal with resettlement related to infrastructure projects. Particular attention should be paid to legal frameworks of expropriation for public-interest processes in national contexts, in order to improve the implementation of safeguard policies;
- >> A particular effort should be made with private-sector operators. The OECD and FAO could make a useful contribution in this area through the operationalisation of the FAO-OECD guide, which could include a VGGT presentation and introduction module.

● Better incorporating the principles of the VGGT into development aid

In the implementation of development policies, the main principles remain respecting land-users rights, and ensuring that private use is compatible with long term general interests. The problematics of responsible governance of tenure must be better integrated within all the phases of the project cycle (diagnosis, identification, formulation and implementation and assessment operations).

To do so, the VGGT must be used to improve governance of tenure on the basis of the following initiatives:

- >> support the countries concerned with the identification and formalisation of existing acknowledged legitimate rights on land – whether formal or informal, individual or collective – and revising the method of securing the land rights and customs of rights holders and users;
- >> mobilising the VGGT to support improvement of the different components of land policies (land right formalization, transparency and accountability of large scale land acquisitions, conflict resolution) consistently with agricultural, territorial-development and natural-resource management policies;
- >> building on the initiatives of all stakeholders to implement the VGGT locally in order to facilitate a broader political process. National multi-stakeholder platforms should be collectively mobilised to discuss the results of these local initiatives;
- >> promote fit for purpose management tools that are appropriate to local contexts and based on intermediate levels of governance (decentralisation), taking into account local specificities and ensuring the security and stability needed for investment;
- >> address the need for effective conflict-resolution processes, especially on a local level (judiciary and/or alternative processes), and defining the institutions competent to assess prejudice with a view to proper compensation.

Political dialogue related to aid and development programmes should stress the benefits of commitment to responsible land-tenure policies. This is one of the great issues in the implementation of the VGGT: the application of their principles is subject to the political will of governments to engage in land reform processes that recognise the legitimate tenure rights of the greatest number of people, especially the most vulnerable groups.

III. French initiatives to assist with application of the VGGT

Since the adoption of the VGGT, France has shown a strong commitment to their promotion and application, focusing on three areas: international use, proactivity in bilateral political discussions and coherent initiatives.

● Promoting the VGGT at the core of the international agenda and ensuring that our initiatives are coherent

The VGGT are an internationally recognised and adopted fundamental framework that sets up the principles of responsible land governance. Their adoption provided a tool to raise the question of land tenure in international development discussions on the basis of explicit references to existing standards of human rights. So France has launched a number of initiatives intended to **create synergies between international frameworks in order to widely disseminate the principles of responsible land governance**:

- >> mobilisation of French expertise to turn the guidelines into an operational tool, *Guide to due diligence of agribusiness projects that affect land and property rights*. This guide has been promoted to the international community;
- >> support for the inclusion of a land indicator in the Sustainable Development Goals (SDG), promoting joint action on the part of donors within the Global Donor Working Group on Land;
- >> working with the other NASAN members to establish an analytical framework for responsible agricultural investment at the testing stage of pilot projects;
- >> mobilising to ensure that the OECD-FAO guide for responsible agricultural supply chains is consistent with the principles of the guidelines;
- >> using the VGGT in our strategic dialogues with different stakeholders (governments, development banks).

Ensuring that our projects supported by development aid comply with the VGGT

Following the adoption of the VGGT, the French Ministry of Foreign Affairs and International Development (MAEDI) asked its own public operators, notably the AFD (French Development Agency), to ensure that all projects supported by overseas development aid would be aligned with the VGGT in order to ensure the consistency of its development-aid policies. That commitment involved the preparation of a *Guide to due diligence of agribusiness projects that affect land and property rights*, based on the VGGT. **The AFD subsequently formally incorporated the principles of the VGGT into its social and environmental due diligence procedures** to facilitate the design of agricultural projects that take into account land-related due diligence. So a systematic approach has been applied to ensure land security with regard to agricultural projects backed by the AFD that affect land and property rights. The AFD is the first donor to have undertaken such a task. Its results will be used to study, monitor and, finally, assess projects.

● **Political dialogue with our bilateral partners: increasing capacities through support for multi-stakeholder platforms**

As a consequence of the voluntary nature of the guidelines, it is up to us all to promote their use, particularly by governments. The VGGT must be used to objectively assess the land-governance situation and inclusively identify changes to be made to protect the legitimate land rights of all, especially the most vulnerable populations. To this end, France provides long-term assistance for the different stakeholders, with dialogue and negotiation in countries that so wish.

ASSISTING THE DIFFERENT LAND-POLICY STAKEHOLDERS: THE CASE OF SENEGAL

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In 2012, the Government of Senegal resumed its land-reform process, setting up a new National Commission for Land Reform (CNRF). Among other tasks, it was asked to propose changes for the management of land in the national domain (95% of the country).

In order to facilitate this political process, French foreign aid in coordination with other development partners is using different tools to facilitate dialogue between the groups of stakeholders involved in the process: joint-funding of Voluntary Guideline promotion workshops together with Italian and German foreign aid, and technical support of FAO; intensifying political dialogue with the Senegalese authorities and making international commitments (G7 in 2013 on Land Transparency); organisation of a field visit for discussions and political dialogue with the National Commission on Land Reform (CNRF); capitalising on lessons learned from projects financed by the AFD (French Development Agency) to test land-management pilot approaches; funding of coordination workshops for civil-society platforms in order to encourage constructive talks (Technical Committee on "Land Tenure and Development", and the French Ministry of Foreign Affairs and International Development).

In this context, the VGGT have proved to be a powerful tool to assist land reform. They enable the organisation of political dialogue on solid foundations, identifying potential improvements to national land governance for the benefit of all, especially vulnerable and marginalised populations.

● **National applications of the VGGT: an outline of land-tenure policies in France**

The French tenure regime: securing land users rights

Aside from application of the VGGT to take into account land-tenure issues in development aid better, **the goal of coherency requires the promotion of systems of responsible land governance in our own country.** Nationally, **France's land-tenure policies are based on both the recognition of rights of land ownership and use, and on tools to regulate access to these rights for reasons of public interest.** The aim of these tools deployed after the Second World War was to modernise farming in order to ensure France's food security by developing **consolidated, competitive, family-type farms and limiting the development of very large farms.** Although these goals are still valid today, other objectives have been assigned to the tools over the years, such as environmental and landscape conservation and job protection. They provide an operational solution for the application of the many principles of the VGGT.

These regulatory tools apply:

- >> *when farmland is purchased:* the French and management and rural establishment agencies (SAFER) – limited companies approved by the government to conduct public-service

assignments – can acquire farmland by agreement or, when necessary, by pre-emption, sometimes with a request for price adjustment. They then assign the land in priority to farmers who are starting up their farm or who need to consolidate it. They also ensure the transparency of the rural-land market;

- >> *to the leasing of farmland governed by the Farm Lease Act*: this act is a set of public-order regulations that protect farmers in situ. They notably determine the price of the lease and its minimum duration. They provide for a right of pre-emption for the in-situ lessee in case of sale and for agricultural land tribunals to resolve conflicts between lessors and lessees; this provides strong security of land access for farmers;
- >> *to the farming of land authorised by a structure-control procedure*: this administrative procedure separates the ownership of farmland from its use. The prefect grants or refuses authorisation to farm land according to priorities decided in each region.

France has also set up tools (urban-planning documents) that can **curb the phenomenon of land artificialisation**, which causes loss of biodiversity and generates greenhouse-gas emissions. ●