



Food and Agriculture Organization  
of the United Nations

# **Legal aspects relevant to securing the interests and rights of smallholders with a particular focus on women land rights**

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**Seminar on Hot Topics in Sustainable Agriculture and Land - EU**

16 February 2016  
Brussels



# Overview

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- Legal work on the VGGT:
  - Assessments; law reform; implementation, dispute settlements
- Key challenges to small holders tenure security
- Statutory recognition of customary rights
- Protection of women's rights within customary tenure
- Advancing women's rights in legislation
- Conclusions



# Legal work on the VGGT

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- **FAO Technical Guide (forthcoming):**
- *Responsible governance of tenure and the law: a technical guide for lawyers and other legal service providers*
  - Cover land, fisheries and forest tenure
  - Addressed to lawyers working for governments, business lawyers and public-interest legal service providers
- Key areas covered
  - Legal value of VGGT, legitimacy, connection with human rights
  - Legal assessment, law making, implementation, dispute settlement



# Assessments

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- **All countries should seek alignment with the VGGT**
- The VGGT contain a number of fundamental principles aimed at enhancing respect, recognition, protection, safeguarding of legitimate tenure rights.
- They contain implementation principles from human rights and good governance that legislation in a country should reflect overall, eg participation and accountability
- The VGGT contain specific guidance on substantive areas of law, such as legal recognition of legitimate tenure rights, including the rights of women, registration, public lands, expropriation and investments.
- **Legal assessment necessary to ensure alignment w/ VGGT**



# Assessments

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- **Assessments can be undertaken for different purposes**
- Assessments as first step in law making
- Assessment for advocacy
- Assessment as part of due diligence
- Assessments of a particular field or sector, eg gender, land, forestry
- Assessment of a particular issue, eg land consolidation, expropriation
- **Different methods can be used – more in the session on tools**

**Look out for forthcoming FAO Technical Guide: Responsible governance of tenure and the law**



# FAO experiences in legal assessments

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**Sierra Leone** -see <http://www.fao.org/legal/publications/legal-papers/en/>  
FAO (financed by Germany) developed a tool for assessing legislation on land, fisheries and forests against the VGGT

- Substantive questions organized around the five principles of respect/recognize, protect/safeguard, facilitate the enjoyment of legitimate tenure rights, access to justice and prevention of conflict
- Assessment covered existing legal framework as well as draft policies and laws, allowing for concrete recommendations for better alignment with the VGGT
- Worked with Interministerial task force on the VGGT

## Macedonia

- FAO developed a detailed assessment tool for land consolidation, in a project to be followed up with EU funding

## More on the session on tools



- **Do not copy the VGGT into national law**
- While most of the key provisions of the VGGT should be reflected in national legislation, the way they are worded necessitates applying them rather than copying them.
- The VGGT are general and need to be applied in ways that fit national legal systems and approaches.
- Countries cannot be expected to overhaul their entire legal framework related to tenure of land, fisheries and forests in a single step.
- Not all provisions of the VGGT are relevant to all countries, e.g. not all have communities with customary tenure or indigenous peoples.
- **The VGGT should therefore be considered in law-making and a mechanism established to ensure alignment w/ VGGT**



# Law-making

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- **Ensure a process that is consistent with VGGT**
- Participation of relevant government agencies as well as stakeholders that will be affected by the law
- Make special efforts to ensure participation by the more vulnerable sections and to ensure gender sensitivity
- There may be a need for capacity development to ensure meaningful participation
- **Consider small holders** (including farmers, pastoralists, herders, small scale fishers and rights to commons), **women's rights** and **implementability of substantive legal provisions**
- Allow sufficient time for analysis, drafting, consultations and further drafting
- Consider testing procedures before law is submitted to parliament
- Identify legislation to be abolished or amended





# Implementing laws

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## Laws don't get applied automatically in many developing countries

- Support dissemination of new laws
- Support awareness raising activities
- Support capacity development for different users
  - Judges, government officials
  - Right holders
  - Others that may be affected by the law
- Support institutions responsible for implementing laws
- Support accessibility of services

See [FAO. 2014. When the law is not enough: Paralegals and natural resource governance in Mozambique](#)



# FAO's experience

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## Kenya

- EC funded project Support for Responsible Land and Natural Resource Governance in Communal Lands in Kenya
- Support implementation of new land laws on community lands (mainly pastoral lands)
- Institutional strengthening:
  - National Land Commission
  - County governments
- Applications of gender-responsive territorial development tools
- Enable communities to have tenure rights registered



# Small holder and community rights

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- All legitimate tenure rights – individual or community – should be recognized and protected by law
- Small holders may rely on agricultural plots and/or on access to commons (pasture, wetlands, wooded areas);
- Community land will often contain both types of rights
- Community land is often ruled by custom
- Official registration efforts may be more effectively carried out at community level
- Titling efforts should not focus solely on individual agricultural parcels
- Legislation should contain provisions for FPIC for indigenous peoples (FPIC) and similar safeguards for other communities under customary tenure



# Key legal issues regarding small holders

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- Legal recognition and protection of legitimate tenure rights
  - Including lease rights, use rights, rights of way
- Facilitation of enjoyment or legitimate tenure rights
  - Costs and physical accessibility of services and documentation
  - Complexity and costs of obtaining legal proof of rights
  - Taxation of property
- Access to justice
  - Costs and physical accessibility of dispute settlement mechanisms
  - Support to alternative dispute settlement mechanisms
- Clarity of legal texts, clarity of rights, clarity of obligations

**Many countries never specify which laws are to be abolished**



# Small holder women's rights

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- Women tend to have weaker tenure rights than men
- Particular challenge arises when laws recognize customary rights and customary institutions:
  - Laws should make these customs subject to constitutional and international human rights principles on gender equality
  - Customs need to evolve in line with principles of gender equality
  - Consider working to the strengths of customary rules regarding protection of widows and children, also in the context of HIV/AIDS
  - Strengthen women's decision making power and agency at the community level
  - Great need not only to change laws, but to help implement laws at the customary level, engaging whole communities and their leaders in adapting their customs



# Enhancing gender equality through law

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- Constitutions, land laws, family and inheritance laws all need to protect the equal rights of men and women
- Supporting gender equity through all legal instruments
  - From constitutions and laws to regulations and standard forms
  - The devil may be in the detail
- Consultative, participatory and gender-equitable legal drafting
  - Enhance women's participation in legislative process
  - Ensure not only gender-neutral, equal opportunity provisions but gender-responsiveness with provisions that specifically address challenges faced by women
- Gender-equitable access to justice and legal support
  - Gender balance in judicial institutions, legal clinics for women

**See Technical Guide: Governing land for women and men**

**More in Tools**



# Conclusions

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- VGGT provide for increased objectivity in legal work, as they contain standards that have been agreed by consensus and build on best practices as well as binding and non-binding provisions of international law
- There is great need for further support for legal assessments, legislative processes, implementation and dispute settlement to further the application of the VGGT
- FAO believes that all partners should promote impartial legal advice to strengthen legal protection of small holders and increased gender equality.





# Thank you for your attention

## Information resources

FAO Legal Papers and LEG Partner Publications:

<http://www.fao.org/legal/publications/legal-papers/en/>

<http://www.fao.org/legal/publications/partner-publications/en/>

FAO Legal Assessment Tool for gender-equitable land tenure and  
Gender and Land Rights Database: <http://www.fao.org/gender-landrights-database/en/>

FAO Governance of Tenure page:

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

